



# Analysis of the Regulation and Deregulation of U.S. Ocean and Fisheries Policies

HANA V. VIZCARRA  
LAURA BLOOMER



HARVARD  
LAW SCHOOL

ENVIRONMENTAL &  
ENERGY LAW PROGRAM

AUGUST 2019

# About the Authors

**Hana V. Vizcarra** is Staff Attorney at Harvard Law School's Environmental & Energy Law Program (EELP) where she leads EELP's portfolio on private sector approaches to climate and environmental issues and conducts legal analysis on regulatory development in environmental and energy law. Before joining EELP in 2018, Hana practiced environmental law in Washington D.C. for two national law firms. In private practice she represented clients in complex environmental litigation, counseled on environmental compliance and regulation, and advised on environmental aspects of transactions. Before becoming an attorney, Hana spent seven years working in political research and communications. Hana received her J.D. from Georgetown University Law Center and B.A. from Pomona College in California.

**Laura Bloomer** is an EELP Legal Fellow beginning in Fall 2019. She is a 2019 graduate of Harvard Law School and Harvard Kennedy School, earning a J.D., cum laude, and a Masters in Public Policy. Prior to law school, Laura worked on President Obama's reelection campaign and taught English in East Java, Indonesia with the Peace Corps. Laura received her B.A. from the University of Texas at Austin.

# Acknowledgments

This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of authors Hana Vizcarra and Laura Bloomer and do not necessarily reflect the views of the European Union.

The Harvard Law School Environmental & Energy Law Program influences policy discussions about environmental, climate, and energy issues. We apply rigorous legal analysis to identify shortcomings and opportunities for change in order to achieve improved environmental outcomes.

Harvard Law School, Environmental & Energy Law Program  
6 Everett Street, Suite 4119  
Cambridge, MA 02138  
[eelp.law.harvard.edu](http://eelp.law.harvard.edu)

© 2019 by the Harvard Law School Environmental & Energy Law Program. All rights reserved.



# Executive Summary

While changes in political leadership affect U.S. ocean and coastal management strategies, the trajectory of U.S. policy over time has been to advance comprehensive consideration of the interconnected ecological ocean system in international and domestic ocean management. Domestically, regional planning and protective approaches have helped regulators balance multiple, often conflicting uses that can affect ecosystem resilience.

However, U.S. wariness of multi-lateral international agreements challenges environmentally conscious ocean management goals. Recent domestic ocean policies emphasize fossil energy development over conservation and sustainability concerns. Proposals regarding offshore resource development as well as deregulatory efforts could impact ocean resources and have repercussions in international fora.

At the domestic level, limits on the current administration's ability to abruptly finalize major changes to ocean and coastal management exist: jurisdictional authorities are split among federal and state powers and among multiple agencies, and science-based and procedural requirements are

built into the ocean and coastal statutes. The current administration has shown a willingness to continue implementation of certain fisheries management reforms initiated in the prior administration, perhaps indicating certain policy areas may not experience extensive priority shifts.

This paper reviews the legal and regulatory framework supporting U.S. coastal and ocean management, and describes changes under the current administration.<sup>a</sup> Comprehensive reviews of the legal framework and regulations of topics covered in this report already exist,<sup>1</sup> but there is value in considering the overarching legal framework and understanding how these separate technical areas interrelate. This paper focuses on policy topics prioritized under the current and most recent administrations and assesses the state of play of the ongoing deregulation process.

Overall, ocean management has seen less dramatic change than other areas of environmental regulation during this administration, such as air, water, climate, and energy. Most action on ocean issues has, thus far, concentrated on domestic policy. However, the themes exhibited at the domestic level are beginning to reflect on the international stage and to shift the dialogue with the EU and other partners.

The administration's unwillingness to continue previous domestic policies on climate change and

---

a In addition to the information in the body of this paper, an attached Annex provides detail on relevant statutes, executive orders, and a small number of international agreements to provide context for the topics discussed. This paper builds on EELP's expertise in U.S. environmental and energy law and its efforts to track regulatory developments under the current administration in its [Regulatory Rollback Tracker](#).



opposition to international agreements involving commitments to do so (for example, in announcing the U.S. intends to withdraw from the Paris Climate Agreement) have a direct impact on Arctic policies and may also impact ocean and coastal issues closely tied to climate, such as acidification, sea level rise, and adaptation. Yet, at the national level, this administration has supported narrow efforts to address marine debris and plastics in the oceans.

Policies and actions in areas crucial to the management of ocean and coastal areas reveal a pattern of prioritizing economic interests and energy development over conservation and protection. On issues not directly tied to climate and not thought to hinder U.S. energy industry development, this administration has exhibited a degree of continuity in position with the prior administration—such as on illegal, unreported, and unregulated (IUU) fishing and signing of an agreement preemptively barring fishing in the Central Arctic Ocean. Continued development of offshore wind energy could also be an avenue for increased cooperation with the EU as much of the existing expertise in this area lies with EU-based companies. Recent estimates suggest there are 22,000 MW of offshore wind potential off the east coast of the U.S.—representing a possible \$70 billion of economic opportunity.



<b>Executive Summary</b>	<b>1</b>
<b>1. U.S. Legal Framework for Ocean and Coastal Governance</b>	<b>4</b>
A. The U.S. and International Law of the Sea (UNCLOS)	4
B. Domestic Statutory Structure and Jurisdictional Divisions	5
Framework/Management Statutes	5
Conservation Area Statutes	6
Environmental Statutes	5
C. The Development of a National Ocean Policy	7
D. Implementing Agencies	8
<b>2. The Trump Administration Approach to Deregulation and Ocean Governance</b>	<b>10</b>
A. Executive Order 13840 on Ocean Policy	11
B. Offshore Energy Development	12
C. Habitat and Natural Resource Conservation	14
D. Domestic Fisheries Management	15
E. International Fisheries Management and Ocean Conservation	17
<b>3. Stakeholder Views and Responses</b>	<b>19</b>
A. States, Local Governments, and Tribes	19
B. Congress	20
C. Industry	21
D. Non-profits and Think Tanks	22
<b>Conclusion</b>	<b>23</b>
<b>Endnotes</b>	<b>24</b>
<b>Annex</b>	<b>33</b>



# I. U.S. Legal Framework for Ocean and Coastal Governance

A web of statutes, executive actions, and regulations implemented by federal, regional, and state entities governs U.S. ocean management. Federal statutes create the framework for U.S. ocean governance, and multiple federal agencies (and offices within them) implement these statutes. States hold significant ocean and coastal management responsibilities as well, largely controlling resources within three nautical miles of the coast and sharing enforcement and implementation responsibilities with the federal government under various environmental statutes. Domestic law also intersects with international law, as we discuss in more detail below.

U.S. resource and conservation law began evolving into contemporary environmental law in the early 1970s, following a series of highly publicized gaps in environmental protection.<sup>2</sup> This transition largely set in place the current U.S. legal structure on environmental and resource issues which is discussed in more detail in section I.B. below.

There are two statutes not exclusive to ocean and coastal law that play an important role in federal regulatory development. The Administrative Procedure Act (APA) prescribes how federal agencies promulgate, revise, or rescind regulations. It establishes the parameters for public comment, how an agency considers these comments, and to what extent the agency must explain its decisions. The National Environmental Policy Act (NEPA) is

a foundational statute of U.S. environmental law. Signed in 1970, NEPA requires agencies to conduct environmental reviews prior to commencing major federal actions that could significantly affect the environment. While it does not compel the government to choose the most environmentally protective option, it requires the agency to take a “hard look” at the effects of government action and to consider alternatives.

## A. The U.S. and International Law of the Sea (UNCLOS)

Despite its decision not to ratify the United Nations Convention on the Law of the Sea (UNCLOS), the U.S. has consistently maintained that UNCLOS reflects customary international law,<sup>3</sup> and the actions of numerous administrations have demonstrated this. Former President Reagan claimed the U.S.’s Exclusive Economic Zone (EEZ) in accordance with the provisions of UNCLOS a year after it was signed,<sup>4</sup> the Department of Defense operates a Freedom of Navigation Program in which it challenges “excessive maritime claims” “inconsistent with international law as reflected in the Law of the Sea Convention,”<sup>5</sup> and the Department of State reviews U.S. actions to ensure they accord with the convention.<sup>6</sup>

The U.S. actively participated in the negotiation of UNCLOS, but President Reagan ultimately pulled back support, withholding signature due to concerns over the deep seabed mining provision.<sup>7</sup> Continued negotiations led to a 1994 agreement addressing these concerns,<sup>8</sup> following the 1994 adjustments, UNCLOS went into force. President Clinton signed the convention and sent it for the advice and consent of the Senate, which is required for ratification,<sup>9</sup> but





the Senate failed to grant it.<sup>10</sup> Newt Gingrich’s 1994 “Republican Revolution” and “Contract with America” ushered in an aggressively partisan approach to politics, changing the political dynamics for years to come and spilling into the debate of UNCLOS in the then-Democratically led Senate.<sup>11</sup> Both Presidents Bush and Obama have since led failed efforts to obtain the advice and consent of the Senate so that the U.S. could become a party to the convention.<sup>12</sup> The current administration has not undertaken any similar effort to gain consent.<sup>13</sup>

U.S. ocean management, particularly related to fisheries management and commercial activities, is intertwined with international law. The U.S. remains an active participant in multi-lateral negotiations affecting oceans, marine activity, and species protection. For example, the U.S. is a party to the 1995 United Nations Fish Stocks Agreement, which implements provisions of UNCLOS regarding straddling stocks and highly migratory fish.<sup>14</sup> As a party to the Port State Measures Agreement, the U.S. passed the 2015 Illegal, Unreported, and Unregulated (IUU) Fishing Enforcement Act to implement the agreement. The act imposes civil and criminal sanctions on violators of the enforcement provisions and requires the Secretary of Commerce to report and take action against countries that do not address illegal fishing. It also authorizes the Secretary to prevent ships carrying IUU-obtained fish from entering port. NOAA Fisheries participates in international trade organizations and tracks agreements concerning living marine resources.<sup>15</sup>

## B. Domestic Statutory Structure and Jurisdictional Divisions

U.S. law relevant to ocean policy includes a complex statutory structure that defines the responsibilities of various levels of government; attempts to balance the protection of land/offshore areas, habitats, plants, and animals with the productive use of economically important resources; outlines agency decision-making requirements (i.e., NEPA and the APA discussed above); sets standards and creates permitting schemes to protect human health and the environment.

This section discusses some of the most important statutes governing ocean protection and the management of ocean resources. For a discussion of current legislative proposals on ocean issues, see Section 3.B. discussing Congress. Additional explanations of the statutes discussed in this section as well as others can be found in the attached Annex.

### FRAMEWORK / MANAGEMENT STATUTES

The four primary statutes governing the management of coastal and offshore resources and defining the responsibilities of different government jurisdictions include: the Submerged Lands Act, the Outer Continental Shelf Lands Act (OCSLA), the Coastal Zone Management Act (CZMA), and the Magnuson-Stevens Fishery Conservation & Management Act (Magnuson-Stevens Act or MSA).

The Submerged Lands Act (1953) gave states title to submerged lands and the natural resources in the lands and waters up to three nautical miles from the coastline. Texas and Florida argued for



and received a more expansive jurisdiction of three leagues (nine nautical miles) from the coastline due to historical factors.<sup>16</sup> The Submerged Lands Act was Congress's response to a series of Supreme Court cases severely limiting states' jurisdiction.<sup>17</sup> The Outer Continental Shelf Lands Act (OCSLA) (also 1953) gave the federal government jurisdiction over all submerged lands and their resources seaward of the state-managed areas to the edge of the U.S.'s continental shelf. OCSLA establishes the management structure for the leasing, development, and regulation of offshore energy and mineral resources. The Coastal Zone Management Act (CZMA), passed in 1972, authorized state and local governments to develop and implement coastal management plans with federal support and set up procedures for encouraging consistency between state plans and federal actions.

The 1976 Magnuson-Stevens Act defined the federal and state jurisdictional split over fishery resources. It established federal authority from the edges of state waters out to 200 miles, what is now called the EEZ under UNCLOS and customary international law.<sup>18</sup> While states have primary control over fisheries within their waters, the act provides for federal control over activities in state waters impacting fisheries predominantly in federal waters. It also provides for some state regulation in federal waters involving fisheries without federally approved fishery management plans. As the framework statute for fisheries management, MSA governs the conservation and management of living U.S. ocean resources.

Together these statutes authorize states to retain general jurisdiction of coastal zones, submerged

lands, and coastal waters extending three nautical miles from the shore, while the federal government exercises near-exclusive jurisdiction over the waters and submerged lands between three and 200 nautical miles from shore, with some obligations to consult and consider state priorities and concerns.

### **CONSERVATION AREA STATUTES**

Two additional statutes allow for the development of marine conservation areas. In 1972, the National Marine Sanctuaries Act created a process for Congress and the National Oceanic and Atmospheric Administration (NOAA) (a sub-agency of the Department of Commerce) to designate protected marine sanctuaries. Similarly, presidents have invoked the much older 1906 Antiquities Act to designate marine areas of historic, cultural, or scientific importance as national monuments, protecting them from commercial activities.

### **ENVIRONMENTAL STATUTES**

Environmental statutes applicable to both onshore and offshore activities establish procedural and permitting requirements and impose controls on activities, including those that impact the oceans. For example, the Clean Water Act, Marine Mammal Protection Act, Endangered Species Act, Migratory Bird Treaty Act, National Environmental Policy Act (NEPA), and Oil Pollution Act all apply to coastal and ocean activities.

The Clean Water Act regulates discharges of pollutants into the marine environment and requires permits for pollutant discharge into state or federal waters.<sup>19</sup> It includes both technology- and water quality-based limitations enforced nationally through





permitting regimes and water quality standards. States set water quality standards for coastal and state waters. The Clean Water Act also regulates certain discharges from vessels as well as the dredge and fill of coastal wetlands. The Rivers and Harbors Act likewise requires permits for construction, excavation, and depositing materials in jurisdictional waters.

The Marine Mammal Protection Act prohibits unauthorized injuring or killing of marine mammals. The Migratory Bird Treaty Act similarly protects listed migratory birds from unauthorized takings, and includes many seagoing species. Species that are endangered or threatened, as well as habitat critical for their recovery, are further protected from harmful human activity by the Endangered Species Act. The Oil Pollution Act, passed in 1990, a year after the Exxon Valdez oil spill in Alaska, amended the Clean Water Act to establish a strict liability regime for oil spills and outline spill response authorities, as well as require spill response planning from vessels and the government.

There are numerous additional statutes addressing specific ocean-related topics and research priorities. Examples are the Marine Debris Research, Prevention, and Reduction Act (2006); the Federal Ocean Acidification Research and Monitoring Act; the Marine Protection, Research, and Sanctuaries Act (the Ocean Dumping Act); the Arctic Research and Policy Act; and the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015. Many of these laws fit within the legal structure described above, amending or adding to the U.S. Code created by earlier statutes.

## C. The Development of a National Ocean Policy

Although many statutes manage different aspects of coastal and ocean activities, planning, and management in the U.S., there was not an overarching national policy designed to guide their implementation until the mid-2000s. In 2000, Congress passed the Oceans Act that established a sixteen-member Commission on Ocean Policy to develop recommendations for a coordinated, comprehensive national ocean policy. It also required the president to submit a “national ocean policy” to Congress responding to the Commission’s recommendations and subsequent biennial reports to Congress on federal ocean and coastal programs and activities.

Following a period of fact finding, the Commission published its final recommendations in a September 2004 report.<sup>20</sup> Then-President George W. Bush signed Executive Order 13366 in December 2004 outlining a policy to facilitate consultation on ocean-related matters, and research and public outreach on these issues continued. In 2010, President Obama’s Executive Order 13547, titled “Stewardship of the Ocean, Our Coasts, and the Great Lakes,” created the first detailed National Ocean Policy and an interagency effort to better coordinate and support agencies’ ocean-related actions. The National Ocean Policy aimed to improve collaboration among stakeholders and government entities by setting up regional planning bodies to coordinate among various levels of government and create regional plans.<sup>21</sup> It specifically called for coastal and marine spatial planning.



Presidents use executive orders and proclamations such as these to declare federal policy, coordinate among federal agencies, and establish areas of protection. These actions are limited to authority granted under the Constitution or relevant statutes, and are susceptible to revocation by future presidents. Even so, reversals of certain directives and regulatory actions implemented as a result of an executive order may be limited by statutory requirements. The power as well as limitations of directing policy by executive order are on display when considering the development of the National Ocean Policy. As is described in more detail in Section 2 below, Executive Order 13547 establishing the National Ocean Policy has since been revoked and replaced by President Trump.

## D. Implementing Agencies

The statutes described above grant authority for their implementation to multiple governmental units. Various federal, regional, and state entities have responsibility for different aspects of ocean-related management. Two agencies oversee the majority of ocean-related management at the federal level: the Department of Commerce and the Department of the Interior. Within each, sub-agencies implement different statutes and manage discrete activities, draft relevant regulations, and handle enforcement.

Under the Department of Commerce, the National Oceanic and Atmospheric Administration (NOAA) is a research agency that handles a wide range of activities related to storm warnings and weather forecasts, climate research and monitoring, fisheries management, coastal preparedness and restoration, and marine sanctuaries management. Within NOAA,

the National Marine Fisheries Service (NMFS), also referred to as NOAA Fisheries, is the office primarily responsible for stewardship of ocean resources and habitat.<sup>22</sup> It implements the Magnuson-Stevens Act, in partnership with Regional Fishery Management Councils, to manage federal commercial and recreational fisheries. NOAA Fisheries is also responsible for endangered aquatic species, marine mammal protection, and seafood fraud and import regulations. NOAA's National Ocean Service manages the national marine sanctuaries, is responsible for navigational charts, and maintains coastal tide and water level sensors.<sup>23</sup> Various other offices in NOAA carry out additional research missions.

At the Department of the Interior, the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) manage offshore energy development, while the U.S. Fish and Wildlife Service (FWS) carries out the endangered species-related mandates and Office of Natural Resources Revenue (ONRR) manages the collection of revenue from offshore resource extraction.

The Marine Mammal Commission (MMC) is an independent agency responsible for providing “independent, science-based oversight of domestic and international policies and actions of federal agencies” and counsels the administration and Congress based on its reviews of such policies and actions.<sup>24</sup> The U.S. Coast Guard is tasked with implementation and enforcement of ocean laws and programs, especially as they relate to marine pollution, illegal fishing, and vessel safety. The Environmental Protection Agency (EPA) and the Army Corps of Engineers implement the Clean Water Act



and other statutes affecting ocean dredging and pollution from point sources.

