

A Comparison: EU and US Ocean Policy

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About CALAMAR

The *Cooperation Across the Atlantic for Marine Governance Integration (CALAMAR)* project aimed to strengthen networks among key maritime stakeholders in the EU and US, and contribute policy recommendations to improve integration of maritime policies and promote transatlantic cooperation. The project convened a dialogue including more than 40 experts from both sides of the Atlantic. The CALAMAR project began in January 2010 and culminated in a final conference in Lisbon, Portugal on April 11-12, 2011 where the Working Groups' conclusions were presented. Two reports were developed to complement the dialogue by providing background information and assessments that: 1) compare EU and US maritime policy, and 2) identify opportunities and challenges for integrated maritime governance. A third report lays out policy recommendations for improved transatlantic cooperation in maritime governance based on the recommendations selected by the working groups throughout their discussions over the course of the CALAMAR project. All project reports are available on the project website at the following link: <http://www.calamar-dialogue.org/>.

The following report is the first of the two reports developed to complement the dialogue, and was produced with the assistance of the European Union within the framework of the Pilot Project on Transatlantic Methods for Handling Global Challenges. The contents of this report are the sole responsibility of Ecologic Institute (Germany) and its partners, Meridian Institute (US), Duke University (US), Institute for Sustainable Development and International Relations - IDDRI (France) and University of Delaware (US) and do not necessarily reflect the views of the European Union.

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About Ecologic Institute

The Ecologic Institute is a private not-for-profit think tank for applied environmental research, policy analysis and consultancy with offices in Berlin, Brussels, Vienna, and Washington DC. An independent, non-partisan body, the Ecologic Institute is dedicated to bringing fresh ideas to environmental policies and sustainable development. The Ecologic Institute's work programme focuses on obtaining practical results. It covers the entire spectrum of environmental issues, including the integration of environmental concerns into other policy fields. Founded in 1995, the Ecologic Institute is a partner in the network of Institutes for European Environmental Policy. The Ecologic Institute acts in the public interest; donations are tax-deductible.

Contents

List of Acronyms	4
1 Introduction	9
2 European Union ocean and coastal policy	10
2.1 EU strategic interests and vision for ocean management	10
2.2 Governance framework in the EU	13
2.3 Integrated approaches in the EU and its Member States	20
2.4 EU international cooperation.....	29
3 United States ocean and coastal policy	34
3.1 US strategic interests and vision for ocean management	34
3.2 The ocean policy framework in the US	35
3.3 Major federal ocean and coastal laws.....	41
3.4 Prospects for US ocean governance	46
3.5 Progress at the state level	49
3.6 US international cooperation.....	50
4 Comparison of EU and US ocean and coastal policies	55
4.1 Introduction.....	55
4.2 Domestic policies and positions	55
4.3 International maritime governance.....	61
5 Potential for EU and US cooperation	71
5.1 Bilateral cooperation	72
5.2 Key opportunities and challenges for cooperation	74
5.3 The CALAMAR dialogue.....	77
6 References	79
Annex A: Comparative table on consistency of policy objectives in the EU and US	89

List of Acronyms

ACCOBAMS	Conservation of Cetaceans in the Black Sea, Mediterranean Sea and contiguous Atlantic area
ABNJ	Area Beyond National Jurisdiction
AMLR	Antarctic Marine Living Resources Program
APA	Administrative Procedure Act
ASFA	Aquatic Sciences and Fisheries Abstracts
BOEMRE	Bureau of Ocean Energy Management, Regulation and Enforcement
CBD	Convention on Biological Diversity
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CEQ	White House Council on Environmental Quality
CFCA	Community Fisheries Control Agency
CFP	Common Fisheries Policy
CITES	Convention on International Trade in Endangered Species
CMSP	Coastal and marine spatial planning (US)
COFI	Committee on Fisheries
COP	United Nations Framework Convention on Climate Change Conference of Parties
CoR	Committee of the Regions
COREPER	Committee of Permanent Representatives
CPMR	Conference of Peripheral Maritime Regions
CZM	Coastal Zone Management
CZMA	Coastal Zone Management Act
CZMP	Coastal Zone Management Plan
DG	Directorate General
DG CLIMA	Directorate General for Climate Action
DG ENV	Directorate General for Environment
DG RELEX	Directorate General for External Relations
DG MARE	Directorate General for Maritime Affairs and Fisheries
DG MOVE	Directorate General for Mobility and Transport

DOI	Department of the Interior
EBM	Ecosystem-based Management
EC	European Community (term no longer in current use)
ECJ	European Court of Justice
EEDI	Energy Efficiency Design Index
EESC	European Economic and Social Committee
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EMODNET	European Marine Observation and Data Network
EMSA	European Maritime Safety Agency
EPA	Environmental Protection Agency
EPZ	Ecological Protection Zone
EU	European Union
FAO	United Nations Food and Agriculture Organization
FERC	Federal Energy Regulatory Commission
FPZ	Fisheries Protection Zone
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GDP	Gross Domestic Product
GFCM	General Fisheries Commission for the Mediterranean
GHG	Greenhouse Gas
GPA	Global Plan of Action for the Protection of the Marine Environment from Land-Based Activities
IATTC	Inter-American-Tropical Tuna-Commission
ICC	Interstate Commerce Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICES	International Council for the Exploration of the Sea
ICJ	International Court of Justice
ICZM	Integrated Coastal Zone Management
ILO	International Labour Organization
IMO	International Maritime Organization

IMP	Integrated Maritime Policy
ISA	International Seabed Authority
IUCN	International Union for Conservation of Nature
IUU	Illegal and unreported and underreported (fishing)
IWC	International Whaling Commission
IWRM	Integrated Water Resources Management
HLCDSD	UN High-Level Conference on Sustainable Development
JOCI	Joint Ocean Commission Initiative
LME	Large Marine Ecosystem
MARPOL	International Convention on the Prevention of Pollution from Ships
MEP	Member of the European Parliament
MEPC	Marine Environment Protection Committee
MGR	Marine Genetic Resource
MIF	Maritime Industries Forum
MMPA	Marine Mammal Protection Act
MMS	Minerals Management Service (now BOEMRE)
MOU	Memorandum of Understanding
MPA	Marine Protected Area
MSD	Marine Sanitation Device
MSFD	Marine Strategy Framework Directive
MSP	Maritime Spatial Planning
NAC	North American Commission
NAFO	Northwest Atlantic Fisheries Organization
NAMPAN	North American Marine Protected Areas Network
NASA	National Aeronautical and Space Administration
NASCO	North Atlantic Salmon Conservation Organization
NEAC	North-East Atlantic Commission
NGO	Non-Governmental Organization
NOAA	National Oceanic and Atmospheric Administration
NOC	National Ocean Council

NEPA	National Environmental Policy Act
OCSLA	Outer Continental Shelf Lands Act
OCS	Outer Continental Shelf
OECD	Organisation for Economic Co-operation and Development
ORRAP	Ocean Research and Resources Advisory Panel
OSPAR	Convention on the Protection of the Marine Environment of the North-East Atlantic
PSC	Port State Control
REIO	Regional Economic Integration Organizations
RFMO	Regional Fisheries Management Organization
SECT	Ship Efficiency Trading Scheme
SOLAS	International Convention for the Safety of Life at Sea
TABD	Transatlantic Business Dialogue
TACD	Transatlantic Consumer Dialogue
TAC	Total Allowable Catch
TAED	Transatlantic Environmental Dialogue
TEU	Treat on the European Union
TFEU	Treaty on the Functioning of the European Union
TLD	Transatlantic Legislators Dialogue
UK	United Kingdom
UN/UNGA	United Nations/United Nations General Assembly
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNFSA	United Nations Fish Stocks Agreement
UNICPOLOS	United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea
US	United States
USACE	US Army Corps of Engineers
USCG	US Coast Guard

USCOP	US Commission on Ocean Policy
USGS	United States Geological Survey
WGC	West Greenland Commission
WTO	World Trade Organization

I Introduction

In the face of increased impacts of climate change and global demand for marine resources, the European Union (EU) and the United States (US) have a common interest in conserving marine resources while sustainably developing the maritime economy.¹ At the same time, the EU and the US face challenges in developing an integrated maritime governance framework, which could help foster these goals. Key obstacles stem from a reliance on sector-based governance approaches, as well as inherent complexity in managing a growing number of activities across different levels of government. Enhanced cooperation between the EU and US in developing joint approaches, exchanging best practices and identifying opportunities to strengthen collaboration could lead to improvements in ocean governance. Opportunities exist for increased coordination in international venues, notably the UN fora, such as the United Nations Convention on the Law of the Sea (UNCLOS) and its associated processes, to address common concerns, such as preventing illegal, unreported, and unregulated (IUU) fishing and protecting biodiversity in the high seas.

