OCEAN AND COASTAL LAW - 2021

Tim Eichenberg, Sarah M. Reiter, Caroline Park, and Donald Baur
Environmental Law Center
Vermont Law School, Summer Session Term 1
June 1 – June 17, 2021
1:00 pm – 4:00 pm

SYLLABUS

Required Texts: Rieser, et al, Ocean and Coastal Law (OCL), West Group
Supplemental Materials (SM) available at Bookstore

Strongly Recommended: Baur, Eichenberg, Snusz and Sutton, Ocean and Coastal Law
and Policy, ABA (2015) available at bookstore

Recommended Reading (RR): On reserve in Library or URLs*

Office Hours: By appointment

Exam: Open-book, take-home, anonymous grading, due Sunday,
June 20, 3:00 pm

Required Reading: Advance reading and volunteers asked to present cases for
first class

June 1-June 4/ Tim Eichenberg & Caroline Park

CLASS I:
Tuesday, June 1: State Ownership and Control of Marine Resources and the
Public Trust Doctrine

Required Reading:
The Submerged Lands Act and the Tidelands Controversy – OCL pp. 125-147
The Public Trust Doctrine – OCL pp. 270-295

SM 00006-00013 National Audubon Society v. Superior Court, 33 Cal. 3d 419 (1983)
SM 00014-00021 San Francisco Baykeeper v. California State Lands Commission,
California Court of Appeals (2018)

* RR is not necessary for the class. These materials provide additional information and legal
authority for the issues discussed in the corresponding class.

Recommended Reading:


CLASS II:
Wednesday, June 2: Coastal Zone Management

Required Reading:

Saving the Bay: The Nation’s First Coastal Management Agency (https://www.youtube.com/watch?v=H0sY37CUK1k and slides)
The Coastal Zone Management Act and Federal Consistency – OCL pp. 391-403; 423-443
Implementing Coastal Management Plans: The California Coastal Act (slides)
Providing Public Beach Access – pp. 378-385; 259-270; 350-368

Waters of the United States, 33 CFR §328.3
*Surfrider Foundation v. Martins Beach*, Superior Court of San Mateo County (2014)


Recommended Reading:


RR Aldo Toledo, Cargill drops fight to build 12,000 homes on Redwood City salt ponds, 4/15/2021, https://www.mercurynews.com/2021/04/15/cargill-drops-fight-to-build-12000-homes-on-redwood-city-salt-ponds/


RR O. Pilky and Young, The Rising Sea, Chapter 1, “Living on the Edge” (2008)

CLASS III:
Thursday, June 3: Adapting to Climate Change and Sea Level Rise

Required Reading:

Protecting Coastal Communities from Climate Change and Sea Level Rise (slides)
Private Interests of Littoral and Riparian Landowners – OCL pp. 303-313; 321-329
Regulating Eroding Shorelines to Adapt to Climate Change and Sea Level Rise – OCL pp. 443-467
Preventing Climate Change as a Federal Public Trust Obligation – OCL pp. 478-498
| SM 00040-00051 | Walton County v. Stop the Beach Renourishment, Inc., 998 So. 2d 1102 (2008) |

**Recommended Reading:**

**CLASS IV:**
**Friday, June 4:**  **Fisheries: U.S. Federal and International Conservation and Management**

**Required Reading:**

<table>
<thead>
<tr>
<th>Code</th>
<th>Title</th>
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<tbody>
<tr>
<td>SM 00067-00070</td>
<td>Magnuson-Stevens Fishery Conservation and Management Act and National Standard 1 Guidelines: excerpts</td>
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<tr>
<td>SM 00078-00081</td>
<td><em>Gulf Fishermens Ass’n et al. v. National Marine Fisheries Service et al.</em>, 968 F.3d 454 (5th Cir. 2020)</td>
</tr>
<tr>
<td>SM 00091-00094</td>
<td>ICCAT Recommendation 20-06: Western Atlantic Bluefin Tuna</td>
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**June 7-10 / Donald Baur**

*NOTE: * indicates a case for which a volunteer student presentation is requested*

