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A Review Of Recent Developments In Ocean And Coastal Law, 2007

Lynne Davies Editor-in-Chief
University of Maine School of Law

A REVIEW OF RECENT DEVELOPMENTS IN OCEAN AND COASTAL LAW

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I. RECENT TRANSBORDER DEVELOPMENT BETWEEN MAINE AND CANADA

Not in My Backyard: Proposed LNG Facility in Passamaquoddy Bay Draws Criticism

Downeast LNG, Inc. and Downeast Pipeline, LLC have recently applied for permits to construct and operate a liquefied natural gas (LNG) import terminal and pipeline in Robbinston, Maine, located in Washington County.[1] The project has three main components. First, offshore facilities, including a 3862-foot pier, would be constructed for unloading LNG.[2] Second, an onshore facility would be constructed on an eighty-acre parcel to store and vaporize LNG.[3] Finally, a thirty-one mile pipeline would be built as a means to connect to an existing compressor system in Baileyville, Maine.[4] Downeast LNG and Downeast Pipeline contend that the creation of this terminal is necessary to meet increasing demand for natural gas in New England.[5]

The proposal, however, has raised an uproar in Maine and Canada. In Maine, citizens groups such as Save Passamaquoddy Bay and Nulankeyutomonen Nkihtahkomikumon have been formed in opposition to Downeast's proposal.[6] Nulankeyutomonen Nkihtahkomikumon, a non-

1. Natural Resources Protection Act Permit Tier 3 Freshwater Wetlands, Attachment I, 1, filed by Downeast LNG, Inc. and Downeast Pipeline, LLC with the Maine Department of Environmental Protection (Dec. 19, 2006) (on file with Maine Department of Environmental Protection).

2. *Id.*

3. *Id.* at 1, 13.

4. *Id.* at 1.

5. *Id.* at 1-2.

6. *See* Save Passamoaquoddy Bay From LNG, Homepage, http://www.savepassamaquoddybay.org/ (last visited Nov. 19, 2007); *see also*

profit whose name means "We Take Care of Our Land," argues that the proposed LNG facility would industrialize Passamaquoddy Bay (Quoddy Bay).[7] The group, whose members live in Quoddy Bay and are from the Passamaquoddy Tribe, contends that Tribe members' navigational rights, upon which members depend for both commercial and subsistence purposes, would be restricted.[8] LNG tankers would also threaten local wildlife such as birds, whales, seals, fish, and marine ecosystems as a whole.[9]

New Brunswick's Premier, Shawn Graham, and Canada's Ambassador, Michael Wilson, have notified the U.S. Federal Energy Regulatory Commission (FERC) that LNG tankers would be prohibited from passing through Head Harbor Passage to access Quoddy Bay because the Passage is part of Canada's jurisdiction.[10] The Canadian sector of Save Passamaquoddy Bay, which was organized by citizens of New Brunswick, contends that the proposed facility would lead to increased shipping traffic off the New Brunswick coast, causing disruption to fishermen, tour operators, and boaters, and adversely effecting marine ecosystems in the event of an accident.[11]

The proposed LNG facility in Passamaquoddy Bay raises larger questions about regional energy policies. Energy experts contend that the development of LNG is critical to combat major energy shortages in New England, which nearly caused roaming blackouts last winter.[12] Maine communities, however, have continually voiced their opposition to the construction of LNG facilities in their own backyard.[13]

Nulankeyutomonen Nkihtahkomikumon, *We Take Care of Our Land*, http://www.wetakecareofourland.org/ (last visited Nov. 19, 2007).

7. Joint Motion to Intervene of Save Passamaquoddy Bay, 2, filed by Nulankeyutomonen Nkihtahkomikumon on behalf of Ronald Shems and Rebecca Boucher with the Maine Department of Environmental Protection (Aug. 30, 2007) (on file with Maine Department of Environmental Protection).

8. *Id.* at 2-3.

9. *Id.* at 3.

10. Associated Press, *New Brunswick, Maine Leaders at Odds on LNG Tanker Dispute*, PORTLAND PRESS HERALD, Feb. 21, 2007, *available at* http://news.mainetoday.com/updates/009356.html.

11. Save the Passamaquoddy Bay/Canada, *No Way in Our Bay!*, http://www.saveourbay.ca/ (last visited Nov. 19, 2007).

12. Richard Barringer et al., *LNG: To Be or Not To Be (In Maine)*, http://www.clf.org/programs/cases.asp?id=367 (last visited Nov. 11, 2007).

13. *Id.*

II. RECENT GOVERNMENTAL ACTION BEYOND MAINE

Find Somewhere Else to Trawl: Panel Votes to Freeze Trawling in the Bering Sea

On June 10, 2007, the North Pacific Fishery Management Council[14] voted unanimously to ban trawling on 180,000 square miles of the Bering Sea, endorsed gear modifications to existing trawling mechanisms, and established a research area in the northern Bering Sea to further study the effects of trawling.[15] Essentially, the trawling ban codifies the existing boundaries, as trawling will still be allowed in the remaining 150,000 square miles of the Bering Sea.[16] This ban has been hailed as an important step in sustaining local fisheries.[17] Trawling involves dragging large, weighted nets across ocean floors to harvest groundfish species, such as halibut.[18] The modifications proposed to trawler mechanisms would lessen the impact on the seafloor, and local trawlers would have a one year grace period to make the modifications.[19] The proposed research area will study the effects of trawling on specific species in the Bering Sea area so that future regulations on trawling will be more effective.[20] Going forward, the North Pacific Fishery Management Council in October 2007 will be focusing on new halibut and crab fishery management plans.[21]

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14. The North Pacific Fishery Management Council (NPFMC) is one of eight regional councils established by the Magnuson-Stevens Fishery Conservation and Management Act in 1976 to manage fisheries in the 200-mile Exclusive Economic Zone. The NPFMC primarily focuses on the Gulf of Alaska, Bering Sea, and Aleutian Islands. Councils make their recommendations to the Secretary of Commerce, who then makes the final decision to accept or reject their recommendations. North Pacific Fishery Management Council, *Navigating the North Pacific Counsel Process: A Guide to the North Pacific Fishery Management Counc*il 5-6, *available at* http://www.fakr.noaa.gov/npfmc/misc_pub/Navigating_NPFMC.pdf. *See generally* The Magnuson-Stevens Act, 16 U.S.C. §§ 1801-1883 (2000) (setting forth national standards for regional councils to guide development of local fishery management plans).

15. North Pacific Fishery Management Council, *Agenda Item D-3, Bering Sea Habitat Conservation, Council Motion* (June 10, 2007), *available at* http://www.fakr.noaa.gov/npfmc/current_issues/BSHC/BSHC607 motion.pdf. *See also* Rachel D'oro, *Panel Limits Trawling in Bering Sea*, ANCHORAGE DAILY NEWS, June 11, 2007, at B1.

16. D'oro, *supra* note 15, at B1.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. North Pacific Fishery Management Council, Draft Agenda for 184th Plenary Session 3-4 (2007), *available at* http://www.fakr.noaa.gov/npfmc/Agendas/1007agenda.pdf.

