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Caribbean Conservation Corp. v. Florida Fish & Wildlife Conservation Commission

THE LAST CASE ON THE DOCKET THIS MORNING IS CARIBBEAN CONSERVATION CORPORATION, INC. ET AL. VERSUS FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT.

YOU HAVE ALL WORKED OUT THE APPORTIONMENT OF TIME?

YES. THREE MINUTES FOR REBUTTAL FOR US. THANK YOU.

CHIEF JUSTICE: THAT IS FINE. ALL RIGHT. YOU MAY PROCEED.

I AM DAVID GUEST, REPRESENTING THE CONSERVATIONIST CONSERVATIONISTS HERE. CARIBBEAN CONSERVATION, FLORIDA WILDLIFE FEDERATION, ET CETERA. THIS CONTROVERSY IS ABOUT A BILL PASSED BY THE LEGISLATURE IN 1999, THAT IMPOSED THE ADMINISTRATIVE PROCEDURES ACT ON A CONSTITUTIONAL EXECUTIVE AGENCY, THE FISH AND WILDLIFE CONSERVATION COMMISSION, WHICH I WILL REFER TO AS THE CONSERVATION COMMISSION.

THIS CONTROVERSY BOILS DOWN TO WHETHER THE CONSTITUTION REVISION WOULD LEAVE ANY ROOM FOR LEGISLATIVE ACTION IN TERMS OF THE JURISDICTION OF THE COMMISSION. IS THAT --

I WOULD SAY NO. I THINK IT IS A NEAR REMEMBER QUESTION THAN THAT, JUSTICE WELLS. -- I THINK IT IS A NARROWER QUESTION THAN THAT, JUSTICE WELLS. I THINK IT IS WHETHER OR NOT THE CONSERVATION COMMISSION HAS JURISDICTION OVERALL MARINE LIFE. IT IS NOT WHETHER -- OVER ALL MARINE LIFE. IT IS NOT WHETHER OTHER AGENCIES PERHAPS DEP, ALSO HAVE JURISDICTION. IT IS WHETHER THE MARINE FISHERIES COMMISSION HAS JURISDICTION, EXCLUSI HAVE OR NOT EXCLUSI HAVE, IT IS NOT MATERIAL TO -- EXCLUSIVE OR NOT EXCLUSIVE IS NOT MATERIAL TO US UNDER THIS --

RELATED TO THE MARCH OF '99 STATUTORY SCHEME AT THAT TIME, THAT THE COMMISSION DID NOT HAVE JURISDICTION OVER THE ENDANGERED SPECIES.

NO. THAT IS NOT CORRECT. THE, THIS COURT, IN 1990, ADJUDICATED THE CASE DAVIS VERSUS STATE, AND THE QUESTION PRESENTED THERE WAS, DOES THE MARINE FISHERIES COMMISSION HAVE JURISDICTION OVER MARINE ENDANGERED SPECIES OR NOT.

WHAT WAS THE CONTEXT, THOUGH, THAT THAT ISSUE WAS PRESENTED? IN OTHER WORDS WHAT WAS THE FACTUAL SETTING THAT WAS BEING ADDRESSED?

THE CONTEXT WAS THAT THERE WAS A TURTLE EXCLUDEER DEVICE ATTACHED TO SHRIMP FISHING RIGS, AND THE SHRIMPERS SAID THAT A NUMBER OF THINGS, ONE WAS THAT THERE IS AN EXCLUSION FOR ENDANGERED SPECIES. ANOTHER ONE WAS THAT THEY ARE NOT RENEWABLE MARINE FISHERIES RESOURCES AND A NUMBER OF OTHER CLAIMS, ALL OF WHICH THIS COURT ADJUDICATED. THIS COURT FOUND THAT THE PLAIN MEANING OF THE MARINE FISHERY STATUTE, SECTION 370.027, PART 1 PARTICULARLY, WAS NOT THAT THE PHRASE "ACCEPT FOR ENDANGERED SPECIES" MODIFIED THE TERM MARINE LIFE. IT DID NOT MEAN MARINE LIFE OTHER THAN ENDANGERED SPECIES. THAT EXCEPTION, THIS COURT FOUND ON A PLAIN MEANING PRINCIPLE, WAS AN EXCEPTION THAT MODIFIED THE FULL AUTHORITY. IN FACT, WHAT THE COURT HELD WAS THAT THE STATUTE DOES NOT SAY THAT THE COMMISSION CANNOT ACT AT ALL, WITH

REFERENCE TO ENDANGERED SPECIES, BUT SAYS THAT THE COMMISSION IS NOT THE ONLY AGENCY THAT CAN ACT, SO IT WAS A BROAD, IT WAS A BROAD DECISION, AND IT COMPORTS, ACTUALLY, WITH THE ACTUAL PRACTICE OF THE COMMISSION. IN 1984, ONE YEAR AFTER THE MARINE FISHERIES COMMISSION WAS ESTABLISHED, IT ADOPTED A RULE TO PROTECT ENDANGERED STURJ ONE. -- S STCHLT URGE -- ENDANGERED STURGEON. THAT HAS BEEN ON THE BOOKS FOR 18 YEARS NOW.

SO WAS ONE OF THE QUESTIONS BEFORE THE AUTHORITY WAS ONE OF THE MARINE AUTHORITIES HAD WITH REFERENCE TO THE CONSTITUTION? DOES THAT HAPPEN WITH THE CONSTITUTIONAL AMENDMENT?

ACTUALLY I THINK NO. THANK THAT IS A SUBISSUE. I THINK THAT, IF YOU LOOK AT THE PLAIN MEANING OF ARTICLE IV SECTION 9, IT GIVES THE CONSERVATION COMMISSION JURISDICTION OVER WILDLIFE, FRESH WATER LIFE, AND MARINE LIFE.

BUT IN ORDER TO DO THAT, DON'T YOU HAVE TO JUST SOMEHOW WRITE OUT OF THE CONSTITUTION, THE LANGUAGE IN SECTION, ARTICLE 12 SECTION 23-B, WHICH SECTION THAT THE JURISDICTION OF THE MARINE FISHERIES COMMISSION, AS SET FORTH IN STATUTES IN EFFECT ON MARCH 1, 1988, SHALL BE TRANSFERRED TO FISH AND WILDLIFE CONVATION COMMISSION?

NO. NO. AND FOR TWO REASONS. ONE IS BECAUSE THE GENERAL GRANT OF AUTHORITY, THE JURISDICTION, OF THE AGENCY AS SET FORTH IN SECTION 9, AND IT IS THOSE THREE THINGS, WILDLIFE, FRESH WATER LIFE AND MARINE LIFE, AND BY, IN A SCHEDULING PROVISION, ADDING ADDITIONAL AUTHORITY FROM THE MARINE FISHERIES COMMISSION, CANNOT, AS A MATTER OF LOGIC, REDUCE THE AUTHORITY IN THE GENERAL GRANT OF AUTHORITY.