In coastal zones and state waters, state, local, and tribal governments are crucial players in coastal management, both individually and through regional partnerships. States share enforcement and permitting responsibility for the Clean Water Act with EPA and the Army Corps of Engineers. States also manage activities in state waters (generally, up to three nautical miles). Thus, energy development within state waters as well as recreational and commercial fishing that is not under federal control via the Magnuson-Stevens Act are state responsibilities. States also have police powers that extend into federal waters. States participate in regional management of fisheries, both via the MSA-established Regional Fishery Management Councils that set rules for federal fisheries and through regional ocean partnerships through which states cooperate on management of state fisheries that cross state jurisdictions. States also manage their own marine protected areas and develop coastal management plans under the Coastal Zone Management Act (all coastal states currently have approved plans under the act except for Alaska, which pulled out of the program).<sup>25</sup>

The eight Regional Fishery Management Councils created by the MSA include commercial and recreational fishing, academic, environmental, and government representatives and lead the development of regional fishery management plans for federal fisheries, among other responsibilities.<sup>26</sup> Interstate compacts that create Interstate Marine Fishery Commissions by statute also cover certain coastal regions and serve as deliberative bodies

to coordinate conservation and management among states.<sup>27</sup> Additionally, various regional ocean partnerships (generally created by agreement among governors, not statute) work on ecosystem management concerns across state lines.<sup>28</sup>

The Department of State leads U.S. engagement internationally but does so with technical advice and support from other agencies. The NOAA Office of International Affairs advises on international trade and environmental policy issues, coordinates international programs, and participates in international agreement negotiations.<sup>29</sup> The Bureau of Oceans and International Environmental and Scientific Affairs is the primary section at State responsible for issues most relevant to ocean policy at an international level.<sup>30</sup> Within it sit numerous offices specializing in specific areas such as the Office of Ocean and Polar Affairs, which handles issues involving the Law of the Sea, Arctic and Antarctic concerns, and maritime security, environment, and scientific concerns.<sup>31</sup> The Office of Marine Conservation within the Bureau addresses international fisheries management, IUU fishing, bycatch and environmental impacts of fishing, and certain seafood import issues. The Coast Guard also plays a key role in the Arctic, representing the U.S. in international navigational bodies, search and rescue, vessel safety, fisheries enforcement, and pollution response.<sup>32</sup>

Part IV of the attached Annex includes a chart detailing the responsibilities of various agencies and levels of government.



## 2. The Trump Administration Approach to Deregulation and Ocean Governance

A key theme of the current administration is a focus on reducing supposed regulatory burdens on industries by revising or rescinding agency regulations—a theme that cuts across many issues including ocean policy. The Trump administration has attempted to delay or suspend new rules from taking effect, and has targeted finalized regulations for revision or revocation. One of the first orders instructed agencies to identify two rules to rescind for every new rule proposed.<sup>33</sup>

In addition, the administration initiated reviews of numerous existing regulations as well as rulemaking procedures to suspend, revise, or revoke certain regulations. These efforts have placed a special emphasis on targeting rules developed under the prior administration. The Environmental and Energy Law Program at Harvard Law School has been tracking many such deregulatory efforts in the environmental and energy area on our [Regulatory Rollback Tracker](#). Descriptions of the executive orders relevant to ocean policy are provided in Part II of the attached Annex and we discuss some of the relevant regulations at risk below.

In their haste to implement the current deregulatory agenda, agencies have at times neglected the requirements of the Administrative Procedure Act

(APA). Agency efforts to prevent or delay compliance deadlines not yet in effect and revise or rescind existing regulations regularly face court challenges. Much of this litigation is ongoing, but early decisions have reinforced statutory limits on a President’s ability to drastically shift course, or at least to do so without following proper procedure. The APA’s public notice and comment requirements equally apply to proposals to revise or rescind regulations as to proposals to enact them in the first place.

In addition to the requirements of the APA, the National Environmental Policy Act (NEPA) can slow the President’s agenda, as NEPA’s requirements for environmental reviews continue to apply, even to agency actions aimed at deregulation. This administration has prioritized limiting NEPA’s impact on its deregulation efforts by streamlining NEPA’s required environmental reviews to speed up permitting processes; revoking guidance on how agencies should consider greenhouse gases in environmental reviews; and directing the White House Council on Environmental Quality (CEQ) and the permitting offices in each agency to revise their agency-specific environmental assessment procedures.<sup>34</sup>

Four key policy areas have dominated U.S. ocean management policy in recent administrations: offshore energy development, Arctic development and conservation, habitat conservation, and fisheries management. Overlying these policy areas was the development of a unified national ocean policy to guide ocean research, federal actions, and interagency coordination (described previously). Efforts to combat and respond to climate change’s impacts on the marine environment also increased



in importance in recent prior administrations. While these same policy areas continue to be the focus of activity in the current administration, it is generally because of efforts to reverse or revise prior regulatory and policy developments.

Most notably, the current administration has increased emphasis on promoting offshore energy development (particularly fossil energy development) and marine commercial activities primarily by aggressively pursuing the revision or rescission of regulations applicable to such activities. These priorities represent a marked difference from the prior administration, which emphasized ocean stewardship and conservation.

The remainder of this section will discuss the current administration’s response to the recently enacted National Ocean Policy, approach to offshore energy development, treatment of habitat and natural resource conservation, and domestic and international fisheries management policies.

## A. Executive Order 13840 on Ocean Policy

In 2018, President Trump rescinded former President Obama’s 2010 National Ocean Policy (established in Executive Order 13547) in Executive Order 13840. The 2018 order retained some interagency coordination and a cabinet-level committee, and some provisions of the 2010 order were minimally modified, but the new directive lessened federal support for interagency and inter-jurisdictional ocean management. The 2018 Executive Order directs agencies and the reorganized Ocean Policy Committee (formerly the National Ocean Council)

to prioritize economic growth and national security, rather than emphasizing the preservation of ecological health of the ocean. The new directive de-emphasizes environmental concerns and does not explicitly encourage ecosystem-based management or climate change research.

The impact of the reorganization of the National Ocean Council is significant. Subcommittees were eliminated, and five federally-supported regional ocean planning bodies charged with implementing the 2010 policy were disbanded on claims they were “duplicative.”<sup>35</sup> The regional planning bodies worked with local stakeholders to develop comprehensive plans intended to meet the often competing needs of the fishing community, recreational users, conservationists, energy developers, tribes, local governments, and other stakeholders. Only two regions submitted plans prior to disbandment. Federal agencies may continue to follow those plans, though they are no longer considered controlling policy.<sup>36</sup> The Ocean Policy Committee has prioritized data gathering, release, and sharing.<sup>37</sup> Efforts are underway to support regional data sharing and to create an ocean data release plan.<sup>38</sup>

This reorganization may encourage a return to piecemeal ocean management. For select regions, in which state-based ocean partnerships are strong and marine planning was well established, the new executive order may have minimal impact. For other regions, the lack of federal support has stalled efforts for more inclusive and comprehensive marine planning.



## B. Offshore Energy Development

One of the most visible policy changes from the Obama to Trump presidencies is in offshore oil and gas development. The Trump administration has proposed opening an unprecedented amount of land and water to energy development while rescinding or revising operational and safety protections of the prior administration.

The 2017 Executive Order 13795, “Implementing an America-First Offshore Energy Strategy,” instructed the Department of the Interior to expand leasing to include previously off-limits areas of the mid- and south-Atlantic coast, the Gulf of Mexico, and the Chukchi and Beaufort Seas near Alaska. The order overturned three Obama-era proclamations protecting Arctic and Atlantic areas from oil and gas leasing. It also directed agencies to reconsider a series of offshore drilling safety and environmental rules proposed or finalized under the Obama administration. Finally, it requested reports on marine sanctuaries and monuments and ordered agencies to expedite reviews and permitting under the Marine Mammal Protection Act and Outer Continental Shelf Lands Act dealing with protected marine species.<sup>39</sup>

Implementing the President’s instructions on offshore leasing, the Bureau of Ocean and Energy Management (BOEM), the Department of the Interior sub-agency responsible for offshore leasing, proposed a new five-year leasing plan in January 2018 that dramatically expands federally managed ocean areas available for energy development. The proposal was to supersede an existing five-year plan only two years into its term. However, a federal judge

found in March 2019 that President Trump could not revoke former President Obama’s protections of the Arctic and Atlantic areas from consideration for leasing, halting the development of the expanded leasing program for the time being.<sup>40</sup> This decision has been appealed and the outcome of this appeal could be pivotal in determining how offshore leasing is planned and managed in the future.<sup>41</sup>

States have limited authority to engage in energy planning in federal waters. The Coastal Zone Management Act (CZMA) provides for state involvement in federal offshore projects through a consistency review process. However, the current administration has said it intends to make changes to this process in the name of streamlining permitting and accelerating projects.<sup>42</sup> Coastal states have expressed concerns over such revisions.<sup>43</sup> The Outer Continental Shelf Lands Act also provides for limited state involvement in federal offshore energy planning through submittal of state recommendations to Interior on the “size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan.”<sup>44</sup> Although this provision requires a response from the Interior Secretary, it does not require deference to state recommendations.<sup>45</sup>

The administration has moved forward with plans to allow oil and gas exploration / exploitation in onshore coastal Arctic areas as well, including opening the Arctic National Wildlife Refuge (ANWR) and the coastal plain region of the National Petroleum Reserve-Alaska (NPR-A) to drilling. Prior to the 2018 elections, when both the Senate and House were controlled by the Republican party, Congress passed the Tax Cuts and Jobs Act of 2017 with a provision





authorizing oil and gas lease sales in ANWR’s coastal plain. It required Interior to hold lease sales within the next seven years—the first time that Congress has authorized oil and gas exploration in the area beyond an early survey completed in 1987. Bureau of Land Management (Interior’s sub-agency for onshore energy development on federal and tribal lands) released a draft environmental impact statement on coastal plain leasing and held a lease sale for the NPR-A in December 2018. It is in the process of preparing required plans and environmental reviews for the NPR-A.<sup>46</sup>

Executive Order 13795 also initiated deregulatory efforts to shorten permitting times and reverse environmental and safety protection measures for offshore operations put in place after the 2010 Deepwater Horizon oil spill. As instructed, BOEM halted work on an offshore air quality control rule that was proposed in 2016 but not yet finalized. Interior also initiated a review of a 2016 requirement for additional financial security for lessees and a 2016 rule regulating exploratory drilling in the Arctic’s challenging and fragile environment.<sup>47</sup> Interior has completed revisions to two final and active rules listed for review in the executive order. The Bureau of Safety and Environmental Enforcement (BSEE, another Department of the Interior sub-agency), revised the Obama-era Offshore Safety Regulations Rule, rolling back a number of requirements for offshore equipment.<sup>48</sup> It also finalized revisions to the 2016 Blowout Preventer Systems and Well Control Rule in May 2019.<sup>49</sup> In addition, BOEM and NOAA Fisheries have worked to expedite permits required by the Marine Mammal Protection Act for seismic survey activities.<sup>50</sup>

Although oil and gas development has received most of the attention in the first two years of the Trump presidency, offshore wind development planning and leasing have progressed as well. BOEM manages leasing for offshore renewable as well as mineral resources. Its Renewable Energy Program began in 2009, authorized by the Energy Policy Act of 2005.<sup>51</sup> Leasing under this program has continued to move forward in the current administration. BOEM reports it has fifteen active wind leases.<sup>52</sup> BOEM expects construction to begin on projects in Virginia and Massachusetts in the next two years.<sup>53</sup>

Yet, challenges in getting these projects into operation remain significant. For example, the first offshore wind farm planned for federal waters, off the coast of Massachusetts, has faced recent permitting delays that could derail the project.<sup>54</sup> And despite BOEM’s continued work on permitting and development of these projects, President Trump has not exhibited full-throttled support for wind energy development.<sup>55</sup>

Offshore wind is a rare area where the federal government priorities could align with those of many coastal states as well as European partners whose companies are experienced in the development of offshore wind. Offshore wind development has not faced the automatic opposition from conservation interests that oil and gas development has received, but it has run into opposition from commercial fisherman.<sup>56</sup> An analysis by the University of Delaware’s Special Initiative on Offshore Wind on the future of the U.S. offshore wind industry found the projected 18.6 GW of wind power expected for the Atlantic seaboard represents \$70 billion capital expenditure revenues that would include the



construction of 1,750 foundations for turbine and substation towers.<sup>57</sup> In a panel on offshore wind at the National Marine Sanctuary Foundation’s Ocean Week 2019, panelists noted these foundations could provide opportunities for science and conservation.<sup>58</sup>

## C. Habitat and Natural Resource Conservation

Designations of national monuments, marine sanctuaries, reserves, and other protective classifications contribute to the effective management of ocean resources. Recent administrations have designated large areas of offshore lands as marine national monuments under the authority of the Antiquities Act—most notably, the Northeast Canyons and Seamounts Marine National Monument protects nearly 5,000 square miles of land on the outer continental shelf.<sup>59</sup> Congress and NOAA may also designate areas as marine sanctuaries pursuant to the National Marine Sanctuaries Act. NOAA manages the National Marine Sanctuaries System, which now includes fourteen sanctuaries (with the most recent addition of Mallows Bay in Maryland) and two monuments covering over 600,000 miles of marine and Great Lakes water.<sup>60</sup> Most marine-protected areas are managed as multiple-use sites, meaning human activities in the region may continue if compatible with conservation objectives.<sup>61</sup> These protected areas may restrict activities to the extent necessary to achieve the conservation objectives of the designation. Commercial fishing is often limited or prohibited within monuments and sanctuaries.

In 2017, President Trump ordered a review of onshore and offshore national monuments in

Executive Order 13792. Two days later, he ordered the Department of Commerce to also review existing marine sanctuaries designated under the National Marine Sanctuaries Act in Executive Order 13795. Interior included five marine monuments in its review, and its final recommendations suggested alterations to the management or size of three, including reversing an Obama-era presidential proclamation prohibiting commercial fishing activity in marine monuments.<sup>62</sup> Secretary of Commerce Wilbur Ross submitted a report to the President pursuant to EO 13795 as well, but its contents have not been made public. Other hints that the agency has considered expanding commercial fishing in marine sanctuaries and monuments have emerged but plans have not yet developed.<sup>63</sup>

President Trump has ordered reductions in onshore monuments<sup>64</sup> but has yet to reduce the size of any marine monument. A case pending in the D.C. federal District Court challenges President Trump’s authority to decrease a national monument’s size.<sup>65</sup> This case remains in early stages and the District Court’s ruling will likely face an appeal to the Court of Appeals regardless of the decision. The outcome of this case could impact the President’s authority under the Antiquities Act to adjust existing marine monuments as well as onshore monuments.

In addition to protected area designations, the Endangered Species Act protects marine habitat by protecting the “critical habitat” of listed species.<sup>66</sup> The Fish & Wildlife Service and NOAA complete critical habitat designations for listed species through a rulemaking process based on the best available scientific information. The agencies may consider factors such as economic or national



security impacts. Agencies proposing actions that may affect a protected species' critical habitat must consult with either U.S. Fish & Wildlife Service or NOAA before initiating the action.<sup>67</sup> The consultation process helps ensure human activities in the marine environment, whether commercial fishing or energy development, do not significantly impact marine habitat.

Recent rulemakings by the administration weaken protections for listed species and their critical habitat. Significant changes to critical habitat designations include: allowing for consultation exemptions for certain activities; restricting when habitat may be designated as critical; and granting additional discretion to agencies to determine whether the designation of critical habitat is imprudent.<sup>68</sup> These rules were finalized in August 2019.<sup>69</sup> They may accelerate ESA reviews but may also have detrimental impacts on the recovery of endangered and threatened marine species.<sup>70</sup>

The administration has also reversed an Obama-era interpretation of the Migratory Bird Treaty Act's (MBTA) prohibition of taking or killing of migratory birds.<sup>71</sup> The Obama-era interpretation extended the prohibition to incidental takes of protected species. The Trump administration withdrew that opinion and replaced it with an interpretation of the act that would allow incidental or accidental injuries or killings of birds protected by the MBTA.<sup>72</sup> Environmental groups and eight states have challenged the administration's action in federal court.<sup>73</sup> The case recently survived a request to entirely dismiss it.<sup>74</sup>

Although habitat protection and conservation are secondary to commercial activity and energy

development in this administration, the marine conservation areas have yet to succumb to the fate of onshore areas, some of which have seen their boundaries shrink. But ongoing rulemaking may impact agencies' future ability to foster species recovery and safeguard areas from development.

## D. Domestic Fisheries Management

U.S. domestic fisheries law has evolved from a focus on promoting domestic commercial fishing operations to a scientific approach balancing conservation of species and economic opportunities for coastal and fishing communities. This transition is due primarily to the success of the Magnuson-Stevens Act (MSA) and, in particular, its subsequent revisions. As initially passed, the 1976 act allowed the "maximum sustainable yield" of a fishery to be modified by "social, economic, or ecological factor[s]."<sup>75</sup> This language was changed in the 1996 Sustainable Fisheries Act to allow only the *reduction* of the maximum sustainable yield by such factors, preventing the prior practice of setting yields above the optimal level.<sup>76</sup> The 1996 amendments made several other notable changes including the requirement to establish plans to rebuild overfished species, among others. The Reauthorization Act of 2006 further improved sustainability outcomes by requiring annual catch limits, more stringent overfishing limitations to promote rebuilding of populations, and an expanded role for scientific advisors in decisions, among other changes.<sup>77</sup> Following this round of revisions, U.S. fish stocks have made significant progress in achieving sustainability goals. As of 2017, NOAA determined



that 90% of U.S. stocks are not subject to overfishing, a remarkable turnaround.<sup>78</sup>

In its current form, the MSA creates a management process with shared federal and regional authority and includes significant stakeholder involvement. It sets ten policy objectives for fisheries management that include: preventing overfishing, achieving optimum yield through catch limits, rebuilding depleted stocks, using the best available scientific information, and minimizing adverse effects to fishing communities.<sup>79</sup> Despite the successful evolution of the MSA, challenges remain for sustainable management of domestic fisheries. For example, the absence of updated data management, collection, and privacy rules hinders science-based fisheries management.<sup>80</sup>

NOAA Fisheries (also known as the National Marine Fisheries Service or NMFS) is the primary federal regulatory body for fisheries management. However, management of U.S. federal fisheries is largely executed through the eight Regional Fishery Management Councils. These councils develop fishery management plans that must contain certain provisions related to sustainable fishing, including an obligation to identify and minimize damage to fish habitat that is essential for species' "spawning, breeding, feeding, or growth to maturity."<sup>81</sup> The Secretary of Commerce reviews and approves each fishery management plan and prepares and implements fishery management plans for species that are highly migratory and cross the jurisdictions of multiple regional councils.<sup>82</sup>

The statutory requirements of the MSA and the shared management responsibilities among state, federal, and regional entities limit the changes

an administration can make to domestic fisheries management. The most visible change to fisheries management in this administration was the replacement of the Obama-era National Ocean Policy with one less supportive of collaborative conservation and management efforts. However, agency implementation of some laws passed before this administration took office has continued.

