SYLLABUS


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

**Office Hours:** By appointment

**Exam:** Open-book, take-home, anonymous grading, due Sunday, June 19, 3:00 pm

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

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May 31-June 3/Sarah Reiter

**CLASS I:**

**Tuesday, May 31:** International Marine Law/Emergence and Principles

**Required Reading:**

Refer to Canvas for required and recommended readings on the sources and principles of international environmental law and the United Nations Convention on the Law of the Sea, including but not limited to:

Treaty (202 pages): UNCLOS, in particular, Articles 87-89, 136, 137, 192, 194, 197

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* RR is not necessary for the class. These materials provide additional information and legal authority for the issues discussed in the corresponding class.
CLASS II:
Wednesday, June 1: International Marine Law & The Ocean-Climate Nexus

Required 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 the study of GHGs, ocean acidification, and requirements under UNCLOS and the Paris Agreement, including but not limited to:


CLASS III:
Thursday, June 2: International Marine Law & Biodiversity on the High Seas

Required 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, including but not limited to:

Treaties (50+ pages): Draft BBNJ text, 50 p.; Proposed comments on BBNJ (skim)
Resolutions: (4+ pages): UNGA 59/24, 69/292, 72/249


CLASS IV:
Friday, June 3: International/Federal Marine Law & Plastic Pollution

Required Reading:

Refer to Canvas for required and recommended readings on international and national instruments to address plastic pollution and its interlinkages with biodiversity, climate change, health, and social issues, including but not limited to:


Cases: San Antonio Bay Estuarine Waterkeeper v. Formosa Plastics Corporation Texas, (S.D. Tex. 2019); No. 20-40575 (5th Cir. Apr. 30, 2021)

June 6-June 9/ Tim Eichenberg & Caroline Park

CLASS V:
Monday, June 6: Ownership and Control of the Coast 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
U.S. v. California, 332 U.S. 19 (1947)
National Audubon Society v. Superior Court, 33 Cal. 3d 419 (1983)
San Francisco Baykeeper v. California State Lands Commission, California Court of Appeals (2018)

Recommended Reading:


CLASS VI:
Tuesday, June 7: Coastal Zone Management and Public Access

Required Reading:

Saving the Bay: The Nation’s First Coastal Management Agency (https://www.youtube.com/watch?v=H0sY37CUk 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)
Public Beach Access, Coastal Permits and the Takings Doctrine – pp. 378-385; 259-270; 350-368
Surfrider Foundation v. Martins Beach, Superior Court of San Mateo County (2014)


Recommended Reading:


RR Paul Rogers, San Jose: $545 million project breaks ground to improve flood protection along south San Francisco Bay shoreline: Project is the latest in a growing list of major efforts to reduce Bay Area flood risk from sea level rise. April 14, 2022, https://www.mercurynews.com/2022/04/14/san-jose-545-million-project-breaks-ground-to-improve-flood-protection-along-south-san-francisco-bay-shoreline/


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

CLASS XII:

Wednesday, June 8: Adapting to Climate Change and Sea Level Rise

Required Reading:
Protecting Coastal Communities from Climate Change and Sea Level Rise (slides)
Regulating Eroding Shorelines to Adapt to Climate Change and Sea Level Rise: Public and Private Rights – **OCL pp. 247-259**
Private Interests of Littoral and Riparian Landowners – **OCL pp. 303-313; 321-329; 443-467**
Preventing Climate Change as a Federal Public Trust Obligation – **OCL pp. 489-498**
Waters of the United States, 33 CFR §328.3
**Sackett v. EPA**, 8 Fed. 4th 1075 (2021)
Hannah Northey and Pamela King, *Supreme Court tees up wetlands case that could cuff EPA*, Greenwire, January 24, 2022, [https://www.eenews.net/articles/supreme-court-tees-up-wetlands-fight-that-could-cuff-epa/](https://www.eenews.net/articles/supreme-court-tees-up-wetlands-fight-that-could-cuff-epa/)
**Walton County v. Stop the Beach Renourishment, Inc.**, 998 So. 2d 1102 (2008)

