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A Review Of Developments In Ocean And Coastal Law 2004-2005

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A REVIEW OF DEVELOPMENTS IN OCEAN AND COASTAL LAW 2004-2005

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STUDY FINDS RECREATIONAL FISHING HARMS STOCKS

Sport fishermen may account for a quarter of the catch from overfished species, a far greater percentage than experts previously believed.

The impact is even greater for popular species. Sport fishermen account for 59 percent of the catch of red snapper and about 90 percent of the red drum and bocaccio catch.

Will Figueira of Duke University in North Carolina, a researcher who participated in the study, said there are more than ten million saltwater recreational anglers in the U.S., and their numbers have grown by nearly 20 percent over the past ten years.

Figueria hopes his report will prompt both fishermen and legislatures to take action to conserve the resource.

See Maggie Fox, *Fishing Just for Fun Damages Stocks, Study Finds*, Aug. 30, 2004, *available at* http://www.planetark.com/dailynewsstory.cfm?newsid=26816.

DEPLETED FISH STOCKS CAUSE GHANAIANS TO TURN TO BUSHMEAT

Subsidized European fishing fleets are depleting the waters off West Africa, forcing local fishermen to slaughter wildlife in order to feed their families, a recent study shows.

Justin Brashares, an ecosystems professor at the University of California Berkley, said the hunting of bush animals is fueled by the lack of fish, poverty, and social unrest, and could permanently deplete the wildlife.

The local fishermen are now hunting antelope, monkeys, and jackals. His findings confirm the fears of local conservation groups who have maintained that the international fleets deplete local food supplies.

Mr. Brashares said that without the option of catching fish, locals hunt for bushmeat to avoid starvation and for economic survival. He also

maintained that without subsidies from the European Union, it would not be worthwhile for the international fleets to fish off West Africa.

Those subsidies rose to more than $350 million in 2001 from $6 million in 1981.

See Maggie Fox, *Finding No Fish, Ghanaians Turn to Bushmeat*, Nov. 15, 2004, *available at* http://www.planetark.com/avantgo/dailynewsstory.cfm?newsid=28148.

GULF OF MEXICO OIL PLATFORMS MAY BECOME FISH FARMS

The Bush Administration supports converting oil and natural gas platforms in the Gulf of Mexico into deep-sea fish farms raising red snapper, mahi mahi, yellow fin tuna, and flounder.

Fish farming in federal open seas would be done by enclosing thousands of fish in submerged pens that are serviced by scuba divers. Supporters of this conversion believe aquaculture would strengthen American seafood production and provide needed employment for coastal communities. Currently, seafood accounts for about $7 billion of the nation's foreign trade deficit.

There are an estimated 3,500 idle platforms in the Gulf of Mexico that could potentially be converted into fish farms. However, critics are concerned that the nation's waters will become unsightly and dirty feedlots for fish. These opponents question whether the national government should dedicate parts of the ocean for farming, thus privatizing a public resource.

Critics are also worried that fish raised at these converted platforms could escape into the wild, corrupting the native populations' genetic pools, and spreading diseases.

See Cain Burdeau, *Oil Platforms May be Used for Fish Farms*, THE ASSOCIATED PRESS, Apr. 4, 2005.

REPORT CRITICIZES GOVERNMENT'S CORAL REEF PROTECTION PLAN

Despite the Bush Administration's recent Ocean Action Plan, an article appearing in the March 18, 2005 issue of the journal *Science* criticized the U.S. government's slow and inadequate protection of coral reefs.

The article entitled *Are U.S. Coral Reefs on the Slippery Slope to Slime?* is based on an assessment of coral reefs in Florida and Hawaii made by an international team of eleven scientists from the U.S. and Australia.

The assessment concluded that the reefs were deteriorating rapidly as a result of overfishing, pollution, disease, and global warming. The authors cautioned that Florida's reefs were more than halfway toward ecological

extinction, as evidenced by the continued decline of large predatory fish, and overgrowth of seaweed and disease.

