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A Review Of Developments In Ocean and Coastal Law 2005-2006

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A REVIEW OF DEVELOPMENTS IN OCEAN AND COASTAL LAW 2005-2006

Compiled by the editorial staff of the Ocean and Coastal Law Journal

CALIFORNIA ENACTS NEW LAW EXTENDING CURRENT CRUISE SHIP REGULATIONS TO ALL OCEANGOING VESSELS

Governor Arnold Schwarzenegger signed into law a bill that extends the current regulations on cruise ships to all oceangoing vessels. The law prohibits onboard incineration within three miles of the California coast, and “regulates the release of graywater, sewage sludge, oily bilgewater, hazardous waste, or other waste” into state marine waters or sanctuaries.

The bill requires ships to report to the State Lands Commission (Commission) before departing from their first California port. The master, owner, operator, agent, or person in charge must provide the Commission with certain documentation relating to the ship’s ports of call, as well as the ship’s sewage, graywater, and blackwater discharges. The bill requires the Commission to submit the data collected from these reports to the State Water Resources Control Board by February 1, 2007. The Board must submit the information to the Legislature by October 1, 2007.

California Governor Schwarzenegger Signs Ship Pollution Bill into Law, CHAMBER OF SHIPPING, Oct. 12, 2005, <http://www.chamber-of-shipping.com/index/news-app/story.658>.

EU BANS BOTTOM TRAWLS IN SENSITIVE AREAS

In September 2005, the European Union’s fisheries ministers agreed to ban the use of bottom trawls near the Madeira, the Azores, and Canary Islands following the discovery of coral located one thousand meters under the sea. The regulation reflected concerns about the danger bottom trawls cause to coral reefs. Bottom trawls are large fishing nets dragged along the sea floor to collect bottom dwelling fish species.

According to several environmental groups, the trawls have disastrous environmental effects on fragile habitats like coral reefs. In recent years, the use of trawls has increased as the bottom dwelling species they ensnare

have become more attractive to fishermen whose more traditional catches, such as cod and hake, have been depleted.

EU Bans Canary and Azores Trawling to Save Coral Reefs, PLANET ARK, Sept. 21, 2005, <http://www.planetark.com/dailynewsstory.cfm?newsid=32591&newsdate=21-sep-2005>.

U.S. CAVIAR BAN AIMS TO PROTECT BELUGA STURGEON

The United States recently announced a ban on the importation of beluga caviar in an effort to slow the continuing decline of the beluga sturgeon population. The move places pressure on Britain and the European Union to ban imports as well.

The U.S. had previously placed the beluga sturgeon on its endangered species list, giving the Caspian states that harvest the fish six months to develop a joint management plan. When they failed to do so, the U.S. was forced to act, as the fish continues to decline due to ineffective government protection, pollution, a shrinking habitat, and overfishing.

The Convention on International Trade in Endangered Species notes that the beluga population has been cut in half over the last five years, with the population in the Black Sea dropping by a fifth.

Caviar remaining on U.S. shelves will be allowed to be sold, but any beluga caviar found at U.S. ports of entry will be impounded. Some European environmental groups have questioned the U.S. policy, including Traffic International. Steve Broad, Traffic's director, stated: "If you cut off the trade, there is no incentive for restocking."

Charles Clover, *US Bans Beluga Caviar to Help Sturgeon*, THE AGE, Sept. 30, 2005, <http://www.theage.com.au/news/world/us-bans-beluga-caviar-to-help-sturgeon/2005/09/29/1127804608151.html>.

BUSH SEEKS TO PRIVATIZE FISHERIES

President Bush has proposed legislation to amend the Magnuson-Stevens Fishery Conservation and Management Act by encouraging the regional fisheries management councils to replace current management schemes, such as restricting fishing days at sea, with a plan allocating individual quotas to each fisherman, or group of fishermen.

Under the President's plan, each fisherman would receive a share of the permitted catch limit. The shares would allow each operator to catch an amount up to the limit of his or her share whenever he or she chooses. The shares would be transferable, allowing the fishermen to sell or lease their allocations.