In response to the need to improve transatlantic cooperation in maritime governance, the EU funded an 18-month dialogue that brings together experts from the EU and US to develop a set of recommendations. This report was prepared to support this dialogue, and presents and compares EU and US approaches to ocean and coastal management. It provides an overview of EU and US governance structures, ocean policies, and decision-making processes as well as compares efforts to implement integrated approaches in maritime governance. This report is complemented by a detailed assessment of opportunities for enhanced transatlantic collaboration. A third report lays out policy recommendations for improved transatlantic cooperation in maritime governance based on the recommendations selected by the working groups throughout their discussions over the course of the CALAMAR project. All project reports are available on the project website at the following link: <http://www.calamar-dialogue.org/>.

Chapters 2 and 3 focus on current EU and US ocean and coastal policy, respectively, and review the governance and legal frameworks of each system. Economic and geopolitical interests are examined within the context of the maritime governance, and current approaches and activities in integrated ocean management are summarized. Each chapter concludes with a brief overview of the roles that the EU and US play in international maritime organizations and platforms for cooperation. Chapter 4 presents a comparison of EU and US ocean and coastal policy, focusing on emerging issue areas. The final chapter provides an overview of recent discussions in international fora related to maritime governance and identifies EU and US positions within these fora. Preliminary findings on key opportunities and challenges for transatlantic cooperation are presented, followed by a short summary of the expectations of the CALAMAR dialogue.

¹ Use of the term *maritime* as applied by the EU, e.g. in the Integrated Maritime Policy, carries a different meaning than in US policy documents. In the US, the term *maritime* is usually reserved for economic activities like shipping, navigation, or the use of marine resources. In the European Integrated Maritime Policy the term *maritime* refers to a holistic ocean management policy that takes into account all human activities as well as the status of the marine environment. The term *marine*, therefore, only refers to the natural marine environment, as well as the coastal zone that interfaces with the marine environment. In this report, the term *maritime* is used referring to the holistic approach and *marine* is used referring to the natural marine environment.

2 European Union ocean and coastal policy

Ocean and coastal management is an active area of EU policy development. This chapter presents the EU's strategic interests and future vision for coastal and ocean management. It describes the overall governance structure of the EU, including the legal division of responsibilities and competences between the EU and its Member States. A summary of existing EU maritime policy is presented, followed by an overview of the EU's role in international fora. The report refers to the European Union as the EU; the term Europe refers to the geographical area rather than the political region.

2.1 EU strategic interests and vision for ocean management

Europe's access to oceans and seas has played a crucial role in its cultural and economic development. Consequently, any changes in the marine environment have potentially severe consequences for the region. Some basic facts illustrate the importance of ocean and coastal waters for the EU:

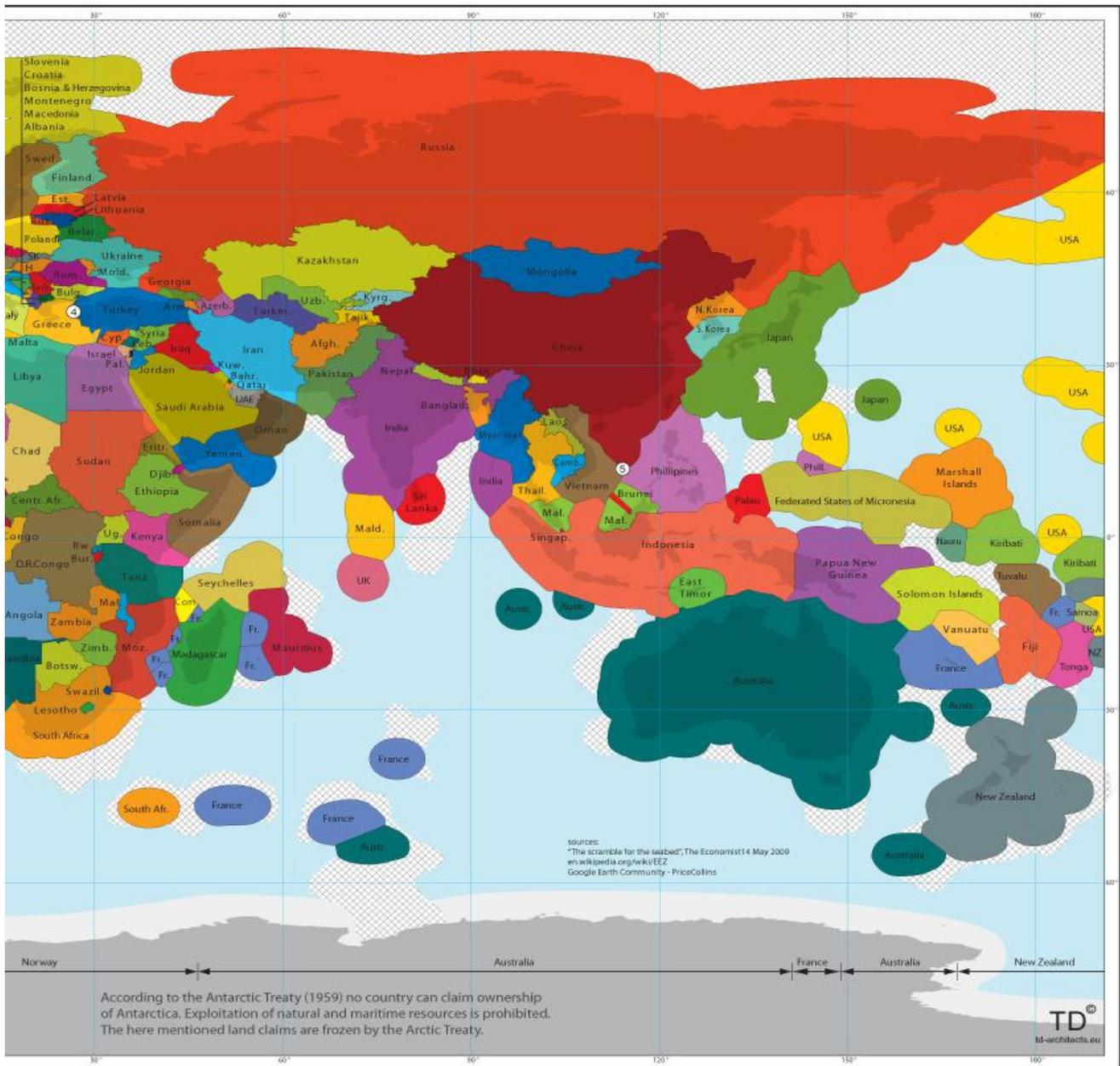
- the coastline of the EU is over three times longer than that of the US and over twice that of Russia;
- almost half the European population lives less than 50km from the sea and no European resident lives more than 700km away from the coast;
- the European continent is surrounded by four seas and two oceans: the Mediterranean, the Baltic, the North and the Black Sea as well as the Atlantic and Arctic oceans;
- finally, the marine surface area under the jurisdiction of the EU Member States is larger than the total land area of the EU.

Several EU Member States have overseas countries and territories in the Caribbean Sea and the Indian and Pacific Oceans². These so-called 'overseas territories' are regarded as a geopolitical asset as they have extensive Exclusive Economic Zones (EEZs) and grant access to fishing areas and potential new marine resources. These territories nearly triple the EEZ of the EU and secure European geopolitical presence and influence throughout all the oceans of the world. At the same time, these territories bring environmental responsibilities and, due to their remoteness, bear significant challenges for administration as well as social and economic development.

Figure 1, below, presents a global overview of the EEZs across the globe. It shows that the EEZs of EU Member States extend globally, including a "Pacific Europe", where the extent of the Pacific Ocean waters under its jurisdiction exceeds the waters that surround the

² The following four Member States have overseas countries and territories linked to them: Denmark (Greenland and the Faroe Islands), France (Mayotte; New Caledonia; French Polynesia; Saint Pierre and Miquelon; French Southern Territories; Wallis and Futuna), the Netherlands (Aruba; Netherlands Antilles;) and the United Kingdom (Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Montserrat; Pitcairn Islands; South Georgian and South Sandwich Islands; Saint Helena; Turks and Caicos Islands).