California's Bold Step: A New Plan for Protecting Marine Areas

On September 21, 2007, California established a new watershed network of marine protected areas (MPAs), restricting or banning fishing in eighteen percent of near-shore waters along the central coast of California.[22] These MPAs are the product of the Marine Life Protection Act of 1999 (MLPA).[23] While initial efforts to create a comprehensive MPA plan under the MLPA failed, a revival in 2005 produced a "Master Plan for Marine Protected Areas."[24] The plan divides California into five separate regions[25] and creates four separate types of MPAs.[26] The purpose of the plan is to preserve California's marine resources and provide unique opportunities for scientific study of MPAs.[27]

The first phase of the plan, implementing the MPAs on the Central Coast, was unanimously approved by the California Fish and Game Commission on April 13, 2007.[28] This first phase created twenty-nine

22. David Sneed, *Marine Reserves Go into Effect as World Watches*, TRIB. (San Luis Obispo, CA), Sept. 21, 2007, at A1.

23. CAL. FISH & GAME CODE §§ 2850-2863 (2007). The 1999 MLPA directed the state to design and manage a network of marine protected areas in order to protect marine life, habitats, ecosystems, natural heritage, and improve recreational, educational and study opportunities provided by marine ecosystems. *Id.* § 2853(b)(1)-(6).

24. CALIFORNIA MLPA MASTER PLAN FOR MARINE PROTECTED AREAS, REVISED DRAFT (2007), *available at* http://www.dfg.ca.gov/mlpa/pdfs/masterplan041307.pdf [hereinafter MLPA MASTER PLAN].

25. *Id*. at 89, 179. North Coast Region (California/Oregon border to Alder Creek near Point Arena), North-Central Coast Region (Alder Creek near Point Arena to Pigeon Point), San Francisco Bay Region (Waters within the San Francisco Bay District), Central Coast Region (Pigeon Point to Point Conception), South Coast Region (Point Conception to U.S./Mexico Border). *Id.*

26. . *Id*. at 49-51. The "State Marine Reserve" MPA prohibits both recreational and commercial fishing, requiring that, to the extent practicable, the MPA remain in an undisturbed and unpolluted state. *Id.* The "State Marine Recreational Managed Area" MPA allows strict management of recreational activities; the area provides for game hunting but prohibits fishing. *Id.* The "State Marine Park" MPA allows recreational fishing, restricted only by local conservation objectives, but prohibits all commercial fishing. *Id.* The "State Marine Conservation Area" MPA allows both commercial and recreational fishing, but can be restricted by local conservation objectives. *Id*.

27. News Release: August 31, 2007, Landmark "Central Coast" Marine Protected Areas will be in Effect Sept. 21, http://www.dfg.ca.gov/mlpa/newsroom_083107.asp (last visited Nov. 9, 2007).

28. Kevin Howe, *Coastal Protection at Last—Marine Act in Works Since 1999*, MONTEREY COUNTY HERALD, at A1, Apr. 14, 2007, http://www.redorbit.com/news/science/901970/coastal_protection_at_last_marine_act_in_works_since_1999/index.html (last visited Dec. 20, 2007).

MPAs in the Central Coast,[29] covering nearly 204 square miles, roughly eighteen percent of the state waters.[30] The new MPAs of the Central Coast region went into effect on September 21, 2007, and have been hailed as a watershed event in the management of marine resources.[31] However, critics of the plan are concerned about needlessly putting fisheries out of business with unnecessary regulations and falling short of addressing the large commercial pollution problem.[32] By 2011, California aims to implement this new network of MPAs on its entire 1100-mile coastline.[33]

1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter[34] (London Convention) is an agreement intended to provide a framework for the control and regulation of the deliberate dumping of non-ship waste at sea.[35] The London Convention was first adopted on November 13, 1972 and entered into force on August 30, 1975.[36] The United States ratified the London Convention on August 3, 1973, complying with the Convention's obligations through enactment and enforcement of the Marine Protection, Research, and Sanctuaries Act (MPRSA).[37] The 1996 London Protocol, an amendment to the London Convention, came into force on March 24, 2006, and is a more restrictive

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29. Marine Protected Area's of California's Central Coast, *available at* http://www.dfg.ca.gov/mlpa/ pdfs/ccmpas_brochure.pdf (creating fifteen State Marine Conversation Areas limiting both recreational and commercial fishing, and thirteen "no-take" State Marine Reserves, and one State Marine Recreational Managed area).

30. MLPA MASTER PLAN, s*upra* note 24, at 89.

31. Sneed, s*upra* note 22.

32. Michael Martinez, *Aquatic havens draw storm*, CHI. TRIB., May 13, 2007, at 3.

33. MLPA MASTER PLAN, *supra* note 24, at ii.

34. 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, LC-LP.1/Circ.5, Annex, I.M.O. Doc. T5/5.01 (Nov. 27, 2006) [hereinafter London Protocol].

35. National Ocean Services, International Treaties, Conventions, and Agreements: The Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter, London, 1972, http://nosinternational.noaa.gov/conv/Idc.html (last visited Nov. 11, 2007).

36. *Id*.

37. The Library of Congress, Treaties Search, http://thomas.loc.gov/cgi-bin/ntquery/D?trtys:3:./temp/~trtysq2TNRo:: (last visited Nov. 19, 2007); Press Release, White House Press Office, President Bush Seeks Ratification of 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (Sept. 5, 2007), http://www.marketwatch.com/news/story/president-bush-seeks-ratification-1996/story.aspx?guid=%7B366EDD71-D42A-411D-A518-6B1ED0564DE4%7D (last visited Nov. 19, 2007).

approach to the regulation of marine dumping intended to eventually replace the London Convention.[38] The United States signed the Protocol on March 31, 1998, and the decision to ratify the Protocol is currently pending in the Senate.[39]

The objectives of both the London Convention and the Protocol are to protect the marine environment from all sources of pollution and to prevent, reduce, and eliminate pollution caused by dumping and incineration at sea.[40] However, the Protocol "reflects the global trend towards precaution and prevention with the Parties agreeing to move from [the London Convention's] controlled dispersal at sea of a variety of land-generated wastes towards [the] integrated land-based solutions for most, and controlled sea disposal of few, remaining categories of wastes."[41] With provisions codifying the "precautionary approach," the "polluter pays principal," and the "reverse list" approach, the Protocol is a more stringent and potentially more effective regulatory regime for controlling the dumping of waste into the world's oceans.[42]

By ratifying the Protocol, the United States would join a multilateral effort to develop and enhance the existing international regulatory scheme for protecting the marine environment from the adverse effects of discarded waste. Although the Protocol imposes stricter standards in regard to pollutant disposal from vessels and aircraft into the marine environment, it is likely that these standards could be implemented and maintained through amendments to the current MPRSA. Additionally, according to President George W. Bush, it is unlikely that ratification of the Protocol and adoption of its obligations would have a significant economic impact.[43]

Law of the Sea Treaty conceived in 1982 by the United Nations

The United Nations Convention on the Law of the Sea (UNCLOS) is a comprehensive multilateral treaty deigned to govern activities on, above, and beneath the world's oceans.[44] UNCLOS was adopted in 1982 and came

38. International Maritime Organization, Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, http://www.imo.org/Conventions/contents.asp?topic_id=258&doc_id=681 (last visited Nov. 11, 2007).

39. White House Press Office, *supra* note 37.

40. *See* London Protocol, *supra* note 34; National Ocean Services, *supra* note 35.

41. National Ocean Services, *supra* note 35.

42. *Id*.