An example of continuity in federal agency management of fisheries under this administration is the implementation of the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 (IUU Enforcement Act). Prior to its passage, then-President Obama called for the creation of a comprehensive framework for combating IUU fishing and seafood fraud in 2014,<sup>83</sup> a process that produced a federal action plan in 2015 that included working with Congress to pass legislation implementing the international Agreement on Port State Measures.<sup>84</sup> The IUU Enforcement Act modified the MSA, the High Seas Driftnet Fishing Moratorium Protection Act, and various other existing acts to authorize efforts to combat illegal, unreported, and unregulated (IUU) fishing.

NOAA Fisheries then developed the Seafood Import Monitoring Program (also known as the Seafood Traceability Program), issuing the final rule establishing the program in December 2016.<sup>85</sup> SIMP is a reporting and recordkeeping program designed to combat seafood fraud and discourage IUU fishing, and traces the supply chains of thirteen priority species.<sup>86</sup> Implementation of the IUU Enforcement Act through NOAA Fisheries rulemaking has continued under the current administration. In 2018, the agency proposed rules to establish



the Commerce Trusted Trader Program and the Traceability Information Program for Seafood (a “domestic counterpoint” to SIMP covering U.S. aquaculture of shrimp and abalone).<sup>87</sup> SIMP was challenged in court but defended by the agency and ultimately upheld in 2017.<sup>88</sup>

The ongoing efforts to promulgate SIMP, the Traceability Information Program, and the Commerce Trusted Trader Program demonstrate continuity in approach to fisheries management from the previous administration to the current. Additionally, the final version of the Modernizing Recreational Fisheries Management Act of 2018 (the Modern Fish Act) signed by President Trump resisted efforts to weaken MSA management controls. The act broadens the range of tools available for management of recreational fisheries, and improves data collection and reporting on catches and allocation in the Atlantic and Gulf catch share programs.<sup>89</sup> As originally introduced, it faced strong opposition from conservation organizations. However, as passed, the bill received bipartisan support without severely undermining the conservation goals of the MSA.<sup>90</sup>

However, this administration’s handling of domestic fisheries management shows a decreased concern for stock rebuilding and conservation goals. It has supported policies favoring recreational anglers over conservation and, at times, over commercial fishing interests. For example, a decision to reopen the 2017 federal recreational season for red snapper to private anglers proved controversial.<sup>91</sup> Later internal emails indicated potential political and legislative gamesmanship may have guided that decision.<sup>92</sup> The administration has also demonstrated a willingness to undercut conservation goals written into the

MSA. The Department of Commerce clashed with the Atlantic States Marine Fisheries Commission by overruling a Commission recommendation that New Jersey’s management measures for flounder were noncompliant with the Commission’s rebuilding plan for the stock.<sup>93</sup> President Trump has also expressed unhappiness with the regional commission management structure of the MSA, voicing unease with their powers when signing the Modern Fish Act.<sup>94</sup> In the summer of 2018 a presentation by then-Acting Administrator of NOAA, Rear Admiral Timothy Gallaudet, sparked concern that the agency was explicitly moving away from the climate and conservation aspects of its mission.<sup>95</sup> A rule proposed in November 2018 and yet to be finalized has also raised concerns regarding a potential reversal of policy on subsidies for new fishing vessel construction in the fishing industry.<sup>96</sup>

## E. International Fisheries Management and Ocean Conservation

The Trump administration’s engagement on international fisheries and ocean conservation issues presents mixed messages on conservation and sustainability similar to those seen in domestic policy. While the administration has shown a willingness to cooperate on some issues of interest to the international community, it has pulled away from others.

A number of actions related to marine management have maintained progress made in the prior administration. President Trump signed the Save Our Seas Act in 2018 which extended the Marine





Debris Act and reauthorized NOAA's \$10 million Marine Debris Program.<sup>97</sup> The bill was a bipartisan effort supported by conservation groups.<sup>98</sup> Although it targets an issue of increasing importance on the international stage and explicitly authorizes NOAA to “promote international action” on marine debris,<sup>99</sup> it represents a modest improvement on and continuation of existing policy and programs. Similarly, the implementation of SIMP and related programs addressing IUU fishing (fulfilling international commitments such as the Port State Measures Agreement) has continued (as noted in the domestic fishery management section above). In 2017, the U.S. joined with eight other countries and the European Union in a precautionary agreement barring fishing in the high seas of the Central Arctic Ocean for sixteen years and establishing a research and monitoring program for the area.<sup>100</sup> Signed in October 2018, the agreement represents a substantial commitment from Arctic nations and non-Arctic nations with significant active fishing fleets.<sup>101</sup>

Yet, the Trump administration reportedly discouraged the acceptance of a May 2019 agreement to extend Basel Convention bans and controls to plastic wastes.<sup>102</sup> As a non-party to the convention the U.S. could not vote on the agreement but participated as an observer—the U.S. signed the Basel Convention but never fully ratified it (the Senate gave its advice and consent but no implementing legislation has been enacted).<sup>103</sup> The new agreement would restrict the U.S.'s ability to export plastic waste unless it has a specific agreement with the importing country that meets certain provisions and allows for the import. Secretary of State Pompeo has since stated that the U.S. would not interfere with international efforts to curb plastic pollution.<sup>104</sup> Even so, it clearly is not

taking the type of leadership role on such issues that it has taken in years past.

In the Arctic, the administration has been less cooperative on matters explicitly connected to climate change. As one of five Arctic coastal nations and one of the eight members of the Arctic Council,<sup>105</sup> the U.S. participates in multi-lateral discussions on the use of the Arctic. Through collaboration with other Arctic states, the U.S. actively engaged in Arctic policy during the Obama administration and heightened its focus on the impacts of climate change on the Arctic native populations and the environment.<sup>106</sup> In 2013, the White House announced the National Strategy for the Arctic Region, establishing three priorities: national security, responsible stewardship, and international cooperation.<sup>107</sup> In 2015, then-President Obama issued Executive Order 13689, creating the Arctic Executive Steering Committee to encourage interagency alignment of federal Arctic policy.<sup>108</sup> The Steering Committee coordinated efforts to advance the implementation plan for the National Strategy for the Arctic Region.<sup>109</sup> The U.S. held the chairmanship of the Arctic Council from April 2015 to May 2017.<sup>110</sup>

Early in the Trump administration, there were signs of continuity. In May 2017, the U.S. signed the Arctic Council's Agreement on Enhancing International Arctic Scientific Cooperation to facilitate research cooperation in the Arctic.<sup>111</sup> That ministerial meeting of the Arctic Council also resulted in the Fairbanks Declaration, which reaffirmed the Council's commitments to, among other policy priorities, peace, cooperation, and environmental protection.<sup>112</sup> Then the U.S. signed the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic





Ocean (CAO) in 2018.<sup>113</sup>

President Trump has not maintained the Arctic-focused White House structures created by his predecessor.<sup>114</sup> In an early 2019 meeting of the Arctic Council, Secretary of State Pompeo negotiated aggressively to remove mentions of climate change from the group's policy statement.<sup>115</sup> This provoked rebukes from longtime European allies as well as former administration officials who witnessed similar efforts to cleanse U.S. agencies of climate-related language under this administration.<sup>116</sup> In addition to the climate theatrics, the administration's support for oil and gas development in the Arctic marks one of the most notable changes in recent U.S. Arctic policy.

## 3. Stakeholder Views and Responses

### A. States, Local Governments, and Tribes

The administration's offshore and coastal energy development plans have faced stiff opposition from many coastal states and other stakeholders. While Alaskan politicians have long sought expanded leasing both onshore and offshore, Alaskan tribes are split on the issue. Most Gwich'in people, whose community is closely tied to caribou herds, have

opposed any drilling in the refuge's coastal plain, but the Inupiat people, who work on the North Slope and are economically tied to the industry, mostly support oil and gas development.<sup>117</sup> Coastal states without existing drilling activity off their coasts oppose new development in federal waters, regardless of party affiliation. Florida's then-governor Rick Scott (R) asked the Department of the Interior to remove Florida from oil and gas leasing consideration in early 2018 and then-Interior Secretary Ryan Zinke indicated a willingness to do so.<sup>118</sup> Other states similarly requested removal but were not similarly supported.<sup>119</sup>

Because states have limited ability to affect federal offshore resource management decisions, they are looking for creative ways to impede the process. Nine states introduced bills in January 2019 aimed at blocking oil and gas drilling off their coasts.<sup>120</sup> The state bills include proposals to ban offshore development in state waters (which would not impact federally managed waters), proposals to impose strict liability for oil spills, and efforts to limit onshore infrastructure development to support offshore activities. New York Governor Andrew Cuomo signed a bill on April 30, 2019, prohibiting oil and gas leasing in state waters and preventing key state departments from authorizing leases that would result in an increase of oil and gas production in federal waters.<sup>121</sup> Ten states joined a lawsuit challenging permits for seismic testing off the Atlantic coast.<sup>122</sup> Republican leaders in South Carolina, Georgia, and Florida reportedly pressured the administration to keep their coasts free from drilling as recently as April 2019.<sup>123</sup> Florida congressional representatives introduced a bill in Congress to ban oil and gas leasing off their state's



coast until 2024.<sup>124</sup> States point to potential injury to their commercial fishing and tourism industries as well as environmental concerns in explaining their opposition.

States have also actively engaged in this administration's deregulatory agenda with state attorneys general challenging regulatory actions via the Administrative Procedure Act, National Environmental Policy Act, Endangered Species Act, and Marine Mammal Protection Act, among other relevant statutes. However, these coalitions often break down on party lines with Democratic attorneys general leading cases against current administration actions and Republicans lining up in the opposing camp.

## B. Congress

Recent congressional sessions have included efforts to amend and reauthorize the Magnuson-Stevens Act, which was last reauthorized in 2006. In 2018, the U.S. House of Representatives passed a bill to reauthorize and significantly amend the act.<sup>125</sup> The proposed legislation would increase fishery management flexibility for regions and states by loosening requirements for rebuilding stocks and allowing managers to consider changes in the ecosystem and economic needs of fishing communities when determining annual catch limits.<sup>126</sup> It would also exempt certain species from annual catch limit requirements. The fishing industry supported this added flexibility, but environmental groups expressed concern it would undermine progress already achieved and would not uphold the act's mission of sustainable fishing. The Senate did not vote on the legislation before the end of the last

Congress (the 115<sup>th</sup> Congress) and it would have to be re-introduced in the House to be considered again. The reauthorization of the Magnuson-Stevens Act continues to be a priority for stakeholders. Congress did pass the Modernizing Recreational Fisheries Management Act in 2018, dealing with management of private angling, as well as the Save Our Seas Act reauthorizing the Marine Debris Act (both discussed previously).

The U.S. House of Representatives moved from Republican to Democratic control in the 2018 elections. As a result, the 116<sup>th</sup> Congress (the current Congress) has focused more on agency oversight, conservation, and responding to the President's agenda. Relevant committees have held hearings on ocean-related issues and the operations of the environmental- and energy-focused agencies.<sup>127</sup> Legislators in the 116<sup>th</sup> Congress have introduced over 70 pieces of legislation directly concerning the oceans, coastal ecosystems, and offshore activities.<sup>128</sup> Approximately one-third of the introduced legislation relates to offshore energy planning and development, including bills that would prohibit oil and gas leasing and permitting in federal waters off the Atlantic, Florida (including the Eastern Gulf of Mexico), Pacific, and Arctic coasts.<sup>129</sup>

While most of the proposed acts have yet to receive a vote, in June 2019 the U.S. House of Representatives passed four bipartisan bills related to ocean acidification research.<sup>130</sup> If enacted, the bills would support and provide funding for research on ocean acidification, including its impact on vulnerable communities, industry, and ecosystems.<sup>131</sup> These bills could significantly bolster federal research capabilities, as congressional funding for ocean



acidification research lapsed in 2012.

Given the divided nature of the Congress (with Republican leadership controlling the Senate and Democratic leadership controlling the House), few bills are expected to make it to the President's desk. However, the bipartisan nature of the ocean bills that Congress passed in 2018 shows some issues may be able to gain traction.

## C. Industry

Ocean policy impacts a range of industry interests. From fishing, to energy, to tourism, numerous industries engage on policy decisions in this arena with often differing views on issues.

Fishing interests divide into commercial and recreational fishing (including both the charter industry and private anglers). These groups are often at odds when it comes to advocating for catch shares, as a quick look at the history of the Gulf of Mexico's red snapper stock demonstrates. Fishing industry groups often advocate for more flexibility in the domestic fishery management system or increased catch share allocations for their particular slice of the industry but have also supported efforts to rebuild stock, combat overfishing, and control IUU fishing. The MSA's fishery management structure is designed to hear competing concerns and provide for a science-based method to balance economic concerns with conservation goals. Yet, these methods require strong data to properly operate. Recent concerns have included criticism that fishery management is not adapting quickly enough to migrating stock and is improperly allocating catch as a result.<sup>132</sup>

Fishing and offshore energy interests can also collide. Concerns over impacts on recreational and commercial fishing have been cited by opponents to expanded oil and gas leasing in the Atlantic and elsewhere, in addition to concerns about impacts on tourism. Offshore wind siting has also required careful consideration of fishing interests. Rhode Island commercial fishing groups vocally opposed an offshore wind project until they were able to negotiate compensation, fisheries monitoring, and adjustments to siting to accommodate fishing gear and lanes.<sup>133</sup> And as was discussed earlier, the first offshore wind project planned for federal waters, off the coast of Massachusetts, was recently delayed in part over concerns that impacts on fisheries were not fully considered.

The oil and gas industry is generally supportive of this administration's approach to energy development. It has welcomed reconsideration of offshore environmental and safety regulations and the potential expanded exploration and production opportunities that the opening of new areas to leasing could bring. However, even the energy sector has joined others in the business community in pushing back against the administration's climate policies, with some companies going so far as to state their support for regulation of methane leaks from oil and gas operations.<sup>134</sup>

Numerous associations representing the energy and commercial fishing sectors lobby Congress, engage with the administration and agencies on rulemaking, and bring challenges in court to rulemakings and other agency decisions.

## D. Non-profits and Think Tanks



Many U.S. non-profit organizations and think tanks specialize in ocean-related issues. These range from large institutions that have lobbying and research arms dedicated to the marine environment to smaller regional organizations focused on recreation and regional ocean health. These groups can engage with U.S. ocean law and policy in a variety of ways, such as submitting public comments in the rulemaking process, engaging with Congress on legislative issues, or bringing citizen suits to enforce regulation or challenge regulatory decisions in court. Events such as the annual Capitol Hill Ocean Week (CHOW) organized by the National Marine Sanctuary Foundation in Washington, D.C. provide opportunities for public engagement with Congress and often attract a wide range of participating organizations.<sup>135</sup> Numerous organizations are mentioned by name in this section but this does not represent all significant players at the regional or national stage on ocean-related issues.

Examples of organizations that cover a wide range of ocean-specific issues include the Ocean Conservancy, Oceana, the Ocean Foundation, and the Marine Conservation Institute. Other organizations specialize in subsets of issues. For example, the Surfrider Foundation tends to focus more on coastal environmental issues than broad ocean policy. There are coalitions focused primarily on fisheries management, such as the Marine Fish Conservation Network and National Coalition for Marine Conservation. Examples of groups dedicated to marine mammals include the Whale and Dolphin Conservation Society and the American Cetacean Society.

Some of the biggest environmental organizations

have significant efforts focused on oceans as well. Wildlife conservation organizations such as the World Wildlife Fund, the Wildlife Conservation Society, Defenders of Wildlife, and the Humane Society have substantial marine campaigns. The Environmental Defense Fund (EDF), Pew Charitable Trusts, Sierra Club, Earthjustice, the Nature Conservancy, the Natural Resources Defense Council (NRDC), and Greenpeace all have significant ocean programs.

NRDC, Sierra Club, the Center for Biological Diversity, the Conservation Law Foundation, and Earthjustice are some of the most prolific utilizers of the courts to impact ocean policy. They challenge agency regulatory and permitting decisions and represent conservation and environmental interests in court. Organizations such as EDF work to partner with commercial stakeholders to encourage best practices and develop coalitions in support of advocacy goals. Many of these organizations, such as Pew Charitable Trusts, WWF, the Woods Hole Oceanographic Institution, and many of the ocean-specific organizations also have significant research and science operations that contribute to the science considered in policymaking or management decisions, at times funded by government grants. Most organizations do not focus on a single approach. They may engage in lobbying, research, and participate in litigation against the government or industry.

Academic think tanks also contribute to ocean law and policy. Large groups like the Brookings Institution or Center for Strategic and International Studies address international ocean issues particularly as they relate to security concerns. The World Resources Institute works on environmental



issues worldwide and has a dedicated oceans staff. There are think tanks focused on Arctic and Antarctic issues such as the Polar Institute at the Woodrow Wilson Center and the Arctic Institute. Harvard's Belfer Center for Science and International Affairs addresses a range of policy issues related to ocean resource management, conservation and environmental concerns, energy, international security, and Arctic issues. Think tanks not specifically focused on environmental issues often address the wider economic issues, international relationships, and security concerns that arise in ocean law and policy while non-profits tend to orient more exclusively towards environmental protection and conservation.

the international arena, breaks with prior approaches have built over the course of this administration, showing an increasing propensity to pull away from previous stances. Yet, there remain areas in which international partners may be able to find common ground with this administration. Not all aspects of ocean and coastal management have experienced the same level of policy shift and some of the administration's efforts remain caught in court battles.