Figure I: The global Exclusive Economic Zones (EEZ).



Source: © Theo Deutinger (http://td-architects.eu/admin/uploads/files/0a206695df114a069545b19791516aa2.090811_EEZ.jpg)

The ocean is of considerable, but frequently underestimated, economic importance for Europe. Almost 90 percent of EU's external trade and over 40 percent of its internal trade are transported by sea, and 40 percent of the world's merchant fleet is owned by European shipping companies. The intensity and scope of its maritime activities is expanding due to advances in technology and increased demand. In recent years, the EU has clearly identified that it is "at a crossroads in our relationship with the ocean".⁴ Simultaneously, the last several decades have witnessed a growing recognition of the limitations of sector-based maritime policies, owing to the strong interlinkages of almost all matters related to the marine environment.

2.2 Governance framework in the EU

The EU lacks the sovereignty of a single state but is more powerful than a loose grouping of neighboring countries. It is well-defined as a confederation of countries connected through an economic and political partnership. The 27 Member States voluntarily entrust some of their sovereignty to a set of common institutions that govern their shared interests.⁵

Despite the Member States' decision to share certain aspects of power, unlike the US, it cannot act unilaterally; it does not have a common military, tax, postal or education system shared by its members; nor does it seek to replace the individual countries within the confederation. Each Member State retains complete sovereignty over its citizens and territories unless it explicitly relinquishes this power to the EU (i.e. principle of conferred powers).⁶ Where this power is conferred to the EU, actions are carried out by a general system of government that coexists with Member States' own governance regimes, varying according to area and capacities.

The Treaty of Lisbon, adopted in 2009, amends the Treaty on European Union (TEU; also known as the Maastricht Treaty) and the Treaty establishing the European Community (TEC; also known as the Treaty of Rome, renamed the Treaty on the Functioning of the European Union (TFEU)). The Treaty of Lisbon broadens the role of the European Parliament by establishing the co-decision procedure as standard or ordinary legislative procedure.⁷ Since the Treaty of Lisbon has come into force, measures derived from EU competence for environment – in general⁸ – require a co-decision from the European Parliament and the Council.⁹ In addition, there are changes related to EU participation in international maritime organizations, which are discussed below in Section 2.4.4.

⁴ COM (2007) 575 final.

⁵ The EU consists of 27 Member States: Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

⁶ McCormick, 2005.

⁷ Read more about EU legislative procedures at:

<http://www.europarl.europa.eu/parliament/expert/staticDisplay.do?language=EN&id=55> and http://europa.eu/institutions/decision_making/index_en.htm. [Accessed September 24, 2010]

⁸ TFEU. Art. 192.

⁹ The Lisbon Treaty consists of a number of amendments to the existing Treaties (The Euratom Treaty remains a separate Treaty modified by a Protocol n° 12 amending the Treaty establishing the European Atomic Energy Community and annexed to the Treaty of Lisbon.) while keeping the same structure. It maintains the difference between the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), previously named Treaty establishing the European Community (TEC). The revised TEU (TEU-L) continues to include Common Foreign and Security Policy and gives the legal personality to the Union which should enhance the coherence of the EU's external relations. The TFEU sets out organizational and functional details of the EU as for the (i) internal market, (ii) competition policy, (iii) transport, (iv)

2.2.1 EU competences

The EU and Member States have both shared and exclusive competences. This balance aims to ensure the greatest autonomy for the Member States. The EU can only act where Member States do not have the capacity to act alone or where action at the EU level is deemed to be more effective (i.e. principle of subsidiarity). In addition, the EU must always take the route of least intervention. In other words, the action should be limited to the minimum needed to achieve the objectives of a treaty, thus ensuring the greatest level of freedom for Member States and individuals (i.e. principle of proportionality).

It is important to bear in mind that the EU is a voluntary union and as such, is only able to take action in policy areas that have been explicitly mentioned in treaties agreed on by all Member States (i.e. principle of conferred powers). Generally speaking, where there is no explicit mention in a treaty, the area remains in the sole domain of the Member States.¹⁰ The competences of the EU that are explicitly mentioned in the treaties include: exclusive; shared; and supporting, coordinating and complementary competences.

In the majority of cases, the powers that are conferred to the EU are those that are known as shared competences, for example, shipping. In these cases, both the EU and the Member State may legislate, with the latter acting where the EU does not. There are also areas in which the EU has exclusive competency and is able to act independently of Member States, such as in the conservation of marine biological resources under the Common Fisheries Policy.¹¹

This division of competences may cause friction between Member States and the EU. For example, some Member States want to maintain commercial fishing in areas where the EU has restricted fishing rights due to declining fish stocks.

2.2.2 Decision making and power balance

It is important to note that despite the high level of cooperation and integration that has occurred over the past 60 years of the EU, delegation of powers to European institutions is perceived in different ways, depending on the Member State in question and its national system of governance. For example, the European Parliament is usually run by a coalition of political parties. While this method is not dissimilar to the German federal system of government, it is almost unprecedented in the United Kingdom (UK).¹² This may lead to Member States such as the UK arguing that debates are settled based on the lowest common denominator.

employment and social policy, (v) free movement of goods, of persons, services and capital, or (vi) economic and monetary policy, and includes now the former third pillar (justice and home affairs).

¹⁰ In addition to its explicit competences, the EU also has implied powers as to where the explicit competences cannot be properly executed without addressing adjoining matters. For example, the EU is entitled to sign international treaties with third parties where the Member States have exclusively conferred powers upon the Union.

¹¹ In addition to marine conservation, the exclusive competencies of the EU are: (a) customs union; (b) the establishing of the competition rules necessary for the functioning of the internal market; (c) monetary policy for the Member States whose currency is the euro; (d) the conservation of marine biological resources under the common fisheries policy; (e) common commercial policy. Consolidated Version Of The Treaty On The Functioning Of The European Union, Part 1, Article 3 (2010).

¹² Pinder. 2001.

In order to push actions such as the IMP forward, the process is dependent on cooperation from Member States and relies on national transposition processes. Box 1 presents an overview of EU efforts to involve stakeholders in the decision making process for maritime governance.

Box 1: Stakeholder participation in EU maritime governance

Stakeholder involvement in EU governance has grown in significance, especially during the last decade of expansion from 15 to 27 Member States. It has become necessary to ensure that the increase in the number of citizens is not matched by increased alienation from governance processes. To address this, the Commission has established a set of general principles and minimum standards for the consultation of interested parties and has a number of ways in which it promotes participation and stakeholder involvement.

On an official level, there are a number of advisory bodies that feed into the governance of the EU, including the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR). In an effort to increase the transparency and coherence of its activities, the EU consults with a number of informal groups and platforms to ensure that other interest groups are also involved in the governance process.

In the case of the IMP, stakeholder participation has been a top priority. The MSFD, for example, was prepared with the help of a two-year extensive stakeholder consultation process aimed at capturing experience and best practices as well as increasing transparency. The Commission received a strong stakeholder response to this consultation process, especially from the Conference of Peripheral Maritime Regions (CPMR), which brings together some 160 European regions, and the Maritime Industries Forum (MIF), which currently represents 25 maritime trade associations, the industry-focused European Network of Maritime Clusters, and major environmental NGOs.

The EU has also supported the process of the self-organized Venice Platform, an all-embracing Maritime Stakeholder Platform. The purpose of this platform is to contribute to the implementation of the EU Integrated Maritime Policy by stimulating dialogue among different maritime stakeholders and between them and public authorities. The steering committee of the Venice Platform, the so-called Group of 10, consists of five different interest groups: maritime industries, environmental, science, public authorities (regional level), and recreational users of the sea. In addition, the Group of 10 independently works to set up lines of joint action, such as workshops at the annual European Maritime Day stakeholder conference, and seeks to coordinate with the European Parliament Seas and Coastal Affairs Intergroup and DG MARE.

Stakeholder participation in the development of EU maritime policy is generally seen as a valuable instrument to exchange information, best practices, learn from local experiences, avoid unintended and contradictory impacts on other maritime goals in the overall context of sustainable development, and achieve acceptance of the rules by those to whom they apply. Nevertheless, bringing together stakeholder voices from 27 different countries and attempting to give each an opportunity to shape the governance process is difficult.

2.2.3 EU legislative institutions

The legislative institutions of the EU form a triangle consisting of the European Commission, the European Parliament, and the Council of the European Union.

