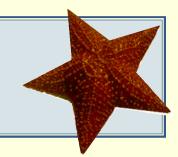
Volume 3, Number 1 2004



THE SEA GRANT LAW AND POLICY DIGEST is a bi-annual publication indexing the law review and other articles in the fields of ocean and coastal law and policy published within the previous six months. Its goal is to inform the Sea Grant community of recent research and facilitate access to those articles. The staff of the Digest can be reached at: the Sea Grant Law Center, Kinard Hall, Wing E - Room 256, P.O. Box 1848, University, MS 38677-1848, phone: (662) 915-7775, or via e-mail at sealaw@olemiss.edu.

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Journals featured in this issues of the *LAW AND POLICY DIGEST*. For more information, click on the name of the journal.

- ALASKA LAW REVIEW
- Arkansas Law Review
- BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW
- Coastal Management
- COLORADO JOURNAL OF INTERNATIONAL ENVIRONMENTAL LAW AND POLICY
- ENVIRONMENTAL LAW
- HARVARD ENVIRONMENTAL LAW REVIEW
- Iowa Law Review
- JOURNAL OF LAND USE AND ENVIRONMENTAL LAW
- JOURNAL OF MARITIME LAW AND COMMERCE
- JOURNAL OF TRANSNATIONAL LAW AND POLICY
- Marine Ecology Progress Series
- MARINE POLICY
- Marine Technology Society Journal
- MICHIGAN JOURNAL OF INTERNATIONAL LAW
- MISSOURI ENVIRONMENTAL LAW AND POLICY REVIEW
- National Research Council
- New York University Law Review
- Ocean and Coastal Management
- Ocean Development and International Law
- SEA GRANT COLLEGE PROGRAM, UNIVERSITY OF PUERTO RICO
- SOUTHWESTERN JOURNAL OF LAW AND TRADE IN THE AMERICAS
- Texas Tech Journal of Texas Administrative Law
- THOMAS JEFFERSON LAW REVIEW
- University of Pennsylvania Journal of International Economic Law
- VANDERBILT JOURNAL OF TRANSNATIONAL LAW
- Washington & Lee Law Review
- WILLIAM AND MARY ENVIRONMENTAL LAW AND POLICY REVIEW
- WWF (originally known as World Wildlife Fund)
- WYOMING LAW REVIEW



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Friedell, Steven F. "When Worlds Collide: The In Rem Jury and Other Marvels of Modern Admiralty." 35 Journal of Maritime Law & Commerce 143-169 (2004).

Friedell considers how admiralty, once its own field of jurisprudence, has been somewhat blurred into claims "at law". *Romero v. ITOC* and *Fitzgerald v. U.S. Lines Co.* are discussed.

Olawoyin, Adewale A. "Admiralty Jurisdiction in the Federal Courts of Nigeria: Innovation or Incongruity under the Admiralty Jurisdiction Act 1991?" 35 Journal of Maritime Law & Commerce 79-98 (2004).

Nigeria's Admiralty Jurisdiction Act is discussed, with regard to its unique jurisdiction claims over the operation of aircraft, inland oil pollution damage, and the Act's defiance of Nigeria's 1999 Constitution.

II. AQUACULTURE

Eagle, Josh, et. al. "Why Farm Salmon Outcompete Fishery Salmon." 28 Marine Policy 259-270 (2004).

Eagle describes the factors behind successful salmon farming, its impact on salmon market prices, and the fishing trade's future in economic, environmental, and political sustainability. One of these factors is fishery law, which restricts the capability of fishermen to compete with salmon farmers.

Helle, Sean M. "Aquaculture and Pollutants under the Clean Water Act: A Case for Regulation." 89 *Iowa Law Review* 1011-1049 (2004).

A Ninth Circuit opinion allowing the raising of mussels without a permit in the Puget Sound is critiqued, with regard to the Clean Water Act.

Howlett, Michael, and Jeremy Rayner. "(Not So) 'Smart Regulation'? Canadian Shellfish Aquaculture Policy and the Evolution of Instrument Choice for Industrial Development." 28 *Marine Policy* 171-184 (2004).

The article compares the progress and trends in Canadian aquaculture policy with "smart regulation" requirements. The authors find that Canadian aquaculture policy neglects the procedural tools to become legitimate, and instead emphasizes substantive policy tools to aid growth in the aquaculture industry.

Wilson, Shannon R. "Sustainable Aquaculture: An Organizing Solution in International Law." 26 Thomas Jefferson Law Review 491-516 (2004).

As aquaculture and fish farms have grown globally, so have the environmental consequences. The author discusses why and how aquaculture has increased in developing nations, what benefits and problems have arisen from international agreements like the U.N. Conference on the Environment and Development (UNCED) and from principles of customary international law, as well as U.N. efforts to promote methods of sustainable aquaculture.



Carpenter, David R. "On the Separation of Powers Challenge to the California Coastal Commission." 79 New York University Law Review 281-325 (2004).

California's Coastal Commission is under attack for violating the separation-of-powers doctrine in the way the Commissioners are appointed. While the CA Supreme Court reviews the case, Carpenter argues the appointment-by-legislature structure currently in place should be struck down as unconstitutional. Such would serve to lessen the political pressure on the commission and let it focus on its intended job of protecting the environment.

Crawford, Brian R., et. al. "Compliance and Enforcement of Community-Based Coastal Resource Management Regulations in North Sulawesi, Indonesia." 32 Coastal Management 39-50 (2004).

The increasing use of community-based coastal resource management in the Asia-Pacific region is discussed by the authors. They cite the ability of locals to successfully enforce local-created regulations as a major reason for the attractiveness of the management scheme. Co-management is also promoted as a viable alternative.

Dong, Ping. "An Assessment of Groyne Performance in the United Kingdom." 32 Coastal Management 203-213 (2004).

The article presents the results of a survey on groyne use in England to prevent coastal erosion. The survey was conducted to enhance the performance of groynes through better design. Groynes were found to be effective in preventing erosion, and rock, rather than more conventional timber, was found to perform best.

