SYLLABUS

Required Texts: Refer to Canvas for required readings
Strongly Recommended: Baur, Eichenberg, Snusz and Sutton, Ocean and Coastal Law and Policy, ABA (2015) available at bookstore
Recommended Reading (RR): Refer to Canvas for recommended readings
Office Hours: By appointment
Exam: Open-book, take-home, anonymous grading, due Sunday, June 18, 3:00 pm. Instructors reserve the right to raise or lower final grades as a result of superior or inferior performance.

May 30-June 2/Lizzie Lewis and Caroline Park

CLASS I: Tuesday, May 30: Coastal Ownership & The Public Trust Doctrine

Required Reading:¹

The Tidelands Controversy –

United States v. California, 332 U.S. 19 (1947)
United States v. Louisiana, 363 U.S. 1 (1960)
Ten Taxpayer Citizens Grp. v. Cape Wind Assocs., 373 F.3d 183 (1st Cir. 2004)

The Public Trust Doctrine –

Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387 (1892)

Private Rights Of Littoral Landowners –

Schultz v. Dania, 156 So.2d 520 (Fl. Dist. App. 1963)
Lummis v. Lilly, 429 N.E.2d 1146 (Mass. 1982)
United States v. Milner, 583 F.3d 1174 (9th Cir. 2009)

¹ Please note that case excerpts for Week 1’s required reading will be posted on Canvas. The citations are provided for your information only.
Recommended Reading:

**CLASS II:**
**Wednesday, May 31:**

**The Takings Issue: Public Access, Beach Protection, & Sea Level Rise**

**Required Reading:**

**Takings –**

Parts I – IV of Peter Spencer, *When Giving Almost Becomes a Taking: An Analysis of Stop the Beach Renourishment v. Florida Department of Environmental Protection*, 16 Roger Williams Univ. L. Rev. 751 (2011)

**Public Access –**

*State v. Ibbison*, 448 A.2d 728 (R.I. 1982)
*Jesurum v. WBTSCC Ltd. P’ship*, 151 A.3d 949 (N.H. 2016)
*Stevens v. Cannon Beach*, 854 P.2d 449 (Or. 1993)
*Matthews v. Bay Head Improvement Ass’n*, 471 A.2d 355 (N.J. 1984)

**Beach Protection –**

*St. Bernard Parish Gov’t v. United States*, 887 F.3d 1354 (Fed. Cir. 2018)

CLASS III:
Thursday, June 1:  
Primer On The Administrative Procedure Act; Coastal Zone Management; National Environmental Policy Act

Required Reading:

Judicial Review of Agency Action –

Todd Garvey, Cong. Res. Serv., A Brief Overview of Rulemaking and Judicial Review (Mar. 27, 2017)


Loper Bright Enter., Inc. v. Raimondo, 45 F.4th 359 (2022)

The Coastal Zone Management Act –


Parts I & V of Envl. Def. Ctr. v. BOEM, 36 F.4th 850 (9th Cir. 2022)

Decision & Findings by the U.S. Sec’y of Commerce in the Consistency Appeal of Broadwater Energy LLC & Broadwater Pipeline LLC by the State of N.Y. (2009)

The National Environmental Policy Act –


Anderson v. Evans, 371 F.3d 475 (9th Cir. 2004)

Ctr. for Biological Diversity v. U.S. Dep’t of Interior, 563 F.3d 466 (D.C. Cir. 2009)

Ctr. for Biological Diversity v. Bernhardt, 982 F.3d 723 (9th Cir. 2020)

Part III of Envl. Def. Ctr. v. BOEM, 36 F.4th 850 (9th Cir. 2022)

Recommended Reading:


CLASS IV:
Friday, June 2: Fisheries: U.S. Federal & International Conservation & Management

Required Reading:
Magnuson-Stevens Fishery Conservation and Management Act and National Standard Guidelines: Excerpts (4 pages)

Case Excerpts (* requesting student volunteers to present on each case during class):


Hulk Grouper Fishery Management Plan: Reading for In-Class Exercise (2 pages)


ICCAT Recommendation 22-10: Western Atlantic Bluefin Tuna (5 pages)

Recommended Reading (not printed, go to links below):


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CLASS V:
Monday, June 5: 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


