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A Review Of Developments In U.S. Ocean And Coastal Law 2003

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A REVIEW OF DEVELOPMENTS IN OCEAN AND COASTAL LAW 2003

DOMESTIC

I. FISHERIES MANAGEMENT

A. The Reauthorization of the Magnuson-Stevens Conservation and Management Act

The Magnuson-Stevens Act was first passed in 1976 for the conservation and management of United States fisheries. A major impetus for the passage of the Act was the problem of declining fish stocks. On February 27, 2003, Maine Senator Susan Collins introduced the Fisheries Science and Management Improvement Act of 2003 in the Senate of the 108th Congress of the United States. The bill is intended to reauthorize and amend the Magnuson-Stevens Act.

According to the NOAA Office of Legislative Affairs, Senator Collins' statement on the floor indicated that the bill, if passed, will require that all stock assessments be peer-reviewed, including consideration of anecdotal information from fishermen; change the scope of Essential Fish Habitat from the whole Exclusive Economic Zone "to more discreet units of habitats as originally conceived." The bill is also intended to make sure that fishery management plans are "pre-determined to be compliant with NEPA requirements, thereby preventing NEPA law from [being] used in an incorrect way to regulate fisheries." See NOAA Office of Legislative Affairs, *Fisheries Bills Introduced in the Senate*, available at <http://www.legislative.noaa.gov/Archives/2003/march03.htm> (last visited Mar. 16, 2003).

B. Pew Oceans Commission Releases Reports on the State of the Fishing Industry

The Pew Oceans Commission is an independently funded American group "conducting a national dialogue on the policies needed to restore and protect living marine resources in U.S. waters." The Pew Oceans

Commission presents its "recommendations for a new national ocean policy" to Congress and the Bush Administration early this year. In preparation, the Commission has produced and released four reports on improvements to fisheries management that have become necessary since the original passage of the Magnuson-Stevens Act in 1976.

To produce *Managing Marine Fisheries*, Pew convened a two-day workshop with leading scientists and policymakers. The report contains recommendations for reforms to fishery management. *A Dialogue on Marine Fisheries* contains suggestions given by fishermen in meetings held across the nation. *Socioeconomic Perspectives on Marine Fisheries in the United States* is a report that finds "that improving fishery management has the potential to more than double current catches, restoring and creating tens of thousands of family wage jobs." *Marine Reserves: A Tool for Management and Conservation* recommended the creation of large marine reserves to mitigate pollution, coastal development, and overfishing that threaten the commercial fishing industry. See Pew Oceans Commission, *Mission Statement*, available at <http://www.pewoceans.org/mission.asp> (last visited Mar. 16, 2003); Pew Oceans Commission, *Commission Honors America's Fishing Heritage*, Jan. 14, 2003 available at http://www/pewoceans.org/articles/2003/01/13/pr_31402.asp (last visited Mar. 16, 2003); Colleen Valles, *Independent Commission Urges Reserves to Protect Ocean Life*, Jan. 16, 2003, available at [Http://production.enn.com/news/wire-stories/2003/01/01162003/ap_49366.asp](http://production.enn.com/news/wire-stories/2003/01/01162003/ap_49366.asp) (last visited Mar. 16, 2003).

C. *The Commercial Fishermen Safety Act of 2003*

On February 27, 2003, Maine Senator Susan Collins introduced an amendment to the Internal Revenue Code. The amendment would provide a tax credit against income for the purchase of fishing safety equipment. This tax credit would total seventy-five percent of the amount fishermen pay "to purchase and maintain required safety equipment." See NOAA Office of Legislative Affairs, *Fisheries Bills Introduced in the Senate*, available at <http://www.legislative.noaa.gov/Archives/2003/march03.htm> (last visited Mar. 16, 2003).

II. PROTECTED AREAS

A. *Designation of Particularly Sensitive Areas*

The National Oceanic and Atmospheric Administration (NOAA) announced on November 13, 2002 that it would provide additional

protection to the Florida Keys by designating the waters around the Keys as Particularly Sensitive Sea Areas (PSSA). This designation is aimed at preventing possible destruction to the Keys caused by thousands of large international ships that pass through the Keys every year. The U.S.'s successful application to the International Maritime Organization resulted in this designation of the waters around the Florida Keys as a PSSA. This designation is crucial in preventing additional damage to the Keys' coral reefs caused by ship groundings, anchoring, collisions and discharges of harmful substances. International nautical charts will now reflect the PSSA as a 3,000 square nautical mile area. The PSSA includes three "no-anchoring" zones and four "Areas to be Avoided" that prevent large ships from traveling too close to coral reefs.

The Florida Keys represents the first such designation in U.S. waters and is now one of only four other Particularly Sensitive Sea Areas in the world. The other current PSSAs are: the Great Barrier Reef in Australia; the Sabana-Camaguey Archipelago in Cuba; Malpelo Island in Columbia; and the Wadden Sea in Northern Europe. According to Nancy Klingener, Program Manager of the Ocean Conservancy, "this international distinction is important for the Florida Keys, an area that depends ecologically and economically on the health of the coral reef ecosystem." "It adds important reinforcements to the protections already in place from the Florida Keys National Marine Sanctuary and the new Tortugas Ecological Reserve." This designation of the Florida Keys will hopefully set a national precedent for marine protection. According to Dr. Cheri Recchia, The Ocean Conservancy's Director for Marine Protected Areas, "we look forward to similar protections being established for other sensitive areas, such as Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve." *See The Ocean Conservancy Applauds NOAA's Protection of The Florida Keys From Large International Ships*, available at <http://oceanconservancy.com/dynamic/press/releases/archive.htm?id=021113a> (last visited Mar. 15, 2003).

