

The SandBar

Legal Reporter for the National Sea Grant College Program



Trump Administration Issues Endangered Species Act Regulatory Changes

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Evaluating Impacts of Gulf
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Reflections on a National
Sea Grant Law Center
Fellowship

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Cover page photograph of endangered baby Leatherback Sea Turtles, courtesy of the U.S. Fish and Wildlife Service.

Contents page photograph of Delray Beach, Florida, courtesy of Dawn Hopkins.



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Trump Administration Issues Endangered Species Act Regulatory Changes

Catherine Janasie¹



Photograph of an endangered Hector's Dolphin,
courtesy of Gregory Smith.

In August, the U.S. Fish and Wildlife Service (FWS) in the Department of the Interior and the National Marine Fisheries Service (NMFS) in the Department of Commerce announced final rules that amend some of the regulations implementing Section 4 and Section 7 of the Endangered Species Act (ESA). The agencies had proposed regulatory changes to the ESA back in July 2018, but, as a result of receiving over 60,000 comments on the proposed changes, the agencies were not able to release the final rules for over a year. The regulatory changes announced in August will impact several actions by the agencies under the ESA, including listing and delisting species, designating critical habitat, protections for threatened species, and the consultation process.

The Endangered Species Act

Congress passed the ESA in 1973 to protect both imperiled species and their ecosystems. The ESA is administered by the FWS for terrestrial species and by NMFS for listed marine species. Once a species is listed as endangered or threatened under Section 4 of the ESA, the Act's other provisions, such as Section 7 consultation and Section 9 take, come into play.

Section 4 of the ESA lays out how a species can be listed as either endangered or threatened under the Act. When making listing determinations, the Act directs the agencies to take several factors into account, and in making a listing determination, the agencies must only consider "the

best scientific and commercial data available.”²² Importantly, the agencies are not supposed to consider economics when making listing determinations. Once a species is listed, the ESA directs the agencies to designate critical habitat for the species.

Under the ESA, the take prohibition only applies to listed endangered species. However, in 1978 the FWS issued a regulation that applied the take prohibition to threatened species as well. Known as the Blanket 4(d) rule, it gets its name from Section 4(d) of the ESA, which directs the agencies to issue regulations deemed “necessary and advisable to provide for the conservation of threatened species.”²³ NMFS has always decided whether to extend the take prohibition to a threatened species on a case by case basis.

The consultation provisions of Section 7 apply to the actions of federal agencies and are meant to prevent the federal government from putting a listed species in jeopardy of extinction.⁴ Consultation is a two-step process that involves informal and formal consultation. Informal consultation is an optional process that can be used to determine whether formal consultation is needed. If any listed species are present in the area of the proposed action, and it is possible that the proposed action “may adversely affect” listed species or its critical habitat, then formal consultation is required. During the process, the agency proposing the action – the “action agency” works with the “expert agency” – either FWS or NMFS – to determine whether its action will jeopardize the species or destroy or adversely modify its habitat. At the end of the consultation process, the expert agency issues a biological opinion.

Section 4 Changes

In terms of listing species, the regulatory changes occur in a couple different ways, including a definition for the phrase “foreseeable future,” which comes into play when the agencies are deciding whether to list as species as threatened. Under the ESA, a threatened species is defined as “any species which is likely to become an endangered species within the *foreseeable future* throughout all or a significant portion of its range.”²⁵ The definition states that the foreseeable future extends only so far as the agencies can reasonably determine that the threats and the species responses to those threats are likely, and thus, are not based on speculation. The FWS states that the new definition conforms to the approach they have been following under a 2009 Department of Interior Solicitor's Opinion and makes the agency's decision-making process more transparent.⁶