Such quotas are currently used in fisheries in the U.S., notably Alaska, and internationally. But marked consolidation of the fisheries in areas such as New Zealand has raised concerns in Congress about the impact of issuing such quotas on the traditional, typically family-run fishing operations of New England. Rep. Tom Allen (D-ME), co-chair of the House Oceans Caucus, has introduced his own bill restricting the number of quota shares an individual may own and limiting possession to seven years.

Environmentalists differ on the issue of fisheries privatization. Some believe that issuing shares will give fishermen an immediate financial stake in conserving stocks. But others warn that the “efficiency” the Administration seeks will not result in better stewardship of the resource.

Tom Bell, *Fish-Quota Plan Gets Mixed Reviews*, MAINE SUNDAY TELEGRAM, Oct. 2, 2005, at A1.

MORATORIUM RECOMMENDED FOR NORTH CAROLINA HERRING

Alewives and blueback herring, coastal fish known collectively as river herring, have become so depleted in North Carolina that state biologists have recommended a complete moratorium on fishing these species as the only option consistent with the state’s governing law on fisheries management, the Fisheries Reform Act.

Data from the 1970s to present indicate that the Chowan River spawning population of blueback herring has plummeted from 4.5 million to 300,000 pounds. Over the past four years, catches of these herring species have come in lower than the allowable quota, and the biologists say the situation is so dire that it is possible the species will not recover. Joining the biologists in voicing concern are anglers, who require healthy stocks of herring as bait for striped bass, and conservationists.

Despite the herring’s depletion, North Carolina’s Marine Fisheries Commission recently voted 5-1 to reject a moratorium—the third time the Commission has voted against a moratorium since 1999. The Commission, charged with managing the recovery of overfished saltwater species, says they rejected the moratorium in order to allow an advisory committee to continue its herring recovery efforts. However, the action has prompted critics to claim that the Commission favors the commercial fishing industry over the health of the species. In defense of the Commission’s action, others responded that the real issues are degradation of spawning and nursery wetlands, and over-predation by a growing striped bass population.

The question remains whether the federal government might issue a moratorium even if the State does not. The regional fisheries management compact, the Atlantic States Marine Fisheries Commission, could request

federal intervention if North Carolina does not comply with the Compact's herring management plan. At this point, the State is in compliance because the Compact has not restricted herring fishing either, but the Compact will survey the herring population next year and may order reductions then.

Jack Horan, *Herring Stocks Free-Fall: Fisheries Panel Balks at a Moratorium*, THE CHARLOTTE OBSERVER, Oct. 23, 2005.

FAR-RANGING SHARKS AND TURTLES PROMPT CALL FOR INTERNATIONAL PROTECTION

The migration patterns of leatherback turtles and great white sharks have been revealed by two independent efforts to monitor the movements of these animals via satellite tracking devices.

A great white shark, named Nicole by researchers, has been traced traveling from Africa to Australia and back. Researchers claim that this 12,000 plus mile trip is the first link between the shark populations of the two continents. Nicole was tagged in November, 2003. Her trip from South Africa to Australia lasted ninety-nine days. She was again located off the coast of South Africa about six months later.

The great white is classified as an endangered species in Australia and is also protected by South Africa, Namibia, the Maldives, and the U.S. states of Florida and California.

The movements of eleven leatherback turtles have also been tracked by satellite as these endangered animals migrate through the Atlantic Ocean. Of the eleven, five of the turtles were tagged in Panama, and one of those five is moving north along the east coast of the United States to feed off of Nova Scotia. Another turtle, tagged in Suriname, is being tracked swimming east towards West Africa. She could be the first confirmed trans-Atlantic migration of a leatherback.

The objectives of the leatherback study are to document the movements of this species so as to reduce bycatch mortality in Atlantic fisheries as well as establish a trans-oceanic cooperative to protect this population.

Randolf Schmid, *Shark Nicole Clocks More Than 12,000 Miles Criss-crossing Indian Ocean*, ENVIRONMENTAL NEWS NETWORK, Oct. 7, 2005, <http://enn.com/wild.html?id=680>; Michael Perry, *Shark Attacks Spark "Kill or Be Killed" Debate*, PLANET ARK, Sept. 19, 2005, <http://www.planetark.com/dailynewsstory.cfm?newsid=32556>; Ed Stoddard, *Tagged Atlantic Sea Turtles Trace Journeys Online*, ENVIRONMENTAL NEWS NETWORK, Sept. 13, 2005, <http://enn.com/wild.html?id=634>.

SECOND SONAR SUIT FILED

Ear-splitting sonar used by the United States Navy to detect submarines and underwater objects has led to a lawsuit against the Navy by the Natural Resources Defense Council (NRDC) and other environmentalist groups. The lawsuit claims that mid-frequency sonar used by the Navy causes harm to whales, dolphins, and other marine animals, and violates environmental laws.

Two years ago, the NRDC settled a lawsuit against the Navy for its use of low-frequency sonar, which affects marine mammals' ability to avoid predators, navigate, and find food. The October 19, 2005 suit addresses the Navy's use of mid-frequency sonar.

Mid-frequency sonar is so intense that it sounds like a rocket blasting off. The intense sonar sound has caused some whales, with blood running out of their eyes and ears, to become stranded on the world's beaches.

The NRDC claims that the Navy could spare marine mammals from painful injuries and death by taking simple measures. Precautionary measures include limiting sonar activity to areas where there are few marine mammals and slowly increasing the volume of sonar to give marine mammals an opportunity to leave the area.

By not taking precautionary measures, the NRDC contends that the Navy has violated the National Environmental Policy Act, the Marine Mammal Protection Act, and the Endangered Species Act. Under these laws, the Navy has a duty to mitigate the damages that its activities cause.

Jill Serjeant, *U.S. Navy Sued Over 'Ear-Splitting' Sonar on Whales*, ENVIRONMENTAL NEWS NETWORK, Oct. 20, 2005, <http://enn.com/today.html?id=9067>; *Navy Sued Over Harm to Whales From Mid-Frequency Sonar*, NATIONAL RESOURCES DEFENSE COUNCIL, Oct. 19, 2005, <http://www.nrdc.org/media/pressreleases/051019.asp>.

FISHING BANNED IN REFUGE

Hawaii has preserved 1,200 miles of a largely pristine area across the Pacific Ocean with new rules that create the Northwestern Hawaiian Islands State Marine Refuge, ban fishing around the Northwestern Hawaiian Islands, and limit public access to the refuge.

Hawaiian officials hope to expand the no-fishing zone. Officials have requested that the federal government extend the fishing ban to fifty miles beyond the refuge. The federal government may turn the 132,000 square miles into a National Marine Sanctuary. The extent to which the federal government will ban or limit fishing in the area is unclear.

Tara Godvin, *Hawaii Creates State Marine Refuge in Northwestern Hawaiian Islands, Bans Fishing*, ENVIRONMENTAL NEWS NETWORK, Oct. 3, 2005, <http://enn.com/today.html?id=8935>.

EEL FISHING BAN PROPOSED

The European Commission (EC) has proposed that all European countries cease eel fishing for the first fifteen days of every month. The EC ban would be in effect until each European country formulates a plan to protect the threatened eels. Ideally, each country would create a plan to ensure that forty percent of adult eels could escape from rivers to the sea for spawning.

Eel spawning grounds are difficult to identify, but tiny larvae have been found in the Sargasso Sea, south of Bermuda. The Gulf Stream then carries them in a northeasterly direction toward southern Europe, where they arrive in early winter. The larvae then morph into “glass eels,” which are transparent juveniles. These glass eels wait outside river estuaries until the climate warms; here, they are targeted by fishermen. Recently, scientists report that the number of new glass eels that successfully swim upriver is at only one percent of historic levels.

Europe needs a fast and serious plan for recovery of the eel population which is at its lowest number since 1980. It could take nearly twenty years for the numbers to recover with a plan, and without one, the species could become extinct in Europe. The conflict lies in that over 25,000 fishermen along the Mediterranean coasts of Africa, Asia, and Europe rely on eel fishing for their livelihood. They ship the catch to be used for aquaculture in Europe and Asia, a practice necessary because eels have not been successfully bred in captivity. The rest of the catch is used for re-stocking northern European waters and for human consumption.

EU Plans Fishing Bans to Protect Threatened Eels, PLANET ARK, Oct. 7, 2005, <http://www.planetark.com/dailynewsstory.cfm/newsid/32858/story.htm>; *Eel Stocks Dangerously Close to Collapse*, INTERNATIONAL COUNCIL FOR THE EXPLORATION OF THE SEA, <http://www.ices.dk/marineworld/eel.asp> (last visited Apr. 25, 2006).