The **European Commission** is the administrative wing of the EU and works to protect the interests of the EU as a whole. The Commission is responsible for proposing and implementing legislation and is divided into Directorate Generals (DGs), which are led by Commissioners and act in a similar way to civil service departments, e.g., Fisheries and

Maritime Affairs (DG MARE); Environment (DG ENV); Mobility and Transport (DG MOVE); and External Relations (DG RELEX).

Following a legislative proposal from the Commission, the other two institutions in the legislative triangle debate and vote on whether to adopt new legislation.

The **European Parliament** consists of Members of the European Parliament (MEPs), elected by EU citizens based on a national allocation in proportion with each Member State's population.¹³ The Parliament also has working groups for specific issues, such as the European Parliament Seas and Coastal Affairs Intergroup.¹⁴

The **Council of the European Union** consists of ministerial representatives from Member State governments chosen by that country for the topic being discussed and commonly referred to as the Council or the Council of Ministers. Leadership is rotated on a 6-month basis among Member States.¹⁵ Following adoption by the Parliament and the Council, the legislation is then carried out by the Commission and the Member States.

The **European Council** is made up of heads of government from EU Member States and convened by its President.¹⁶ The European Council has no legislative power, but decides on the general political direction and priorities of the EU.

Advisory bodies aim to ensure stakeholder participation. These include the Committee of the Regions (CoR) and the European Economic and Social Committee (EESC), which play specialized roles and work in an advisory capacity to inform the triangle of EU Institutions. CoR is an assembly of local and regional governments; for example representatives from the German *Länder* or the French *Départements*, while EESC is a body that represents economic and social interest groups. The key sections within the EESC working on marine and maritime policy issues are NAT (agriculture and environment) and TEN (transport and energy).

The **European Court of Justice** (ECJ) is an independent separate body that is not involved in the day-to-day governance of the EU. The Commission can take Member States to tribunal at the ECJ if they fail to correctly implement any binding instruments of EU law.

A number of **specialized and decentralized EU agencies** exist to support the EU Member States and their citizens, such as the Community Fisheries Control Agency (CFCA), which acts to improve compliance under EU's Common Fisheries Policy (CFP). These agencies were created to allow geographical devolution and cope with new tasks of a legal, technical, and/or scientific nature. At the European level, there are six agencies dealing with matters related to the seas: FRONTEX (the European agency for the management of operational cooperation at the external borders of the Member States), European Defense Agency,

¹³ There are currently 736 MEPs, to be increased to 751 at the next European elections in 2014.

¹⁴ The intergroup convened for the first time on 11 February 2010 and has agreed to focus on a number of issues including marine biodiversity, the creation of a European coastguard, the development of ocean power, coastal conservation, the processing of marine waste, maritime transport, and climate change.

¹⁵ The websites of the current and former presidencies is available at: <http://www.consilium.europa.eu/showPage.aspx?id=695&lang=en>. [Accessed September 24, 2010]

¹⁶ Under the Lisbon Treaty, the President of the European Council is elected for a two-and-a-half year term, with the possibility of one renewal of term.

European Space Agency, European Maritime Safety Agency,¹⁷ Community Fisheries Control Agency, and the European Environment Agency.¹⁸

Figure 2 provides a brief outline of the various European Commission services and departments with key responsibilities related to Maritime Affairs. It also outlines the nature of their responsibilities. This list is intended to provide a general overview based on the involvement of the DGs within the Maritime Interservice Group, which serves as a coordinating mechanism for the IMP. It is not a comprehensive list, but rather identifies key actors from the European Commission involved in maritime governance.

¹⁷ The European Maritime Safety Agency (EMSA) was created in 2002 in order to assist the European Commission and Member States to address maritime safety, maritime security and prevention from vessel-source pollution. Its main contributions consist of insuring that EU law related to maritime safety is properly applied in particular in connection with the Port State Control, and promoting cooperation between national authorities. The Agency is also in charge of a system used to monitor ships transporting dangerous cargoes (SafeSeaNet) and it has been nominated to standardize potential response to accidents from Member States. This assignment has been developed in order to help Member States to combat marine pollution thanks to specially chartered oil-recovery ships and a dedicated satellite monitoring system (CleanSeaNet). Since 2006, the EMSA has been located in Lisbon (Portugal). See also: Regulation 1406/2002/EC of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency.

¹⁸ A complete list of agencies is available at: http://europa.eu/agencies/index_en.htm. [Accessed September 24, 2010]

Figure 2: Overview of key European Commission departments and services involved in Maritime Affairs

Services with key activities specific to Maritime Affairs				
Joint Research Council	Environment monitoring			
DG Development	Sustainable management of natural resources			
DG Employment	Social dialogue, social rights, working conditions, adaptation to change			
DG Justice, Freedom and Security	Border management and maritime surveillance			
DG Research	Agriculture, forestry, fisheries and aquaculture	Maritime transport, research, waterborne tech, research strategy	Management of natural resources	
DG Enterprise and Industry	(Maritime) cluster policy and lead markets	Maritime industries, shipbuilding and Leadership 2015, MIF	Tourism	
DG External Relations	Maritime surveillance	Norway	Coordination and analysis	Arctic
DG Mobility and Transport	State aid to maritime transport	Maritime Transport Policy, Regulatory Questions, Maritime Safety	Maritime Transport & Ports Policy, Maritime Security	
DG Energy	Promotion of renewable energies	Energy policy/Maritime policy, ensuring a better fit		
DG Climate Action	Emissions from ships			
DG Environment	Natura 2000	Framework directive Protection of Water and Marine Environment, urban wastewater, Integrated coastal zone management	LIFE Programme	Ship dismantling
DG Regional Policy	Thematic innovation, coordination			
DG Eurostat	Statistical information technologies			
DG Education and Culture	Cultural policy and intercultural dialogue			
DG Trade	Transport services	Trade and sustainable development		
DG Competition	State aid to shipbuilding	Competition in maritime transport		
Secretariat General	Strategic objective, solidarity			
DG Maritime Affairs and Fisheries	Implement maritime and fisheries policy			

Source: Ecologic Institute 2010, adapted from information provided by the European Commission.

2.2.4 Legislative instruments

The EU has five different legislative instruments: *regulations*; *directives*; *decisions*; and the non-binding *recommendations* and *opinions*. The two most powerful mechanisms are regulations and directives, as they are the legal instruments that most closely resemble national laws in the Member States. In areas where the EU has exclusive competence, legislative acts are more likely to be addressed through the use of regulations. A regulation is immediately binding and applicable in all Member States and has primacy over national law – an effect of the conferral of powers. Primacy over national law means that all opposing prior and future national legislative acts are no longer applicable.¹⁹ An example of a regulation in the maritime context is the Common Fisheries Policy basic regulation.²⁰ The regulation addresses, among other things, adjustment of fishing capacity, reference levels for fishing fleets, and allocation of fishing opportunities. Since it is a regulation, lower EU catch quotas for Cod in the North Sea overrule a higher Total Allowable Catch (TAC) in Member States.

In areas of shared competence, such as the environment, legislation is more likely to be in the form of a directive, such as the MSFD or the Water Framework Directive.²¹ A directive is binding with respect to achievement of its goal. In contrast to a regulation, it leaves the choice of form and method to the national authorities. However, a directive does require at least one national act of implementation (such as the German Federal Water Act implementing the Water Framework Directive) to be created within two years of the directive's entry into force.²²

Framework Directives are often adopted on environmental topics, such as, the Air Quality Framework Directive of 1996, the Water Framework Directive of 2000, the Waste Framework Directives of 2006 and 2008 and the MSFD of 2008.²³ The addition of the term framework has no legal implications; it merely indicates a broader spectrum of implementation²⁴ with less specific measures than normal directives, which have had an increasing tendency toward setting binding standards.

2.2.5 Legislative challenges

EU legislation is sometimes affected by debate between the European Commission and the Member States as to whether the EU has been conferred powers in a particular area, particularly where there is overlap between areas of competence. One example is maritime spatial planning (MSP). The Communication on the *Roadmap for Maritime Spatial Planning: Achieving common principles in the EU* was presented by the Commission in November 2008. It forms part of the Commission's Integrated Maritime Policy launched in October 2007 and seeks to encourage a broad debate on how a common approach to MSP can be achieved in the EU. However, until now, it has only been possible to address this topic

¹⁹ The primacy also applies for rulings of the Court of Justice of the EU over the Member States' supreme courts, but only regarding the interpretation of EU law.

²⁰ European Commission, 2002a.