Additionally, the assessment concluded that while reefs near isolated northwest Hawaiian islands were in relatively good condition, the reefs of Hawaii's main islands showed signs of degradation that included accumulating amounts of harmful marine debris and heightened levels of contaminants such as lead and PCBs.

The authors called on the U.S. government to manage coral reefs as whole ecosystems, rather than fragmented habitats, to reverse current trends on a large scale. Moreover, they recommended the establishment of "no take" areas and harvest quotas to combat the adverse effects of overfishing, as well as improved land use and coastal development strategies to reduce toxin levels in coral reef ecosystems.

See Marine Researchers Develop Blueprint For Rescuing America's Troubled Coral Reefs, March 23, 2005, *available at* http://www.sciencedaily.com/releases/2005/03/050323120043.htm.

NORTH PACIFIC MANAGEMENT COUNCIL ESTABLISHES EXTENSIVE MARINE PROTECTED AREAS

In February 2005, members of the North Pacific Fishery Management Council ("the Council") voted unanimously to protect over 370,000 square miles of Alaska's ocean from habitat destruction.

The action will close several areas of Alaskan waters to types of fishing gear deemed harmful to deep-sea coral gardens and other living habitats found on the seafloor. Depending on their sensitivity and environmental value, the selected sites are designated as marine reserves, habitat conservation areas, or habitat conservation zones.

These designations ban different types of fishing gear and afford varying degrees of protection for the living substrate. The bans extend throughout the Aleutian Islands management region except in areas providing the greatest fish harvests.

In addition to the Aleutian Islands closures, the Council established protected sites in selected areas off the Gulf of Alaska. The move comes after some controversy over whether the Council was protecting essential fish habitats as mandated by the Magnuson-Stevens Fishery Conservation and Management Act.

The Council's motion and related maps are available at http://www.fakr.noaa.gov/npfmc/current_issues/HAPC/HAPC.htm.

See ALASKA MARINE CONSERVATION COUNCIL, NORTH PACIFIC FISHERY MANAGERS PROTECT GLOBALLY SIGNIFICANT CORALS FROM DESTRUCTIVE EFFECTS OF BOTTOM TRAWL FISHERIES (Feb. 10, 2005),

available at http://www.akmarine.org/pressroom/release-021005.shtml; *Bottom Trawling Ban off Alaska to Widen*, ASSOCIATED PRESS, Feb. 18, 2005, *available at* http://msnbc.msn.com/id/6967527.

NOAA REPORT ON COASTAL POPULATION TRENDS RELEASED

In March 2005, the National Ocean Service of the National Oceanic and Atmospheric Administration released an updated report on population trends in United States coastal areas. The report covers 1980 through the present day, and offers projections for the coastal population in 2008. It is a follow-up to a similar study released in the 1990s.

According to the report, fifty-three percent of the nation's population lived along the United States coast as of 2003, totaling 153 million coastal residents—thirty-three million more than twenty-five years ago. About seven million more are projected to move to the coast by 2008. The report also provides an overview of population trends specific to each coastal region within the U.S.

While recognizing the economic benefits of coastal growth, the report also calls attention to the strain such growth places on the coastal environment and the deeper waters of the ocean. In particular, it notes that high populations leave coastal ecosystems "vulnerable to pollution, habitat degradation and loss, overfishing, invasive species, and increased coastal hazards such as sea-level rise."

See NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, POPULATION TRENDS ALONG THE COASTAL UNITED STATES: 1980-2008, *available at* http://oceanservice.noaa.gov/programs/mb/supp_cstl_population.html.

STUDY CONCLUDES IMAGING RADAR IS VALUABLE FOR ASSESSING COASTAL POLLUTION

Through a pilot research program funded by NASA, space-based radar has been proven to be useful in addressing Earth-based problems. Scientists examined high resolution radar images of the Southern California coast to determine what information the images could offer about coastal pollution.