B. Illegal Collection of Coral

A forty-nine count indictment charged John Marquardsen with illegally collecting the coral and rock from Kaneohe Bay on the island of Oahu. Marquardsen allegedly falsely labeled the coral and rock as smoked fish and seafood and shipped it to Los Angeles, California. Rodolfo Tagle, the co-defendant is charged with receiving the shipments and distributing the coral and rock to marine supply stores for use in aquariums. Both

Marquarsden and Tagle face twenty-four counts of trafficking in wildlife, twenty-four counts of illegal shipping and one count of conspiracy. A third party, King Wong, was also charged in connection with this case. Wong has already pleaded guilty to conspiracy for taking part in the scheme by packaging the coral rock and preparing false paperwork for shipping. The coral and rock was worth an estimated \$1 million and prosecutors say the damage caused to the Oahu reef system exceeded \$5 million. The indictment came after an investigation by the U.S. Fish and Wildlife Service, the Hawaii Department of Land and Natural Resources and the Hawaii Department of Conservation and Resource Enforcement. *See Men Accused of Taking 100 Tons of Hawaiian Coral*, available at <http://www.planetark.org/dailynewsstory.cfm?newsid=19669&newsdate=03-Feb-2003> (last visited Mar. 16, 2003).

C. New Marine Habitat Restoration Projects

On February 4, 2003, the NOAA National Marine Fisheries Service, Ocean Trust and the National Fisheries Institute announced funding for nine new community based habitat restoration and research projects. The projects will help protect a variety of marine habitats and fisheries in the coastal areas of Massachusetts, Connecticut, New York, Maryland, Virginia, Texas, Washington and Alaska. According to Bill Hogarth, director of NOAA fisheries, "restoring our coastal environment and commercial fisheries to a healthy level is a major undertaking . . . we are making progress in this area by encouraging local communities to work with us on restoration projects and to raise awareness of the importance of valuable marine habitats." Members of the seafood business community and volunteers are encouraged to submit proposals during the 2003 project solicitation period beginning January 15, 2003. Thor Lassen, president of Ocean Trust, invited all seafood companies, restaurants and retailers to join in the effort to restore marine habitat and fisheries. According to Lassen, "[t]his is a tremendous opportunity to build a strong coalition with public participants to enhance fishery-dependent ecosystems." According to Justin LeBlanc, Vice President for the National Fisheries Institute, this is a mutually beneficial partnership. He says, "the commercial fish and seafood industry is committed to the restoration and conservation of important fish habitat . . . restoring these areas means a healthier coastal environment and improved fisheries. . . ." One such project began in Massachusetts in the summer of 2002, when Ocean Trust and NOAA Fisheries began working with Egg Island Oyster Company and the Wellfleet Shellfish Department to restore Cape Cod's quahog fishery. Connecticut, New York, Maryland, Virginia, Texas and Washington are

also working on various projects to restore habitat and fisheries. NOAA Fisheries staff works closely with the various communities to help with project development and implementation. The projects are then maintained by communities, promoting a heightened awareness of and appreciation of the local environment. *See Chincoteague Bay is Target of Increased Habitat and Restoration Program, available at <http://www.publicaffairs.noaa.gov/releases2003/feb03/noaa03r110.html> (last visited Mar. 15, 2003).*

III. ENDANGERED SPECIES

A. *Mixed Results on Alaskan Drilling*

The National Academy of Sciences recently made it known in a report requested by Congress that oil drilling in the National Petroleum Reserve on Alaska's North Slope has had decidedly mixed results on the area. While some endangered species have been disturbed and whaling in the area has been made more difficult, there have been no significant oil spills or large declines in the caribou population over thirty-five years of drilling. However, the report indicates that environmental effects continue to grow, despite efforts to the contrary by government and the oil industry. Furthermore, the report suggests that the oil drilling has produced both positive and negative social effects, such as better schools and health care on the one hand, and an increase in diabetes and alcoholism. An area slightly larger than Minnesota, the National Petroleum Reserve provides about fifteen percent of the nation's oil supply. The area is adjacent to the contested Arctic National Wildlife Refuge. *See ENERGY: Scientists find positive, negative results of Alaska oil drilling, CONG. DAILY A.M., Mar. 5, 2003, available at 2003 WL 8362649 (last visited Mar. 12, 2003).*

B. *Pentagon Seeks Exemptions From Endangered Species Act*

The Pentagon is seeking exemptions from environmental laws, including the Endangered Species Act (ESA) due to what it says is a need for greater regulatory flexibility and increased military preparedness. According to preliminary reports, the sought exemptions are to be included in the 2004 Defense Authorization Bill, coming up for hearings in March of 2003. The Pentagon is expected to ask Congress to amend the ESA so that the Defense Department can employ Integrated Natural Resource Management Plans, instead of maintaining entire critical habitat areas in its efforts to protect endangered species. Under the current regime, the Defense Department often has to break up training areas to provide critical habitat area protection. Environmentalists, such as Daniel Patterson of the

Center for Biological Diversity, argue that the military has failed to present any evidence that the environmental protection measures currently in place have affected military preparedness. Patterson adds, “[t]he Pentagon is using the threat of war to gut thirty years of public interest legislation.” Other exemptions sought include a finding that spent munitions are not solid wastes, allowing ranges to be used despite the Resource Conservation and Recovery Act (RCRA); an exclusion of live fire training from the Comprehensive Environmental Response, Compensation and Liability Act; and an amendment to the Clean Air Act, allowing the military five years to bring its emissions into compliance. *See Jim Skeen, Pentagon Seeking Law Exemptions*, L.A. DAILY NEWS, Mar. 7, 2003, at SC1, available at 2003 WL 5671335 (last visited Mar. 12, 2003).

C. More Salmon, but Still Endangered

Despite increased runs of salmon and steelhead along the Pacific coast, NOAA scientists have concluded that none of the twenty-seven populations listed as endangered should come off the threatened or endangered species list. The scientists further concluded that three of the populations that have been hitherto listed as “threatened,” should be relisted as “endangered.” The recent increases appear to be due more to a temporary up-tick in cycles of available food in the ocean than to any efforts to save the fish from extinction. There are signs of hope, however. Bob Lohn, the Northwest Regional Administrator for NOAA Fisheries, said, “[i]n those areas where there have been good habitat conditions and/or major reforms such as harvest reforms or other improvements, we are often seeing a quicker rebound.” A 2001 federal court ruling that temporarily struck down threatened species status for a population of Oregon coastal salmon prompted the current review. While protection for the Oregon salmon was restored pending appeal, the case held that NMFS erred when both wild and hatchery salmon were included in the same population group, while only the wild fish were listed as threatened. Currently, of the twenty-seven identified populations on the West Coast, five are listed as endangered, twenty-one as threatened and one is listed as a candidate for protection. An attorney representing Pacific fishermen expressed frustration at NOAA’s findings for continued protection despite “record runs.” *See Jeff Barnard, Despite Growing Numbers-Fish Runs Still in Peril, Federal Scientists Contend*, THE COLUMBIAN (Vancouver, WA), Feb. 26, 2003, at C2, available at 2003 WL 5221445 (last visited Mar. 12, 2003).