Further, the agencies stated that they received comments during the public comment period that they were not being transparent about the economic impacts of listing decisions. In response, the agencies decided to strike language from the existing regulation that said listing determinations would be made “without reference to possible

economic or other impacts of such determination.”²⁷ In announcing the language change, the FWS stated that “the preamble to the regulation clarifies that the ESA does not prohibit agencies from collecting data that determine this cost and making that information available, as long as doing so does not influence” the listing determination.⁸

In addition, the new rules made the standards for listing and delisting the same, making the bar for delisting a species the same as listing a species.⁹ Finally, the FWS rescinded its Blanket 4d rule with the regulatory changes, taking away the automatic take protection for threatened species. With this change, the FWS aligns itself with NMFS policy and will decide whether to extend the endangered species protections to threatened species on a case by case basis.

For critical habitat designations, the new regulations provide a non-exhaustive list of when designating critical habitat may not be prudent, including when: telling the public where the species is would increase the threat to the species; habitat impacts do not threaten the species or cannot be addressed by consultation; or areas within the jurisdiction of the United States provide negligible conservation value for a species that primarily lives outside the United States. An additional regulatory change deals with the process for designating unoccupied critical habitat. In 2016, the Obama Administration changed the regulations concerning unoccupied critical habitat to allow the agencies to consider occupied and unoccupied habitat at the same time. Under the new rules, unoccupied habitat can only be designated if the currently occupied habitat is not adequate for the species's conservation.¹⁰

In addition, the new rules made the standards for listing and delisting the same, making the bar for delisting a species the same as listing a species.

Section 7 Changes

First, the new regulations impose a sixty-day time limit for informal consultation, with an option to extend the deadline to 120 days.¹¹ Further, with the regulatory changes, the agencies have codified alternative consultation mechanisms meant to streamline the consultation process. These include adding a definition for programmatic consultation, which includes examples of types of programmatic consultation. As another streamlining effort, the new rules allow the agencies to adopt the action agency's package initiating consultation into the biological opinion, as well as any findings the expert agency made in issuing incidental take permits.¹² In addition, the new rules add an optional expedited consultation process that can be



Photograph of a juvenile Lake Sturgeon, courtesy of the U.S. Fish and Wildlife Service.

entered into with mutual agreement between the action and expert agency after considering “the nature, size, and scope of the action or its anticipated effects on listed species or critical habitat and other relevant factors.”¹³

Finally, the agencies revised the definition for “destruction or adverse modification” of critical habitat. The new definition now states that an alteration will now only qualify as “destruction or adverse modification” if it diminishes the critical habitat’s value “as a whole.” The new definition adds the “as a whole” language, while removing a second sentence from the definition that read “[s]uch alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.”¹⁴

Moving Forward

The new regulations became effective at the end of September. However, Earthjustice has already filed a suit on behalf of multiple conservation groups, including the Center for Biological Diversity, Sierra Club, and Natural Resources Defense Council.¹⁵ The challenge has been brought under the Administrative Procedure Act and the National Environmental Policy Act. Other lawsuits challenging the regulations are sure to follow. We will have to wait to see whether any of these regulatory changes will be struck down by the courts. ♻️

Endnotes

- ¹ Senior Research Counsel, National Sea Grant Law Center. This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture under Subaward no. UA AES 05687-03 from the National Agricultural Law Center, University of Arkansas.
- ² 16 U.S.C. § 1533(b)(1)(A).
- ³ *Id.* § 1533(d).
- ⁴ *Id.* § 1536(a)(2).
- ⁵ *Id.* § 1532(20) (emphasis added).
- ⁶ Craig Aubrey & Carey Galst, U.S. Fish & Wildlife Serv. & Cathy Tortorici, Nat’l. Marine Fisheries Serv., [Webinar on Revisions to the Implementing Regulations 50 CFR Parts 424, 402, and 17 under the Endangered Species Act](#) (Sept. 6, 2009).
- ⁷ 50 C.F.R. § 424.11(b).
- ⁸ Press Release, U.S. Fish & Wildlife Serv., [Trump Administration Improves the Implementing Regulations of the Endangered Species Act](#) (Aug. 12, 2019).
- ⁹ *Id.*
- ¹⁰ 50 C.F.R. § 424.12.
- ¹¹ *Id.* § 402.13
- ¹² *Id.* § 402.14.
- ¹³ *Id.*
- ¹⁴ *Id.* § 402.02.
- ¹⁵ [Lawsuit Challenges Trump Administration Attack on Endangered Species Act](#), EARTHJUSTICE.

NMFS Agrees to Finish Evaluating Impacts of Gulf Oil and Gas Activities on Endangered Species

Terra Bowling



Photograph of an oiled pelican, courtesy of the Louisiana GOHSEP.

The *Deepwater Horizon* disaster resulted in the largest offshore oil spill in U.S. history, releasing 134 million gallons of oil into the Gulf of Mexico over a period of 87 days. The oil spill killed thousands of marine mammals and sea turtles, including species protected under the Endangered Species Act (ESA). In 2013, the National Marine Fisheries Service (NMFS) began work to update a biological opinion (BiOp) on oil and gas activities in the Gulf of Mexico in light of the oil spill.¹ By June 2018, the agency still had not completed the BiOp. Environmental groups filed suit alleging that the agency unreasonably delayed completing consultation and issuing the BiOp. In July 2019, the parties reached a settlement.

Background

Under the ESA, federal agencies must ensure that actions they conduct, fund, or authorize will not jeopardize the existence of endangered or threatened species or damage their habitats.² The ESA requires agencies to formally consult with either the U.S. Fish and Wildlife Service (FWS) or NMFS—depending on the species affected—for any actions that could impact a protected species or its habitat. Following consultation, the FWS or NMFS prepares a BiOp, which examines the impact of the agency’s action on listed species. A BiOp might identify the allowed “take”³ of listed species or outline measures that would minimize impacts of the action.

The Bureau of Ocean Energy Management in the Department of the Interior (DOI) oversees the oil and gas leasing program in the Gulf of Mexico. These activities could impact endangered species in the Gulf; therefore, DOI must consult with NMFS, which in turn must complete a BiOp on the activities. NMFS last issued a BiOp for the oil and gas leasing program in the Gulf of Mexico in 2007.

Updated BiOp

Following the *Deepwater Horizon* oil spill in 2010, DOI requested that NMFS reinstate consultation to update the BiOp. NMFS reinstated consultation in 2013. When the agency had not completed the process by 2018, environmental groups filed suit.

This July, the environmental groups and NMFS reached a settlement agreement. Under the settlement, the agency must develop a new BiOp by November 5, 2019. The BiOp will look at the impacts on ESA-listed species from permit issuance and plan approval, as well as any actions associated with lease sales. NMFS is also required to pay plaintiffs more than \$25,000 in legal fees.

The BiOp will look at the impacts on ESA-listed species from permit issuance and plan approval, as well as any actions associated with lease sales.

Following the issuance of President Trump's America-First Offshore Energy Strategy, the Trump administration has sought to significantly expand oil and gas activities on the Outer Continental Shelf.⁴ At the same time, the administration rolled back offshore drilling safety rules enacted following the *Deepwater Horizon* disaster.⁵ With increased offshore drilling activity and fewer safety protections, an updated BiOp is necessary to ensure the protection of listed species. ♻️

Endnotes

- ¹ Gulf Restoration Network, et al., v. Nat'l. Marine Fisheries Serv., No. 1:18-cv-01504-JDW, stipulated settlement agreement (M.D. Fla. July 19, 2019).
- ² 16 U.S.C. § 1536(a)(2).
- ³ The ESA defines "take" as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct." 16 U.S.C. § 1532.
- ⁴ BOEM, *Developing a New National OCS Program*.
- ⁵ Terra Bowling, *Changes for Offshore Drilling Rules*, THE NATIONAL SEA GRANT LAW CENTER BLOG (May 10, 2019).