## Conclusion

The current administration's penchant for deregulation has extended to the many regulatory structures governing ocean and coastal management and resources. This deregulatory agenda has, at times, placed the administration at odds with some political leaders of the President's own party. The current administration has exhibited a pattern of choosing fossil energy development over sustainability and, at times, other commercial concerns. Yet, not every action has represented a split with prior practice. Implementation of some regulatory changes that began in the prior administration have continued, largely unabated. In



## Endnotes

- 1 See, e.g., OCEAN AND COASTAL LAW AND POLICY (Donald C. Baur et al., eds., ABA Publishing, 2d ed.) (2015).
- 2 For an excellent discussion of this transition, read Chapter Four of Harvard Law Professor Richard Lazarus's book *The Making of Environmental Law*. Richard J. Lazarus, *THE MAKING OF ENVIRONMENTAL LAW*, Univ. of Chicago Press (2004).
- 3 See James E. Hickey Jr., *The 1982 United Nations Convention on the Law of the Sea*, 365, OCEAN AND COASTAL LAW AND POLICY (Donald C. Baur et al., eds., ABA Publishing, 2d ed.) (2015) (noting that "U.S. stated policy since 1994 is to act in a manner consistent with the provisions of UNCLOS relating to traditional uses of the oceans.") (internal citations omitted). NOAA Office of General Counsel, *Law of the Sea Convention*, at [https://www.gc.noaa.gov/gcil\\_los.html](https://www.gc.noaa.gov/gcil_los.html) (last visited June 28, 2019) ("Although not yet a party to the treaty, the U.S. nevertheless observes the UN LOSC as reflective of customary international law and practice. Despite the efforts of numerous government officials, organizations, and industries since its creation, the treaty has yet to gather the Congressional support necessary for U.S. accession."); U.S. Department of State, *The Law of the Sea Convention – In Our National Security Interest*, July 1, 2011, at <https://2009-2017.state.gov/e/oes/lawofthesea/factsheets/177205.htm> (last visited June 28, 2019) (describing the Bureau of Oceans and International Environmental and Scientific Affairs' reasoning for why accession is nonetheless in the U.S. interest); Dept. of State, *Law of the Sea Convention*, March 7, 2019, at <https://www.state.gov/law-of-the-sea-convention/> (last visited June 28, 2019) (providing a list of supporters for acceding to the convention).
- 4 Proclamation 5030 by the President of the United States of America on the Exclusive Economic Zone of the United States of America, March 10, 1983, [https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/USA\\_1983\\_Proclamation.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/USA_1983_Proclamation.pdf).
- 5 Department of Defense, *Annual Freedom of Navigation Report, Fiscal Year 2018* (Dec. 31, 2018), at [https://policy.defense.gov/Portals/11/Documents/FY18%20DoD%20Annual%20FON%20Report%20\(final\).pdf?ver=2019-03-19-103517-010](https://policy.defense.gov/Portals/11/Documents/FY18%20DoD%20Annual%20FON%20Report%20(final).pdf?ver=2019-03-19-103517-010).
- 6 See John B. Bellinger, III, *The United States and the Law of the Convention*, 1 BERKELEY J. INT'L L. PUBLICIST 7, 13-14 (in a speech Bellinger, Legal Adviser to the U.S. Secretary of State during Pres. Bush's second term, notes the various ways "the United States will continue to abide by the Convention and work within its framework.").
- 7 Ronald Reagan, *Statement on the United States Actions Concerning the Conference on the Law of the Sea* (July 9, 1982), at <https://www.reaganlibrary.gov/research/speeches/70982b>.
- 8 See James E. Hickey Jr., *The 1982 United Nations Convention on the Law of the Sea*, 365, 378 OCEAN AND COASTAL LAW AND POLICY (Donald C. Baur et al., eds., ABA Publishing, 2d ed.) (2015).
- 9 See Transmittal Package for UNCLOS sent to the Senate (Oct. 7, 1994) (including letter from Pres. Clinton noting "The United States has basic and enduring national interests in the oceans and has consistently taken the view that the full range of these interests is best protected through a widely accepted international framework governing uses of the sea."), [https://www.foreign.senate.gov/imo/media/doc/treaty\\_103-39.pdf](https://www.foreign.senate.gov/imo/media/doc/treaty_103-39.pdf).
- 10 See Harry N. Scheiber, *Introduction: Perspectives on the History of U.S. Non-Ratification of the U.N. Convention on the Law of the Sea, and on the Prospects for an Early Reversal*, 1 BERKELEY J. INT'L L. PUBLICIST 1 (2009).
- 11 Cf. McKay Coppins, *The Man Who Broke Politics*, ATLANTIC (Oct. 17, 2018), <https://www.theatlantic.com/magazine/archive/2018/11/newt-gingrich-says-youre-welcome/570832/> ("During his two decades in Congress, he pioneered a style of partisan combat—replete with name-calling, conspiracy theories, and strategic obstructionism—that poisoned America's political culture and plunged Washington into permanent dysfunction."); see also John Briscoe & Peter Prows, *The U.N. Convention on the Law of the Sea Turns 27, and American Ratification is Not in Sight – Still*, 1 BERKELEY J. INT'L L. PUBLICIST 18, 19 (2009) ("But the 'Republican takeover' of Congress in the mid-term election in November 1994 dashed those hopes. Many conservatives continued to oppose the Convention . . .").
- 12 See John B. Bellinger, III, *The United States and the Law of the Convention*, 1 BERKELEY J. INT'L L. PUBLICIST 7 (2009) (printing a speech Bellinger, Legal Adviser to the U.S. Secretary of State during Pres. Bush's second term, in which he discusses that administration's support for and efforts to achieve accession to UNCLOS); John Briscoe & Peter Prows, *The U.N. Convention on the Law of the Sea Turns 27, and American Ratification is Not in Sight – Still*, 1 BERKELEY J. INT'L L. PUBLICIST 18, 19 (2009) (noting President Obama and Secretary of State Clinton made ratification a priority for their administration, as did Senator John Kerry as the Chair of the Foreign Relations Committee); and John E. Noyes, *The Law of the Sea Convention and the United States of America*, *Revue Belge De Droit International* 2014/1 (2014) ("The array of support in the United States for accession is remarkable. . . . Since 1994, both Republican and Democratic administrations have urged US acceptance of the UNCLOS.").
- 13 The most recent resolution calling upon the Senate to offer its advice and consent for UNCLOS was introduced in the 115<sup>th</sup> Congress.





See S. Res. 598, A resolution calling upon the United States Senate to give its advice and consent to the ratification of the United Nations Convention on the Law of the Sea (“The United States, like most other countries, believes that coastal states under UNCLOS have the right to regulate economic activities in their Exclusive Economic Zones (EEZs), but do not have the right to regulate foreign military activities in their EEZs”), available at <https://www.congress.gov/bill/115th-congress/senate-resolution/598/text?format=txt>.

14 The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001) Overview, [https://www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_fish\\_stocks.htm](https://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm).

15 See NOAA Fisheries website on international affairs, available at <https://www.fisheries.noaa.gov/topic/international-affairs>; its website specific to relevant international trade agreements, <https://www.fisheries.noaa.gov/international/international-affairs/international-trade-organizations>; and the 2018 NOAA Fisheries International Agreements Book, available for download at <https://www.fisheries.noaa.gov/resource/document/2018-noaa-fisheries-international-agreements-book>.

16 Matthew H. Armsby, Jocelyn B.G. Herbert, & Michael A. Mantell, *Role of the States*, in OCEAN AND COASTAL LAW AND POLICY 75, 78 (Donald C. Baur et al., eds., ABA Publishing, 2d ed.) (2015) (Puerto Rico also received title to submerged lands up to three leagues due to an act of Congress).

17 *Id.* at 77 (describing the cases and Congressional response).

18 Former President Ronald Reagan issued a presidential proclamation claiming an area of 200 nautical miles from the baseline from which the breadth of the territorial sea is measured as the U.S. EEZ, in accordance with the manner in which the EEZ is defined in UNCLOS. Proclamation 5030 by the President of the United States of America on the Exclusive Economic Zone of the United States of America, March 10, 1983, [https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/USA\\_1983\\_Proclamation.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/USA_1983_Proclamation.pdf).

19 For a more complete explanation of the Clean Water Act’s applicability to coastal and marine environments, see Robin Kundis Craig, *Coastal Water Quality Protection*, in OCEAN AND COASTAL LAW AND POLICY, 235 (Donald C. Baur et al., eds., ABA Publishing, 2d ed.) (2015).

20 U.S. Commission on Ocean Policy, *An Ocean Blueprint for the 21<sup>st</sup> Century* (Sept. 20, 2004), [http://www.jointoceancommission.org/en/policypriorities/U\\_S\\_Commission\\_Report\\_Folder/U\\_S\\_Commission\\_Report.aspx](http://www.jointoceancommission.org/en/policypriorities/U_S_Commission_Report_Folder/U_S_Commission_Report.aspx). This followed a report from the non-

governmental Pew Oceans Commission released in May 2003 titled *America’s Living Oceans: Charting a course for sea change*, [https://www.pewtrusts.org/-/media/assets/2003/06/02/full\\_report\\_df?la=en&hash=DFB95E1321D3B5B1B6575B10BCD7C1994767E61E](https://www.pewtrusts.org/-/media/assets/2003/06/02/full_report_df?la=en&hash=DFB95E1321D3B5B1B6575B10BCD7C1994767E61E). Both commissions continued to work under the banner of the Joint Ocean Commission Initiative, <http://www.jointoceancommission.org/>.

21 Kristen M. Fletcher, *Managing Coastal Development*, in OCEAN AND COASTAL LAW AND POLICY, 177, 200-01 (Donald C. Baur et al., eds., ABA Publishing, 2d ed.) (2015).

22 NOAA Fisheries, About Us, <https://www.fisheries.noaa.gov/about-us>.

23 National Ocean Service, About Us, <https://oceanservice.noaa.gov/about/>.

24 Visit the MMC website for more information, <https://www.mmc.gov/>. Note that the Trump administration’s most recent budget for fiscal year 2020 proposes eliminating funding for this small, independent agency. MMC Chairman Daryl Boness, *Marine Mammal Commission Proposed for Elimination*.

25 Alaska withdrew from the program in 2011. See NOAA Office for Coastal Management, Coastal Zone Management Programs, <https://coast.noaa.gov/czm/mystate/> (listing states participating in the National Coastal Zone Management Program).

26 For more information, visit the U.S. Regional Fishery Management Councils, <http://www.fisherycouncils.org/>.

27 For example, the [Atlantic States Marine Fisheries Commission](#), the [Gulf States Marine Fisheries Commission](#), and the [Pacific States Marine Fisheries Commission](#).

28 Matthew H. Armsby, Jocelyn B.G. Herbert, & Michael A. Mantell, *Role of the States*, in OCEAN AND COASTAL LAW AND POLICY, 75, 95 (Donald C. Baur et al., eds., ABA Publishing, 2d ed.) (2015).

29 NOAA Office of International Affairs, <https://www.international.noaa.gov>.

30 Department of State Bureau of Oceans and International Environmental and Scientific Affairs, <https://www.state.gov/bureaus-offices/under-secretary-for-economic-growth-energy-and-the-environment/bureau-of-oceans-and-international-environmental-and-scientific-affairs/>.

31 Office of Ocean and Polar Affairs, <https://www.state.gov/bureaus-offices/under-secretary-for-economic-growth-energy-and-the-environment/bureau-of-oceans-and-international-environmental-and>



[scientific-affairs/office-of-ocean-and-polar-affairs/.](#)

32 United States Coast Guard Arctic Strategic Outlook (April 2019), [https://www.uscg.mil/Portals/0/Images/arctic/Arctic\\_Strategy\\_Book\\_APR\\_2019.pdf](https://www.uscg.mil/Portals/0/Images/arctic/Arctic_Strategy_Book_APR_2019.pdf).

33 Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs (Jan. 30, 2017), <https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs>.

34 For ample discussion of the various actions this administration has taken to revise NEPA review processes, see the EELP Regulatory Rollback page at <https://eelp.law.harvard.edu/2018/08/nepa-environmental-review-requirements/>.

35 Fact Sheet, President Donald J. Trump is Promoting America's Ocean Economy, the White House (June 19, 2018) ("President Trump's Executive Order also eliminates the duplicative, Federally driven Regional Planning Bodies established by the previous Administration."), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-promoting-americas-ocean-economy/>.

36 Memorandum, Guidance for Implementing Executive Order 13840, Executive Office of the President (June 28, 2018), <https://www.whitehouse.gov/wp-content/uploads/2017/11/20180628EO13840OceanPolicyGuidance.pdf>.

37 Ocean Policy Committee Meeting Summary (Aug. 1, 2018), <https://www.whitehouse.gov/wp-content/uploads/2017/11/OPC-Summary-Initial-Meeting-080118.pdf>.

38 Workplan to Identify Priority Research and Technology Needs, Ocean Policy Committee: Ocean Science and Technology Subcommittee (Feb. 2019), <https://www.whitehouse.gov/wp-content/uploads/2017/11/20190211-OST-workplan-FINAL.pdf>.

39 Additional detail on the order and subsequent agency actions it triggered can be found on the Offshore Oil and Gas Drilling page of EELP's Regulatory Rollback Tracker, <https://eelp.law.harvard.edu/2018/08/offshore-oil-and-gas-drilling-leasing-rules-and-guidance/>.

40 League of Conservation Voters, et al. v. Trump, 363 F.Supp.3d 1013 (D. Alaska 2019) (vacating Section 5 of Trump's EO 13795 and reinstating former Pres. Obama's 2015 and 2016 withdrawals of Arctic and Atlantic coastal areas from oil and gas leasing; finding the Outer Continental Shelf Lands Act allows the president to withdraw areas from leasing but does not also grant him the power to reverse a prior withdrawal; that act is reserved for Congress), <https://earthjustice.org/sites/default/files/files/80%20Order%20granting%20MSJ.pdf>; see also Timothy Puko, *Trump's Offshore Oil-Drilling Plan Sidelined*

*Indefinitely*, WALL STREET JOURNAL (April 25, 2019), [https://www.wsj.com/articles/trumps-offshore-oil-drilling-plan-sidelined-indefinitely-11556208950?mod=hp\\_listc\\_pos2](https://www.wsj.com/articles/trumps-offshore-oil-drilling-plan-sidelined-indefinitely-11556208950?mod=hp_listc_pos2).

41 Pamela King, *Trump admin appeals restoration of Obama-era bans*, E&E NEWS (May 29, 2019).

42 NOAA, Advanced Notice of Proposed Rulemaking, Procedural Changes to the Coastal Zone Management Act Federal Consistency Process, 84 Fed. R. 8628 (March 11, 2019), <https://www.federalregister.gov/documents/2019/03/11/2019-04199/procedural-changes-to-the-coastal-zone-management-act-federal-consistency-process>.

43 Letter from the Attorneys General of New York, California, Maryland, Massachusetts, New Jersey, North Carolina, Oregon, Rhode Island and Washington to the Office for Coastal Management RE: ANPR Procedural Changes to the Coastal Zone Management Act Federal Consistency Process (April 25, 2019), <https://oag.ca.gov/system/files/attachments/press-docs/2019-04-25-comments-anpr-procedural-changes-czma.pdf>.

44 43 U.S. Code § 1345.

45 43 U.S. Code § 1345(d). Such determinations can be challenged in court but only invalidate a lease sale or proposed development and production plan if they are found to be "arbitrary or capricious," a high bar to meet.

46 Documents related to this process are available on BLM's website at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=174096>.

47 See Sec. Zinke, Secretarial Order No. 3350 (May 1, 2017), <https://www.doi.gov/sites/doi.gov/files/press-release/secretarial-order-3350.pdf>.

48 BSEE, Final Rule, Oil and Gas and Sulphur Operations on the Outer Continental Shelf-Oil and Gas Production Safety Systems, 83 Fed. R. 49216 (published Sept. 28, 2018), <https://www.federalregister.gov/documents/2018/09/28/2018-21197/oil-and-gas-and-sulphur-operations-on-the-outer-continental-shelf-oil-and-gas-production-safety>.

49 BSEE, Final Rule, Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions, 84 Fed Reg. 21908 (published May 15, 2019), <https://www.federalregister.gov/documents/2019/05/15/2019-09362/oil-and-gas-and-sulfur-operations-in-the-outer-continental-shelf-blowout-preventer-systems-and-well>.

50 For example, NOAA Fisheries has proposed a rule in response to a petition from BOEM that would "govern the authorization of take of small



numbers of marine mammals over the course of five years incidental to geophysical survey activities conducted by industry operators in Federal waters of the U.S. Gulf of Mexico (GOM).” NMFS, Proposed Rule, Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, 83 Fed. R. 29212 (June 22, 2018).