SO WHAT DOES THAT SECTION MEAN? OTHERWISE THAT SECTION HAS NO MEANING.

NO. IT MEANS SIMPLY THAT, AS PRACTICAL ADMINISTRATIVE MATTER, IF YOU ARE GOING TO SET UP A COMMISSION THAT HAS JURISDICTION OVERALL CREATURES GREAT AND SMALL, THEN YOU SHOULD FOLD IN THE TWO COMMISSIONS THAT DEAL WITH MARINE LIFE AND DEAL WITH FRESH WATER LIFE AND WILDLIFE. IT IS A PROCESS.

YOU ARE REALLY INTERPRETING THE CONSTITUTIONAL PROVISIONS THAT YOU ARE RELYING ON, AS BARRING THE LEGISLATURE FROM ACTING IN THIS AREA.

NO, I AM NOT.

YOU ARE NOT?

I AM NOT. I AM NOT. ALL I AM SAYING IS THAT THE JURISDICTION OF THE COMMISSION, OF THE CONSERVATION COMMISSION, IS SET FORTH IN ARTICLE IX. WHETHER THAT JURISDICTION IS EXCLUSIVE OR NONEXCLUSI HAVE, IT IS NOT ACTUALLY ADDRESSED BY THE CONSTITUTION. AND THERE IS A HINT IN THE MISSING "D", WHICH I SUGGEST IS A VERY FEINT TECHNICAL NUANCE IN ARTICLE IX, AND IF YOU LOOK AT THE REFERENCE OF THE CONSTITUTIONAL COMMISSION, THAT MISSING "D" WAS INTENDED TO MEMORIALIZE AN UNDERSTANDING THAT THE PROGRAMS CONCERNING MARINE LIFE THAT WERE CURRENTLY HOUSED AT THE DEPARTMENT OF ENVIRONMENTAL PROTECTION WERE NOT GOING TO BE, BY OPERATION OF THE NEW CONSTITUTION, TRANSFERRED. THIS WAS, IN FACT, REALLY A TURF BATTLE BETWEEN THE GAME AND FISH COMMISSION AND DEP.

WHERE DOES THE ADMINISTRATIVE PROCEDURE ACT COME INTO THIS? I UNDERSTAND YOUR INITIAL ARGUMENT, AND IT SEEMS TO FOCUS IN THE FIRST DISTRICT'S ARGUMENT NOT TO BE WHERE THE JURISDICTION IS, AS FAR AS THE MARINE LIFE, BUT AS TO WHETHER THE LEGISLATURE COULD IMPOSE THE REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT ON

IT. ARE THOSE THE SAME THING OR TWO DIFFERENT THINGS?

THEY ARE DIFFERENT. THE SHORT ANSWER TO YOUR QUESTION IS THAT, WITHIN THE TEXT OF ARTICLE IV SECTION 9, THERE IS A PROVISION THAT SAYS THAT IT IS THE COMMISSION THAT IS TO ESTABLISH PROCEDURES TO ENSURE ADEQUATE DUE PROCESS IN THE EXERCISE OF ITS EXECUTIVE AND REGULATORY FUNCTIONS. THAT IS TO SAY IT IS NOT THE ROLE OF THE LEGISLATURE TO ESTABLISH THE PROCEDURES ON HOW THE COMMISSION EXERCISES ITS CONSTITUTIONAL AUTHORITY.

BUT THAT IS, SO IT IS A SEPARATE ARGUMENT, AND WE COULD FIND THAT THERE WAS NEVER ANY INTENT TO EXCLUDE THE LEGISLATIVE ABILITY TO IMPOSE THE ADMINISTRATIVE PROCEDURE ACT ON THE COMMISSION, BECAUSE, AND THAT IS A FACT BOTH OF THE COMMISSIONS WERE SUBJECT TO THE ADMINISTRATIVE PROCEDURE ACT, WERE THEY NOT, BEFORE THIS CONSTITUTION --

NO, THEY WERE NOT.

NEITHER OF THEM WERE?

THE MARINE FISHERIES COMMISSION IS A CREATE YOUR OF THE LEGISLATURE, WHEREAS THE FISHERIES COMMISSION WAS NOT, AND THERE WAS A CONSTITUTIONAL AUTHORITY PROTECTING THAT. THE LEGISLATURE ENACTED A CONSTITUTIONAL PROCEDURES, WHEN THAT AGENCY, ITSELF, IS ESTABLISHED IN ITS OWN CONSTITUTIONAL PROCEDURES.

WOULD YOU ESTABLISH WHAT THE REAL-LIFE IMPLICATIONS ARE, FROM AN ENVIRONMENTAL POINT OF VIEW?

VERY SIMPLY, WHEN THIS CONSERVATION AGENCY ACTS TO PROTECT ENDANGERED STURGEON, WHEN IT ACTS TO PROTECT ENDANGERED SEA TURTLES AND THE LIKE, THAT THE PROCEDURES IN CHAPTER 120 THAT ALLOW THE OPPONENTS OF THOSE MEASURES TO THROW UP PROCEDURAL ROADBLOCKS AND HOLD UP THE MEASURES FROM BECOMING EFFECTIVE FOR MONTHS OR YEARS, AND THEN GO TO THE LEGISLATURE AND ADD ADDITIONAL PROCEDURAL HURDLES, THAT THOSE BECOME IMPOSSIBLE, IF THE COMMISSION IS THE ONE THAT ESTABLISHES THE PROCEDURES. IT IS A PROCEDURAL ISSUE ONLY.

IS THERE ROOM FOR CONCURRENT JURISDICTION OR IS ONE EXCLUSI HAVE OF THE OTHER? THE LEGISLATURE LEAVES NO ROOM FOR THE COMMISSION TO HAVE AUTHORITY TO REGULATE.

I THINK I UNDERSTAND YOUR QUESTION, JUSTICE SHAW, AS MEANING, THAT ARE YOU SAYING WAS THERE CONCURRENT JURISDICTION OVER THESE MATTERS?

IS THERE ROOM FOR?

ABSOLUTELY INDEED, AND NOT ONLY IS THERE ROOM FOR IT. THAT WAS THE STATUTORY SCHEME, BECAUSE WHAT HAPPENED, AS YOU CAN SEE IN THE DAVIS CASE, THAT THE MARINE FISHERIES COMMISSION EXERCISED ITS AUTHORITY, IN ADDITION WE HAD A WHOLE LOT OF OTHER ENTITIES EXERCISING AUTHORITY, TOO. WE HAD DEP EXERCISING ITS AID, IN TRYING TO PROTECT SEA TURTLES. WE HAD COUNTIES ADOPTING LIGHTING ORDINANCES TO PROTECT THE HATCHLINGS, AND THE RATIONALE FOR THAT IS CLEAR. IT IS THAT ENDANGERED SPECIES STAND ON THE PRESS I PUS OF EXTINCTION -- ON THE PRECIPUS OF EXTINCTION FOR ALL TIME.

