



Institute for Biodiversity Law and Policy 2018–2019 Annual Report

Stetson University College of Law continues to provide environmental law education, research, and service at the international, national, and local levels. The Institute for Biodiversity Law and Policy serves as the interdisciplinary focal point for Stetson Law's environmental law programs and initiatives and was the 2016 recipient of the **Distinguished Achievement in Environmental Law and Policy Award** from the **American Bar Association's Section of Environment, Energy, and Resources (ABA SEER)**. This report highlights the Institute's 2018–2019 activities. For more information about the Institute and to support our initiatives, please visit www.stetson.edu/law/biodiversity.



Stetson Law professors and students at Big Cypress National Preserve
[Photo credits: Alexa Albright]

Supporting international and national environmental conservation efforts:

Stetson Law provides research and other support for the **Ramsar Convention on Wetlands**, a multilateral environmental treaty that promotes the wise use and conservation of wetlands. There are 170 Contracting Parties to the Convention. Stetson is the only law school with a memorandum of cooperation with the Ramsar Convention's Secretariat. At the end of 2018, Professor Royal Gardner, the Director of Stetson's Institute for Biodiversity Law and Policy, finished his second three-year term as chair of the Convention's **Scientific and Technical Review Panel (STRP)**. The STRP is scientific advisory body for the Ramsar Convention.

Professor Gardner and Dr. Max Finlayson (Charles Sturt University, Australia) were the lead coordinating authors for the ***Global Wetland Outlook: State of the World's Wetlands and their Services to People (GWO)***, the Ramsar Convention's flagship publication. Work on the *GWO* began at a meeting in Changshu, China, in 2016, and the final report was launched at Ramsar's 13th Conference of the Parties (COP13) in the United Arab Emirates in October 2018. The *GWO* was published by the Ramsar Secretariat in English, French, and Spanish. The team of contributing authors consisted of more than two dozen scientific and policy experts, including Erin Okuno, the Institute's Foreman Biodiversity Fellow and an adjunct professor at Stetson Law, and Stetson Law alumnus Michael Dema.



Professor Gardner and Dr. Finlayson at the Ramsar Convention COP13 in the United Arab Emirates
[Photo credits: top left—Ramsar Convention Secretariat, www.ramsar.org; top right—Franz Dejon, IISD/ENB, www.ramsar.org]

The *GWO* is accompanied by a **series of technical notes** that provide further information and references. With Dr. Finlayson and others, Professor Gardner and Erin Okuno co-authored two of the technical notes. Professor Gardner and Erin Okuno also were among the co-authors of Ramsar Briefing Note 8, ***Ramsar Advisory Missions: Technical Advice on Ramsar Sites***, which was published in 2018 and aims to enable Ramsar Site managers to better understand the Ramsar Advisory Mission process and its use. The *GWO* and the technical notes are available online at <https://www.global-wetland-outlook.ramsar.org/outlook>, and the Briefing Note is available online at <https://www.ramsar.org/resources/ramsar-briefing-notes>. In recognition of his work on these Ramsar publications and his numerous other publications over the last year, Professor Gardner received Stetson's **Dickerson-Brown Award for Excellence in Faculty Scholarship** in May 2019.

In July 2018, Professor Gardner, Erin Okuno, Dr. Steph Tai (University of Wisconsin Law School), Kathleen Gardner (Pollack Solomon Duffy LLP), and Christopher Greer (White & Case LLP) filed an **amicus curiae brief in the U.S. District Court for the District of North Dakota**. This was the second amicus brief they have filed on behalf of the Society of Wetland Scientists, a leading professional association of wetland and aquatic scientists around the world. The brief supports the 2015 **Clean Water Rule** (which defines the geographic coverage of the Clean Water Act) and explains how the Rule is scientifically sound. The brief is available online at <https://stetso.nu/FCDT5>. In June 2018, Professor Gardner received the **Society of Wetland Scientists President's Service Award** in recognition of his work on Clean Water Act policy issues and Clean Water Rule litigation on behalf of the Society.