Photograph of marshland impacted by the Deepwater Horizon oil spill, courtesy of the Louisiana GOHSEP.

Court Battle Over Use of Florida Water and Land Legacy Act Funds Continues

Philip Lott¹



Photograph of the Anhinga Trail at the Everglades National Park, courtesy of Siddarth Machado.

A Florida appellate court recently ruled on a state Constitutional amendment intended to provide funds for conservation lands: the Florida Water and Land Legacy Act. Soon after Florida voters approved the amendment in 2014, environmental groups filed suit alleging that the Florida Legislature and other state actors used the funds for appropriations that were unconstitutional. After a victory for the environmental groups in circuit court, the Florida Legislature appealed and received a different interpretation of the amendment.

History of the Amendment

In 1963, the Florida Legislature established the Land Acquisition Trust Fund (LATF) as part of the Outdoor Recreation and Conservation Act of 1963.² The Florida Legislature created the LATF to finance the improvement, management, restoration, or enhancement of land, water areas, easements, and the like. Just two years later in 1965, the Legislature made the LATF a part of the Florida Constitution by amendment.³ This amendment became Section 17 of Article IX of the Florida Constitution.

The amendment was set to expire on its 50th birthday in 2015. In 2014, Florida voters approved a new amendment via a ballot measure. This new amendment became Section 28 of Article X of the Florida Constitution, or as more commonly known to Floridians, the 2014 Florida Water and Land Legacy Act.⁴

Florida Water and Land Legacy Act

Under the amendment, the Florida Legislature directed “no less than 33 percent of net revenues derived from the existing excise tax on documents” or “any successor or replacement tax” to the LATF for a period of 20 years after the effective date of the amendment.⁵ Article X, Section 28, subsection 1 provides that the funds should be used to finance or refinance:

the acquisition and improvement of land, water areas, and related property interests including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.

Photograph of the mangroves at the Everglades National Park, courtesy of Chin Gum.



However, not long after the passage of the amendment, two separate lawsuits were filed in the Leon County Circuit Court against the Florida Legislature, several agencies and agency heads, and various other state actors. The plaintiffs, including several environmental groups and individuals, filed the lawsuits alleging that certain appropriations from the LATF were contrary to the purposes of the amendment and were therefore unconstitutional. Primarily, the groups objected to funding being used for administrative costs and to maintain land purchased prior to the amendment's effective date. In a statement on its website, one of the plaintiffs stated "[t]his case stems from the overwhelming support of voters in 2014 approving...the Water and Land Legacy Constitutional Amendment...[and] the Legislature did not spend the money as directed by the Amendment."⁶

After consolidating the lawsuits, the environmental groups moved for summary judgment.⁷ The court ruled in favor of the groups holding that the Legislature failed to comply with the amendment. The circuit court interpreted the amendment to permit funds in the LATF to be expended only for the 1) acquisition of conservation lands, and 2) the improvement,

management, restoration and enhancement of public access and enjoyment of those conservation lands purchased *after the effective date of the amendment in 2015*. The circuit court found some 100 appropriations to be unconstitutional, because they were used for lands purchased before the 2015 effective date rather than for lands after the 2015 effective date. Further, the circuit found that appropriations using funds for agency administrative costs were unconstitutional.

Appealing the Circuit Court's Decision

On appeal, the First District Court of Appeal of Florida reviewed the circuit court's decision by analyzing the language of the amendment. The appellate court held that the provision did not plainly restrict the use of the LATF revenue to improve, restore, or enhance lands *only acquired after 2015*. The appellate court explained that because the text of the amendment specifically authorizes refinancing, the language suggests that property for which Florida already owns title was within the scope of permissible LATF activities. The court further determined that the language of the amendment indicated that restoration was not restricted to state-owned lands.

Based on this reasoning, the appellate court reversed the circuit court's decision and remanded the case back to circuit court. On its website, one of the plaintiffs stated that "the people of Florida did not intend the funds to be used to support the administrative costs of State agencies" and "we urge the Governor and legislative leaders to speak out strongly and clearly, affirming that the intent of [the amendment] was to purchase and manage conservation lands."⁸ Now back in circuit court on remand, the people of Florida await to see how the court will conclude the litigation over the purposes of the 2014 Florida Water and Land Legacy Act. 📌

Endnotes

- ¹ 2021 JD Candidate, University of Mississippi School of Law.
- ² FLA. STAT. ANN. § 375.011 (1963).
- ³ FLA. CONST. Art. IX, § 17 (1965) (Florida Constitution of 1885 revised in Revision of 1968).
- ⁴ FLA. CONST. Art. X, § 28 (2014).
- ⁵ Jennifer Kay, [Conservation Funding Ruling Reversed by Florida Appeals Court](#), BLOOMBERG ENVIRONMENT (Sept. 11 2019, 4:11 PM).
- ⁶ Preston Robertson, [FWF Defends Amendment 1 Decision in Court](#), FLORIDA WILDLIFE FEDERATION (July 17, 2019).
- ⁷ A motion for summary judgment is "a request without a trial because there is no genuine issue of material fact to be decided by a fact-finder—that is, because the evidence is legally insufficient to support a verdict in the nonmovant's favor." Black's Law Dictionary (11th Ed. 2019).
- ⁸ [Update on Amendment 1 lawsuit](#), FLORIDA DEFENDERS OF THE ENVIRONMENT (Sept. 11, 2019).

Can Local Governments Regulate Pesticides under FIFRA? A Maryland Court Decides

Catherine Janasie¹

As concerns about the potential negative health effects of pesticides continue to grow, county and local governments are increasingly passing legislation to restrict or outright ban the use of pesticides within their borders. Under the Federal Insecticide, Fungicide, and Rodenticide Act, known as FIFRA, the federal and state governments have express authority to regulate pesticides. The question then becomes, what authority do county and local governments also have to regulate? Unfortunately, the answer is: it depends. The U.S. Supreme Court has ruled that FIFRA does not prevent local regulation of pesticides, as long as local regulation is allowed by the state. Thus, while some states have specifically prevented county and local governments from regulating pesticides, a recent case in Maryland shows that a state can allow the local regulation of pesticides, even when state law is silent on the issue.

Regulatory Framework

Congress passed FIFRA in 1947 to establish labeling provisions and require the registration of pesticides sold in interstate commerce. Once the negative effects of pesticides on humans and the environment began to grow, Congress amended the law in both 1972 and 2003 to strengthen FIFRA's provisions. FIFRA's primary purpose "is to ensure that, when applied as instructed, pesticides will not generally cause unreasonable risk to human health or the environment."² Under the law's provisions, the U.S. Environmental Protection Agency (EPA) is directed to establish programs for the labeling, packaging, and registration of pesticides. FIFRA also bestows on EPA additional authorities, such as setting worker protection standards and designating restricted use pesticides.

FIFRA also explicitly gives certain authority to states, including regulating the sale and use of federally registered pesticides, but only to the extent the state does not allow something prohibited under FIFRA.³ However, FIFRA is silent as to the authority of local governments. This left open the question of whether any local regulatory action would be preempted under the law.

Local Authority to Regulate Pesticides

Preemption occurs when a higher level of government prohibits lower levels of government from passing laws that conflict with ones passed by the higher level of government. Thus, the federal government can preempt conflicting state and local laws, while a state government can preempt local laws. While the higher level of government can explicitly state that preemption will occur, it need not do so. Preemption can also be implied when the higher level of government has acted in such a way that a court can conclude that it intended to occupy the entire field of regulation.⁴

The U.S. Supreme Court has found that FIFRA does not preempt the local regulation of pesticides. In *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991), a property owner claimed that state and federal law preempted a town ordinance that regulated the use of pesticides. The Court held that Congress failed to expressly manifest any intent for FIFRA to pre-empt local law, and that FIFRA does not provide any evidence that Congress meant to preempt local regulation by implication. The Court found this even though FIFRA only uses the term "state," the definition of which does not include political subdivisions or municipalities. Further, the Court reasoned that FIFRA does not address all areas of pesticide regulation, showing Congress did not intend to occupy the field.