SO THE LEGISLATURE WOULD STILL HAVE SOME IMPLEMENTING POWER.

ABSOLUTELY. THEY CAN ADOPT PROGRAMS. THEY CAN REPEAL PROGRAMS. THERE IS NO DOUBT ABOUT THAT, BUT WHEN THE CONSERVATION COMMISSION IS ACTING WITHIN THE SCOPE OF ITS

JURISDICTION OVERALL MARINE LIFE, WHEN IT IS DOING THAT, THE LEGISLATURE LACKS AUTHORITY, BECAUSE OF THAT PROVISION IN ARTICLE IX, IN SECTION 9 TO IMPOSE PROCEDURAL RESTRAINTS ON THEM.

NOW, I TAKE IT YOUR POSITION IS THAT THIS IS SO CLEAR IN THE CONSTITUTION, THAT THERE CANNOT BE ANY RESORT TO WHAT IS THE STATEMENT OF INTENT BY THE CONSTITUTIONAL REVISION COMMISSION.

NO. I WOULD SAY THAT IT IS CLEAR, FROM THE CONSTITUTION, BUT THAT THE RECORD OF THE PROCEEDINGS OF THE CONSTITUTIONAL REVISION COMMISSION ARE IN NO WAY INCONSISTENT WITH THIS. THE AMENDMENT --

DIDN'T THE CONSTITUTION REVISION COMMISSION DEBATE AND STATEMENT INDICATE THAT THEY WERE JUST MAKING A VERY TECHNICAL CHANGE, HERE, AND THAT THE VERY LANGUAGE OF THIS SCHEDULE WAS INTENDED TO SHOW THAT THE STATUS QUO WAS BEING MAINTAINED, SO THAT THERE WOULD BE THE SAME TYPE OF JURISDICTION AS THERE WAS IN MARCH OF 1998.

WELL, ACTUALLY, JUSTICE WELLS IF YOU TAKE A VERY CLOSE LOOK AT THE WEB SITE THAT IS IDENTIFIED ON PAGE 24, OF THE ATTORNEY GENERAL'S ANSWER BRIEF, AND YOU LOOK AT HER PROPOSITIONS 45 AND -- LOOK AT PROPOSITIONS 45 AND LOOK AT THE ACTUAL SEQUENCE OF EVENTS, YOU SEE THAT THE FIRSTITYRATION OF THIS PROPOSITION THAT HAD -- THE FIRST ITERATION THAT HAD THIS SCHEDULING OF EVENTS IN IT, HAD HAD MARINE LIFE THEIR FIRST AND ALL OTHERS THERE SECOND. THAT WAS THEIR FIRST, SO I THINK THAT YOU CAN'T INTERPRET THE SCHEDULING COMMISSION TO MEAN THAT IT WAS A NARROW ALLOCATION OF AUTHORITY, BUT IF YOU LOOK AT THE ACTUAL DEBATE THAT TOOK PLACE, WHEN COMMISSIONER THOMPSON OFFERED HIS AMENDMENT, WHICH ULTIMATELY PASSED, HE WAS SAYING WE AREN'T, THROUGH THIS PROCESS, TRANSFERRING THE PROGRAMS, THE REGULATORY PROGRAMS AND THE OTHER PROGRAMS OF THE DEP OVER MARINO RELATED MATERIALS -- MARINE RELATED MATERIALS, MARINE LIFE FOR ENDANGERED SPECIES. THAT IS THE SEA TURTLE PROGRAM AND THE MANATEE PROGRAM, UNDER 370.12. ARE WE? WE AREN'T INTENDING TO DO THAT. WE ARE ONLY INTENDING TO TRANSFER THE MARINE FISHERIES COMMISSION, AS IT EXISTING AS OF MARCH 1998. AND THAT IS REALLY CONSISTENT WITH WHAT WE ARE ARGUING. WHICH WE ARE NOT SAYING THE LEGISLATURE CANNOT ACT. WE ARE SAYING THAT, WHEN THE MARINE, WHEN THE CONSERVATION COMMISSION ACTS, AS TO MARINE LIFE, IT HAS CONSTITUTIONAL JURISDICTION OVER IT.

BUT YOU ARE TALKING HERE ABOUT PROCEDURES. IN ARTICLE IV SECTION 9, SAYS THE COMMISSION SHALL ESTABLISH PROCEDURES TO ENSURE ADEQUATE DUE PROCESS IN THE EXERCISE OF ITS REGULATORY FUNCTIONS, AND THAT THE LEGISLATURE MAY ENACT LAWS IN AID OF THE COMMISSION, NOT INCONSISTENT. SO AS I AM SEEING, THE COMMISSION IS OPPOSING YOUR POSITION. I MEAN, THEY COULD, THEMSELVES, SAY WE ARE GOING TO OUR RULES AND PROCEDURES SHALL BE THE ADMINISTRATIVE PROCEDURE.

SURE. THEY COULD. I AM NOT SAYING THAT THEY COULDN'T.

THEY HAVE NOT DONE THAT YET.

THEY HAVE NOT ADOPTED IN THEIR OWN RULES, THE REQUIREMENT THAT YOU HAVE TO COMPLY WITH THE PROVISIONS I WAS WORRIED ABOUT, WHICH IS THAT, UNDER THE APA, YOU CAN PUT THE AIR BRAKES ON A PROPOSED REGULATION.

BUT DON'T YOU, SINCE YOU ARE ARGUING THAT THIS IS UNCONSTITUTIONAL ON ITS FACE, DON'T YOU HAVE TO SHOW US THAT IMPOSING THE REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT ARE INCONSISTENT WITH THE PROCEDURES OF DUE PROCESS, AS ESTABLISHED BY THE COMMISSION? I MEAN, DOESN'T IT, YOU ARE JUST SAYING IT. HOW DO WE --

NO. I THINK SIMPLY IT IS THE TASK OF THE COMMISSION TO ESTABLISH ITS PROCEDURES. AND IT IS NOT THE TASK OF THE LEGISLATURE, AND WE CONTEND THAT THERE IS A CLEAR DIFFERENCE BETWEEN THE TWO PROCEDURES. LET ME GET TO A POINT THAT I HAVEN'T GOT TO THAT IS VERY IMPORTANT HERE. THERE IS ONE ISSUE. THERE IS ONE PIECE OF EVIDENCE IN THE RECORD OF THE CRC. IT IS A LETTER FROM A COMMISSIONER, A LETTER OF INTENT ISSUED SUBSEQUENT TO THE FINAL VOTE OF THE COMMISSION. SUBSEQUENT TO THE FINAL VOTE, PUT IN THE RECORD, AND IT HAS A MISSTATEMENT OF LAW IN IT, AND THE MISSTATEMENT IS THAT THE MARINE FISHERIES COMMISSION DOES NOT HAVE STATUTORY POWER OVER ENDANGERED SPECIES AT ALL. THAT IS TOTALLY INCONSISTENT WITH THE HOLDING OF THIS COURT IN DAVIS.