- 51 Visit BOEM’s Renewable Energy page at <https://www.boem.gov/Renewable-Energy-Program-Overview/>.
- 52 Interior reported a wind auction for a lease area off the Massachusetts coast garnered \$405 million in December 2018. Interior Press Release, *BIDDING BONANZA! Trump Administration Smashes Record for Offshore Wind Auction with \$405 Million in Winning Bids* (Dec. 14, 2018), <https://www.doi.gov/pressreleases/bidding-bonanza-trump-administration-smashes-record-offshore-wind-auction-405-million>.
- 53 Remarks by BOEM Chief of the Office of Renewable Energy Programs James Bennett at the New England – Germany Energy Transition Forum, Harvard Law School, May 16, 2019.
- 54 See Heather Richards, Developer blames Interior for offshore wind delays, *E&E NEWS* (July 18, 2019), <https://www.eenews.net/greenwire/2019/07/18/stories/1060756669> and Karl-Erik Stromsta, *Vineyard’s Delay Exposes Challenges for Fast-Moving US Offshore Wind Market*, *GREEN TECH MEDIA* (August 11, 2019), <https://www.greentechmedia.com/articles/read/vineyard-winds-delay-exposes-challenges-for-us-offshore-wind-market#gs.wqi5gQ>.
- 55 See Karen Heller, *The story of Donald Trump’s feud with his one true nemesis: Windmills*, *WASHINGTON POST* (Oct. 16, 2019), [https://www.washingtonpost.com/lifestyle/style/the-story-of-donald-trumps-feud-with-his-one-true-nemesis-windmills/2019/08/15/f637980a-be9e-11e9-b873-63ace636af08\\_story.html](https://www.washingtonpost.com/lifestyle/style/the-story-of-donald-trumps-feud-with-his-one-true-nemesis-windmills/2019/08/15/f637980a-be9e-11e9-b873-63ace636af08_story.html) (describing Pres. Trump’s history of misrepresenting wind power’s health and economic impacts, his repeatedly stated dislike of “windmills,” and his history of opposing offshore wind power in Scotland).
- 56 Mary Ann Bragg, *Federal agencies, Vineyard Wind at odds over wind farm setup*, *CAPE COD TIMES* (Aug. 1, 2019), <https://www.southcoasttoday.com/news/20190801/federal-agencies-vineyard-wind-at-odds-over-wind-farm-setup> (detailing comments made on the draft environmental impact statement, including those raising concerns of impacts on fishing).
- 57 Stephanie A. McClellan, Ph.D., White Paper, Supply Chain Contracting Forecast for U.S. Offshore Wind Power (March 2019), <http://www.ceoe.udel.edu/File%20Library/About/SIOW/SIOW-White-Paper--Supply-Chain-Contracting-Forecast-for-US-Offshore-Wind-Power-FINAL.pdf>.
- 58 National Marine Sanctuary Foundation email, June 7, 2019, <https://mailchi.mp/ourdailyplanet/chow-2019-wrap-up-and-thank-you?e=0daf888e5c>.
- 59 NOAA, Northeast Canyons and Seamounts Marine National Sanctuary, <https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/northeast-canyons-and-seamounts-marine-national>. Fishing groups challenged the Obama-era monument designation for the Northeast Canyons and Seamounts. This lawsuit was recently dismissed, with the court finding Pres. Obama had the authority under the Antiquities Act to protect the full designated area. *Massachusetts Lobstermen’s Association v. Ross*, 349 F.Supp.3d 48 (D.D.C. Oct. 5, 2018).
- 60 See NOAA’s page on the National Marine Sanctuaries system, available at <https://sanctuaries.noaa.gov/about/>.
- 61 Jason Patlis et al., *The National Marine Sanctuary System: the Once and Future Promise of Comprehensive Ocean Governance*, 44 *Env’t L. Rep. News & Analysis* 10932 (Nov. 2014).
- 62 Memorandum for the President, Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act, The Secretary of the Interior, [https://www.doi.gov/sites/doi.gov/files/uploads/revise\\_final\\_report.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/revise_final_report.pdf).
- 63 Emails obtained in a FOIA request included draft presidential proclamations prepared by Interior officials which would eliminate Northeast Canyons and Seamounts monument or amend to remove commercial fishing restrictions. Jennifer Yachnin, Trump officials drafted plans to eliminate marine monument off New England, *SCIENCE MAGAZINE* (July 24, 2018), <https://www.sciencemag.org/news/2018/07/trump-officials-drafted-plans-eliminate-marine-monument-new-england>. However, the emails also indicate that the monument has only minor impacts on fisherman. *Id.*
- 64 See, eg. Josh Dawsey and Juliet Eilperin, Trump shrinks two huge national monuments in Utah, drawing praise and protests, *WASHINGTON POST* (Dec. 4, 2017), [https://www.washingtonpost.com/politics/trump-scales-back-two-huge-national-monuments-in-utah-drawing-praise-and-protests/2017/12/04/758c85c6-d908-11e7-b1a8-62589434a581\\_story.html?utm\\_term=.d895b371e159](https://www.washingtonpost.com/politics/trump-scales-back-two-huge-national-monuments-in-utah-drawing-praise-and-protests/2017/12/04/758c85c6-d908-11e7-b1a8-62589434a581_story.html?utm_term=.d895b371e159).
- 65 See Earthjustice Press Release, *Conservation Groups File Lawsuit After President Trump Illegally Axed Majestic Bears Ears National Monument* (Dec. 7, 2017), <https://earthjustice.org/news/press/2017/conservation-groups-file-lawsuit-after-president-trump-illegally-axed-majestic-bears-ears-national-monument>.
- 66 16 USCA §1531(b) (“The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and



threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species. . .”).

67 Generally, NOAA enacts the Endangered Species Act as it applies to marine and anadromous species, and Fish & Wildlife Service oversees its implementation for fresh water and land species.

68 Proposed Rule, Revision of the Regulations for Listing Species and Designating Habitat, 83 Fed. R. 35193 (July 25, 2018), <https://www.federalregister.gov/documents/2018/07/25/2018-15810/endangered-and-threatened-wildlife-and-plants-revision-of-the-regulations-for-listing-species-and>; Proposed Rule, Revisions of the Regulations for Prohibitions to Threatened Wildlife and Plants, 83 Fed. R. 35174 (July 25, 2018), <https://www.federalregister.gov/documents/2018/07/25/2018-15811/endangered-and-threatened-wildlife-and-plants-revision-of-the-regulations-for-prohibitions-to>; Proposed Rule, Revision of Regulations for Interagency Cooperation, 83 Fed. R. 35178 (July 25, 2018), <https://www.federalregister.gov/documents/2018/07/25/2018-15812/endangered-and-threatened-wildlife-and-plants-revision-of-regulations-for-interagency-cooperation>. See generally Murray Feldman & Sarah Bordelon, FWS and NMFS Propose Significant Endangered Species Regulatory Overhaul, ABA (Oct. 25, 2018); Jamie Auslander, Parker Moore & Zaheer Tajani, Major Changes to Endangered Species Act Regulations Proposed, Beveridge & Diamond (July 25, 2018), <https://www.bdlaw.com/publications/major-changes-to-endangered-species-act-regulations-proposed/>; HLS EELP Regulatory Rollback Tracker, Endangered Species Act Regulations, <https://eelp.law.harvard.edu/2018/07/endangered-species-act-regulations/>.

69 See EELP’s Endangered Species Act Rules Regulatory Rollback Tracker Page, <https://eelp.law.harvard.edu/2018/07/endangered-species-act-regulations/> and U.S. Fish & Wildlife Service Press Release, Trump Administration Improves the Implementing Regulations of the Endangered Species Act (Aug. 12, 2019), [https://www.fws.gov/news/ShowNews.cfm?ref=trump-administration-improves-the-implementing-regulations-of-the-amp\\_ID=36443](https://www.fws.gov/news/ShowNews.cfm?ref=trump-administration-improves-the-implementing-regulations-of-the-amp_ID=36443).

70 Lisa Friedman, *U.S. Significantly Weakens Endangered Species Act*, THE NEW YORK TIMES (August 12, 2019), <https://www.nytimes.com/2019/08/12/climate/endangered-species-act-changes.html>.

71 See Solicitor Opinion M-37050 (Dec. 22, 2017), <https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf>.

72 *Id.*

73 See New York Attorney General, Press Release, A.G. *Underwood Leads Suit Against Trump Administration For Abandoning Longstanding Protections For Migratory Birds* (Sept. 5, 2018), <https://ag.ny.gov/>

[press-release/ag-underwood-leads-suit-against-trump-administration-abandoning-longstanding](#) and Michael Doyle, *Greens sue Interior over migratory bird law revisions*, E&E News (May 24, 2018), <https://www.eenews.net/greenwire/2018/05/24/stories/1060082645>.

74 Nat. Res. Def. Council, Inc. v. U.S. Dep’t of the Interior, No. 18-CV-4596 (VEC), 2019 WL 3456886 (S.D.N.Y. July 31, 2019), <https://www.law.nyu.edu/sites/default/files/mbta-sdny-opinion-073119.pdf>.

75 Josh Eagle, Monica Goldberg, Jack Sterne, *Domestic Fishery Management*, in OCEAN AND COASTAL LAW AND POLICY, 305, 309 (Donald C. Baur et al., eds., ABA Publishing, 2d ed.) (2015).

76 *Id.*

77 *Id.* at 310.

78 See NOAA Fisheries, *New record: Number of overfished stocks in the U.S. reaches all time low* (May 17, 2018) (press release regarding the 2017 Status of U.S. Fisheries Report to Congress stating “91 percent of U.S marine fish stocks are not subject to overfishing and 87 percent are not overfished”), <https://www.noaa.gov/media-release/new-record-number-of-overfished-stocks-in-us-reaches-all-time-low>.

79 See NOAA Fisheries, [National Standard Guidelines](#).

80 See Monica Medina and Scott Nuzum, *Electronic Reporting and Monitoring in Fisheries: Data Privacy, Security, and Management Challenges and 21<sup>st</sup>-Century Solutions*, 49 ELR 10670 (July 2019), <https://elr.info/news-analysis/49/10670/electronic-reporting-and-monitoring-fisheries-data-privacy-security-and-management-challenges-and-21st>.

81 Magnuson-Stevens Act §303(a)(7).

82 See NOAA Fisheries, *Consolidated Atlantic Highly Migratory Species Management Plan*, <https://www.fisheries.noaa.gov/management-plan/consolidated-atlantic-highly-migratory-species-management-plan>.

83 Presidential Memorandum – *Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud* (June 17, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/06/17/presidential-memorandum-comprehensive-framework-combat-illegal-unrepor-te>.

84 NOAA, *Recommendations of the Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud*, 79 Fed. R. 75536 (Dec. 18, 2014), <https://www.govinfo.gov/content/pkg/FR-2014-12-18/pdf/2014-29628.pdf>; Presidential Task Force on Combating IUU Fishing and Seafood Fraud, *Action Plan for Implementing the Task Force Recommendations* (March 15, 2015),



[https://www.iuufishing.noaa.gov/Portals/33/IUUtaskforce\\_actionplan.pdf?ver=2016-09-07-154552-720](https://www.iuufishing.noaa.gov/Portals/33/IUUtaskforce_actionplan.pdf?ver=2016-09-07-154552-720); see also NOAA, U.S. Government Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud, <https://www.fisheries.noaa.gov/international-affairs/us-government-task-force-combating-illegal-unreported-and-unregulated-fishing>.

85 NOAA Fisheries, Final Rule, Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program, 81 Fed. R. 88975 (Dec. 9, 2016), <https://www.federalregister.gov/documents/2016/12/09/2016-29324/magnuson-stevens-fishery-conservation-and-management-act-seafood-import-monitoring-program>.

86 Included species are: abalone, Atlantic cod, blue crab (Atlantic), dolphinfish, grouper, king crab (red), Pacific cod, red snapper, sea cucumber, sharks, shrimp, swordfish, and tunas (albacore, bigeye, skipjack, yellowfin, and bluefin).

87 NOAA Fisheries, Proposed Rule, Commerce Trusted Trader Program, 83 Fed. R. 2412 (Jan. 17, 2018), <https://www.federalregister.gov/documents/2018/01/17/2018-00653/commerce-trusted-trader-program>; and NOAA Fisheries, Proposed Rule, Magnuson-Stevens Fishery Conservation and Management Act; Traceability Information Program for Seafood, 83 Fed. R. 5146 (Oct. 11, 2018), <https://www.federalregister.gov/documents/2018/10/11/2018-22039/magnuson-stevens-fishery-conservation-and-management-act-traceability-information-program-for>.

88 Alfa International Seafood, et al. v. Ross, 264 F.Supp.3d 23 (D.D.C. Aug. 28, 2017).

89 Modernizing Recreational Fishing Management Act of 2018, <https://www.congress.gov/bill/115th-congress/senate-bill/1520/text>.

90 See Environmental Defense Fund, Press Release, Congress Passes “Modern Fish Act” With Broad Support, (Dec. 19, 2018), <https://www.edf.org/media/congress-passes-modern-fish-act-broad-support>.

91 Department of Commerce Press Release, Department of Commerce Announces Changes to the 2017 Gulf of Mexico Red Snapper Private Angler Recreational Season, (June 14, 2017), <https://www.commerce.gov/news/press-releases/2017/06/department-commerce-announces-changes-2017-gulf-mexico-red-snapper>.

92 Rob Hotakainen, Extending red snapper season might have broken U.S. law, *SCIENCE MAGAZINE* (Dec. 19, 2017), <https://www.sciencemag.org/news/2017/12/extending-red-snapper-season-might-have-broken-us-law>.

93 Atlantic States Marine Fisheries Commission, Press Release, Department of Commerce Decision May Impact ASMFC’s Ability to Conserve Atlantic Coastal Fisheries (July 14, 2017) (noting this was the first time that the Secretary of Commerce “failed to uphold a

noncompliance recommendation by the Commission” and expressing concern about how it would impact their efforts to end overfishing on the summer flounder stock and other conservation efforts), <http://www.asmfc.org/uploads/file/5968fe9dpr29SummerFlounderNJCompliance.pdf>.

94 See President Trump’s signing statement for S. 1520 (Dec. 31, 2018), <https://www.whitehouse.gov/briefings-statements/statement-by-the-president-22/>; see also Jason Huffman, *Trump took shot at fishery management councils in signing of Modern Fish Act*, *UNDERCURRENT NEWS* (Jan. 7, 2019),

<https://www.undercurrentnews.com/2019/01/07/trump-took-shot-at-fishery-management-councils-in-signing-of-modern-fish-act/>.

95 See Andrew Rosenberg, *Ocean Agency Must Keep Its Focus on Climate Change and Sustaining Marine Ecosystems*, *UNION OF CONCERNED SCIENTISTS BLOG*, <https://blog.ucsusa.org/andrew-rosenberg/ocean-agency-must-keep-its-focus-on-climate-change-and-sustaining-marine-ecosystems>.

96 NOAA, Proposed Rule, Shipping Act, Merchant Marine, and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fishing Vessel, Fishing Facility and Individual Fishing Quota Lending Program, 83 Fed. R. 55137 (Nov. 2, 2018), <https://www.federalregister.gov/documents/2018/11/02/2018-23956/shipping-act-merchant-marine-and-magnuson-stevens-fishery-conservation-and-management-act>; see also Martin D. Smith, *Subsidies, efficiency, and fairness in fisheries policy*, *SCIENCE* (Apr. 5, 2019), <https://science.sciencemag.org/content/364/6435/34>.

97 S.3508, Save Our Seas Act of 2018, <https://www.congress.gov/bill/115th-congress/senate-bill/3508/text>.

98 Ocean Conservancy, Save Our Seas Act Signed Into Law (Oct. 11, 2018), <https://oceanconservancy.org/blog/2018/10/11/save-seas-act-signed-law/>.

99 33 U.S.C. § 1952(b)(7).

100 NOAA Press Release, U.S. Signs Agreement to Prevent Unregulated Commercial Fishing on the High Seas of the Central Arctic Ocean (Oct. 3, 2018), <https://www.fisheries.noaa.gov/feature-story/us-signs-agreement-prevent-unregulated-commercial-fishing-high-seas-central-arctic>; Hannah Hoag, *Nations agree to ban fishing in Arctic Ocean for at least 16 years*, *SCIENCE* (Dec. 1, 2017), <https://www.sciencemag.org/news/2017/12/nations-agree-ban-fishing-arctic-ocean-least-16-years>; Ocean Conservancy, *Ocean Conservancy Welcomes Historic Agreement Reached to Protect Central Arctic Ocean* (Nov. 30, 2017), <https://oceanconservancy.org/news/ocean-conservancy-welcomes->





[historic-agreement-reached-protect-central-arctic-ocean/](#).

101 See Department of State Press Release, U.S. Signs Agreement to Prevent Unregulated Commercial Fishing on the High Seas of the Central Arctic Ocean (Oct. 1, 2018), <https://www.state.gov/u-s-signs-agreement-to-prevent-unregulated-commercial-fishing-on-the-high-seas-of-the-central-arctic-ocean/>; and Steve Bittenbender, *US, Russia, China, others to sign agreement preventing illegal fishing in Arctic*, SEAFOODSOURCE (Oct. 3, 2018), <https://www.seafoodsource.com/news/environment-sustainability/us-russia-china-others-to-sign-agreement-preventing-illegal-fishing-in-arctic>.

102 See Agence France Presse, *Pompeo says US won't obstruct curbs on plastic pollution* (June 11, 2019), <https://www.yahoo.com/news/pompeo-says-us-wont-obstruct-curbs-plastic-pollution-205049230.html>.

103 See EPA, *Frequent Questions on International Agreements on Transboundary Shipments of Waste*, <https://www.epa.gov/hwgenerators/frequent-questions-international-agreements-transboundary-shipments-waste> and Department of State, *Basel Convention on Hazardous Wastes Share* (Feb. 11, 2019), <https://www.state.gov/key-topics-office-of-environmental-quality-and-transboundary-issues/basel-convention-on-hazardous-wastes-share/>.

104 See Agence France Presse, *Pompeo says US won't obstruct curbs on plastic pollution* (June 11, 2019), <https://www.yahoo.com/news/pompeo-says-us-wont-obstruct-curbs-plastic-pollution-205049230.html>.

105 See generally Congressional Research Service, *Changes in the Arctic: Background and Issues for Congress* (Feb. 7, 2019), <https://fas.org/sgp/crs/misc/R41153.pdf>.

106 See Press Release, *United States-Canada Joint Arctic Leaders' Statement*, the White House (Dec. 20, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/12/20/united-states-canada-joint-arctic-leaders-statement>; Press Release, *FACT SHEET: U.S.-Nordic Collaboration on Climate Change, the Arctic, and Clean Energy*, the White House (May 13, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/05/13/fact-sheet-us-nordic-collaboration-climate-change-Arctic-and-clean>; Press Release, *Joint Statement of Ministers: On the occasion of the first White House Arctic Science Ministerial*, the White House (Sept. 28, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/09/28/joint-statement-ministers>.

107 Patricia F.S. Cogswell, *National Strategy for the Arctic Region Announced*, the White House (May 10, 2013), <https://obamawhitehouse.archives.gov/blog/2013/05/10/national-strategy-Arctic-region-announced>.

108 Executive Order 13689, *Enhancing Coordination of National Efforts in the Arctic* (Jan. 21, 2015), <https://www.govinfo.gov/content/>

[pkg/FR-2015-01-26/pdf/2015-01522.pdf](#).

109 For general information and links to relevant actions, see The White House, *Advancing Implementation of the National Strategy for the Arctic Region* (March 9, 2016), <https://obamawhitehouse.archives.gov/blog/2016/03/09/advancing-implementation-national-strategy-Arctic-region>; See also Congressional Research Service, *Changes in the Arctic: Background and Issues for Congress* (Feb. 7, 2019), at 8-12, <https://fas.org/sgp/crs/misc/R41153.pdf>.

110 U.S. Department of State, *U.S. Chairmanship of the Arctic Council*, <https://2009-2017.state.gov/e/oes/ocns/opa/arc/uschair/index.htm>.

111 Arctic Council, *Agreement on Enhancing International Arctic Scientific Cooperation* (May 11, 2017), <https://oaarchive.arctic-council.org/handle/11374/1916>; see also Arctic Council Press Release, *Arctic Council Ministers meet, sign binding agreement on science cooperation, pass Chairmanship from U.S. to Finland* (May 11, 2017), <https://arctic-council.org/index.php/en/our-work2/8-news-and-events/451-fairbanks-04>.

112 Fairbanks Declaration (2017): *On the Occasion of the Tenth Ministerial Meeting of the Arctic Council* (May 11, 2017), <https://oaarchive.arctic-council.org/handle/11374/1910>.

113 NOAA Fisheries, *U.S. Signs Agreement to Prevent Unregulated Commercial Fishing on the High Seas of the Central Arctic Ocean* (Oct. 3, 2018), <https://www.fisheries.noaa.gov/feature-story/us-signs-agreement-prevent-unregulated-commercial-fishing-high-seas-central-arctic>.