In January 2017, Professor Gardner, Erin Okuno, and Dr. Tai filed an amicus curiae brief in the **U.S. Court of Appeals for the Sixth Circuit** on behalf of a dozen water and wetland scientists in support of the Clean Water Rule. They recently adapted the brief into a scientific review paper, titled **“Advocating for science: amicus curiae brief of wetland and water scientists in support of the Clean Water Rule,”** which was published in the peer-reviewed journal *Wetlands* in May 2019 (<https://doi.org/10.1007/s13157-019-01160-z>).

Stetson Law’s Biodiversity Institute received a **\$150,000 grant from the Joy McCann Foundation** in spring 2019. The grant will fund a two-year research project on “Improving Long-term Protection of Aquatic Resource Compensatory Mitigation Sites.” The main objective of the project will be to support the efforts of policymakers, regulators, conservation organizations, and other stakeholders to ensure effective long-term protection of aquatic resource compensatory mitigation sites in Florida and around the country. The Institute will identify current trends and best practices regarding site-protection instruments and financing mechanisms for long-term protection and management of restored wetlands and streams.

In spring 2019, the Environmental Law Institute (ELI) and Stetson Law’s Biodiversity Institute completed the work on a two-year **Wetland Program Development Grant** from the U.S. Environmental Protection Agency. The purpose of the project is to support the ability of states, tribes, and local governments to develop rigorous in-lieu fee (ILF) mitigation programs that yield ecologically effective and sustainable compensatory mitigation for wetlands and streams. The final report, **“In-Lieu Fee Mitigation: Review of Program Instruments and Implementation Across the Country,”** will be released during summer 2019. Additionally, Professor Gardner, Erin Okuno, and two ELI staff members wrote an article, **“Clean Water Act In-Lieu Fee Mitigation: Project and Programmatic Risks,”** which is derived from the report and explores the implications of recent Trump administration actions related to Clean Water Act jurisdiction. The article appears in the June 2019 issue of the *Environmental Law Reporter*. Professor Gardner and Erin Okuno also co-authored an article, **“The Shifting Boundaries of Clean Water Act Jurisdiction,”** for *Wetland Science & Practice*, a publication of the Society of Wetland Scientists. The article examines the complicated status of the Trump administration’s many actions to restrict the geographic scope of the Clean Water Act by redefining the regulatory definition of “waters of the United States.”

Professor Paul Boudreaux researched and wrote an article entitled **“‘Species’. . . in Law,”** about the legal definitions of the concept of a *species*. Professor Boudreaux also created, recruited, and moderated a panel presentation called **“Retreat from the Coasts?”** at the 2019 American Association of Law Schools Annual Conference. Additionally, he offered expert legal opinions to Florida governments that were considering rezoning to allow phosphate mining, and he gave advice and drafted documents for Florida environmental non-governmental organizations.

An article written by Professor Lance Long, **“The Climate Necessity Defense: Proof and Judicial Error in Climate Protest Cases,”** was published in the *Stanford Environmental Law Journal* in December 2018. The article is the first in-depth analysis of state and federal court treatment of the necessity defense in climate change protest cases. The article argues that the courts have consistently mischaracterized and misapplied the well-recognized doctrine in the climate change context.

Teaching environmental law through innovative methods:

In spring 2019, Professor Gardner and Erin Okuno taught **Topics in Biodiversity Law: Convention on International Trade in Endangered Species (CITES)** and organized Stetson Law’s first spring break study abroad trip to India as part of the course. The students researched topics related to CITES and gave presentations at the Ashok Kumar Memorial Wildlife Law and Enforcement Conference in Pune, India. Professor Gardner and Erin Okuno also presented. After the conference, the group traveled to Kanha National Park for wildlife safaris.



Spring break study abroad program in India

Professor Long taught **Environmental Advocacy** in spring 2019. Students in the class learned about the art and skill of persuasion in the environmental arena. This year, the class drafted an amici brief on behalf of Florida faith-based organizations. The brief was written in support of an amended complaint filed by Florida youth plaintiffs in Florida state court. The plaintiffs claim that the Florida state government has failed to comply with Florida's constitutional provisions and the public trust doctrine, which both require the government to protect Florida's natural resources, including the air, for use by current and future citizens. The amici brief brings to the court's attention the perspective of faith-based organizations that believe that they are obligated by moral beliefs to protect our environment.