Escofet, Anamaría, and Ileana Espejel. "Geographic Indicators of Coastal Orientation and Large Marine Ecosystems: Alternative Basis for Management-Oriented Cross-National Comparisons." 32 Coastal Management 117-128 (2004).

The writers examine attributes of eleven coastal nations in the Americas, including 'geographic indicators of coastal orientation' and 'large marine ecosystems'. The study should be useful in speeding future cross-national environmental comparisons.

Gallagher, Anthony, et. al. "Constructs of Sustainability in Coastal Management." 28 Marine Policy 249-255 (2004).

The author reviews a survey given to experts on the theoretical, key concepts needed for sustainability, and the survey's use in creating a "Coastal Sustainability Standard."

Huda, A.T.M. Shamsul. "Interagency Collaboration for Integrated Coastal Zone Management: A Bangladesh Case Study." 32 Coastal Management 89-94 (2004).

A study of Bangladesh agencies actively protecting and developing agriculture and fishery coastal resources has shown that institutional ability, while needed, cannot ensure cooperation by multiple communities in the creation of an integrated coastal zone management scheme. To raise the chances for success, the author says that each

region or organization involved should be allowed to manage their respective component, and each agency should retain its independence, while working toward the agreed upon goal.

Kellogg, Wendy A., et. al. "The Current Coastal Resource Management Training Market in Ohio's Lake Erie Basin." 32 Coastal Management 271-291 (2004).

The present market for non-federal training in coastal resource management in the Ohio Lake Erie basin is described as a model for other coastal region training programs. Important issues discussed include a minimum level of knowledge required to be an effective coastal resource manager, how the trainer's responsibilities are spread out, and the need for an appreciation of a basin's economic base and inhabitant traits.

Kofron, Christopher P. "The Trial Intensive Management Area for Crocodiles: A Crocodile Removal Zone in Queensland, Australia." 32 Coastal Management 319-330 (2004).

Kofron examines the Queensland program of swimming area protection from, and removal of, the world's largest crocodile, the Estuarine Crocodile (Crocodylus porosus). During its three year trial run, not one crocodile attack was reported along the seventy kilometers of usually-problematic coastal swimming holes within the protection zone.

Lee, Chan-Won, and Young-Tack Kwon. "Dredging Index for Sediments Remediation Management." 32 Coastal Management 145-154 (2004).

Lee and Kwon discuss the dredging of contaminated sediments as an oft chosen remediation method in coastal waters. A dredging index was created to aid in determining the location of unpolluted areas and hot spots. Sediment quality and the degree of sediment quality degradation are more easily measured with the new system.

Noronha, Ligia. "Coastal Management Policy: Observations from an Indian Case." 47 Ocean and Coastal Management 63-77 (2004).

The author examines India's coastal resource management as it is applied to developments in the coastal state of Goa, famous for its tourism. The lack of an integrated approach to policy-making, combined with a failure for policymakers to understand the results of the policies they make, has hindered sustainability.

Palmer, Michael T. "The Chesapeake Bay Restoration Act of 2000: New Requirements for Federal Agencies." 28 William and Mary Environmental Law and Policy Review 375-422 (2004).

A breakdown of the new CBRA requirements is offered, with a description of pollutant threats to the Bay and the effectiveness of the regulations.

Ransom, Elizabeth A. "Wind Power Development on the United States Outer Continental Shelf: Balancing Efficient Development and Environmental Risks in the Shadow of the OCSLA." 31 *Boston College Environmental Affairs Law Review* 465-500 (2004).

The author discusses the costs and benefits of wind power on the Outer Continental Shelf (OCS), previously allowed oil and gas leases on the OCS, the use of the OCS by private corporations for wind power in light of the OCSLA, and the need for clear regulations before wind power development is allowed. Ransom suggests private wind power revenue payments to the government could assuage ecological dangers.

Sumalde, Zenaida M. "Transaction Costs of Community-Based Coastal Resource Management: The Case of San Miguel Bay, Philippines." 32 Coastal Management 51-60 (2004).

Sumalde reviews a study of the transaction costs (TC) in beginning a community-based coastal resource management system.

Wescott, Geoff. "The Theory and Practice of Coastal Area Planning: Linking Strategic Planning to Local Communities." 32 Coastal Management 95-100 (2004).

We scott looks at the major obstacles for coastal planning in achieving an integrated coastal management system. He describes the three-tiered coastal plan in Victoria, Australia for those seeking local coastal planning examples. Key elements include increased local community participation at every step of planning and a simple, understandable state strategy.

Wood, Nathan J., and James W. Good. "Vulnerability of Port and Harbor Communities to Earthquake and Tsunami Hazards: The Use of GIS in Community Hazard Planning." 32 Coastal Management 243-269 (2004).

To reduce the potential for loss of life and property damage, port and harbor towns should perform broad assessments using geographic information systems (GIS) to integrate natural, socioeconomic, and hazards information. An Oregon port town is used to demonstrate how GIS can be used to mitigate earthquake and tsunami hazards.

IV. CORAL REEFS

Tongson, Edgardo, and Marivel Dygico. "User Fee System for Marine Ecotourism: The Tubbataha Reef Experience." 32 Coastal Management 17-23 (2004).

The solution to the Tubbataha Reefs Natural Marine Park's financial problems came from the collection of fees and the sale of permits to its coral reef diving patronage. A survey, which the authors promote as invaluable, was given to divers utilizing the Philippine park to aid in finding out how much the public would pay to visit the waters.

V. DAM REMOVAL

"Rivers at Risk: Dams and the Future of Freshwater Ecosystems." WWF 1-48 (2004).

The report examines the risks dams pose to freshwater ecosystems, the species residing there, and the people who depend on their continued existence for survival. It focuses on large dams over sixty meters high, and river basins with multiple dams. WWF recommends that governments and dam builders follow the guidelines set out by the World Commission on Dams (WCD) (available at www.panda.org).



ECONOMICS

Guillotreau, Patrice."How Does the European Seafood Industry Stand After the Revolution of Salmon Farming: An Economic Analysis of Fish Prices." 28 Marine Policy 227-233 (2004).