MEXICO BANS TRADE IN MARINE MAMMALS

Mexico has banned the importation and exportation of marine mammals for all but scientific uses. The new law, published in the Official Journal of the Federation on January 26, 2006, prohibits “importing, exporting and re-exporting specimens of any species of marine mammal and primate, as well as parts or products made from them.”

The new law comes at a critical point for marine protection in Mexico, following recent acts by governmental authorities that had weakened conservation policies. In 2003, for example, the Department of Environmental and Natural Resources, had “illegally authorized the importation of twenty-eight dolphins from the Solomon Islands to Mexican-based commercial dolphinariums.” Dolphinariums, a growing industry in Mexico, are aquariums or “water-parks” that keep dolphins in captivity for exhibition and entertainment.

Mexico’s new law also provides a significant tool for non-governmental agencies, such as the International Fund for Animal Welfare, in their work to protect the environment.

Mexico Bans Imports and Exports of Primates and Marine Mammals, ENVIRONMENTAL NEWS NETWORK, Feb. 6, 2006, http://enn.com/aff_PF.html?id=1119.

LAWSUIT TO HALT LONGLINE SWORDFISHING COMES TOO LATE

The U.S. Court of Appeals for the Ninth Circuit ruled on February 21, 2006, that EarthJustice, an environmental advocacy group seeking a ban on longline fishing in Hawaii, had missed a thirty-day deadline. The group had brought suit in U.S. District Court, challenging the National Marine Fisheries Service’s (NMFS) reinstatement of longline fishing for swordfish in Hawaii, arguing that the reinstatement violated the Migratory Bird Treaty Act, the Endangered Species Act, and the National Environmental Policy Act.

The ban was imposed in 2002 after endangered sea turtles were found to be incidentally caught on a regular basis. NMFS lifted the ban in 2004, after finding that new “circle” hooks and other measures reduced such accidents.

EarthJustice’s attorney said that the group would likely file a new complaint. Even with the new hooks, he says that thousands of albatross as well as the endangered turtles continue to drown each year.

A regional administrator for NMFS said that all of the leatherback and loggerhead turtles that were injured by hooks last year were released into the ocean, according to the observers aboard all of Hawaii’s swordfishing boats.

Under new rules, if a total of sixteen leatherback turtles or seventeen loggerhead turtles are hooked, NMFS will close swordfishing for the rest of the year. Before the ban, between 1994 and 1999, 112 leatherback turtles and 418 loggerhead turtles were incidentally caught. Although there is no similar cap for seabird catches, the fishery could be closed if just one short-tailed albatross is killed.

Alexandre Da Silva, *Suit Against Longlining Filed Too Late, Court Rules*, HONOLULU STAR BULLETIN, Feb. 22, 2006, <http://starbulletin.com/2006/02/22/news/story10.html>.

COMMISSION PASSES TOUGHER RULES ON TUNA FISHING

The Commission that limits the bluefin tuna catch has implemented new rules that allot quotas to specific fishing companies, require fishermen to tag fish with the time and place of the catch, and designate harbors at which fishermen must unload their catch. Violators of the new rules, published by the Commission for Conservation of Southern Bluefin Tuna, may face both fines and prison terms.

The Commission caps the total tonnage of tuna that should be caught and then divides the total among five nations, including Japan. In 2005, however, Japan, which had been allotted 6,065 tons, exceeded its quota by 1,500 tons. The Commission designed the new rules to reign in overfishing by Japan, which under the old rules was only required to send in periodic reports detailing catch numbers. Under the new rules, Japan's 2006 quota will be reduced by 1,500 tons as penalty for last year's excess catch.

Consistent global demands for certain types of fish result in overfishing of numerous commercial fisheries. The United Nations reports that over seventy percent of commercially important fish stocks are overfished. Excess harvesting levels can range from over-exploitation to depletion, in some instances. Bluefin tuna is one of the species that faces such overfishing, and Japan's recent excesses are one significant contributor to the problem.

Elaine Lies, *Japan Tightens Tuna Rules after Exceeding Quota*, PLANET ARK, Mar. 3, 2006, <http://www.planetark.com/dailynewsstory.cfm/newsid/35431/story.htm>.