





PREMIERE ISSUE

Welcome to the premiere issue of the Sea Grant Law Center's LAW AND POLICY DIGEST! The DIGEST is a bi-annual on-line publication intended to notify the Sea Grant Community of recently published research in the fields of ocean and coastal law and policy.

Here at the Law Center, we understand how difficult it can be to locate the research results and published articles of individuals outside our organization. It is our hope that the DIGEST will provide the community with easy access to pertinent law review articles and published policy research. The articles indexed in the following pages are from a wide range of publications, all contributing to the knowledge base of our field.

The journal articles are compiled with the assistance of Andrea Coffman at the Ocean and Coastal Law Center Library at the University of Oregon School of Law. The Library's "Recent Articles in Marine Legal Affairs" is an invaluable resource in our quest to provide a comprehensive list of recent publications. You can reach the Ocean and Coastal Law Center Library at <http://oceanlaw.uoregon.edu/library/library.html>. The abstracts following each article are either provided courtesy of the publishing journal or prepared by Sea Grant staff.

We welcome your thoughts and suggestions for improvements. You can reach the staff via e-mail at sealaw@olemiss.edu or by phone at (662) 915-7775. We look forward to hearing from you.

Sincerely,

Stephanie Showalter

Editor



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, 518 Law Center, University, MS 38677, phone: (662) 915-7775, or via e-mail at sealaw@olemiss.edu .

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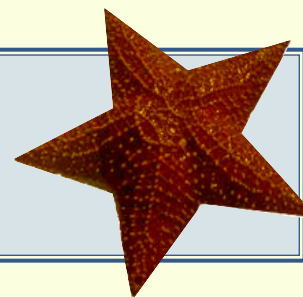
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Journals featured in this issues of the *LAW AND POLICY DIGEST*. For more information, click on the name of the journal.

- ALBANY LAW REVIEW
- AMERICAN JOURNAL OF INTERNATIONAL LAW
- BOSTON UNIVERSITY LAW REVIEW
- BROOKLYN JOURNAL OF INTERNATIONAL LAW
- CALIFORNIA WESTERN LAW REVIEW
- CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL
- CANADA-UNITED STATES LAW JOURNAL
- CAPITAL UNIVERSITY LAW REVIEW
- CASE WESTERN RESERVE LAW REVIEW
- COASTAL MANAGEMENT
- COLORADO JOURNAL OF INTERNATIONAL ENVIRONMENTAL LAW AND POLICY
- COLUMBIA LAW REVIEW
- ECOLOGY LAW QUARTERLY
- EMORY LAW JOURNAL
- FLORIDA LAW REVIEW
- GEORGETOWN INTERNATIONAL ENVIRONMENTAL LAW REVIEW
- HARVARD ENVIRONMENTAL LAW REVIEW
- HOUSTON JOURNAL OF INTERNATIONAL LAW
- INTERNATIONAL JOURNAL OF MARINE AND COASTAL LAW
- JOURNAL OF ENERGY AND NATURAL RESOURCES LAW
- JOURNAL OF INTERNATIONAL WILDLIFE LAW AND POLICY
- JOURNAL OF MARITIME LAW AND COMMERCE
- MARINE POLICY
- THE MARITIME LAWYER (RETTITLED TULANE MARITIME LAW JOURNAL IN 1987)
- MARITIME STUDIES
- NAVAL LAW REVIEW
- NEW YORK UNIVERSITY ENVIRONMENTAL LAW JOURNAL
- NOVA LAW REVIEW
- OCEAN AND COASTAL MANAGEMENT
- OCEAN DEVELOPMENT AND INTERNATIONAL LAW
- REVIEW OF LITIGATION
- SAN DIEGO INTERNATIONAL LAW JOURNAL
- SOUTH CAROLINA LAW REVIEW
- STANFORD ENVIRONMENTAL LAW JOURNAL
- TEXAS TECH LAW REVIEW
- TULSA JOURNAL OF COMPARATIVE AND INTERNATIONAL LAW
- UNIVERSITY OF SAN FRANCISCO LAW REVIEW
- URBAN LAWYER
- VIRGINIA JOURNAL OF INTERNATIONAL LAW
- WISCONSIN ENVIRONMENTAL LAW JOURNAL



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 I. **ADMIRALTY**

Daniels, Christopher B. "Survey Article: Admiralty Law." 33 *Texas Tech Law Review* 541-577 (2002).

Daniels surveys the important decisions in Admiralty Law by the Fifth Circuit in the past year. Topics include establishing personal jurisdiction, Coast Guard/OSHA jurisdiction, the Jones Act, allision with public structures, Harter Act "delivery", salvage, and recovery of economic damages in unintentional maritime tort cases.

 II. **AQUACULTURE**

Aarset, Bernt. "Pitfalls to Policy Implementation: Controversies in the Management of a Marine Salmon-Farming Industry." 45 *Ocean and Coastal Management* 19-40 (2002).

The success of marine salmon farming is dependent upon the interaction of the industrial and public institutions regarding three main areas of conflict; (1) floating net pens, (2) confinement of the salmon in the coastal commons, and (3) the utilization of salmon as a farmed species. Bernt explores the institutional vulnerability of the marine salmon-farming industry in Washington state. Furthermore, the organization of the Washington industry as compared to other marine fish farming operations in the United States and Norway.

 III. **CLIMATE CHANGE**

Hopenstand, Dafna. "Global Warming and its Impact on Near-Shore Communities: Protection Regimes for Fish and Coastal People Affected by Coral Reef Damage." 8 *Wisconsin Environmental Law Journal* 85-114 (2002).

Coral reef destruction due to global warming not only threatens the viability of the underwater ecosystem, but also the culture and livelihood of coastal communities dependent on those marine resources. Several international conventions could potentially be used to protect coral reefs, such as the Convention on Biological Diversity and the Kyoto Protocol, but these conventions are largely ineffective as they lack cooperative parties and adequate enforcement mechanisms. Hopenstand reviews potential solutions to the problem in the form of effect-oriented adaptation measures, i.e. marine sanctuaries, and source-oriented mitigation measures aimed at eliminating the causes of climate change.

Myatt-Bell, L. B.; Scrimshaw, M. D.; Lester, J. N.; and Potts, J. S. "Public Perception of Managed Realignment: Brancaster West Marsh, North Norfolk, UK." 26 *Marine Policy* 45 - 57 (2002).

Managed realignment is a relatively new coastal defense strategy for dealing with the anticipated sea level rise and flooding associated with climate change. Existing hard coastal defenses are realigned inland to facilitate the establishment of salt marshes. Myatt-Bell and co-authors present the results of a study into the public perceptions of managed realignment in England.

Pisani, Christian. "Fair at Sea: The Design of a Future Legal Instrument on Marine Bunker Fuels Emissions within the Climate Change Regime." 33 *Ocean Development and International Law* 57-76 (2002).

Greenhouse gas emissions from international shipping fall beyond the scope of the existing climate change regime. The Kyoto Protocol, which elaborates the obligations as set out by



the 1992 United Nations Framework Climate Change Convention, recognizes this concern by calling upon its parties to pursue limitation or reduction of bunker fuels emissions through the International Maritime Organization. Pisani suggests the adoption of a future legal instrument along the lines of Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL) governing air pollution from vessels. In this manner, the burden of enforcement of technical standards could be allocated taking equity considerations into account as spelled out by the climate change regime. (*Abstract courtesy of Ocean Development and International Law*)



IV. COASTAL ZONE MANAGEMENT

Billé, Raphaël; and Mermet, Laurent. "Integrated Coastal Management at the Regional Level: Lessons from Toliary, Madagascar." 45 *Ocean and Coastal Management* 41-58 (2002).

In 1997, an integrated coastal management program was implemented in Madagascar. Billé and Mermet present the results of a case study conducted in Madagascar in 1999 and 2000, which revealed that this program appears to be particularly difficult to implement on the regional level.

Blivi, Adoté; Anthony, Edward J.; and Oyédé, Lucien M. "Sand Barrier Development in the Bight of Benin, West Africa." 45 *Ocean and Coastal Management* 185-200 (2002).

Blivi, Anthony, and Oyédé discuss the morphology and development of sand barriers in Togo and Benin (West Africa).

Cardiff, Todd T. Comment. "Conflict in the California Coastal Act: Sand and Seawalls." 38 *California Western Law Review* 255-281 (2001).

Despite the destructive nature of seawalls and other coastal armoring, California coastal communities continue to construct such fortifications. Cardiff examines the debate surrounding shoreline armoring in California and investigates the claims of coastal property owners that they have a constitutional right to build.