IV. POLLUTION

A. *The Public Health Security and Bioterrorism Preparedness and Response Act*

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, amends the Safe Drinking Water Act and requires the Environmental Protection Agency (EPA) to work with local water utilities to protect public health. Under this Act, all drinking water systems that serve more than 3,300 people are required to submit vulnerability assessments (VA), as well as corresponding emergency response plans, to the EPA. The submission deadline for systems serving more than 100,000 people is March 31, 2003. Recently the EPA announced that it was making significant progress towards complying with the Bioterrorism Act and protecting the nations drinking water supply. This progress includes providing a set of instructions to aid drinking water utilities around the country in submitting self-assessments to the EPA in a secure manner. It also includes soliciting grant applications from non-profits that actively support drinking water systems and providing grant assistance to large drinking water systems for VA development. *See EPA, Water Infrastructure Security, available at <http://www.epa.gov/safewater/security> (last visited Apr. 21, 2003).*

B. *Pretreatment Standards for Wastewater Discharge*

On February 14, 2003, the Environmental Protection Agency (EPA) announced that it is adopting limitation guidelines and pretreatment standards for wastewater discharges from metal products and machinery facilities. This regulation will apply to an estimated 2,400 operations nationwide. The operations covered by the regulation include metal products and machinery facilities that both manufacture, rebuild, or maintain metal products, parts or machines and directly discharge wastewater. This regulation is expected to prevent about 500,000 pounds per year of oil, grease, and total suspended solids from being discharged into United States water bodies. *See Industrial Water Pollution Controls; Metal Products and Machinery Effluent Guidelines, available at <http://www.epa.gov/waterscience/guide/mpm/rule.htm> (last visited Apr. 21, 2003).*

C. NPDES Permit Requirements for Livestock and/or Concentrated Feeding Operations

On February 12, 2003, the Environmental Protection Agency (EPA) published final regulations establishing national pollutant discharge elimination system (NPDES) permit requirements and limitation standards for livestock facilities and/or concentrated animal feeding operations (CAFOs) under the Clean Water Act. The EPA said that the regulations will increase the number of livestock operations that must obtain NPDES permits and will apply to operations that raise in confinement more than 1,000 cattle, 700 dairy cows, 2,500 swine, 10,000 sheep, 125,000 chickens, 82,000 laying hens, or 55,000 turkeys.

These rules, which become effective April 14, will require large-scale beef, dairy, hog, and poultry raising facilities to apply for and obtain NPDES permits even if their discharges occur only during storms. These permitted facilities must also implement nutrient management plans, which include manure management. Additionally, these plans must ensure that crops will take up and use the nutrients from the manure. According to the EPA, these new rules and requirements will reduce phosphorus, nitrogen, sediment, metals, and pathogen releases into the environment from CAFOs. See EPA NPDES Permit Regulation and Effluent Limitation Guidelines and Standards for CAFOS, 40 C.F.R. pts. 9, 122, 123 and 412 (2003); *National Pollutant Discharge Elimination System: Concentrated Animal Feeding Operations - Final Rule*, available at <http://www.epa.gov/npdes/afo/cafo/finalrule.cfm> (last visited Apr. 21, 2003).

V. MISCELLANEOUS

A. Gulf of Mexico "Dead Zone" Grows to Size of Massachusetts

According to the Louisiana Universities Marine Consortium, this year's "dead zone" area in the Gulf of Mexico is 8,500 miles. The so called "dead zone" is an area almost completely devoid of aquatic life. The "dead zone" is the result of agricultural runoff from the Mississippi River. Streams, bayous and rivers, which in turn feed the Mississippi, receive excessive nutrients and in turn deposit them in the Big Muddy. The accumulated nutrients overstimulate plankton growth, resulting in huge plankton blooms. When the plankton die, they sink and decay. "This decay process uses up available dissolved oxygen, causing mobile organisms like fish and shrimp to leave the area. Immobile animals like clams and oysters suffocate," says Dr. Tom Moorman, a Ducks Unlimited scientist.

The extreme wetland losses along the Louisiana coast have worsened the problem in the Gulf of Mexico. It is estimated that Louisiana is losing about a football field worth of wetland every half hour, for a total of twenty-five to thirty square miles of loss annually.

In response to this problem, Governor Foster of the State of Louisiana has launched a massive educational campaign to bring national awareness to the problem. The aim of the campaign, identifying Louisiana's coast as "America's Wetland," is to remind the nation of the Louisiana Gulf Coast's importance as a transportation route, a source of energy and an important source of seafood. *See Ducks Unlimited, Gulf of Mexico "Dead Zone" is Bigger Than Ever, available at http://ducks.org/news/deadzone_august_2002.asp (last visited Apr. 21, 2003).*

B. Shippers and Environmentalists Eye a New Northwest Passage

The legendary search for an ice free "northwest passage" from Europe to the Far East may be coming to an ironic end. As the Arctic ice melts and the glaciers recede due to global warming, the shortest sea journey from Japan to Europe may soon be a straight route over the top of the world, according to a January 28, 2003 report by the Cable News Network.

According to Alexander Medvedev, the general director of the Murmansk Shipping Company, year round transport of goods through the Northern Sea Route is less than a decade away. Mr. Medvedev pointed to the favorable economics of thawing Northern Sea Route: "You can save at least ten to fifteen days on the voyage from Japan to Europe, especially in summertime."

United Nations predictions suggest that although Mr. Medvedev may be a bit "optimistic" in terms of the short-term outlook for an ice free northwest passage, the trends are definitely favorable to year round shipping. Its own studies show the Arctic completely free of ice, during the summer months, by 2080.

Environmentalists have greeted the prospect of major shipping through the Arctic on a year round basis with alarm. "There has to be a strategy for sustainable development of the Arctic. It mustn't become a sort of new Africa, where colonists exploited the resources," said Svein Tveitdal, managing director of the United Nations Environment Program's polar center.

While the need for development of shipping infrastructure in the Arctic and the reticence of some insurers to risk insuring shipping through historically dangerous areas may slow commercial shipping initially, the new polar routes will save 4,000 nautical miles on some journeys from the Far East to Europe. With environmental change due to global warming and

economics converging, the new "northwest passage" may come to rival the Panama and the Suez Canal for ship traffic. *See Melting ice may open Arctic ship route, available at <http://cnn.com/2003/TECH/science/01/27/arctic.ice.reut/> (last visited Feb. 9, 2003).*

*C. Public and Private Commissions Recommend
"National Ocean Policy Act"*

Both the private Pew Oceans Commission and the Congressionally created U.S. Commission on Ocean Policy are expected to recommend the adoption of a comprehensive federal "National Ocean Policy Act" and the creation of regional planning groups to help guide protection of coastal resources.

According to Leon Panetta, Chairman of the Pew Oceans Commission, the legislation that will be proposed this spring will create regional planning groups similar to those that have existed in the mid-Atlantic area since 1980. These groups have coordinate coastal cleanup and habitat restoration work and "make protection of ocean resources and sustainability a national priority."

The other commission, the congressionally created Commission on Ocean Policy is expected to endorse these proposals and further, to recommend major changes in national policy, including, perhaps, the creation of a new federal agency to oversee protection of ocean resources and coordination of existing marine conservation programs.

The sixteen member Commission on Ocean policy, created by an act of Congress in the summer of 2000, is Chaired by retired Admiral James Watkins. Panetta and Watkins have been meeting to coordinate the efforts of their respective commissions. *See Terry Rodgers, Ocean group meets as studies wrap up. Policy proposals will go to Congress, THE SAN DIEGO UNION-TRIBUNE, (Jan. 30, 2003); Don Walsh, Uncertainties and accomplishments, SEA POWER 45 (Jan. 1, 2002).*

INTERNATIONAL

I. FISHERIES

A. *Counting Sharks*

As part of a court-approved settlement agreement between the National Marine Fisheries Service (NOAA Fisheries) and commercial fishermen, the agency agreed to have its stock assessment of various sharks overseen by an independent reviewer. The species being counted include the sandbar,

blacktip, tiger, hammerhead, spinner and silky, all of which are large Atlantic coastal sharks. The firm that conducted the independent review is the Natural Resource Consultants, Inc., headquartered in Seattle. The review of NOAA's assessment was very favorable; Natural Resource Consultants cited the results as "the best scientific information available" and the work as being of a "highly professional character."

On December 27, 2002, NOAA published an emergency rule to establish fishing quotas for these sharks and is seeking public input on additional management options. The count for blacktip sharks shows that their numbers have been fully rebuilt and improvements have been noted for sandbar sharks. The agency's work is far from over, however, as the aggregate of sharks, including the hammerhead and tiger sharks, is still highly depleted from overfishing. *See Large Coastal Shark Stock Assessment Peer Reviews Complete; Science Shows Blacktip Sharks Fully Rebuilt, available at <http://www.dnr.state.md.us/fisheries/fins.html> (last visited Mar. 17, 2003).*

*B. Up to the Minute Catch Information May Help Preserve
Highly Migratory Fish in the Atlantic*

The National Marine Fisheries Service (NOAA Fisheries) is set to amend its regulations governing non-tournament catches of highly migratory Atlantic billfish and North Atlantic swordfish. The specific fish catches affected will be the Atlantic sailfish, the blue and white marlin and the North Atlantic swordfish. According to Dr. Ransom A. Myers and Mr. Peter Ward of Dalhousie University's Department of Biology, there is evidence that billfish population size is now a small fraction of historical levels. Likewise, the United States National Marine Fisheries Service has said that the commercial swordfish industry is so threatened by depletion that it may lose viability within the next ten years.

As of March 2, 2003, current recreational tuna permits will be extended to all highly migratory fish in the Atlantic. In addition, swordfish recreational catches will be limited to one per person with a maximum of three per vessel. Finally, and possibly of most importance, there will now be a mandatory reporting program for recreational landings of any of these fish types in the Atlantic. North Carolina and Maryland are exempted from this reporting requirement because these states have already modified their reporting programs to cover these species. Catch reports should be made to NOAA Fisheries at 1-800-894-5528. *See Causes of Rapid Declines in World Billfish Catch Rates, available at <http://www.soest.hawaii.edu/PFRP/stats/myers.html> (last visited Apr. 21, 2003); Fish Market Mutiny, available at <http://www.fishingnj.org/artnytsafina.htm> (last visited Mar. 17,*

2003); *Atlantic Billfish and Swordfish and Recreational Retention Limit for North Atlantic Swordfish*, Office of Sustainable Fisheries, available at http://www.nmfs.noaa.gov/sfa/hms/032900A_faxFR.htm (last visited Apr. 21, 2003).

II. TREATIES/CONVENTIONS

A. *MARPOL's Annex IV Will Come into Effect on September 27, 2003*

On September 26, 2002, Norway accepted the International Convention for the Prevention of Pollution from Ships' (MARPOL) Annex IV. This Annex seeks to address the health hazards posed by vessels discharging raw sewage, while in coastal areas, by prohibiting ships from discharging untreated or inadequately treated sewage within four miles of land. Norway's ratification enables Annex IV to be put into force, for now the eighty eight accepting countries, together, constitute fifty-one percent of the world's tonnage. Now that the MARPOL's entry into force criteria for Annex IV is fulfilled, Annex IV will come into effect on September 27, 2003.

Annex IV is optional, however for those countries agreeing to adopt the regulations, it outlines how sewage should be handled on board and under what circumstances discharge may be permitted. Moreover, it requires all participating parties to maintain adequate pump out facilities as well as it incorporates a model International Sewage Pollution Prevention Certificate that can be administered by national shipping administrations to ships within their jurisdiction.