Guillotreau examines the value spread change in European seafood markets due to salmon farming and some wild-caught species. The effects include the expanding of the cointegration theory to better analyze the "fish value chain" and its price transmissions, along with some benefits to European shoppers.

Huff, Julia LeMense. "Protecting Ecosystems Using Conservation Tax Incentives: How Much Bang Do We Get for Our Buck?" 11 Missouri Environmental Law & Policy Review 138-158 (2004).

Tax incentives that aid conservation are discussed, using Virginia and Oregon laws as models. The author states that land protected by tax incentives must be part of a larger conservation structure or be environmentally important to be protected cost effectively.

Pretes, Michael, and Elizabeth Petersen. "Rethinking Fisheries Policy in the Pacific." 28 Marine Policy 297-309 (2004).

The authors examine the debate over the use of government money to bankroll the tuna fishing of private companies. They suggest an alternative, and provide an example of success, in making offshore investments from proceeds of tuna fishing, to form a trust fund. The fund's earnings are then applied to private fishing ventures and other trade and industry interests.



ECOSYSTEM MANAGEMENT

Chenpagdee, Ratana, and Daniel Pauly. "Improving the State of Coastal Areas in the Asia-Pacific Region." 32 Coastal Management 3-15 (2004).

Sustainable coastal activities, economics, and resources; the management of coastal ecosystems; and coastal area planning were reviewed by the authors, in the context of Asia-Pacific coastal zones. A analysis of the regional coastal projects database is offered, as is a preview of a coastal ecosystems database, presently being built.

Christie, Donna R. "Living Marine Resources Management: A Proposal for Integration of United States Management Regimes." 34 Environmental Law 107-174 (2004).

Christie proposes the combining of living marine resources management to focus on improving and maintaining ecosystem health. She reviews the Magnuson-Stevens Fishery Conservation and Management Act, Marine Mammal Protection Act, the Endangered Species Act, and the problems associated with current marine management.

Kelly, C., et. al. "Management of Marine Wildlife Disturbance." 47 Ocean and Coastal Management 1-19 (2004).

The health of the bottlenose dolphin and basking shark, among other marine species in English waters, are being threatened by a surge in near-shore personnel watercraft, the public in general, and the inefficient British legislative structure. A study conducted in Britain shows the anthropogenic effects on a number of marine wildlife species in inshore waters. The authors recommend widespread education of citizens on using existing legislation, and integrating organizational marine management methods.

Lessmann, Ryan P. "Current Protections on the Galapagos Islands are Inadequate: the International Maritime Organization Should Declare the Islands a Particularly Sensitive Sea Area." 15 Colorado Journal of International Law and Policy 117-151 (2004).

Lessmann explains the importance of the Galapagos Islands, the pollution harming them, and the current state of local and international laws protecting the islands.

Wang, Hanling. "Ecosystem Management and Its Application to Large Marine Ecosystems: Science, Law, and Politics." 35 Ocean Development & International Law 41-74 (2004).

Wang reviews the need for, and the problems with, managing large marine ecosystems (LMEs). He argues that the complex nature of LMEs requires a multi-state, cooperative, ecosystem management method.

VIII.

ENDANGERED SPECIES

"Atlantic Salmon in Maine." National Research Council 1-260 (2004).

The article proposes a broad, statewide plan to save the imperiled Atlantic salmon in Maine waters. Atlantic salmon had a population of 500,000 in the early 1800s, but in 2001, as few as 1,000 survived (available at www.nap.edu).

"Endangered and Threatened Fishes in the Klamath River Basin: Causes of Decline and Strategies for Recovery." *National Research Council* 1-424 (2004).

The NRC discusses the survival of endangered Coho salmon, shortnose and Lost River suckers in the Klamath River of Oregon and California. Overfishing, obstructed migration routes, entrapment by water management structures, degradation of habitat, poor water quality, and invasive species have contributed to their decline (available at www.nap.edu).

Fantl, Nicholas C. "Not So Critical Designations: The Superfluous Nature of Critical Habitat Designations Under the Endangered Species Act." 57 Arkansas Law Review 143-169 (2004).

Fantl explores the framework of critical habitat under the ESA, when designation as critical is not necessary, how courts have misapplied the ESA in the past, and how they should apply it in the future.

Kellogg, Bridget. "The Dam Controversy: Does the Endangered Species Act Apply Internationally to Protect Foreign Species Harmed by Dams on the Colorado River?" 13 Journal of Transnational Law and Policy 447-474 (2004).

Kellogg argues that U.S. dams are "taking" protected species in Mexico, by their overuse of water, in violation of the Endangered Species Act. She explains the terms of the ESA and the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Feb. 3, 1944, U.S.-Mex., 3 U.N.T.S. 313.

"Managing the Columbia River: Instream Flows, Water Withdrawals, and Salmon Survival." *National Research Council* 1-172 (2004).

The article urges Canada, tribal groups, and basin states like Washington to establish a system for considering water withdrawal permits, in light of the impacts of water withdrawal on the survival of Columbia River salmon (available at www.nap.edu).

"Nonnative Oysters in the Chesapeake Bay." *National Research Council* 1-344 (2004). The article rallies for a delay implanting disease-resistant, reproductive Suminoe oysters from Asia into the Chesapeake Bay until a thorough study of the environmental dangers of such a move can be completed (available at www.nap.edu).

Richards, Beth. "The Pump Don't Work Because the Bureau Took the Handle: The United States Bureau of Reclamation's Discretion to Reduce Water Deliveries to Comply With the Endangered Species Act." 4 Wyoming Law Review 113-154 (2004). Richards examines the prior appropriations doctrine, the Endangered Species Act, and water delivery contracts, focusing on the 10th Circuit's 2003 decision in Rio Grande Silvery Minnow v. Keys.

Sinden, Amy. "The Economics of Endangered Species: Why Less is More in the Economic Analysis of Critical Habitat Designations." 28 Harvard Environmental Law Review 129-214 (2004).

Sinden explains the role of economics in the Endangered Species Act, the failure of the Fish and Wildlife Service to execute the ESA's critical habitat requirements, and how the 2001 *Cattle Growers* 10th Circuit opinion has negatively affected complex economic analysis in the endangered species arena.