YOU ARE TALKING ABOUT CLAY HENDERSON?

YES, YES, YOUR HONOR.

AND I SUBMIT THAT, SINCE THAT WAS SUBMITTED SUBSEQUENT TO THE FINAL VOTE, THAT YOU SHOULD NOT IMPUTE THAT MISTAKE OF LAW TO THE REST OF THE CONSTITUTIONAL REVISION COMMISSION, AND CERTAINLY SHOULD NOT IMPUTE IT TO THE VOTERS OF FLORIDA, BECAUSE THEY WERE THE ONES WHO VOTED ON THIS. AND THAT IS NOT CONSISTENT WITH THE PLAIN MEANING OF THE MARINE FISHERIES COMMISSION STATUTE, THAT THIS COURT EXPLAINED IN DAVIS.

LET ME ASK YOU THIS. IF THE LEGISLATURE, YOU SAY THAT THEY CAN'T HAVE CONCURRENT JURISDICTION. IF THE LEGISLATURE ACTS FIRST IN AN AREA, IS THERE ANYTHING THAT THE COMMISSION COULD DO TO NULLIFY THAT SAYING, WELL, THIS --

NO.

-- THAT THIS IS IN OUR BAILEY WICK. THE LEGISLATURE, YOU SHOULD NOT HAVE ACTED.

NOT AS RELATES TO ENDANGERED SPECIES, NO, ANY MORE THAN THE ENDANGERED SPECIES ACT. YOU HAVE CURRENT AUTHORITY, AND WHEN YOU HAVE CURRENT AUTHORITY, YOU CANNOT NEGATE THE AUTHORITY OF ANOTHER AGENCY. THE IDEA HERE IS THAT THIS HOUSE IS ON FIRE, THAT THIS IS A FIVE ALARM FIRE OUT HERE, BECAUSE THERE IS AN ENDANGERED SPECIES ON THE BRINK OF EXTINCTION, AND EVERY AGENCY WHO CAN PROBABLY THROW WATER ONTO THAT FIRE IS THERE TO HELP A THAT IS DIFFERENT WITH THREATENED SPECIES AND WITH SPECIES OF SPECIAL CONCERN, WHEN IT IS MORE APPROPRIATE TO HAVE ONE AGENCY THAT IS LEADING IT ALL. THANK YOU.

MAY IT PLEASE THE COURT. I AM JAMES ANTISTA, GENERAL COUNSEL FOR THE FISH AND WILDLIFE CONSERVATION COMMISSION. I WILL BE GIG MY ORAL ARGUE -- I WILL BE DIVIDING MY ORAL ARGUMENT TIME WITH MATT CON I GO LAYER-. -- WITH MATT CONIGLIARO. KEEP

CHIEF JUSTICE: KEEP ON EYE ON YOUR TIME.

IS THAT ISSUE OF CONCURRENT JURISDICTION RAISED?

NO. AND THE TRIAL JUDGE SUGGESTED THAT THERE MIGHT BE CONCURRENT JURISDICTION, WITH RESPECT TO THE NEW COMMISSION AND THE LEGISLATURE, AND THE DISTRICT COURT SAID, NO, THAT WAS NOT THE INTENT OF THE FRAMERS OF THE CONSTITUTIONAL REVISION, OF THE CONSTITUTIONAL REVISION COMMISSION THAT, A CONCURRENT JURISDICTION ARRANGEMENT WAS UNTENABLE, IMPRACTICAL AND COULDN'T WORK.

WHERE IS THE LEGISLATURE'S JURISDICTION, AND WHERE IS THE COMMISSION'S JURISDICTION? WHAT IS THE RUBICON? WHAT DIVIDES THE TWO?

JUSTICE SHAW, THE, TO ANSWER THAT QUESTION, YOU FOCUS ON WHAT THE TRIAL COURT AND THE DISTRICT COURT AN AGREED ON, AND THEY AGREED ON -- COURT AGREED ON, AND THEY GREED ON THE FUNDAMENTAL -- AND THEY AGREED ON THE FUNDAMENTAL PRINCIPLE THAT THE FISH AND WILDLIFE COMMISSION WAS MEANT TO BE THE MERGER OF TWO COMMISSIONS ONLY, AND THE NEW COMMISSION TOOK ONLY AS HIS CONSTITUTIONAL JURISDICTION, ONLY THE AUTHORITY PROVIDED BY THE TWO CONCURRENT COMMISSION, AND THAT IS NO MORE AND NO LESS, AND THAT IS EVIDENCE EVIDENCE IN PLAIN TEXT BY ARTICLE IV, BY THE SCHEDULE, BY ALL TRANSCRIPTS AND OTHER ANSWER LATER AIDS THAT THIS -- ANCILLARY AIDS THAT THIS COURT CAN USE TO ARRIVE AT THE DECISION OF THE COMMISSION.

THE TWO APPELLANTS, ONE WAS A LEGISLATIVE COMMISSION AND THE OTHER HAD BEEN A CONSTITUTIONAL COMMISSION, CORRECT?

THAT'S CORRECT.

DOES THAT HAVE IMPLICATIONS FOR WHO HAS THE AUTHORITY TO ENACT THE PROCEDURES THAT WILL, THEN, GOVERN THE COMMISSION?

YES, IT DOES, YOUR HONOR. THE COMMISSION, WHEN ACTING IN ITS CONSTITUTIONAL CAPACITY, ACTS AS AN AUTONOMOUS AGENCY, AND IT NEED NOT SUBJECT ITS RULES TO AN ADMINISTRATIVE ADJUDICATION UNDER CHAPTER 120. THAT IS THE BIG DIFFERENCE BETWEEN A CONSTITUTIONAL COMMISSION AND AN AGENCY THAT DERIVES ITS POWER FROM THE LEGISLATURE. WHEN THE COMMISSION IS ACTING WITHIN ITS STATUTORY AUTHORITY, AS IT WOULD BE WHEN IT IS REGULATING TURTLES, MANATEES, AND WHALES, IT MUST ACT IN ACCORDANCE WITH THE AUTHORITY THAT THE LEGISLATURE PROVIDES AND IN ACCORDANCE WITH THE COMPLETE PROVISIONS OF CHAPTER 120, INCLUDING ADMINISTRATIVE ADJUDICATIONS OVER THE AGENCY RULES.