114 Heather A. Conley & Matthew Molino, *The Implications of U.S. Policy Stagnation Towards the Arctic Region*, CSIS (May 2019), <https://www.csis.org/analysis/implications-us-policy-stagnation-toward-arctic-region> (noting “the administration began to disassemble the Obama administration’s Arctic-specific administrative structures, emphasized economic development, and dismissed climate impacts in the region”); Melody Schreiber, *Two U.S. Bills Could Advance American Presence In The Arctic*, ARCTIC TODAY (Feb. 28, 2019), <https://www.arctictoday.com/two-u-s-bills-could-advance-american-presence-in-the-arctic/> (noting “the Trump administration has left the committee dormant for the past two years”).

115 Anne Gearan, Carol Morello, and John Hudson, *Trump administration pushed to strip mention of climate change from Arctic policy statement*, WASHINGTON POST (May 2, 2019), [https://www.washingtonpost.com/politics/trump-administration-pushed-to-strip-mention-of-climate-change-from-arctic-policy-statement/2019/05/02/1dabcd5e-6c4a-11e9-8f44-e8d8bb1df986\\_story.html?utm\\_term=.ac310cad208b](https://www.washingtonpost.com/politics/trump-administration-pushed-to-strip-mention-of-climate-change-from-arctic-policy-statement/2019/05/02/1dabcd5e-6c4a-11e9-8f44-e8d8bb1df986_story.html?utm_term=.ac310cad208b).





116 Joel Clement, Opinion, *Once again, the U.S. embarrasses itself on climate change*, WASHINGTON POST (May 6, 2019), [https://www.washingtonpost.com/opinions/2019/05/06/once-again-us-embarrasses-itself-climate-change/?utm\\_term=.462344b33692](https://www.washingtonpost.com/opinions/2019/05/06/once-again-us-embarrasses-itself-climate-change/?utm_term=.462344b33692).

117 See, e.g., Yereth Rosen, Opponents of Alaska drilling say it threatens climate, wildlife, REUTERS (April 5, 2019) (noting the distinct stances of the Gwich'in Athabascans who live along the Alaska-Canada border and the Inupiat of the North Slope), <https://www.reuters.com/article/us-usa-alaska-drilling/opponents-of-alaska-drilling-say-it-threatens-climate-wildlife-idUSKCN1RH0B8>.

118 Sec. Ryan Zinke statement on twitter, <https://twitter.com/SecretaryZinke/status/950876846698180608>.

119 See, e.g., 227 legislators from seventeen states wrote Sec. Zinke urging him to consider the local and regional economic and ecosystem repercussions to expanded drilling. Letter from state legislators to Sec. Zinke, [https://www.eenews.net/assets/2018/03/06/document\\_ew\\_01.pdf](https://www.eenews.net/assets/2018/03/06/document_ew_01.pdf). New York Gov. Cuomo formally requested exclusion from BOEM's new five-year leasing plan. New York Press Release, Governor Cuomo Announces Formal Request for New York Exclusion from Federal Offshore Drilling Program (March 9, 2018), <https://www.governor.ny.gov/news/governor-cuomo-announces-formal-request-new-york-exclusion-federal-offshore-drilling-program>.

120 Stephen Lee and Dean Scott, Coastal States Link Arms to Oppose Trump Offshore Drilling Plan (Jan. 8, 2019) ("State lawmakers from nine states introduced bills Jan. 8 aimed at blocking oil and gas drilling off their coasts, and a group of House Democrats meanwhile unveiled measures that would ban drilling in federal waters off much of the country."), <https://news.bloombergenvironment.com/environment-and-energy/coastal-states-link-arms-to-oppose-trump-offshore-drilling-plan>.

121 A02572, Relating to prohibiting state authorizations related to certain offshore oil and gas production, <https://bit.ly/2zewcl4>; see also Casey Leins, *New York Bans Offshore Drilling in Its Waters* (April 30, 2019), <https://www.usnews.com/news/best-states/articles/2019-04-30/gov-cuomo-signs-bill-banning-offshore-drilling-in-new-york-waters>.

122 See Press Release, Attorney General Frosh Leads Coalition Suing to Block Seismic Testing in the Atlantic Ocean (Dec. 20, 2018) (announcing nine states were intervening in opposition to seismic testing in the Atlantic: Maryland, Connecticut, Delaware, Maine, Massachusetts, New Jersey, New York, North Carolina, and Virginia) and South Carolina's motion to intervene (Jan. 7, 2019), <http://www.law.nyu.edu/sites/default/files/sc-motion-to-intervene.pdf>.

123 *U.S. Coastal states work to block offshore drilling*, ARGUS MEDIA

(April 24, 2019), <https://www.argusmedia.com/en/news/1890325-us-coastal-states-work-to-block-offshore-drilling>.

124 See H.R. 2352, introduced April 22, 2019, <https://www.congress.gov/bill/116th-congress/house-bill/2352/text?r=44&s=1>.

125 H.R. 200, Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act, (Passed 222-193 on July 11, 2018), <https://www.congress.gov/bill/115th-congress/house-bill/200>.

126 See *id.*; See also U.S. Regional Fishery Management Councils, Bullets: H.R. 200, [https://static1.squarespace.com/static/56c65ea3f2b77e3a78d3441e/t/58d95bc72e69cf44f27d9b08/149063981617of2/HR200\\_BulletPoints.pdf](https://static1.squarespace.com/static/56c65ea3f2b77e3a78d3441e/t/58d95bc72e69cf44f27d9b08/149063981617of2/HR200_BulletPoints.pdf).

127 For example, the House Energy and Commerce Committee has held hearings on EPA's [mission](#) and [enforcement](#); the House Natural Resources Committee has held hearings on [offshore wind](#), [fisheries](#), [ANWR's Coastal Plain](#), [North Atlantic Right Whale](#) protections, [BOEM and BSEE's policies](#), and the [health of the oceans](#). The House Committee on Science, Space, and Technology has examined [ocean exploration](#), reviewed [NOAA's budget](#) request, and looked at the [impact of climate change on oceans](#). In addition, House committees have held budgetary hearings for agencies, numerous hearings related to climate change, and an array of additional energy and environmental topic hearings.

128 Based on a review of introduced legislation by the authors.

129 See, e.g., H.R. 279, H.R. 286, H.R. 287, H.R. 291, H.R. 309, H.R. 310, H.R. 337, H.R. 341.

130 Rob Hotakainen & Courtney Columbus, *House passes bills to combat ocean acidification*, E&E News (June 5, 2019), <https://www.eenews.net/greenwire/2019/06/05/stories/1060489749>.

131 HR 1921 creates a prize competition for ocean acidification research and reauthorizes the Federal Ocean Acidification Research and Monitoring Act of 2009. HR 1716 requires that NOAA periodically publish a vulnerability assessment for the coastal communities most threatened by ocean acidification. HR 1237 reauthorizes and/or expands ocean acidification research programs at NOAA, the National Science Foundation, and the National Aeronautics and Space Administration (NASA). HR 988 directs the Department of Commerce to coordinate with the National Academy of Sciences, Engineering, and Medicine to conduct a study about the impact of ocean acidification on estuarine environments.

132 See, e.g., Rob Hotakainen, *As fish move north, 'things are getting weird out there'*, E&E News (June 4, 2019), <https://www.eenews.net/greenwire/2019/06/04/stories/1060479219> (discussing New England fishermen's concerns over fishing quotas and migrating stock).



133 See Alex Kuffner, *R.I. fisherman, Vineyard Winds reach deal on compensation*, PROVIDENCE JOURNAL (Feb. 23, 2019), <https://www.providencejournal.com/news/20190223/ri-fishermen-vineyard-wind-reach-deal-on-compensation> and Mary Ann Bragg, *Vineyard Wind Commits to Fisheries Monitoring*, CAPE COD NEWS (April 7, 2019), <https://www.wind-watch.org/news/2019/04/09/vineyard-wind-commits-to-fisheries-monitoring/>.

134 See Hana Vizcarra, *Shifting Perspectives: E&P Companies Talk Climate and the Energy Transition*

(March 26, 2019) (“[Shell](#), [BP](#), and [Exxon](#) all [announced support](#) for the Obama-era EPA methane regulations, calling on the Trump administration to leave them in place (Shell even advocated tightening them).”), <https://eelp.law.harvard.edu/2019/03/shifting-perspectives-ep-companies-talking-climate-and-the-energy-transition-trends-in-disclosure-and-climate-strategy/>; and Joe Goffman and Hana Vizcarra, *Regulating methane emissions now means suing the EPA* [Opinion], THE HOUSTON CHRONICLE (April 4, 2019), <https://www.houstonchronicle.com/opinion/outlook/article/Regulating-methane-emissions-now-means-suing-the-13742706.php>.

135 Capitol Hill Ocean Week 2019, Presented by the National Marine Sanctuary Foundation (June 4-6, 2019), <https://www.worldoceansday.org/events-current-year/capitol-hill-ocean-week-2019>.



# Annex: Relevant Statutes, Executive Orders, International Agreements, and Agencies

## Part I: Statutes

### 1. Act to Prevent Pollution from Ships (1978)

The Act to Prevent Pollution from Ships ([33 U.S.C. §1901–1914](#)) implements Annexes I and II of the International Convention for the Prevention of Pollution from Ships (MARPOL) and limits and regulates discharges of oil and noxious substances. The Marine Plastic Pollution Research and Control Act amended the act in 1987 to implement Annex V of MARPOL regarding the dumping of plastics at sea. The MPPRCA required EPA and NOAA to study the impacts of plastics on the environment and ways to reduce or eliminate improper disposal or the effects of it. This was further amended in 2006 by the Marine Debris Research, Prevention, and Reduction Act (see No. 12 below).

### 2. Antiquities Act (1906)

The Antiquities Act ([16 U.S.C. §431–433](#)) authorizes the President or Congress to designate “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” as national monuments. Designations must be “confined to the smallest area compatible with proper care and management of the objects to be protected.” National monuments are individually managed by a number of federal agencies according to the purposes and characteristics of each designation. In 2018, the Federal District Court for the District of Columbia [upheld](#) the President’s authority to designate offshore lands as marine national monuments.<sup>1</sup>

---

<sup>1</sup> Massachusetts Lobstermen’s Assoc. v. Wilbur Ross, No. 17-406.



### 3. Arctic Research and Policy Act of 1984 (1984)

The Arctic Research and Policy Act ([15 U.S.C. §4101–4111](#)) establishes the U.S. Arctic Research Commission to recommend Arctic research policy. The act also creates the Interagency Arctic Research Policy Committee, which must develop five-year research plans. The National Science Foundation chairs the Committee and implements the act and the research policy.<sup>2</sup> Section 4111 defines “Arctic” as “all United States and foreign territory north of the Arctic Circle and all United States territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers; all contiguous seas, including the Arctic Ocean and the Beaufort, Bering, and Chukchi Seas; and the Aleutian chain.”

### 4. Clean Water Act (1972)

The Clean Water Act ([33 U.S.C. §1251 et seq.](#)) makes it unlawful to discharge a pollutant from a point source into navigable waters without a permit. The act creates a national permitting system. The prohibition on unauthorized discharges encompasses discharges into the waters of the contiguous zone and ocean from any point source other than a vessel or other floating craft. The Clean Water Act also requires permits for the discharge of dredge or fill material into navigable waters. The **BEACH Act of 2000** amended the Clean Water Act to direct states to address pathogens in coastal recreational waters.

The EPA issues point source permits under Section 402 of the act, while U.S. Army Corps of Engineers issues dredge/fill permits under Section 404 of the act. Although the statutory language has not been updated to reflect current nomenclature for international marine boundaries, it is generally recognized that the Clean Water Act’s prohibition on unauthorized discharges of pollutants covers the entire Exclusive Economic Zone.<sup>3</sup> Enforcement of the CWA is split between federal and state authorities. Most states implement permitting and enforcement activities within their jurisdictions, and states are primarily responsible for setting water quality criteria.

### 5. Coastal Zone Management Act (1972)

The CZMA ([16 U.S.C. §1451–1465](#)) is intended to “preserve, protect, develop, and where possible, to restore or enhance the resources of the nation’s coastal zone.” The act aims to balance the competing needs

---

2 See *generally* National Science Foundation, Arctic Research and Policy, <https://www.nsf.gov/geo/opp/arctic/rschpolc.jsp>.

3 Ocean and Coastal Law and Policy, 2<sup>nd</sup> Edition, page 239 (Act and implementing regulations still refer to discharges in the “territorial seas, contiguous zone, and the ocean”). See CWA § 403; 40 CFR 125(M).



to preserve and develop U.S. coastal regions by creating the National Coastal Zone Management Program, which provides resources to states that choose to join the program.<sup>4</sup> Participating states must develop comprehensive management plans to preserve, protect, and develop coastal zones. The plans are then approved by NOAA.<sup>5</sup> CZMA contains a “consistency provision” that authorizes states to review federal actions affecting states’ coastal zones to ensure the action is consistent with the states’ policies.<sup>6</sup> However, if a state objects to an activity, the federal government need only provide an explanation for why it believes the activity is consistent “to the maximum extent practicable” with the state’s enforceable policies. The CZMA also establishes the National Estuarine Research Reserve System and the Coastal and Estuarine Land Conservation Program, the latter of which provides funds to state and local governments to purchase threatened coastal and estuarine lands for conservation purposes.<sup>7</sup>

## 6. Endangered Species Act (1973)

The ESA ([16 U.S.C. §1531–1544](#)) provides for the survival and recovery of endangered and threatened species. The act is jointly implemented by the Fish and Wildlife Service in the Department of the Interior and NOAA in the Department of Commerce. Generally, NOAA is responsible for marine and anadromous species while FWS is responsible for most terrestrial and freshwater species. The inclusion of a species on the [list of endangered and threatened species](#) triggers the protections of the act. The agencies must make listing decisions on the basis of available scientific information, not economic impacts.

The ESA prohibits the take of listed species, which includes adverse “habitat modification or degradation.” The agencies must promulgate regulations to conserve listed species and provide for their recovery, which includes protecting certain critical habitat. FWS and NOAA complete critical habitat designations for listed species through a rulemaking process based on the best available scientific information. Unlike listing a species, the agencies may decline to designate critical habitat because of the consideration of other factors, such as economic or national security impacts.

---

4 See Mila Buckner, *The Coastal Zone Management Act’s Capacity to Spearhead Coastal Adaptation*, 22 *Hastings W.-N.W. J. Envtl. L. & Pol’y* 39, 65 (Winter 2016).

5 All eligible states, except for Alaska, are part of the Coastal Zone Management Program. Alaska withdrew from the program in 2011. See Notice, *Alaska Coastal Management Program Withdrawal from the National Coastal Management Program Under the Coastal Zone Management Act (CZMA)*, 76 *Fed. Reg.* 39857 [July 7, 2011].

6 See *generally* Office for Coastal Management, NOAA, *Applying Federal Consistency*, <https://coast.noaa.gov/czm/consistency/applying/>.

7 See *generally* Office for Coastal Management, NOAA, *Coastal Zone Management Act*, <https://coast.noaa.gov/czm/act/>.



Under Section 7 of the ESA, if government action is likely to jeopardize a listed species, the acting agency must consult with FWS or NOAA prior to initiating the action. Section 7 consultation is an in-depth, multi-tiered process depending on the proposed action's likelihood of adversely affecting a listed species or the species' critical habitat. The agency may recommend alternatives to the proposed action. The agency may also permit a level of incidental takes for projects. Recent rulemakings by the administration weaken protection for listed species and their critical habitat.<sup>8</sup>

## 7. Federal Ocean Acidification Research and Monitoring Act (2009)

The Federal Ocean Acidification Research and Monitoring Act ([33 U.S.C. §3701–3708](#)) established an Inter-agency Working Group on Ocean Acidification. The working group is tasked with developing strategic plans for ocean acidification research and monitoring.<sup>9</sup> The act also creates the Ocean Acidification Program within NOAA to implement the plans.<sup>10</sup>

## 8. High Seas Driftnet Fishing Moratorium Protection Act (1992)

The Moratorium Protection Act ([16 U.S.C. §§1801, 1823, 1826, 1861](#)) implements United Nations General Assembly Resolutions calling on nations to ban the use of large-scale driftnets in their EEZs. Following amendments in 2006 and 2010, the act requires that NOAA Fisheries produce a biennial report to Congress identifying countries engaged in illegal, unreported, and unregulated (IUU) fishing or bycatch of protected species and shark catches on the high seas. If a country is listed in the report, NOAA Fisheries will consult with the nation to address the issues identified. If sufficient corrective action is not taken, NOAA Fisheries will issue a negative certification for that country in the next report to Congress. The act authorizes the Secretary of the Treasury to restrict imports of certain fish or fish products and to deny entry into port of any vessel registered in a country that is negatively certified.

---

8 See EELP's Endangered Species Act Rules Regulatory Rollback Tracker Page, <https://eelp.law.harvard.edu/2018/07/endangered-species-act-regulations/> and U.S. Fish & Wildlife Service Press Release, Trump Administration Improves the Implementing Regulations of the Endangered Species Act (Aug. 12, 2019), [https://www.fws.gov/news/ShowNews.cfm?ref=trump-administration-improves-the-implementing-regulations-of-the-&\\_ID=36443](https://www.fws.gov/news/ShowNews.cfm?ref=trump-administration-improves-the-implementing-regulations-of-the-&_ID=36443).

9 See e.g., Interagency Working Group on Ocean Acidification, *Strategic Plan for Federal Research and Monitoring of Ocean Acidification* (March 2014), [https://www.nodc.noaa.gov/oads/support/IWGOA\\_Strategic\\_Plan.pdf](https://www.nodc.noaa.gov/oads/support/IWGOA_Strategic_Plan.pdf).

10 See generally *Interagency Working Group on Ocean Acidification*, <https://oceanacidification.noaa.gov/iwgoa/Home.aspx> and Implementation of the Strategic Plan for Federal Research and Monitoring of Ocean Acidification (Dec. 2016), <https://oceanacidification.noaa.gov/sites/oap-redesign/Documents/IWGOA/OA%20Implementation%20Plan%20FINAL.pdf>.





## 9. Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015

The [IUU Fishing Enforcement Act of 2015](#)<sup>11</sup> implements provisions of UNCLOS regarding straddling stocks and highly migratory fish.<sup>12</sup> The act also authorizes the U.S. Coast Guard and NOAA to enforce laws that combat IUU fishing. The statute imposes civil and criminal sanctions on violators of the enforcement provisions. It requires the Secretary of Commerce to report and act when countries do not address illegal fishing. The Secretary may prevent ships carrying fish obtained through IUU fishing from entering port. The legislation amends sections of the U.S. code, including the **High Seas Driftnet Fishing Moratorium Protection Act**, the **Magnuson-Stevens Act**, and statutes governing specific fisheries.

