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A Review Of Developments In Ocean And Coastal Law 2000-2001

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A REVIEW OF DEVELOPMENTS IN OCEAN AND COASTAL LAW 2000-2001

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INTERNATIONAL

I. FISHERIES

A. Indonesia Plans to Crackdown on Illegal Harvesting

The Indonesian Ministry of Maritime Affairs and Fisheries plans to revise its fisheries laws to create stronger sanctions on illegal maritime activities. Indonesia's fish stocks have been continuously declining due to various factors. It wishes to reverse this trend to stop the illegal harvesting in its waters. Last year, forty foreign fishing boats were caught in Indonesian waters. The current law imposes only a maximum penalty of \$2,630 (U.S. Currency) on ships convicted of violating fisheries laws. Tougher fisheries regulations, long with the opening of Samudera Jakarta, a port that took twenty years to develop, provide Indonesia with optimism for a strong future in commercial fishing. Indonesia hopes that by controlling illegal harvesting it can export fish. France, which has long built ties with Indonesia, plans to import fish from two of that country's largest retailers. In developing a strong economic presence in fishing, the largest hurdle for Indonesia may be its current political turbulence. Associated Press, *Indonesia to Bolster Fishing Laws: Plans Crackdown on Illegal Harvesting* (Feb. 20, 2001), available at <http://www.gofish.com/cgi-bin/WebObjects/Gofish.woa/wo/42.0.0.GofishDonut.9.2.13.1.3.1.0.0.1.13.7.1.1.4.0>.

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B. United Nations Targets Illegal Fishing

More than 110 countries have agreed on a voluntary pact that targets illegal, unregulated, and unreported (IUU) fishing. The world's stocks have been steadily decreasing since the 1970s. Currently, about three-quarters of the world's fishing stocks are fully or over-exploited. The United Nations Food and Agriculture Organization (FAO) estimates that IUU fishing comprises as much as 30 percent of the total catches in some fisheries and has caused the overfishing of several high value fish stocks.

The pact seeks to target "pirate fishing" where vessels use so-called "flags of convenience" to avoid international fishing regulations. Greenpeace estimates that there are some 1,300 industrial-scale fishing vessels that exploit legal loopholes to fly flags of convenience. The U.N.'s plan of action is to target the pirate ships that fly the flags of convenience and make it more difficult to conceal their ownership through fictitious names and companies. Greenpeace feels the agreement is insufficient to effectively combat IUU fishing. Deutsche Press-Agentur, *U.N. Launches IUU Plan: Voluntary Pact Targets 'Flags of Convenience'* (Mar. 3, 2001), available at http://www.gofish.com/cgi-bin/WebObjects/Gofish.woa/wa/gotoArticle?document_id=134232494&isnews=1.

C. South Africa Passes Stricter Fishing Laws

The South African government announced that harsh cuts on licenses and quotas will be made to protect local fish species that have been dangerously over-exploited. At least twenty species are seriously threatened. The new regulations will affect inshore species like red stumpnose and rock cod (not the internationally traded species like hake and tuna). The problem of overfishing facing the South African fishing industry is similar to the problem elsewhere. More than half a million South Africans are involved in line fishing. The country's rising unemployment rate has forced more and more people to turn to the sea for survival. Geelbek, a species used in a once popular restaurant dish, has a population of only about six percent of what it was thirty years ago. The plan reduces the number of fishing vessels by one half. The long-term goals are healthy stocks and larger catches, but these necessitate short-term sacrifices. Fisheries officials admit enforcing the regulations will be difficult with only 120 inspectors at their disposal. Victor Mallet, *S. Africa Passes Strict New Laws: Government Puts Limits on Licenses, Quotas* Financial Times (Jan 3, 2001), available at <http://www.gofish.com/cgi-bin/WebObjects/Gofish.woa/wo93.0.0.GofishDonut.9.2.13.1.3.1.0.0.1.13.7.1.1.4.0>.

D. Algeria Implements Plan to Increase Aquaculture Growth

The Algerian fishing minister announced a five-year national aquaculture plan. The main objectives of the plan are to achieve food security and create new jobs. The hope is that the plan will increase production from the current 250 tons to nearly 30,000 tons and in doing so create nearly 60,000 jobs. Other aims are to valorize the industry and bring in currency through exports. Algeria will have partners in its ambitious plan. Spain is interested in investment in the field of aquaculture in the Sahel; Hungary is interested in internal areas; the Arab Union of fish-producing countries has interest in the exploitation of Saharan fishing expanses. Algerian News Agency, *Algeria Plans Aquaculture Growth: Aggressive Production Creases Sought by 2005* (Feb. 12, 2001), available at http://www.gofish.com/cgi-bin/WebObjects/Gofish.woa/wa/gotoArticle?document_id=134231760&isnews=1.

E. Greenpeace Campaigns Abroad Against Genetically Modified Fish

The U.S. Food and Drug Administration is processing an application for approval of commercial breeding of genetically altered salmon. The genetically altered salmon can grow twice as fast as other farmed salmon and the breed is larger and more aggressive. Greenpeace fears that this super breed threatens to wipe out the wild salmon population. Greenpeace has gone to China and the Philippines in hope of convincing them to pressure the United States to deny approval of the new super breed. A decision on the application will be made this year and, if approved, the genetically engineered fish could be in supermarkets by next year. South China Morning Post, *Greenpeace Takes Campaign Abroad: Takes Anti-gmo Campaign to China, Philippines* (Mar. 29, 2001), available at http://www.gofish.com/cgi-bin/WebObjects/Gofish.woa/wa/gotoArticle?document_id=134234563&isnews=1.

F. Brazil Seeks Greater Quotas

In May 2001, the International Commission for the Conservation of Atlantic Tuna (ICCAT) met in Brussels. Brazil was expected to introduce new criteria for setting tuna quotas. Presently the South Atlantic fishing grounds are dominated by countries that do not have a coastline on the South Atlantic, such as Spain, Japan, and Russia. In 1997, the last time ICCAT set quotas, Brazil, the largest country on the South Atlantic, was awarded only sixteen percent of the total catch, as opposed to forty percent for Spain and twenty-six percent for Japan. Quotas were set based on the

countries' historic shares of the catch. The historically low level of fishing activity may make it impossible for Brazil to develop its fishing industries. Length of coastline, proximity, or a country's protein needs are some of the criteria that Brazil would like to have considered. Mario Osava, Inter Press Service, *So. Atlantic Nations Fight for Tuna: Brazil Seeks Greater Quotas from ICCAT* (Apr. 3, 2001), available at http://www.gofish.com/cgi-bin/WebObjects/Gofish.woa/wa/gotoArticle?document_id=134234752.

G. *Evaluating the World's Fisheries*

The "Keynote 2001: State of the Fisheries Summit" at the International Boston Seafood Show provided some conclusions about the world's fisheries. Many nations and fisheries are plagued by a lack of proper management techniques and an inability to gather and process harvest and biomass data. While U.S. fisheries face problems, the United States' situation is enviable. The lack of scientific information available in other countries makes it difficult to determine the status of many fisheries. For example, in the West Indian Ocean, the status of sixty-six percent of the stocks are unknown. The goal for world fisheries is to fish for maximum sustainable yield without overfishing the stocks. The world's climate is a major factor in determining the size of stocks. For example, in 1997 El Nino caused a large decline in the harvest of Pacific salmon. If global warming happens at the pace that the Intergovernmental Panel on Climate Change predicts, the abundance of fish stocks will be greatly altered. James Wright, Gofish.com News, *World Fisheries Evaluated: Scientists Assess the World's Marine Resources* (Mar. 28, 2001), at http://www.gofish.com/cgi-bin/WebObjects/Gofish.woa/wa/gotoArticle?document_id=134234545&isnews=1.

II. MARINE ENVIRONMENTS

A. *Galapagos Oil Spill*

The Galapagos archipelago is one of the world's most fragile and untouched marine ecosystems. The islands were crucial in helping Charles Darwin develop his theory of evolution. The islands' remoteness has given rise to many species found nowhere else. Almost all the reptiles, half the plants, and a quarter of the species of fish are unique to the islands. This fragile ecosystem has been threatened by an oil spill.

Jessica, an Ecuadorian oil tanker, was on a routine trip to service a private tour boat operator and Petrocomercial, the state oil company that provides the Galapagos with fuel, when it ran aground 500 meters off the

island of San Cristobal. A burst pipe in the ship's marine room started the leak. An international clean-up team worked unsuccessfully to contain 150,000 gallons of spillage. The U.S. coastguard helped pump out the 100,000 gallons that remained in the tanker. A massive effort was made to contain the spill, but one captain was quoted as saying: "The bottom line is once oil gets out of a ship it's virtually impossible to remove it or contain it on the ocean."

While people worked to contain the spill, others worked to minimize the impact on the animals by preemptively removing some species and treating others that were already affected. Ecuador's environmental minister said the accident caused severe environmental damage. It is not known what the ultimate effect of the spill will be. The long-term danger is that the oil will sink to the ocean floor where it will destroy algae that is vital to the food chain, which in turn will affect marine iguanas, sharks, birds, and other species. Alex Bellos and John Vidal, *Galapagos Oil Catastrophe: Race to Evacuate Rare Animals as 150,000 Gallon Slick Closing on Islands Threatens to Destroy Unique Habitats*, *The Guardian* (London), (Jan. 23, 2001), available at <http://www.guardian.co.uk/international/story/0,3604,426756.00.html>.

B. Caribbean Sea Turtles

The plans of a Houston-based oil company to drill for oil and natural gas five miles off the coast of Costa Rica, near the Caribbean port of Limon, has stirred up a controversy. The company, Harken Energy Corporation, which has ties to President George W. Bush, has proposed the drilling in a region that is considered to be the "cradle" of the Caribbean's sea turtle populations. The sea turtles are protected under the Inter-American Convention for the Protection and Conservation of Sea Turtles, as well as by a resolution that was unanimously approved by scientists and conservationists at the twenty-first International Annual Symposium on Sea Turtle Biology and Conservation. The resolution was designed to protect sea turtle nesting beaches and sea turtles using offshore areas for mating and migration purposes. Under the resolution, the Costa Rican government was to ban all oil exploration off its Caribbean coast. In September, the Constitutional Chamber of the Supreme Court of Costa Rica issued a preliminary ruling in favor of a group of indigenous people challenging the activity on the grounds that they were not sufficiently consulted by the government before the acreage purchased by Harken Energy was offered up for exploration. Part of the ruling was reversed in November, allowing Harken to submit an application for its drilling plans in part of a concession area offshore. Since then, various environmental groups have joined the

indigenous people in organizing a campaign to stop the development. *Bush's Former Oil Company Threatens Endangered Sea Turtles in Costa Rica: 800 Turtle Scientists Issue Plea* (Apr. 6, 2001), available at <http://www.enn.com/direct/display-release.asp?id=3982>; *Bush's Former Oil Firm Threatens Sea Turtles* (Apr. 10, 2001), available at http://www.enn.com/news/enn-stories/2001/04/04102001/oil_42929.asp?site=email.

III. MISCELLANEOUS

A. *Japanese Whalers*

Japan has engaged in significant whale hunts over the past year, repeatedly incurring the criticism of the international community. In particular, Japan's activities in November 2000 resulted in a condemnation of its actions. Japan's whaling fleet took 439 minke whales from December 1999 to April 2000, and 43 Bryde's, 40 minke, and 5 sperm whales from July 2000 to August 2000. The fleet took another 440 southern minke whales in their most recent expedition from November 2000 to April 2001. Although a ban has existed on commercial whaling since 1986, Japan has used a provision of International Whaling Commission regulations that permits nations to issue permits to themselves to kill whales for scientific purposes. Japan has used this "loophole" to kill up to 540 minke whales on an annual basis. The U.S. Humane Society has filed a petition to have Japan certified under the Pelly Amendment, but the President has not yet imposed any trade sanctions against Japan. Many feel that Japan's actions are not genuinely associated with scientific purposes and run counter to the intended purpose of the scientific research permit allowance, which is aimed at small-scale, genuine scientific research. *Japan Exploits Loophole to Continue Whaling in Antarctic Sanctuary* (Nov. 17, 2000), available at <http://www.enn.com/direct/display-release.asp?id=2685>; *Clinton Administration Flouts Law: Humane Society of U.S. Files Pelly Petition Urging Sanctions Against Japan Over Whaling Policies* (Nov. 16, 2000), available at <http://www.enn.com/direct/display-release.asp?id=2669>; *Japanese Whalers Defy World Opinion* (Apr. 11, 2001), available at <http://www.enn.com/direct/display-release.asp?id=4030>.

B. *Nuclear Transports Banned*

Chile and Argentina have formally objected to having a nuclear transport ship carrying French-processed nuclear waste to Japan, via Cape Horn, pass through their Exclusive Economic Zones (EEZ). The ship, *Pacific Swan*, carried vitrified spent fuel which was produced by mixing

glass with waste materials from Japanese nuclear reactors. It is highly radioactive. Despite protests, the ship passed through both countries' waters, even though a court order existed directing the Argentine government to block the ship from entering its jurisdictional waters. The government failed to comply on the grounds that they interpreted the ruling as applying only if the ship approached within twelve miles of the coast. Environmental groups worry about the danger that the ship poses and fear that the route will become a popular alternative to the route through the Panama Canal. Reuters, *Chile, Greenpeace Object to Nuclear Waste Ship* (Dec. 29, 2000), available at http://www.enn.comenn-subscriber-news-archive/2000/12/12292000/reu-wasteship_41074.asp; Reuters, *Court Blocks Nuclear Ship from Argentine Waters* (Jan. 11, 2001), available at http://www.enn.comenn-subscriber-news-archive/2000/01/01112001/reu-nukeship_41289.asp; Associated Press, *Green Groups Fume over Nuclear Waste Ship* (Jan. 12, 2001), available at http://www.enn.comenn-subscriber-news-archive/2000/01/01122001/ap_nukeship_41310.asp.

DOMESTIC

I. COASTAL RESOURCES MANAGEMENT

A. *Coastal Zone Management Act*

The Coastal Zone Management Act's (CZMA) Federal Consistency regulations contained in section 307 of the CZMA were revised and published in the Federal Register on December 8, 2000. The Final Rule is published in 65 Fed. Reg. 77,123-77,175. The consistency requirement compels the federal government and private parties using federal licenses to comply with a state's Coastal Management Plan. The original consistency requirement was promulgated in 1979. The revision reflects the statutory changes to the CZMA enacted through the Coastal Zone Act Reauthorization Amendments of 1990 and the Coastal Zone Protection Act of 1996. *NOAA Publishes Final Federal Consistency Regulations*, 65 Fed. Reg. 77,123-77,175 (Dec. 8, 2000), available at <http://www.ocrm.nos.noaa.gov/pcd/up.html>.

B. Coastal Barrier Resources Reauthorization Act

The Coastal Barrier Resource Act (CBRA) was reauthorized and amended November 13, 2000, when President Clinton signed the Coastal Barrier Resources Reauthorization Act of 2000. The Act prohibits federal subsidies for development and disaster relief on over 3 million acres of the Nation's coastal barriers, essentially discouraging development of these areas. The amendments are designed to improve and facilitate implementation of CBRA through such means as voluntary addition of lands to the Barrier Resource System and by codifying a set of mapping guidelines. A digital mapping pilot program was authorized that will help integrate the CBRA with other planning tools used by local, state, or the federal government. *Statement on Signing the Coastal Barrier Resources Reauthorization Act of 2000*, 36 WEEKLY COMP. PRES DOC. 2867 (Nov. 13, 2000).

C. Case Law

The First Circuit Court of Appeals affirmed the District Court's entry of summary judgment in a case involving building additions on an entertainment complex in San Juan Harbor. The defendants ignored a cease and desist order and built the addition without obtaining a permit from the Army Corps of Engineers as required by the Rivers and Harbors Act of 1899, (33 U.S.C. § 401 *et seq.*). The United States brought suit to remove the addition and requested a permanent injunction against future illegal construction. The appellate court affirmed the summary judgment and awarded double costs to the United States because all of the defendant's arguments on appeal were frivolous. *United States v. San Juan Bay Marina*, 239 F.3d 400 (1st Cir. 2001).

II. PROTECTED MARINE SPECIES AND ENDANGERED SPECIES

A. Beluga Whale

NMFS has proposed regulations designed to limit the harvest of the beluga whale in Cook Inlet, Alaska under the Marine Mammal Protection Act (MMPA). The objective of the proposed regulations is to recover the beluga stock to its Optimum Sustainable Population (OSP) while providing Alaskan Natives continued use of the beluga for traditional subsistence purposes.

NMFS first designated the beluga as depleted on May 31, 2000. The agency attributes the largest "human-caused" reductions to Native harvesting. Consequently, it proposed harvest regulations to provide for long-term

control of the Alaskan Native harvest. These regulations included: (1) any further subsistence harvest may occur only through a co-management agreement between NMFS and an Alaskan Native Organization (ANO); (2) harvests will be limited to no more than two strikes annually until the stock is no longer considered depleted; (3) the sale of beluga products is prohibited; (4) all hunting must occur after July 15 to minimize harvesting of pregnant females; and, (5) no calf, or adult belugas with dependant calves, may be taken.

The passage of Public Law 106-31 ensured that no harvest would occur without a co-management agreement, stating that the taking of any beluga whale would be a violation of the MMPA, unless it occurs through a cooperative agreement between NMFS and an ANO. Congress further passed Public Law 106-553, extending Public Law 106-31. The original restriction was enacted in May of 1999 and expired on October 1, 2000. A cooperative agreement allows Alaskan natives to continue harvesting beluga whales for traditional subsistence use, while allowing the beluga stock to recover.

NMFS and the Cook Inlet Marine Mammal Council (CIMMC) signed a co-management agreement for the year 2000. Under that agreement, Alaskan Natives of the Native Village of Tyonek were allowed to harvest one whale. Although no whales were actually harvested, NMFS is proposing a co-management agreement for the year 2001 and beyond.

A formal hearing on the proposed regulations went before Administrative Law Judge Parlen McKenna on December 5, 2000. The main topics at the hearing concerned: (1) the carrying capacity of the Cook Inlet beluga stock, (2) the current number of beluga inhabiting the Cook Inlet, and (3) whether the subsistence harvest of the beluga should be restricted to two belugas annually. NMFS prepared a draft environmental impact statement (DEIS) that examined the proposed regulations. The final EIS will not be issued until a decision on the hearing has been made. Taking of the Cook Inlet (CI), Alaska, Stock of Beluga Whales by Alaska Natives, 65 Fed. Reg. 59,164 (Oct. 4, 2000) (to be codified at 50 C.F.R. 216. *See also Moratorium Extended To Prohibit Hunting of Cook Inlet Beluga Whales* (Jan. 18, 2001), available at <http://www.publicaffairs.noaa.gov/releases2001/jan01/noaanmfs0104akr.html>.

B. Killer Whales

In February 2001, scientists for the Center for Biological Diversity released a report predicting that the Puget Sound Southern Resident pod of killer whales have an eighty-one percent chance of becoming extinct within

the next 300 years. Scientists are worried, but report that extinction is not inevitable as long as action is taken to save the whales.

Since 1974, the Center for Whale Research has been conducting annual surveys of the Southern whale. The Southern population was believed to number at least 100 whales or more in the mid-1960s. Since that time, however, three major declines have occurred. The first, occurring between 1967 and 1972, was caused by live captures for public display; it caused a thirty percent decline in the pod's population. The second decline occurred between 1981 and 1984; it was caused by a disproportionate loss of juvenile southern calves, and caused a four percent decline in the population. The third decline started in 1994 when mortalities rose due to the loss of post reproductive females, and continued through 2001 with the additional loss of three male juveniles, two reproductive females, two young juveniles and the deaths of four calves. This most recent decline is alarming for several reasons: (1) this is the longest decline without apparent cause, such as captures or hunting; (2) the decline is driven by an increased mortality of young adults and juveniles, without substantial reduction of calving; (3) the southern whale's main food source is declining; and, (4) whale watching and water traffic disturbances have increased dramatically. Scientists developed eight scenarios using a computer simulation model developed by the International Union for the Conservation of Nature to project the killer whale's population trend over the next 300 years. The second model, which considered the killer whale's total population trend since 1974, resulted in an eighty-one percent chance of extinction in 300 years. The scientists recommend that efforts should be made to identify the cause of these recent deaths, and find ways to minimize any human impacts that may be implicated. Center for Biological Diversity, *Scientists: 81% Chance of Extinction for Ailing Northwest Killer Whales*, available at <http://www.biologicaldiversity.org/swcbd/species/orca/index.html> (last visited Apr. 6, 2001). See also Martin Taylor & Brent Plater, THE CENTER FOR BIOLOGICAL DIVERSITY, POPULATION VIABILITY ANALYSIS FOR THE SOUTHERN RESIDENT POPULATION OF THE KILLER WHALE (ORCINUS ORCA) (2001).

C. Atlantic Large Whale Take Reduction Plan

NMFS delayed implementing the final Atlantic Large Whale Take Reduction Plan (ALWTRP) from January 22, 2001 to February 21, 2001, because of rough weather conditions. The affected fishers were not able to implement gear modification in time to meet the January deadline. The delay allowed fishers an additional thirty days to implement the gear modifications.

The ALWTRP was developed to reduce the level of serious injury and mortality rates of all large whale species in East Coast lobster trap and finfish gillnet fisheries. The interim rule proposed gear modifications, such as: buoy line weak links, net panel weak links with anchoring systems, restrictions on the number of buoy lines, and gear marking. NMFS proposed these recommendations by promulgating the gear modifications in the December 2000 interim final rule. NMFS believed that the thirty-day delay would have minimal impacts on the Atlantic right whale population.

Various Environmental Assessments (EA) were prepared describing the impacts on the environment that would result from the implementation of the ALWTRP. These EAs concluded that the ALWTRP's actions posed no significant adverse environmental impacts; the thirty-day delay did not change that determination. The delay of the final rule should have no adverse impact on marine mammals. Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations, 66 Fed. Reg. 5489 (Jan. 19, 2001) (to be codified at 50 C.F.R. part 229).

D. Permits

In October of 2000, NMFS issued three-year permits to the California/Oregon (CA/OR) drift gillnet fishery for the incidental takings of four stocks of threatened or endangered species. The four stocks are: the fin whale, California/Oregon/Washington stock; humpback whale, California/Oregon/Washington & Mexico stock; Steller sea lion, eastern stock; and sperm whale, California/Oregon/Washington stock. NMFS believes that the incidental takes will have a negligible impact on the affected marine mammal stocks.

The MMPA authorizes incidental takes of individual species from marine mammal stocks listed as endangered or threatened under the Endangered Species Act (ESA) if NMFS determines that: (1) the incidental mortalities and serious injuries will have a negligible impact on the affected species or stock; (2) a recovery plan has been, or is being, developed for the species; and (3) where required under the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered according to the MMPA, and a take reduction plan has been, or is being, developed for each species or stock.

Various comments were received expressing opposition to the issuance of the permits and questioning NMFS' determination based on current data. NMFS stated that a permit cannot be refused as long as the conditions of the MMPA are met. After evaluating all of the best available information, NMFS determined that granting the incidental takes would pose only negligible impacts on the stock. Based on that assessment, NMFS

concluded that the CA/OR drift gillnet fishery would cause no more than a ten percent increase in the recovery of each stock listed in the permit. The permits may be revoked at any time if the level of takes is likely to result in more than a negligible impact. Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit, 65 Fed. Reg. 64,670 (Oct. 30, 2000).

E. Steller Sea Lion

1. On January 20, 2001, NMFS issued an emergency rule implementing changes to the regulation of 2001 Alaska groundfish fisheries. The rule extends Steller sea lion protection measures for the Bering Sea/Aleutian Islands pollock, Atka mackerel and the Gulf of Alaska pollock fisheries. The rule also implements new protection measures for the Bering Sea pollock fishery and the Bering Sea/Aleutian Islands and Gulf of Alaska Pacific cod fisheries and establishes 2001 harvest specifications for the federally managed groundfish fisheries off Alaska. NMFS believes that the implementation of this rule has fulfilled Congress's objective to protect Steller sea lions and fishing communities. Fisheries of the Exclusive Economic Zone off Alaska; Steller Sea Lion Protection Measures for the Ground Fisheries off Alaska; Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries off Alaska, 66 Fed. Reg. 7276 (Jan. 22, 2001).

2. On March 21, 2001, NMFS announced that funds were available to those eligible to carry out research into the causes of the decline of the Steller sea lion in Alaska. The MMPA authorizes the Secretary of Commerce to conduct scientific research to monitor the health and stability of the Bering Sea marine ecosystem and to resolve questions concerning the causes of marine mammal decline. This new program will be added to the "Catalog of Federal Domestic Assistance" under the Marine Mammal Data Program.

Those applying for funding are responsible for obtaining all federal, state, and local government permits and funding approval for all projects and activities. The primary objective of the Steller Sea Lion Research Initiative (SSLRI) is to provide support for those eligible applicants to research the cause of the decline of the Steller sea lion and to develop conservation and protective measures to ensure recovery of the species. NMFS proposed a set of six primary research areas: fisheries competition hypothesis, environmental change hypothesis, predation hypothesis, anthropogenic effects hypothesis, disease hypothesis, and pollution hypothesis. These categories represent funding priorities because NMFS intends to use them to integrate SSLRI activities. In addition to specifying

necessary budgets, applicants must also be institutions of higher learning, hospitals, other non-profit, commercial organizations, state, local, or Indian tribal government, or individuals. Funding for the SSLRI was made available through an FY 2001 Federal appropriation. Proposed projects will be evaluated on a specified set of criteria. After projects have been evaluated, NMFS will develop recommendations for project funding, and submit rankings to the Regional Administrator, who will determine which projects to fund. Steller Sea Lion Research Initiative (SSLRI), 66 Fed. Reg. 15,842 (Mar. 21, 2001).

F. Turtles

For the third consecutive year, turtle strandings have increased. According to data released by NMFS, strandings jumped ten percent nationally in 2000. Stranded turtles are those that wash up on beaches, either extremely weak or dead. One reason for the increase in strandings could be the higher amount of time fishermen are spending in the water. An example can be seen in North Carolina, where fishermen are pursuing inshore species like flounder because of the restrictions on monkfish catches. Gillnets cause an increase in turtle strandings. In North Carolina alone, turtle strandings in 2000 have increased thirty-eight percent. Strandings have doubled, with 352 occurring in 1998, and 817 occurring in 2000. In 1998, one stranding event alone accounted for a stranding of 200 turtles. It occurred right before the fishing season closed, when fishermen were fishing longer and harder.

South Carolina has avoided a similar jump in strandings by implementing laws that prevent the use of gillnets and by having turtle excluder devices that allow turtles to keep from being trapped in trawl nets. Scientists continue to encourage NMFS to issue measures that would increase the number of turtle excluder devices. David Jakubiak, *THE ISLAND PACKET*, *Turtle Strandings Increase Again* (Feb. 02, 2001), available at <http://www.islandpacket.com/search/story/0,2029,235592,00.html>.

G. Manatees

In January, a settlement was reached in a federal lawsuit concerning manatee protection. Eighteen groups representing various interests had filed suit against the United States Army Corps of Engineers (Corps) and the United States Fish and Wildlife Service (FWS) alleging that through their various acts and omissions the agencies were causing takings that are prohibited under the MMPA. As a result of the settlement agreement, FWS

must designate manatee refuges and sanctuaries in Florida by September 2001; FWS and the Corps must adopt small take regulations under the MMPA within 28 months; and FWS must undertake to evaluate various impacts on manatees and their habitat for all Corps permitting activities. Save the Manatee Club, *Landmark Settlement Reached in Federal Lawsuit*, available at <http://www.savethemanatee.org/news/lawsuit.htm> (last visited April 16, 2001).

III. FISHERIES MANAGEMENT

A. NOAA Submits Annual Fisheries Report to Congress

On February 2, the National Oceanic and Atmospheric Administration (NOAA) released its fourth annual fisheries report to Congress (2000 report), as mandated by the Magnuson-Stevens Act. The purpose behind the annual reports is to identify fisheries that are overfished or are approaching such a condition. The 2000 report contains several differences from past reports: it is the most comprehensive report to date; it contains additional stock information; and it identifies plans of action with regard to these stocks. The 2000 report also breaks the stocks into two groups—major stocks, those whose landings total over 200,000 pounds annually, and minor stocks, those that have limited landings or low economic value.

The 2000 report reviewed the status of 905 stocks in United States fisheries. Of these stocks, ninety-two were classified as “overfished,” compared to sixty-four from the 1999 report. The number of stocks that were not “overfished” totaled 148, compared to 122 from the 1999 report. The number of stocks where overfishing was occurring totaled 72, 5 fewer than the 1999 report; and no overfishing was occurring in 210 stocks in the 2000 report, as opposed to 159 in the 1999 report. In both reports, the number of species that approached being overfished was five. Overfished stocks are those whose biomass is below the minimum amount required to produce a continual maximum sustainable yearly harvest; stocks where overfishing is occurring are those whose fishing mortality rate exceeds the rate that would produce such a harvest.

Over 600 of the 905 stocks reported were either of unknown status or were classified as undefined. Undefined stocks are those for which the information is insufficient to determine whether they meet the overfishing or overfished definitions. The 905 stocks were broken down into categories of 287 major stocks and 618 minor stocks. *Status of U.S. Fish Stocks Updated in NOAA Fisheries' Annual Report to Congress*, NOAA News Releases 2001 (Feb. 2, 2001), available at <http://www.publicaffairs.noaa>.

gov/releases2001.html. For the full report see Department of Commerce, NMFS, *Report to Congress on the Status of Fisheries in the United States* (Jan. 2001), available at <http://www.nmfs.noaa.gov/sfa/reports.html>.

B. MMPA Violator Penalized by NMFS

On February 2, NOAA reported that National Marine Fisheries Service (NMFS) officials had imposed a \$5000 fine on gillnet fisher Gunner Noreen of Juneau, Alaska, for killing a harbor seal with a .270 caliber rifle, in violation of the Marine Mammal Protection Act (MMPA). The settlement agreement allowed for a portion of the fine to be suspended if Noreen goes five years without another MMPA violation. It is notable that the MMPA provides for penalties of up to \$20,000 plus one year in prison for intentional violations of subchapter II of the MMPA, which, among other things, prohibits the taking of marine mammals. Noreen was reported to NOAA by a crew member of his vessel, and NOAA is trying to secure a reward for that person. *NOAA Fisheries Enforces Marine Mammal Protection Act*, NOAA News Releases 2001 (Feb. 21, 2001), available at <http://www.publicaffairs.noaa.gov/releases2001/feb01/noaanmfs0110akr.html>; see also *NMFS Settles with Man Who Killed Harbor Seal*, ASSOCIATED PRESS NEWS-WIRES, Feb. 21, 2001, Westlaw Westnews, WIRESA.

C. The United States Launches a Plan of Action to Protect Seabirds

On February 24, NMFS released a national plan of action to protect seabirds. The plan was created to reduce seabird bycatch in longline fisheries of the United States, and came pursuant to a November 1999 voluntary international agreement among United Nations Food and Agriculture Organization member nations. That agreement called for member nations to assess, develop national plans of action, and create a plan for future research, regarding seabird bycatch in longline fisheries. The plan is the product of a collaborative effort involving NMFS, the United States Fish and Wildlife Service (FWS) and the U.S. State Department, all of whose authority is involved with the protection of seabirds in longline fisheries.

The main purposes of the plan are to collect and assess seabird bycatch data and to develop and implement measures and educational programs designed to reduce seabird bycatch in longline fisheries. The effort in implementing the plan is scheduled to occur over the next four years and will involve NMFS, assisted by the Regional Fishery Management Councils, in conjunction with FWS. Department of Commerce. *NOAA Fisheries Releases a National Plan of Action to Protect Seabirds* (Feb. 28, 2001), available at <http://www.fakr.noaa.gov/newsreleases/birdplan.htm>.

Final United States National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries (Feb. 2001), available at <http://www.nmfs.noaa.gov/sfa/international/FinalNPOA-Seabirds.htm>. National plan announced and public comment responded to in National Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries, 66 Fed. Reg. 12,764 (Feb. 28, 2001).

D. Sharks

1. In February of 2001, NMFS announced that the final National Plan of Action for the Conservation and Management of Sharks (NPOA) became available. The United Nations Food and Agriculture Organization's Committee on Fisheries (COFI) produced an International Plan of Action for the Conservation and Management of Sharks (IPOA) that noted an increase in the catch of sharks and its potential impact on the shark population, and recommended that member nations voluntarily develop national plans to ensure the conservation and management of sharks for their long term sustainable use.

Sharks, skates, rays (elasmobranches) and the chimaeras comprise the set of Chondrichthyes, or cartilaginous fishes. These elasmobranches present various problems for fishery management and conservation. Fishing that reduces shark populations to unsustainable levels can occur quickly because the species is at the top of the food chain, and has a relatively small abundance compared to other groups situated in lower trophic levels. Successful management of shark fisheries requires a commitment to fishery monitoring, biological research, and proactive management.

The NPOA reiterates the IPOA member objectives, including: assessing threats to shark populations, determining and protecting critical habitats, implementing harvesting strategies consistent with a biological sustainability, minimizing unutilized incidental catches, and minimizing waste and discards from shark catches. Keeping in mind these objectives, the NPOA recognizes the need to increase the current level of knowledge about the characteristics and diversity of the species. The NPOA summarizes the available information on U.S. shark fisheries, including stock assessments, catch data, landings and discards, management measures, and research needs. *National Plan of Action for the Conservation and Management of Sharks*, 66 Fed. Reg. 10,484 (Feb. 15, 2001); see also NMFS, NOAA, *Final United States Plan of Action for the Conservation and Management of Sharks* (Feb. 2001), available at <http://www.nmfs.noaa.gov/sfa/final%20npoa.february.2001.htm>.

2. In December of 2000, President Clinton signed a bill that banned the practice of cutting off shark fins and throwing the carcass into the sea. The bill was first introduced two years ago. The practice, called shark finning, is often a side business to swordfish and tuna fishing. Those small operations have no room to carry the carcass, which is of little value. The legislation is aimed mainly at Pacific fishermen who supply the fins to Asian markets, where they are prized as a culinary delicacy. The new law makes it illegal for fishermen to carry shark fins without the carcass and enter American ports, or operate in the 200 mile federal water territory. *Aimed at Saving Species, New Law Bans 'Shark Finning,'* CHI. TRIB., (Dec. 27, 2000), 2000 WL 29790909.

E. NMFS Closes Area to Horseshoe Crab Fishing

NMFS has banned fishing for horseshoe crabs in nearly 1500 square miles of federal waters off the mouth of Delaware Bay. The ban is designed to provide additional protection for local stocks, as well as to protect the declining population of migratory shorebirds that feed on horseshoe crab eggs. The final rule was implemented on March 7, 2001.

Horseshoe crabs are bottom dwelling marine animals related to spiders, and can be found in near-shore and continental shelf habitats from Mexico to Maine. In the spring, horseshoe crabs move inshore to spawn. In 1999, it was estimated that three million horseshoe crabs were collected along the Atlantic coast for use as bait in eel, whelk, and catfish fisheries.

The affected area adjoins the waters of Pecks Beach, New Jersey. All Atlantic coastal states have guidelines, designed by the Atlantic States Marine Fisheries Commission (ASMFC) that have reduced the horseshoe crab bait catch by twenty-five percent. The ASMFC is responsible for management oversight of horseshoe crab fisheries in state waters. The ASMFC has also recommended prohibiting fishing for horseshoe crabs in federal waters within a thirty nautical mile radius of the mouth of Delaware Bay. NMFS is considering reporting requirements for vessels that catch horseshoe crabs in federal waters, and prohibiting at-sea vessel transfers of horseshoe crabs currently not counted among state quotas. NOAA Fisheries Closes Area To Fishing For Horseshoe Crabs (Feb. 5, 2001), *available at* <http://www.publicaffairs.noaa.gov/releases2001/feb01r104.html>; Final rule and area specifications announced in Atlantic Coastal Fisheries Cooperative Management Act Provisions; Horseshoe Crab Fishery; Closed Area, 66 Fed. Reg. 8906 (Feb. 5, 2001) (to be codified at 50 C.F.R. pt. 697).

F. Salmon

In a controversial decision, Atlantic salmon has been listed as endangered under the Endangered Species Act (ESA). Maine plans to appeal the Department of Commerce's decision to list the species as endangered in eight Maine rivers. United States Senators Olympia Snowe and Susan Collins, along with Representative John Baldacci, have expressed their support of the state's appeal. On December 7, 2000, Maine's Attorney General filed the appeal in the United States District Court in Portland. Snowe, Collins, and Baldacci expressed the belief that the Secretary's decision to list the salmon was based on flawed science, and they support current salmon recovery plans conducted by state officials.

The state's appeal argues that the Secretary's decision is unjustified for three main reasons: (1) there is a lack of sound scientific evidence to justify the listing; (2) the decision reverses a previous decision that the salmon were not likely to become endangered in the foreseeable future; and, (3) a study is expected to confirm the contention that the listing relies on flawed science. The state further argues that the restoration of the salmon should be done through state and local initiatives, with only input and resources from the federal government. Snowe, Collins, and Baldacci believe that in the end, research being conducted by the National Academy of Science will support their arguments. The Secretary stated that the federal government would review its decision once the study results were released.

If the salmon remains listed, Snowe, Collins, and Baldacci believe the state would suffer serious economic harm, particularly in the aquaculture, agriculture, and tourism industries. State of Maine Appeal of Federal Atlantic Salmon Listing, CONGRESSIONAL PRESS RELEASE, Dec. 7, 2000.

G. Red Snapper

Environmental groups have petitioned NMFS to list the Pacific red snapper, also called bocaccio, as "threatened" under the ESA. The ESA defines a threatened species as one that is in danger of extinction throughout all or a significant portion of its range. The population of the red snapper, once an abundant groundfish, has decreased ninety-eight percent since 1969. If the red snapper were listed it would represent the first ocean fish to be given protection under the ESA. A threatened designation could have a large impact on commercial and recreational fishing. Environmentalists argue, however, that without the listing the red snapper will disappear.

Environmentalists are trying to list the species, that stretches from Northern California to the Mexican border. The Pacific Fishery Manage-

ment Council, a group that advises the federal government about fish populations on the west coast, reports that commercial and recreational fishing for red snapper is limited under federal regulation, and that any further listing is not necessary. There are currently annual quotas that limit California's commercial fisherman to 100 metric tons of red snapper, and recreational fishermen are limited to two red snappers each, for a total of 48 metric tons this year. Environmentalists have challenged the quotas because they fail to account for fish being unintentionally caught during commercial trawling. Federal funding has been set aside for a pilot program to measure these unintentional catches. Seema Mehta, *'Threatened' Listing Urged For Type of Red Snapper; Environment: Activists Seek To Protect Bocaccio, Which Would Be the First Ocean Fish So Designated. A Fishery Group Says Such an Action Is Not Necessary*, LOS ANGELES TIMES, Jan. 25, 2001 at B3.

H. Individual Fishing Quotas

In a successful effort led by Senator Olympia Snowe, Senator John Kerry, and Representative Bill Delahunt, Congress has extended the four year moratorium that was issued on programs involving Individual Fishing Quotas in 1996. Individual Fishing Quota programs distribute shares of public fisheries to certain individuals who hold permits. Such programs have been the source of extensive public policy debate; an extension of the moratorium will allow for Congress to continue to discuss and develop standards surrounding these sorts of systems. The moratorium will last for another two years, while Congress works on developing national standards. Marine Fish Conservation Network, *Congress Extends Ban on Exclusive Fishing Privileges* (Dec. 18, 2000), available at <http://www.enn.com/direct/display-release.asp?id=2956>.

IV. PROTECTED AREAS

A. Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve was designated as a marine protected area when President Clinton signed Executive Order 13,178 on December 4, 2000. The Reserve includes a chain of islands, atolls, submerged banks and reefs approximately 1200 nautical miles long and 100 nautical miles wide. This area is surrounded by some of the most extensive and pristine coral reefs in U.S. waters.

The Executive Order provides conservation measures and management techniques for the Reserve. Activities that are prohibited in the reserve are exploration for oil and gas, alteration of the seabed through activities such as drilling or anchoring in the coral, discharging or depositing materials, and removing or taking any living or non-living resource or species unless expressly allowed in the Executive Order. Fisheries will be capped at current harvest levels, but in Preservation Areas some or all fishing activities will be restricted. Management techniques will include enforcement of the conservation measures and monitoring and assessment of the resources of the Reserve.

After a thirty-day public comment period, the establishment of the Reserve was finalized in Executive Order 13,196. This order modified the previous order and included revised conservation measures and modification of the Preservation Areas. *Northwestern Hawaiian Island Coral Reef Ecosystem Reserve*, Questions and Answers Page, available at <http://hawaiiireef.noaa.gov> (last visited Apr. 9, 2001); see also 65 Fed. Reg. 77,221 (Dec. 8, 2000) (requesting public comments on the order).

B. National Marine Sanctuaries Amendments Act of 2000

The management of the nation's thirteen marine sanctuaries was extended and improved with President Clinton's signing of the National Marine Sanctuaries Amendment Act of 2000. Over the last seven years, the Administration and Congress have worked to increase funding for the sanctuary program five-fold. During this period, new sanctuaries have been added off Massachusetts, Florida, Washington, Hawaii, and Michigan. Currently, these sanctuaries provide increased protection for over 18,000 square miles of ocean habitat.

The Act authorizes thirty-two million dollars in fiscal year 2001, with two million-dollar increases per year through 2005. Additionally, six million dollars a year was authorized for facilities necessary to manage the sanctuaries. The Act also provides for increased protection of the coral reefs off the Northwestern Hawaiian Islands. Additionally, a scholarship named in memory of former NOAA ocean service director Dr. Nancy Foster was established to recognize outstanding scholarship in the fields of oceanography, marine biology, and maritime archeology. *Revised Fact Sheet: President Clinton: Preserving America's Ocean Treasures*, U.S. NEWS-WIRE, Nov. 13, 2000.

C. Florida Keys National Marine Sanctuary

The boundary of the Florida Keys National Marine Sanctuary was expanded by ninety-six square nautical miles. To protect the coral reef resources in this area, the Tortugas Ecological Reserve was established. A supplemental management plan for the Reserve was published detailing the goals and objectives, management responsibilities, research activities, interpretive and educational programs and enforcement. Regulations to implement the boundary expansion and activities in the Reserve were also issued, with the goal of protecting the deep water coral reef community in this area. Florida Keys National Marine Sanctuary Regulations, Part V, 66 Fed. Reg. 4267 (Jan. 17, 2001).

D. Virgin Islands Coral Reef National Monument

President Clinton established the Virgin Islands Coral Reef National Monument under the authority of Section 2 of the Act of June 8, 1906 (16 U.S.C. § 431). The monument consists of nearly 112,708 acres off St. John in the Virgin Islands. The area contains many species of reef fish, whales and dolphins, and several threatened and endangered species. The Secretary of the Interior, through the National Park Service, will manage the monument. A management plan will be prepared within three years, addressing any specific actions needed to protect this monument. Establishment of the Virgin Islands Coral Reef National Monument by the President of the United States of America, 66 Fed. Reg. 7364 (Jan. 22, 2001).

E. Marine Protected Areas Public Meetings

The South Atlantic Fishery Management Council held nine public scoping meetings in April and May of 2001. The meetings were designed to gather information about the use of Marine Protected Areas (MPA) as fishery management tools, especially for the snapper/grouper complex. Currently, the Council is considering different actions to take in MPAs, including permanent closures with either limited or no take provisions, limited duration closures, and spawning closures with either limited or no take allowed. The intent of the Council is to review areas suggested by the public and the MPA Advisory Panel. South Atlantic Fishery Management Council; Public Scoping Meetings, 66 Fed. Reg. 17,519 (Apr. 2, 2001).