FISHERIES MANAGEMENT

XIX.

Adler, Jonathan H. "Conservation Through Collusion: Antitrust as an Obstacle to Marine Resource Conservation." 61 Washington & Lee Law Review 3-78 (2004).

Adler relays the antitrust problems with fishery management, including the fixing of prices, output limits and fishing area distribution. He also points out how antitrust prosecution can hinder oil and pollution controls.

Anuchiracheeva, Supaporn, et. al. "Systematizing Local Knowledge Using GIS: Fisheries Management in Bang Saphan Bay, Thailand." 46 Ocean and Coastal

Management 1049-1068 (2003).

The authors show how using Participatory Rural Appraisal and Geographical Information Systems (GIS) at Bang Saphan Bay, Prachuap Khiri Khan Province, Thailand, they were able to effectively organize, study and create graphic displays of crucial local knowledge, for use in the management of fisheries. Data collected on fishing locations; times, techniques, and technology used; and the species of fish sought, gathered from local fishermen, aided in fishery management and planning, including rights-based fisheries and co-management.

Bundy, Alida. The Ecological Effects of Fishing and Implications for Coastal Management in San Miguel Bay, the Philippines." 32 Coastal Management 25-38 (2004).

Bundy explores the connection between fishing and the ecosystem for fishery management in San Miguel Bay. Her conclusion was that management should be adaptive and utilize available data of the changing needs of the fishery for effective administration of the Bay.

Cheong, So-Min. "Managing Fishing at the Local Level: The Role of Fishing Village Cooperatives in Korea." 32 Coastal Management 191-201 (2004).

This article describes local fisheries management in Korean fishing village cooperatives, their historical influences, and how local laws have been altered to meet changing environmental needs.

Christie, Donna R. "Marine Reserves, the Public Trust Doctrine and Intergenerational Equity." 19 *Journal of Land Use and Environmental Law* 427-434 (2004).

Christie denounces the failure of fishery management due to its focus on protecting a single species. Instead, she promotes ecosystem-based management, which focuses on the species in trouble, its predators and prey, climate effects on the area, and other habitat-wide elements. Marine reserves could serve as the ideal testing grounds for such management of fisheries.

Domínguez-Torreiro, Marcos, et. al. "Co-management Proposals and their Efficiency Implications in Fisheries Management: the Case of the Grand Sole Fleet." 28 Marine Policy 213-219 (2004).

The authors document the use of co-management in a fishery, which involves getting those using the resources involved in managing the fishery for sustainability. They discuss the factors and requirements of co-management that ensures cost-effective allotment of resources. A Spanish community and fleet are used as examples of a fishery moving to co-management.

Fagenholz, Andrew. "A Fish In Water: Sustainable Canadian Atlantic Fisheries Management and International Law." 25 *University of Pennsylvania Journal of International Economic Law* 639-667 (2004).

The article focuses on the depletion of Canada's fisheries by overfishing, including a

chronology of the fishery's decline. Fagenholz explains how the 1982 United Nations Law of the Sea (UNCLOS) agreement, the 1995 U.N. Fish Stocks Agreement, the Food and Agriculture Organization Code of Conduct for Responsible Fisheries, and the Northwest Atlantic Fisheries Organization (NAFO) can combine to offer both local and international solutions to revive a sustainable Canadian fishing industry.

Felthoven, Ronald G., and Catherine J. Morrison Paul. "Directions for Productivity Measurement in Fisheries." 28 *Marine Policy* 161-169 (2004).

A review of fishery productivity literature is presented, along with ideas for improvement. The authors propose adding bycatch levels and clear descriptions of environmental and stock fluctuations to fishery reports, and reducing the economic assumptions usually included in such reports.

Gilman, Eric, et. al. "Performance Assessment of an Underwater Setting Chute to Mitigate Seabird Bycatch in the Hawaii Pelagic Longline Tuna Fishery." 47 Ocean and Coastal Management 985-1010 (2003).

The authors discuss the high mortality rate for seabirds in longline fisheries. A study in Hawaii's pelagic longline tuna fishery indicates underwater setting technology, which is out of the view and possible depth of diving seabirds, can provide a safe, inexpensive and effective alternative, while giving anglers better fishing efficiency.

Jentoft, Svein, and Knut H. Mikalsen. "A Vicious Circle? The Dynamics of Rulemaking in Norwegian Fisheries." 28 Marine Policy 127-135 (2004).

The Norwegian method of fisheries management rule production is discussed to illustrate the typical managed fishery; a mess of extremely complex, ever-changing rules and regulations. The underlying cause seems to be the adoption of new rules to meet new fishing practices and concerns, followed by requests for, and adoption of, rules from those being regulated. The authors examine possible solutions for the resulting myriad of regulations that cause enforcement costs to rise and fishery management legitimacy to be questioned.

Lobe, Kenton. "The *Padu* System of Community-based Fisheries Management: Change and Local Institutional Innovation in South India." 28 *Marine Policy* 271-281 (2004).

Lobe explains the *padu* fishery management system, an Indian caste-based structure giving rights to fishermen that use stake nets to catch shrimp. Padu employs a lottery system which allows fishing on a rotational basis.

McBeath, Jerry. "Greenpeace v. National Marine Fisheries Service: Steller Sea Lions and Commercial Fisheries in the North Pacific." 21 Alaska Law Review 1-42 (2004).

McBeath discusses the four Greenpeace cases concerning the National Marine Fisheries Service and its failure to properly enforce NEPA and the Endangered Species Act. The cases were brought to protect the Stellar Sea Lion, a North Pacific animal, which was on the verge of extinction in the 1990s. The article serves as an important demonstration for using science to get the federal government to enforce environmental statutes.

Nielsen, Jesper Raakjær, et. al. "Fisheries Co-management—An Institutional Innovation? Lessons from South East Asia and Southern Africa." 28 Marine Policy 151-160 (2004).

The authors review a study on fisheries co-management in South East Asian and Southern African coastal and freshwater fisheries. Examples of beneficial results and implementation problems are given.