**Recommended Reading:**


CLASS VIII:

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

**Required Reading:**

Magnuson-Stevens Fishery Conservation and Management Act and National Standard 1 Guidelines: Excerpts


ICCAT Recommendation 17-06: Western Atlantic Bluefin Tuna

J. Wolman, “Offshore wind is set to soar. Fishing groups want to pump the brakes.” *Politico* (March 11, 2022)

**June 13-16 / Donald Baur**

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

**CLASS IX:**  
**Monday, June 13:**  
**PART I: International Authorities – Species Conservation/Whales and Whaling**

**Required Reading:**

Letter from Department of the Interior to the President regarding Iceland and the Fisherman’s Protective Act (Jan. 31, 2014)  
“Whale Wars – Eco-Terrorism as Reality TV”, *Huffington Post* (June 5, 2009)  
*Institute of Cetacean Research v. Sea Shepherd Conservation Society*, 708 F.3d 1099 (9th Cir. 2013)  
United Nations, Japan Declaration Under Article 36(2) Rescinding ICJ Jurisdiction (October 6, 2015)  
Statement by Japan’s Ministry of Foreign Affairs on decision to withdraw from the IWC (December 26, 2018)  
“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)  
**RR**  
**RR**  
**RR**  
**RR**  
CLASS IX:

Monday, June 13: **PART II: Federal Marine and Coastal Protected Areas**

**Required Reading:**


*United States v. Brown*, 552 F.2d 817 (8th Cir. 1977)


*Marine Sanctuaries – OCL pp. 987-993 (Personal Watercraft Industry Association v. Department of Commerce)*

*Massachusetts Lobstermen’s Ass’n v. Ross*, 945 F.3d 535 (D.C. Cir. 2019); cert denied 592 U.S. _____ (2021) (Roberts Statement)

**Recommended Reading:**


CLASS X:

Tuesday, June 14: **The Marine Mammal Protection Act**

**Required Reading:**

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


*Committee for Humane Legislation v. Richardson*, 540 F.2d 1141 (D.C. Cir. 1976)

*Center for Biological Diversity v. National Science Foundation*, 55 ERC 1873 (N.D. Cal. 2002)
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)

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

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

Earth Island Institute v. Hogarth, 494 F.3d 757 (9th Cir. 2007) “Mexico Loses 10-Year WTO Battle Over US Tuna Labeling.” VOA News (December 14, 2018)

Recommended Reading:


CLASS XI:
Wednesday, June 15: 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)

*Consultation and Jeopardy – (Greenpeace Foundation v. Mineta)

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

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 XII:
Thursday, June 10:       PART I: Offshore Energy

Required Reading:

Offshore Oil and Gas Energy Development –OCL pp. 547-550

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

*OCS Withdrawals - OCL pp. 629-643
**PEER v. Hopper, 827 F.3d 1077 (D.C. Cir 2016)**

“Fact Sheet: Biden Administration Jump Starts Offshore Wind Energy Projects” (March 29, 2021)

The Ocean Conservancy/Perkins Coie — “From Policy to Power, Federal Actions to Deliver on America’s Offshore Wind Potential” (2022)

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

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**CLASS XII: Thursday, June 16: PART II: Ocean Policy**

**Required Reading:**

Executive Order 13547, Stewardship of the Ocean, Our Coasts, and the Great Lakes (July 19, 2010)
National Ocean Implementation Plan (April, 2013)
Ocean Action Agenda - Ocean Priorities for the Trump Administration
Executive Order Regarding the Ocean Policy to Advance the Economic, Security, and Environmental Interest of the United States (June 19, 2018)
Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, Section 216; 86 Fed. Reg 7619-7633 (February 1, 2021)

“The U.S. Commits to Tripling It’s Presidential Lands. Here’s How It Could Be Done” *National Geographic*, (January 27, 2021)

**Recommended Reading:**


*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)