Courtney, Catherine A.; White, Alan T.; and Deguit, Evelyn. "Building Philippine Local Government Capacity for Coastal Resource Management." 30 *Coastal Management* 27-45 (2002).

In 1991, the Philippines government passed the Local Government Code. With this legislation, local municipalities and cities became responsible for managing coral reefs and coastal resources. Courtney, White, and Deguit review the maturation of local coastal management in the Philippines and the current capacity of local governments to manage their coastal resources.

Davidson, Mary Gray. Note. "Protecting Coral Reefs: The Principal National and International Legal Instruments." 26 *Harvard Environmental Law Review* 499-546 (2002).

Threats to the health of coral reef ecosystems are increasing and come from a wide variety of sources, most notably global warming. This article examines the status of the coral reefs and their importance to the human environment. Davidson then evaluates the existing US domestic and the international legal framework being utilized to protect these ecosystems.



Dyer, Bernard; and Millard Keiran. "A Generic Framework for Value Management of Environmental Data in the Context of Integrated Coastal Zone Management." 45 *Ocean and Coastal Management* 59- 75 (2002).

An important area of concern in Integrated Coastal Zone Management is the maximization of the value derived from environmental data. Dyer and Millard identify the issues and techniques of data value management and integrate them into a framework for value analysis of environmental data. The authors develop a generic framework and seek to inform the reader how aspects of data management can improved the value of the data.

Gibbons, Lieutenant Patrick J. "Too Much of a Good Thing? Federal Supremacy & the Devolution of Regulatory Power: The Case of the Coastal Zone Management Act." 48 *Naval Law Review* 84-131 (2001).

Gibbons addresses the Coastal Zone Management Act (CZMA) and its relation to federal agencies exercising rights which are in conflict with state controls and regulation under the CZMA. The author argues that the CZMA provides states with too much subversive power over the federal agencies. Gibbons also discusses the development of coastal regulation and the legislative background of the CZMA. The author concludes by making recommendations to change certain aspects of the CZMA so as to exempt national defense from state regulation.

Harvey, Nick; Clarke, Beverly; and von Baumgarten, Patricia. "Coastal Management Training Needs in Australia." 45 *Ocean and Coastal Management* 1-18 (2002).

A national survey was carried out in Australia to identify the Nation's coastal management training needs. Harvey, Clarke, and von Baumgarten present the results of the survey and the outcomes of its recommendations.

Nelson, Cliff; and Botterill, David. "Evaluating the Contribution of Beach Quality Awards to the Local Tourism Industry in Wales - The Green Coast Award." 45 *Ocean and Coastal Management* 157-170 (2002).

The Green Sea Partnership created a beach award program, called the Green Coast Award, to develop tourism through sustainable management plans at rural beaches in Wales. Nelson and Botterill present the result of a study which evaluated the value of the Green Coast Award and tested the presumptions underlying the Award, such as improved environmental standards and increased tourism.

Suman, Daniel. "Panama Revisited: Evolution of Coastal Management Policy." 45 *Ocean and Coastal Management* 91-120 (2002).

In the late 1990s, Panama underwent an institutional reorganization and merged agencies with authority over coastal and marine areas into the Panama Maritime Authority. The Legislature also created the National Environment Authority. Both of these actions recognized the importance of integrated coastal management, but institutional change has been slow and sectoral management of the coastal zone continues. Suman examines the evolution of Panama's institutions and legal frameworks and highlights areas for future action.



Westmacott, Susie. "Where Should the Focus Be in Tropical Integrated Coastal Management?" 30 *Coastal Management* 67-84 (2002).

Integrated coastal management is a multi-disciplinary approach to coastal management, which attempts to integrate the various stakeholder groups and institutions in the coastal zone. In the tropics, the majority of efforts at integrated coastal management fail at the implementation stage. Westmacott highlights the common challenges of tropical coastal zone management and argues for the incorporation of conflict management into the management process.



V.

ECONOMICS AND TRADE

Blume, Alan L. "A Proposal for Funding Port Dredging to Improve the Efficiency of the Nation's Marine Transportation System." 33 *Journal of Maritime Law and Commerce* 37-89 (2002).

Although there has been an increased demand for deeper channels at US ports, few within the marine transportation industry agree on how waterway infrastructure maintenance should be funded. Blume offers a funding proposal to promote economically efficient investment in the United States' marine transportation system. An assessment of the current practice of federal provision of dredged channels is also included.

Condon, Bradley. "Multilateral Environmental Agreements and the WTO: Is the Sky Really Falling?" 9 *Tulsa Journal of Comparative and International Law* 533-567 (Spring 2002).

As environmental protesters made clear at both the 1999 Seattle meeting of the World Trade Organization and the 2001 Summit of Americas, the legal regime of the WTO is increasingly seen as a barrier to effective international environmental management. The issue facing the world community today is how to resolve these conflicts between international trade agreements and multilateral environmental agreements. Condon addresses whether reform of the WTO is actually necessary to avoid such conflicts.

Hatcher, Aaron; Frere, Julian; Pascoe, Sean; and Robinson, Kate. "'Quota-Hopping' and the Foreign Ownership of UK Fishing Vessels." 26 *Marine Policy* 1-11 (2002).

"Quota-hopping" is the practice of re-flagging vessels in order to fish against the catch quotas of another nation. Hatcher and co-authors examine "quota-hopping" in the United Kingdom from an economic perspective and the incentives underlying the practice.

Johnston, Robert J.; Grigalunas, Thomas A.; Opaluch, James J.; Mazzotta, Marisa; and Diamantides, Jerry. "Valuing Estuarine Resource Services Using Economic and Ecological Models: The Peconic Estuary System Study." 30 *Coastal Management* 47-65 (2002).

As part of the National Estuary Program, four integrated economic studies were undertaken to assist with resource preservation decisions for the Peconic Estuary System of Suffolk County, NY. Johnston and co-authors highlight the various methodologies that can be used to assess nonmarket economic values and identifies the expected differences in the results of each approach.

Suriís-Regueiro, Juan C.; Varela-Lafuente, Manuel M.; and Garza-Gil, M. Dolores. "Profitability of the Fishing Fleet and Structural Aid in the European Union." 26 *Marine*

**Policy 107-119 (2002).**

Fishermen in the European Union continue to invest in fishing companies even though there is a widespread belief of the low financial profitability of those companies. Suriís-Regueiro and co-authors present the results of a study of the financial profitability of the European fleet and the influence of EU policies on the economics of the fleet.

Vetemaa, Markus; Eero, Margit; and Hannesson, Röögvaldur. "The Estonian Fisheries: From the Soviet System to ITQs and Quota Auctions." 26 *Marine Policy* 95- 102 (2002).

In Estonia, a portion of the fishing rights, both volume quotas and gear use rights, are allocated each year through auctions. The remainder are allocated based upon historic use. Vetemaa, Eero, and Hannesson discuss the development of Estonian fishing rights during the post-Soviet period.

**VI. ESTUARIES****Tuler, Seth; Webler, Thomas; Shockey, Ingrid; and Stern, Paul C. "Factors Influencing the Participation of Local Governmental Officials in the National Estuary Program." 30 *Coastal Management* 101-120 (2002).**

The participation of local governmental officials in coastal management policy-making, although often overlooked, is essential to successful implementation and enforcement. Tular and co-authors present the results of interviews with local government officials from national estuary program applications in New England in which the authors examined the various factors influencing participation.

**VII. FISHERIES MANAGEMENT****Botet, Violanda. "Filling in One of the Last Pieces of the Ocean: Regulating Tuna in the Western and Central Pacific Ocean." 41 *Virginia Journal of International Law* 787- 813 (2001).**

In September 2000, the negotiations surrounding the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean concluded and was signed by approximately two dozen countries, including the US. Botet describes the Convention, highlights some significant aspects and examines potential challenges regarding implementation.

Carr, Christopher J.; and Scheiber, Harry N. "Dealing with a Resource Crisis: Regulatory Regimes for Managing the World's Marine Fisheries." 21 *Stanford Environmental Law Journal* 45-79 (2002).

As fisheries around the world near commercial extinction, national and international fisheries managers seek to improve the management of fisheries and strengthen global conservation norms and regulations. Carr tracks the evolution of the principle of "sustainability" and examines the inability of most fisheries management regimes to achieve this goal. The author concludes with a look at recent efforts to develop global conservation standards.

Colson, David A. "The Impact of Federalism and Border Issues on Canada-United States Relations: Pacific Salmon Treaty." 27 *Canada-United States Law Journal* 259-266 (2001).