²¹ The Water Framework Directive was adopted in 2000. It expands the scope of water protection to all European waters (inland as well up to 1nm at the coastline) and sets clear objectives that a "good status" must be achieved for all European waters by 2015 and water use has to be sustainable throughout Europe. See: Water Framework Directive 2000/60/EC.

²² If the provisions of a directive are precise, clear and unconditional, and do not call for additional measures, they can be directly transferred to the Member States. However, these must still be adopted into national law.

²³ European Commission, 2006a.

²⁴ Calliess & Ruffert, 2007. p. 2135.

through informal communications due to the fact that spatial planning is not an explicit competence of the EU.²⁵ However, the Treaty of Lisbon's provision to add "territorial cohesion" to the list of EU shared competences is intended to improve coordination.

The Treaty on the Functioning of the European Union (TFEU) states that environmental protection requirements must be integrated into the definition and implementation of the EU's policies and activities, in particular with a view to promoting sustainable development (i.e. integration principle).²⁶ Integrating environmental consideration is relevant for ocean and coastal policy, since it includes policies related to fisheries, shipping, tourism, conservation, and other activities. However, only some of these matters are explicitly mentioned in the TFEU: the conservation of marine biological resources under the Common Fisheries Policy is an exclusive EU competence; territorial cohesion; fisheries; environment; transport and trans-European networks are shared competences between the EU and its Member States. Regarding industry and tourism, the EU can only carry out actions to "support, coordinate or supplement" the Member States. Irrespective of its competences, the EU must, in general, find a legal basis for its actions.²⁷

However, the principle of conferred powers interferes with the integration principle since the EU must base legislative acts on *one* specific competence, and must, therefore, approach ocean and coastal policy in a way that is sectorally-restricted. The MSFD provides a good example. Although intended to follow the principle of integration, is based on the competence for environment, which is a shared competence. Therefore, the Commission sets a framework in which the details must be decided by the Member States.

2.3 Integrated approaches in the EU and its Member States

In the past, ocean and coastal issues at the European level have been addressed on a sectoral basis. Generally, protection of the marine environment has not been a top priority, which generates concern about the sustainability of economic activities that depend on marine resources. The EU has acknowledged the need for integrated approaches and launched a series of initiatives to examine how sectoral policies, like fisheries, transport, environment, energy, industry or research policy, could be combined to ensure the viability of ocean and coastal sectors and coastal regions. Actually achieving this goal, however, remains a challenge due to conflicting stakeholder interests, divergent actions in different policy areas, and the structural challenges common to multi-level governance systems. In this context, the EU is implementing a new system of integrated and holistic maritime policies, most notably through the wide-ranging Integrated Maritime Policy (IMP), and its associated environmental pillar, the Marine Strategy Framework Directive (MSFD), Integrated Coastal Zone Management (ICZM) and development of marine spatial planning (MSP).

²⁵ Though TFEU Art. 192 par. 2 b) mentions the Council has to adopt measures affecting "town and country planning" in a special procedure, which is closely related.

²⁶ TFEU. Art. 11.

²⁷ TFEU Art. 191.

2.3.1 Integrated Maritime Policy (IMP)

The Integrated Maritime Policy (IMP)²⁸ is at the heart of efforts to overcome existing sectoral fragmentation. Adopted in 2007 by the European Commission and European Council, the Blue Book on a Future Integrated Maritime Policy (IMP) aims to improve coordination of marine policies among EU Member States to overcome the compartmentalization and lack of coherence that occur across sector-based policies. Its objective is to produce a more integrated and holistic approach to governing the EU marine waters that will “enhance Europe's capacity to face the challenges of globalization and competitiveness, climate change, degradation of the marine environment, maritime safety and security, and energy security and sustainability”.²⁹ As it encompasses a broad spectrum of policy areas, it has been called “the most comprehensive policy ever adopted by the EU”.³⁰

The IMP has a dual focus on economic development while maintaining environmental sustainability, with its rationale anchored in the Lisbon agenda for jobs and growth, and the Gothenburg Agenda for Sustainability. Additionally, implementation of the IMP aims to contribute to the EU achieving the economic and social targets set out in the 2010 EU economic reform package, “Europe 2020”.³¹ The economic reform outlined in Europe 2020 is based upon three “mutually reinforcing principles”:

- 1) developing an economy based on knowledge and innovation;
- 2) sustainable growth: promoting a more resource efficient, greener and more competitive economy; and
- 3) fostering a high-employment economy delivering social and territorial cohesion.

To this end, many of the focus areas of the IMP support the aims of Europe 2020, such as maximizing the sustainable use of the oceans and contributing to knowledge and information. Efforts to protect the functioning of marine ecosystems are based both on a concern for environmental conservation, as well as concern that such ecosystems continue to have the capacity to provide goods and services of high economic value for the EU.

The EU will also further develop the external dimension of the IMP, as detailed in the Communication “Developing the international dimension of the Integrated Maritime Policy of the European Union”, as many of the most urgent challenges demanding an integrated approach must be addressed through international cooperation.³² The Commission seeks to foster dialogue with countries sharing a sea basin with the EU, as well as strengthen its role in international maritime affairs in matters such as protection of marine biodiversity, addressing climate change, increasing understanding of the sea, or addressing piracy and destructive fishing practices. The EU also seeks to enhance its participation within multilateral fora, encourage ratification of UNCLOS, and develop high-level dialogue on maritime issues with key partners such as Canada, Norway, Japan, US, Brazil, India, Russia, and China.

The Blue Book provides initial proposals for a programme of work, highlighting the following actions as being particularly important:

²⁸ COM (2007) 575 final-

²⁹ COM (2007) 575 final.

³⁰ Koivurova, 2009, p. 174.

³¹ COM (2010) 2020.

³² COM (2009) 536 final

- A European Maritime Transport Space without barriers
- A European Strategy for Marine Research
- National integrated maritime policies to be developed by Member States
- A European network for maritime surveillance
- A Roadmap towards maritime spatial planning by Member States
- A Strategy to mitigate the effects of Climate Change on coastal regions
- Reduction of CO2 emissions and pollution by shipping
- Elimination of pirate fishing and destructive high seas bottom trawling
- A European network of maritime clusters
- A review of EU labour law exemptions for the shipping and fishing sectors

Accompanying the release of the Blue Book was an ambitious Action Plan³³ that provided a more in depth series of proposals for a programme of work. The Action Plan stipulates:

“The new integrated maritime policy will truly encompass all aspects of the oceans and seas in a holistic, integrated approach: we will no longer look only at compartmentalised maritime activities, but we will tackle all economic and sustainable development aspects of the oceans and seas, including the marine environment, in an overarching fashion.”³⁴

The Action Plan contains 65 proposals for specific actions to further the integration of European maritime policies, with initiatives covering the spectrum of maritime issue areas from surveillance activities, ports policy and maritime transport to maritime spatial planning and integrated coastal zone management and sustainable maritime tourism to implementation of an ecosystem-based approach to European fisheries.

In November 2009, the Commission presented a progress report on the achievements of the IMP over the past two years. The Commission concluded with confidence that the IMP would enhance the optimal development of all sea-related activities in a sustainable manner. With regard to the 2007 Action Plan, it noted that 56 of 65 actions had been launched or completed (mostly through Commission or Council acts). For the remaining 9 actions a number of initiatives had been undertaken, only without formally adopted documents. It identified a large number of areas where progress had been made towards implementing integrated maritime policies with regards to maritime governance structures, stakeholder involvement and cross-sector tools.

The progress report also looks to the future and the Commission has established strategic guidelines to further promote cross-sectoral thinking, including:

- The enhancement of integrated maritime governance, including the establishment of effective structures at all decision making levels and the enshrinement of stakeholder involvement.
- Cross-cutting tools like MSP, integrated maritime surveillance, comprehensive marine knowledge and data systems as well as a European Marine and Maritime Research Strategy.
- Defining the boundaries of sustainability for human activities impacting the marine environment through the use of the MSFD as a platform for developing maritime activities.

³³ COM (2007) SEC 1278

³⁴ COM (2007) SEC 1278

- Sea-basin strategies to tailor policy tools to the specific needs of the geographical, economical, and political context of each region. Specific regional initiatives are currently in place in the Arctic, Mediterranean, and Baltic Sea. Strategies for the Atlantic and North Sea are currently in development. The Commission plans to adopt a strategy on the Atlantic by June 2011.
- Development of an international dimension of the IMP to strengthen the EU's position in multilateral and bilateral relations. The EU has identified a number of areas in need of international solutions, such as the protection of marine biodiversity, including biodiversity on the high seas, climate change, maritime safety and security, working conditions in the maritime sector, and maritime research.
- Focus on sustainable economic growth, employment, and innovation through, for example, strengthened links between energy and climate change policies and the IMP or the promotion of maritime clusters.

