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## A Review Of Developments In Ocean And Coastal Law 2002

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# A REVIEW OF DEVELOPMENTS IN OCEAN AND COASTAL LAW 2002

*Kenyon R. Shubert and Genevieve Watson*<sup>\*</sup>

## **DOMESTIC**

### I. LEGISLATION

#### *A. Magnuson-Stevens Act*

On May 16, 2002, Rep. Wayne Gilchrest (R-MD) introduced HR 4749 to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (MSA), Marine Protected Areas. It was referred to the House Resources Committee (Chair James Hansen, R-UT) and was passed on July 10, 2002. Environmental groups claim the bill undermines existing safeguards of the MSA. H.R. 4749, 107th Cong. (2002), *available at* <http://www.legislative.noaa.gov/Legislation/magnusonstevens.html> (last visited Oct. 21, 2002); Magnuson-Stevens Act, 16 U.S.C. §§ 1801 et seq. (1996), *available at* <http://www.oceana.org/index.cfm?sectionID=16&fuseaction=25.detail&pageID=75> (last visited Oct. 7, 2002).

#### *B. Ocean Habitat Protection Act and Other Bills Introduced in Congress*

On September 18, 2002, Rep. Wayne T. Gilchrest (R-MD) introduced a bill (HR 5396) to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to reauthorize and improve the Act. On the same day, Rep. Vernon J. Ehlers (R-MI) introduced a bill (HR 5395) to establish marine and freshwater research, development, and demonstration programs to support efforts to prevent, control and eradicate invasive species, and to educate citizens and stakeholders and restore ecosystems. Both were referred to the House Committee on Transportation and Infrastructure (Chair Don Young, R-AK).

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On March 19, 2002, Rep. Joel Hefley (R-CO) introduced the Ocean Habitat Protection Act (HR 4003), "a bill to protect diverse and structurally complex areas of the seabed in the United States exclusive economic zone by establishing a maximum size limit on roller, rockhopper, and all other ground gear used on bottom trawls." It was referred to the Resources Committee. On June 6, 2002, Sen. Robert Torricelli (D-NJ) introduced the same bill in the Senate (S 2593). It was referred to the Commerce Committee (Chair Ernest Hollings, D-SC).

On June 21, 2002, Rep. Mark Kirk (R-IL) introduced a bill (HR 2272) to amend the Foreign Assistance Act of 1961 to provide for debt relief to developing countries who take action to protect critical coral reef habitats. H.R. 5396, 107th Cong. (2002), *available at* <http://www.legislative.noaa.gov/Legislation/oceansandgreatlakeshouse.html> (last visited Oct. 21, 2002); H.R. 4003, 107th Cong. (2002), *available at* <http://www.legislative.noaa.gov/Legislation/oceansandgreatlakeshouse.html> (last visited Oct. 21, 2002); S. 2593, 107th Cong. (2002), *available at* <http://www.legislative.noaa.gov/Legislation/oceansandgreatlakessenate.html> (last visited Oct. 21, 2002); H.R. 2272, 107th Cong. (2002), *available at* <http://www.legislative.noaa.gov/Legislation/oceansandgreatlakeshouse.html> (last visited Oct. 21, 2002).

## II. ENDANGERED SPECIES ACT

### A. *EPA Must Consider Pesticides That Hurt Pacific Salmon*

In the year the Clean Water Act turned thirty, the federal court in Seattle Washington recognized another route to controlling non-point sources, here pesticide deposits in watersheds. Judge John Coughenour, of Seattle's District Court, told the Environmental Protection Agency (EPA) that the agency must take action to protect salmon in the Pacific Northwest from pesticide runoff. The court found that the EPA has a legal obligation under the Endangered Species Act to review the impacts of pesticide use and curtail any uses that are hurting the salmon.

The Pacific Coast Federation of Fishermen Association and the Institute of Fisheries Resources, joined forces with Washington Toxics Coalition and the Northwest Coalition for Alternatives to Pesticide in this suit to force action from the EPA. The commercial fishing industry showed relief at the decision, which it argued would begin to restore salmon that could revitalize fishing employment and a billion dollar industry to the Northwest.

The record in the case included EPA's own documentation of currently used pesticides, which are harmful to surface water contamination levels, fish and their habitat. A U.S. Geological Survey detected fourteen

pesticides in salmon watersheds at concentrations at or above levels dangerous to fish survival. The court decision reprimanded the EPA for “wholesale non-compliance” with the Endangered Species Act, calling its disregard for the pervasive pesticide discharges, “patently unlawful.” *Court Orders Federal Government to Ensure Pesticide Use Will Not Harm Salmon*, available at <http://www.earthjustice.org/news/print.html?ID=393> (last visited Oct. 3, 2002).

### *B. Sea Turtles*

On September 30, 2002, Judge Nancy Gertner of the United States District Court for the District of Massachusetts, cited the Endangered Species Act (ESA) as it affirmed the government’s ban of pelagic longline fishing gear. The ban will affect a large area in the North Atlantic and is geared toward preserving the existence of leatherback and loggerhead sea turtles.

Thousands of sea turtles are mistakenly caught in Atlantic pelagic longlines each year. The lines, targeted at swordfish and tuna, run up to sixty miles long and are lined with thousands of hooks. In June of 2001, the National Marine Fisheries Service (NMFS) determined that the pelagic longline fishing practice threatened the existence of Atlantic loggerhead and leatherback turtles. Leatherback sea turtles in the Pacific are currently on the verge of extinction. NMFS concluded that approximately ten vessels caught 75% of the loggerhead and 40% of the leatherback sea turtles caught as bycatch by the entire U.S. Atlantic longline fleet. To limit this bycatch, the court has upheld NMFS’s decision to close the area off the coast of New England with the most bycatch, encompassing 2.6 million nautical square miles, to this style of fishing.

The fishing industry had challenged this decision to close an entire area of the ocean. International environmental organizations such as Oceana, the Turtle Island Restoration Network and the Center for Biological Diversity joined the government in support of the closure.

Public pressure against the fishing industry’s practice of discarding non-targeted marine animals, like these turtles, injured dead or dying during massive fishing operations was substantial. This summer over 110,000 Americans supported Oceana’s petition demanding that the NMFS implement a program to count, cap and control wasted catch. The Turtle Island Restoration Network has worked since 1989 integrating the ecological marine species with the economic needs of local communities that depend on the ocean for their livelihood, in an effort to protect and restore endangered turtles.

On June 27, 2002, the Center for Biological Diversity, the Turtle Restoration Network and the Ocean Conservancy jointly filed suit to stop a similar fishing practice off the coast of Hawaii. NMFS, who had previously banned longline fishing in this part of the Pacific, reopened the area by granting itself a permit to conduct experimental longline fishing for swordfish. The suit seeks to halt the experiment until NMFS complies with NEPA and the ESA. *Lawsuit Filed to Stop Further Killing of Endangered Sea Turtles by Fishery "Experiment" in Pacific*, available at <http://www.earthjustice.org/news/print.html?ID=391> (last visited Sept. 12, 2002); *Oceana Law Project*, available at <http://www.oceana.org/index.cfm?sectionID=16&fuseaction=25.detail&pageID=75> (last visited Sept. 12, 2002).