X. INTERNATIONAL TREATIES

Egede, Edwin. "The Outer Limits of the Continental Shelf: African States and the 1982 Law of the Sea Convention." 35 Ocean Development & International Law 157-178 (2004).

Egede examines the current and future struggle of African coastal states to meet their obligations regarding the outer continental shelf, under the Law of the Sea Convention.

Macnab, Ron. "The Case for Transparency in the Delimitation of the Outer Continental Shelf in Accordance with UNCLOS Article 76." 35 Ocean Development & International Law 1-17 (2004).

Macnab critiques Article 76 of the UN Convention on the Law of the Sea, which allows coastal states to present evidence to the Commission on the Limits of the Continental Shelf on their proposed outer continental shelf national boundaries. Article 76 does not require notice to be given to any affected or interested nations, disclosure of the coastal state's scientific rationale or data relied upon in determining the proposed boundary, nor must the Commission's explain its ruling on the boundary. Macnab promotes solutions to these deficiencies, before outer continental shelf boundaries become set in stone.

Rothwell, Donald R. "Building on the Strengths and Addressing the Challenges: The Role of Law of the Sea Institutions." 35 Ocean Development & International Law 131-156 (2004).

Rothwell analyzes the impact of new institutions created by the Law of the Sea Convention, including the International Tribunal for the Law of the Sea, the Commission on the Limits of the Continental Shelf, and the International Sea-Bed Authority. He argues that these institutions promote the basic standards of the Convention, including the common heritage principle, and discusses the discord over forum shopping, the easing of regulations in naval space, and treaty parallelism.

Serdy, Andrew. "One Fin, Two Fins, Red fins, Bluefins: Some Problems of Nomenclature and Taxonomy Affecting Legal Instruments Governing Tuna and other Highly Migratory Species." 28 *Marine Policy* 235-247 (2004).

Serdy illustrates how tunas are named and identified in the UN Convention on the Law of the Sea (UNCLOS), the UN Fish Stocks Agreement, and other fisheries

treaties. He then discusses the UN Food and Agriculture Organization's (FAO) acknowledgment that Atlantic and Pacific stocks of *Thunnus thynnus*, formerly-believed to be only separate stocks, are actually two individual species. He promotes the use of Latin scientific designations for fish, rather than the common names used in treaties, until FAO names become more widely accepted.

Smith, Ronald C., et. al. "Year in Review: The International Environmental Community Celebrates a Series of Successes but Laments the One that Got Away." 13 Journal of Transnational Law and Policy 499-532 (2004).

The authors recount the environmental triumphs and failures of 2003, including, among others, the Millineum Ecosystem Assessment, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the World Summit on Sustainable Development, the Durban Accord on protecting wildlife, and the EU's stringent fishing limit on nearly-extinct cod and hake populations in European waters.

Stokke, Olav Schram, and Clare Coffey. "Precaution, ICES and the Common Fisheries Policy: a Study of Regime Interplay." 28 *Marine Policy* 117-126 (2004).

Stokke and Coffey discuss how the UN Fish Stocks Agreement increased the power to members of the International Council for the Exploration of the Sea and the EU Common Fisheries Policy. The Fish Stocks Agreement maintained international cooperation, while allowing for greater safety margins, better long-term planning, and recovery preparation in case of future species declines.

XI. INVASIVE AND NON-INDIGENOUS SPECIES

Semmens, Brice X. et. al. "A Hotspot of Non-Native Marine Fishes: Evidence for the Aquarium Trade as an Invasion Pathway." 266 *Marine Ecology Progress Series* 239-244 (2004).

The authors describe the many non-native invasive species living off the reefs of Florida, and their likely source, according to the Reef Environmental Education Foundation (REEF): Aquarium releases. There is a link between the number of ornamental fish imported into the U.S., and the likelihood of those fish being spotted off the East Coast.

XII. MARINE PROTECTED AREAS

Helvey, Mark. "Seeking Consensus on Designing Marine Protected Areas: Keeping the Fishing Community Engaged." 32 Coastal Management 173-190 (2004).

The author examines the group formed to consider creating a marine reserve in the Channel Islands National Marine Sanctuary in California, and lessons learned from the group's inability to agree on a network design. It is essential for the fishing community to stay fully engaged in order to reach a consensus.

Karamanlidis, Alexandros, et. al. "Monitoring Human Activity in an Area Dedicated to the Protection of the Endangered." 32 Coastal Management 293-306 (2004).

The article discusses the severe decline of Mediterranean monk seal populations and a study of the marine protected area set up to protect the seals. The study on human usage of The National Marine Park of Alonnisos, Northern Sporades enabled park management to adjust their resources as needed, and has given baseline data crucial for future management. Efforts have been successful in protecting monk seal "pupping sites" and lowering seal mortality from human activities.

Lindholm, James, et. al. "Role of a Large Marine Protected Area for Conserving Landscape Attributes of Sand Habitats on Georges Bank (NW Atlantic)." 269 *Marine Ecology Progress Series* 61-68 (2004).

A study performed in Georges Bank revealed the damage caused by mobile bottom-contact fishing gear, including the removal of fauna structures, the smoothing of sand ripples and the increased mortality rates for juvenile Atlantic Cod. Some areas in Georges Bank damaged by mobile fishing gear took more than a decade to heal.

Scholz, Astrid, et. al. "Participatory Socioeconomic Analysis: Drawing on Fishermen's Knowledge for Marine Protected Area Planning in California." 28 *Marine Policy* 335-349 (2004).

A study was done in California to examine the potential for combining geospatial analysis and fisherman experience into the planning of marine protected areas. The resulting database aids in identifying previous conflicts on MPA siting plans avoiding or lessening future quarrels.

XIII. MARITIME BOUNDARIES

Donovan, Thomas W. "Suriname-Guyana Maritime and Territorial Disputes: A Legal and Historical Analysis." 13 Journal of Transnational Law & Policy 41-98 (2003).