Regulation in Montgomery County, Maryland

In 2015, the County Council of Montgomery County, Maryland passed legislation to regulate the use of pesticides on both private and public property in the county. Among other things, the law contains requirements for pesticide retailers and applicators, including requiring applicators to inform customers about what pesticides they are using and provide notice to the public after a pesticide application. Further, the county law included restrictions on the types of pesticides that could be applied to lawns, playgrounds, mulched recreation areas, and children's facilities, which includes buildings that are occupied on a regular basis by children under six years old.



Photograph of a crop duster spraying agricultural land near the Choptank River in Caroline County, Maryland, courtesy of Matt Rath/Chesapeake Bay Program.

While Maryland law does not explicitly preempt, or allow, the local regulation of pesticides, pesticide companies, local businesses, and some residents challenged the Montgomery County law, claiming that it was preempted by state law. In August 2017, the Montgomery County Circuit Court ruled that the county ordinance was preempted by state law, finding that the state's pesticides laws gave the Maryland Department of Agriculture sole authority to regulate pesticides.⁵

However, Montgomery County appealed the decision, and earlier this year, the Court of Special Appeals found that the county ordinance was not preempted by state law.⁶ The court relied on several factors in its decision, such as the fact that after *Mortier*, the state legislature at the behest of the pesticide industry failed three times to pass legislation that would explicitly preempt local pesticide regulations. Likewise, after a 1985 state Attorney's General Opinion found that state law did not preempt local regulation, no subsequent amendments to Maryland's pesticide laws refuted this position.

Moreover, the court was persuaded by the fact that Maryland explicitly allows some local regulation of pesticides under the Chesapeake and Atlantic Coastal Bays Critical Area Program. Further, the court found that state regulation of pesticides was not so comprehensive as to prevent local regulation. Notably, the court seemed to be swayed by the need of local communities to control their exposure to pesticides, stating: "Accordingly, we conclude that the citizens of Montgomery County are not powerless to restrict

the use of certain toxins that have long been recognized as 'economic poisons' and which pose risks to the public health and environment."⁷

Conclusion

In July, the Maryland Court of Appeals, the highest court in Maryland, denied to hear the pesticide companies and other plaintiffs' appeal of this year's decision that did not find preemption of local regulation under Maryland law.⁸ Thus, local governments in Maryland now have the authority to regulate pesticides, as long as those regulations do not conflict with federal or state regulation under FIFRA. ❧

Endnotes

- ¹ Senior Research Counsel, National Sea Grant Law Center.
- ² *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Federal Facilities*, U.S. ENVTL. PROT. AGENCY.
- ³ 7 U.S.C. § 136v.
- ⁴ *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604-05 (1991).
- ⁵ *Complete Lawn Care, Inc. v. Montgomery Cnty.*, 2017 WL 3332362 (Md. Cir. Ct. 2017).
- ⁶ *Montgomery Cnty. v. Complete Lawn Care, Inc.*, 207 A.3d 695 (Md. App. 2019).
- ⁷ *Id.* at 711.
- ⁸ *Goodman v. Montgomery Cnty.*, 464 Md. 585 (2019).

Reflections on a National Sea Grant Law Center Fellowship

Amanda Nichols¹



Photograph of a swan, courtesy of Digital Eye Media.

In May 2016, I graduated with a J.D. from the University of Mississippi School of Law and began working in August of the same year towards an LL.M. in Environmental, Natural Resources, and Energy Law at Lewis and Clark College's Northwestern School of Law in Portland, Oregon. At that time, I assumed my first post-LL.M. job would be at a

yet-to-be-determined environmental non-profit organization or law firm somewhere in Florida (where I luckily passed the dreaded bar exam). Little did I know, I would actually find my ideal first position as an attorney back in Oxford, Mississippi as the Ocean and Coastal Law Fellow at the National Sea Grant Law Center (NSGLC).

While in law school at the University of Mississippi, I initially learned about the NSGLC when I was applying for a position as a student research intern. In that position, I was exposed to numerous ocean and coastal law issues on a national scale and enlightened to the wonderful possibility that an environmental attorney could potentially find success in the field without ever having to set foot in a court room. Consequently, when I learned in the fall of 2017 that the NSGLC was soliciting applications for its Ocean and Coastal Law Fellowship, I immediately applied and was, thankfully, offered the position. Over the past two years, I have been lucky to work on a number of interesting and important ocean and coastal law issues in a position that has set me up for what I hope will be a promising career in the larger field of environmental law.

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The Position and Selected Highlights

As the NSGLC's Ocean and Coastal Law Fellow, I primarily work with ocean and coastal law issues focusing on aquaculture in all of its forms—recreational and commercial, freshwater and saltwater, and land-based and open water. Generally, I research, publish, and present on legal and policy issues related to aquaculture, specifically, as well as agriculture and food law and ocean and coastal law, generally. While much of my time is spent in my office behind a computer, it would be untrue to say that all of my work is done there. In addition to writing articles, reports, and the ilk, the NSGLC has sent me all across the country to attend conferences and meetings where I am able to grow my knowledge of ocean and coastal law and oftentimes present on the products of my own legal research.

Though I have found virtually everything I have worked on while at the NSGLC to be interesting and important, there are several projects that stand distinct from the rest. First and foremost, I found my involvement with the NSGLC's "Overcoming Impediments to Shellfish Aquaculture through Legal Research and Outreach" project to be especially engaging and challenging. Legal and permitting issues are consistently ranked as a critical impediment to domestic aquaculture development, and a variety of legal conflicts can arise as states seek to encourage the development and expansion of their own shellfish aquaculture industries.

Furthermore, the regulatory landscape facing the aquaculture industry can be confusing and complicated. Consequently, the NSGLC partnered with several organizations in 2017 to examine such impediments with a goal of helping aquaculturists, regulators, and community members recognize and overcome certain barriers to shellfish aquaculture in order to find success in their related endeavors.² To accomplish this, attorneys from each project partner authored case studies examining a distinct regulatory barrier. I was tasked with showing how Nationwide Permit 48—a federal permit authorizing certain shellfish aquaculture activities issued by the U.S. Army Corps of Engineers under authority given to it by the Clean Water Act and Rivers and Harbors Act—is not always as successful at streamlining the shellfish aquaculture permitting process as many tied to the industry believe. To that end, I researched and wrote a case study included with those penned by other project partners in a comprehensive document that was released in March 2019.³ While researching and writing my case study was quite interesting, I found the outreach portion of the project to be especially enjoyable.

In order to conduct outreach on the findings of our research and solicit feedback from different user groups prior to publication, project partners attended several industry conferences spanning the United States over the last two years. Specifically, I was afforded the opportunity to attend and present at one of the largest aquaculture-related conferences in the nation—Aquaculture America—twice, with the 2018 meeting in Las Vegas, Nevada, and the 2019 meeting in New Orleans, Louisiana. At these meetings, I honed my public speaking and education skills by speaking to dozens of conference attendees on Nationwide Permit 48 and learned about many other aspects of aquaculture by attending other presenters' sessions. Furthermore, I was able to meet numerous people involved in the industry and discuss aquaculture issues in a way I would have never been able to while sitting behind a desk.


The Ocean and Coastal Law Fellow position has also allowed me to publish my writing in several internal and external publications. Notably, I co-authored an article along with a colleague that was eventually published in the ABA Section of Environment, Energy, and Resources' (SEER) food law edition of their *Natural Resources & Environment* magazine, thus bolstering my resume and adding to national ocean and coastal law discourse. Furthermore, researching and writing the article, entitled "Navigating the Kelp Forest: Current Legal Issues Surrounding Seaweed Wild Harvest and Aquaculture," allowed me to expand my knowledge of issues such as the federal statutory and regulatory framework governing the harvest and sale of seaweed as food.⁴

In addition to singular projects and reports, I was thrilled to be able to aid in the NSGLC's advisory service activities. The NSGLC's advisory service is a legal research service that examines various ocean and coastal law questions presented to it by the Sea Grant College Program and its constituents.⁵ In helping with this program, I was able to research and write on interesting and unique issues such as the ability of states to limit the importation of certain baitfish species as well as the applicability of National Pollutant Discharge Elimination System permit requirements to fish hatcheries and offshore farms.

In addition to these distinct opportunities, my time as the NSGLC'S Ocean and Coastal Law Fellow afforded me the opportunity to research and write numerous reports, fact sheets, and blog posts covering a myriad of related topics, including state right-to-farm laws, local zoning issues, genetically modified organisms, invasive species, and animal welfare. In many instances, I was also able to conduct related outreach in the form of webinars and conference presentations. In doing so, I was required to disseminate information effectively in varying ways, sometimes to a largely non-legal audience—necessitating that I grow my personal knowledge base and hone my communication skills.

Final Thoughts

All in all, I believe that my experience as the Ocean and Coastal Law Fellow for the National Sea Grant Law Center has been invaluable in broadening my knowledge of a myriad of environmental law issues, refining my legal research and

writing skills, and introducing me to numerous people and organizations with which I would be honored to work with in the future. As I prepare to leave this chapter of my professional life and move on to the next one, I can only hope that the next Fellow has as good of an experience as I did, for there is more than just football and Faulkner to be had in the small town of Oxford, Mississippi. There is the potential for meaningful professional growth in the field of ocean and coastal law (and, yes, perhaps a little football too). 

Endnotes

- ¹ Ocean and Coastal Law Fellow, National Sea Grant Law Center.
- ² Other project partners include: (1) the Rhode Island Sea Grant Legal Program at Roger Williams University School of Law, (2) the Virginia Coastal Policy Center at William & Mary Law School, (3) the Carl Vinson Institute of Government at the University of Georgia, and (4) the California Sea Grant Program.
- ³ To view this document, see *Overcoming Impediments to Shellfish Aquaculture Through Legal Research and Outreach: Case Studies*, THE NATIONAL SEA GRANT LAW CENTER ET AL. (Mar. 2019).
- ⁴ Catherine Janasie & Amanda Nichols, *Navigating the Kelp Forest: Current Issues Surrounding Seaweed Wild Harvest and Aquaculture*, NAT. RESOURCES & ENV'T, Summer 2018, at 17.
- ⁵ For more information about this service, please see *Advisory Service*, THE NATIONAL SEA GRANT LAW CENTER.

SPECIAL ANNOUNCEMENT

Be sure to check out our upcoming podcast on shellfish aquaculture:

LAW ON THE HALF SHELL

The first episode debuts on November 5th, 2019.

For more information visit:

<http://nsglc.olemiss.edu>



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Littoral Events

CERF 2019 25th Biennial Conference

November 3-7, 2019
Mobile, AL

For more information, visit: <https://www.cerf.science/conference-theme>

Virginia Coastal Policy Center's 7th Annual Conference

November 15, 2019
Williamsburg, VA

For more information, visit: <http://bit.ly/vcpc7conference>

RISE Conference 2019

November 18-20, 2019
Albany, NY

For more information, visit: <https://rise2019.org>