Researchers found that the radar images showed the presence and location of pollutants such as wastewater discharge, natural hydrocarbon seepage, and storm water runoff.

This technology improves and complements the current methods of locating and assessing coastal pollution, such as oceanographic field samplings. Because pollution hazards are often "localized, dynamic, and

episodic," water quality managers benefit from technology that provides up-to-date information.

Space-based radar imaging works around the clock, allowing for more timely and accurate notice of coastal hazards, especially when combined with more traditional methodology. Despite the technology's usefulness, researchers have identified two primary limitations—it does not provide information about the harmfulness of identified coastal hazards, and there is infrequent coverage.

See NAT'L AERONAUTICS AND SPACE ADMIN., NASA RESEARCHERS USE IMAGING RADAR TO DETECT COASTAL POLLUTION (March 17, 2005), *available at* http://www.nasa.gov/home/hqnews/2005/mar/HQ_05079_pollution_imaging.html.

ENDANGERED SPECIES ACT UNDER FIRE

For the first time since it was originally enacted in 1973, there is a strong possibility that substantial changes could be made to the Endangered Species Act (ESA).

The U.S. House of Representatives has voted to weaken provisions of the act that protects habitats of endangered animals. Representative Richard Pombo (R-CA), Chairman of the Natural Resources Committee, introduced the measure to overhaul the ESA.

When it was originally passed into law, the ESA was widely seen as a means to protect endangered animals that were highly visible symbols of our country, such as the bald eagle and the grizzly bear. However, the catalogue of protected species has grown to 518 since the law was enacted.

This expansion of the ESA's scope does not sit well with many businesses, which are at times forced to delay, alter, or cancel planned development in areas that are within the habitat of a protected species. For years, many Republican governors of western states have sought to overhaul the ESA to make it easier for businesses in their states to develop areas that are currently off-limits.

Currently, the ESA dictates the use of the "best available science" before categorizing a species as endangered, while a proposed alternative would be to require the "best science."

Under this proposed standard, if the U.S. Fish and Wildlife Service conducts a study that could not conclusively state what the status of a possibly endangered species is, it would be required to do more research before placing the species under the protection of the ESA. Another proposed alteration would require that a request to conduct otherwise prohibited activity on private land under the protection of the ESA be responded to within a specific time frame.

See U.S. House of Representatives Votes to Dismantle the Endangered Species Act, available at http://www.stopextinction.org/site/c.epIQKXOBJsG/ b.704799/k.CCB4/Home.htm; *See also Effort Under Way to Weaken US Endangered Species Law, available at* http://www.planetark.com/dailynewsstory.cfm?newsid=28903&newsdate=11-Jan-2005 (last visited Nov. 21, 2005).

NAVY SONAR SUSPECTED IN MARINE MAMMAL DEATHS

Orca whales, recently classified as an endangered species, may now have to contend with possible threats from Navy sonar testing in Washington State's Puget Sound.

The number of orcas in the sound has been low for a long time, but some experts believe that Navy sonar testing has exacerbated the problem.

David Baine, a professor at the University of Washington who has been studying different species of whales for twenty-five years, was out on the water one day when he heard the distinctive ping sound that indicates a Navy submarine using its sonar.

Baine noted that soon thereafter he saw a pod of orcas heading away from the sound into a cove they normally would not enter. In addition, he saw other marine mammals in the area, such as other whales, porpoises and dolphins exhibiting "panic behavior." Baine believes that one possible explanation for these unusual actions by the orcas and other mammals is that the sonar waves damage the hearing of marine mammals exposed to them.

A government report shows that although sonar activity has "transformed the acoustical landscape of a large area of Puget Sound . . . [there is] no evidence that the intensity of the sound that the . . . [orcas] were likely to have received was sufficient to cause temporary or permanent deafness." It remains to be seen whether the Navy will change its practices now that the U.S. Fish and Wildlife Service has listed the orcas as an endangered species. The listing may lead to measures protecting their habitat. The Navy has previously argued that it should not be subject to such environmental restrictions under the Endangered Species Act.