Clay Henderson, Executive Director of Stetson University's **Institute for Water and Environmental Resilience**, taught **Environmental Regulation of Water** in spring 2019. The course was a survey of federal and state regulations for control of water quality and the prevention of water pollution with a practical focus on Florida issues. The class examined the Florida Springs and Aquifer Protection Act, the Supreme Court original jurisdiction case of *Florida v. Georgia*, and the Comprehensive Everglades Restoration Project. Students submitted memos outlining contemporary water issues such as the right to clean water and water conflicts with endangered species, as well as water and growth management.

In spring 2019, Professor Gardner and Professor Long again taught **Research and Writing II—Environmental Law**, a special section of Research and Writing II that covers the same fundamental skills as other sections but in an environmental context, with an emphasis on real-world issues. The students researched and submitted public comments on the Environmental Protection Agency's proposal to limit which waters are afforded Clean Water Act protection. The memorandum of law assignment and appellate brief problem also addressed issues involving

the Clean Water Act. Professor Gardner and Professor Long took the students on a field trip to Big Cypress National Preserve in the western Everglades. The trip allowed the students to gain a better appreciation for natural resources and the legal efforts to protect them.



Research and Writing II field trip to Big Cypress National Preserve

Thanks to **Hopping Green & Sams, P.A.** for sponsoring a book award at Stetson Law that is given each year to the student in Research & Writing II—Environmental Law who receives the highest grade in the course. Carmen Cato received the book award in spring 2019.

This past year, Stetson Law students participated in **environmental law externships**, where the students had opportunities to practice hands-on legal skills. Placements included a variety of governmental and non-governmental organizations: Environmental Protection Commission of Hillsborough County, Florida Department of Environmental Protection, National Oceanic and Atmospheric Administration, Center for Biological Diversity, and Ocean Conservancy. Thanks to the generosity of Dick and Joan Jacobs, who endowed the “**Dick and Joan Jacobs’ Environmental Law Externship Fund**” at Stetson Law, students can apply to receive financial support that will enable them to participate in meaningful environmental law externships and other opportunities around the country and the world. In September 2018, Travis Hearne received funds to attend the 15th Meeting of the Scientific Committee of the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC) in Tegucigalpa, Honduras.



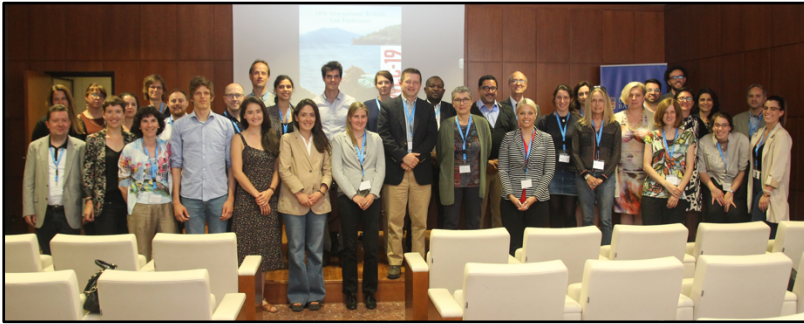
Stetson Law student Travis Hearne
at the IAC scientific meeting in Honduras



Dick and Joan Jacobs with Professor Gardner, Professor Long, and
student recipients of the Jacobs’ Environmental Law Externship Fund

Creating and contributing to a dialogue about environmental challenges:

Stetson Law helped organize the **19th International Wildlife Law Conference (IWLC-19)**, which was hosted at the University of Barcelona Faculty of Law on June 3–4, 2019. The conference featured sessions on marine biodiversity in areas beyond national jurisdiction, protected areas, regional connectivity, indigenous peoples, fisheries, trophy hunting, and enforcement and liability, among others. Professor Gardner delivered an opening plenary presentation on the *GWO*. Other IWLC-19 plenary speakers included Professor Ludwig Krämer (ClientEarth), Professor Luis E. Rodríguez Rivera (Universidad de Puerto Rico), and Dr. Guillaume Chapron (Swedish University of Agricultural Sciences). On the second day of the conference, Erin Okuno spoke about extinct species and CITES.