NOW, AS I UNDERSTAND YOUR POSITION IS THAT THE REASON FOR THAT IS HISTORICALLY THIS POWER OVER THESE SPECIES HAD BEEN SET OUT BY STATUTE AND HAD BEEN GIVEN TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.

THAT IS CORRECT, YOUR HONOR.

AND AT THE TIME OF THE CONSTITUTIONAL REVISION CHANGE. IS THAT CORRECT?

THAT'S CORRECT, YOUR HONOR, UNDER CHAPTER, SECTION 370.12, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION HAD THE COMPLETE REGULATORY AND MANAGEMENT AND ENFORCEMENT AUTHORITY OVER GREEN TURTLES, MANATEES, AND OTHER MARINE MAMMALS, AND THE MARINE FISHERIES COMMISSION, IN THE ENTIRE TIME OF ITS EXISTENCE, NEVER EXERCISED DIRECT REGULATORY MANAGEMENT OR ENFORCEMENT AUTHORITY OVER THOSE SPECIES.

WHEN CAN TELL? YOU HAVE BROKEN THIS DOWN, NOW, TO WHEN THE COMMISSION IS ACTING IN ITS CONSTITUTIONAL AUTHORITY, AS OPPOSED TO A STATUTORY AUTHORITY. HOW CAN YOU TELL, WHEN IT IS ACTING IN ONE CAPACITY, AS OPPOSED TO THE OTHER?

THE COMMISSION FULLY UNDERSTANDS, YOUR HONOR, WHERE IT IS SUBJECT TO THE STATUTORY --

MY POINT IS --

-- AUTHORITY.

-- IF IT WANTS TO DO SOMETHING AND IT SAYS STATUTORY, WE CAN'T DO THIS, THEN IT PUTS ON

ANOTHER HAT AND IT CAN SAY, ALL RIGHT, I HAVE PUT ON ANOTHER HAT AND I AM NOW ACTING UNDER MY CONSTITUTIONAL AUTHORITY. CAN IT DO THAT?

WHEN IT ACTS WITH REGARD TO WHALES AND MANATEES, THEN IT WILL CONFIRM TO THE ENABLING STATUTE. WHEN THE COMMISSION IS EXERCISING AUTHORITY OVER RED FISH OR TROUT, OR DEER, IT IS ACTING UNDER ITS CONSTITUTIONAL AUTHORITY.

WHAT IS YOUR INTERPRETATION OF OUR DECISION IN DAVIS?

THE DAVIS DECISION STANDS FOR THE PROPOSITION THAT THE MARINE FISHERIES COMMISSION HAVE THE AUTHORITY TO REQUIRE SHRIMP VESSELS TO USE TURTLE EXCLUDER DEVICES, BECAUSE THE MFC AT THAT TIME, HAD THE AUTHORITY TO REGULATE FISHING GEAR, AND IT WAS THE AGENCY THAT NEEDED TO IMPOSE UPON THE SHRIMPERS, THE OBLIGATION AND RESPONSIBILITY TO USE THOSE TURTLE EXCLUDER DEVICES. THERE IS A GREAT DEAL OF COMMENT IN THE CASE BY JUSTICE PARK BARKETT, ABOUT -- JUSTICE BARKETT ABOUT WHY THAT WAS IMPORTANT, AND IT WAS IMPORTANT THAT THE MFC HAVE THE ABILITY TO DO THAT, BUT I DO NOT THINK THAT THE CASE HOLDS THAT THE MFC HAD BROAD AUTHORITY OVERALL ENDANGERED AND THREATENED MARINE SPECIES. I THINK THE CASE --

HOW DO YOU READ THE CONSTITUTIONAL PROVISION, ARTICLE IX, 4 SECTION 9, WHICH SAYS THAT THE COMMISSION SHALL REGULATE AUTHORITY, AND THEN SAY FRESH WATER AND MARIANNA AQUATIC LIFE. HOW DO YOU INTERPRET THAT LANGUAGE THAT SAYS JUST MARINE LIFE?

JUSTICE QUINCE, I BELIEVE THAT MEANS THAT THE CONSTITUTIONAL REVISION COMMISSION WAS QUALIFYING THE AUTHORITY OF THE COMMISSION, ITS CONSTITUTIONAL AUTHORITY, QUALIFYING THE TYPES OF SPECIES OVER WHICH IT WOULD HAVE CONSTITUTIONAL AUTHORITY, AND IF YOU LOOK AT THAT PROVISION, PLUS THE SCHEDULE --

MARINE LIFE.

THAT'S RIGHT, AND THE SCHEDULE. IT, I BELIEVE THE CONSTRUCTION IS THAT THE NEW COMMISSION WOULD HAVE ONLY THAT AUTHORITY THAT THE MARINE FISHERIES COMMISSION HAD OVER MARINE LIFE.

AND --

WHICH DOESN'T --

WHICH IS ENDANGERED SPECIES, SO IS THERE STILL ROOM IN ARGUMENT, BECAUSE AS I UNDERSTAND THE PETITIONER'S ARGUMENT, THAT PART OF THEIR ARGUMENT IS, OKAY, EVEN IF YOU CONSIDER ENDANGERED SPECIES, THEN THERE ARE TWO OTHER CATEGORIES OF MARINE LIFE THAT WOULD NOT BE INCLUDED IN THIS EXCLUSION THAT TALKS ABOUT THE AUTHORITY THAT THE MARINE COMMISSION HAS, SO HOW DO YOU ADDRESS THAT PARTICULAR ARGUMENT ARGUMENT? CONCERNED SPECIES OR AND THREATENED SPEES IS?

YES, YOUR HONOR. THE BEST CONSTRUCTION, IT TO GIVE HARMONY TO WHAT THE CONSTITUTIONAL REVISION COMMISSION INTENDED, WOULD BE TO SAY THAT THERE WERE CERTAIN ENDANGERED SPECIES OVER WHICH THE MARINE FISHERIES COMMISSION DID NOT HAVE JURISDICTION, AND THOSE SPECIES ARE IDENTIFIED IN CHAPTER 370.12. WHALES, SEA TURTLES ANIMAL ALWAYS. AND ANYTHING ELSE THAT WAS SUBJECT TO MFC REGULATION, FOR WHICH THEY HAVE RULES TO GOVERN, COMES TO THE NEW COMMISSION.

AND THAT YOU HAVE AUTHORITY TO ENACT THE PROCEDURES FOR. SO ARE WE SAYING THAT, THE WAY, AND MAYBE, I DON'T WANT TO GET SIMPLISTIC ABOUT IT, BUT THE WAY THAT

MANATEES AND TURTLES ARE GOING TO BE PROTECTED IN THIS STATE WILL BE DIFFERENT THAN THE WAY STURGEON AND WHATEVER ELSE FALL INTO THE OTHER, THE REST OF EVERYTHING? THERE IS JUST GOING TO BE TWO DIFFERENT TYPES OF PROCEDURES AND PROCEEDINGS THAT WILL GOVERN THE WAY THE COMMISSION HAS TO ACT IN THOSE, IN THAT REGARD?