Annex IV applies to vessels conducting international voyages. It will affect all new ships of 400 and above gross tonnage as well as all new ships below 400 gross tonnage that are certified to carry more than fifteen people. This Annex, however, will not immediately affect those existing ships of 400 and above gross tonnage or those existing ships below 400 gross tonnage that are certified to carry more than fifteen people. These existing ships will not be required to meet the adopted regulations until five years after the Annex enters into force. *See International Maritime Organization, Sewage Rules for Ships to Enter into Force Following Breakthrough Ratification*, available at http://www.imo.org/Newsroom/mainframe.asp?topic_id=583&doc_id=2524 (last visited Mar. 5, 2003).

*B. Numerous Delegations Urge Stronger
Actions Against IUU Fishing*

In early March, numerous delegations met to discuss the problems surrounding illegal, unreported, and unregulated fishing (IUU). Many of the delegations involved in the meeting of Food and Agriculture Organization's (FAO) Committee on Fisheries (COFI) advocated for stricter initiatives to fight IUU fishing. Those countries pushing for stronger actions view IUU as frustrating national and international efforts to manage fisheries in a more responsible way.

Japan recommended that FAO hold an intergovernmental meeting as a means for stepping up the implementation of two international plans of action. These two international plans of action, emerging from the 1995 Code of Conduct for Responsible Fisheries, call for (1) the management of fishing capacity (IPOA-Capacity) and (2) the international plan of action to deter, prevent, and eliminate IUU fishing (IPOA-IUU). IPOA-Capacity addresses the management of fleet capacity, while IPOA-IUU requires States and regional fisheries management organizations to act in fighting IUU fishing.

While both the IPOA-Capacity and IPOA-IUU are voluntary, Japan still believes that these two plans are essential components in implementing the Code of Conduct for Responsible Fisheries. The Japanese delegation supported their position by stating that "[t]heir effective and full implementation is urgently required to restore and maintain the sustainability of the world fisheries resources." Japan is even willing to provide financial support for an intergovernmental meeting in early 2004.

Australia also voiced its concern regarding the current difficulties associated with fighting IUU fishing. In advocating for stronger actions, Australia stated that the three most important issues surrounding world fisheries today are fighting IUU fishing, overcapacity, and ensuring that regional fisheries management organizations are assuming their full responsibilities. By addressing these three issues, delegations will then be able to manage the world fisheries in a more sustainable way. *See Food and Agriculture Organization, Strong Support for Firmer Action Against IUU fishing, available at <http://www.fao.org/english/newsroom/news/2003/14660-en.html> (last visited Mar. 8, 2003).*

*C. European Commission Recommends Major Reductions
in Fishing Catches as a Means of Fending off
a Moratorium on Cod Fisheries in 2003*

The European Union faces a tough choice in fisheries management, but it is a choice faced by most of the world's fisheries today: either allow fishing to continue as is or significantly reduce it so that tragedy may be avoided. In the words of Franz Fischler, Commissioner of Agriculture, Rural Development, and Fisheries, "[t]he choice facing us is stark but straightforward: either we do our best to secure the future of our fishing sector by taking measures that will undeniably impose pain in the short term or we postpone them once again, until, inevitably, one fish stock after another collapses with all the attendant consequences for the sector."

Cod stocks are not fairing well today. According to the International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee on Fisheries (STECF), it is necessary to significantly reduce Total Allowable Catches (TACs) of cod in the Irish Sea, North Sea, eastern English Channel, North Sea, west of Scotland, and Skagerrak as a means of maintaining stock recovery. The ICES and STECF further recommend that fishing for whiting, haddock, and flatfish should be significantly reduced. The reasoning behind their recommendation is that since these species are often caught with cod, by reducing their TACs, cod stocks will be even more protected.

The northern hake and the anglerfish are also experiencing significant depletion. Currently the European Commission is taking the ICES and STECF recommendations into account in crafting TACs and recovery plans for the 2003 season. Last year the Commission proposed a recovery plan based on the ICES findings. This proposal, however, is outdated due to the alarming decline in cod stocks. The ICES advised the Commission to adopt a new and improved recovery plan or a moratorium would be needed in order to prevent cod stocks from plummeting. See Europa, *Commission Proposes Significant Reductions in Fishing Catches to Fend off Moratorium on Cod Fisheries in 2003*, available at http://europa.eu.int/comm/fisheries/news_corner/press/inf02_55_en.htm (last visited Mar. 8, 2003).

III. POLLUTION

*A. World Wildlife Fund Urges the United States to Lead the World in the
Establishment of No-Go Zones For Oil Tankers*

In January of 2003, David Sandalow, Executive Vice-President of the World Wildlife Fund (WWF) and former assistant secretary of state for

oceans, environment and science, testified before the Senate Committee on Commerce, Science and Transportation expressing his support for the establishment of “no-go zones” for oil tankers operating in U.S. Waters. These zones would effectively phase out the travel of single-hulled tankers in U.S. waters and would protect areas determined to be of environmental and economic importance from the risk of oil spills. This recommendation is made in the wake of the recent spill from the tanker *Prestige* in Spain that has had calamitous effects on European fisheries and beaches alike. WWF makes this recommendation with the hope that the U.S. will create pre-cedent followed internationally.

In November 2002, an oil spill occurred when the tanker *Prestige* sank off the coast of Spain in a channel separating the Galician Bank from the continental shelf. The *Prestige* was carrying twenty million gallons of heavy fuel oil, nearly twice as much as was spilled on the Alaska shore by the Exxon Valdez in 1989. The effected area is home to eleven kinds of sharks, eighty-six species of fish, starfish, the endangered cold-water coral, *Lophelia pertusa*, and some species of sponges. The spill has had devastating effects on area birds and has effectively halted commercial fishing in the area.

Sandalow testified that a World Wildlife Fund urges the United States to lead efforts to build a global network of “no-go-zones where tanker traffic is prohibited.” He further delineated the mechanisms by which the U.S. could effect these “no-go zones,” explaining that the International Maritime Organization (IMO) rules allowed for designation of zones such as these. The IMO allows coastal nations to petition for a Particularly Sensitive Sea Areas (PSSA) designation of maritime areas that warrant special protection due to environmental or economic significance and potential harm that could come from shipping activity in the area. Once this designation is achieved, shipping traffic can be more rigidly monitored or, in some cases, disallowed. This mechanism allows nations to determine which coastal areas are most important to ecological and economic conservation but also achieves a balance between national and international interests in maritime commerce.

Sandalow testified that the U.S. is under-utilizing the PSSA tool, asserting that “in our own waters, we should seek PSSA status for areas that are critical to the ocean web of life, or of special importance to commercial or recreational fishermen and others who rely on the sea.” The IMO mechanism could be an important tool when used in concert with federal conservation acts seeking to preserve areas of biological importance, or marine animals like the Endangered Species Act, or the Marine Mammal Protection Act, or with legislation seeking to protect fishery stocks like the Magnuson-Stevens Fishery Conservation and Management

Act. It is the hope of the WWF that the United States can lead the international community by applying this tool to existing environmental legislation.

The WWF, an organization that seeks to protect marine resources across the globe, hopes that the U.S. will become a world leader in the use of the PSSA mechanism to prevent oil spills by banning tankers from "no-go zones." See World Wildlife Fund Newsroom, *WWF Calls for No-Go Zones for Tankers in U.S. Waters at Senate Hearing on Oil Tanker Safety*, available at <http://www.worldwildlife.org/news/headline.cfm?newsid=465> (last visited Mar. 4, 2003); World Wildlife Fund Newsroom, *Oil Slick Moving Closer to National Park; WWF Leading Efforts to Save Wildlife Caught in Spill*, available at <http://www.worldwildlife.org/news/headline.cfm?newsid=456> (last visited Mar. 4, 2003).

B. Proposed Criminal Penalties for Sea Polluters Within the European Union

In March 2003, the European Commission introduced a draft law proposal that would impose criminal sanctions on ships that pollute by flushing their tanks out at sea. These penalties would include, in some cases, jail sentences for those directly responsible for introducing pollutants by this method of dumping. This comes in wake of the *Prestige* oil spill off the coast of Spain last year and is indicative of a trend on the part of the European Union (EU) towards a harder line on ocean pollution.

EU Transport and Energy Commissioner Loyola de Palacio stated that "[e]xisting civil liability regimes for pollution by ships do not provide sufficient financial disincentives for shipowners and others involved in the transport of dangerous cargoes by sea to behave in the most responsible way." The EU hopes that the bill will inspire greater compliance through the risk of personal criminal liability of individual polluters and would prosecute those involved in deliberate releases and grossly negligent spills of oil or other pollutants. Those at risk for prosecution could include ship's master, owner, operator, charterer, or the classification societies which certified the vessels as seaworthy.

This bill would place a significant burden on countries to prosecute within the EU. EU governments would not only be responsible for prosecuting polluters in their ports, but would also have to prosecute ships responsible for polluting far off of their coasts or even on the high seas. The bill has also been criticized by the shipping community. Chris Horrocks, general secretary of the London-based International Chamber of Shipping, commented that "[i]t [the bill] leaves a whole lot of unanswered questions." He went on to question the need for the law in light of the fact

that governments can already prosecute in cases of deliberate pollution. If the bill is passed it will be with the approval of the European Parliament and a weighted majority of EU nations. *See Planet Ark, EU Proposes Criminal Penalties for Sea Polluters, available at www.planetark.org/dailynewsstory.cfm?newsid=20075&newsdate=07-Mar-2003 (last visited Mar. 20, 2003).*

III. CORAL REEFS

A. *NOAA will Study Coral Reef Decline in the Caribbean and Micronesia*

The National Oceanic and Atmospheric Administration (NOAA) is funding the research of coral reef ecosystem degradation in the Caribbean for the next five years and in Micronesia for the next three years. While the two studies have common goals to protect healthy coral reef ecosystems and restore coral reefs that have been harmed by humans, each study will concentrate on the problems unique to its respective area.

The University of Puerto Rico (UPR) is leading the study of Caribbean coral reefs. The study will combine current research with forty years of historical data. By using both sets of data, UPR hopes to not only gain further understanding on how coral reefs function, but also provide scientific data for reef conservation and restoration. The Caribbean research will evaluate alternative management strategies from marine protected areas. The research will also look at the affect of fishery closures on the reefs and will use computer models to analyze possible ecosystem management strategies.

The University of Guam is spear-heading the coral research in Micronesia, which strives to produce ways to evaluate stress on coral reef ecosystems and establish water quality guidelines for coastal pollutants. The data will concentrate on the usefulness of marine protected areas and society's perception of watersheds and coral reefs. The study will strive to produce a model for integrated coral reef management. This project will most likely be used throughout the Micronesian islands.

Although the Micronesian research project is collected in Guam, it will be immediately used on the islands of Palau and Yap. *See NOAA Studies Coral Reef Decline in the Caribbean and Micronesia, available at <http://www.publicaffairs.noaa.gov/releases2002/nov02/noaa02r443.html> (last visited Mar. 21, 2003).*

IV. PROTECTED AREAS

A. Canada's First Marine Protected Area

On March 7, 2003, Robert G. Thibault, Minister of Fisheries and Oceans, announced the establishment of Canada's first Marine Protected Area. The area has been named the Endeavor Hydrothermal Vents Area and is located southwest of Vancouver Island, British Columbia. It is the site of the world's largest concentration of deep-sea vents and was once believed to be entirely devoid of life. That notion, however, could not be farther from the truth. These hydrothermal vents are the source of a unique ecosystem teeming with life. The vents, which lie 2,250 meters (7,400 feet) beneath the ocean's surface, were created by geysers erupting from fissures in the ocean floor. From these vents flow mineral-rich water heated to 300 °C / 572 °F. What makes these waters biologically interesting is that the energy cycle in the ecosystem does not rely on photosynthesis, the ultimate source of food and oxygen for most living organisms. Instead, the life forms here thrive in the complete absence of sunlight, operating on the chemical energy in the geyser's water. There are twelve species of marine life that exist nowhere else in the world, and sixty species unique to the Juan de Fuca Ridge System. By designating this area as a marine protected area under the authority of Canada's Oceans Act, protection is provided for the unique organisms that reside there, while scientific research is still permitted.

This is a great first step in Canada's effort to protect and preserve its marine ecosystems. In addition, Canada's Department of Fisheries and Oceans is now considering thirteen other areas for Marine Protected Area status on Canada's three coasts. One of these areas is the Gully, which lies off the coast of Nova Scotia and is the site of one of the deepest submarine canyons in the western North Atlantic. Also being considered by the Department of Fisheries and Oceans in order to protect critical beluga whale habitat is the southern Beaufort Sea. See *Canada's First Marine Protected Area Teeming With Life at Ocean's Bottom*, Agence France Presse, Mar. 13, 2003, LEXIS News Group File.