Due to the nature of the migratory patterns of North American Pacific Salmon, fishermen



in the US and Canada are unable to limit their catch solely to those varieties of salmon originating from either country. A treaty was needed between the US and Canada, but the United States' options when negotiating were limited by domestic laws. Colson describes the difficulties the United States' federalism framework created during the negotiations of the 1999 Pacific Salmon Treaty.

Cordonnery, Laurence. "A Note on the 2000 Convention for the Conservation and Management of Tuna in the Western and Central Pacific Ocean." 33 *Ocean Development & International Law* 1-15 (2002).

[Cordonnery] reviews the potential benefits and shortcomings of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean adopted in September 5, 2000, in Hawaii. The research findings rely on a detailed review of the negotiation process and the protracted debates between member states of the Forum Fishery Agency (FFA) and distant water fishing nations. The importance of this Convention for the long-term sustainability of the Pacific tuna stocks is emphasized in light of existing global fisheries instruments and regional mechanisms of cooperation whose limitations are outlined. (*Abstract courtesy of Ocean Development and International Law*)

Davis-Mattis, Laleta; and Young, Gladys. "Fisheries Management in Jamaica: International Perspectives." 4 *Journal of International Wildlife Law and Policy* 131-146 (2001).

[Davis-Mattis and Young] examine Jamaica's efforts to implement the conservation and management provisions of the United Nations Convention on the Law of the Sea (UNCLOS), bearing in mind that prior to 1982 there was an existing legal framework that sought to address issues relating to fisheries management. More specifically, the paper looks at the issues related to the conservation and management of straddling and highly migratory fish stocks under UNCLOS and subsequent agreements negotiated under the auspices of UNCLOS. It also addresses the problems Jamaica faces with the conservation and management of Queen Conch (*Strombus Gigas*), in particular, the UNCLOS provisions regarding access to such resource, taking into account the limitations to such access as regulated by the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES). (*Abstract courtesy of Journal of International Wildlife Law and Policy*)

Gillespie, Alexander. "Wasting the Oceans: Searching for Principles to Control Bycatch in International Law." 17 *The International Journal of Marine and Coastal Law* 161-193 (June 2002).

Bycatch, the accidental catch of non-targeted species, is a significant problem in international environmental law. Gillespie examines methods that management regimes can utilize to combat the problem of bycatch, such as accurately defining the target species, alteration of harvesting technologies and incentives/disincentives.

Johnsen, D. Bruce. "Customary Law, Scientific Knowledge, and Fisheries Management Among Northwest Coast Tribes." 10 *New York University Environmental Law Journal* 1-69 (2001).

Without relying on third-party enforcement by states, Northwest Coast Tribes have managed to maintain stable property rights to salmon streams and the salmon populations contained



therein. Johnsen investigates the hypothesis that tribal leaders actively engaged in salmon husbandry. The article examines the anthropological and economical evidence supporting the salmon husbandry theory.

Juda, Lawrence. "Rio Plus Ten: The Evolution of International Marine Fisheries Governance." 33 *Ocean Development and International Law* 109-144 (2002).

The 1992 United Nations Conference on Environment and Development (UNCED) held at Rio de Janeiro was a seminal event that addressed the interplay of economic development and human use of natural resources with the need for protection of the natural environment. Juda examines the principles and approaches suggested by UNCED as they relate to world fisheries and considers how they have been reflected in global fishery agreements such as the FAO Compliance Agreement and the United Nations Fish Stocks Agreement, in the work of international fishery bodies such as the FAO Committee on Fisheries, and in the efforts of a number of regional fishery commissions. It also addresses the significance and ramifications of changes suggested by Agenda 21 for the future conduct and management of world marine fisheries. (*Abstract courtesy of Ocean Development and International Law*)

Kaczynski, Vlad M.; and Fluharty, David L. "European Policies in West Africa: Who Benefits from Fisheries Agreements?" 26 *Marine Policy* 75-93 (2002).

The European Union enters into fishery cooperation agreements with Sub-Saharan West African coastal states to maximize access to fishery resources, secure employment for European harvesters and supply seafood markets at lower prices. Practices associated with these agreements displace local entrepreneurs, distort the economics of European fisheries, and promote overexploitation. Kaczynski and Fluharty examine these agreements and their effect on the coastal states and the fisheries of the region.

Kelly, S.; Scott, D.; and MacDiarmid, A. B. "The Value of a Spillover Fishery for Spiny Lobsters Around a Marine Reserve in Northern New Zealand." 30 *Coastal Management* 153-166 (2002).

Kelly and co-authors examine the contribution of the Leigh Marine Reserve in northern New Zealand to the spiny lobster fishery.

Linscheid, E. Michael. Comment. "Living to Fish, Fishing to Live: The Fishery Conservation and Management Act and Its Implications on Fishing-Dependent Communities." 36 *University of San Francisco Law Review* 181-207 (2001).

Twenty years after the enactment of Fishery Conservation and Management Act (FMCA) in 1976 to eliminate foreign fishing vessels from waters extending 200 miles from United States shores, Congress enacted the Sustainable Fisheries Act to strengthen conservation efforts and rebuild depleted fisheries. At the same time, Congress also passed a national standard for fishing-dependent communities. Linscheid argues that the definition of "fishing-dependent community" is too broad and that court decisions have actually adversely affected those communities truly dependent upon fishing.

McRae, Donald. "The Negotiation of the 1999 Pacific Salmon Agreement." 27 *Canada-United States Law Journal* 267-278 (2001).



In 1999, the United States and Canada negotiated the Pacific Salmon Treaty. McRae discusses the events which led to the dispute, identifies the major players in the negotiation process, and highlights key aspects of the process itself and the final agreement.

Popick, Ian J. Comment. "Are There Really Plenty of Fish in the Sea? The World Trade Organization's Presence Is Effectively Frustrating the International Community's Attempts to Conserve the Chilean Sea Bass." 50 *Emory Law Journal* 939- 985 (2001).

Faced with the decline of the Patagonia Toothfish in the Southern Ocean due to overfishing, the member states of the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) implemented a "Catch Documentation Scheme" (CDS) restricting the importation of fish to those catches accompanied by proper documentation. In light of the difficulties encountered by the United States in its attempts to impose similar, although more stringent, restrictions on tuna and shrimp imports, Popick analyzes whether the CDS provision can withstand WTO scrutiny if challenged.

Van Steenis, Jon. "Pirates As Poachers: International Fisheries Law and the Bluefin Tuna." 29 *Capital University Law Review* 659-679 (2002).

Although many treaties attempt to address the issues of overfishing and the decline of pelagic (ocean) fish, most are unable to prevent Distant Water Fishing Nations from continuing to fish on the high seas without regard to conservation ideals and technological improvements. The Straddling Stocks Agreement of 1995 attempts to manage fisheries on the high seas and protect highly migratory species from extinction. Van Steenis addresses the jurisdiction of Coastal States to regulate bluefin tuna fishing outside their Exclusive Economic Zones.

Van Zwieten, Paul A. M.; van Densen, Wim L. T.; and Dang Van Thi. "Improving the Usage of Fisheries Statistics in Vietnam for Production Planning, Fisheries Management and Nature Conservation." 26 *Marine Policy* 13-34 (2002).

The long-term monitoring of fish stocks is dependent upon fishery data obtained through the fisheries exploiting those stocks. This article examines the statistical system in Vietnam to assess how the data collected can be transformed and utilized to assist with decision-making in the domains of food production, fisheries management and nature conservation.

Wiser, Glenn M. "Transparency in 21st Century Fisheries Management: Options for Public Participation to Enhance Conservation and Management of International Fish Stocks." 4 *Journal of International Wildlife Law and Policy* 95-129 (2001).

Effective implementation of international environmental and natural resource conservation agreements depends not only upon the cooperation of contracting parties, but also upon the ability of the agreement to win the continuing support and input of non-governmental stakeholders. This view, accepted and advocated by nations in the 1992 Rio Declaration, Agenda 21, and the recent Aarhus Convention on Public Participation, is now being incorporated into modern regional fisheries management organizations. These and earlier fisheries organizations can benefit from an awareness of how other multilateral agreements that adhere to the Rio Declaration and Agenda 21 tenets have enhanced sustainable development through their provisions for transparency and public participation. [Wiser] surveys how these



regimes have implemented the principles of access to information, access to decision-making and access to justice, and makes corresponding recommendations to assist fisheries management organizations in achieving their goals. (*Abstract courtesy of Journal of International Wildlife Law and Policy*)



VIII. INVASIVE SPECIES

Van den Bergh, Jeroen C. J. M.; Nunes, Paulo A. L. D.; Dotinga, Harm M.; Kooistra, Wiebe H. C. F.; Vrieling, Engel G.; and Peperzak, Louis. "Exotic Harmful Algae in Marine Ecosystems: An Integrated Biological-Economic-Legal Analysis of Impacts and Policies." 26 *Marine Policy* 59-74 (2002).

Harmful algae blooms pose a significant threat to marine living resources and human beings, and are generally generated by an exotic micro-algae. Van den Bergh and co-authors present a multi-disciplinary view of the management of exotic harmful algae species discussing insights from the fields of biology, economics, and law.



IX. ISLANDS

Batongbacal, Jay L. "A Philippine Perspective on Archipelagic State Issues." 122 *Maritime Studies* 18-31 (2002).

Batongbacal presents a historic overview of the positions taken by the Philippines during the negotiations of the 1982 UN Convention on the Law of the Sea and identifies current issues affecting compliance with the Convention.

Crosby, M. P.; Brighthouse, G.; and Pichon, M. "Priorities and Strategies for Addressing Natural and Anthropogenic Threats to Coral Reefs in Pacific Island Nations." 45 *Ocean and Coastal Management* 121-137 (2002).

Managers of coral reef ecosystems must balance conservation and development objectives while dealing with political and societal pressures and the uncertainty of natural systems. In order to facilitate interactions between scientists, managers, and policymakers, participants of the Pacific Regional ICRI developed a set of recommendations to address natural and anthropogenic threats to coral reefs in the region. Crosby, Brighthouse, and Pichon provide details on those recommendations.

Triggs, Gillian. "Proposed Timor Sea Arrangements between Australia and the East Timor Transitional Administration." 20 *Journal of Energy & Natural Resources Law* 40-49 (2002).

On July 5, 2001, the East Timor Transitional Administration and the Australian Government agreed to a Memorandum of Understanding (MOU) on the "Timor Sea Arrangement." The Timor Sea Arrangement is merely annexed to the MOU as "suitable for adoption ... upon East Timor's independence." Triggs sets out the most striking features of the Timor Sea Arrangement. [Also considered is] the current litigation in the Federal Court of Australia against Phillips Petroleum for compensation for the alleged expropriation of a concession in the Timor Gap granted by Portugal in 1974. (*Abstract courtesy of Journal of Energy and Natural Resources Law*)



X. MARINE BOUNDARIES

Kaye, Stuart B. and Rothwell, Donald R. "Southern Ocean Boundaries and Maritime



Claims: Another Antarctic Challenge for the Law of the Sea.” 33 *Ocean Development and International Law* 359-389 (2002).

Throughout the life of the 1959 Antarctic Treaty, there has been considerable development in the law of the sea. Negotiated following the 1958 First United Nations Conference on the Law of the Sea, at which the customary international law concepts of the territorial sea and continental shelf were codified into treaty law, the law of the sea has since developed through state practice and most importantly through the 1982 United Nations Convention on the Law of the Sea. Whatever the merits of examining the interaction between Antarctica and the law of the sea have been in the past, there is much to suggest that the general significance of such issues is growing, especially as states seek to determine the outer limits of their continental shelf claims and in doing so determine Antarctic baselines. Kaye examines these issues from a general law of the sea perspective, taking into account the impact of the Antarctic Treaty while reviewing Australian practice in particular. (*Abstract courtesy of Ocean Development and International Law*)

Kwiatkowska, Barbara. “The Qatar v. Bahrain Maritime Delimitation and Territorial Questions Case.” 33 *Ocean Development and International Law* 227-262 (2002).

During the decade-long Qatar v. Bahrain proceedings, the International Court of Justice (ICJ) rendered two Judgments on jurisdiction and admissibility (1994-1995), followed by its decision not to rely on the 82 Qatar documents challenged by Bahrain (1999), and by Judgment on the merits (2001). Kwiatkowska surveys how these complex proceedings led to settlement of a long-standing dispute in the Arabian/Persian Gulf to the satisfaction of both parties and how they have enriched the contributions of the Court to the development of international law. (Abstract courtesy of Ocean Development and International Law)

Plant, Glen. International Decision. “Maritime Delimitation and Territorial Questions Between Qatar and Bahrain.” 96 *American Journal of International Law* 198-210 (2002).

In March, 2001, the International Court of Justice issued its decision in *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain*. The action was instituted by Qatar in 1991 and the ICJ was faced with determining and setting the maritime boundaries of the two countries. Plant summarizes the ICJ's application of customary international law to the boundary dispute (neither country is a party to the 1958 Conventions on the law of the sea) and the findings of the court.



XI. MARINE ENVIRONMENTAL PROTECTION

Dzidzornu, David M. “Marine Protection Under Regional Conventions: Limits to the Contributions of Procedural Norms.” 33 *Ocean Development and International Law* 263-316 (2002).

Regional marine environment protection regimes prescribe specific procedural norms according to which participants are expected to implement the obligations the regimes impose. These norms include the broad requirement of *cooperation* per se to undergird the carrying out of all obligations. Cooperation is thus the framework within which participants are required to determine and observe the obligation to apply the *best available techniques* and *best environmental practices*, and to institute substantive *monitoring* and *reporting* practices. The prescriptive content of these norms reflects social, economic, and other interests at the base of



participants' utilization of the marine area and its resources. As such, their expected observance of the requirements would hardly evidence unconditional commitment to the ideal of marine environment protection. Rather, it is an effort to balance that ideal against economic and other interests, the pursuit of which constitutes the *raison d'être* of the normative obligations. The balancing effort is aided by a regime's internal international institution, where such an institution is sufficiently endowed legally and materially to facilitate the process through supervising the observance of the monitoring and reporting obligations. (*Abstract courtesy of Ocean Development and International Law*)

Long, Ronán; and Grehan, Anthony. "Marine Habitat Protection in Sea Areas Under the Jurisdiction of a Coastal Member State of the European Union: The Case of Deep-Water Coral Conservation in Ireland." 17 *The International Journal of Marine and Coastal Law* 235-261 (2002).

The European Union has lagged behind the United States and other countries in the development of legal regimes for the conservation of marine biodiversity and now must reconcile diverse legal instruments. Long and Grehan use deep-water coral conservation off the coast of Ireland to illustrate the problems associated with the EU's approach to marine habitat protection.

Vanderzwaag, David. "The Precautionary Principle and Marine Environmental Protection: Slippery Shores, Rough Seas, and Rising Normative Tides." 33 *Ocean Development and International Law* 165-188 (2002).

Law and policy implications of the precautionary principle in the field of marine environmental protection are explored in this paper in a three-part analysis. First, seven slippery aspects of the precautionary principle are highlighted, including confusion in terminology, definitional variations, definitional generalities, the spectrum of precautionary measures available, ongoing philosophical tensions and competing socioeconomic interests, debate over who should be responsible for making precautionary decisions, and limited interpretation by international tribunals. Second, the rather feeble precautionary responses to the tempestuous issues of climate change, hazardous chemicals, and overfishing are described. Third, the potential for the precautionary principle to synergize with human rights norms, such as the emerging right to a healthy environment, and other principles of sustainable development is discussed. (*Abstract courtesy of Ocean Development and International Law*)



XII. MARINE PROTECTED AREAS

Alder, Jacqueline; Zeller, Dirk; Pitcher, Tony; and Sumaila, Rashid. "A Method for Evaluating Marine Protected Area Management." 30 *Coastal Management* 121-131 (2002).

Although there is growing support for the use of marine protected areas (MPAs) to promote conservation and tourism, such support may fade if a method for assessing the effectiveness of the area is unavailable. Alder proposes a MPA evaluation model, which can be used to evaluate MPA management effectiveness.

Arin, Tijen; and Kramer, Randall A. "Divers' Willingness to Pay to Visit Marine Sanctuaries: An Exploratory Study." 45 *Ocean and Coastal Management* 171-183 (2002).

A potential revenue source for conservation of coral reefs in marine sanctuaries is diver fees.



Arin and Kramer reviewed diver demand for visits to protected areas in the Philippines and evaluated the factors affecting divers' willingness to pay fees.

Brax, Jeff. "Zoning the Oceans: Using the National Marine Sanctuaries Act and the Antiquities Act to Establish Marine Protection Areas and Marine Reserves in America." 29 *Ecology Law Quarterly* 71-129 (2002).

The management of public lands by the federal government has mainly focused on those lands above the high water mark of oceans, ignoring public lands lying offshore. Brax argues that the National Marine Sanctuaries Act should be used to consolidate the management of existing Marine Protected Areas (MPA) in the United States. The article highlights some of problems with the Act and suggests how its mechanisms can be strengthened.

Chapman, Matthew. Note. "The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve: Ephemeral Protection." 29 *Ecology Law Quarterly* 347-370 (2002).