YOUR HONOR, THE DIFFERENCE WOULD BE THAT, FOR THE TURTLES AND THE MANATEES, WE HAVE TO CONFORM AND ALLOW CHAPTER 120 RULE ADJUDICATION HEARINGS FOR. THE OTHER SPECIES, WE DON'T.

BUT YOU COULD. WOULD THEY BE INCONSISTENT WITH, IF YOU SAID THAT CHAPTER 120 WILL BE HOW YOUR COMMISSION IS GOVERNED, IS THERE SOMETHING THAT WOULD BE UNCONSTITUTIONAL ABOUT DOING THAT?

WELL, THE PROBLEM WE WOULD APPROACH OR FACE THERE WOULD BE SOME OF OUR CONSTITUENTS MIGHT NOT BELIEVE THAT WE HAVE THE POWER TO IMPOSE THAT ON THOSE FUNCTION THAT IS WE HANDLE THROUGH THE CONSTITUTION, AND THEY MIGHT CHALLENGE US. KEEP IN MIND THAT THE PURPOSE OF AN ADMINISTRATIVE ADJUDICATION IS TO DETERMINE IF AN AGENCY RULE IS WITHIN DELEGATED STATUTORY AUTHORITY. IF THE RULE-MAKING AUTHORITY COMES FROM THE CONSTITUTION, THEN THAT PROCEDURE DOESN'T WORK AND THE COURTS HAVE SAID, IN THE AIR BOAT ASSOCIATION CASES AND IN A NUMBER OF OTHER CASES, THAT IT DOESN'T FIT THE COMMISSION, WHEN IT IS ACTING UNDER ITS CONSTITUTIONAL POWER. ONE COMMENT ABOUT A QUESTION THAT YOU RAISED ABOUT THE DUE PROCESS ISSUE. THE CONSTITUTIONAL REVISION PLACED A DUE PROCESS PROVISION IN THE AMENDMENT BECAUSE THEY WERE CONCERNED ABOUT THIS APA ISSUE, AND THE ABSENCE OF USE OF RULE OF ADJUDICATION, SO THEY IMPOSED UPON THE COMMISSION, THE OBLIGATION TO COME UP WITH ITS OWN DUE PROCESS STANDARDS, WHEN ACTING IN ITS CONSTITUTIONAL CAPACITY, WHICH THE COMMISSION HAS DONE. SO THEY HAVE ADOPTED THE UNIFORM RULES OF PROCEDURE THAT GOVERN OTHER AGENCIES, AND THAT WILL GOVERN HOW WE PROMULGATE RULES, HOW WE DEAL WITH DECLARATORY STATEMENTS, HOW WE DEAL WITH ADJUDICATING LICENSE DENIALS AND THAT SORT OF THING.

PRIOR TO THE CONSTITUTIONAL REVISION, DID THE COMMISSION USE THE APA?

THE GAME COMMISSION DID NOT, YOUR HONOR. WE DID NOT ALLOW OUR RULES TO BE ADJUDICATED UNDER APA. IF A PERSON TRIED TO FILE A RULE CHALLENGING TO A COMMISSION RULE, THE ATTORNEYS WOULD MOVE TO DISMISS -- CHALLENGE TO A COMMISSION RULE, THE ATTORNEYS WOULD MOVE TO DISMISS IT AND THOSE MOTIONS WOULD BE GRANTED.

THE COMMISSION, WHICH WAS A LEGISLATIVE AGENCY, DID TO THE APA.

YES, YOUR HONOR.

MAY IT PLEASE THE COURT. MATT CONIGLIARO ON BEHALF OF THE STATE OF FLORIDA. LET ME START BY AGREEING WITH THE FISH AND WILDLIFE COMMISSION REGARDING OUR POSITION IN THIS CASE.

ARE YOU REPRESENTING THE INTEREST OF THE LEGISLATURE IN THIS PROCEEDING OR JUST SO I UNDERSTAND WHERE --

NOT FORMALLY, YOUR HONOR. THE ATTORNEY GENERAL WAS MADE A DEFENDANT TO THE CASE, AND WE ARE HERE ON BEHALF OF THE ATTORNEY GENERAL. INCIDENTALLY, THE INTEREST OF ALL OF THESE DIFFERENT ENTITIES, WITH THE EXCEPTION OF THE PETITIONER IS PERFECTLY ALIGNED, THE LEGISLATURE'S POINT OF VIEW, THE FISH AND WILDLIFE'S POINT OF VIEW, THE ATTORNEY GENERAL'S POINT OF VIEW AND THROUGH US, THE STATE OF FLORIDA, THE CONSERVATION COMMISSION'S POINT OF VIEW ARE ALL IDENTICAL, IT IN THE WAY THESE BODIES

HAVE INTERPRETED REVISION FIVE AS THE COMMISSION WROTE IT, AND THE STATUTES THAT WERE AFFECTED OR CONSIDERED THROUGH REVISION FIVE AND THE POINT OF THE REVISION, AS MR. ANTISTA SAID, WAS TO BRING THE MARINE FISHERIES COMMISSION INTO THE FISH AND WILDLIFE CONVICTION COMMISSION, WITH RESPECT TO THE WILDLIFE, AND WE HAVE NOT CHALLENGED THE NOTION THAT, IF THE COMMISSION HAS CONSTITUTIONAL JURISDICTION OVER A SPECIES THAT, THE LEGISLATURE DOES NOT HAVE THE ABILITY TO REQUIRE CERTAIN PROCEDURES TO BE FOLLOWED.

BUT YOU HAVE TO ADMIT THAT IT STRAINS LOGIC, TO SAY THAT THIS COMMISSION HAS JURISDICTION OVER MARINE LIFE BUT THERE ARE CERTAIN TYPES OF MARINE LIFE THAT IT DOESN'T HAVE JURISDICTION OVER. I MEAN, THAT IS SOMEWHAT OF AN IN CONGRUITY HERE, THAT WE ARE FACED WITH IN 2002, IS IT NOT?