CLASS VI:
Tuesday, June 6: 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 VII:
**Wednesday, June 7: 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); Pending BBNJ text (under reconciliation May 15, 2023)
- Resolutions: (4+ pages): UNGA 59/24, 69/292, 72/249

### CLASS VIII:
**Thursday, June 8: 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 Estaurine Waterkeeper v. Formosa Plastics Corporation Texas, (S.D. Tex. 2019); No. 20-40575 (5th Cir. Apr. 30, 2021)

**June 12-15 / Michael Jasny**

**CLASS IX**

**Monday, June 12**  
**Marine Biodiversity and Species-Based Management**

J.L. Penn and C. Deutsch, Avoiding Ocean Mass Extinction from Climate Warming, 376 Sci. 524 (2022)


Take prohibitions (MMPA, ESA)

*Strong v. Secretary of Commerce*, 5 F.3d 905 (5th Cir. 1993)

*U.S. v. Hayashi*, 5 F.3d 1278 (9th Cir. 1993)


*Strahan v. Coxe*, 127 F.3d 155 (1st Cir. 1997)


Species listings (ESA)


Take exceptions and limits: standards for authorization of incidental take (MMPA)

*Center for Biological Diversity v. Salazar*, 695 F.3d 893 (9th Cir. 2012)

*NRDC v. Pritzker*, 828 F.3d 1125 (9th Cir. 2016)

Take exceptions and limits: jeopardy and adverse modification (ESA)

*National Wildlife Federation v. NMFS*, 524 F.3d 917 (9th Cir. 2008)

*Pacific Coast Federation of Fishermen’s Associations v. NMFS*, 265 F.3d 1028 (9th Cir. 2001)


**Evening event:** Screening of *Sonic Sea*, beginning 6:30pm, with discussion by a panel of experts

**CLASS X**

**Tuesday, June 13**

**Marine biodiversity and species-based management (continued)**

Cumulative impacts/sublethal effects and the incidental take provision

*Sonic Sea* (see above)


Domestic bycatch


T.B. Werner et al., *Preventing Entanglements of North Atlantic Right Whales (Eubalaena glacialis) in Pot Fishing Gear* (undated presentation)


Foreign bycatch

Conservation of Sea Turtles, Importation of Shrimp, 16 U.S.C. § 1537note


Standing and relief in wildlife cases


*Center for Biological Diversity v. EPA*, 937 F.3d 533 (5th Cir. 2019)


**CLASS XI**

**Wednesday, June 14**

**Marine biodiversity and place-based management**


National Marine Sanctuaries


Revised Terms of Designation for the Monterey Bay National Marine Sanctuary, 73 Fed. Reg. 70,488, 70,492-95 (Nov. 20, 2008)

National Marine Sanctuary Program Regulations, 50 C.F.R. §§ 922.130-34 (MBNMS regulations)


NOAA, Monterey Bay National Marine Sanctuary Final Management Plan 107-21 (2021)


**Marine National Monuments**


Presidential Proclamation No. 9496, 81 Fed. Reg. 65,169 (Sept. 21, 2016)


Section 12 withdrawals

Outer Continental Shelf Lands Act of 1953, as amended, 43 U.S.C. § 1331 et seq. (excerpts)


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**CLASS XII**

**Thursday, June 15**  
**Special topics: Offshore energy and paralegal activism**

*Offshore energy*

Outer Continental Shelf Lands Act of 1953, as amended, 43 U.S.C. § 1331 et seq. (excerpts)


*Oceana, Time for Action: Six Years after Deepwater Horizon 6-11* (2016).


Memorandum Opinion, Sierra Club v. NMFS, Civ. No. 20-cv-3060 PX (D. Md. May 24, 2021)


BOEM and NMFS, Draft North Atlantic Right Whale and Offshore Wind Strategy 1-2, 5-11, 14-20 (2022)

K. Moore, “East Coast Congressmen Seek NOAA Response on Scientists’ Offshore Wind Advice, National Fisherman (Mar. 15, 2023)

Paralegal activism
R. Spilman, “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)
J. Harvey et al., Internet Blogs, Polar Bears, and Climate-Change Denial by Proxy, 68 Biosci. 281 (2017)