Although cross-cutting tools such as marine knowledge and data systems are technical in nature, their political relevance should not be underestimated. Creating a common set of data not only informs the policy process from a neutral position, it can also be seen as an important step toward overcoming cross-sectoral thinking as policy communities can use a shared frame of reference that creates common ground and facilitates mutual understanding.

In September 2010, the European Commission put forward a proposal for continued financial support of €50 million for the IMP for the period 2011 to 2013.³⁵ The proposal is being discussed at the European Council and Parliament as part of the co-decision procedure.

2.3.2 European Marine Strategy Framework Directive (MSFD)

One of the most significant instruments implemented by the EU relevant to the IMP is the Marine Strategy Framework Directive (MSFD). The MSFD, adopted by the European Parliament and European Council in 2008, is a binding legal instrument designed to establish a policy framework within which EU Member States will maintain or achieve “good environmental status” of their marine environment by 2020. The creation of the MSFD was led by DG Environment as part of the European Marine Strategy called for in the 6th Environmental Action Programme.

The MSFD states that marine policies will use an ecosystem-based approach to the management of human activities, with Member States formulating their own national marine strategies with regard to distinct geographic regions, such as the Baltic Sea. It is important to note that the MSFD is not a harmonizing measure intended to produce a uniform set of standards across all Member States with regards to what constitutes good environmental status. Rather, Member States are required to establish their own marine strategies for their own marine waters. The Member States determine what constitutes good environmental status, as well as the optimal methods for achieving that target. The MSFD does include a list of qualitative descriptors for determining good environmental status. Furthermore, on September 1, 2010, the European Commission adopted a far more detailed list of criteria and methodological standards for determining the good environmental status of marine waters.

The MSFD³⁶ requires Member States to develop a marine strategy to achieve good

³⁵ COM (2010) 494 final.

environmental status in their marine waters by 2020 in the following manner:

- Member States will enact laws and regulations to ensure the implementation of the MSFD by 15 July 2010 (Article 26.1)
- Marine strategies will apply an ecosystem-based approach to the management of human activities (Article 1.3)
- Marine strategies will be developed by Member States with regard to defined marine regions (e.g., Baltic Sea, Northeast Atlantic) and subregions (e.g., the Celtic Sea, Greater North Sea, Iberian Coast, Bay of Biscay and the Macaronesian region within the Northeast Atlantic region) (Articles 4.1 and 4.2).
 - Member States sharing a region or subregion will cooperate and coordinate in order to achieve the measures required by the MSFD, and Member States will, where appropriate, use existing regional agreements, such as the Regional Sea Conventions (Articles 5.1 & 6).
- Member States will take the following steps to ensure adequate monitoring and knowledge about environmental status of marine waters (Article 5.2):
 - An initial assessment of the environmental status of their marine waters and the impact of human activities by 15 July 2012;
 - Establishment of targets and indicators by 15 July 2012 for determining and establishing good environmental status;
 - Establishment and implementation by 15 July 2014 of monitoring programme for ongoing assessment of environmental status and updating of targets and indicators;
- Member States will develop a programme of measures by 2015 designed to achieve or maintain good environmental status by 2020, with this programme entering into operation by 2016 at the latest (Article 5.2).
- The Commission will publish the following reports on the MSFD:
 - An evaluation report on the implementation of the MSFD within 2 years of receiving all programmes of measures (and no later than 2019)
 - An evaluation report by 15 July 2012 on the contribution of the MSFD to existing obligations and initiatives of the EU and Member States at the Community or international level (in terms of environmental protection for marine waters).

The text of the MSFD includes a list of descriptors for measuring good environmental status, as well as an indicative list of marine pressures, characteristics and impacts, and an indicative list of characteristics to be taken into account for setting environmental targets.

Member States' strategies should be developed in close collaboration with maritime stakeholders that take into account the European vision for the oceans and seas and are to be guided by the principles of subsidiarity, competitiveness and economic development, the

³⁶ Marine Strategy Framework Directive. 2008/56/EC.

ecosystem approach and the principle of stakeholder participation.³⁷

The ultimate aim of the MSFD's good environmental status objective is maintaining biodiversity and providing diverse and dynamic oceans and seas that are clean, healthy, and productive. This desired status objective takes into account several natural factors, such as biological, geological, chemical, and climatic factors, as well as those resulting from human activities. It does not seek the unrealistic goal of a non-impacted, pristine state of the environment but rather seeks to find a balance between environmental protection or restoration and the use of marine resources and adverse effects of human activities.

Like the IMP, the MSFD emphasizes cooperation within marine regions. Transboundary effects have to be taken into account, which means that the Member States are required to cooperate within the EU as well as with non-EU countries bordering the EU marine waters. The Northeast Atlantic³⁸ is one of the four regions mentioned in the Directive.³⁹

The MSFD refers to the Water Framework Directive⁴⁰ by stating that coastal waters, including their seabed and subsoil, should be treated as part of the marine environment as long as they are not already addressed through the Water Framework Directive. Although the MSFD is supposed to follow an integrated approach and calls for using established measures and cooperation structures under the Water Framework Directive, it does not include any provision ensuring consistency with the definition of good status as do provisions of River Basin Managements plans contained in the Water Framework Directive.

2.3.3 Relationship between IMP and MSFD

The link between the IMP and MSFD has undergone a slow but measurable change in recent years, with a trend towards policy convergence. Perhaps as a result of its legally binding nature – particularly compared to the rest of the IMP – the role of the MSFD has expanded over the last two years.

During its creation, the MSFD was envisioned to be the environmental pillar of the IMP, a quality that is solidified within the introductory paragraphs of the text of the Directive, where it states: “this Directive should, inter alia, promote the integration of environmental considerations into all relevant policy areas and deliver the environmental pillar of the future maritime policy for the European Union.”⁴¹ Since its adoption in 2008, however, the role of the MSFD with regards to the IMP has been expanded upon. Reference to the MSFD as the environmental pillar of the IMP has been constant, but there has been an increasing implication that the MSFD should be integrated into all policy sectors as a cross-cutting tool. To this end, the MSFD is being increasingly referred to as the platform through which IMP activities will developed.

³⁷ Important stepping stones in this direction are the Dutch ‘National Water plan’, the French ‘Grenelle de la Mer’, the German ‘Entwicklungsplan Meer’, the Swedish bill on a coherent maritime policy, the Polish interdepartmental maritime policy plan and the UK Marine Bill.

³⁸ Member States may implement the Directive by reference to subdivision provided their compatibility with following sub-regions of the Northeast Atlantic Ocean: (i) the Greater North Sea, including the Kattegat, and the English Channel; (ii) the Celtic Seas; (iii) the Bay of Biscay and the Iberian Coast; (iv) in the Atlantic Ocean, the Macronesian biogeographic, region, being the waters surrounding the Azores, Madeira and the Canary Islands. Marine Strategy Framework Directive 2008/56/EC Art. 4, para. 2.

³⁹ The other regions being the Baltic Sea, the Mediterranean Sea and the Black Sea.

⁴⁰ Water Framework Directive 2000/60/EC.

⁴¹ Official Journal of the European Union, 2008/56/EC, Preamble Paragraph 3.

This shift is evident in a number of recent documents, such as the 2009 progress report from the European Commission on the implementation of the IMP highlighted six strategic orientations through which to best implement the IMP.⁴² One of these was the ‘definition of the boundaries of sustainability’, wherein the use of the MSFD is expected to provide a platform for the development of all maritime activities, including their cumulative impacts. Similarly, a recent resolution by the European Parliament on the IMP noted that “the Marine Strategy Framework Directive forms the environmental pillar of the Integrated Maritime Policy (IMP)” and that “this approach should be better linked with the other sectoral policies”.⁴³

Perhaps the clearest indication of this shift is visible in the conclusions of the European Council from 16 November 2009 on the IMP, where the following is stated in Operative Paragraph 3:

*RECALLS that the MSFD has been welcomed by the European Council as the environmental pillar of the IMP; ACKNOWLEDGES the MSFD, with the ecosystem based-approach to the management of human activities as an overarching principle, as a basis on which to develop more successfully all maritime activities within the concepts of sustainability in line with the MSFD, having regard to their cumulative impacts, and STRESSES the need to integrate the sustainable use of marine goods and services by present and future generations into decisionmaking;*⁴⁴

This position was also referenced in a subsequent conclusion of the European Council from 14 June 2010.⁴⁵ Hence, it is apparent that role of MSFD has become more extensive than that articulated in either the 2007 Blue Book on IMP, the 2007 IMP Action Plan or the 2008 MSFD.