43. White House Press Office, *supra* note 37.

44. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T. 397 [hereinafter UNCLOS].

into force on November 16, 1994.[45] Although UNCLOS's primary focus is navigational and transit issues, it includes provisions on territorial sea limits, economic jurisdiction, safe passage, exploitation rights, protection of living marine resources and the marine environment, marine research, and dispute resolution.[46]

To date, 155 countries, not including the United States, have ratified UNCLOS.[47] In 1994, former U.S. President Bill Clinton signed UNCLOS and submitted it to the Senate for ratification.[48] Despite the Senate's failure to ratify UNCLOS, the United States became a provisional participant in the Convention from 1994 to 1998.[49] Since the termination of its provisional status in 1998, the U.S. government has continued to recognize many of UNCLOS's provisions interpreting them as customary international law.[50] On May 15, 2007, U.S. President George Bush urged the Senate to reconsider ratifying UNCLOS.[51] In his official statement President Bush cited national security interests, the exercise of sovereign rights over marine areas and their valuable natural resources, and the protection of the marine environment as some of the benefits of joining UNCLOS.[52]

Despite adherence to many of the provisions of UNCLOS, ratification of the convention will effect the United States for two reasons: 1) UNCLOS is a "package deal" requiring ratifying States to adopt all of its provisions and obligations, and 2) "[t]he Convention . . . creates rights only for those who become parties to it and thereby accept its obligations."[53] Thus, the U.S. ratification of the UNCLOS will both bind the United States to provisions it has not recognized as existing customary law and "will give

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45. United Nations Division for Ocean Affairs and the Law of the Sea, The United Nations Convention on the Law of the Sea (A Historical Perspective), http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm (last visited Nov. 11, 2007) [hereinafter Historical Perspective].

46. *Id*.

47. Bill Walsh, *Vitter Speaks Out Against Treaty U.S. Yet to Sign on to 'Law of the Sea,'* NEW ORLEANS TIMES-PICAYUNE, Oct. 11, 2007, at 4.

48. Carrie E. Donovan, *The Law of the Sea Treaty*, Apr. 2, 2004, http://www.heritage.org/Research/InternationalOrganizations/wm470.cfm (last visited Dec. 20, 2007).

49. *Id.*

50. Daniel Inkelas, *Security, Sound, and Cetaceans: Legal Challenges to Low Frequency Active Sonar under U.S. and International Environmental Law*, 37 GEO. WASH. INT'L L. REV. 207, 224 (2005).

51. Press Release Office of the Press Secretary, President's Statement on Advancing U.S. Interests in the World's Oceans (May 15, 2007), *available at* http://www.whitehouse.gov/news/releases/2007/05/20070515-2.html.

52. *Id.*

53. Historical Perspective, *supra* note 45.

the United States a seat at the table when the rights that are vital to [its] interests are debated and interpreted."[54]

Opponents of the ratification contend that the benefits of the Convention—safe passage and sovereign rights over specific boundaries—are protected by other international treaties and customary law, while becoming a party to the Convention means restriction and regulation of submarines in territorial waters, adherence to stricter environmental regulations, and subjection to an external jurisdiction.[55] Proponents argue that UNCLOS will continue to form the basis for international maritime law, and that absent ratification, the United States will not be able to maximize its sovereign rights, among other things, "giving up its chance at staking lucrative oil claims in international waters."[56]

From both an economic and a conservation perspective, U.S. ratification of UNCLOS is a good idea. In ratifying UNCLOS, the United States will be adopting a uniform body of law that includes provisions intended for the preservation and fair allocation of marine resources. Furthermore, melting in the arctic regions and advances in technology have lead to the increased accessibility to underwater resources and navigational routes making ratification of UNCLOS vital to the protection of U.S. sovereign rights and the establishment of U.S. authority in future jurisdictional disputes.

III. RECENT CASES IN MAINE AND BEYOND

Bog Lake Company v. Town of Northfield, Maine

In *Bog Lake Company v. Town of Northfield,*[57] the plaintiff, Bog Lake Company (Landowner), filed a declaratory judgment action requesting judicial review of Northfield's denial of a zoning amendment application. More specifically, after the Town voted to uphold the landowner's shoreline classification as a protected resource (it was originally zoned in 1987), the landowner sought a trial in Maine Superior Court to determine whether the classification was still correct.[58]

The Town moved to dismiss the complaint in Superior Court, and the motion was granted. In so holding, the Superior Court recognized that

54. Press Release, Office of the Press Secretary, *supra* note 51.

55. Donovan, *supra* note 48.

56. Walsh, *supra* note 47, at 4.

57. No. Was-07-108 (Me. argued Sept. 10, 2007).

58. Bog Lake Co. v. Northfield, WASSC-CV-05-041, 4 (Me. Super. Ct., Wash. Cty., June 15, 2006) (Hunter, J.).

absent a constitutional challenge, the Superior Court had no jurisdiction to substitute its judgment for that of the Town's electorate. Thus, the Superior Court held that the Town's vote was a legislative action and not subject to judicial review.[59] The Landowner appealed this dismissal, and the Maine Supreme Judicial Court (Law Court) heard oral arguments on the matter on September 10, 2007.

The significance of this case is that it is unclear whether the Law Court will develop new law to challenge the zoning classifications of strict resource protected property. If the Law Court holds that the Superior Court was in error, it may mean a significant overhaul of local zoning procedure, and may create a new avenue of appeal for landowners who feel their land has been mischaracterized. This could have severe policy ramifications, for it would allow landowners to judicially challenge every zoning classification and would undermine the role of municipalities to determine what land should be zoned as a resource protected area.

Save Our Sebasticook, Inc. v. Maine Board of Environmental Protection

In *Save our Sebasticook, Inc. v. Board of Environmental Protection,* a non-profit environmental group sought review of a Superior Court decision, which affirmed the decision of the Board of Environmental Protection (Board) permitting an energy company to remove a dam and construct a hydroelectric power plant.[60] The dam at issue was the century-old Fort Halifax dam located in the Town of Winslow on the Sebasticook River.[61]

The Law Court, in affirming the decision of the Superior Court, held that the Board had sufficiently analyzed the costs and benefits of the proposed project, and that the energy company had established that the positive effects of removing the dam outweighed the direct and cumulative impacts of the project.[62] Moreover, the Law Court held that the Board made sufficient findings to support the determination that the project would not violate water quality standards.[63]

Save Our Sebasticook (SOS) argued that the Board improperly construed and applied the provisions of the Maine Waterway Development and Conservation Act (MWDCA),[64] in providing a permit to the energy

59. *Id.* at 6.
60. 2007 ME 102, ¶ 1, 928 A.2d 736, 738.
61. *Id.* ¶ 2, 928 A.2d at 738.
62. *Id.* ¶ 29, 928 A.2d at 744.
63. *Id.* ¶ 35, 928 A.2d at 746.
64. 38 M.R.S.A. §§ 630-637 (2006).

company to partially remove the dam.[65] In addition, SOS argued that the Board did not adequately consider the public economic benefits criterion as required by the MWDCA because the Board considered only the loss of revenue to the municipality through a decrease in property taxes, and did not factor in the loss of employment, and loss of hydroelectric energy.[66] The Law Court rejected these arguments; it held that the Board's conclusion that the dam removal will improve overall water quality, and that the species relocation plan will improve the habitat for a great number of species, was supported by evidence in the record, and contributed to an appropriate decision.[67]

Passamaquoddy Tribe Does Not Have to Release Information to the Public About Leasing its Land to a Liquefied Natural Gas Developer

In *Winifred B. French Corp. v. Pleasant Point Passamaquoddy Reservation*,[68] the Maine Supreme Judicial Court (Law Court) held that public policy concerns do not require, under Maine's Freedom of Access Act (FOAA),[69] the Pleasant Point Passamaquoddy Reservation (Reservation), a political subdivision of the Passamaquoddy Tribe, to release documents concerning a proposed liquefied natural gas (LNG) facility on coastal tribal lands.[70] By refusing to grant public access to this information, the Law Court foreclosed any opportunity for meaningful public debate concerning the use of Maine's coastal resources.