I DON'T THINK IT IS ILLOGICAL YOUR HONOR. THE WAY THE JURISDICTION OF THE STATUTORY AGENCIES WAS PREVIOUSLY DIVIDED WAS THAT THE MARINE FISHERIES COMMISSION BASICALLY REGULATED FISH AND FISHING AND THE THINGS ASSOCIATED WITH THAT. DEP AND, BEFORE THAT, DNR, HAD JURISDICTION OVER THE CONSERVATION ASPECTS OF MARINE LIFE IN FLORIDA, AND WE HAVE GIVEN THE COURT THE VARIOUS CITATION TO SAY THE STATUTES THAT WERE CONTROLLING THEN. WHEN REVISION FIVE WAS CONCLUDED AND THE COMMISSION HAD FORMALIZED THE LANGUAGE COMPLETELY, THE INTENT OF THE COMMISSION WAS TO KEEP THAT DIVISION, TO BRING THE NONENDANGERED, STATUTORY REGULATION OF THE MFC INTO THE NEW CONSTITUTIONAL --

BUT FROM THE UNDERSTANDING STANDPOINT OF THE PUBLIC, AS JUSTICE SHAW REPEATEDLY ASKED HERE, HOW IS THE PUBLIC GOING TO KNOW WHICH HAT THE COMMISSION IS WEARING, WHEN IT PROCEEDS, THEN, TO COMPLAIN ABOUT A MATTER? UNLESS IT GOES BACK AND RESEARCHES THE STATUTE AND SEES THAT YOU HAVE GOT THESE ITEMS THAT ARE IN A STATUTORY HAT, AS OPPOSED TO A CONSTITUTIONAL HAT?

I THINK THE COMMISSION HAS THUS FAR BEEN FAIRLY CLEAR ABOUT WHICH SPECIES IT HAS CONSTITUTIONAL JURISDICTION TO REGULATE AND WHICH SPECIES IT HAS STATUTORY JURISDICTION TO REGULATE, AND AS A PRACTICAL MATTER, I THINK IT MAKES SENSE IN THE END. WITH RESPECT TO THE ENDANGERED SPECIES, THOSE ARE THE SPECIES THAT, FOR GOOD OR BAD REASONS, DEPENDING ON YOUR POINT OF VIEW, TEND TO BE MORE CONTROVERSIAL AND MORE CONTENTIOUS, AND THAT REMAINS, AS IT WAS WITH THE DEP, THAT NOW REMAINS WITH THE LEGISLATURE, AND THEY HAVE GIVEN IT AS A STATUTORY MATTER, TO THE NEW COMMISSION, SO EVERYTHING IS UNDER ONE ROOF.

SO BASICALLY WHAT IT MEANS PRACTICALLY FOR THE PUBLIC, ASSUMING THE PUBLIC CARES AND WANTS TO PROTECT ENDANGERED SPECIES, THAT IT IS GOING TO BE A MORE CUMBERSOME PROCESS, WHEN THERE ARE ACTIONS TO DO WITH PROTECTING THE ENDANGERED SPECIES, THAT IS THE MANATEES AND THE, I GUESS WHAT ELSE EVER, THE THREE MANATEES --

MANATEES, SEA TURTLES AND WHALES.

BUT THAT IS GOING TO AND SLOWER PROCESS, AND WHY IS IT THAT THE PUBLIC, BACK IN 1988, WANTED ONE CONSTITUTIONAL COMMISSION WITH PLENARY AUTHORITY OVER THESE ENDANGERED SPECIES?

I HAVE A COUPLE OF RESPONSES TO THAT, I DON'T THINK IT IS A MORE MORE INVOLVED PROCESS. AS, THE, FOR CONSTITUTIONAL MATTERS, BUT WHAT THE APA DOES IS PROVIDE FOR A GREAT DEAL OF PUBLIC INPUT, AND I WOULD SUGGEST TO THE COURT, WITH RESPECT TO ENDANGERED SPECIES THAT, THAT IS WHERE THIS IS MOST IMPORTANT.

BUT ISN'T THAT EXACTLY WHERE THE CONSTITUTION WAS, WHEN IT SAID THAT THIS COMMISSION

HAD TO ENACT RULES TO ASSURE DUE PROCESS THAT, THE RULES THEY DO ADOPT MUST ALLOW WITH FULL PUBLIC INPUT BEFORE REGULATIONS GET ADOPTED?

YES, YOUR HONOR. WE ARE NOT SUGGESTING THAT THE COMMISSION COULD SOMEHOW DOWNPLAY DUE PROCESS OR AVOID IT BUT THERE MAY BE ARGUMENTS BETWEEN WHAT THE FLOOR OF THE DUE PROCESS REQUIRES AND WHAT THE APA REQUIRES, AND I THINK AS A PUBLIC MATTER, FIRST OFF, TO ADDRESS THE POINT THAT THE PETITIONERS MADE REGARD DELAYS AND WHATNOT, THE COMMISSION IS CERTAINLY ENABLED TO ENACT TEMPORARY RULES. IF SOMEONE IS BRINGING A RULE CHALLENGE, THAT CHALLENGE DOESN'T HAVE TO UPSET THE RULE TAKING EFFECT ON AN EMERGENCY BASIS, IF IT IS REQUIRED, AND THERE ARE PROVISIONS AND DOCTRINES THAT ARE FOLLOWED TO DEAL WITH THAT, SO IN THE END THAT IS NOT REALLY THE CONCERN. THE ULTIMATE CONCERN IS SIMPLY WHETHER THE APA SHOULD APPLY IN THESE AREAS OR NOT, AND WE THINK THAT THE CLEAR INTENT OF THE CONSTITUTIONAL REVISION COMMISSION WAS THAT THE LEGISLATURE SHOULD MAKE THAT DECISION, AND CERTAINLY THE LEGISLATURE, IN INTERPRETING THIS CONSTITUTIONAL PROVISION, VIEWED THEMSELVES AS BEING ABLE TO MAKE THAT DECISION.

I AM ONLY SMILING, BECAUSE IF IT WAS SUCH A CLEAR INTENT, I DON'T KNOW WELL BE HERE WITH TRYING TO -- I DON'T KNOW WE WOULD BE HERE WITH TRYING TO FIGURE ALL THIS OUT, BECAUSE IT SURE ISN'T CLEAR, AND I AM NOT SOPHISTICATED IN THESE MATTERS, FROM READING ALL OF THIS, SO WHEN YOU SAY IT IS CLEAR INTENT, WHERE IS IT SO CLEAR?

IT IS CLEAR IN TWO RESPECTS. FIRST FROM THE TEXT OF THE AMENDMENT, ITSELF, REVISION FIVE ITSELF. AS WAS SUGGESTED EARLIER BY JUSTICE QUINCE, THE PROVISIONS OF ARTICLE 12 SECTION 23 WOULD BE, IF NOT COMPLETELY, PERHAPS COMPLETELY MEANINGLESS, THE FIRST TWO SENTENCES IN PARTICULAR, IF THE PETITIONER'S VUF THE PLAIN MEANING OF THE CONSTITUTION IS CORRECT. THE FIRST SENTENCE PROVIDES FOR THE TRANSFER OF THE MF C_s JURISDICTION, WHICH HAD JURISDICTION ONLY OVER MARINE LIFE, THAT PROVISION.

