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Country/Region Reports -- United States of America

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X. COUNTRY/REGION REPORTS

1. UNITED STATES OF AMERICA

(1) Introduction

Legislative activity related to international environmental regulation came to a virtual stop as deadlock continued over ratification and implementation of treaties such as the Biodiversity Convention, the Law of the Sea Convention, and the Basel Convention. Most congressional activity in environmental regulation centered on Republican-sponsored bills to cut back on domestic environmental programs.

On December 18, President Clinton vetoed the funding bills for the Environmental Protection Agency (EPA) and the Department of the Interior for fiscal year 1996. The President cited as justification for the veto the $1.5 billion cut in EPA’s funding from what he requested and the Department of the Interior funding proposal’s allowance of clear-cutting in Alaska’s Tongass National Forest.

(2) The North American Free Trade Agreement (NAFTA)

One of the most important NAFTA issues debated in 1995 was whether the agreement would be expanded to allow Chile’s accession. Integral to this debate was disagreement over NAFTA’s supplemental environmental accord, the North American Agreement on Environmental Cooperation. Those opposed to including Chile in the agreement argued that US fast-track negotiators did not have the authority initially to negotiate labor and environmental agreements and, alternatively, that an environmental agreement was unnecessary because Chile does not border the United States. On the other hand, proponents of the environmental accord argued that proximate borders were irrelevant to the environmental concerns, and that failure to enforce environmental laws with Chile could lead to trade distortions between NAFTA parties.

A water-quality problem in Mexico became an early test case of NAFTA’s environmental side accord. During a six-week period in December 1994 and January 1995, 40,000 migratory birds died at the polluted Silva Reservoir in central Mexico. Many of the birds were on the US endangered species lists, while others were protected by a United States/Canada/Mexico accord on migratory birds. The Mexican government concluded that dumping of endosulfan, a pesticide, caused the deaths. In June, several environmental groups from the United States and Mexico filed a joint petition with the NAFTA Commission for Environmental Cooperation, requesting that the Commission investigate the incident. A
nine-member panel of scientists from the three countries rebutted the Mexican government's assertion that industrial pollution caused the deaths. Instead, the panel concluded that raw sewage floating into the reservoir created a botulism bacteria incubator, causing the deaths.

On October 13, the environmental ministers of the NAFTA countries, acting in their capacity as the North American Commission for Environmental Cooperation, announced an action plan to phase out the use of polychlorinated biphenyls in North America. Three other chemicals will become subject to action plans in early 1996. Other action by the Commission included working on a plan for assessing the environmental impacts of pollution that crosses the parties' common borders. Under a target date of the end of 1996 for assessment requirements, a nation planning a project with possible adverse effects on neighboring nations would have to notify the Commission. The neighboring country could then offer input into the domestic environmental impact assessment and into possible forms of mitigation. The Commission also announced the signing of a joint intent statement to release information on greenhouse gas emissions to member nations.

(3) United States/Mexico Border Issues

In response to a longstanding problem with Mexican sewage flowing from the Tijuana River, the city of San Diego began testing sewage from Tijuana to determine whether the Mexican wastewater contains toxic contaminants. The goal was to eventually eliminate such wastes from ocean waters. The US Government will pay San Diego for its testing program. In addition, the US section of the International Boundary and Water Commission (IBWC) is building a sewage-treatment plant to clean up the flow of wastes in dry weather.

In May, the IBWC began Phase II of its Rio Grande Study. The Commission, which evaluates United States/Mexico border water issues, surveyed for toxic substances in areas previously determined to be areas of concern. Two international reservoirs were also subject to the sampling.

In June, the annual meeting of the United States/Mexico Border Health Association met to address health problems in border regions. The Association noted an increase in health hazards and diseases shared in common. Based in part on increased cross-border contacts generated by NAFTA, the spread of infectious diseases and drug use had increased as well.

Air-quality cooperation between the United States and Mexico was hindered by continuing disagreement over Carbon II, a Mexican coal-fired plant that was scheduled to open in late August or early September. The United States' concerns involved the plant's outdated technology, resulting in unfiltered pollutants crossing the border and polluting Big Bend National


Park, among other sites. Mexico emphasized the economic need for the plant’s operation and rejected US offers to fund a study on new technology available to reduce the plant’s emissions.

In October, President Zedillo of Mexico and President Clinton announced that they would jointly undertake a survey on the environmental problems in the border region. The two governments pledged an $8 billion, multi-year cleanup program.

The Border Environment Cooperation Commission (BECC) approved two environmental projects in September. The first is a water treatment plant in Brawley, and the second is a wastewater treatment plant in Ensenada, a Baja California port. Approval allows the projects’ sponsors to apply for loans from the North American Development Bank. The newly-established BECC is a binational agency composed of five representatives from Mexico and five from the United States.

(4) Antarctica


(5) Protection of Endangered Species, Biodiversity, and Fisheries

In 1995, the United States Senate failed to ratify the Convention on Biological Diversity.

The Humane Society brought suit against the US Secretary of Commerce in the United States Court of International Trade, alleging that Italy continues large-scale driftnet fishing in the Mediterranean in defiance of international, European, and American law. In August, the court refused to issue a writ of mandamus compelling the Commerce Secretary to identify Italy as a violator and inform Italy’s president of the violation as required by the Driftnet Enforcement Act.

In *Earth Island Institute v. Christopher*, 1995 WL 604708 (Int’l Ct. Trade Oct. 12, 1995), Earth Island Institute filed a complaint in the International Court of Trade seeking to compel protection of sea turtles from nets used in shrimp fishing. By year’s end, the case was still pending, but, in the above-referenced opinion, the court granted the defendant’s motion to amend its answer in order to include an affirmative defense that the plaintiff’s complaint is time-barred by the statute of limitations.