The Reservation had been in negotiations since May of 2004 with Quoddy Bay, LLC, concerning the proposed lease of Reservation land on which Quoddy Bay desired to build an LNG facility.[71] The conflict that led to litigation arose when a local reporter attempted to gain access to exclusive Reservation hearings[72] and was refused. Soon thereafter, the Reservation also refused the written requests of two Maine newspapers for access to documents concerning the proposed facility.[73]

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65. *Save our Sebasticook*, 2007 ME 102, ¶ 13, 928 A.2d at 740.

66. *Id.* ¶ 16, 928 A.2d at 741.

67. *Id.* ¶ 34, 928 A.2d at 745.

68. 2006 ME 53, 896 A.2d 950.

69. 1 M.R.S.A. §§ 401-410 (2005).

70. *French*, 2006 ME 53, ¶ 11, 896 A.2d at 955.

71. *Id.* ¶ 2, 896 A.2d at 952. "A lease was signed in May 2005 and approved by the U.S. Secretary of the Interior." *Id.*

72. *See id.* ¶ 3, 896 A.2d at 952. Between May 2004 and May 2005, the Reservation held hearings, at which attendance was limited to members of the Tribe and non-member invited guests. *Id.*

73. *Id.*

The newspapers argued that the FOAA required the Reservation to give the public access to these documents and also required the Reservation to open its meetings to the public.[74] Judgment in the lower court was granted for the Reservation, leading to an appeal by the newspapers.[75] The Law Court's analysis of the case focused on the capacity in which the Reservation was acting in reference to negotiations with Quoddy Bay. Applying the precedent set forth in *Great Northern Paper, Inc. v. Penobscot Nation*,[76] the Law Court held that, "because the reservation was not acting in its municipal capacity, we agree with the trial court that FOAA does not apply."[77] Additionally, the Law Court refused to acknowledge any public right to information based upon public policy concerns.

Severance v. Patterson *and the Rolling Public Beach Easement*

In *Severance v. Patterson*,[78] a Texas landowner (Severance) brought suit against various Texas state officials for declaratory and injunctive relief seeking to prevent the State from enforcing a public easement against her beachfront properties.[79] Severance claimed that her constitutional rights as a beachfront landowner were violated by the "rolling" nature of the public beach easement.[80]

As a result of the public easement's "rolling" over the dry beach, portions of Severance's three beachfront properties became situated on public beach. The Open Beach Act (OBA) authorizes state officials to petition the courts for an order to remove any improvements on a public beach.[81] Severance claimed that enforcing the public easement would be a regulatory and "physical invasion" taking for public use without just

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74. *Id.* ¶ 1, 896 A.2d at 952.

75. *Id.*

76. 2001 ME 68, ¶ 42, 770 A.2d 574, 587 (sets forth a four question test to determine if the FOAA is applicable to Indian tribes).

77. *French*, 2006 ME 53, ¶ 11, 896 A.2d at 956.

78. 485 F. Supp. 2d 793 (2007).

79. *Id.* at 798.

80. *Id.* at 796. Under Texas' Open Beaches Act, a public easement over the "dry beach" expands and contracts with the natural boundaries of the beach. *Id.* at 796. The "dry beach" is defined as the sandy line between the mean high tide mark and the vegetation line, which is the extreme seaward boundary of natural vegetation that spreads continuously inland. *Id.* at 797.

81. *Id.*

compensation, a violation of her substantive due process rights, and an unreasonable seizure of her property.[82]

While the district court rejected the state officials' defense that they had sovereign immunity from Severance's suit, the court nevertheless dismissed the suit, finding that Severance's house-removal claims were unripe and her other claims were "substantively deficient."[83] Severance's house-removal and physical-invasion claims lacked ripeness because officials had taken no action to remove her homes and, although they had the power to do so under the OBA, the court found no indication that enforcement action would be taken, as such actions are rarely filed.[84] So long as Severance's homes continued to not "truly interfere" with public beach use, the court found it reasonable to believe that state officials would not seek to enforce the easement.[85]

Severance claimed that a public beach easement that rolls with natural boundaries violated her constitutional due process rights by allowing the State to appropriate her property interest without providing due process.[86] The court rejected this contention, finding that Severance's property interests, under Texas law, were "subject to the public's superior interest in its pre-existing easement."[87] The easement existed over the dry beach before Severance's property purchases, and its natural expansion and contraction with the natural boundaries of the beach was not unconstitutional. The court found that Severance suffered no taking because her right to exclude the public, as a property owner, never extended beyond the rolling, natural boundary of the beach.[88] The Constitution affords no guarantee of real property boundaries.[89]

While the district court dismissed Severance's suit, its treatment of her house-removal and physical-invasion claims as unripe suggests that Severance, or a like-situated landowner, may have a constitutional defense if Texas state officials take action to enforce the public easement.

82. *Id.* at 798.
83. *Id.* at 799.
84. *Id.* at 800-01.
85. *Id.* at 801.
86. *Id.* at 803.
87. *Id.*
88. *Id.* at 804.
89. *Id.*

Ocean, Inc. v. Gutierrez: *Protection of Leatherback Sea Turtles*

In *The Ocean Conservancy v. Gutierrez*, two non-profit organizations, the Ocean Conservancy and Oceana, Inc., brought suit against the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration (NOAA), and the National Marine Fisheries Service (NMFS) seeking a declaratory judgment that NMFS's reasonable and prudent alternative measures relating to the treatment of leatherback sea turtles violated the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act, and the National Environmental Policy Act.[90] The U.S. District Court granted summary judgment for the defendant federal agencies, and the plaintiffs appealed.[91]

Leatherback sea turtles have been endangered since 1970.[92] NMFS issued a biological opinion in 2001 that pelagic (open-ocean) longline fishing in the Atlantic fishery was likely to jeopardize the continued existence of leatherback sea turtles.[93] The 2001 opinion included a reasonable and prudent alternative (RPA) that closed a section of the pelagic longline fishery, required longline vessels fishing outside that section to carry dipnets and line-cutters to minimize entanglement, and established a cooperative research program.[94] Based on experimental research, in 2004 NMFS issued a new biological opinion with an RPA.[95] The 2004 RPA established an extensive outreach program to train fishermen in the new techniques, increased NMFS monitoring, and set a reduction in the post-release mortality rate of leatherback sea turtles.[96]

Plaintiffs claimed that NMFS acted arbitrarily in its prediction of the mortality rate based on the measures it was putting in place under the 2004

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90. 394 F. Supp. 2d 147 (D.D.C. 2005).

91. Oceana, Inc. v. Gutierrez, 488 F.3d 1020 (D.C. Cir. 2007).

92. *Id.* Leatherback sea turtles are the largest turtles and the largest living reptiles in the world, and are the only sea turtles that lack a hard, bony shell. *Id. See also* NOAA Fisheries: Office of Protected Fisheries, *Leatherback Turtle (Dermochelys Corlacea)*, http://www.nmfs.noaa.gov/pr/species/turtles/leatherback.htm (last visited Oct. 21, 2007); Benjamin W. Jenkins, *The Next Generation of Chilling Uncertainty: Indirect Expropriation Under CAFTA and its Potential Impact on Environmental Protection*, 12 OCEAN & COASTAL L.J. 269, 270-76 (2007) (discussing the importance of sea turtles to the Caribbean ecosystem and the specific threats to not only leatherback sea turtles, but also many other turtle species).