ISN'T THE POLICY THANKER HERE THAT, IF -- THE POLICY DANGER HERE THAT, IF THIS IS A MATTER WHICH IS WITHIN THE LEGISLATURE'S PRIORITY, THE LEGISLATURE COULD PASS A STATUTE WHICH SAYS THERE SHALL BE NO REGULATION OF CONDUCT IN RESPECT TO TURTLES, MANATEES AND WHALES. ISN'T THAT POSSIBLE? WHEREAS THE COMMISSION COULDN'T DO THAT.

I AM NOT SURE THAT THERE IS A SUBSTANTIVE DIFFERENCE IN THEIR RESPECTIVE SPHERES, BETWEEN WHAT EACH CAN DO, THAT IF ONE COULD DO IT THE OTHER COULDN'T, AND IF I CAN USE THAT AS A TIE-IN, BACK TO THE DISCUSSION BEFORE ABOUT CONCURRENT JURISDICTION, I DON'T SEE HOW CONCURRENT JURISDICTION COULD OPERATE IN THIS AREA. THAT WAS NOT ANYONE'S INTENT. IT WAS NOT THE CR C_s INTENT. IT WAS NOT THE LEGISLATURE'S INTENT. IT IS NOT THE WAY THE FISH AND WILDLIFE COMMISSION READS THE AMENDMENT, THE PRIOR STATUTES OR ANYTHING ELSE, AND JUSTICE PARIENTE, TO RETURN TO YOUR QUESTION, ADMITTEDLY AS IS OFTEN THE CASE, THE CONSTITUTIONAL LANGUAGE PERHAPS COULD HAVE BEEN CLEARER, BUT I THINK IT WAS SUFFICIENTLY CLEAR, AND CERTAINLY IF THIS COURT DOES, AND I THINK IT SHOULD, LOOK TO THE INTENT AS MEMORIALIZED IN DISCUSSIONS AND SPEECHES AND THE STATEMENT OF INTENT BY COMMISSIONER HENDERSON, BY THE COMMISSION'S GENERAL COUNSEL.

BUT YOU ONLY GET TO THAT, IF THE LANGUAGE IS AMBIGUOUS, DON'T YOU?

NOT NECESSARILY. WITH RESPECT TO CONSTITUTIONAL --

IF, AND I KNOW THAT IT DOES SAY, SECTION 9 DOES SAY MARINE LIFE, IS THAT AN AMBIGUOUS TERM?

I THINK THE TERM IS PROBABLY CAPABLE OF MORE THAN ONE DEFINITION, BUT I AM NOT SURE

THAT IS IMPORTANT HERE. THE MARINE LIFE GRANT OF AUTHORITY WAS NOT COMPLETE INORITY KEL 4 SECTION 9 -- IN ARTICLE IV SECTION 9, AND IT WAS SPELLED OUT.

HOW DO WE KNOW THAT'S NOT COMPLETE? WHAT DO WE LOOK AT THAT CAN TELL US THAT THIS WAS NOT A COMPLETE GRANT OF AUTHORITY OVERALL MARINE LIFE?

THE DETECTURAL DIFFERENCE BETWEEN THE -- THE TEXAS TURL DIFFERENCE BETWEEN -- THE TEXTUREAL DIFFERENCE BETWEEN, EVEN IF THERE WAS A COMPLETE GRANT, THAT LANGUAGE MUST BE GIVEN MEANING, BUT WHEN YOU LOOK TO THAT LANGUAGE, IT DOES NOT SIMPLY SAY WILD ANIMAL LIFE, FRESH WATER FISH AND MARINE LIFE. IT SAYS THAT THE COMMISSION WILL HAVE THE STATE'S AUTHORITY WITH RESPECT TO WILD ANIMAL LIFE AND FRESH WATER LIFE, AND THAT IT SHALL HAVE AUTHORITY WITH RESPECT TO MARINE LIFE.

CHIEF JUSTICE: WE WILL HAVE TO CLOSE ON THAT NOTE. THANK YOU VERY MUCH. COUNSEL, YOU HAVE REBUTTAL?

THANK YOU. I JUST HAVE THREE POINTS HERE. FIRST, THERE IS NO EVIDENCE IN THE RECORD OF THE CONSTITUTIONAL REVISION COMMISSION, OF A DISCUSSION OF CONCURRENT AUTHORITY BEING A BAD IDEA. THAT WAS, IN FACT, THE LEGISLATIVE SCHEME THAT EXISTED AT THAT TIME. THE MARINE FISHERIES COMMISSION HAD ADOPTED RULES TO PROTECT ENDANGERED STURGEON. THEY HAD BEEN ON THE BOOKS FOR 14 YEARS AT THAT POINT AND NOT A WORD WAS SAID. THE DEP HAS JURISDICTION OVER OTHER SPECIES, SO THERE WAS, IN FACT, THAT CONCURRENT JURISDICTION, AND THERE WAS NO COMPLAINT ABOUT IT. THE COMMISSION HAS ARGUED THAT, WHAT THE CONSTITUTIONAL JURISDICTION SHALL BE WILL BE DECIDED BY ENDANGERED SPECIES, BY ENDANGERED SPECIES LOOKING AT THAT. I SUBMIT YOU CANNOT FIND THAT IDEA ANYWHERE ON THE FACE OF THIS CONSTITUTION. IT SAYS MARINE LIFE. IT DOESN'T SAY MARINE LIFE EXCEPT FOR ENDANGERED SPECIES OR MARINE LIFE EXCEPT FOR SOME ENDANGERED SPECIES. IT SAYS MARINE LIFE ONLY. AND FINALLY, THIS ARGUMENT ABOUT THIS WAS A FISHING AGENCY. THAT WAS THE ARGUMENT THAT THIS COURT HEARD AND REJECTED IN DAVIS. THAT IS WHAT DAVIS SAID. IT SAID THAT TURTLES AREN'T A RENEWABLE MARINE FISHERIES RESOURCE, AND THEY ARE NOT A FISH, BECAUSE YOU DON'T CATCH THEM AND EAT THEM. THAT IS NOT THE POWER OF THE AGENCY. THE AGENCY, UNDER 370.027 SUB1, HAD FULL AUTHORITY OVER -- SUB-1 HAD FULL AUTHORITY OVER MARINE LIFE, EXCEPT FOR ENDANGERED SPECIES, AND WE, THIS COURT INTERPRETED THAT TO MEAN, EXCEPT FOR ENDANGERED SPECIES, TO MEAN NONFULL CONCURRENT, ENDANGERED SPECIES ONLY, AND NOT SPECIAL CONCERN. THEY EXERCISED IT FOR OTHER FORMS OF MARINE LIFELIKE STURGEON AND CORAL AND OTHER THINGS THAT I RECITED IN MY PREPLY BRIEF. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT WILL NOW STAND IN RECESS UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE.