

The Natural Resource

ENVIRONMENTAL AND NATURAL RESOURCES LAW & POLICY PROGRAM NEWSLETTER

NaturalResourcesLaw.Stanford.edu

Fall 2000

1999-2000 Produces a Wave of Accomplishments at Stanford Law School

Growth, innovation, and impact. These words best describe the environmental program's latest year.

In a major initiative, the program joined forces with Stanford's Hopkins Marine Station in June to form the Stanford Fisheries Policy Project. With critical seed money from the David and Lucile Packard Foundation, the project will analyze how science is currently used in marine management and recommend improvements.

The launching of the fisheries project capped a year focused on oceans policy. In March, Dr. Sylvia Earle provided her insights on marine issues as the Law School's second Robert Minge Brown Lecturer. (Former Senator Tim Wirth was the first Brown Lecturer.) Dr. Earle's lecture served as the keynote address for Sea Change, an extraordinary three-day conference organized by Stanford Law School students as part of the



Dr. Sylvia Earle

Stanford-hosted meeting of the National Association of Environmental Law Societies. The Law School also added a new course on marine policy to its expanding curriculum.

In another major programmatic change, the Earthjustice Legal Defense Fund joined forces with Stanford in steering the Law School's environmental clinic. Earthjustice will draw on its years of experience and nationwide network of attorneys to oversee the clinic's legal work, while Stanford will continue its development of a rigorous and interdisciplinary clinical curriculum. The year also saw the arrival of the newest member of Stanford's clinical faculty—Michael Lozeau, fresh from his successful tenure as Executive Director of the San Francisco BayKeeper.

The clinic exemplifies Stanford's dedication not only to preparing the next generation of environmental lawyers and policymakers but to helping resolve environmental issues today. Further illustrating this dedication, the Law School has continued to host and facilitate dialogues among diverse interest groups, including an international forum on corporate codes of conduct (organized by the Natural Heritage Institute) and the "copper brakepad partnership" (stewarded for several years by Sustainable Conservation and Stanford). The

Law School is also producing a new series of environmental handbooks designed for community groups and lawyers seeking a practical overview of important areas. Stanford University Press will publish the first handbook, on the Endangered Species Act, this fall; work on a land use handbook has already begun.

The program's prior innovations have now become established practice. Stanford's case study collection continues to grow and is now used by dozens of faculty throughout the nation. Our workshop seminar, begun in 1992 to highlight the best in environmental scholarship, hosted fifteen presentations this past year from legal academics such as Holly Doremus, David Getches, and Richard Revesz; policymakers such as Deputy Secretary of the Interior David Hayes; nonprofit leaders such as Michael Sutton; and scientists such as Barbara Block and Pam Matson.

To avoid continually banging elbows, Stanford's growing program has moved across the street from the main Law School building to Owen House. An 1896 Victorian house renovated in 1975, Owen House provides far greater ambiance than our prior basement headquarters! We encourage you to stop in to see what we're up to and share your own experiences whenever you are in the area.



Owen House

Environmental and Natural Resources Law & Policy Program (ENRLP)

Buzz Thompson
Vice Dean, Stanford Law School, and Robert E. Paradise Professor of Natural Resources Law

John Barton
George E. Osborne Professor of Law

Hank Greely
Professor of Law

Tom Heller
Lewis Talbot and Nadine Hearn Shelton Professor of International Legal Studies

Robert Rabin
A. Calder Mackay Professor of Law

Meg Caldwell
Director, ENRLP, and Lecturer in Law

Josh Eagle
Coordinator, Stanford Fisheries Policy Project, and Lecturer in Law

Deborah Sivas
Director, Earthjustice Environmental Law Clinic, and Lecturer in Law

Michael Lozeau
Staff Attorney, Earthjustice Environmental Law Clinic, and Lecturer in Law

Cynthia Delacruz
Program Coordinator, ENRLP



Clinic attorneys Deborah Sivas and Michael Lozeau

Clinic Merges the Excellence of Stanford and Earthjustice

In May, Stanford joined forces with the Earthjustice Legal Defense Fund in running the Environmental Law Clinic. Earthjustice will oversee the clinic's legal work, while Stanford focuses on the clinic's educational mission. This arrangement will allow clinic attorneys and students to tap into Earthjustice's unparalleled network of knowledge, experience, and resources. Earthjustice is the nation's largest nonprofit environmental law firm, with ten offices across the United States, including the clinical office at Stanford. As before, the clinic will represent a broad array of environmental clients such as the Sierra Club, National Parks and Conservation Association, Northern California WaterKeepers, and Center for Marine Conservation.

After a nationwide search, the clinic also welcomed Mike Lozeau on board in December 1999 as the newest member of its clinical teaching corps. As the former Executive Director of San Francisco BayKeeper, Mike brings unparalleled experience with the Clean Water Act and efforts to preserve estuaries like the San Francisco bay and delta. His background complements and expands on the clinic's existing expertise in marine and terrestrial conservation.