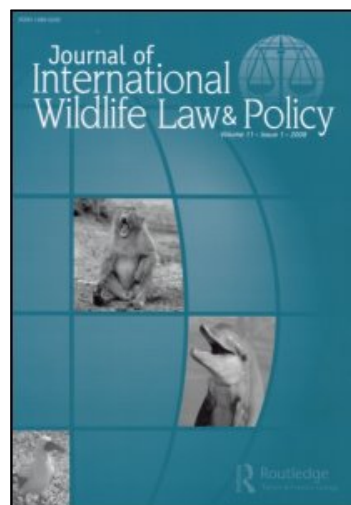
Speakers and attendees at IWLC-19

In November 2018, Stetson Law and ELI co-sponsored the **Sixth Annual ELI-Stetson Wetlands Workshop**. The theme of the workshop was “The Role of NGOs and the Public Sector in Implementing Wetland Restoration Projects: Trends, Lessons Learned, and Best Practices.” Dr. M. Siobhan Fennessy (Kenyon College) delivered the Edward and Bonnie Foreman Biodiversity Lecture to start the workshop. Other speakers included Dr. Rebecca Kihlsinger (ELI), Erin Okuno (Stetson Law), Karen Johnson (The Nature Conservancy), Alex Robertson (remote participant, Georgia-Alabama Land Trust, Inc.), David Urban (Ecosystem Investment Partners), Martha Gruber and Philip Rhinesmith (Southwest Florida Water Management District), Andrew Zodrow (Environmental Protection Commission of Hillsborough County), and Michael Dema (City of St. Petersburg). This year’s workshop also featured a morning field trip to Boyd Hill Nature Preserve. We would like to thank **Mechanik Nuccio Hearne & Wester, P. A.** for sponsoring the poolside networking reception after the workshop and the **Law School Liaison Committee of The Florida Bar’s Environmental and Land Use Law Section (ELULS)** for providing a special grant to Stetson Law to support the event.



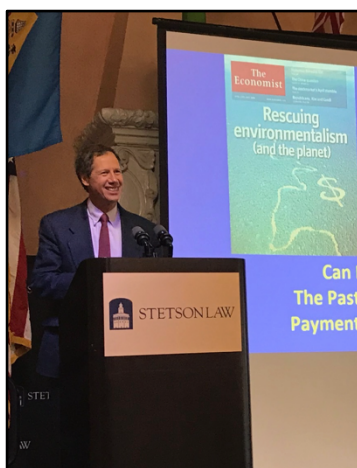
Students, attendees, and speakers at the 2018 ELI-Stetson Wetlands Workshop

Professor Boudreaux continues to serve as the editor in chief of the *Journal of International Wildlife Law & Policy* (*JIWLP*), and Professor Gardner and Erin Okuno are on the journal's editorial advisory board. Students at Stetson Law serve as student editors for *JIWLP*, in which capacity they perform "cite and source" reviews of articles and other editing tasks. Select student articles may be chosen for publication. *JIWLP* published its 21st volume in 2018–2019, with articles addressing ideas for improving conservation areas for whales, the European Union's Habitat Directive, analysis of the Convention on International Trade in Endangered Species, preservation laws for the Caribbean sawfish, analysis of distinctions between Latin American wild meat and wild fish laws, laws concerning the conservation of sharks, and the role of litigation in conservation.



Professor Boudreaux and Interim Dean Kristen Adams with the graduating student editors of *JIWLP*

Thanks to the generous support of Bonnie Foreman, the Biodiversity Institute offered the **Edward and Bonnie Foreman Biodiversity Lecture Series** again during fall 2018 and spring 2019. The lecture series is free and open to the Stetson and larger Tampa Bay communities. Numerous scientists, attorneys, judges, policymakers, and other experts have presented at the lecture series, which fosters a dialogue about important, timely environmental issues and has created meaningful connections and opportunities (such as externships) for students and other attendees over the years. The speakers this last year included Professor James Salzman (UCLA Law School/UCSB School of Environment), Richard O. "Dick" Jacobs (attorney, photo explorer, and Senior Counsel, Johnson Pope Bokor Ruppel & Burns), Dr. M. Siobhan Fennessy (Kenyon College), Andrew Hayslip (Tampa Bay Waterkeeper), Rhyann Tompkins and Cindy Mercado (U.S. Fish and Wildlife Service), and Dr. Richard Caddell (Cardiff University, United Kingdom).