The National Marine Fisheries Service issued a final rule revising Atlantic tuna fisheries regulations (60 Fed. Reg. 38505). The new regulations set Atlantic bluefin tuna fishing categories, extend vessel and dealer permit and reporting requirements to additional Atlantic fisheries, and generally seek to clarify the regulations themselves and facilitate their enforcement.

Legislation was introduced in Congress to amend the Marine Mammal Protection Act to remove unilateral US embargoes in exchange for
commitments by the affected countries to observe the requirements of the (→) Declaration of Panama to reduce dolphin mortality in the Eastern Tropical Pacific Ocean. An administration official testifying before the House Resources Subcommittee on Fisheries, Wildlife, and Oceans also stated that the Act should be amended to reconcile it with standards of the Inter-American Tropical Tuna Commission (IATTC) and to remove the embargoes on countries participating effectively in the IATTC.

On October 10, the Ninth Circuit Court of Appeals ruled that the National Marine Fisheries Service did not violate the Marine Mammal Protection Act by prohibiting purse seine tuna fishing for 1994 after the agency had documented excessive dolphin mortality rates (already approaching the total number of mortalities in 1993) during the first two months of that year. The court determined that the agency required closure of the fishery based on a reasonable interpretation of the Act and its legislative purposes, and that the agency closed the fishery only after it was clear that a global moratorium would not be established by March 1, when the American Tuna Boat Association’s permit was set to expire (American Tuna Boat Assoc. v. Commerce Dep’t, 67 F.3d 1404 (9th Cir. 1995)).

In May, the United States and Canada amended the 1916 Migratory Bird Convention. In conserving migratory birds, the Convention had failed to address the rights of Canada’s aboriginal and Alaska’s indigenous populations. For centuries, both of these groups hunted migratory birds during the spring and summer months. The amendments are designed to accommodate the goals of the Convention and the interests of these groups. As a result, both groups may now hunt migratory birds only during the warm months. In order for the United States to fully implement the Alaskan hunting provisions, the current United States/Mexico agreement prohibiting duck takings between March 10 and September 1 will also have to be amended.

In October, the Clinton administration announced that thousands of acres of trees in the Pacific Northwest would be released to logging, following a Ninth Circuit Court of Appeals ruling that upheld the timber industry’s claims that the sales are required under a law passed by Congress and signed by the President last summer. The law allows some cutting in national forests by granting an exemption from fish and wildlife regulations for harvesting undertaken in an attempt to reduce wildfires in national forests. The President had disagreed with the timber industry over the scope of the language, but announced that all court remedies to prohibit the release had been exhausted. In response, environmentalists filed a formal complaint with the North American Commission for Environmental Cooperation, seeking a ruling that the law violated NAFTA’s environmental provisions.

By year’s end, legislation was pending in both the House of Representatives and Senate to limit the scope of the Endangered Species Act
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place serious limitations on economic growth and energy policy in the United States. Members of the House Commerce Subcommittee on Energy and Power were concerned that the Mandate would result in new emission-reduction commitments for industrialized countries over the next 25 years while the developing countries, of which many are significant trade competitors with the United States, would not have any specific commitments. Thus, the Chairman of the Senate Energy and Natural Resources Committee, Senator Frank Murkowski, indicated that the Senate would oppose any protocol to the treaty that would impose economic hardship on the United States.

(7) Hazardous Materials and Pesticides

In 1994, when the parties to the Basel Convention accepted a ban on movement of hazardous waste between industrial and developing countries, the United States opposed the ban and argued that prohibiting exports for recycling might deprive developing countries of essential materials. In 1995, industrial and congressional opposition in the United States to ratification and implementation of the Convention intensified.

On December 8, the EPA announced a final rule to conform its regulation on the import and export of hazardous wastes to Organisation for Economic Cooperation and Development (OECD) Council Decision C(92)39. The rule does not change which wastes are subject to import and export restrictions under the Resource Conservation and Recovery Act, but does alter the procedures for movement to and from OECD countries. The hazardous wastes covered by the rule are those subject to federal manifest requirements under 40 C.F.R., Part 262. The final rule was scheduled to appear in the Federal Register in January 1996.

(8) Nuclear Energy and Waste

In early May, largely in response to intense United States lobbying efforts, more than 170 countries agreed to extend indefinitely the Nuclear Non-Proliferation Treaty. The Non-Aligned Movement, a group of 11 developing nations along with other non-nuclear countries, attempted to condition the treaty’s extension on disarmament and a reduction of nuclear arsenals. In recognition of these demands, the United States and other nuclear powers pledged to review efforts to conclude a global ban on nuclear testing by the end of 1996 and to reduce nuclear arms.

The Department of Energy considered resuming the production of tritium. A shortage of the radioactive gas is expected by the year 2011 without the development of new sources. The Clinton Administration announced in October that it would consider using a civilian reactor for production. The other alternative for production is to build a linear accelerator, which, while more expensive, would not produce as much high-level
radioactive waste. The Department of Energy published a notice of decision in December announcing that it would pursue a dual-track system for producing tritium by buying an existing commercial reactor and by designing, building, and testing the critical components of an accelerator system (60 Fed. Reg. 63878). Within three years, one option will be selected as the sole source of tritium production.

(9) Water Pollution

The House of Representatives, under Republican-Party control, introduced a number of bills to cut back on the provisions of the Clean Water Act. President Clinton announced his intention to veto any legislation significantly undermining the Act. The Canadian reaction to many of the proposed changes was unfavorable. Millions of Canadians receive their water from the Great Lakes, shared by the United States and Canada. Canada’s Deputy Prime Minister Sheila Copps vowed to object to any such cutbacks in US water pollution measures.

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