Students worked last year on a number of precedent-setting cases. The clinic represented amicus curiae in two major pieces of fisheries litigation, one at each end of the country. In groundbreaking litigation involving the steller sea lion, the clinic helped convince the federal district court in Washington state that the National Marine Fisheries Service (NMFS) must prepare a comprehensive environmental impact analysis for the

fisheries on which the sea lion depends for survival. And in a case before the D.C. Circuit Court of Appeals involving summer flounder, the clinic successfully argued that NMFS could not legally approve a fishing quota that had only an 18 percent chance of restoring the fishery. The D.C. Circuit resoundingly rejected the quota, noting that "[o]nly in Superman Comics' Bizarro world, where reality is turned upside down, could the Service reasonably conclude that a measure that is at least four times as likely to fail as to succeed offers a 'fairly high level of confidence.'" Reflecting the clinic's belief in building effective alliances, the clinic's clients in the flounder litigation were fishing groups dedicated to ensuring sustainable fisheries.

In yet another cutting-edge case under the Endangered Species Act, the clinic joined forces with the National Wildlife Federation to successfully challenge a habitat conservation plan covering 53,000 acres and two dozen species in the Natomas Basin of California's Central Valley. The case is only the second in the nation to overturn incidental take permits issued under the Endangered Species Act. In a carefully crafted decision, the court agreed with the clinic's argument that the habitat conservation plan failed to minimize and mitigate the impacts of development on listed species and to ensure adequate funding for future mitigation.

The clinic moves into the new fall semester with a diverse docket of important matters. The clinic's efforts on behalf of several Northern California tribes to protect a Native American sacred site from industrial development are coming to a head, with state court

litigation and two separate federal administrative appeals pending. The clinic is also representing the National Parks and Conservation Association in a case involving the siting of a massive garbage dump on the border of Joshua Tree National Park in California's Mojave Desert. The proposed landfill, which would receive 20,000 tons of garbage a day by rail haul and rank among the largest in the nation, threatens the national park's pristine Class I airshed and designation as a World Biosphere Reserve. In another matter of nationwide precedence, the clinic has filed a lawsuit on behalf of WaterKeepers Northern California, CalPIRG, and San Diego BayKeeper challenging the U.S. Environmental Protection Agency's failure to adopt total maximum daily loads (TMDLs) for California's impaired waterbodies.

Virtually all of the clinic's matters offer exceptional training for Stanford students, while tackling important environmental issues on behalf of nonprofit clients. Students play an active role in the clinic's work. In this past year, for example, one student argued a motion in a suit against the California Coastal Commission's approval of a permit that violates the applicable coastal plan. Another student took the lead role in successfully resolving a case through mediation before the Ninth Circuit Court of Appeals. In addition to receiving detailed feedback on their work, students meet weekly to discuss strategic and ethical issues involved in the representation of environmental nonprofits.

If you would like to find out more about the Environmental Law Clinic, please contact Debbie Sivas, Directing Attorney of the clinic, at 650/723-0325 or dsivas@stanford.edu.

Students Win Competition

Congratulations are in order for Angela Chabot (SLS '01) and Catherine Engberg (SLS '01) who won the first Student Environmental Negotiations Competition at Golden Gate University in April 2000. The State Bar of California Environmental Law Section sponsors the negotiation competition, which highlights the importance of negotiation skills in environmental law. Two-person teams from 16 law schools participated in the first competition. The teams negotiated a simulated dispute involving an oil spill that damaged a small Southern California coastal town.

NSF Grant and Ecosystem Conference Top Fall News

The National Science Foundation has awarded \$1 million to Professor Buzz Thompson and three faculty members from Stanford's School of Engineering for the development of a distributed information management system that will permit companies and members of the public to more easily apply environmental regulations. Dubbed REGNET, the project will initially develop a pilot application focusing on the regulation of hazardous waste management.

REGNET will permit regulated companies, as well as nonprofits and other members of the public, to access regulatory materials through semi-structured, indexed storage; address semantic ambiguities; cross-reference relevant legal and engineering documents; and engage in online compliance checking. The project marks Stanford's first major collaboration between computer scientists and legal academics, and highlights the potential for technology to improve the regulatory process.

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On November 16 to 17, Stanford will host a high-level, international forum on how to use ecosystem services to promote environmental investments. The forum will start by critically examining current efforts by cities, water suppliers, and flood control agencies to preserve and restore watershed lands for ecosystem services such as water purification and flood reduction. The forum will then examine what scientific, economic, and legal advances are needed to further promote investments in watersheds and other ecosystems.

Professor Jim Salzman of American University, and Dr. Gretchen Daily and Professor Buzz Thompson of Stanford are organizing the forum. The select group of attendees will include academics from science, economics, and law; policymakers; nonprofit leaders; private entrepreneurs; and journalists.