2018–2019 Foreman Biodiversity Lectures

In spring 2019, Stetson Law hosted the International Finals of the 23rd Annual **Stetson International Environmental Moot Court Competition (IEMCC)**. Founded by Stetson Law in 1996, it is the world's largest moot court competition devoted exclusively to international environmental issues. This year's problem focused on the use of the Sargasso Sea and the protection of eels. From November 2018 through March 2019, student teams submitted written memorials and presented oral arguments at national and regional rounds throughout the world. Hundreds of students participated in these rounds, and the top teams were invited to the International Finals on April 11–13, 2019, at Stetson Law's Gulfport campus. Twenty-seven teams from Brazil, China, Colombia, India, Ireland, Kazakhstan, Mexico, the Philippines, Republic of Korea, Singapore, Taiwan, Trinidad and Tobago, Ukraine, and the United States participated in the International Finals in 2019—the largest International Finals in the competition's history!



IEMCC participants with Professor Gardner and Interim Dean Kristen Adams

The IEMCC final round judges were Dr. Richard Caddell (Cardiff University), Dr. Kate O'Neill (UC Berkeley), and Professor Jason Palmer (Stetson Law). This year's champion was the National Law School of India University, Bangalore, and the runner-up was the National University of Singapore. The semifinalists were the University of the Philippines and the National University of Advanced Legal Studies, Kochi. The William S. Richardson School of Law, University of Hawaii at Manoa received the award for the best written memorial, and two universities, Universidad de Monterrey and Hugh Wooding Law School, received the Spirit of Stetson Award, which recognizes the team or teams that best exemplify civility, justice, and fair play during the competition. We are grateful for everyone's continued support of the Stetson IEMCC. Many thanks to the Joy McCann Foundation and the Law School Liaison Committee of the ELULS for their financial support of the International Finals again this year.

Professor Lance Long participated in a panel discussing the use of the necessity defense in climate change civil disobedience cases at the **2019 Public Interest Environmental Law Conference (PIELC)** held at the University of Oregon. Several Stetson environmental law students attended the conference with Professor Long, and they held the annual Stetson PIELC reunion of Stetson students and alumni.



Professor Long with students and friends at PIELC



Professor Long, Professor Gardner, Professor Radwan, and Stetson Law students performing at the Earth Day Celebration

Stetson's Environmental Law Society and Student Animal Legal Defense Fund hosted the annual **Earth Day Celebration** on campus in April 2019. Attendees enjoyed fresh, local food and had the opportunity to speak with various environmental and community groups at the zero-waste event. Professor Gardner, Professor Long, Professor Radwan, and Stetson students Jonathon Catino, Rebecca Mitchko, Amber Nicol, and Emily Preu provided musical entertainment at the event, performing as Royal Gardner and the Officious Intermeddlers. The band also performed at the Justice, Soul & Rock 'n' Roll fundraiser for Gulfcoast Legal Services in fall 2018.

Celebrating the accomplishments of our students and recent graduates:

Stetson students Travis Hearne, Nicole Neugebauer, and Brian Remler participated in the **Jeffrey G. Miller National Environmental Law Moot Court Competition** in February 2019. The competition was held at the Elisabeth Haub School of Law at Pace University in White Plains, New York. Professor Gardner and Erin Okuno coached the team.

Congratulations to the students who received environmental law awards at the spring 2019 graduation: Katherine Pratt received the Hearne Environmental Law Award, Travis Hearne was the recipient of The Florida Bar City, County and Local Government Law Section Law Student Award, and Dane Petersen received the Nader/Zrake Memorial Award.



Katherine with Interim Dean Kristen Adams



Brian, Travis, and Nicole

We are proud of our graduates who were recently hired for environmental law and policy positions. Dane Petersen was hired at Gramling Environmental Law, P.A., and Travis Hearne is going to work at Mechanik Nuccio Hearne & Wester, P. A.

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For more information about Stetson's Institute for Biodiversity Law and Policy and how to support its programs, please visit www.stetson.edu/law/biodiversity or contact Erin Okuno at okuno@law.stetson.edu.



Wildlife spotted on the 2019 spring break study abroad program in India
[Photo credits: Erin Okuno and Roy Gardner]