**CLASS V:**
**Monday, June 7:**  **PART I: International Authorities – Species Conservation/Whales and Whaling**

**Required Reading:**

| SM 00103-00113* | *Japan Whaling Ass’n v. American Cetacean Society*, 478 U.S. 221 (1986) |
| SM 00114 | Letter from Department of the Interior to the President regarding Iceland and the Fisherman’s Protective Act (Jan. 31, 2014) |
| SM 00117 | “Whale Wars – Eco-Terrorism as Reality TV”, *Huffington Post* (June 5, 2009) |
| SM 00118-00121* | *Institute of Cetacean Research v. Sea Shepherd Conservation Society*, 708 F.3d 1099 (9th Cir. 2013) |
| SM 00122 | United Nations, Japan Declaration Under Article 36(2) Rescinding ICJ Jurisdiction (October 6, 2015) |
| SM 00123 | Statement by Japan’s Ministry of Foreign Affairs on decision to withdraw from the IWC (December 26, 2018) |
| SM 00145-00148 | “Season Ends for Taiji’s Dolphin Drive Hunts”, The Dolphin Project, (March 1, 2021) |

**Taiji Dolphin Hunt (video shown in class) - Recommended Viewing - *The Cove***

**Recommended Reading:**

| RR | *Institute of Cetacean Research v. Sea Shepherd Conservation Society*, 774 F.3d 935 (9th Cir. 2014) |


### CLASS V:

**Monday, June 7:**  **PART II: Federal Marine and Coastal Protected Areas**

**Required Reading:**

| SM 00163-00164* | *United States v. Brown*, 552 F.2d 817 (8th Cir. 1977) |


| SM 00169-00180* | *Massachusetts Lobstermen’s Ass’n v. Ross*, 945 F.3d 535 (D.C. Cir. 2019); cert denied 592 U.S. _____ (2021) (Roberts Statement) |
| SM 00181-00182 | Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, Section 216 86 Fed. Reg 7619-7633 (February 1, 2021) |
| SM 00183-00193 | “The U.S. Commits to Tripling It’s Presidential Lands. Here’s How It Could Be Done” *National Geographic*, (January 27, 2021) |

**Recommended Reading:**

CLASS VI:
Tuesday, June 8: The Marine Mammal Protection Act

Required Reading:

Background on MMPA, ESA - OCL pp. 787-791


SM 00207-00216 Committee for Humane Legislation v. Richardson, 540 F.2d 1141 (D.C. Cir. 1976)

SM 00217-00219 Center for Biological Diversity v. National Science Foundation, 55 ERC 1873 (N.D. Cal. 2002)

SM 00220-00228* Strong v. Secretary of Commerce, 5 F.3d 905 (5th Cir. 1993); United States v. Hayashi, 5 F.3d 1278 (9th Cir. 1993)

Keiko and the MMPA, Whale Sanctuary Project (videos shown in class)

SM 00229-00245* Conservation Council for Hawaii v. NMFS, 97 F. Supp. 3d 1210 (D. Hawaii 2015) (also discussed under Endangered Species Act on June 14)

Fisheries Incidental Take/Domestic – OCL pp. 875-878
Fisheries Incidental Take/Foreign – OCL pp. 864-870

SM 00246-00248 Courtney Columbus, “Navy defends asking Congress for leeway to kill marine mammals” (August 22, 2018)

SM 00249-00259* Earth Island Institute v. Hogarth, 494 F.3d 757 (9th Cir. 2007)

SM 00260-00262 “Mexico Loses 10-Year WTO Battle Over US Tuna Labeling.” VOA News (December 14, 2018)

Recommended Reading:


CLASS VII:  
Wednesday, June 9:  
Marine Endangered Species

Required Reading:

Listing and Critical Habitat


Critical Habitat -  OCL pp. 817-824 (CBD v. Evans)

*Recovery Plans -  OCL pp. 909-918 (California Sea Urchin Comm’n v. Bean)


*The Take Prohibition and its Exceptions -  OCL pp. 888-894 (Strahan v. Coxe)

SM 00301-00302  Drifting in Static, National Geographic (Jan. 2011)


Recommended Reading:


RR  D. Baur, Wm. R. Irvin, ESA: Law, Policy and Perspectives, Chapters 2, 6, 11, 15-17 (2010)