B. Illegal Fishing in Marine Protected Areas Around the World

Marine Protected Areas, intended to preserve the richness of the marine ecosystems contained within their boundaries, are considered by most people to be valuable ecological areas worthy of protection. Unfortunately, there are some individuals and corporations that view marine protected areas as mere obstacles to the achievement of economic goals. There are

reports from various parts of the world of illegal fishing in marine protected areas. For instance, there is a recent case in the Galapagos Marine Reserve where a Colombian vessel, the *El Dorado*, was captured while fishing illegally inside these waters. Not only was the *El Dorado* fishing in an illegal area, but it was also using a technique called dolphin encirclement, an illegal practice itself. It is estimated that the *El Dorado* killed as many as fifty dolphins while employing this illegal fishing technique inside the reserve's boundaries. Similar illegal fishing has been reported in the Great Barrier Reef Park off the east coast of Australia. Since January 2002, seventy-one commercial fishing vessels have been caught illegally fishing in protected zones in the Great Barrier Reef. It appears that the economic incentives are so great that the parties acting illegally are willing to operate in violation of the law and accept the fines imposed upon them as a cost of doing business. See Megan Saunders, *Waiving the Rules*, THE AUSTRALIAN, Feb. 17, 2003, at 10, LEXIS, News Group File; World Wildlife Fund Newsroom, *Dolphin Deaths Highlight Continued Threats to Galapagos Marine Reserve from Illegal Fishing*, available at <http://www.worldwildlife.org/news/headline.cfm?newsid=392> (last visited May 21, 2003).

C. Marine Protected Areas Help the Recovery of Coral Reefs

The Global Coral Reef Monitoring Network (Network) has reported that protected areas can successfully stem the damage to coral reefs caused by human activities. The Network released studies from 150 authors in the *Status of Coral Reefs of the World Report: 2002*, which discusses the condition of coral reefs in more than 100 countries. The studies show that most of the world's reefs continue to decline in health because of climate change, coral bleaching, diseases and pollution. Above all, the studies show that coral reefs in marine protected areas show stronger signs of recovery than reefs in unprotected areas. The report cited strong recovery in protected reefs along the coast of East Africa, around the Indian Ocean islands, in Southeast Asia and in the Caribbean. Of course the gains in reef health have been minimal when compared with the rate of destruction. Nonetheless, the fact that the reports show there has been recovery and that more recovery is possible suggests there is still hope for preserving some of the unique ecosystems associated with coral reefs around the world. See Lauren Miura, *Coral Reefs: Protected Areas Said to Help Recovery*, available at <http://www.icran.org/> (last visited Feb. 8, 2003).

V. MISCELLANEOUS

A. New Athens Convention Raises Liability Limits for Ship Passengers

Amendments to the 1974 Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea were adopted at a diplomatic conference held at the International Maritime Organization (IMO) Headquarters in London from October 21 to November 1, 2002. These amendments are new international laws making insurance to cover ship passengers compulsory and raising liability limits for both death and personal injury claims and loss of or damage to cabin luggage. The limit on compulsory insurance or other financial security required has a floor of 250,000 Special Drawing Rights (SDR) (approximately US \$325,000) per passenger on each distinct occasion. Ships will be issued certificates to attest that their insurance is in force. The carrier is liable unless it can show that an incident resulted from an act of war, hostilities, civil war, insurrection, natural phenomenon of exceptional and inevitable character, or was wholly caused by an act or omission of a third party done with intent to cause the incident. Liability of the carrier only includes loss arising from incidents in the course of carriage; if the loss is suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier is only liable if the incident was due to the fault or neglect of the carrier. Liability for loss of or damage to cabin luggage is limited to 2,250 SDR (US \$2,925) per passenger, per carriage, while liability for loss of or damage to vehicles is limited to 3,375 SDR (US \$16,250) per vehicle, per carriage.

As well as raising limits of liability, the amendments also introduce other mechanisms to assist passengers in getting compensation, such as replacing the fault-based liability system with a strict liability system for shipping related incidents. The amendments also include an "opt-out" clause that enables State Parties to retain or introduce higher limits of liability for those carriers who are subject to the jurisdiction of their courts. *See Liability Limits for Ship Passengers Raised with New Athens Convention, Compulsory Insurance Introduced*, Jan. 11, 2003, available at http://www.imo.org/Newsroom/mainframe.asp?topic_id=583&doc_id=2535 (last visited Mar. 7, 2003).

B. Sharks Get First International CITES Listings

In Asia, shark fins are used to make shark fin soup, a culinary delicacy. In China, one basking shark fin can sell for \$15,000, providing a lucrative market for those basking sharks killed specifically for their fins, as well as

those sharks caught as by-catch. In Taiwan, it is primarily whale shark meat that is eaten. Demand for both species has caused their respective populations to decline in recent years. Yet at the same time, eco-tourism operations involving dive trips to see the sharks have provided considerable revenue for countries like Australia, the Philippines, Mexico, and Belize.

Fortunately, at the 2002 Convention on International Trade in Endangered Species (CITES) which met in Santiago, Chile, both basking and whale sharks were voted on and confirmed for CITES Appendix II listing. Appendix II listing does not ban trade, but it does prompt measures to ensure that international trade does not compromise or harm wild populations. The proposal to list the basking shark was brought by the United Kingdom, and exceeded the requisite two-thirds majority by three votes in a secret ballot process. Kenya, Peru, and the Czech Republic spoke in support of the listing, while China, Iceland, and Norway opposed it. The proposal to list the whale shark passed by two votes, and was supported by Germany, South Africa, and Costa Rica on behalf of six Central American countries. Korea, Japan, and Malaysia spoke out against the whale shark proposal. The U.S. supported both listings.