### *C. Dead Coho Salmon Line The Klamath River*

Adult coho salmon migrate up California's northern Klamath River each year from September to November. This year upwards of 40,000 of these fish are estimated to have died as they headed up the river to spawn, leaving the banks lined with their carcasses. This species of salmon is on the threatened list under the Endangered Species Act.

The crisis began in 2001 when a severe drought in the Klamath Basin forced federal managers to make a hard choice: either supply local farms with the irrigation necessary for their crops or maintain stream levels necessary to protect the Basin's fish populations. The Bureau of Reclamation chose the latter and left many farmers without water. These farmers protested and filed suit, with some taking matters into their own hands and tearing open an irrigation gate to release water to their dry fields.

In March 2002, President George W. Bush set up the cabinet level Klamath River Basin Federal Working Group to resolve some of the legal and economic issues surrounding the Klamath Basin. The group included representatives from the Departments of the Interior, Agriculture and Commerce, as well as the White House Council on Environmental Quality. It developed a ten year plan for the Klamath Basin that recognized the needs of the farmers 200 miles upstream.

The results of the Bush administration's plan are being felt by the coho salmon trying to swim upstream in a river well below what it was in last year's drought. Low water levels and resultant high temperatures are being blamed for massive fish death counts. The Pacific Coast Federation of Fishermen's Association (PCFFA) has closed the ports from Fort Bragg to above Brookings Oregon in order to prevent more salmon from entering the river. The U.S. Bureau of Reclamation, against which Earthjustice has filed suit on behalf of PCFFA, blames the deaths not on its own water management decisions, but rather on an unusually hot September.

Farmers in the Klamath Basin also support the idea that the management plan is not to blame for the lack of cold water flowing down the Klamath. The Secretary of the Department of the Interior said the farmers are receiving less than one quarter of the water they used to receive. One-hundred fifty producers in the Klamath Basin in Oregon and California have signed on to a program with the federal government, which will provide technical and financial assistance to improve the efficiency of their irrigation and livestock watering operations. Environmentalists say that these voluntary measures are not enough and have joined forces with commercial salmon fishermen and California Congressman Mike Thompson to file suit in U.S. District Court in San Francisco, challenging the government's 10 year water management plan. *Too Hot for Salmon, Klamath River in Court Again*, available at <http://www.flmnh.ufl.edu/fish/InNews/Klamath2002.htm> (last visited Oct. 9, 2002).

#### *D. Gulf Sturgeon May Still Survive*

In 2001 the Fifth Circuit of the Court of Appeals held that a finding by the U.S. Fish and Wildlife Service (FWS), which failed to create protected sturgeon habitat in the Gulf of Mexico, was invalid. This holding led to a 2002 decision by FWS and the National Marine Fisheries Service to begin the process of establishing critical habitat in several areas throughout the Gulf region.

Gulf sturgeon is one of the few anadromous species that breed in fresh water rivers. The areas proposed for critical habitat include: the Pearl River system in Louisiana and Mississippi; the Pascagoula River system in Mississippi; the Escambia River system in Florida and Alabama; the Yellow River system in Florida and Alabama; the Choctawhatchee River system in Florida and Alabama; the Apalachicola River system in Florida; and the Suwannee River system in Florida. Several estuarine and marine areas in Louisiana, Florida, Alabama and Mississippi are also included in the proposal.

Gulf sturgeon was listed under the Endangered Species Act in 1991 after being pushed to the point of extinction by over fishing, pollution and damming of waterways where it breeds. One of the oldest extant fish species, dating back around 350 million years, Gulf sturgeon can reach an impressive 500 pounds and live almost fifty years. Despite their even temperament, this species gained infamy when it was featured in Longfellow's "Song of Haiwatha," where the poet relays an epic battle between the hero and the sturgeon.

This impressive species once ranged from the Florida Keys to the Mississippi River, however, now its population is confined almost entirely

to the area between Louisiana and the Suwanee River in Florida. The Sierra Club, which brought suit in this case, hopes that this decision by the FWS will be a first step, after eight years of litigation, toward recovering this and other threatened species throughout the Gulf. *Victory for Gulf Sturgeon*, available at <http://www.earthjustice.org/news/print.html?ID=385> (last visited Sept. 23, 2002).

### III. PROTECTED AREAS

#### A. *Alaskan National Wildlife Refuge Beats the Odds*

On April 18, 2002, bipartisan support in the U.S. Senate blocked an amendment that would mandate oil drilling in the Arctic National Wildlife Refuge (ANWR), a nineteen million acre refuge bordering Alaska's northeast coast. The proposed drilling, had it passed, would have been limited to 2,000 acres at any one time. The proposal was the main arm of the Bush administration's national energy plan, and was argued for on the basis that it would help reduce U.S. dependency on Middle Eastern oil and create tens of thousands of jobs. The vote took place just one week after a negative U.S. Geological Survey report of the expected environmental impact of the drilling was released. The Bush administration cited new drilling techniques as an argument against the report. Democrats and eight Republicans questioned the projected amount of oil to be garnered from ANWR, as well as whether or not it would significantly affect U.S. dependency on foreign oil. The vote was a victory for the moment, but new amendments to the legislation passed by the Republican House last year will be presented in the Senate before the end of 2002. Among the proposed amendments is one suggested by Republican Senator Ted Stevens of Alaska which would allow the Native Americans living in ANWR the right to drill on the 92,000 acres they own.

ANWR protects the Porcupine Caribou, who make their way to the coastal plain each spring in one of North America's greatest mammal migrations. Once there they give birth to and raise their calves. Polar bears share the coastal plain with the Caribou, using it as their denning habitat and nursery for newborn cubs. Drilling for oil in ANWR would provide only a six-month supply for the U.S. at current consumption rates and would not be available for ten years.

As further testament to the valuable wilderness of Alaska, the Richard King Mellon Foundation donated 33,805 acres to the U.S. Fish and Wildlife Service in western Alaska in September of 2002. As the largest conservation gift in the state's history, this gift protects forty miles of Pacific coastal habitat for birds, fish and other wildlife. Alaska has sixteen national wildlife refuges, and the gift became a part of the Alaska Peninsula

National Wildlife Refuge and the Izembek National Wildlife Refuge Complex. The donated land includes an area of marsh and beach habitat which is temporary home to migratory birds like black brant, emperor geese, and Steller's eider, as well as more than 100 miles of fish streams and rivers where five species of Pacific salmon thrive. *WWF Congratulates U.S. Senate For Voting To Protect The Arctic National Wildlife Refuge*, available at <http://www.worldwildlife.org/news/headline.cfm?newsid=340> (last visited Oct. 7, 2002); *More Than 33,000 Acres In Alaska To Be Protected For Wildlife Thanks To Record Mellon Foundation Donation*, available at <http://news.fws.gov/newreleases/r7/C4B5965D-D416-491B-B5BCE69D1BA3C627.html> (last visited Oct. 21, 2002).