93. *Oceana, Inc.*, 488 F.3d at 1022.

94. *Id.*

95. *Id.* In the three seasons following the 2001 biological opinion, NMFS conducted experimental research that evaluated the efficacy of various fishing gear and techniques and studied leatherback mortality rates. *Id.*

96. *Id.* at 1023-24.

RPA. They based this claim on lack of enforcement mechanisms, lack of positive incentives for compliance, and inadequate monitoring.[97] The U.S. Court of Appeals for the District of Columbia upheld the federal district court's determination that NMFS's 2004 RPA is not arbitrary or capricious. It rejected Oceana's claim that NMFS's goal of reducing the post-release mortality rate could not be achieved, finding that NMFS's judgment was within the bounds of reason.[98] The court found the mortality rates reasonable, particularly given that NMFS included a backup provision to ensure that the mortality rates are met.

North Carolina Fisheries Association, Inc. v. Gutierrez

In response to an administrative decision that approved Amendment 13C to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the North Carolina Fisheries Association, Inc., individual fishermen, and a seafood company sued the Secretary of Commerce on the ground that the Amendment was invalid.[99] Plaintiffs specifically claimed that Amendment 13C is invalid because its mandate of greater restrictions on the harvest of snowy grouper, golden tilefish, vermillion snapper, and black sea bass was not based on sound scientific information and was also against public policy due to the harsh economic impact on North Carolina fishermen.[100] The plaintiffs had standing to sue for the violation under provisions in the MSA. Additionally, the plaintiffs argued that the conduct of administrative agencies throughout the amendment process was biased and not based on correct science, and therefore the Amendment was invalid.[101] Both sides moved for summary judgment.[102]

As to the issue that the agency's scientific decisions were not based on proper research, the court cited that "courts have upheld agency action based on the 'best *available*' science, recognizing that some degree of speculation and uncertainty is inherent in agency decision-making."[103] The court explained that Southeastern Data and Assessment Review (SEDAR) officials, hired by the MSA administrative committee, had based this

97. *Id.* at 1024.

98. *Id.*

99. North Carolina Fisheries Association, Inc. v. Gutierrez, 2007 WL 2331048, at *8 (D.D.C. 2007).

100. *Id.*

101. *Id.* at *6-7.

102. *Id.* at *1.

103. *Id.* at *15 (citing Oceana, Inc. v. Evans, 384 F. Supp. 2d 203, 219 (D.D.C. 2005)) (emphasis in original).

assessment on existing standard methodology and current information, and this is all that was required by the statute.[104]

However, the plaintiffs' final claim, which alleged that Amendment 13C is invalid because it does not provide a rebuilding plan for snowy grouper and black sea bass, was accepted by the court; the court held that it was an error of law to exclude such a provision in the Amendment.[105] Through an intensive statutory construction exercise, the court concluded that the MSA required such a provision in this case because it is an overall objective of the Act to increase the fish population by both reducing and regulating commercial fishing and rebuilding the fish stocks through accepted procedures.[106] This is a unique compromise, since the defendant conceded this argument.[107] However, due to the highly deferential standard applied to National Marine Fisheries Service (NMFS) decisions, the court did not order an immediate remedy, but rather ordered each side to submit additional proposals to determine the exact method in which to implement the rebuilding process.[108]

Despite the highly deferential standard of review given to administrative bodies under the Administrative Procedure Act (APA), this case exemplifies a rare instance where an appellate court overturned an administrative decision. Still, it may not give other organizations much hope for future reversals because as previously mentioned the defendant conceded the point. This case implies that NMFS is willing to work with local fishing groups to help the overall fish population.

Jan De Nul NV v. Hauptzollamt Oldenburg: *Final Judgment Delivered on December 14, 2006*

In this case, the Court of Justice of the European Communities (ECJ)[109] was asked to define several terms used in the Council Directive 92/81/EEC of October 19, 1992.[110] This Directive allowed for both required and optional excise duties on mineral oils.[111] Mineral oils are a common source

104. *Id.*

105. *Id.* at *30.

106. *Id.* The court pointed to 16 U.S.C. § 1854(e) as the key provision mandating that the National Marine Fisheries Service set up a fish stock rebuilding program. *Id.* at *28.

107. In his supplemental brief for summary judgment, the defendant agreed that "rebuilding measures should be included with the measures to remedy overfishing." *Id.* at *26.

108. *Id.* at *33.

109. Opinion of Mr. Advocate General Bot.

110. Case C-391/05, Jan De Nul NV v. Hauptzollamt Oldenburg, 2007 E.C.R., ¶ 1.

111. *Id.* ¶¶ 8-14.

of ship fuel and duties on such fuel have an impact on multi-national commerce and jurisdictional boundaries between Member States and the European Community. The language in the Directive made a distinction between required and optional mineral oil duties,[112] and the court was asked to clarify this language.[113] Specifically, the court was asked to interpret the term "Community waters," as distinguished from "inland waterways."[114]

The dispute arose over mineral oil duty charged for the operation of a hopper dredger[115] by a German company called Jan de Nul NV located on the Elbe River between Hamburg and Cuxhaven.[116] The Hauptzollamt Oldenburg (the Head Customs Office located in Oldenburg, Germany) levied a duty on Jan de Nul for both the transport and operation of the dredger.[117] Jan de Nul objected to the imposed duty,[118] and the Hauptzollamt dismissed the objection.[119]

Thereafter, the company filed a claim with the Finanzgericht Hamburg (FH) (the Finance Appeals Court located in Hamburg, Germany),[120] and argued that fuel for transport of the dredger should be exempt from the duty.[121] Jan de Nul argued that the transport was commercial navigation, which, under the Directive, was required to be exempt from the duty while in Community waters.[122] The Hauptzollamt responded that the body of water in which the dredger was operating was an inland waterway such that, under the Directive, the duty exception is an optional determination made by the Member States.[123] In this case, the Member State, Germany, had chosen not to apply the exception.[124] The Hauptzollamt later amended its response, in consideration of a decision by the Bundesfinanzhof (BFH) (the highest Federal Finance Court located in Munich, Germany), which recognized that a dredger should be exempt from the duty while in

112. *Id.* ¶¶ 10-11.
113. *Id.* ¶ 1.
114. *Id.* ¶ 2.
115. "A hopper dredger enables sand, gravel[,] and other similar materials to be sucked up from the sea or river bed. The mixture of water and materials thus poured into the hold of the dredger is then transported to a place where it is dumped." *Id.* ¶ 19.
116. *Id.* ¶ 18.
117. *Id.* ¶ 21.
118. *Id.*
119. *Id.* ¶ 22.
120. *Id.*
121. *Id.* ¶ 23.
122. *Id.*
123. *Id.* ¶ 24.
124. *Id.*

transit.[125] The parties thus settled the original dispute concerning the duty applied to a dredger while in transit.[126]

However, the issue remained whether a duty should be applied to the dredger while dredging.[127] Noting the difficulty of interpretation of Articles 8(c)(1) and 8(2)(b) of Directive 92/81, the FH chose to stay the proceedings until it had a ruling from the ECJ on a critical question: "Should the operation of a suction and holding vessel [by a hopper-dredger] in Community waters always be regarded as navigation . . . or is it necessary to draw a distinction between the various forms of activity during the course of its use?"[128]