The legislation was the result of a process started when President Obama issued a memorandum in 2014 to establish a comprehensive framework to address IUU fishing and seafood fraud.<sup>13</sup> This established a task force on the subject that was charged with providing a report of recommendations for combating IUU and seafood fraud. The task force published its recommendations in December 2014 and an action plan on March 15, 2015.<sup>14</sup> The primary result of this effort was a new seafood traceability program promulgated by NOAA Fisheries.

The Department of Commerce, through NOAA Fisheries, implements the [Seafood Import Monitoring Program](#) (also known as the Seafood Traceability Program), a reporting and recordkeeping program that traces the

---

11 Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015, 16 USC 1801, P.L. 114-81, <https://www.congress.gov/114/plaws/publ81/PLAW-114publ81.pdf>; See also Bill Summary, H.R. 774, "Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015." Rep. Don Young, [https://donyoung.house.gov/uploadedfiles/h.r.\\_774\\_iuu\\_fishing\\_enforcement\\_act\\_of\\_2015.pdf](https://donyoung.house.gov/uploadedfiles/h.r._774_iuu_fishing_enforcement_act_of_2015.pdf).

12 UN Oceans and Law of the Sea, The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001). Overview, [http://www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_fish\\_stocks.htm](http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm).

13 President Obama, Presidential Memorandum – Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (June 17, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/06/17/presidential-memorandum-comprehensive-framework-combat-illegal-unreported>.

14 NOAA, Recommendations of the Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud, 79 Fed. R. 75536 (Dec. 18, 2014), <https://www.govinfo.gov/content/pkg/FR-2014-12-18/pdf/2014-29628.pdf>; Presidential Task Force on Combating IUU Fishing and Seafood Fraud, Action Plan for Implementing the Task Force Recommendations (March 15, 2015), [https://www.iuufishing.noaa.gov/Portals/33/IUUtaskforce\\_actionplan.pdf?ver=2016-09-07-154552-720](https://www.iuufishing.noaa.gov/Portals/33/IUUtaskforce_actionplan.pdf?ver=2016-09-07-154552-720); see also NOAA, U.S. Government Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud, <https://www.fisheries.noaa.gov/international-affairs/us-government-task-force-combating-illegal-unreported-and-unregulated-fishing>.



supply chain of thirteen priority species.<sup>15</sup> The final rule establishing the program was issued by NOAA Fisheries in December 2016. The program is intended to combat seafood fraud and to disincentivize illegal, unreported, and unregulated fishing. NOAA Fisheries requires importers of the covered species to obtain International Fisheries Trade Permits, report certain harvest information at the point of entry into U.S. commerce, and maintain records of the chain of custody from the point of harvest to import into the U.S. The reporting requirements are similar to those of the European Union’s catch certification program, but the structure of the program is different. Whereas the European Union’s program directs nations to ensure compliance of vessels registered in their jurisdiction, the Seafood Import Monitoring Program regulates importers directly. The rule was challenged in court but ultimately upheld.<sup>16</sup>

The final rule establishing the SIMP delayed its applicability to shrimp and abalone because comparable state or federal regulations were not in place for domestic aquaculture-produced shrimp and abalone. Pursuant to a directive from Congress in the 2018 appropriations bill, importers of shrimp and abalone are now covered by the program, and NOAA Fisheries has proposed a reporting scheme for domestic producers called the **Traceability Information Program for Seafood**. The proposed rule would require domestic producers to provide traceability information for products entering U.S. commerce. Intended as a “domestic counterpoint” to SIMP, the proposal includes registration, reporting, and recordkeeping requirements for owners and operators of U.S. aquaculture of shrimp and abalone to ensure traceability from the point of production to entry into U.S. commerce.<sup>17</sup> The Department of Commerce is also developing the **Commerce Trusted Trader Program**. Once finalized, the Commerce Trusted Trader Program is expected to allow streamlined entry into U.S. commerce for certain International Fisheries Trade Permit holders that have established and provided documentation of supply chains free of IUU fish or falsely labeled seafood products.<sup>18</sup>

## 10. Lacey Act (1906)

The Lacey Act ([16 U.S.C. §§3372–3378](#)) makes it unlawful to trade fish, wildlife, and plants that are unlawfully obtained. The law “regulates the import of any species protected by international or domestic law and prevents

---

15 Included species are: abalone, Atlantic cod, blue crab (Atlantic), dolphinfish, grouper, king crab (red), Pacific cod, red snapper, sea cucumber, sharks, shrimp, swordfish, and tunas (albacore, bigeye, skipjack, yellowfin, and bluefin).

16 *Alfa International Seafood, et al. v. Ross*, 264 F.Supp.3d 23 (D.D.C. Aug. 28, 2017).

17 NOAA Fisheries, Proposed Rule, Magnuson-Stevens Fishery Conservation and Management Act; Traceability Information Program for Seafood, 83 Fed. R. 5146 (Oct. 11, 2018), <https://www.federalregister.gov/documents/2018/10/11/2018-22039/magnuson-stevens-fishery-conservation-and-management-act-traceability-information-program-for>.

18 NOAA Fisheries, Proposed Rule, Commerce Trusted Trader Program, 83 Fed. R. 2412 (Jan. 17, 2018), <https://www.federalregister.gov/documents/2018/01/17/2018-00653/commerce-trusted-trader-program>.



the spread of invasive, or non-native, species.”<sup>19</sup> The species covered by the act include those listed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and those protected by state law.

## 11. Magnuson-Stevens Fishery Conservation & Management Act (1976)

The Magnuson-Stevens Act ([16 U.S.C. §1801–1891](#)) is the framework statute for conserving and managing U.S. fisheries in federal waters. The act also governs management of anadromous species within and beyond U.S. territorial seas. The MSA has been revised multiple times, including by the **1996 Sustainable Fisheries Act** which addressed overfishing by establishing scientifically based total allowable catches for managed fisheries, among other requirements for rebuilding and management plans. The **Magnuson-Stevens Reauthorization Act of 2006** (signed by the President in January 2007) required total allowable catches (also known as annual catch limits) in fishery management plans and required regulators to set annual catch limits at or below levels recommended by regional council science and statistical committees, ensuring they are science-based. The **Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015** implemented the international Port State Measures Agreement and modified the MSA to authorize efforts to combat illegal, unreported, and unregulated (IUU) fishing. In 2018, the President signed the **Modernizing Recreational Fisheries Management Act of 2018** (also known as the Modern Fish Act, S. 1520, [P.L. 115-405](#)), which amended the Magnuson-Stevens Act yet again with the objective of better supporting recreational fishing. While early versions of the 2018 bill faced significant opposition, the bill ultimately passed with broad support.<sup>20</sup> The act adjusted management of recreational fisheries and provided for improved data collection and new reports on fishery allocation in the Atlantic and Gulf and limited access privilege programs.

## 12. Marine Debris Research, Prevention, and Reduction Act (2006)

The [Marine Debris Research, Prevention, and Reduction Act \(33 U.S.C. §1951–1958\)](#) establishes a Marine Debris Prevention and Removal Program in NOAA. The act also gives the U.S. Coast Guard authority to take measures towards reducing violations of and enforcing MARPOL. The **Save Our Seas Act of 2018** amended the Marine Debris Research, Prevention, and Reduction Act. It provides additional funding to NOAA’s Marine

---

19 See Fish and Wildlife Service, International Affairs, Lacey Act, <https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html>.

20 See EDF Oceans, Congress Passes “Modern Fish Act” With Broad Support (Dec. 19, 2018), <https://www.edf.org/media/congress-passes-modern-fish-act-broad-support>.



Debris Program, permits the NOAA Administrator to declare and respond to “severe debris events” (e.g., following a large storm), and calls on agencies to promote international action.

## 13. Marine Mammal Protection Act (1972)

The MMPA ([16 U.S.C. §1361–1423](#)) protects all marine mammals with the goal of preventing marine mammal stocks from declining below optimum sustainable population levels for a healthy ecosystem. The act is jointly implemented by NOAA Fisheries, the U.S. Fish & Wildlife Service, and the Marine Mammal Commission. NOAA Fisheries oversees cetaceans and pinnipeds (except walruses), and the Fish & Wildlife Service oversees walruses, polar bears, sea otters, manatees, and dugongs. The Marine Mammal Commission is a small, independent agency created by the act and primarily tasked with providing science-based oversight and research of international and domestic actions impacting marine mammals and their ecosystems.

The act prohibits the unauthorized take of marine mammals in U.S. waters. NOAA regulations for the MMPA define “to take” as “to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal.” There are certain exceptions to the take prohibition, including for research and subsistence uses. Marine activities, such as shipping and energy production, that may result in the unintentional take of marine mammals must obtain “incidental take permits.” Rather than requiring incidental take permits for each commercial fishing operation, the MMPA establishes an annual exemption limit for accidental takes of marine mammals that are not endangered or threatened. Fisheries in which marine mammals are seriously injured or killed with higher frequency require vessels to acquire annual authorization certificates (the agency categorizes fisheries as either frequently, occasionally, or rarely harming marine mammals, with those falling in the frequent or occasional categories requiring authorizations).

The MMPA also includes conservation provisions. Agencies can designate critical habitat to protect marine areas essential to a species’ survival and recovery. NOAA must conduct periodic stock assessments for species, respond to marine mammal health concerns and stranding events, and develop recovery plans for mammals with “depleted” populations. The agencies must also implement response plans in the case of certain mortality events.<sup>21</sup> If a government activity may impact a marine mammal, the acting agency must consult with FWS or NOAA prior to commencing.

---

21 NOAA, Marine Mammal Health and Stranding Response Program, <https://www.fisheries.noaa.gov/national/marine-life-distress/marine-mammal->



## 14. Marine Protection, Research, and Sanctuaries Act (Ocean Dumping Act) (1972)

The Ocean Dumping Act ([33 U.S.C. §1401 et seq.](#)) regulates and bans most ocean dumping, including dredged material, unless authorized by a permit. The act implements the 1972 London Convention, which seeks to prevent marine pollution and dumping. EPA and the Army Corps of Engineers implement the Ocean Dumping Act.

The legislation package also included the **National Marine Sanctuaries Act** ([16 U.S.C. §1431 et seq.](#)), which establishes the National Marine Sanctuaries Program. The act permanently protects significant ocean and Great Lakes areas by designating them as marine sanctuaries. Congress and NOAA are authorized to establish marine sanctuaries, which now number over a dozen.<sup>22</sup> The act's primary goal is to protect the natural resources within the sanctuaries. Each sanctuary is managed according to a multiple-use standard, meaning the sanctuary's management plan may allow public and private uses that are compatible with protecting the resources and the sanctuary's conservation purposes. A stakeholder advisory council recommends management strategies to NOAA for each sanctuary.

## 15. Migratory Bird Treaty Act (1918)

The MBTA ([16 U.S.C. §701–712](#)) criminalizes unauthorized takes of migratory birds. The FWS defines a take to include “pursue, hunt, shoot, wound, kill, trap, capture, or collect.” Federal courts have split on whether the definition extends to accidental takes. The current administration has reinterpreted the act to allow incidental or accidental injuries or killings of birds protected by the MBTA.<sup>23</sup>

## 16. National Environmental Policy Act (1969)

NEPA ([42 U.S.C. §4321–4347](#)) mandates environmental reviews prior to commencing “major federal actions significantly affecting the quality of the human environment.” These major actions include federal licensing and permitting, formal planning, and adoption of significant agency policy. NEPA requires agencies to prepare thorough “environmental impact statements” that take a “hard look” at the effects of activities likely to have

---

[health-and-stranding-response-program](#).

22 NOAA, *National Marine Sanctuaries*, <https://sanctuaries.noaa.gov/>.

23 See Solicitor Opinion M-37050 (Dec. 22, 2017), <https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf>.



significant adverse impacts on the environment. The agency must also consider alternative actions. Agency actions expected to have lower impacts may undergo a less comprehensive “environmental assessment.” Certain actions that fall under “categorical exclusions” do not require individual NEPA reviews. The government does not have to alter a particular action based on its environmental review. But NEPA’s procedural components hold agencies accountable through public and judicial review and ensure full consideration of environmental impacts of proposed actions.

The Council on Environmental Quality, a small agency within the Executive Office of the President, issues NEPA implementing regulations to guide agencies, but each agency also issues agency-specific NEPA regulations outlining procedures used within the agency. In 2018, the Trump administration ordered the CEQ to update its NEPA regulations and directed agencies to review and update their individual regulations. President Trump also revoked guidance to agencies about how to consider greenhouse gas emissions and climate change in NEPA reviews. For more detail on the status of the NEPA regulation updates, visit HLS EELP’s [NEPA Regulatory Rollback Page](#). The Secretary of the Interior Department issued an order mandating a quickened timeline for environmental reviews and limiting the page length of environmental impact statements. Multiple agencies are similarly revising their NEPA guidelines to advance more streamlined, less precautionary approaches.

## 17. Nonindigenous Aquatic Nuisance Prevention and Control Act (1990)

Congress enacted the Nonindigenous Aquatic Nuisance Prevention and Control Act ([16 U.S.C. §4701–4751](#)) to prevent infestations of coastal inland waters by nonindigenous species. The act was amended by the **National Invasive Species Act of 1996** to manage and prevent the dumping of invasive species from ballast water discharges.

## 18. Oceans Act of 2000

The Oceans Act ([33 U.S.C. 857-19, P.L. 106-256](#)) established a sixteen-member Commission to develop and make recommendations for a coordinated, comprehensive national ocean policy. The Oceans Act required the President to submit a statement of proposals responding to the Commission’s recommendations within 120 days of receiving its report and ordered an ongoing biennial report to Congress beginning in September 2001 on federal ocean and coastal programs and activities.

## 19. Oil Pollution Act (1990)

The Oil Pollution Act ([33 U.S.C. §2701 et seq.](#)) enhances spill prevention and response. The act establishes





liability for oil spills, provides a fund for financing cleanup, and requires storage facilities and vessels to submit oil spill response plans. The act also requires area and regional spill response planning.

## 20. Outer Continental Shelf Lands Act (1953)

OCSLA ([43 U.S.C. §1331–1356](#)) establishes federal jurisdiction over submerged lands on the outer-continental shelf (OCS) seaward of state boundaries. The act authorizes the Secretary of the Interior to manage mineral exploration and development of the OCS. U.S. offshore oil and gas leasing and permitting are executed pursuant to this authority. After the Deepwater Horizon spill in the Gulf of Mexico in 2010, the Department of the Interior reorganized to split its authorities among three primary agencies: [BOEM](#), [BSEE](#), and [ONRR](#). OCSLA requires that BOEM develop five-year lease plans to meet the country’s energy needs. These plans describe when and where certain areas of the OCS may be made available for leasing in each five-year period. The planned lease sales are conditional on further environmental and state review. Additionally, Congress can establish moratoriums on new lease sales either broadly or in certain areas, and the President can withdraw areas from leasing. The **Energy Policy Act of 2005** amended OCSLA to grant BOEM authority over offshore renewable and alternative energy exploration and development on the OCS. BOEM is authorized to grant leases, easements, and rights-of-way to facilitate offshore energy projects.

## 21. Ports and Waterways Safety Act (1978)

[The Ports and Waterways Safety Act \(33 U.S.C. §1221–1236\)](#) authorizes measures for managing vessel traffic and protecting the marine environment.

## 22. Submerged Lands Act (1953)

Congress passed the Submerged Lands Act (43 U.S.C. [§1301–1303](#) and [§1311–1315](#)) to encourage the development of petroleum resources in coastal waters. The act grants states title to submerged lands three nautical miles from their coastlines. Texas’s and Florida’s jurisdictions in the Gulf of Mexico extends nine nautical miles. Each state’s ownership extends to the oil, gas, and other minerals in the seabed as well as marine species within the state’s jurisdiction.

## 23. Vessel Incidental Discharge Act (2018)

President Trump signed the [Vessel Incidental Discharge Act \(VIDA\)](#) in December 2018 to streamline a patchwork of regulations governing incidental discharges from vessels in U.S. waters. The act amends the Clean Water Act and charges the Environmental Protection Agency with developing national performance standards



by 2020 for covered vessels, which includes foreign vessels. The U.S. Coast Guard must then promulgate implementation, compliance, and enforcement regulations by 2022. VIDA applies to commercial vessels greater than seventy-nine feet in length and certain non-recreational vessels. Small vessels and commercial fishing vessels receive certain exemptions with only the ballast water discharge provisions of VIDA applicable to them.

## Part II: Executive Orders

Presidents have power to coordinate federal policy, to protect areas from harmful activities, and to make certain areas available for or withdraw certain areas from offshore energy development. The President may use executive orders, presidential memoranda, and proclamations to affect policy. Executive orders often establish priorities and direct agencies to review programs for consistency with those priorities. Executive action is susceptible to revocation or amendment by a subsequent administration interested in setting different policy priorities. New regulations promulgated as the result of an executive order must comply with the **Administrative Procedure Act (APA)**, which sets the procedural requirements for agencies promulgating, revising, or rescinding regulations. Below is a non-exhaustive list of executive orders with significance for U.S. ocean law and policy, including recent regulatory reform orders not limited to ocean issues.

### 1. [EO 13089](#) Coral Reef Protection (1998)

Established the interagency Coral Reef Task Force to be co-chaired by Interior and Commerce.

### 2. [EO 13158](#) Marine Protected Areas (2000)

Established the national system of Marine Protected Areas. Defines a marine protected area as “any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.”

### 3. [EO 13366](#) Committee on Ocean Policy (2004)

Established a Committee on Ocean Policy and outlined a policy to coordinate and facilitate consultation on



ocean-related matters. Served as the response to the recommendations of the Commission on Ocean Policy created by the Oceans Act of 2000.

#### 4. [EO 13508](#) Chesapeake Bay Protection and Restoration (2009)

Established a Federal Leadership Committee for Chesapeake Bay. Directs the Committee to prepare and publish a coordinated strategy to protect and restore Chesapeake Bay.

#### 5. [EO 13547](#) Stewardship of the Ocean, Our Coasts, and the Great Lakes (2010)

Created the first national ocean policy and began an interagency effort led by a National Ocean Council to better coordinate and support agencies' ocean-related actions.<sup>24</sup> The goal of the national ocean policy was to improve collaboration among stakeholders and government entities to create a more coordinated approach to management. For more information on this EO, visit HLS EELP's [Regulatory Rollback Page](#) on Trump's subsequent EO 13840, which replaced it in 2018.