The author details the over two hundred year-old dispute over three areas in the countries' territorial sea, EEZ, and Outer Continental Shelf, known for its petroleum resources. The UNCLOS arbitration is working to resolve one of the three disputed boundary lines, with Guyana asking Suriname to avoid behavior that delays oil exploration and to let Guyana fisherman work in peace.

XIV. NEPA

Bisbee, Dorothy W. "NEPA Review of Offshore Wind Farms: Ensuring Emission Reduction Benefits Outweigh Visual Impacts." 31 Boston College Environmental Affairs Law Review 349-384 (2004).

The author considers the role of NEPA review in assessing the emissions from, and aesthetic impacts of, wind farms off the U.S. coast, as compared to existing, onshore

wind farms. She suggests the Environmental Impact Statement, required by NEPA, should be amended to more accurately review offshore wind farm impacts.

Heisler, Richard. "A Whale of a Tale: NRDC v. U.S. Navy and the Attempt to Exempt the Exclusive Economic Zone from the National Environmental Policy Act." 10 Southwestern Journal of Law and Trade in the Americas 125-170 (2003 / 2004).

The NRDC case is examined, where whales beached themselves due to the U.S. Navy's use of sonar near the Bahamas. The author then describes the Navy's claim that the EEZ is exempt from NEPA requirements.

Wickersham, Jay. "Sacred Landscapes and Profane Structures: How Offshore Wind Power Challenges the Environmental Impact Review Process." 31 Boston College Environmental Affairs Law Review 325-347 (2004).

Wickersham examines the proposed Cape Wind power generation project in the Nantucket Sound, as it proceeds through Massachusetts Environmental Policy Act (MEPA) and NEPA review. He addresses the need for a system of ocean development planning and the natural bias of people to think that all human activity harms nature.

XV. OCEAN OBSERVING SYSTEMS

Ali, Kamal-Deen. "Legal and Policy Dimensions of Coastal Zone Monitoring and Control: The Case in Ghana." 35 Ocean Development & International Law 179-194 (2004).

Ghana is trying to establish an ocean monitoring system using the existing global position system (GPS). The new system will help Ghana develop and defend its sea resources. The author reviews the Ghana system, and discusses its impact on the rights of other coastal states.

Worcester, Peter, and Walter Munk. "The Experience with Ocean Acoustic Tomography." 37 Marine Technology Society Journal 78-82 (2003/2004).

The authors describe the failure of existing Federal regulations to differentiate between activities causing minor, non-harmful changes to marine mammal behavior and those causing problems with survival and procreation. By way of example, they show how the use of ocean acoustic tomography, used to study ocean temperature, current fields, and their changes, has been hindered by today's regulatory structure.

XVI. OCEAN GOVERNANCE

Suárez de Vivero, Juan Luis, and Juan Carlos Rodríguez Mateos. "New Factors in Ocean Governance. From Economic to Security-based Boundaries." 28 *Marine Policy* 185-188 (2004).

As nations seek protection from migratory, environmental, and hostile foreign military threats, the importance of ocean boundaries has grown in recent years. The

boundaries are desired as much for security concerns as for traditional economic factors. However, some nations may go too far with security implementation, leading to unilateral restrictions on travel through the EEZ, in violation of existing multilateral agreements.

Tanaka, Maki. Lessons from the Protracted MOX Plant Dispute: A Proposed Protocol on Marine Environmental Impact Assessment to the United Nations Convention on the Law of the Sea." 25 Michigan Journal of International Law 337-428 (2004).

Nations have an interest in the dangerous activities of their neighbors, especially those that could wreak environmental havoc on many states in the region. A marine environmental impact statement amendment to UNCLOS is called for by the author, with the 2002 shipment of plutonium into the United Kingdom, without much notice to nearby states, cited as an example.

XVII. OFFSHORE INSTALLATIONS

Kaiser, Mark J., and Allan G. Pulsipher. "A Binary Choice for the Removal of Offshore Structures in the Gulf of Mexico." 28 Marine Policy 97-115 (2004).

The factors involved in removing an offshore structure with or without explosives are explained, including a risk assessment of environmental, cost, safety, technical and other considerations. An empirical model of Gulf of Mexico oil and gas structures removed between 1986-2001 provides the data necessary for such calculations.

Schroeder, Donna M., and Milton S. Love. "Ecological and Political Issues Surrounding Decommissioning of Offshore Oil Facilities in the Southern California Bight." 47 Ocean and Coastal Management 21-48 (2004).

The authors describe some of the ecological and political issues and choices in decommissioning offshore oil and gas production platforms. Californians are not as receptive as those near the Gulf of Mexico in supporting "rigs-to-reefs" programs. Coastal management should consider making reef-bearing platforms into marine protected areas.

XVIII. OIL AND GAS DEVELOPMENT

American Petroleum Institute, et. al. "The Oil and Gas Industry Perspective on the Marine Mammal/Human-generated Sound Issue." 37 Marine Technology Society Journal 83-84 (2003/2004).

The authors review the U.S. oil and gas industry's cooperation with the Federal government regarding the protection of ocean mammals, including the Whale Seismic Study and seismic mitigation procedures like slowly raising the sound levels of air gun and visually monitoring the waters during seismic activities.

Rabinowitz, Philip D., et. al. "Geology, Oil and Gas Potential, Pipelines, and the Geopolitics of the Caspian Sea Region." 35 Ocean Development & International Law 19-40 (2004).

The article debates the economic, environmental, and political issues arising with the exploration and mining of Caspian Sea fossil fuels. The ownership of reserves, possible earthquakes, mud volcanoes, gas hydrates, pollution, sea level changes, desertification, and transportation routes are discussed.

XIX. POLLUTION

de Gennaro, Michael A. "Oil Pollution Liability and Control Under International Maritime Law: Market Incentives as an Alternative to Government Regulation." 37 Vanderbilt Journal of Transnational Law 265-298 (2004).

The author explains why current U.S. and international law has failed to curb oil spills on the ocean, including inadequate language in the laws and the failure to consider the "economic realities" of ocean shipping. Market-based regulation of oil pollution that allows the free exchange of pollution permits is promoted as a viable alternative to existing laws.

Draper, Randon H. "Resuscitatingthe Victims of Ship Pollution: the Right of Coastal Inhabitants to a Healthy Environment." 15 Colorado Journal of International Law and Policy 181-208 (2004).

Draper encourages coastal inhabitants to press for increased enforcement of shipping standards and environmental laws. He examines the Prestige oil tanker calamity of 2002 and its effect on the Spanish ecosystem, pollution from oceangoing vessels, and reviews current conventions like MARPOL.

Hawkins, Andrew T. "Federal Supremacy, Sovereign Immunity, and Cooperative Federalism—The Relationship between Federal Facilities and State Environmental Laws." 5 Texas Tech Journal of Texas Administrative Law 63-85 (2004).

The question of whether federal facilities located on state lands are subject to or exempt from state environmental permit regulations and punitive fines is discussed. State and Federal sovereignty, the Resource Conservation Recovery Act, Clean Water Act, Clean Air Act, and related case decisions are explored in this context.

Norgart, Cynthia D. "Florida's Impaired Waters Rule: Is there a 'Method' to the Madness?" 19 Journal of Land Use and Environmental Law 347-376 (2004).

Florida's Department of Environmental Protection passed a controversial rule outlining a methodology to identify impaired bodies of water, for TMDL purposes. The author analyzes the rule, case decisions, Florida's water quality standards, and pronounces the rule an improvement over previous Florida impaired water determination methods.



RECREATION AND TOURISM

Thomas, Jr. Stephen. "State Regulation of Cruise Ship Pollution: Alaska's Commercial Passenger Vessel Compliance Program as a Model for Florida." 13 Journal of Transnational Law & Policy 533-557 (2004).

The authors call on Florida to enact a cruise ship pollution control legal structure, similar to Alaska's system. Federal pollution law preemption is discussed, as is *Ray v. Atlantic Richfield* and *Locke*, two U.S. Supreme Court cases affecting cruise ship pollution control.



REGIONAL MANAGEMENT

Braxton, B.C. and C. Davis. "Regional Planning in the US Coastal Zone: a Comparative Analysis of 15 Special Area Plans." 47 Ocean and Coastal Management 79-94 (2004).

Coastal regional planning is compared in various U.S. regions. The authors promote regional planning as a key tool in coastal management, and suggest federal guidelines be improved for Special Area Management Plans, through the Coastal Zone Management Act.

Haughton, Milton O., et. al. "Establishment of the Caribbean Regional Fisheries Mechanism." 28 *Marine Policy* 351-359 (2004).

Cooperative fishery resource management is a daunting but necessary task for Caribbean nations, due to local fish stocks that regularly move across the states' aquatic boundaries. The authors discuss the 2002 CARICOM Caribbean Regional Fisheries Mechanism (CRFM), and its system of regional fishery management.

Le Tissier, M.D.A., et. al. "A Training Framework for Understanding Conflict in the Coastal Zone." 32 Coastal Management 77-88 (2004).

The authors explain why the coastal zone is often the scene of conflict between groups competing for scarce resources and land. A structure is then offered to solve problematic differences in analysis, translation, and policy creation.



SCIENTIFIC RESEARCH

Gordon, Jonathan, et. al. "A Review of the Effect of Seismic Surveys on Marine Mammals." 37 Marine Technology Society Journal 16-34 (2003/2004).

Though the effects of seismic air gun noise on marine mammals are small, biological consequences have been easier to see. Air gun noise can harm a mammal physically, psychologically, behaviorally, and even cause the mammal's prey to relocate to new habitat. Despite these observed effects, the authors urge cautious regulation in managing seismic activity possibly affecting mammals, due to the many unknowns.

Heitmeyer, Richard M., et. al. "Shipping Noise Predictions: Capabilities and Limitations." 37 Marine Technology Society Journal 54-65 (2003/2004).

The article describes the inaccuracy of many models designed to test the level of noise generated by ocean shipping, due mainly to incomplete or incorrect shipping or environmental information.

Hofman, Robert J. "Marine Sound Pollution: Does it Merit Concern?" 37 Marine Technology Society Journal 66-77 (2003/2004).

Hofman reviews the Navy's use of mid-frequency tactical sonar and the effects on marine mammals. He presents alternatives to Congress' National Defense Authorization Act of 2004, which changes the Marine Mammal Protection Act's definitions of harassment and allows the Secretary of Defense to exempt military readiness exercises from the MMPA.

Popper, Arthur N., et. al. "Anthropogenic Sound: Effects on the Behavior and Physiology of Fish." 37 Marine Technology Society Journal 35-40 (2003/2004).

Fish have similar inner ear hearing receptors to those of marine mammals, and as such, seismic noise that disturbs or injures mammals may also disturb and injure fish. The authors review current literature on the subject.

Tyack, Peter, et. al. "Controlled Exposure Experiments to Determine the Effects of Noise on Marine Mammals." 37 Marine Technology Society Journal 41-53 (2003/2004).

The benefits, design features, and methods of Controlled Exposure Experiments (CEEs) are discussed, with regard to studying how marine mammals are affected by underwater noise. CEEs can be helpful in determining the acoustic threshold of mammals, based on their responsive behavior.

Wartzok, Douglas, et. al. "Factors Affecting the Responses of Marine Mammals to Acoustic Disturbance." 37 Marine Technology Society Journal 6-15 (2003/2004).

The authors offer a summary of how ocean noise affects marine mammals' short-term and long-term behavior, as well as the future of marine mammal research.

Zea, Sven and Ernesto Weil. "Taxonomy of the Caribbean Excavating Sponge Species Complex Cliona Caribbaea- C. Aprica- C. Langae (Porifera, Hadromarida, Clionaidae). PRU-R-03-(7) Sea Grant College Program, University of Puerto Rico (2003).

Sponges that excavate and encrust rock and damage living coral have often been confused with other types of sponges. The authors tell of their research to positively identify three different species of these "digging" sponges in the Caribbean and South America.



SECURITY

Valencia, Mark J. "Summary of the Bali Dialogue." 28 Marine Policy 7-12 (2004).

The author recounts some of the event leading to the reluctance of some nations to

allow military and intelligence activities in the EEZ near their coasts over concerns of security. He suggests there may be some agreement that EEZ activity should not damage resources or the environment. Key to settling the issue is the defining of terms like 'peaceful purpose', 'peaceful activity', and 'scientific research.'

Van Dyke, Jon M. "Military Ships and Planes Operating in the Exclusive Economic Zone of Another Country." 28 *Marine Policy* 29-39 (2004).

Some coastal nations dispute the right of navies to operate in the EEZ near their land, citing protection of their coastal resources, population, and environment. The status of hydrographic surveys is also in the air, as to whether it is marine scientific research, requiring the coastal state's permission.

XXIV. SHORELINE MANAGEMENT

Juda, Lawrence and Richard Burroughs. "Dredging Navigational Channels in a Changing Scientific and Regulatory Environment." 35 Journal of Maritime Law and Commerce 171-218 (2004).

The authors explore the regulations covering the dredging of ports and shipping channels, the disposal of dredged material, and problems that cause extensive delays in completing such projects. The two key problems discussed are the lack of regulatory certainty and the state of unclear scientific assessments as to what constitutes dredged material pollution.

XXV. SUSTAINABLE DEVELOPMENT

Rodabough, Samuel A. "Where the Oregon Trail Meets the Silk Road: Why China's Path to Sustainability Should Bypass Oregon." 13 Pacific Rim Law & Policy Journal 199-227 (2004).

China is looking to Oregon for ideas on sustainable environmental, economic, and social development, but Rodabough suggests China would do better to follow its own, current path of reform. The Oregon model conflicts with many of China's stated best interests, including a limit on economic growth.

Shabman, Leonard, and William Cox. "Urban Water Supply and the Environment: Extending the Reach of Section 404 of the Clean Water Act." 23 Virginia Environmental Law Journal 75-109 (2004).

Permit review under section 404 of the CWA and regulatory frameworks have made it very difficult for cities to construct or negotiate the use of water supply facilities to meet the needs of their citizenry. Investments in water supply, the regulatory structures used, and the CWA's section 404 are described, including "sequencing" and the "public interest review."



XXVI. TAKINGS

Fork, Brian C. "A First Step in the Wrong Direction: Slavin v. Town of Oak Island and the Taking of Littoral Rights of Direct Beach Access." 82 North Carolina Law Review 1510-1524 (2004).

Fork explains how the North Carolina Court of Appeals misapplied two state statutes in the protection of sea turtle habitat by cutting off beach landowners from accessing the beach and water directly from their property, while failing to pay compensation. Fork offers solutions to the situation, including the construction of fenced beach paths to the water, or allowing landowners to construct elevated walkways to the water, built above the fence and beach habitat.

Guy, Donald C. and James E. Holloway. "Finding the Development Value of Wetlands and Other Environmentally Sensitive Lands Under the Extent of Interference with Reasonable Investment-Backed Expectations." 19 *Journal of Land Use and Environmental Law* 297-345 (2004).

Guy and Holloway examine the development, use, and takings of sensitive lands in light of *Palazzolo v. Rhode Island*. The authors suggest the market value of real estate involved in takings cases be determined by real estate appraisal experts, to ensure just compensation and measure the level of investment-backed expectations interference.

Hart, John F. "Fish, Dams and James Madison: Eighteenth-Century Species Protection and the Original Understanding of the Takings Clause." 63 *University of Maryland School of Law* 287-319 (2004).

Hart recounts the fish passage laws of the 1700's, which required mill owners and others blocking rivers to construct new dams or mills, or modify existing ones, in a way to allow fish to pass through. He then compares the passage laws with current wildlife protection laws, in the context of the Fifth Amendment Takings Clause.

Houck, Oliver A. "More Unfinished Stories: Lucas, Atlanta Coalition, and Palila/Sweet Home." 75 University of Colorado Law Review 331-432 (2004).

Houck recounts the personal stories and procedural histories underlying Lucas v. South Carolina Coastal Council, Atlanta Coalition on the Transportation Crisis, Inc. v. Atlanta Regional Commission, Palila v. Hawaii Department of Land and Natural Resources, and Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon. The article provides insight into what the real people involved in the takings lawsuits dealt with, and where they are now.



XXVII. UNDERWATER CULTURAL HERITAGE

Dromgoole, Sarah. "Murky Waters for Government Policy: the Case of a 17th Century British Warship and 10 Tonnes of Gold Coins." 28 *Marine Policy* 189-198 (2004).

The author discusses the deal between U.S. based Odyssey Marine Exploration, Inc. and the United Kingdom, for the recovery of gold from the HMS Sussex, a

British battleship that sank off the coast of Spain in 1694. She reviews the agreement with regard to the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage. Her conclusion is that the British government is acting within the best interests of the public in attempting to recover its contracted portion of the estimated hundreds of millions, to a billion dollars or more, of gold and/or silver on board.

XXVIII. WETLANDS

Kharod, Anjali. "Wetlands Regulatory Morass: The Missing *Tulloch* Rule." 15 Villanova Environmental Law Journal 67-88 (2004).

The U.S. Supreme Court failed to discuss the *Tulloch* rule in a recent dredged material case, *Borden Ranch Partnership v. U.S. Army Corps of Engineers*. The author reviews the *Tulloch* Rule in light of *Borden Ranch* and details the regulation of wetlands in the U.S.

Nolan, Timothy J. and Steven P. Aggergaard. "Get Your Hands Off My Depot!" 13 Business Law Today27-31 (2004).

The authors explore *Penn Central* and its recent progeny, which have been used many times recently to defeat land regulation by the government. They also offer advice, based on this line of cases, to those who represent land developers.

XXIX.

WHALING

Halverson, Sonja Marta. "Small State with a Big Tradition: Norway Continues Whaling at the Expense of Integration and Nordic Cooperation." 31 Syracuse Journal of International Law and Commerce 121-148 (2004).

The author discusses the history of whaling, the legal status of Norwegian whaling, the failure of the International Whaling Commission to enforce laws, and the effects of Norway's whaling on the European Union and neighboring states.