See Debera Carlton Harrell, *Whales, Porpoises Seen Acting Strangely Degree of Sonar Harm to Marine Mammals Debated*, SEATTLE POST-INTELLIGENCER, Mar. 18, 2005, at B1, *available at* 2004 WLNR 3177966; Craig Welch, *Feds Make Dramatic Move to Save Orcas,* THE SEATTLE TIMES, Nov. 16, 2005, *available at* http://seattletimes.nwsource.com/html/localnews/2002626355_orca16m.html (last visited Nov. 21, 2005).

JAPAN AND SOUTH KOREA RE-OPEN BORDER ISLANDS DISPUTE

Through diplomatic efforts ten years ago, Japan and South Korea both agreed by treaty to not include certain islands and the surrounding waters as part of either of the country's exclusive economic zones (EEZ). It now appears that both countries are attempting to break these treaty obligations.

In Japan, these islands are known as "Takeshima." Japan's Shimane Prefecture adopted a resolution in March 2005 to set a date to claim the islands. In response, the South Korean government's Korea Ocean Research and Development Institute, which refers to the area as "Tokto," announced that it would be investing heavily in research in the area. The research will focus on mineral deposits and the ecosystem. South Korea also intends to claim this region as part of its EEZ.

See Kim Sung-jin, *Nation to Conduct Research Project on Tokto,* THE TOKTO TIMES, Mar. 18, 2005, *available at* http://times.hankooki.com/lpage/nation/200503/kt2005031816181611950.htm; Kengo Sakajiri, *Seoul Demands Deletion of Takeshima Claims in Texts*, THE ASAHI SHIMBUN, April 8, 2005, *available at* http://www.asahi.com/english/Herald-asa/TKY200504080154.html.

UN SECRETARY GENERAL ISSUES REPORT ON "OCEANS AND THE LAW OF THE SEA"

Upon request by the United Nations General Assembly in November 2004 the office of the UN Secretary General has issued a report entitled "Oceans and the law of the sea" which is to be used for discussion in upcoming meetings.

The report contains information regarding how marine fisheries, sustainable development, navigation security and marine debris. It also includes sections on the Indian Ocean tsunami, and protection of marine environments.

The report provides a basis for discussion at the 60th session of the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of Sea.

See U.N. Secretary-General, *Oceans and the Law of the Sea: Report of the Secretary-General*, U.N. doc. A/60/63 (Mar. 4, 2005), *available at* http://www.un.org/Depts/los/general_assembly/general_assembly_reports.htm (follow link to 60th session).

JUDGE FINDS SHIPS MUST HAVE PERMIT BEFORE DUMPING BALLAST WATER IN U.S. PORTS

A federal judge in California has ruled that ships in U.S. ports must have a permit before dumping their ballast water, which is often contaminated with invasive species that damage natural habitats.

Judge Susan Illston agreed with environmental groups suing the U.S. Environmental Protection Agency that the agency exceeded its authority by exempting ships from the permit requirements of the Clean Water Act.

A single tanker ship can discharge as much as twenty-eight million gallons of ballast once it reaches port, and ships dump an estimated twenty-one billion gallons of ballast in U.S. waters each year. The water contains species such as zebra mussels and Chinese mitten crabs that have no natural predators and can quickly reproduce and deplete the ports and bays where they are dumped.

Judge Illston cited a study by the Government Accountability Office that noted: "more than 10,000 marine species each day hitch rides around the globe in the ballast water of cargo ships. . . . Invasive species transported by ballast water have taken over wetland habitats, and deprived waterfowl and other species of food sources."

N.W. Envtl. Advocates v. EPA., No. C 03-05760 SI slip op. (N.D. Cal. March 30, 2005). *See also,* ENVTL. NEWS SERVICE, *Court Acts to Halt Dumping Invasive Species in U.S. Waters,* Apr. 4, 2005, http://www.ensnewswire.com/ens/archives/2005/apr2005archive.asp.