2.3.4 Integrated Coastal Zone Management

Integrated Coastal Zone Management (ICZM) is a holistic approach to the sustainable management of coastal areas, including data collection, policy development, implementation, management and monitoring. It is intended to better address the array of interconnected physical, human and biological management problems that exist across both the terrestrial and marine environments, which, according to the European Commission, relate to “a lack of knowledge, inappropriate and uncoordinated laws, a failure to involve stakeholders, and a lack of coordination between the relevant administrative bodies.”⁴⁶

The origins of ICZM implementation in EU policy can be traced back to the early 1990s. In particular, Chapter 17 of Agenda 21, the action plan adopted at the 1992 UN Conference on Environment and Development, called for the integrated management of coastal zones (including exclusive economic zones) as one of the 7 work programmes for the marine environment.⁴⁷ The need for ICZM was also articulated in the 1993 Fifth European Community environment programme, which called for a framework of integrated

⁴² COM (2009) 540 final.

⁴³ COM (2010) 494 final.

⁴⁴ Council of the European Union, 2009.

⁴⁵ Council of the European Union, 2010.

⁴⁶ COM (2000) 547 final.

⁴⁷ UN Department of Economic and Social Affairs, 1992.

management plans for coastal areas on appropriate levels, as well as the development of ICZM pilot projects.⁴⁸

Between 1996 and 1999, the European Commission operated an ICZM Demonstration Programme consisting of 6 thematic studies and 35 pilot projects in coastal zones across Europe.⁴⁹ A European Commission reflection paper on the programme indicated that the studies and projects had confirmed the utility of the ICZM approach, and called for the promulgation of a European Strategy on ICZM.⁵⁰

In 2002, the European Parliament and Council adopted a non-binding Recommendation on ICZM, outlining steps that Member States should take to adopt national ICZM strategies. As guidance, the Commission stressed that ICZM strategies should be based upon the following eight principles⁵¹:

1. A broad geographic and thematic perspective
2. A long-term perspective, incorporating the precautionary principle
3. The use adaptive management over a gradual process, which implies the need for a sound scientific basis
4. The recognition of local specificity and the diversity of European coastal zones
5. Working with natural processes and respecting the carrying capacities of ecosystems
6. The involvement of all concerned parties in the management process
7. The support and involvement of relevant administrative bodies at national, regional and local level, and the establishment of appropriate links between these bodies for better coordination
8. The use of a combination of instruments to facilitate coherence between sectoral policy objectives and coherence between planning and management.

In 2006 and 2007, multiple evaluations of the implementation of the ICZM Recommendation by Member States were conducted, upon which basis the European Commission released an evaluation report.⁵² The report noted that while steps were taken between 2000 and 2005 towards the implementation of ICZM among Member States “a mature and well-functioning ICZM involving all relevant levels of governance is still rarely observed”⁵³. The report noted, however, that the implementation of ICZM is a gradual, long-term process, and that the majority of Member States had begun the process of implementing national ICZM strategies in response to the 2002 Recommendation.

Given that the policy context for coastal management in the EU has been transformed by the promulgation of the MSFD and IMP, among others, the European Commission has envisioned proposing a follow up to the 2002 recommendation. In 2009, an early reflection report on such a follow up was released, based upon an invitation from DG ENV⁵⁴. It highlighted a number of policy options to be explored in an impact assessment, including a

⁴⁸ Official Journal of the European Communities, 1993.

⁴⁹ European Commission, 2010b.

⁵⁰ European Commission, 1999.

⁵¹ European Commission, 2002c.

⁵² COM (2007) 308 final.

⁵³ COM (2007) 308 final.

⁵⁴ European Commission, 2009g.

revised recommendation, a binding ICZM directive aimed at Member States, or a decision on ICZM that would promote collective actions at the EU level.

ICZM is clearly seen as an important cross-cutting tool within the larger context of the IMP. This is evidenced by its inclusion in the 2007 Action Plan and Blue Paper, which called for the establishment of an exchange of best practices for ICZM. Based on this, in 2009 DG ENV commissioned a three year project entitled OURCOAST, which is intended to produce tools, studies and facilitate the sharing of best practices.⁵⁵

At the same time, however, the precise instruments and approaches of ICZM in the EU context are still evolving, particularly as they relate to the MSFD and IMP. The 2009 Report from the Working Group follow-up to the EU ICZM Recommendation highlighted key areas of the IMP where ICZM could provide added-value, including its unique role in promoting integration across the land-sea boundary, its encouragement of early stage integration and its use of a much smaller spatial scope than other policies and instruments. Additionally, the report also highlighted the potential of increasing coherence between ICZM and the MSFD through the inclusion of the MSFD's criteria for assessing the deliverables of a follow up to the 2002 ICZM recommendation.⁵⁶

2.3.5 Maritime spatial planning in the EU

Maritime spatial planning (MSP) is regarded as one of the key instruments for the EU to respond to the growing competition for limited marine space for uses such as shipping and maritime transport, offshore energy, port development, fisheries and aquaculture, as well as an increased need to deal with their environmental impacts and preserve the health of ecosystems.⁵⁷ MSP can be described as a public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that are usually specified through a political process.⁵⁸ However, it is important to note that views vary on MSP, its scope, and its connection to existing approaches like integrated coastal zone management (ICZM), ecosystem-based management (EBM), or the MSFD.⁵⁹

The geography of the EU consists of relatively small states with shared coastlines and river basins, mirrored by complex legal regimes. Member States might face constraints in implementing MSP imposed by international and/or EU law. The scope of possible constraints varies considerably according to the different policy areas.⁶⁰ For example, while there are no specific rules on tourism under international or EU law that might impact MSP, there is little scope for Member States to regulate commercial fishing outside their territorial zones since the management of fisheries in EU waters is governed by the Common Fisheries Policy. With regard to the high seas, there is virtually no opportunity for Member States to implement MSP schemes. The planning of maritime space will have to rely on cooperation with non-EU countries. This is especially relevant for the Mediterranean, where

⁵⁵ For more on OURCOAST, see: <http://ec.europa.eu/environment/iczm/ourcoast.htm>

⁵⁶ European Commission, 2009g.

⁵⁷ Freestone. et al., 2010.

⁵⁸ Maes, 2008. p. 798.

⁵⁹ Compare Freestone et al. 2010.

⁶⁰ Relevant areas include navigation, fisheries, marine protected areas, pipelines and cables, exploitation of non-living resources, extraction of sand and gravel, dumping, power generation, mariculture, military activities, carbon capture storage, wrecks and other historic features, recreation, and places of refuge.

no EEZs have been established, leaving much of the Mediterranean designated as high seas waters.

Complex governance structures do not necessarily compromise the implementation of MSP. Although the federal governance structure of some Member States could add an additional layer of complexity, evidence suggests that this is not necessarily the case. For example, Germany, with its federal system, has already made considerable progress to extend its traditional spatial planning regime to its marine areas.⁶¹ On another end of the spectrum, the French experience of the *Schémas de Mise en Valeur de la Mer* has been going on for decades while being deeply rooted in the specificities of a recently decentralized State.⁶²

The goals of MSP are not limited to the conservation of marine resources. The Commission also aims to enhance the competitiveness of the EU maritime economy and to promote growth and jobs through MSP. The Commission's Roadmap on Maritime Spatial Planning outlines ten key principles and seeks the development of a common approach among Member States, encouraging the implementation of MSP at both national and EU level.⁶³

There is an ongoing discussion on whether the European Commission is likely to propose a Framework Directive for Maritime Spatial Planning. Member States that are already engaging in MSP may have limited enthusiasm for EU regulations on this topic. The Commission, on the other hand, will be eager to ensure that MSP schemes are adopted for all EU waters. It is important to note, however, that the planning of marine space falls under the competence of Member States, as is stated in the 2008 Commission communication on MSP⁶⁴ and that further action on this subject will not entail a change of competences. Such action would, instead, involve a harmonization of the MSP process.