In December 2000, President Clinton created, by Executive Order, the Northwestern Hawaiian Island Coral Reef Ecosystem Reserve. The Reserve was created to coordinate federal management of the resources within the Reserve and to begin the process of designating the Reserve as a national marine sanctuary. Chapman reviews the viability of using executive orders for this type of policy making, the effectiveness of the current laws protecting the Reserve, and the advantages and disadvantages of sanctuary designation.

Chuenpagdee, Ratana; Fraga, Julia; and Euáán-Avila, Jorge I. "Community Perspectives Toward a Marine Reserve: A Case Study of San Felipe, Yucatán, México." 30 *Coastal Management* 183-191 (2002).

San Felipe marine reserve, in Yucatán, México, was created by the local community without a mandate from the government. Chuenpagdee presents a case study of the formation of the marine reserve and identifies the different perspectives of various local interest groups.

Day, Jon C. "Zoning - Lessons from the Great Barrier Reef Marine Park." 45 *Ocean and Coastal Management* 139-156 (2002).

Marine zoning is a cornerstone of the management of the Great Barrier Reef Marine Park. The first zoning plan was implemented in 1981 and zoning within the park has change significantly over the years. Day highlights those aspects of zoning that have worked well and cites lessons learned from 20 years of adaptive management in the Park.

Fauzi, Akhmad; and Buchary, Eny Anggraini. "A Socioeconomic Perspective of Environmental Degradation at Kepulauan Seribu Marine National Park, Indonesia." 30 *Coastal Management* 167-181 (2002).

Kepulauan Seribu, Indonesia is a designated marine protected area. The park, however, continues to be impacted by both external factors, such as pollution and vessel traffic, and internal factors, such as tourism development. Fauzi and Buchary present the results of the authors' study, which traces and analyzes the internal problems of the park from a socioeconomic perspective.

Meltzoff, Sarah Keene; Lichtensztajn, Yair Gibráán; and Stotz, Wolfgang. "Competing



Visions for Marine Tenure and Co-management: Genesis of a Marine Management Area System in Chile.” 30 *Coastal Management* 85-99 (2002).

The Chilean government has been aspiring to establish a marine management area system that combines the use of marine protected areas with a marine tenure system. Inherent conflicts are present in a system that attempts to simultaneously be both a conservation and a financially profitable zone. Meltzoff and co-authors analyze the use of such a system in light of Chile's political economy and examines the relationships and interactions of fishermen and scientists managing the area.

Rudd, Murray A.; and Tupper, Mark H. “The Impact of Nassau Grouper Size and Abundance on Scuba Diver Site Selection and MPA Economics.” 30 *Coastal Management* 133-151 (2002).

In general, the creation of a marine protected area is expected to increase the size and abundance of the exploited species located within the reserve. Such increases may also provide nonextractive economic value to recreationalists. Rudd and Tupper analyze the preferences of scuba divers for viewing Nassau grouper in the Turks and Caicos Islands.

White, Alan T.; Courtney, Catherine A.; and Salamanca, Albert. “Experience with Marine Protected Area Planning and Management in the Philippines.” 30 *Coastal Management* 1-26 (2002).

The first marine protected areas in the Philippines were established in 1974. White examines the history of the country's marine protected areas, the current laws and policy, and lessons learned.



XIII. MARINE SALVAGE

Bryant, Christopher R. “The Archaeological Duty of Care: The Legal, Professional, and Cultural Struggle Over Salvaging Historic Shipwrecks.” 65 *Albany Law Review* 97- 145 (2001).

In recent years, mainly due to technological advances offering greater access, the debate surrounding the commercial salvage of historic shipwrecks has intensified. Bryant examines the law of salvage as it relates to historic shipwrecks and the tension between salvors and archaeologists over the proper treatment of these wrecks.



XIV. MARITIME LAW

Alderton, Tony; and Winchester, Nik. “Globalisation and De-regulation in the Maritime Industry.” 26 *Marine Policy* 35-43 (2002).

A recent trend in the world's shipping industry has been towards global regulation. Alderton and Winchester look at several globalization attempts and the effect of such regulations on the working conditions of ordinary seafarers.

Andrewartha, Jane; and Riley, Norris. “English Maritime Law Update.” 33 *Journal of Maritime Law and Commerce* 329-370 (July 2002).

Andrewartha and Riley survey the English maritime courts' decisions, during 2001. Topics covered include arbitration, insurance, measures of damages, definition of ship, law and jurisdiction, charter parties, contract, bills of lading, and September 11th.



Chircop, Aldo. "Ships in Distress, Environmental Threats to Coastal States, and Places of Refuge: New Directions for an *Ancien Regime*?" 33 *Ocean Development & International Law* 207-226 (2002).

Places of refuge for ships in distress is a topic before the International Maritime Organization as a result of several recent well-publicized refusals by maritime authorities of coastal states to allow such ships to enter sheltered waters within national jurisdiction. The traditional right of refuge of the crew, ship, and cargo is pitted against threat perceptions held by coastal states resulting in a "not in my backyard" syndrome. Instances of modern state practice seem to restrict the right of refuge to a purely humanitarian dimension. There is a need to reevaluate the right of refuge and to establish a system of places of refuge on the basis of regional cooperation to counter the potential threat of stricken ships that are unable to effect necessary repairs in sheltered areas within national jurisdiction. (*Abstract courtesy of Ocean Development and International Law*)

Derrington, Sarah; and White, Michael. "Australian Maritime Law Update." 33 *Journal of Maritime Law and Commerce* 275-292 (2002).

This is a survey of maritime law developments in Australia during 2001. Derrington and White highlight the *M/V Tampa* incident, the Timor Gap Boundary negotiations, native title over the sea, and summarizes the major Australian maritime cases.

Fidell, Eugene R. and Fidell, Jay M., "Loss of Numbers." 48 *Naval Law Review* 194-199 (2001).

Fidell and Fidell discuss the effectiveness of the court-martial sentence in the sea services of "loss of numbers," which was a punishment for commanding officers. Numbers were used to determine an officer's actual date of promotion, court seniority, and quarter selection. The removal of "loss of numbers," the authors argue, has accelerated the demise of the general court-martial as the forum of choice for the administration of justice in cases involving crimes of command by naval officers.

Heathcote, Peter. "Terrorism at Sea - the Potential Threat." 122 *Maritime Studies* 1-6 (2002).

Heathcote draws attention to the possibility of a terrorist attack on a vessel transporting nuclear materials. In light of the events of September 11, 2001, the author examines the vulnerability of nuclear transport ships traveling through the Pacific Region.

Goldsmith, Frederick B. "River Pilot, Marine Surveyor, and Third-Party Inspector Liability." 26 *The Maritime Lawyer* 463-514 (2002).

Goldsmith provides an overview of the civil liabilities which may arise during the normal course of employment of river pilots, marine surveyors, and third-party inspectors.

Johnston, Douglas M. "The Northwest Passage Revisited." 33 *Ocean Development and International Law* 145-164 (2002).

The case for developing a "transit management regime" for the Northwest Passage has apparently been strengthened by recent events: the end of the Cold War, the emergence of the circumpolar North as a relatively normal region, where interstate diplomacy can be applied to common problems under the aegis of the Arctic Council; and, of course, the



prospect of a lengthening summer season for surface transit as a result of global warming. But the scenario is complicated by other considerations, such as the evolution of different sovereignty concepts and sentiments in Canada, continuing environmental concerns, Inuit ambivalence, law and diplomacy constraints, and new uncertainties over the outcome of Canadian-U.S. energy policy diplomacy and the impact of the world security crisis. The success of the International Northern Sea Route Project suggests that the time for a similar initiative in the Northwest Passage may have arrived. (*Abstract courtesy of Ocean Development and International Law*)

Karan, Hakan. "The Carrier's Liability for Breach of the Contract of Carriage of Goods by Sea Under Turkish Law." 33 *Journal of Maritime Law and Commerce* 91-110 (2002).

Karan addresses the evolution of Turkish law as it relates to carrier liability for loss or damage during transit. It contains an overview of the rules governing carrier liability, the basis for liability, the burden and order of proof when liability is disputed, and the damages and limitation of damages in a carrier liability lawsuit. Presently under Turkish law, many rules and regulations govern a carrier's liability, including the Turkish Commercial Code, the Hague rules, and public orders. The author argues for the unification of the liability regime to adequately meet the needs of modern carriers.

Karan, Hakan. "Turkish Maritime Law Update." 33 *Journal of Maritime Law and Commerce* 371-380 (2002)

Karan surveys recent maritime legislative and case law developments in Turkey during 2001. The author also provides a brief overview of priorities of law in Turkey.