While Jan de Nul argued that the terms should be defined by a functional approach based on the main activity occurring in those waters,[129] the FH countered that a purely functional approach would encroach on the rights of Member States.[130] Instead, the FH advocated for "Community waters" to be defined as twelve nautical miles from the baseline and inland waterways to be defined as the internal waters of a State until they open to the sea that are suitable for navigation.[131]

Ultimately, the ECJ defined "Community waters" as "all the marine waters which come under the sovereignty or jurisdiction of the Member States, with the exception of inland waterways."[132] This definition complies with the use of the term in the first subparagraph of Article 8(1)(a) of Directive 92/81.[133] Also, the ECJ held that the operation of a dredger in Community waters should be regarded as "navigation within Community waters," in accordance with Article 8(1)(c) of Directive 92/81.[134] The ECJ reasoned that such activity is considered "navigation" because the vessel "has a propulsion system which enables it to move independently."[135] Thus, the ECJ found that the exception applies to all forms of navigation for commercial purposes[136] and therefore the dredger's operations, both in transit and in dredging, fall under the navigation definition.

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125. *Id.* ¶ 25.
126. *Id.* ¶ 28.
127. *Id.*
128. *Id.* ¶ 37(2).
129. *Id.* ¶ 40.
130. *Id.* ¶ 47.
131. *Id.* ¶ 49.
132. *Id.* ¶ 82.
133. *Id.* ¶ 84.
134. *Id.* ¶ 103.
135. *Id.* ¶ 94.
136. *Id.* ¶ 98.

In conclusion, by finding in favor of Jan de Nul the ECJ concluded that: (1) "Community waters" refers to all water within the jurisdiction of the State excluding "inland waterways" which are defined in Annex I to Council Directive 82/714/EEC;[137] and (2) "navigation within community waters" applied to both travel and dredging operations of the dredger.[138]

IV. RECENT BOOK REVIEWS

Karen N. Scott, *The Stockholm Declaration and the Law of the Marine Environment*, 54 INT'L. & COMP. L.Q. 1047 (2005) (reviewing MYRON H. NORDQUIST ET AL., THE STOCKHOLM DECLARATION AND THE LAW OF THE MARINE ENVIRONMENT (2003)).

The University of Virginia's Centre for Oceans Law and Policy held its twenty-sixth annual conference in Stockholm in 2002. This conference marked the thirtieth anniversary of the 1972 Stockholm Declaration on the Human Environment, a declaration that has been instrumental in shaping the development of marine environmental protection. Following the conference, *The Stockholm Declaration and the Law of the Marine Environment*, a collection of twenty-eight papers, three keynote addresses, and welcoming remarks exploring the Stockholm Declaration's impact on marine environmental policy was published.

The collection addresses a wide variety of topics. These topics include: significance of nongovernmental organizations to the United Nations Conference on the Human Environment; problems regarding the Aegean and Mediterranean Seas; environmental problems; the relationship of ocean ridges to continental margins within the 1982 United Nations Convention of the Law of the Sea; historical claims to the Arctic Ocean that do not address the Stockholm Declaration's impact on environmental management of the Arctic; and the impact of the Stockholm Declaration on principles of environmental law. In addition, several other topics are addressed: the environmental effects from decisions made by the World Trade Organization and the World Bank; the development of international environmental law; regional protection of semi-enclosed seas; maritime jurisdictional issues; particularly sensitive sea areas; traditional freedom to fish versus common heritage of mankind regime; Iceland and the International Whaling Commission; and future developments.

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137. *Id.* ¶ 105(1).
138. *Id.* ¶ 105(2).

Although the collection has been criticized for the lack of a nexus between the paper topics and topics covered at the conference, the papers themselves are useful to researchers interested in the marine environment and the Stockholm Declaration. While this collection has received further criticism for failing to contribute significantly to the body of literature in these areas, it could be a valuable resource for those wishing to identify topics in the area of marine environmental protection that are open to further analysis and exploration.

James R. McGoodwin, *Fish for Life: Interactive Governance for Fisheries; Interactive Fisheries Governance: A Guide to Better Practice*, 50 OCEAN & COASTAL MGMT. 590 (2007) (reviewing FISH FOR LIFE: INTERACTIVE GOVERNANCE FOR FISHERIES (J. Koolman et al. eds., 2005), and INTERACTIVE FISHERIES GOVERNANCE: A GUIDE TO BETTER PRACTICE (M. Bavinck et al. eds., 2005)).

Fish for Life and *Interactive Fisheries Governance* are companion pieces designed to supplement one another. Most past works have focused on sustainability and management problems of fisheries by looking at issues such as management, conservation, allocation, economics, or capture from the point of view of either human concerns or marine ecological concerns. In contrast, *Fish for Life* and *Interactive Fisheries Governance* take a broader and more inclusive perspective. *Fish for Life* contains lofty ideals to guide fisheries management theory, whereas *Interactive Fisheries Governance* contains concrete steps for putting these theories into practice. However, McGoodwin criticizes these books for relying on the assumption that after all parties are enlightened about the realities facing fisheries, they will agree on a course of action. Although this result may seem unlikely, it is arguably better to aim high, rather than to avoid tackling problems as complex as those facing fisheries.

Both books are useful for people looking for holistic and interactive perspectives on policy solutions for sustainable fisheries, as well as methods for putting principles into practice. Ideas set forth in these companion volumes have the possibility of being well received in fishing communities. These books assert that small scale fishing operations are more sustainable because they benefit a greater number of fishermen, unlike large scale industrialized fishing operations that take a greater share of resources and employ fewer fishermen.

V. RECENT ARTICLES WORTH NOTING

The Lobster Wars, ECONOMIST, Oct. 13, 2007, at 33-34. There is an on-going international controversy stemming from the sovereign rights to a small island off the coast of Maine called Machias Seal Island. The conflict between Canada and the United States dates back to eighteenth century treaties, which includes vague delineations of the so-called "Grey Zone" of ocean waters that surround the island. Currently, there is no resolution to this "managed maritime dispute." This article highlights the local tension between American and Canadian fishermen over lobster rights and addresses the need for some type of workable, or at least concrete, solution.

Barbara Lelli & David E. Harris, *Seal Bounty and Seal Protection Laws in Maine, 1872 to 1972: Historic Perspectives on a Current Controversy*, 46 NAT. RESOURCES J. 881 (2006). Seal legislation evolved differently in Canada than in Maine. In Canada, commercial seal fisheries exist, but have never taken hold in Maine. This article argues that this can be attributed to the different attitudes and different interest groups, such as tourists and fishermen, in every country. In an effort to understand how seals came to be legally protected in the United States while they are still hunted in Canada, this article analyzes the legislative history of seal management in Maine during the 100-year period before the passage of the Marine Mammal Protection Act (MMPA). This article provides an historical analysis for the ongoing economic, social, and environmental controversies arising from current seal-management policies.

Robin Kundis Craig, *Protecting Oceans from Urban Storm Water Runoff*, 21 NAT. RESOURCES & ENV'T 36 (2007). Urban storm water runoff, water flowing through cities to receiving waters, is a major contributor to coastal water pollution because it collects and deposits a variety of pollutants that are damaging to ocean waters. Currently, urban storm water runoff is designated as non-point source pollution. This article explains the importance of re-categorizing urban storm water runoff as point source pollution so that it is regulated under the Clean Water Act (CWA), rather than the less-effective Coastal Zone Management Act (CZMA). Moreover, the article evaluates the efficacy of the CWA regulations and provides a case study of how the CWA programs are working in Santa Monica Bay to improve ocean water quality.