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Dr. Barbara Block, Hopkins Marine Station, tagging a bluefin tuna

New Interdisciplinary Project to Study Fisheries Management

The plight of ocean fisheries is getting increasing attention. From cod in the northwest Atlantic, to rockfish off the Pacific coast, to bluefin tuna worldwide, many major fisheries are in decline, threatening ecological, social, and economic disruption. Thankfully, scientists at Stanford and elsewhere are engaged in breakthrough studies that can improve the management of threatened fisheries. The question is whether current management structures are up to the job of using this science effectively and developing management systems that are as dynamic as the fisheries themselves.

To help ensure that fisheries management is up to the task, policy experts at Stanford Law School have joined forces with scientists at Stanford's Hopkins Marine Station to launch the Stanford Fisheries Policy Project. The project will look at three aspects of the science-policy interface in fisheries management. First, how well do fisheries managers use scientific information, and how can that use be improved? Second, what do current developments in fisheries science tell us about the most effective way of managing fisheries? Finally, is current scientific research providing the information of most importance to management?

Josh Eagle, who worked on marine issues

for the National Audubon Society before joining the Law School, will direct the project with the active participation of Law School Professor Buzz Thompson and Hopkins Professor Barbara Block. Over time, the project will call on faculty elsewhere in the University for help on business, economic, and decisionmaking analysis. Graduate students from law, biology, and other disciplines will jointly undertake key research and analysis, ensuring not only a high quality product but a new generation of interdisciplinary experts.

The project is currently collecting and analyzing data on the historical use of science by fishery management councils under the Magnuson-Stevens Act and plans to issue recommendations based on this study later this year. The project will next develop a framework for evaluating the effectiveness of marine protected areas designed to protect highly migratory fish species. Also planned is a study of how newly documented genetic information about fish species might be incorporated into fisheries law and policy.

The David and Lucile Packard Foundation has provided generous funding for the Stanford Fisheries Policy Project. If you wish to be on the mailing list for project reports and papers, please contact Josh Eagle at 650/725-8415 or jeagle@stanford.edu.

New Environmental Handbook Series to Make Debut with Guide to the ESA

Nearly two decades ago, the Stanford Environmental Law Society (ELS) began publishing citizen handbooks on a variety of topics, including wilderness and historic preservation, bottle laws, scenic river designation, the Endangered Species Act, land use regulation, and billboard laws. In the early '90s, ELS focused on building a nationally acclaimed journal, and its handbook work slowed down. Recently, ELS has renewed its commitment to producing a new set of handbooks.

The latest addition to the Environmental Law Society Handbook project is about to debut this fall with Stanford University Press as its publisher. "The Endangered Species Act: A Stanford Environmental Law Society Handbook" is a comprehensive guide to the federal Endangered Species Act. The handbook is intended for lawyers, government agency employees, students, community activists, businesspeople, and anyone else who needs to understand the Endangered Species Act.

The book guides the reader through the Act's provisions, including the procedures for listing species and designating their critical habitats, the requirements the Act places on federal agencies, and the scope of protections afforded to listed species. It contains a discussion of the modern extinction crisis and a brief history of endangered species protection in the United States. The handbook also explains how the Act and its implementing regulations have been interpreted by courts over the years. It provides valuable tips for citizens who wish to become involved in the application and enforcement

of the Act. The handbook includes the text of the Act, as well as a bibliography of related legislative materials and legal scholarship.

This academic year, students are working with land use expert Meg Caldwell on the next handbook, a guide for citizens, policymakers, lawyers, and local government on California land use. A special Land Use Workshop this fall is focusing on the major issues and research to be covered in the handbook. Workshop students will be writing and conducting primary

research on hot land use topics such as voter initiatives, the connection between local government financing and land use decisions, and sprawl.

To order the "ESA Handbook," contact the Stanford Press at www.sup.org/order/index.html or 1-800/872-7423. To order past ELS handbooks, visit <http://els.stanford.edu>. Share your thoughts and suggestions for future handbooks with Meg Caldwell at 650/723-4057 or megc@stanford.edu.

Stanford Case Studies Now Online

A growing group of faculty throughout the country are now using Stanford's innovative case studies, which present narratives of real-life events and ask students to identify and analyze the relevant legal, social, business, ethical, and scientific issues involved. The case materials are intended as complements to traditional methods of teaching environmental law, natural resources law, land use, and environmental justice. This interactive approach to learning bolsters students' acquisition of skills in critical areas: factual investigation, legal research, counseling, persuasive oral communication, and recognition and resolution of ethical dilemmas, to name a few.

To make the case studies easier to obtain, Stanford has put them online, along with a number of environmental simulations. The full text of the case studies and simulations (including all exhibits) may be downloaded free of charge from the Law School's case studies website at <http://casestudies.stanford.edu>. Instructors and professors from academic institutions also may gain permission to download and use teaching notes, which are currently available for many of the case materials. Academic registrants have the option of joining the case studies listserve, through which instructors can swap suggestions and ideas for use of the case materials.

We welcome questions, feedback, and ideas for new case studies. Contact Program Director Meg Caldwell at 650/723-4057 or megc@stanford.edu.