Kisor, Colin A. "Who's Defending the Defenders? Rebuilding the Financial Protection of the Soldiers' and Sailors' Civil Relief Act." 48 *Naval Law Review* 161-193 (2001).

The Soldiers' and Sailors' Civil Relief Act (SSCRA) suspends the enforcement of civil liabilities against military personnel when they are called to "devote all energy to the defense needs of the Nation." This article focuses on two provisions: 1) the residence and taxation provision and 2) the interest rate cap. The residence and taxation provision of the SSCRA has, in recent years, failed to protect military personnel, living in a state in which they are a non-resident, from being taxed by that state. Many personnel are being taxed in their legal state of residence and the state in which they are stationed. The SSCRA also provides military personnel with an interest rate cap for all pre-service debts, while they are on active duty. Kisor argues that, as it stands, the SSCRA does not adequately protect service-members or offer an incentive for enlistment.

Li, K. X.; and Ng, Jim Mi. "International Maritime Conventions: Seafarers' Safety and Human Rights." 23 *Journal of Maritime Law and Commerce* 381-404 (2002).

International seafarers are a politically and legally weak group in society, largely ignored by many governments. International seafarers do have rights, however, as codified by numerous international conventions, including the International Maritime Organization, the International Labor Organization and the UN Convention on the Law of the Sea. Li and Ng identify the specific rights of seafarers and the accompanying duties of the shipowners and



states. The authors conclude by suggesting the consolidation of these various conventions into an international maritime labor code to afford greater protection to seafarers.

Morse, Marvin H.; and Moran, Lucy M. "Troubling the Waters: Human Cargos." 33 *Journal of Maritime Law and Commerce* 1-35 (2002).

Most of America's millions of immigrants crossed the oceans to reach the country's shores. Initially, immigration was controlled by the laws of the shipping business and admiralty and maritime law. Today, the vast majority of America's seafaring immigrants arrive on flimsy boats or stowed away in cargo holds. The authors "chronicle the stories of some American immigrants and the ships and boats . . . which carried them." Morse and Moran also highlight the trends and shifts of immigration over the seas.

O'Connor, Eugene J.; and O'Reilly, Shannon. "The Fire Defenses Under U.S. Law." 33 *Journal of Maritime Law and Commerce* 111-131 (2002).

Historically, maritime common carriers were deemed liable for the destruction of their cargo while in transit. Today, however, several statutes provide a carrier with defenses to liability for damage due to fire. O'Connor and O'Reilly "examine each of the fire defenses, the elements of a fire damage claim, the burdens of proof involved, and how the courts have reacted recently to fire defenses."

Oxman, Bernard H.; and Bantz, Vincent P. International Decision. "The 'Grand Prince.'" 96 *American Journal of International Law* 219-225 (2002).

The Belize vessel, the *Grand Prince*, was impounded by France for unlawfully fishing in its exclusive economic zone. Belize filed an application with the International Tribunal for the Law of the Sea seeking prompt release of the vessel. France challenged the jurisdiction of the Tribunal claiming that the confiscation of the *Grand Prince* was a decision on the merits by the French Courts and beyond the scope of a prompt release hearing. Oxman and Bantz summarize the decision of the Tribunal to refrain from addressing France's claims, as the Tribunal was without jurisdiction to hear the case because Belize failed to establish that it was the flag state of the vessel.

Southcott, Richard F.; and Walsh, Kimberly A. "Canadian Maritime Law Update." 33 *Journal of Maritime Law and Commerce* 293-328 (2002).

Southcott and Walsh survey the legislative and case law developments in Canadian maritime law for 2001. Legislation covered includes the Canada Shipping Act reform, Transportation Appeal Tribunal of Canada Act, maritime liability, and national marine conservation areas. Case law topics include jurisdiction, conflicts of law, carriage of goods, collision, tug and tow, mortgages and liens, contract, exclusion clauses, arbitration, and practice.

Still, Craig. Student Article. "Thinking Outside the Box - the Application of COGSA's \$500 Per-Package Limitation to Shipping Containers." 24 *Houston Journal of International Law* 81-137 (2001).

Under § 1304(5) of the Carriage of Goods by Sea Act (COGSA), a carrier may not reduce its maximum liability below \$500 for each package. With the introduction of the shipping container, questions have arisen about whether such containers are "packages" within the



meaning of COGSA. Still reviews the struggles of the US courts to consistently apply COSGA's liability limitation to shipping containers.

Van Dyke, Jon M. "The Legal Regime Governing Sea Transport of Ultrahazardous Radioactive Materials." 33 *Ocean Development & International Law* 77-108 (2002).

Although the international community has taken some steps to address the risks created by the movements of ultrahazardous radioactive cargoes, important gaps still exist in the legal regime governing these activities. An apparent consensus has been reached at the International Maritime Organization (IMO) to make the Code for the Safe Carriage of Irradiated Nuclear Fuel, Plutonium, and High-Level Radioactive Wastes in Flasks Aboard Ships (the INF Code) mandatory and to seek some clarification of the standards governing shipboard safety. But still lacking are agreements regarding salvage responsibilities, liability of shippers for damages, revision of transport cask safety standards to meet maritime accident conditions, obligations to consult regarding the best routes and to provide advance notification to concerned coastal states, the preparation of environmental assessments, and contingency planning to handle shore emergencies and salvage responsibilities. Until agreements are reached on these important matters, the shipment of these extremely dangerous or "ultrahazardous" materials will continue to violate fundamental norms of international law and comity because they place coastal nations that receive no benefit from the shipments at grave risk of environmental disaster without any legal protections. (*Abstract courtesy of Ocean Development and International Law*)

White, Michael. "M/V *Tampa* Incident and Australia's Obligations - August 2001." 122 *Maritime Studies* 7-17 (2002).

On August 22, 2001, the M/V *Tampa*, a Norwegian-flagged container vessel, responded to a general distress relay and found a wooden Indonesia vessel dangerously overloaded with 438 persons on board. When the *Tampa* arrived off Christmas Island, the Australian government denied the vessel access to the Australian territorial sea and prevented the landing of the rescued persons onto the island. White examines the merchant shipping aspects of the incident.



XV. MARITIME PIRACY

Beckman, Robert C. "Combatting Piracy and Armed Robbery Against Ships in Southeast Asia. The Way Forward." 33 *Ocean Development and International Law* 317- 341 (2002).

According to the Annual Reports of the International Maritime Bureau on Piracy and Armed Robbery Against Ships for calendar years 1998, 1999, and 2000, there has been a dramatic increase in the number of reported incidents of piracy and armed robbery against ships in waters in Southeast Asia, especially in the Malacca Strait and in Indonesian waters. Very few of the incidents in Southeast Asia are "piracy" as defined in international law because they took place in waters under the sovereignty of a coastal state. Nevertheless, many of the incidents posed serious threats to the safety of international maritime navigation. Some were offenses under the 1988 Convention for the Suppression of Acts Against the Safety of International Maritime Navigation. Some were also major criminal hijacks involving international organized crime. There has been considerable action at both the global and regional levels to attempt to deal with this threat to the safety of international navigation. Beckman analyzes the reported incidents and the attempts by the international



community to deal with the problem. Beckman concludes with various recommendations on steps that should be taken by the international community and States in Southeast Asia to combat piracy and armed robbery against ships. (*Abstract courtesy of Ocean Development and International Law*)

Mo, John. "Options to Combat Marine Piracy in Southeast Asia." 33 *Ocean Development and International Law* 343-358 (2002).

Modern maritime piracy has become one of the major threats to safety at sea. How to combat maritime piracy in Southeast Asia effectively is the major concern of this contribution. Mo argues that some form of government cooperation involving most of the governments of the Southeast Asian region is the best way to combat maritime piracy, although it is not an easy task due to various political, economical, and historical reasons. A unilateral and expedient arrangement by one or a few governments to combat maritime piracy may be convenient but may also encounter resistance or raise suspicion from other governments. (*Abstract courtesy of Ocean Development and International Law*)



XVI. OFFSHORE NATURAL RESOURCES

Halfar, Jochen; and Fujita, Rodney M. "Precautionary Management of Deep-Sea Mining." 26 *Marine Policy* 103-106 (2002).

Interest in deep-sea mining has steadily increased since the early 1970s. Although commercial mining activities may not take place for many years, environmental regulations should be implemented prior to the investment and exploration of a site. Halfar and Fujita suggest the industry should develop precautionary performance standards and support the creation of marine protected areas to insure the minimization of environmental impacts.