CLASS VIII:
Thursday, June 10: **PART I: Offshore Energy**

**Required Reading:**

| SM 00304-00316* | OCSLA Background -- *Center for Biological Diversity v. DOI*, 563 F.3d 466 (D.C. Cir. 2009) |

*OCS Withdrawals - OCL pp. 629-643

| SM 00327-00335 | *PEER v. Hopper*, 827 F.3d 1077 (D.C. Cir 2016) |
| SM 00339-00345 | “Fact Sheet: Biden Administration Jump Starts Offshore Wind Energy Projects” (March 29, 2021) |
| SM 0353-0356 | White House deal sets state for floating-turbine boom |

**Guest Speaker --** Marissa Knodel Advisor, Bureau of Ocean Energy Management (VLS 2012)

CLASS VIII:
Thursday, June 10: **PART II: Ocean Policy**

**Required Reading:**

| SM 00357-00362 | Executive Order 13547, Stewardship of the Ocean, Our Coasts, and the Great Lakes (July 19, 2010) |
| SM 00363-00395 | National Ocean Implementation Plan (April, 2013) |
| SM 00396-00400 | Ocean Action Agenda - Ocean Priorities for the Trump Administration |
| SM 00401-00407 | Executive Order Regarding the Ocean Policy to Advance the Economic, Security, and Environmental Interest of the United States (June 19, 2018) |
Recommended Reading:


RR  *Deepwater: The Gulf Oil Disaster and the Future of Offshore Drilling, Report to the President, National Commission in the BP Deepwater Horizon Oil Spill and Offshore Drilling* (Jan. 2011)

CLASS V:  
Monday, June 14:  International Marine Law: Emergence and Principles

Reading:  
Refer to Canvas for required and recommended readings on the sources of international law, principles of international environmental law, and the “constitution of the ocean,” the United Nations Convention on the Law of the Sea (UNCLOS)

- Treaty: (202 pages)  
  o UNCLOS, in particular, Articles 87-89, 136, 137, 192, 194, 197
- Law Review Article(s): (7 pages)  

CLASS VI:  
Tuesday, June 15:  International Marine Law & The Ocean-Climate Nexus

Reading:  
Refer to Canvas for required and recommended readings on bridging the gap between UNCLOS and the United Nations Framework Convention on Climate Change (UNFCCC) through study of GHGs, ocean acidification, and requirements under UNCLOS and the Paris Agreement

- Treaties: (52 pages)  
  o UNFCCC, 25 p.  
  o The Paris Agreement, 27 p.
- Decisions: (4 pages)  
  o COP25 Decision text (referring to Joint Proposal on Ocean-Climate Nexus) 4 p.
- Law Review Article(s) and additional resources (81 pages)  
  o IPCC SROCC Summary for Policymakers, 36 p.  
  o Susan Biniaz, Comma but Differentiated Responsibilities: Punctuation and 30 Other Ways Negotiators HaveResolved
CLASS VII:
Wednesday, June 16:  International Marine Law & Biodiversity on the High Seas

Reading:
Refer to Canvas for required and recommended readings on integrated ocean governance and the International legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

- Treaties: (50+ p.)
  - Draft BBNJ Text, 50 p.
  - Proposed comments on BBNJ, 350 p. (skim)
- Resolutions
  - UNGA 59/24, 69/292, 72/249
- Law Review Articles: (126 pages)
CLASS VIII:
Thursday, June 17:  International Marine Law & 30X30

Reading:
Refer to Canvas for required and recommended readings on the Convention on Biological Diversity (CBD) and safeguarding human existence through protection of 30% of land and water by 2030.

Treaties: (25 pages)

Decisions and Orders: (18+ pages)
  - COP 10 Decision X/2, Strategic Plan for Biodiversity 2011-2020 (13 pages)
  - Biden’s Executive Order on Tackling the Climate Crisis at Home and Abroad (January 2021)
  - California’s 30x30 and Working Lands Executive Order N-80-20 (October 2020) (5 pages)

Secondary sources and scientific literature (79+ pages)
  - Global Biodiversity Outlook 5 Summary for Policymakers (19 pages)
  - Quick guides to the Aichi Biodiversity Targets (42 pages)
  - An Introduction to National Biodiversity Strategies and Action Plans (18 pages)
  - A Triple Win for Oceans, Climate and Us (March 2021).