Jason Parent, *Animal Salvage: Cost-Effective Methods for the Preservation of Marine Life*, 14 BUFF. ENVTL. L.J. 117 (2006). This article explores domestic and international law for the protection of marine life and its shortcomings regarding the existing harms facing marine life and the growing dangers resulting from technological advancement. The author proposes expanding current legislation by broadening the definition of a marine mammal "taking" and by restricting access to marine habitat and migration routes. The author also proposes increasing financial culpability for those who endanger marine animals and increasing rewards to provide greater incentive to assist animals in distress.

Janice M. Plante, *Haddock Discard Problem on Georges Grows*, 34 COM. FISHERIES NEWS, 12, Aug. 2007, *available at* http://www.fish-news.com/cfn/editorial/editorial_8_07/Haddock_discard_problem_on_Georges_grows.html. The haddock discard problem has at least two components. First, haddock have an extremely high mortality rate after they are discarded by fishermen for being undersized. This is particularly perplexing to commercial fishermen because the haddock fishery's biomass consists largely of fish below the nineteen inch minimum length. The fishermen are also concerned because Canadian fishermen are allowed to take haddock at a lower minimum length. In fact, scientists determined that the Georges Bank haddock from 2003 will only reach roughly eighteen inches by the fall of 2007. This size issue is the second component of the haddock discard problem. The New England Fisheries Management Council (NEMC) endorsed a temporary change in the minimum legal size to seventeen inches, which is supported by commercial fishermen. The idea is simple: match the general length within the biomass to the regulatory size limit. The benefit of the plan is that it would reduce the significant number of fish that are wasted as a result of discard, while allowing commercial fishermen to have a larger catch. Conversely, opponents of the plan claim that there are other ways to deal with the discard problem. Specifically, there are concerns that a length reduction will harmfully alter the spawning stock biomass. Although the NEMC endorsed the change, it ultimately must be approved by the National Marine Fisheries Service.

Bret Schulte, *One Fish, Two Fish, No Fish,* U.S. NEWS AND WORLD REP., Aug. 19, 2007, at 1. In January 2007, President Bush signed into law reforms to the Magnuson-Stevens Act, in an effort to end overfishing by 2011. These reforms force the nation's eight regional fishery councils to put a cap on fish taken from federal waters and are partially designed to promote fishing cooperatives. These fishing cooperatives enter into

agreements with the federal government so that they may allocate their total share of the fish to a set number of fishermen. Thus, these fishing cooperatives exempt fishermen from trip limits so long as they abide by the annual cap limit.

Daniel A. Farber, et al., *Reinventing Flood Control*, 81 TUL. L. REV. 1085 (2007). In the aftermath of Hurricane Katrina, an independent study into the failure of the New Orleans levees revealed that these failures were caused in part by organizational problems and human error in the Army Corps of Engineers' (Corps) design and maintenance of the levees. This article considers reforms to strengthen the Corps and improve oversight of flood control responses. This article provides an interdisciplinary and systematic approach to address the underlying organizational faults in our nation's flood control systems and disaster response.

Lisa A. Kelley, *The Power of the Sea: Using Ocean Energy to Meet Florida's Need for Power*, 37 ENVTL. L. 489 (2007). Ocean wave energy technology is available, but underutilized. This article considers the potential use of ocean energy in Florida and advocates for legislation to promote development of "wave farms." This article is a scholarly legal piece, which addresses an issue that is sure to become a major topic in the next decade.

André Verani, *Community-Based Management of Atlantic Cod by the Georges Bank Hook Sector: Is it a Model Fishery*?, 20 TUL. ENVTL. L.J. 359 (2007). The rapid Atlantic Cod population decline in the Georges Bank area is a significant problem for both the National Marine Fisheries Service (NMFS) and the local fisherman of Massachusetts, but for opposing reasons. NMFS wants to reduce the catch amounts of the cod in order to promote their conservation objectives, while the local fishermen want to harvest as many fish as they can in order to earn a living and ensure cod for the future. This article investigates why a hybrid community-based management approach was effective on Georges Bank to achieve both objectives and how other communities may apply such a method. The article aims to show that a government-run sector approach to fishery conservation, through the assistance of The Cape Cod Commercial Hook Fisherman's Association (CCCHFA), was functionally transformed into a community-based management system. The CCCHFA reached an agreement where the fishermen were paid by the government to conduct primary research on Atlantic Cod populations for NMFS. This way, NMFS was able to better assess how to direct their conversation efforts and the local fishermen were able to maintain their livelihood by fishing, just in a

slightly different way. Thus, the program met the interests of both groups. This article demonstrates how a local fishermen group took control of their community and negotiated a smooth transition from sector-based fisheries management to community-based fisheries management. This success could have implications for how other fishing communities could work with NFMS programs. The article concludes with a list of common characteristics for fishing communities that may benefit from the CCCHFA method: (1) small in size; (2) stable; (3) strong sense of community; (4) highly dependent on the resource characteristics; and (5) strong conservation ethic.

Capt. James Mize, *Protecting California's Coastal Communities: Four Models of Public Interest Lawyering*, 30 ENVIRONS: ENVTL. L. & POL'Y J. 199 (2007). Four main coastal resource advocacy groups represent the interests of coastal communities in California: (1) Earthjustice; (2) The Oceans Conservatory; (3) Surfrider Foundation; and (4) the United Anglers of Southern California. The first two groups bring lawsuits on behalf of coastal communities and lobby the government to pass laws that benefit these communities. The others are grassroots organizations that educate the communities about key issues through local rallies. This article aims to determine which advocacy methods are the most effective overall in representing the interests of coastal communities in California. Using a case study, the article analyzes the different responses of each organization to a California Fish and Game Commission decision to restrict fishing in the Channel Islands Marine Reserve. The article concludes that a model that organizes and educates the local community about the important coastal issues, like the Surfrider's "Special Places" campaign, is the most effective. The author dismissed the other approaches because they were too far removed from the communities and people in order to effect significant improvement to the community situation. This article is important because it alerts large conservation groups of lawyers and lobbyists to the possibility that they may not be best serving the interests of the people they claim to represent when they bring large lawsuits or propose new laws on behalf of coastal communities. A more grassroots and community-based approach may be better suited for the needs of coastal California communities, as well as other similar coastal communities around the country facing similar problems and seeking help from similar outside sources. In essence, the most effective advocacy group may be the coastal communities themselves.