Growing to more than 40 feet, whale sharks and basking sharks are the two largest fish in the sea, though they only feed on plankton and tiny fish. Basking sharks are found in temperate waters and whale sharks are found in more tropical environments, but both can be found throughout the world as a result of their highly migratory natures. Protecting the sharks in the past has been difficult because national protections are limited to only a part of their habitat, and there are no international caps on shark fishing. They also have limited reproductive potential in that they grow slowly, do not reach reproductive age until they are twenty, and have very few young at a time. They are also easy targets for fishermen because they swim slowly and close to the surface. *See Sharks Receive First International Protections: CITES Trade Measures Adopted for World's Biggest Fish, available at <http://www.oceanconservancy.org/dynamic/press/releases/archive.htm?id=021115a> (last visited May 21, 2003).*

C. New Regulations for Bulk Carriers Adopted By IMO

At the 76th session of the Maritime Safety Committee, which took place in parallel with a Diplomatic Conference on Maritime Security, from December 2-13, 2002, the IMO adopted new regulations for bulk carriers as part of a larger program aimed at improving bulk carrier safety. The Committee adopted amendments to chapter XII (Additional Safety Measures for Bulk Carriers) of the International Convention for the Safety of Life at Sea (SOLAS), 1974, which will require the fitting of high level

alarms and level monitoring systems on all bulk carriers for the purpose of detecting the ingress of water into the ship. The new regulations on hold, ballast, and dry space water level detectors requires that alarms be fit on all bulk carriers, no matter when they were constructed, and goes into effect July 1, 2004. The new regulation on availability of pumping systems requires that there be the means to drain and pump dry space bilges and ballast tanks located forward of the collision bulkhead B and that these means are capable of being turned on from a readily accessible enclosed space. The new regulation on access to spaces in cargo areas of oil tankers and bulk carriers requires that the design and building of a ship incorporate suitable access to ensure the proper inspection of the vessel throughout its lifespan.

The Committee also approved recommendations to improve bulk carrier safety covering topics such as double hulls, improved coating of dedicated seawater ballast tanks, steel repair standards, protection of foredeck fittings, redesign and reinforcement of hatch covers, immersion suits, free-fall lifeboats, Port State control, weather routing, and alternate hold loading. *See IMO Adopts New Regulation for Bulk Carriers, available at http://www.imo.org/Newsroom/mainframe.asp?topic_id=583&doc_id=2693 (last visited May 21, 2003).*

D. IMO Adopts Comprehensive Maritime Security Measures

A conference to strengthen maritime security, in order to prevent and to suppress acts of terrorism, was held at the London headquarters of the International Maritime Organization (IMO) from December 9-13, 2002. The conference was attended by a variety of groups: 108 contracting governments to the 1974 Safety of Life at Sea Convention (SOLAS), observers from two IMO member states, the two IMO associate members, United Nations specialized agencies, inter-governmental organizations and non-governmental international organizations. Following the conference, a new and comprehensive regime for international shipping was established to begin in July of 2004. The conference adopted a number of amendments to SOLAS, which enshrine the new International Ship and Port Facility Security Code (ISPS Code). The ISPS Code has two parts: the first, a mandatory section, contains detailed security related requirements for governments, port authorities and shipping companies and the second, a non-mandatory section, contains a series of guidelines describing how to meet these requirements. Furthermore, the conference adopted a series of resolutions that were designed to add weight to the amendments, to encourage the application of the measures to ships and port facilities not covered by the ISPS Code and to pave the way for future work. *See IMO*

Adopts Comprehensive Maritime Security Measures, available at http://www.imo.org/Newsroom/mainframe.asp?topic_id=583&doc_id=2689 (last visited Mar. 4, 2003).

*E. Waterbirds Around the World:
A Global Review of the Conservation, Management
and Research of the Worlds Major Flyways*

A conference that will focus on the major themes and developments related to the global conservation of flyways of waterbirds during their full annual cycle (breeding areas, stop-over sites and wintering areas) has been set for April 3-8, 2004. The conference will be held in Edinburgh, Scotland and will address the achievements of the last forty years, and formulate gaps and needs for initiatives to stimulate future conservation of the worlds flyways and the species and habitats involved. The aims and objectives of the conference are: to review the historical developments of migratory waterbird conservation at all continents; to present and review the present situation on all initiatives regarding waterbird flyway conservation; to present and discuss achievements of single species action plans and global action plans for groups of species; to present an overview of current research on migratory waterbirds; to provide an overview of the present conservation status of migratory waterbirds; to combine the status overview with a review of existing monitoring programs for waterfowl, their value and implementation, and formulation of improvements; to provide an updated overview of the protection status of the major waterbird sites, discuss the process to identify conservation gaps in all flyways, and formulate concrete steps for improvements; to discuss and evaluate the values of migratory waterbirds; to present an update on the harvest and sustainable use of waterbirds; to present, discuss and look at ways to increase knowledge exchange, improve public awareness and general education; and finally, to fund flyway programs. *See Waterbirds Around the World: A Global Review of the Conservation, Management and Research of the Worlds Major Flyways, available at http://www.unep-wcmc.org/AEWA/eng/info/flyway_conference.doc (last visited Mar. 13, 2003).*

*F. "Green Passport" for Ships Debated as IMO
Environmental Meeting Tackles Ship Recycling*

During the 48th session of the Marine Environmental Protection Committee (MEPC), October 7-11, 2002, delegates from more than eighty countries discussed topics relating to the protection of the marine environ-

ment from pollution by ships. MEPC's work included ship recycling, ballast water management and greenhouse gas emission from ships. A draft of International Maritime Organization (IMO) guidelines on ships were discussed in detail. According to the guidelines, almost nothing is wasted in the process of recycling ships because the materials and equipment are almost entirely reused. The guidelines recognized that while the principles of ship recycling may be sound, the working practices and environmental standards are not up to par. The guidelines have therefore been developed to give advice to all involved in the recycling process. The concept of a "Green Passport" for ships is included in the guidelines. This document would contain an inventory of all materials potentially hazardous to human health or the environment used in the construction of a ship. It would then accompany the ship throughout its life, recording any subsequent changes in materials or equipment. Further, successive owners of the ship would maintain the accuracy of the "Green Passport" with the final owner delivering it with the vessel to the recycling yard. *See "Green Passport" for Ships Debated as IMO Environmental Meeting Tackles Ship Recycling, available at http://www.imo.org/Newsroom/mainframe.asp?topic_id=583&doc_id=2486 (last visited Mar. 4, 2003).*