Weaver, Sierra B. Note. "Local Management of Natural Resources: Should Local Governments be Able to Keep Oil Out?" 26 *Harvard Environmental Law Review* 231- 267 (2002).

The management of offshore oil and natural gas development is divided between numerous federal and state agencies and usually involves bitter jurisdictional disputes. Now county and city governments are fighting for their piece of the jurisdictional pie. Weaver examines the tools that have been used by local governments to become involved in the management of offshore oil and gas, focusing on the central coast of California, and the desirability of including local interests in the process.



XVII. POLLUTION

Batik, Kevin. Note. "OPA's Reach: The Geographic Scope of "Navigable Waters" Under the Oil Pollution Act of 1990." 21 *Review of Litigation* 419-453 (2002).

The geographic scope of the term "navigable waters" has not been clearly established by Congress. As a result, courts have struggled to define the term under a number of acts, most notably the Clean Water Act and the Oil Pollution Act. Batik examines how the federal courts have interpreted and applied "navigable waters" in the context of the Oil Pollution Act.

George, Mary. "Transit Passage and Pollution Control in Straits Under the 1982 Law of the Sea Convention." 33 *Ocean Development and International Law* 189-205 (2002).



George examines and points out the inadequacy of the provisions of Part III of the 1982 Law of the Sea (LOS) Convention to combat marine pollution in straits used for international navigation without infringing the right to transit passage of all user states. She stresses that it is the environmental obligation of all user and strait states to protect the marine environment of straits used for international navigation. To this end, this paper proposes that Part III of the UNCLOS be reconsidered and a "Guarantee of Freedom of Navigation—Environmental Impact Statement" be adopted by user and strait states. (*Abstract courtesy of Ocean Development and International Law*)

Lickel, Dan. Comment. "Regulating Foreign Vessels Under the Clean Air Act: The Case for Permissible Administrative Interpretation." 3 *San Diego International Law Journal* 145-176 (2002).

The emissions of large sea-going vessels contribute significantly to the air quality problems in many coastal areas, especially in California. The Environmental Protection Agency (EPA) is required by § 213 of the Clean Air Act to regulate the emissions of these ships. EPA attempted to defer the regulation of these ships to the International Maritime Organization. Environmental groups challenged the deferment, claiming emissions were going unregulated because the International Convention on the Prevention of Pollution from Ships had yet to come into force. EPA settled by agreeing to regulate US vessels and considered regulating vessels flying foreign flags. Lickel examines whether the EPA already has the authority under the CAA to regulate foreign vessels while in US waters.

Mooradian, Christopher P. Note. "Protecting "Sovereign Rights": The Case For Increased Coastal State Jurisdiction Over Vessel-source Pollution in The Exclusive Economic Zone." 82 *Boston University Law Review* 767-816 (2002).

Vessel-source pollution is difficult to regulate as the spills are often accidental, not intentional. Coastal states, however, have the option to regulate vessel discharge and emissions. Mooradian examines the current international law framework for vessel-source pollution and highlights some potential bases for Coastal State jurisdiction over such pollution. The author discusses how some coastal states are attempting to expand their jurisdiction over vessel-source pollution into the EEZ and ways in which the international community can respond to the concerns of coastal states.



XVIII. TAKINGS

Callies, David L.; and Chipchase, Calvert G. (student). "Palazzolo v. Rhode Island: Ripeness and 'Notice' Rule Clarified and Statutory 'Background Principles' Narrowed." 33 *Urban Lawyer* 907-922 (2001).

State and local governments have the authority to regulate the use of land for the health, safety and welfare of their citizens. This "police power" generally shields governmental entities from unconstitutional takings claims. The U.S. Supreme Court in *Palazzolo* addressed the issue of the effect of "notice" on a regulatory takings claim. Callies and Chipchase examine the Court's decision and its potential impacts on the jurisprudence of partial takings.

Longstreth, Benjamin. Note. "Protecting "The Wastes of the Foreshore": the Federal



Navigational Servitude and its Origins in State Public Trust Doctrine.” 102 *Columbia Law Review* 471-500 (2002).

Under the federal navigational servitude doctrine, when regulating waterways for navigation purposes, the federal government need not compensate private landowners for losses. Longstreth argues that because the federal navigational servitude shares the same common law origins as the public trust doctrine, a takings defense should also be available to the federal government when the regulation is for conservation purposes.

Mangone, Gerard J. “Private Property Rights: The Development of Takings in the United States.” 17 *The International Journal of Marine and Coastal Law* 195-233 (2002).

Tension has always existed between private property rights and the exercise of sovereign rights for the public good. Mangone examines the history of US governmental encroachment on private property rights and highlights the role played by the environmental movement in the development of current US takings law.



XIX. WETLANDS

Lammens, Philip. Note. “Section 404(a) of the Clean Water Act: The Army Corps of Engineers’ Jurisdiction Over ‘All Other Waters.’” 54 *Florida Law Review* 147-174 (2002).

Under §404 of the Clean Water Act (CWA), the discharge of dredge or fill material into navigable waters is prohibited unless a permit authorizing such discharge has been issued by the Army Corps of Engineers. In *Solid Waste Agency v. Army Corps of Engineers*, the U.S. Supreme Court limited the Corps’ authority and invalidated, as beyond the scope of the CWA, the Corps’ migratory bird rule which applied §404 to “all other waters” including isolated, intrastate wetlands. Lammens reviews the Corps historic exercise of jurisdiction over navigable waters and examines the Court’s recent restrictive reading of §404.

Plyler, Ross B. Note. “Protecting South Carolina’s Isolated Wetlands in the Wake of *Solid Waste Agency*.” 53 *South Carolina Law Review* 757-776 (2002).

In 2001, the United States Supreme Court in *SWANCC* limited the Corps ability to regulate intrastate, isolated wetlands. Plyler examines the effect of *SWANCC* on South Carolina’s wetlands management and explores the enactment of a state wetlands statute as a possible solution to the current problems posed by the Corps’ loss of jurisdiction.

Podolsky, Michael J. Comment. “U.S. Wetlands Policy, Legislation, and Case Law As Applied to the Wise Use Concept of the Ramsar Convention.” 52 *Case Western Reserve Law Review* 627-653 (2001).

In 1971, the international community, recognizing the importance of wetlands, implemented the Convention on Wetlands of International Importance, Especially of Waterfowl Habitat, commonly known as the Ramsar Convention. The United States became a contracting party to this Convention in 1986. Article 3(1) of the Convention requires parties to promote the “wise use of wetlands in their territory.” Podolsky evaluates whether current US wetlands legislation and case law satisfies the “wise use” requirement of the Ramsar Convention.

Spungin, Debra Alise. Note. “Troubled Waters: Florida’s Isolated Wetlands in the Aftermath



of *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*.” 26 *Nova Law Review* 371-395 (2001).

In *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, the United States Supreme Court limited the Corps' ability to regulate isolate, intrastate waters. Spungin addresses the impact of the *SWANNC* decision on Florida's wetlands and the options available to Florida to protect wetlands now outside the jurisdiction of the Corps.



XX.WHALING

Burns, William C. G.; Wandesforde-Smith, Geoffrey; and Simpson, Karen. Comment. “The 53rd Meeting of the International Whaling Commission and the Future of Cetaceans in a Changing World.” 4 *Journal of International Wildlife Law and Policy* 221-237 (2001).

The 53rd Meeting of the International Whaling Commission was held in London from July 23-27, 2001. Burns reviews the major actions taken by the attending nations and the implications of those actions on the future of the regime.

Gillespie, Alexander. “Forum Shopping in International Environmental Law: The IWC, CITES, and the Management of Cetaceans.” 33 *Ocean Development & International Law* 17-56 (2002).

There is growing concern regarding the primacy of competing international organizations with overlapping areas of interest and competence. This has recently become apparent in the debate among parties to the International Convention for the Regulation of Whaling, the Convention on Trade in Endangered Species, and even the World Trade Organization. The debate involves the most appropriate body to deal with the management of cetaceans, including questions of both legal and illegal trade. Gillespie argues . . . that the International Whaling Commission is in the best position to handle this task. (*Abstract courtesy of Ocean Development and International Law*)

Gillespie, Alexander. “Transparency in International Environmental Law: A Case Study of the International Whaling Commission.” 14 *Georgetown International Environmental Law Review* 333-348 (2001).

Gillespie examines the transparency of the International Whaling Commission, specifically with regards to the participation of non-governmental organizations (NGOs). The author discusses the procedural openness of the IWC, evaluates its' procedures according to international law, and then looks at current threats to the transparency of the IWC.

Prideaux, Margi. “Discussion of a Regional Agreement for Small Cetacean Conservation in the Indian Ocean.” 32 *California Western International Law Journal* 211-251 (2002).

Although the 12 great whale species are managed by the International Whaling Commission, the smaller cetacea inhabiting the world's oceans are not similarly protected. Prideaux examines the possibility of a regional agreement for the Indian Ocean regarding the management of small cetaceans.

Ruffle, Adrienne M. Note. “Restructuring the International Whaling Commission: Suggestions to Strengthen the Conservation Effort.” 27 *Brooklyn Journal of International Law* 639-671 (2002).



The International Convention for the Regulation of Whaling is the only international legal regime focused solely on the regulation of whale stocks. The International Whaling Commission was created to implement the goals of the Convention, but unfortunately, has rarely served more than a symbolic role in the management of whale species. Ruffle examines the changing role of the IWC, the existing enforcement framework, and the recent attempts by the United States to use domestic laws to enforce IWC regulations.

Tumerelle, Alice. "The Reform of the Assessment of Financial Contributions to the International Whaling Commission: A Step Towards More Participation from Developing Countries in the International Regulation of Whaling?" 13 *Colorado Journal of International Environmental Law and Policy* 333-371 (2002).

Although there are many international organizations managing and protecting fishery resources, high membership fees exclude many developing countries from participating in the process. For example, the International Whaling Commission assesses financial contributions based upon a "user-pays" principle and are uniform among member states. A country's wealth is not taken into account. Tumerelle argues that the IWC's rigid assessment of financial contributions must change in order for developing countries to effectively participate in the international regulation of whaling.



XXI. WILDLIFE

Bache, Sali Jayne. "Turtles, Tuna, and Treaties: Strengthening the Links between International Fisheries Management and Marine Species Conservation." 5 *Journal of International Wildlife Law and Policy* 49-64 (2002).

One of the most common human-induced causes of marine wildlife mortality is accidental capture in fishing gear. Although there is widespread recognition that more selected fishing gear is needed to reduce the capture of non-targeted species, no coordinated approach to this problem has been undertaken by the international community. Sea turtle bycatch has been the subject of international accords and unilateral sanctions. Bache examines the various accords dealing with sea turtle bycatch and considers the future direction of the international community.

Campbell, Lisa M.; Godfrey, Matthew H.; and Drif, Ouissem. "Community-Based Conservation via Global Legislation? Limitations of the Inter-American Convention for the Protection and Conservation of Sea Turtles." 5 *Journal of International Wildlife Law and Policy* 121-143 (2002).

Campbell and co-authors discuss the tension between attempting to protect the environment through community-based initiatives and the negotiation of international agreements. For example, the Inter-American Convention seeks to eliminate the domestic use of sea turtles, except in cases of subsistence economic need, without regard to whether localized use is sustainable. The authors are concerned that such provisions in international agreements are not consistent with current conservation thinking and may undermine the effectiveness of the treaties.

Frazier, J. "Marine Turtles and International Instruments: The Agony and the Ecstasy." 5



***Journal of International Wildlife Law and Policy* 1-10 (2002).**

This short article is an introduction to the *Journal's* Special Edition on the conservation of marine turtles and their habitats. The author provides background information on the conservation and policy problems surrounding sea turtles.

Halpern, Marc. Student Article. "Stellar Sea Lions: The Effects of Multi-Statute Administration on the Role of Science in Environmental Management." 19 *UCLA Journal of Environmental Law and Policy* 449-506 (2001/02).

The National Marine Fisheries Services' (NMFS) attempt to manage the two populations of Alaskan groundfish and their interactions with the stellar sea lions using various environmental statutes has been complicated, controversial, and unsuccessful overall. Halpern chronicles the legal history of these fisheries and examines the role science played in legal decision-making. The author concludes by analyzing the possible effects of such multi-statutory management.

Hykle, Douglas. "The Convention on Migratory Species and Other International Instruments Relevant to Marine Turtle Conservation: Pros and Cons." 5 *Journal of International Wildlife Law and Policy* 105-119 (2002).

Hykle examines various international instruments relevant to marine turtle conservation, ranging in scope from global treaties to regional action plans, with particular emphasis given to the Convention on the Conservation of Migratory Species of Wild Animals (CMS). While focusing on CMS and its strengths and weaknesses, Hykle highlights the innovative features of other instruments that have been used to promote marine turtle conservation in recent years. Hykle also discusses in more generic terms the advantages and disadvantages of the various types of instruments that governments have at their disposal to effect conservation measures for marine turtles, ranging from legally-binding treaties to less formal cooperative arrangements. (*Abstract courtesy of the Journal of International Wildlife Law and Policy*)

Namnum, Samantha. "The Inter-American Convention for the Protection and Conservation of Sea Turtles and Its Implementation in Mexican Law." 5 *Journal of International Wildlife Law and Policy* 87-103 (2002).

Sea turtles, as shared resources among various nations, require international cooperation for their protection. Although there are international instruments that provide legal frameworks applicable to the protection of sea turtles, to date the only treaty that establishes an integral, international legal framework is the Inter-American Convention for the Protection and Conservation of Sea Turtles. Namnum analyzes the way in which Mexico, termed "the Country of the Sea Turtles" because six of the world's species of sea turtles occur in nest in the nation, has met its international responsibilities to protect these species. (*Abstract courtesy of the Journal of International Wildlife Law and Policy*)

Philpott, Romney. Note. "Why Sharks May Have Nothing to Fear More Than Fear Itself: An Analysis of the Effect of Human Attitudes on the Conservation of the Great White Shark." 13 *Colorado Journal of International Law and Policy* 445-472 (2002).

Even though most of the scientific community agrees that shark populations have been reduced to dangerously low levels, sharks have failed to gain the level of protection enjoyed



by more beloved marine species, like dolphins and whales. The author suggests that the disparity is due, in part, to the human fear of sharks. Philpott examines the history of Great White Shark conservation and the effect of human fear on those conservation efforts.

Schiffman, Howard S. Comment. "UNCLOS and Marine Wildlife Disputes: Big Splash or Barely a Ripple?" 4 *Journal of International Wildlife Law and Policy* 257-278 (2001).

As the United Nations Convention on the Law of the Sea (UNCLOS) establishes itself as one of the premier regimes in international law, member states are increasingly availing themselves of the significant dispute settlement provisions found in Part XV. The International Tribunal for the Law of the Sea (ITLOS) is beginning to take its place in the pantheon of major international tribunals. Although its jurisprudence thus far has largely consisted of applications for prompt release of vessels, these cases have arisen from disagreements over fishery practices and the enforcement of fishery laws by coastal states. The ITLOS is developing into a transparent, consistent and speedy forum to adjudicate marine disputes arising from UNCLOS. While the overall scope and reach of Part XV may be uncertain at the present time, especially vis-à-vis other dispute settlement institutions, the early activity under Part XV is promising. Those concerned with marine wildlife issues should be encouraged by the potential of Part XV, the ITLOS in particular, to serve as an effective regime in the realm of marine wildlife dispute settlement. (*Abstract courtesy of the Journal of International Wildlife Law and Policy*)

Tiwari, Manjula. "An Evaluation of the Perceived Effectiveness of International Instruments for Sea Turtle Conservation." 5 *Journal of International Wildlife Law and Policy* 145-156 (2002).

The migratory nature of sea turtles makes international cooperation critical for their survival. However, the degree to which international instruments have promoted conservation of sea turtles remains unclear. This paper aims to be a starting point for the evaluation of existing instruments. The objective of this study was to assess if existing instruments had contributed significantly and beneficially to sea turtle conservation and management. For this purpose, the awareness and perceptions of effectiveness of international instruments among sea turtle biologists and conservationists were evaluated. (*Abstract adapted from Journal of International Wildlife Law and Policy*)

Upadhyay, Sanjay; and Upadhyay, Videh. "International and National Instruments and Marine Turtle Conservation in India." 5 *Journal of International Wildlife Law and Policy* 65-86 (2002).

India has a rich cultural linkage to sea turtles, as evident through their mythology, yoga poses and classical dance forms. Despite this connection, turtle populations face the same threats in India as elsewhere in the world. Coastal development, entanglement in fishing gear, and coastal pollution all threaten the survival of India's turtles. Upadhyay and Upadhyay examine the international and national legal regimes of India and how they relate to the conservation of sea turtles.



Wold, Chris. "The Status of Sea Turtles Under International Environmental Law and International Environmental Agreements." 5 *Journal of International Wildlife Law and Policy* 11-48 (2002).

The migratory nature of sea turtles poses significant problems for the implementation of legal regimes to protect the species. Wold examines the current legal status of sea turtles under the existing international agreements.