Mike Mastry, *Coral Reef Protection Under the United States Federal Law: An Overview of the Primary Federal Legislative Means by which Coral Reef Ecosystems and their Associated Habitat may be Protected,* 14 U. BALT. J. ENVTL. L. 1 (2006). Coral reefs are the rainforests of the sea. They provide vital sources of coastal protection, immense biodiversity, and vast, untapped areas of scientific research. However, the coral reef environment is delicate. Human activities have taken a serious toll on coral reefs. As of 2000, over ten percent of the ocean's coral reefs are degraded beyond recovery and another thirty percent are in critical condition. This article comprehensively outlines the current federal protection for coral reefs, breaking down and analyzing the legislation. The article classifies the types of legislation into habitat-based statutes, and species-based statutes. Under habitat-based statutes, the article looks at the Coral Reef Conservation Act,[139] The Marine Protection, Research, and Sanctuaries Act,[140] Federal Water Pollution Control Act,[141] Oil Pollution Act,[142] Coastal Barriers Resources Act,[143] Coastal Zone Management Act,[144] The Antiquities Act of 1906,[145] Abandoned Shipwreck Act,[146] National Environmental Policy Act,[147] and Rivers and Harbors Appropriate Act of 1899.[148] Under species-based statutes, the article looks at the Endangered Species Act,[149] the Fish and Wildlife Coordination Act,[150] the Magnuson-Stevens Fishery Conservation and Management Act,[151] the Marine Mammal Protection Act,[152] and The Lacey Act.[153] However, the article suggests that most of these acts are stretched beyond their original intent to provide tools to protect coral reefs. Ultimately, the article concludes that the Coral Reef Conservation Act is the most important of these acts because it provides federal jurisdiction for coral reef protection within the United States and its territories. Furthermore, it creates the United States Coral Reef Task Force

139. 16 U.S.C. § 6401 (2000).
140. 33 U.S.C. § 1401; 16 U.S.C. § 1431.
141. 33 U.S.C. § 1251.
142. *Id.* § 2701.
143. 16 U.S.C. § 3501.
144. *Id.* § 1451.
145. *Id.* §§ 431-433.
146. 43 U.S.C. § 2101.
147. 42 U.S.C. § 4321.
148. 33 U.S.C. § 401.
149. 16 U.S.C. § 1531.
150. *Id.* § 661.
151. *Id.* § 1801.
152. *Id.* § 1361.
153. *Id.* § 3371.

to deal directly with coral reef needs, affording coral reefs a protection unlike any other has in the past.

Alex E. Morrison & Terry L. Hunt, *Human Impacts on the Nearshore Environment: An Archaeological Case Study from Kaua'i, Hawaiian Islands*, 61 PAC. SCI. 325 (2007). This article studies historical consumption trends of marine resources, specifically shellfish, over the past 600 years in Hawaii to better understand how modern human development affects marine resources. Historical trends relating to shellfish help set baselines for consumption levels of marine resources, which are useful for making meaningful modern comparisons and developing effective regulations. More specifically, the study looks at how the indigenous population foraged the shellfish along Hawaii's coast. Looking at the foraging, researchers tracked the growth and decline of different shellfish populations based on a variety of factors, such as size and usefulness of the shellfish. The study concludes that the shellfish population has always been susceptible to overuse by human consumption; however, certain species of shellfish are more susceptible and thus should be afforded greater protection. Still, the study noted that its conclusions were limited in scope to the areas studied.

Karen N. Scott, *Sound and Cetaceans: A Regional Response to Regulating Acoustic Marine Pollution*, 10 J. INT'L WILDLIFE L. & POL'Y 175 (2007). In the 1990s, undersea noise became recognized as a form of pollution that threatened cetaceans. This article examines undersea noise pollution in the context of three regions (Mediterranean Sea, the Baltic Sea and North Seas, and the Southern Oceans) for the purpose of elucidating the ways in which three regional systems currently regulate undersea noise. The article concludes that in the "absence of an effective global response to acoustic marine pollution, regulatory action at a regional level can, in the short term, go some way towards addressing this lacuna."

Brian E. Baird & Amber J. Mace, *Regional Ocean Governance: A Look at California* 16 DUKE ENVTL. L. & POL'Y F. 217 (2006). In recognition of the fact that marine environments often transcend geopolitical boundaries, a national movement has emerged to develop better regional approaches to manage and protect existing resources and ecosystems. This article uses California as a model to illustrate how a regional approach to ecosystem-management can flourish. The article highlights the importance of developing clear objectives among regional partners to ensure logistical feasibility and financial solvency. Finally, it suggests that federal support

for regional approaches to ecosystem-management could dramatically improve existing efforts.

Daniel Inkelas, *Security, Sound, and Cetaceans: Legal Challenges to Low Frequency Active Sonar under U.S. and International Environmental Law* 37 GEO. WASH. INT'L L. REV. 207 (2005). Sonar, the use of sound propagation for navigation, communication, and detection purposes, has been employed by the U.S. Military since the early twentieth century. Despite the historically benign and widespread use of passive and active sonar systems by modern seafaring vessels, recent technological advances, specifically the development of low frequency active sonar (LFAS), have harmed marine mammals. Use of LFAS has been linked to incidences of mass strandings of dolphins, porpoises and whales, creating concern that proposals for future use and testing of LFAS pose a significant threat to cetacean populations. The aim of this Note is to consider the possible legal constraints on the use of LFAS by the U.S. Navy and federal researchers in U.S. and international waters. This Note examines different ways in which the use of LFAS might be regulated for the purposes of protecting marine mammals through application of U.S. environmental laws and international laws and agreements. In addition, this Note examines recent U.S. litigation challenging the U.S. Navy's use of LFAS and the ensuing 2003 amendments to the Marine Mammals Protection Act, speculating as to the future legal ramifications of both the court's holdings and the new legislation.

Press Release, Maine Atlantic Salmon Comm'n, ASF News: New Atlantic Salmon Conservation Agreement (June 20, 2007), http://www.maine.gov/tools/whatsnew/index.php?topic=ASA_pr_combined&id=39272&v=Article. There has been a moratorium on commercial salmon fishing in Greenland's territorial waters since 2002. The Atlantic Salmon Federation (ASF), the North Atlantic Salmon Fund (NASF), and the Organization of Fishermen and Hunters in Greenland (KNAPK) recently agreed to extend the moratorium for seven more years, beginning with the 2007 season. In part, the decision was influenced by studies that show an eighty-nine percent decline in salmon populations since 1975. Greenland's Home Rule Government has expressed a commitment to enforcing the agreement. In exchange for the closure of Greenland's commercial salmon fishery, ASF and NASF will make annual payments to a fund in Greenland which will provide alternative employment in Greenland's coastal communities, transition salmon fishermen into other sustainable fisheries, purchase and destroy salmon nets, and reduce salmon bycatch in other fisheries. This agreement between conservation groups, the government, and fishermen

could serve as a model for other cooperative fishing agreements, and for agreements that provide incentives for fishermen to enter other lines of work, thereby reducing pressure on declining fisheries.

Press Release, NOAA, White House, Commerce Officials, Seafood Industry Leaders Ask Congress to Endorse Aquaculture Legislation (June 29, 2007), http://aquaculture2007.noaa.gov/pdf/press_release_june2907.pdf. The 2007 National Marine Aquaculture Summit in Washington, D.C. gave the seafood industry leaders, policy experts, government officials, and researchers the opportunity to make recommendations regarding the ways in which the United States can expand its role in the aquaculture industry. If the United States hopes to reduce an $8 billion seafood trade deficit and meet rising demand, it may need to expand the aquaculture industry, which currently makes up only one and a half percent of global production. Also, a second purpose of the summit was to build awareness of HR2010 and S1609, which are proposed offshore aquaculture legislation that would give National Oceanic and Atmospheric Administration (NOAA) jurisdiction over aquaculture in federal waters. According to Secretary of Commerce Carlos Gutierrez, although U.S. wild fisheries are among the best managed and most productive in the world, the wild harvest alone is insufficient to meet future U.S. demands for seafood. Responsible development of the United States aquaculture industry through improved oversight and regulation by NOAA may alleviate increased seafood demands and expand domestic economic opportunities.