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In the Edition

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IN THIS EDITION

VADIM SIDELNIKOV* & DAWN WITHERS**

It is with great honor and pleasure that we introduce the *Golden Gate University Environmental Law Journal's* sixth *Pacific Region Edition*. This edition features works authored by legal scholars and Golden Gate University School of Law alumni and current students, and continues to focus on environmental issues affecting the United States and the Pacific Region.

In the first article of the edition, Anthony A. Austin, in *Where Will All the Waste Go?: Utilizing Extended Producer Responsibility Framework Laws to Achieve Zero Waste*, explores the use of extended producer responsibility (EPR) laws to achieve the ultimate waste management goal: “zero waste.” While many cities have instituted zero waste policies by using recycling and composting, achieving complete waste diversion will become much more difficult in the future. Design, cost, and technological impediments prevent complete waste diversion. Recycling or composting the remaining products in the waste stream is not possible due to multiple factors including: product composition, the cost for localities to bear, or the localities’ lack of technological ability. Mr. Austin proposes a hybrid approach, under which localities recycle and compost to the maximum extent practicable, and an additional EPR framework law targets the remaining products in the waste stream by requiring the producers to take them back. This combined approach can provide a solution to managing and preventing our increasing amounts of waste.

Next, Glen Hearn and Richard Kyle Paisley discuss the importance of building adaptability and flexibility into treaties to provide resilience

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in the face of the anticipated impacts of climate change on managing resources in international waters, in *Lawyers Write Treaties, Engineers Build Dikes, Gods of Weather Ignore Both: Making Transboundary Waters Agreements Relevant, Flexible, and Resilient in a Time of Global Climate Change*. Using case studies from around the world in marine and fresh water situations, Mr. Hearn and Mr. Paisley illustrate how climate change will challenge many of our current institutional arrangements. The authors identify a number of different mechanisms available for developing flexibility in the decisionmaking process for substantive elements of international treaties dealing with the management of international waters. Since there is no 'one size fits all' in terms of appropriate mechanisms, careful consideration of flexibility is needed when developing institutional arrangements from the onset, particularly because altering international agreements after they have been concluded is a difficult process.

In the first student comment of this edition, *A Feasible Alternative: The Legal Implications of Aquaculture in the United States and the Promise of Sustainable Urban Aquaculture Systems*, Garrett Wheeler examines the various types of fish farms currently utilized in the United States, their corresponding legal liabilities, and the recent enthusiasm towards open-ocean farms. As the domestic aquaculture industry embarks on a period of expansion, the author argues that greater focus should be placed on existing technologies to develop environmentally safe seafood cultivation near the nation's population centers. In particular, new regulatory approaches and policy initiatives should be adopted to ensure ecologically sound industry practices while simultaneously reducing environmental liability.

Next, in *Derailing Powder River Basin Coal Exports: Legal Mechanisms to Regulate Fugitive Coal Dust from Rail Transportation*, Tovah R. Trimming explores the effects of expanding coal exports on fugitive coal dust problems from rail transportation in the northwest United States. Despite potential environmental, human health, and track safety risks associated with fugitive coal dust, it is currently unregulated. Environmental groups are raising awareness about these risks as industry plans to further increase train shipments of coal for export from the Powder River Basin region of Montana and Wyoming to the West Coast of the United States and Canada. Coal exports cause concern in the United States because coal combustion contributes to global climate change and international pollution. Trains are vital to transporting coal and therefore the primary target for addressing coal dust issues. However, due to the federal regulatory scheme governing the railroads, regulating coal dust losses from rail transportation raises preemption issues. Ms. Trimming identifies two approaches to circumvent

preemption and authorize the regulation of coal dust. The author discusses how coal dust can be regulated as either a safety regulation under the authority of the Federal Railroad Administration or as particulate matter under the Clean Air Act.

In the closing student comment, *Great White Shark Bycatch Reduction Problems in the California/Oregon Drift Gillnet Fishery*, Andrew J. Graf examines a key direct threat to great white shark survival: bycatch. Recent scientific data suggests that the northeastern Pacific white shark population is reaching alarmingly low numbers. A substantial portion of the northeastern Pacific white shark mortality is linked to the California/Oregon Drift Gillnet Fishery, which targets common thresher sharks and swordfish. This fishery is one of three United States Pacific fisheries that, together, account for eighty-one percent of reported white shark captures off the coast of Southern California. In his comment, Mr. Graf argues that the current federal statutes and regulations do not adequately protect the white shark from bycatch. He advocates a three-prong approach to reduce white shark bycatch numbers, which includes modifying current federal statutes, amending existing regulations, and increasing research efforts.

As we present this next edition of the *Golden Gate University Environmental Law Journal*, we sincerely hope that you will find this issue informational and inspiring. We would like to thank our faculty advisors, Professor Paul Stanton Kibel and Professor Jennifer Pesetsky, for their support in publishing this edition, and also Professor Edward Baskauskas for his thorough and tireless commitment to improving the *Environmental Law Journal*. Additionally, this edition could not have succeeded without the hard work of our student editors and devoted authors. Finally, thank you to the faculty and staff of Golden Gate University School of Law, particularly Dean Rachel Van Cleave, for their dedication to and support of legal scholarship within the environmental law community and among our students.