#### 6. [EO 13689](#) Enhancing Coordination of National Efforts in the Arctic (2015)

Established the Arctic Executive Steering Committee to provide guidance on and coordinate Federal activities related to the Arctic. The steering committee was directed to facilitate consultation and partnerships with the State of Alaska, Alaska Native Tribal Governments, and Alaska Native organizations. In 2013, the White House announced the National Strategy for the Arctic Region, which establishes three priorities: national security, responsible stewardship, and international cooperation.<sup>25</sup> In 2015, then-President Obama issued Executive Order 13689, "Enhancing Coordination of National Efforts in the Arctic", which created the Arctic Executive Steering Committee and encouraged interagency alignment of Federal Arctic policy.<sup>26</sup> The steering committee

---

24 Executive Order 13547, Stewardship of the Ocean, Our Coasts, and the Great Lakes (July 22, 2010), <https://www.govinfo.gov/content/pkg/FR-2010-07-22/pdf/2010-18169.pdf>.

25 Patricia F.S. Cogswell, National Strategy for the Arctic Region Announced, the White House (May 10, 2013), <https://obamawhitehouse.archives.gov/blog/2013/05/10/national-strategy-Arctic-region-announced>.

26 Executive Order 13689, Enhancing Coordination of National Efforts in the Arctic (Jan. 21, 2015), <https://www.govinfo.gov/content/pkg/FR-2015-01-26/pdf/2015-01522.pdf>.



coordinates efforts to advance the implementation plan for the National Strategy for the Arctic Region.<sup>27</sup> The steering committee and national strategy remain in place to date.

## 7. [EO 13754](#) Northern Bering Sea Climate Resilience (2016)

Established the Northern Bering Sea Climate Resilience Area and withdrew significant offshore areas from consideration for oil and gas leasing. This EO was later revoked by EO 13795.

## 8. [EO 13766](#) Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects (2017)

Created a process by which the Chairman of the White House Council on Environmental Quality (CEQ) designates infrastructure projects as “high priority” and establishes expedited procedures and deadlines for the environmental reviews required for such projects.

## 9. [EO 13771](#) Reducing Regulation and Controlling Regulatory Costs (2017)

Often referred to as the “2 for 1” order, it required agencies to identify two existing regulations for repeal for each one it proposes, and required the Office of Management and Budget Director to provide guidance to agencies on implementation. Agencies were to include an approximation of costs or savings associated with new or repealed regulation in their Regulatory Plans. It also asked the OMB Director to identify the total amount of incremental costs allowed per agency in issuing or repealing regulations for each fiscal year.

## 10. [EO 13777](#) Enforcing the Regulatory Reform Agenda (2017)

Directed agencies to designate Regulatory Reform Officers who oversee regulatory reform initiatives and policies and report periodically to the agency head; to establish Regulatory Reform Task Forces that evaluate existing regulations and make recommendations for repeal, replacement, or modification; and to measure progress in the task forces’ efforts.

---

<sup>27</sup> For general information and links to relevant actions, see The White House, Advancing Implementation of the National Strategy for the Arctic Region (March 9, 2016), <https://obamawhitehouse.archives.gov/blog/2016/03/09/advancing-implementation-national-strategy-Arctic-region>; See also Congressional Research Service, Changes in the Arctic: Background and Issues for Congress (Feb. 7, 2019), at 8-12, <https://fas.org/sgp/crs/misc/R41153.pdf>.



## 11. [EO 13783](#) Promoting Energy Independence and Economic Growth (2017)

Directed federal agencies to review and consider revising or rescinding rules and agency actions that impede U.S. energy production. See also the HLS EELP [Regulatory Rollback Page](#) on this EO.

## 12. [EO 13792](#) Review of Designations Under the Antiquities Act (2017)

Ordered the Secretary of the Interior to review all monuments larger than 100,000 acres, including marine monuments, to ensure they “appropriately balance the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” See also discussion of this EO on the [National Monuments and Marine Sanctuaries Regulatory Rollback Page](#).

## 13. [EO 13795](#) Implementing an America-First Offshore Energy Strategy (2017)

Ordered annual lease sales “to the maximum extent permitted by law” in most offshore planning areas. The executive order modified and ordered review of many prior executive actions, and it expedites the process for obtaining incidental take/harassment permits. For example, it revoked EO 13754 and modified memoranda of withdrawal from disposition by leasing issued on Dec. 20, 2016; Jan. 27, 2015; and July 14, 2008. See also discussion of this EO on the HLS EELP [Offshore Energy Regulatory Rollback Page](#).

## 14. [EO 13807](#) Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (2017)

Directed the Office of Management and Budget (OMB) to establish a Cross-Agency Priority Goal on infrastructure permitting to process environmental reviews and authorizations of major infrastructure projects within an average of approximately two years from the notice of intent to prepare an environmental impact statement. Agencies must modify their plans and goals to be consistent with this goal. OMB was required to issue guidance for establishing a performance accountability system to track projects in furtherance of this goal that will include a scoring mechanism. Agencies are asked to implement best practices identified by the Federal Permitting Improvement Steering Council.



The EO also created a unified process for environmental review called “One Federal Decision” which must now be used for major infrastructure projects. One Federal Decision requires the designation of a lead Federal agency responsible for navigating the project through the environmental review and authorization process and coordinating with all cooperating and participating agencies. For NEPA reviews, one Record of Decision which incorporates all individual agency decisions will be produced, unless a project sponsor requests separate NEPA documents, and in certain other circumstances. Agencies must develop and follow permitting timetables updated quarterly by the lead agency. The EO also created a 90-day deadline for authorization decisions after the issuance of the Record of Decision with limited opportunities for extension. OMB and CEQ were tasked with creating a framework and guidance for implementing One Federal Decision.

## 15. [EO 13840](#) Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States (2018)

Revoked Executive Order 13547 and consequently rescinds the National Ocean Policy. EO 13840 replaces the National Ocean Council with the National Ocean Committee. It disbands the five regional ocean planning bodies and other subcommittees established by the previous executive order. See also the [HLS EELP Regulatory Rollback Page](#) on this EO.

## 16. [EO 13868](#) Promoting Energy Infrastructure and Energy Growth (2019)

Directed federal agencies to review and potentially rescind or revise rules and actions that impede U.S. energy production as well as report on other topics. This includes: directing the Environmental Protection Agency to review §401 of the Clean Water Act (CWA) and related regulations and guidance that allow states and tribes to review federal permits or licenses that may result in discharges into navigable waters and certify that they do not conflict with state water quality standards; directing the Department of Transportation to initiate rulemaking to update Part 193 LNG facility safety standards; directing the Department of Labor to review ERISA plan data to identify trends in investments in the energy sector and to review existing guidance on fiduciary responsibilities for proxy voting; instructing the Secretaries of Interior, Agriculture, and Commerce to “develop a master agreement for energy infrastructure rights-of-way renewals or reauthorizations” and “initiate renewal or reauthorization processes for all expired energy rights-of-way grants, leases, permits, and agreements”; ordering the Secretary of Transportation, in consultation with the Secretary of Energy, to report on economic effects of “the inability to transport sufficient quantities of natural gas” to New England and whether states have contributed to these effects; instructing agencies to review their authorities related to the transportation of domestically produced energy and report on how they can be used to advance the policies





of the EO; and ordering the Secretary of Energy to report on opportunities to promote economic growth in Appalachia through petrochemical industries. See also the HLS EELP [Regulatory Rollback Page](#) on this EO.

## Part III: International Agreements

The U.S. is a signatory or party to numerous bilateral and multilateral fisheries conventions and international agreements affecting oceans, marine activity, and species protection. It also participates in regional fisheries management organizations and agreements.<sup>28</sup> NOAA participates in international trade organizations and tracks agreements concerning living marine resources of interest.<sup>29</sup> The NOAA Office of International Affairs and Seafood Inspection publishes a list of [International Agreements Concerning Living Marine Resources of Interest to NOAA Fisheries](#), the latest of which was released in 2018. The book includes information regarding the U.S. representation and implementing legislation. The U.S. Department of State's [Bureau of Oceans and International Environmental and Scientific Affairs](#) (OES) manages U.S. foreign policy on ocean-related topics, including fisheries and marine conservation.

Below we provide descriptions of a few agreements mentioned in the attached policy paper. However, this is not a complete list of relevant agreements. As mentioned above, the NOAA book of international agreements provides a more complete resource for such agreements.

### 1. United Nations Convention on the Law of the Sea (UNCLOS)

The U.S. has not ratified the United Nations Convention on the Law of the Sea (UNCLOS). To date, there is no meaningful effort underway to do so. However, the U.S. has consistently maintained many provisions of UNCLOS. More detail on the history of the U.S. engagement with UNCLOS is provided in the body of the paper.

---

<sup>28</sup> For example, the U.S. is part of the North Atlantic Fisheries Organization, the Southeast Atlantic Convention, the International Convention for the Conservation of Atlantic Tunas, the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, The Inter-American Tropical Tuna Commission, the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, and the Convention on the Conservation of Antarctic Marine Living Resources.

<sup>29</sup> See NOAA Fisheries website on international affairs, <https://www.fisheries.noaa.gov/topic/international-affairs>; its website specific to relevant international trade agreements, <https://www.fisheries.noaa.gov/international/international-affairs/international-trade-organizations>.



## 2. 1995 United Nations Fish Stocks Agreement

The U.S. is a party to the 1995 United Nations Fish Stocks Agreement, which implements provisions of UNCLOS regarding straddling stocks and highly migratory fish.<sup>30</sup>

## 3. FAO Port State Measures Agreement

The Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 (16 U.S.C. §7401, see Part I, No. 9 above) implements the international [Port State Measures Agreement](#) which was the first binding international agreement to address IUU fishing.

## 4. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The U.S. is a party to [CITES](#), which is an international permitting regime for trade in endangered species. The FWS implements CITES for the United States and provides biennial reports to the Convention.

## 5. The Convention on the Conservation of Antarctic Marine Living Resources

The Convention seeks to conserve Antarctic marine resources and to promote international cooperation. The Convention established the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the U.S. is a member.

---

<sup>30</sup> UN Oceans and Law of the Sea, The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001). Overview, [http://www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_fish\\_stocks.htm](http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm).



## 6. The International Convention for the Prevention of Pollution from Ships – MARPOL (1973)

MARPOL addresses operational and accidental pollution from ships by developing specific standards.<sup>31</sup> Not all annexes to MARPOL are mandatory for signatories. The U.S. is a signatory to Annexes I, II, III, V, and VI. Annexes I, II, V, and VI are incorporated into U.S. law in the Act to Prevent Pollution from Ships and Annex III is incorporated by the Hazardous Materials Transportation Act. The U.S. relies on the Clean Water Act to address discharges of sewage rather than ratifying Annex IV.

---

31 For additional information, see the U.S. Coast Guard page on MARPOL, <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/Domestic-Compliance-Division/MARPOL/>.

## Part IV: Agencies

Agencies		Ocean- & Coastal-Related Statutes and Responsibilities
Department of Commerce		
National Oceanic and Atmospheric Administration (NOAA)	<a href="#">NOAA Fisheries (National Marine Fisheries Service)</a>	NOAA Fisheries is the primary agency responsible for management of marine animals protected under the <a href="#">Marine Mammal Protection Act</a> . It shares jurisdiction with U.S. Fish and Wildlife Service (FWS). NOAA Fisheries <a href="#">manages federal fisheries</a> in coordination with the Regional Fishery Management Councils as outlined by the Magnuson-Stevens Act. It is also responsible for endangered and threatened marine and anadromous species under the <a href="#">Endangered Species Act</a> . It works together with FWS and has jurisdiction over 165 endangered and threatened marine species.
	<a href="#">NOAA National Ocean Service</a>	The <a href="#">Office of Marine Sanctuaries</a> within the Ocean Service manages marine national monuments and sanctuaries per the National Marine Sanctuaries Act.
Department of the Interior		
	<a href="#">BOEM</a>	The Bureau of Ocean Energy Management manages development of U.S. outer-continental shelf energy and mineral resources as prescribed by Outer Continental Shelf Lands Act.
	<a href="#">BSEE</a>	The Bureau of Safety and Environmental Enforcement oversees safety and environmental aspects of offshore energy and mineral development.
	<a href="#">ONRR</a>	The Office of Natural Resources Revenue manages payment of revenues for the development of energy and natural resources on the outer-continental shelf and onshore federal and Indian lands.
	<a href="#">Fish and Wildlife Service</a>	The FWS manages odobenids, sirenians, otters, and polar bears under the <a href="#">Marine Mammal Protection Act</a> . The agency shares jurisdiction under the MMPA with NOAA Fisheries. The FWS has primary responsibility for endangered and threatened species and works in partnership with other agencies such as NOAA.
	<a href="#">Office of Assistant Secretary for Insular &amp; International Affairs</a>	This office carries out the Department's responsibilities regarding <a href="#">oceans, Great Lakes, and coasts</a> . Another responsibility is to advance the Department's mission and support U.S. foreign policy abroad via the <a href="#">Office of International Affairs</a> .

Environmental Protection Agency		
	<a href="#">Office of Water</a>	The Office of Water “is responsible for implementing the Clean Water Act and Safe Drinking Water Act, and portions of the Coastal Zone Act Reauthorization Amendments of 1990, Resource Conservation and Recovery Act, Ocean Dumping Ban Act, Marine Protection, Research and Sanctuaries Act, Shore Protection Act, Marine Plastics Pollution Research and Control Act, London Dumping Convention, the International Convention for the Prevention of Pollution from Ships and several other statutes.” It works with the EPA regional offices, other agencies, state and local governments, and various stakeholders to do so.
	<a href="#">Office of Enforcement and Compliance Assurance (OECA)</a>	Primary office responsible for enforcement in coordination with regional offices and states and Tribes. Enforcement responsibilities cover relevant acts such as: Clean Water Act; Marine Protection, Research and Sanctuaries Act; National Environmental Policy Act (NEPA); Oil Pollution Act; etc.
	<a href="#">Office of International and Tribal Affairs</a>	The office leads EPA’s international engagements regarding pollution and environmental challenges, and develops and implements policy and programs. Within this office, the <a href="#">Office of Global Affairs and Policy</a> is the primary point of contact for international organizations.
Department of State		
	<a href="#">Bureau of Oceans and International Environmental and Scientific Affairs</a>	The Bureau sits under the Under Secretary for Economic Growth, Energy, and the Environment, and its mission includes oceans and environment. Within it lies the Office of Marine Conservation, Office of Ocean and Polar Affairs, Office of Global Change, and Office of Environmental Quality and Transboundary Issues, among others.
Marine Mammal Commission		
	<a href="#">MMC</a>	Created by the Marine Mammal Protection Act, the MMC provides “independent, science-based oversight of domestic and international policies and actions of federal agencies addressing human impacts on marine mammals and their ecosystems.”

Coast Guard		
		The Coast Guard handles oil spill response activities, fisheries and environmental law enforcement, and numerous other activities that intersect with the ocean and coastal legal regime. This includes marine safety, search and rescue, protection of living marine resources, marine environmental protection, and ice operations. The various <a href="#">missions</a> of the Coast Guard particularly relevant to the legal regime discussed in our paper include the <a href="#">Maritime Law Enforcement Program</a> (including enforcement of the MSA, ESA, MMPA), <a href="#">Maritime Response Program</a> , <a href="#">Maritime Prevention Program</a> , and <a href="#">Marine Transportation System Management Program</a> . These responsibilities are woven into the daily operations of the Coast Guard. In addition, a few specific offices listed below address relevant policy areas.
	Office of Law Enforcement Policy - Living Marine Resources & Marine Protected Species Enforcement Division	The Coast Guard supports protection of marine resources and species by enforcing laws such as the MMPA and ESA. The Coast Guard also enforces marine resource regulations on foreign fishing vessels and compliance with international Regional Fishery Management Organizations measures.
	<a href="#">Office of Marine Environmental Response Policy</a>	The Coast Guard is responsible for marine environmental response and protection. This office handles the policy development and planning efforts to support that mission. It is the lead response agency for preparedness and response to oil discharges and hazardous substance releases in the coastal zone.
	<a href="#">Arctic Policy Office</a>	The Coast Guard is responsible for a variety of arctic operations and policy support. It is responsible for safety and security of maritime operations in the region. This office outlines the Coast Guard's Arctic strategy.
Army Corps of Engineers		
		The Army Corps of Engineers has a number of relevant duties under the Clean Water Act, Rivers and Harbors Act, and endangered species laws. It plays a substantial role in coastal activities such as waterways management and coastal restoration. The missions addressing these areas include the Coast Guard's <a href="#">environmental program</a> , <a href="#">civil works mission</a> , and <a href="#">emergency response</a> operations.



Executive Office of the President (White House)		
	<a href="#">Council on Environmental Quality (CEQ)</a>	Created by National Environmental Policy Act, the CEQ issues NEPA interpreting regulations that agencies must follow when establishing their own NEPA processes. The CEQ oversees NEPA implementation, issuing guidance in addition to regulations, and reviews and approves agency-specific NEPA procedures. It also recommends policies to the President regarding environmental quality.
	<i>President</i>	The President has the power to designate marine national monuments under the Antiquities Act. The President may also withdraw offshore areas from availability for leasing under Section 12 of the Outer Continental Shelf Lands Act. The President can set policy and direct agencies to implement that policy.
Regional Fishery Management Councils		
	<a href="#">Regional Fishery Management Councils</a>	The RFMCs were created by the Magnuson-Stevens Act. The eight councils develop management plans for federal fisheries which are implemented by NOAA Fisheries.
States		
	<i>State coastal commissions and energy agencies</i>	Under the Submerged Lands Act, OCSLA, and the Coastal Zone Management Act, states manage coastal, submerged lands, and natural resources (oil & gas, mineral) up to 3 nautical miles (or 9 for TX and FL).
	<i>State fisheries and wildlife agencies</i>	The Magnuson-Stevens Act confirmed state authority over fisheries in state waters but reserved for federal government control over activities in state waters that impact fisheries predominantly in federal waters; it also allows states to regulate fisheries in federal waters that do not have federally approved fishery management plans.
	<i>State environmental agencies</i>	States primarily oversee permitting programs under the Clean Water Act and state water quality standards in cooperative federalism model in which state and federal agencies have duties under the act.



Harvard Law School, Environmental & Energy Law Program  
6 Everett Street, Suite 4119  
Cambridge, MA 02138  
[eelp.law.harvard.edu](http://eelp.law.harvard.edu)