*B. Meetings Held to Discuss Protected Areas  
in Stellwagen Bank Sanctuary*

On October 9 and 10, 2002, meetings were held in Portland, Maine to follow up on previous public forums on Marine Protected Areas (MPA) in the Gulf of Maine held in Bar Harbor and Boston, Massachusetts. Representatives from fishing and conservation groups met with state and federal regulators to discuss already existing MPAs, the possibility of new MPAs, and how to make the Gulf of Maine habitat information available online. Complaints included the fact that the current list of seventy-eight existing MPAs contain marine dumping grounds and marine disposal sites which do not meet the official federal MPA standards, defined as areas of the marine environment "reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein." All of the listed MPAs subject their wild fish and invertebrate residents to commercial and recreational exploitation, though some target species are temporarily protected but later left on their own after they reach exploitable numbers once again. The failure to appoint political players in the Department of Interior and the National Oceanic and Atmospheric Administration (NOAA) was cited as one impediment to progressive federal agency action, and as an explanation for the Department to publish the required update on MPA activities.

New England's only national marine sanctuary, Stellwagen Bank National Marine Sanctuary, has also been the subject of discussion this fall. On October 1, 2002, a meeting to begin the scoping process for a new management plan was held in Portland, Maine. Craig MacDonald, director of the sanctuary, says comments from the scoping meetings in Portland and further south will be "evaluated and considered" when final rules are proposed next year. There should be another round of public meetings for reactions to the proposed plan after the rules are issued.



The bank is a shallow plateau just north of the tip of Cape Cod in the southwestern corner of the Gulf of Maine, but the sanctuary itself encompasses both Tillies Bank and Basin, part of Jeffrey's Ledge, and totals 842 square miles of some of the most productive of the Gulf's waters. It was in the sanctuary that a group of rarely observed blue whales was spotted feeding on Stellwagen Bank with the humpbacks and right whales this past summer. However, the sanctuary has never had a set of rules to back up the protection to its inhabitants that the refuge is supposed to provide. There are no restrictions on the operation of whale-watching boats, cruise ships, or fishing trawlers within the sanctuaries boundaries. Created by Congress ten years ago, this would be the first updating of the sanctuary's management plan by NOAA, the agency responsible for managing Stellwagen Bank. Though fishing and other activities go unrestricted, there is a rule prohibiting the mining of sand or gravel – the condition that originally motivated its creation. The fishermen who would be affected by changed rules are largely those from Massachusetts. Maine fishermen have yet to join the debate over the future of the sanctuary, which includes the possibility of no-take zones, a measure used only in the Florida Keys National Marine Sanctuary.

On August 29, 2002, Stellwagen Bank was also confirmed as the home of the *Portland*, a steamship wrecked in a storm and lost at sea on November 27, 1898. All 192 passengers and crew aboard were killed in the sinking, though some of the bodies washed ashore shortly after the accident occurred over 100 years ago. Remotely operated vehicle operations from the research vessel *Connecticut* produced high quality video footage of the wreck that showed some of the distinctive features of the coastal passenger steamship, such as a steam release vent, rudder assembly, paddle guard, paddle wheel hub, and overall length. The ship has been conclusively identified as the *Portland* because no other steamers of this type were reported lost in Massachusetts Bay. The ship's location was originally detected in 1989, but it could not be confirmed as the fabled *Portland* until now. *Reviving The Wild Gulf Of Maine*, available at <http://www.meepi.org/files/mpamtgportloct2k1.html> (last visited Oct. 21, 2002); *Prized Marine Sanctuary May Need Protections*, available at <http://www.pressherald.com/news/state/020930sanctuary.shtml> (last visited Oct. 21, 2002); *Location of the Portland wreck confirmed*, available at [http://www.sanctuaries.nos.noaa.gov/news/pressreleases/pressrelease08\\_29\\_02.html](http://www.sanctuaries.nos.noaa.gov/news/pressreleases/pressrelease08_29_02.html) (last visited Oct. 21, 2002).

### *C. Manatees Get Emergency Attention*

On September 20, 2002, the Fish and Wildlife Service (FWS) took emergency action to establish seven new manatee protection areas in Florida. The action was authorized under the Endangered Species Act and the Marine Mammal Protection Act, and justified by the determination that the danger of taking was imminent. Sanctuaries and refuges were established in Citrus County, Pinellas County, and Hillsborough County. All waterborne activities in the sanctuaries are prohibited and watercraft are required to move at "idle speed" or "slow speed" within the refuges as specified by season. The protected areas will remain in effect through January 20, 2003, and the FWS expects to make a final determination of the sites in the form of a final rule by November 1, 2002. 50 C.F.R. § 17 (2002), *available at* <http://endangered.fws.gov/frpubs/s020920e.html> (last visited Oct. 21, 2002).

## IV. FISHERIES

### *A. Statistical Error Gives Fishing Industry Ammunition*

In early September 2002, National Marine Fisheries Service (NMFS) officials discovered that the net lines on the boat, which is used to research and calculate catch limits for the Gulf of Maine and Georges Bank, were mismatched. The error is thought to have existed since February 2000. Regulators are unclear as to how the six-foot difference in cable lengths that drag the net occurred. However, Cape Cod fisherman Matt Stommel says he witnessed the cables being calibrated incorrectly in February 2000. Stommel says he pointed out the error at the time but federal regulators did not act upon his warning.

The New England Fisheries Management Council has not yet been able to determine the full implication of this error. Scientists from the NMFS have stated that the fish census is unlikely to have been significantly affected by the mistake. They point to the fact that before and after the error is believed to have occurred, there has been little difference in the trend of the amount and species of fish caught.

The net, which is pulled behind the *Albatross IV*, is attached by 300-meter cables. Having one of the cables approximately six feet shorter than the other could affect the way the net opens at different depths, providing inaccurate data on which yearly catch quotas are based. This discovery comes at a volatile time in the fishing industry. A federal court judge has ordered fishing in the region cut by as much as two-thirds, threatening the livelihood of most independent fishermen. If the survey from this boat is

shown to be badly flawed, it could provide vital ammunition to the fishermen fighting these cuts. Beth Daley and Gareth Cook, *Off Shore Fish Counts Questioned*, BOSTON GLOBE, Sept. 12, 2002.

## V. MARINE ENVIRONMENT AND OCEAN POLLUTION

### A. *Loss of Drilling Right is Not a Taking*

In 1990, state lawmakers enjoined oil exploration in Florida waters because of environmental pollution concerns. In 1992, the Florida legislature specifically denied Coastal Petroleum Co. ("Coastal") a permit to drill in the region under Coastal's two preexisting leases for oil and gas rights in the region. After a decade of litigation, in October, 2002, the Florida judiciary further denied Coastal any compensation for these pre-existing leases, rejecting the company's takings argument.

Coastal had originally obtained its leases in 1947 from the state, but had since been denied permits which would allow the use of these leases by the Florida Cabinet in 1992. This decision was subsequently upheld in a state appellate court decision in 1999.

The October 2002 decision, the most recent piece of this decade long litigation, was a response to an argument put forward by Coastal that, under Florida's Constitution, just compensation must be given for the taking of property rights. Florida Circuit Judge J. Ralph Smith rejected Coastal's argument that it was owed potential earnings from untapped energy reserves in the area of their lease. His reasoning was based on the premise that there was no realistic investment-backed expectation prior to the denial of the permit as it was always a risky venture with no guarantee of success even if the permit had been granted.

Coastal's president, Phil Ware, was undeterred and stated his intent to appeal the case to Florida's Supreme Court. *Court Rejects Oil Company's Claim to Payment for Denied Drill Lease*, available at <http://www.earthjustice.org/news/display.html?ID=453> (last visited Oct. 12, 2002).

### B. *Pollution Reduction to Take Effect in 2008*

On July 26, 2002, the Bush administration proposed an 80% reduction in polluting air emissions produced by gasoline-fueled recreational boats. The new standard would take effect in 2008, cutting into one of the two sources that account for 12% of hydrocarbon emissions and 3% of carbon monoxide emissions from mobile sources. The boat standards will cover yachts, sport boats, fishing boats, jet boats, and other types of pleasure craft with outboard engines. The Environmental Protection Agency proposed emission guidelines for diesel-powered recreational boats in 2001 and

commercial marine vessels in 2002, and expects those standards to be finalized in early 2003. A public hearing on the new boat standards was held September 23 in Ann Arbor, Michigan. *U.S. Proposes Pollution Cuts for Motorcycles, Boats, available at* [http://www.enn.com/news/wire-stories/2002/07/07302002/reu\\_47969.asp](http://www.enn.com/news/wire-stories/2002/07/07302002/reu_47969.asp) (last visited Sept. 22, 2002).

## VI. CORAL REEFS

### *A. First Signs of Coral Bleaching in Northern Hawaiian Archipelago*

At the end of a thirty day expedition to the Northwestern Hawaiian Islands, scientists from the Northwestern Hawaiian Islands Reef Assessment and Monitoring Program (NOWRAMP) 2002 revealed that they had documented the first incidents of coral bleaching in the northern half of the Hawaiian archipelago. Neither the 2000 nor the 2001 expeditions found such results. While coral bleaching is a natural response to environmental stresses such as high water temperatures and exposure to solar ultraviolet radiation, it can permanently damage reefs and last year the National Oceanic and Atmospheric Administration and the Fisheries and Wildlife Service set up long-term oceanographic buoys and started establishing permanent coral monitoring sites to measure physical and biological changes in the reefs over time. *Scientists Record First Evidence of Coral Bleaching in The Northwestern Hawaiian Islands, available at* <http://news.fws.gov/newsreleases/el/C9E0C745-3D23-4D9B-AD6C7516D0981A25.html> (last visited Oct. 21, 2002).

### *B. Environmental Groups Call for Protection of Alaskan Coral Forests*

On October 7, 2002, environmental groups called on the North Pacific Fishery Management Council to proclaim an immediate moratorium on bottom trawling in waters surrounding the Aleutian Islands in Alaska in order to protect recently discovered deepwater corals, sponges and depleted rockfish species. The coral is being mapped in order to support and develop suitable protection strategies for the habitat. The coral "forests" are where the rockfish feed, and without them the rockfish fishery will have nothing to harvest. Habitat damage and overfishing both threaten the rockfish, some of which live longer than one hundred years. Federal fishery managers were forced to close large areas off Washington, Oregon and California to rockfish fishing after other protective measures failed. Alaska may need to be the next region required to take such a step.

*Environmentalists Call for Fishing Moratorium to Protect Corals Off Alaska, available at* <http://oceanconservancy.com/dynamic/press/releases/archive.htm?id=021010a> (last visited Oct. 21, 2002).

## VII. WHALES

### *A. Environmentalists File Suit to Stop Aquatic Noise Pollution*

On July 15, 2002, after years of debate, the National Marine Fisheries Service (NMFS) gave the Navy a five-year exemption from the Marine Mammal Protection Act, allowing them to put into use a powerful new sonar system for detecting enemy submarines. Under the exemption, the Navy will be allowed to “harass” small numbers of marine mammals by operating its sonar – permitting the disruption of animal behavior, such as migration patterns seen as critical to their survival, that would otherwise be prohibited by the 1972 act. On August 7, 2002, a coalition of environmental groups, led by the Natural Resources Defense Council, filed suit in U.S. District Court in San Francisco against the Navy and the NMFS to block the Surveillance Towed Array Sensor System Low Frequency Active sonar, asserting that the intense underwater sounds can harm whales and dolphins. NMFS has required the Navy to comply with some restrictions, such as not using the sonar within 13.8 miles of the coast. Within hours of a submarine detection exercise that took place near the Bahamas in 2000, at least sixteen whales and two dolphins beached themselves. Scientists found hemorrhaging around the brain and ear bones – injuries consistent with exposure to extremely loud sounds. Environmentalists claim that eight whales died as a result of the deployment of this powerful mid-range sonar. *Environmentalists Sue to Block Navy Sonar, Saying It Kills Whales, available at* [http://www.enn.com/news/wire-stories/2002/08/08082002/ap\\_48083.asp](http://www.enn.com/news/wire-stories/2002/08/08082002/ap_48083.asp) (last visited Oct. 1, 2002); *Group Says U.S. Navy Sonar is A Threat to Whales, available at* [http://www.enn.com/news/wire-stories/2002/07/07172002/reu\\_47871.asp](http://www.enn.com/news/wire-stories/2002/07/07172002/reu_47871.asp) (last visited Oct. 21, 2002).

### *B. Marine Mammals Receive Limited Protection from Navy Sonar*

The National Resources Defense Council (NRDC) and other environmental organizations sued the federal government for the Navy’s ongoing use during peacetime of low frequency sonar systems for training and routine operations in as much as 75 percent of the world’s oceans. NRDC argued that the sonar technology, Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active Sonar (LFA), violated the

Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA).

In October of 2002, US Magistrate Judge, LaPorte, granted the plaintiff's motion for a preliminary injunction. However, this worldwide ban was lifted on November 15, 2002 when both parties stipulated to an agreement allowing the Navy to have a limited use SURTASS LFA. The agreement would limit the Navy's planned use of 14 million square miles of Pacific Ocean to between ten and fifteen percent of that amount. A spokesperson for the NRDC, Joseph Reynolds, stated that this area was chosen because it is known to be "one of the least productive sections of the much larger permitted area." The permitted area is believed to avoid major whale migration routes and be a compromise that Reynolds claims will, "minimize the exposure to a long list of endangered and depleted species." *NRDC v. Evans*, 2002 WL 31445165 (N.N.Cal.); *NRDC v. Evans*, 2002 WL 31553527 (N.D. Cal.); *Controversial Navy Sonar Cleared for Limited Testing*, available at <http://www.oceana.org/index.cfm?sectionID=4&fuseaction=news.detail&pageID=838> (last visited Jan. 10, 2003).

### *C. National Marine Fisheries Service Sued for Noncompliance*

On August 14, 2002, a group of conservation organizations filed suit in a California federal court against the National Marine Fisheries Service (NMFS), an agency of the Commerce Department's National Oceanic and Atmospheric Administration (NOAA), for violating the 1972 Marine Mammal Protection Act (MMPA). The coalition includes Oceana, the Center for Biological Diversity, and the Turtle Island Restoration Network, who demand that NMFS substantially reduce the killing of marine mammals by commercial fishing operations. Longlines, gillnets and trawl nets all contribute to the trapping and drowning of over 400 harbor porpoises, 400 common dolphins, and 250 pilot whales in U.S. waters each year. Environmental groups argue that NMFS has failed to meet congressionally set deadlines for the development of "Take Reduction Plans" aimed at protecting strategic stocks of threatened mammals, including the aforementioned three groups. The MMPA requires commercial fisheries to reduce incidental mortality and serious injury of all marine mammals to insignificant levels approaching a zero rate.

With the deadline for achieving this goal having passed on April 30, 2001, and a four year overdue report on the progress made by commercial fisheries toward reducing by-catch still awaited from NMFS, this suit to enforce the law hopes to speed things along. Perhaps in response to the suit and public pressure, on September 23, 2002, the NMFS announced the implementation of a rule intended to reduce the number of Atlantic right

whales entangled in gillnets. The rule prohibits the nighttime use of gillnet straight sets from November 15 through March 31 of each year off the coasts of Florida and Georgia, the season in which right whales migrate to the area to calve and nurse. Daytime use of gillnets, placed in a line in the water column, is seen as less of a threat to the whales because the fishermen can see them more easily and the nets are retrieved more frequently than they are at night. The restriction applies to the Southeast U.S. Restricted Area, from Sebastian Inlet, Florida to Savannah, Georgia, extending from the shore seaward to eighty degrees west longitude. Of the 300 western North Atlantic right whales alive today, more than 180 bear wounds and scars from injuries they suffered during collisions with ships or entanglements in fishing gear. Oceana Press Release, *available at* <http://www.oceana.org/index.cfm?sectionID=10&fuseaction=35.detail&pressreleaseID=56> (last visited Oct. 11, 2002); *NOAA Fisheries Restricts Gillnets Off Georgia and Florida to Protect Whales*, *available at* <http://www.publicaffairs.noaa.gov/releases2002/sep02/noaanmfsnr02-050.html> (last visited Oct. 11, 2002).

## **INTERNATIONAL**

### **I. PROTECTED AREAS**

#### ***A. Canadian Park System Expansion Will Create Five Marine Conservation Areas***

On October 3, 2002, the Prime Minister Jean Chretien of Canada announced a major five-year expansion of the Canadian parks system that will include the creation of ten new parks and five new national marine conservation areas. Chretien is making good on promises made at the World Summit on Sustainable Development in Johannesburg with goals of at least one national park to represent each of Canada's thirty-nine natural regions and a 50% expansion of the park system. Sites for parks have been selected in British Columbia's Gulf Islands, Manitoba's lowland forests, the East Arm of Great Slave Lake in the Northwest Territories, Bathurst Island and Ukkusiksalik in Nunavut, and the Torngat and Mealy Mountains in Labrador. The five new marine conservation areas will add an estimated 15,000 square kilometers of unrepresented marine regions. Three sites have been identified in Gwaii Haanas off the Queen Charlotte Islands and the southern Strait of Georgia, both in British Columbia, and in Western Lake Superior. The Canadian Parks and Wilderness Society is waiting on the government to back up its plans with the allocation of funds for these

new parks, as well as to help address the decline of some existing parks. Projected cost for the new parks and marine areas will require an investment of C\$165 million over five years, and for the restoration of the existing parks the Panel on the Ecological Integrity of Canada's National Parks recommended an investment of C\$328 million over five years. *Canada Creates 10 New Parks, Five Marine Reserves, available at <http://www.ens-news.com/ens/oct2002/2002-10-15-04.asp> (last visited Oct. 9, 2002).*

*B. Australia Creates 25,000 Square Miles  
of Marine Reserve Near Antarctica*

The Australian government created the largest Marine Reserve in the world on October 9, 2002, when it named 25,000 square-mile Heard Island and McDonald Islands a fully protected environment. The new marine reserve is located almost 2,800 miles off the southwest coast of the mainland and 620 miles north of Antarctica in Australia's 200 mile exclusive economic zone surrounding Heard and McDonald Islands. Australia outdid itself, making its own Macquarie Island reserve now the second largest in the world. The new reserve is said to protect one of the most pristine environments left on Earth, and will save the habitat and food sources of marine creatures like the southern elephant seal, the Sub-Antarctic fur seal, and several penguin species including King penguins. The islands are home to the world's largest macaroni penguin colonies, each made up of two million birds, and vast colonies of seals. The reserve's waters are also important to two species of albatross, the light-mantled sooty albatross and the black-browed albatross, bottom dwelling soft corals, glass sponges, and giant barnacles. The reserve is the only sub-Antarctic island group without any known human-introduced species and is thus a priceless example of an intact set of interwoven ecosystems; terrestrial, freshwater, coastal and marine. Listed in 1997 by UNESCO as a World Heritage Site, the island group is close to the confluence of Antarctic and temperate ocean waters. *Australia Creates World's Largest Marine Reserve, available at <http://www.ens-news.com/ens/oct2002/2002-10-09-03.asp> (last visited Oct. 21, 2002).*

## II. FISHERIES

*A. Scottish Salmon Escape Fishery*

In April 2002, 10,000 salmon escaped from a farm off the north coast of Scotland. The escape adds fuel to the fire of a raging debate between



fish farmers, who cite the economic benefits of farming fish and environmentalists, who say the good is outweighed by the risk escaped salmon cause wild salmon.

The threats that face wild salmon from these accidental releases include competition for food sources, parasites such as sea lice carried by the caged salmon as well as genetic dilution through mating. Farm salmon are bred to forget their natural migratory instincts so, if mixed with wild breeds, there is a real fear that the cross breeds will no longer spawn correctly and threaten their own ability to promulgate the species.

The Scottish Executive reacted to the outbreak by announcing plans to introduce legislation making it a legal requirement for fish farmers to notify the executive of any outbreaks. The owner of the fish farm where the breakout occurred cited a failure in his pens to combat an unusually strong and fast tide for the disaster. More than 200,000 fish were killed in addition to the 10,000 that escaped. "Friends of the Earth," an environmental group, is encouraging further reaching legislation which would require farmers to invest in stronger cages that could more readily resist Scotland's infamously fierce weather.

Following the accident, hundreds of fishermen flocked to the coast to try and land some of the escapees. *Escape of Farmed Salmon Threatens Wild Stocks*, available at <http://www.planetark.com/avantgo/dailynewsstory.cfm?newsid=15307> (last visited Sept. 12, 2002).

### *B. Canada Sides with Salmon Farmers*

After a C\$1 million technical review of the salmon farming industry, in February 2002, British Columbia decided to weigh-in on the side of salmon farming in an ongoing dispute between environmentalists and those involved in the fisheries. The move by the Canadian government marked the end of a seven-year moratorium on new fish farms in this region of the west coast.

Provincial Fisheries Minister John van Dongen said the consensus was reached because it was felt that the risks of pollution and the escape of non-native species of Atlantic salmon used by floating fisheries could be controlled to avoid major environmental damage. A representative from the David Suzuki Foundation, an environmental group, disagreed. Their spokeswoman, Lynn Hunter, said that the effects of these new fisheries would be so great that they would wipe out the west coast's wild salmon fisheries entirely.

Opposition to the moratorium's end also came from Alaska's Governor Tony Knowles. Fish farms are illegal in Alaska and Canada's decision to expand its farming industry is seen as a threat to wild salmon fisheries, a major source of income for Alaska. Last year, almost 30,000 farmed

salmon escaped from pens with scientists reporting evidence of breeding in coastal streams.

Supporters of the fish farms look to the prospect of new jobs in this industry, which would help eliminate some of the unemployment caused by the downturn in the timber trade. British Columbia's fish farms currently supply about 25% of the farmed fish sold in the United States. Ninety sites are currently operating in the province, operated by dozens of companies. Applications for new sites will take about a year to process and there is no limit on the number of new farms that could be licensed under this decision. *Fish Farm Fight Set For Canada's Pacific Coast*, available at <http://www.planetark.com/avantgo/dailynewsstory.cfm?newsid=14358> (last visited Sept. 14, 2002); *More Fish Farms Set For Canada's Pacific Coast*, available at <http://www.planetark.com/avantgo/dailynewsstory.cfm?newsid=17747> (last visited Sept. 14, 2002); *Alaska Worried By Expanded Canadian Fish Farming*, available at <http://www.planetark.com/avantgo/dailynewsstory.cfm?newsid=15791> (last visited Sept. 14, 2002).

### III. MARINE ENVIRONMENT AND OCEAN POLLUTION

#### *A. Defendant Insurer Slapped with Tab for Ecuadorian Oil Spill*

The Ecuadorian judiciary ordered the insurers of the commercial boat *Jessica* to pay over \$10 million in damages to help clean up oil spilled from the boat in January 2001. The superior court, in the port city of Guayaquil, ordered defendant insurer Terra Nova Insurance Company of London, to pay the assessed damages to the Galapagos National Park where the impact of the spill was felt in its marine reserve.

*Jessica* ran aground in the archipelago, 625 miles west of the Pacific coastline, spilling 175,000 gallons of fuel into the ocean's waters. The court did not assess civil liability against the boat's owner, Acotramar, or the state oil subsidiary, Petrocomercial; however, these two parties still face a criminal lawsuit on this matter. The court rejected Terra Nova's argument that the insurance policy was not in effect at the time of the spill.

While the court record indicated that most animals in the marine reserve were uninjured by the spill, a scientific study showed that 62% of iguanas on one affected island died within a year, raising questions about whether or not the spill's long-term effects will be worse than anticipated. *Court Rules \$10 Million in Damages For Galapagos Spill*, available at <http://www.planetark.com/dailynewsstory.cfm?newsid=18039&newsdate=04-Oct-2002> (last visited Oct. 12, 2002).

*B. Russia Signs POP Convention*

On May 22, 2002, the Russian government signed the Stockholm Persistent Organic Pollutants (POPs) Convention, marking the first anniversary of the introduction of the treaty designed to phase out a number of the world's most dangerous chemicals. The treaty requires ratification by fifty countries to take effect, and would ban or largely restrict the production and use of twelve chemicals including eight pesticides, polychlorinated biphenyls (PCBs), DDT, and dioxins that damage human and animal nervous and immune systems. To date 146 countries have signed and eight have ratified the convention. The treaty hopes to provide funding for the proper disposal of outdated electric equipment and obsolete pesticides to countries that can not afford to pay for it themselves. A report released October 1, 2002 by the Arctic Monitoring and Assessment Program (AMAP) confirmed that Arctic wildlife and indigenous communities are heavily contaminated by PCBs and other industrial pollutants. Residents of the Arctic community, including humans, polar bears, Arctic fox, seals, killer whales, harbor porpoises, glaucous gulls and peregrine falcons, are contaminated with some of the world's highest POP levels. POPs are known to travel great distances on wind and ocean currents, and can do enormous damage to the development and reproduction of the organisms they affect. Several Arctic rim countries, including Canada, Norway, and Sweden, have ratified the Stockholm POPs Convention in an effort to move toward a global ban of toxic industrial chemicals. Increased levels of organic mercury in some parts of the Arctic is linked to increased burning of coal for energy production as far away as Southeast Asia. *Rus-sia Signs Stockholm POPs Convention*, available at <http://www.worldwildlife.org/news/headline.cfm?newsid=354> (last visited Oct. 11, 2002); *Toxic Chemicals A Major Threat To The Arctic*, available at <http://www.worldwildlife.org/news/headline.cfm?newsid=426> (last visited Oct. 11, 2002).

*C. Coal, Oil, and Diesel Spill on Great Barrier Reef*

The *Doric Chariot*, a 225-meter Greek bulk carrier, ran aground near the Great Barrier Reef on July 29, 2002, leaving a fifty meter by thirty meter gash in Piper Reef. The ship, carrying 62,000 tons of coal, 375 tons of fuel oil and thirty-seven tons of diesel, was freed by three tug boats nine days later. Evidence of contamination by Tributal Tin Paint (TTP), as well as the gouge in the reef, led Australian authorities to bring charges against the owners, the ship's master, and its second mate. The charges, brought before a court on August 7, could carry a fine of up to A\$1.1 million (US\$600,000) in environmental damage. The possible fine for damage to

the reef was increased tenfold to A\$1.1 million last year in hopes of improving protection of the world's largest living organism. The first global survey of the health of the world's coral reefs, compiled by more than 5,000 scientists and volunteers in approximately sixty countries, has shown that they are in serious decline, primarily as a result of overfishing. Four species of reef fish face extinction because they are hunted as food or to adorn aquariums. Pressures of overfishing and damaging types of fishing such as dynamiting fish and poisoning fish have damaged the world's coral reefs more in the past twenty years than in the past 1,000 years. Michael Christie, *Australia Charges Ship Owners For Damaging Reef*, available at [http://www.enn.com/news/wire-stories/2002/08/08082002/rev\\_48072.asp](http://www.enn.com/news/wire-stories/2002/08/08082002/rev_48072.asp) (last visited Oct. 6, 2002); Andrew Bridges, *World's Coral Reefs In Serious Decline; Overfishing Worsens Situation*, available at [http://www.enn.com/news/wire-stories/2002/08/08272002/s\\_48269.asp](http://www.enn.com/news/wire-stories/2002/08/08272002/s_48269.asp) (last visited Oct. 6, 2002).

#### *D. Online Atlas*

On May 6, 2002, World Environment Day, the United Nations introduced a new resource to cyberspace. It is an online atlas of the world's oceans that combines a vast amount of knowledge about the marine environment across the globe into one easily accessed location.

The project was headed by the U.N. Food and Agriculture Organization (FAO) and is intended for a wide audience including policymakers, schoolteachers and scientists. The site is designed to help coordinate work underway in the United Nations with national agencies and academic institutions. The FAO's chief Jacques Diouf says, "the oceans play a crucial role in sustaining life on earth and this important new tool will allow us to monitor and pay attention to problems in a way that hasn't been possible in the past." United Nations Atlas of the Oceans, available at <http://www.oceanatlas.org> (last visited Nov. 27, 2002).

### IV. WHALES

#### *A. Canada Moves to Shift Shipping Lanes for Whale Protection*

On April 5, 2002, Transport Canada, the government agency that regulates shipping, submitted a proposal to the International Maritime Organization (IMO) to move ship traffic lanes in the Bay of Fundy so that they avoid the area where most right whales congregate. The Canadian proposal culminated in a decision at the IMO annual meeting in London,

England, on July 12–16, 2002. Over the past ten years collisions with ships were responsible for half of all North Atlantic right whale deaths. The population of the world's most endangered great whales is only around three hundred, and up to two-thirds of them come together in the Bay of Fundy each summer, where their seasonal feeding grounds coincide with a major shipping channel. Irving Oil, employer of the largest shipping fleet in the Bay, backed the proposal and has been active on the right whale recovery team for the past four years, helping to find practical solutions for the protection of the endangered population. Good news of baby-booms in the past two summers, yielding forty-nine calves thus far identified, appears to be related to shifting oceanographic conditions that influence the availability of plankton for the whales to eat. Despite many young whales, their situation remains dire. *Right Whale Advocates Applaud Canada's Proposal to Move Commercial Shipping Lanes*, available at <http://www.worldwildlife.org/news/headline.cfm?newsid=344> (last visited Oct. 7, 2002).

#### *B. Mexico Creates 1.15 Million Square Mile Whale Refuge*

In May 2002, at the International Whaling Commission (IWC) meeting in Shimonoseki, Japan, Mexico signed an accord to protect whales in its waters, making it their largest national sanctuary. The Area of Refuge will provide added protection for the reproduction, growth, and migration of thirty-nine whale species that spend time in Mexican waters. The area encompasses nearly 1.15 million square miles of the Pacific and Atlantic Oceans and the Caribbean. Seventeen thousand gray whales enter Mexican waters each year, many of them using the warm waters as a breeding ground. Earlier in 2002, Mexico established penalties for whaling in its waters, prohibiting the hunting of whales for commercial use or subsistence, but allowing accredited institutions to capture them for scientific or educational purposes. On May 21, at the annual world whaling summit, Iceland stormed out after being denied voting rights in the IWC the day before. Iceland reapplied for membership in 2001 after walking out ten years ago in disgust at the IWC's antiwhaling stance. Iceland still refused to agree to the 1986 commercial whaling moratorium, agreeing only to wait to start whaling until a management procedure was in place. It was thus admitted only as a nonvoting observer. Japan's bid to take one-hundred fifty minke whales in offshore waters, fifty more than last season, was also rejected on the second day of the five-day meeting, as were proposals to create two new whale sanctuaries in the southern hemisphere in the South Pacific and South Atlantic. Neither the creation of the new sanctuaries nor Japan's plan garnered the three-quarters majority of the forty-five voting members required for passage. A twice attempted effort to ensure Alaskan

Inuit rights to make their annual subsistence hunt of sixty-seven bowhead whales also fell short of the required majority by only one vote. The U.S. and Russian proposal was blocked by a Japanese-led coalition despite healthy bowhead populations and the traditional reliance of the Inuit on the whales for food and other necessities for arctic survival. *Mexico Becomes World's Largest Whale Sanctuary*, available at [http://www.enn.com/news/wire-stories/2002/05/05282002/reu\\_47353.asp](http://www.enn.com/news/wire-stories/2002/05/05282002/reu_47353.asp) (last visited Sept. 20, 2002); *Iceland Storms Out of IWC, Japan Rejected on Minke*, available at [http://www.enn.com/news/wire-stories/2002/05/05222002/reu\\_47280.asp](http://www.enn.com/news/wire-stories/2002/05/05222002/reu_47280.asp) (last visited Sept. 20, 2002); *WWF Condemns Japanese Tactic to Deny Alaska Natives Food for Their Table*, available at <http://www.worldwildlife.org/news/headline.cfm?newsid=355> (last visited Oct. 7, 2002).

## V. PIRACY AND SUNKEN TREASURE

### A. *Pollux* Treasures Will Go Back to Italy

On October 9, 2002, British police will return to Italian authorities approximately U.S.\$1 million worth of antiques salvaged from the *Pollux*, a ship believed to have been ferrying passengers between France and Italy when it sank off the Tuscan coast near the Italian island of Elba in 1841. Four British divers came across the *Pollux* two years ago while searching for a sunken British merchant ship from which they had permission to retrieve a load of tin. Once the *Pollux* was discovered, however, the divers used the sonar scanner and crane to scavenge from the 160 year-old ship, tearing out large chunks of the vessel and gathering an illegal collection of 311 gold coins, 2,000 silver coins, diamonds, gold jewelry, antique ceramics, portholes from the wooden ferry, and the ship's toilet. Scotland Yard put an end to the sham at a West London auction house in June 2001. In early 2002 the divers were arrested and given official warnings under the Merchant Shipping Act. The divers claim they thought they were in international waters and that their dive for the treasure was legal. The treasures are expected to be given to a museum in Pisa. *Britain Returns Stolen Sunken Treasure To Italy*, available at [http://www.reuters.com/news\\_article.jhtml?type=entertainmentnews&StoryID=1553675](http://www.reuters.com/news_article.jhtml?type=entertainmentnews&StoryID=1553675) (last visited Oct. 11, 2002); *Police Return Sunken Treasure*, available at <http://www.news.bbc.co.uk/1/hi/england/2310967.stm> (last visited Oct. 11, 2002).

*B. Indonesia Addresses Piracy in Malacca Straits*

In Jakarta in early October 2002, Security Minister of Indonesia Susilo Bambang Yudhoyono announced his country's plan to form a team and prepare a list of pirate-ridden areas in waters in and around the Malacca Straits. The goal of the team is to draw up "the best solution" for the problem, and address the need for better detection technology and weapons to combat piracy at sea and illegal poaching. The team is to coordinate its work with the national police, navy, and the Justice Ministry. In addition, Indonesia is looking to Singapore and Malaysia for "commitment and contribution." The Malacca Straits, which separate Indonesia, Malaysia and Singapore, are traveled by approximately 600 trade ships daily. According to the Piracy Reporting Centre based in Kuala Lumpur, in the first half of 2002 there were nine incidents in the Malacca Straits, forty-four in Indonesian waters, and three in Singapore. London's International Maritime Bureau reports that pirate attacks in Asian waters account for over two-thirds of the global tally, with most of those taking place in Indonesian sea lanes. *Jakarta to Form Team to Combat Piracy*, available at <http://straitstimes.asia1.com/asia/story/0,1870,148078,00.html> (last visited Oct. 11, 2002).

*C. Australia Gets Tough on Patagonian Toothfish Poaching*

Pirates between the coasts of Australian islands and Antarctica are known to take more than just cargo – Patagonian toothfish poachers may soon face armed fishing company boats on the open ocean. Illegal fishing is taking its toll on toothfish (also known as Chilean sea bass) populations—a high priced, slow growing fish. The Australian Fisheries Minister has warned legal commercially licensed fishing companies that arming themselves to protect their fishing rights is not part of what the license permits them to do, and has promised to put more patrols in the Southern Ocean to alleviate the problem. Whether or not fisheries officers themselves will be armed is not confirmed, but "enforcement and apprehension" are the authority's priorities. The government will be increasing surveillance in the sub-Antarctic waters around Heard Island and McDonald Islands ("HIMI"). Since 1997 the government has spent more than U.S.\$8.7 million protecting their sovereign rights in the HIMI fishery and caught six foreign fishing vessels. The HIMI fishery is worth approximately U.S.\$16.3 million, employs 150 people and is under a strict management plan. Toothfish fishing began commercially off the southern Argentina coast, but the fish could be found in Los Angeles restaurants as early as 1984. When the fish first arrived on the market they averaged five feet and 200 pounds, and now they average two feet and twenty pounds, a

likely sign of depletion. TRAFFIC, a wildlife trade monitoring organization, estimated the total trade in toothfish at 59,000 metric tons in the 1999-2000 season, and the illegal, unreported portion at 33,000 metric tons. The Commission for the Conservation of Antarctic Living Resources reported only a quarter of TRAFFIC's unregulated and illegal trade figures, and had said the poaching was declining. Last year, however, TRAFFIC found the black market for toothfish to be worth hundreds of millions of dollars. As of October 16, 2002, 800 restaurants across the U.S. had signed onto a campaign to stop serving Chilean sea bass until it can recover from two decades of over-harvesting and illegal trade. Seven hundred more have agreed to remove the fish from their menus, and the boycott is speculated to last from one to two years. Currently twenty-four fishing nations including the U.S. are parties to a treaty that limits the catch and sets a global cap of 16,500 metric tons annually, approximately one-third of TRAFFIC's trade estimates. *Toothfish Pirates May Face Armed Australian Ships*, available at <http://www.ens-news.com/ens/oct2002/2002-10-01-01.asp> (last visited Oct. 21, 2002); *Atlanta Restaurants Join Boycott of Chilean Sea Bass*, available at <http://www.accessatlanta.com/ajc/living/1002/16seabass.html> (last visited Oct. 19, 2002).

## VI. TREATIES

### A. MARPOL's Annex VI Ratified by Liberia but Not Yet by U.S.

In September 2002, Liberia took the lead in ratifying MARPOL's Annex VI. Liberian flagged ships transport about a third of the United State's imported crude oil. MARPOL is the International Convention for the Prevention of Pollution from Ships and, as its name suggests, it works to regulate disposal of wastes generated by the normal operation of vessels. There are currently 161 countries signed on to the convention as a whole, including the United States who, under the lead of the U.S. Coast Guard, implements it by the Act to Prevent Pollution from Ships.

Annex VI is a provision within the treaty specifically designed to limit harmful air emissions from ships. This provision is only binding if separately ratified by the individual country. The deadline for Annex VI's implementation is the end of the year and must be agreed to by fifteen International Maritime Organization (IMO) members and flags. This number would be representative of 50% of the world's shipping tonnage.

Annex VI would operate by limiting the discharge of nitrous and sulfur oxide emissions from marine diesel engines built after January 1, 2000.



There would also be a ban on the deliberate emission of ozone depleting gasses such as halons and chlorofluorocarbons.

The U.S. has signed Annex VI but it has not yet been ratified by the U.S. Senate. The U.S. is not a party to the Annex IV provision of MARPOL which regulates sewage from ships although it is a party to Annexes I, II, III and V, controlling oil, noxious liquids carried in bulk, harmful substances in package form and garbage from ships respectively.

*EPA MARPOL 73/78 Overview, available at <http://www.epa.gov/OWOW/OCPOD/marpol.html> (last visited Oct. 12, 2002); Liberia Ratifies MARPOL Annex VI, available at [http://www.trans-inst.org/updates\\_September%206\\_02.htm](http://www.trans-inst.org/updates_September%206_02.htm) (last visited Nov. 27, 2002).*

### *B. U.S. Fishermen Want to Fine the E.U. for Over-Fishing*

U.S. Atlantic Coast fishermen, with the support of the state of Maryland, boat manufacturers and the World Wildlife Fund, have asked the Bush administration to pressure the European Union (EU) about over-fishing certain species. The species in question are bluefin tuna and white marlin, which the Recreational Fishing Alliance holds out to be the driving force behind the multi-billion dollar fishing industry in the United States.

Bluefin tuna and white marlin are both highly migratory species. Thus, over-fishing in European waters results in a substantial impact on the fish stocks in U.S. waters. The total annual recommended limit for catch of these species is 25,000 metric tons, as set by the International Commission for the Atlantic Tuna. Tom Grasso, marine wildlife director for the World Wildlife Fund, said the EU's white marlin catch was double what they were allowed under a 1991 agreement and blames it primarily on the Spanish and Portuguese heavily subsidized fishing industries.

The fishermen are accusing the EU of routinely ignoring these catch limits set by the Commission for these two fish species. The U.S. fishing group is demanding that \$100 million in sanctions be imposed upon the EU for these alleged violations. The U.S. commercial fishing industry estimates that it has lost \$500 million in sales since 1982 because of the EU's over-fishing practices.

In September 2002, the Atlantic Coast fishermen, representing saltwater anglers, marine manufacturers and retailers and fishing clubs, filed a petition with the U.S. Trade Representative's office to investigate over the upcoming year to determine if this heavy sanction is warranted. The government is expected to announce their decision on whether or not to conduct this investigation by the end of October. *U.S. Fishermen Seek \$100 Million Sanctions on E.U., available at <http://www.planetark.com/dailynewsstory.cfm/newsid/18221/story.htm> (last visited Oct. 12, 2002).*

*C. Pacific Island Finds Relief From U.S. Navy Bombs  
in Federal Court*

On March 13, 2002, a decision was made to protect at least a dozen migratory birds that pass through the small Pacific island of Farallon de Medinilla. The island is home to breeding colonies of great frigatebirds and masked boobies as well as the endangered Micronesian Megapode. Judge Emmitt G. Sullivan, U.S. District Court judge for the District of Columbia, granted summary judgment against the Navy and Department of Defense. The military training operations on the island, which have killed many of these protected birds, were seen by the courts to be a violation of the Migratory Bird Treaty Act (MBTA).

In 1918, the MBTA was passed by Congress to implement several international treaties regarding protected bird-life. The Act requires that any activity that will injure migratory birds must be done under a permit issued in accordance with regulation. In 1996 the Navy applied unsuccessfully for a permit from the Fish and Wildlife Service (FWS), responsible for overseeing the enforcement of this procedure. Despite FWS's resistance to permitting the Department of Defense's activities on the island, the agency continued to bomb the island without a permit. The Defense Department argued that the MBTA should not apply to federal agencies.

The court will decide the details of how, and to what extent, an injunction on the military is to be placed, at a later date. *Federal Judge Finds U.S. Military in Violation of Migratory Bird Treaty Act*, available at <http://www.earthjustice.org/news/display.html?ID=346> (last visited Sept. 28, 2002).