To explore possible options, the Commission has launched two preparatory actions, one for the Baltic Sea and one for the North Sea/North East Atlantic, aiming at developing cross-border cooperation aspects of MSP. In addition, a study will evaluate the economic benefits of MSP as well as its potential in the Mediterranean Sea.

2.4 EU international cooperation

The EU and its Member States are parties to more than 100 multilateral agreements related to maritime affairs and thereby often cooperate with the US and other nations, especially under the regime of the United Nations (UN). In the UN system alone, there are 15 specialized Agencies (e.g., International Maritime Organization (IMO), Food and Agriculture Organization (FAO)), twelve organizations and programs (e. g. International Court of Justice (ICJ), United Nations Environment Programme (UNEP), seven environmental bodies (e. g. Convention on international Trade in Endangered Species (CITES), Basel Convention), and four joint and coordinating mechanisms (e. g. Aquatic Sciences and Fisheries Abstracts (ASFA)) involved in maritime related activities.

⁶¹ Maes, 2008.

⁶² Trouillet *et al*, 2008, 457-509.

⁶³ The ten principles are: Using MSP according to area and type of activity, Defining objectives to guide MSP, Developing MSP in a transparent manner, Stakeholder participation, Coordination within Member States – Simplifying decision processes, Ensuring the legal effect of national MSP, Cross-border cooperation and consultation, Incorporating monitoring and evaluation in the planning process, Achieving coherence between terrestrial and maritime spatial planning – relation with ICZM, A strong data and knowledge base.

⁶⁴ European Commission, 2008d.

2.4.1 EU representation in international maritime organizations

One element influencing an effective EU policy on international maritime issues is the status of the EU within international maritime organizations. In general, international agreements and conventions have so far been individually signed by the contracting Member States as well as by the EU. There are several reasons for this:

- Member States are the obligated international legal personalities required to ratify the agreements individually according to their national procedures;
- Some international agreements only allow for states to join as full members, with the result that the EU can only function as an observer or participant;
- International agreements will often cover multiple topics, especially with maritime issues, so that the sole representation of the Member States by the EU will fail due to the lack of exclusive competence. Achieving the latter will require coordination between EU and its Member States.

Consequently, the status of the EU varies in different international maritime organizations that do not always follow the internal distribution of competences between the EU and its Member States. The EU is a full member of a number of international maritime organizations, especially in the area of fisheries, and is a contracting party to many international maritime agreements. As a consequence, depending on the international maritime organizations in question, EU representatives may participate as full members, permanent observers, ad-hoc observers, or may not even be accepted as a participating party. This lack of consistency between legal status and the nature of EU competences could sometimes lead to a low transparency of procedures with third countries. However, the concern over ambiguity and uncertainty regarding external treaty-making competence has not prevented non-EU states from signing bilateral or multilateral treaties with the EU and its Member States.

A recent study commissioned by the European Commission DG MARE outlined how the EU and its Member States are represented in international maritime organizations, identified shortcomings concerning the coherence of EU positions in international arenas, and suggested mechanisms to improve the ability of the EU and its Member States to speak with a single voice on the international stage.⁶⁵ Factors that affect the EU coordination process within international maritime organizations include the heterogeneity of interests of Member States, the time available for preparatory coordination among the EU and its Member States, and the improper application of established coordination procedures, including the lack of guarantees that coordination procedures are actually being followed during negotiations.

2.4.2 EU legal status in international organizations

The EU's status at the United Nations General Assembly (UNGA), the FAO and International Commission for the Conservation of Atlantic Tunas (ICCAT) present good examples of the different roles the EU and its Member States have to play and the respective procedures they agreed to follow.

The status of the EU in the UNGA is limited to that of an observer, since these organizations

⁶⁵ Wouters et al., 2009.

do not have a clause concerning the membership of Regional Economic Integration Organizations (REIO) and therefore limit membership to States. The Commission is, therefore, generally limited to speak from its observer seat after all UN Member States. These organizations address topics concerning EU competences, such as sustainable fisheries and oceans and the law of the sea (annual resolutions by the UNGA)⁶⁶, conservation of whale stocks and the orderly development of the whaling industry (International Whaling Commission (IWC))⁶⁷, maritime safety, and prevention of shipping pollution (IMO).⁶⁸

In the FAO, the EU gained its membership retroactively. The FAO's constitution states that "a regional economic integration organization must be one constituted by sovereign States, a majority of which are Member Nations of the Organization, and to which its Member States have transferred competence over a range of matters within the purview of the Organization, including the authority to make decisions binding on its Member States in respect of those matters"⁶⁹, to be eligible for membership. The EU has to clarify its competences by submitting "a declaration of competence specifying the matters in respect of which competence has been transferred to it by its Member States".⁷⁰ This arrangement has the effect that the EU and the Member States have to act jointly within the FAO, even if the internal competences have in practice shifted toward the EU alone. In the special case of the Committee on Fisheries (COFI) of the Fisheries and Aquaculture Department, official representation of Member States in the international forum may be considered redundant.

An interesting counter-example is the ICCAT. Originally, some Member States joined the ICCAT but withdrew from the agreement after the EC was accepted as party.⁷¹ Only France and the UK are still ICCAT parties due to their overseas territories, since EU law does not apply to some of those territories⁷². This is due to the peculiarity that the ICCAT allows for "inter-governmental economic integration organization constituted by States that have transferred to it competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters" to sign and adhere to the Convention⁷⁰ but requests that "EU's Member States of that organization and those that adhere to it in the future shall cease to be parties to the Convention".⁷³ Although the EU is now the main representative in the ICCAT, the Member States still take part in the international negotiations. The EU delegation to ICCAT consists of Commission representatives, EU Member States experts and advisers, as well as a host of industry representatives, making for quite sizeable delegations.⁷⁴

⁶⁶ List of resolutions. Available at: http://www.un.org/Depts/los/general_assembly/general_assembly_resolutions.htm. [Accessed September 24, 2010]

⁶⁷ See: <http://iwcoffice.org/commission/iwcmmain.htm>. The protection of whales does not come under the EU fisheries policy. It is a matter of EU environmental law and therefore subject to shared competence between the EU and its Member States.

⁶⁸ IMO. Available at: <http://www.imo.org/>. [Accessed September 24, 2010]

⁶⁹ FAO Constitution. Art.II par.4.

⁷⁰ FAO Constitution. Art.II par.5.

⁷¹ ICCAT Contracting parties. Available at: <http://www.iccat.int/en/contracting.htm> notes 2 and 3. [Accessed September 24, 2010]

⁷² Overseas Countries and Territories are not part of the EU. On the contrary, the EU law applies fully in Outermost Regions, unless specified otherwise.

⁷³ ICCAT Convention Art.XIV par.6.

⁷⁴ Wouters et. al., 2009.

2.4.3 Coordination of Member States in international maritime organizations

A second challenge for the EU in international negotiations is the coordination of the positions of its Member States. Coordination is mandatory on topics of exclusive competence of the EU, which are presented by the European Commission,⁷⁵ and sensible on topics of shared competences, which is most often presented by the Presidency of the Council.⁷⁶ Regarding exclusive national competences, the Member States will seek to achieve a coordinated position. As long as an agreement touches matters of shared competence or of exclusive Member States' competence, the Member States are represented in the negotiations. For example, in most agreements, budget and finance issues play a role, which fall under Member States competences.

The requirement of coordination of the Member States' positions is not only based upon the respective competences but also upon the internal obligation of the Member States to assist the EU in carrying out tasks as required by the Treaties (i.e. principle of sincere cooperation) and therefore facilitate the achievement of the EU's tasks and refrain from any measure which could jeopardize the attainment of the EU's objectives.⁷⁷ A prominent example led to the recent ruling of the ECJ,⁷⁸ which ruled that Greece had not fulfilled its obligation to cooperate in good faith with the Community institutions by submitting a proposal to the IMO regarding the monitoring of the compliance of ships and port facilities. The Commission had successfully claimed that the Member States no longer had competence to submit national positions to the IMO on matters falling within the exclusive competence of the Community, unless expressly authorized to do so by the Community. The ECJ rejected Greece's reasoning that since Greece became an IMO member before it joined the EU, its obligations toward the IMO and, more specifically, its obligation to participate actively in that international organization as a member are not affected by the provisions of the Treaty.

While it may be difficult to understand why the European countries are represented individually as well as through an EU institution, e.g., the Commission, even more confusion results when the European countries advocate for individual interests without a common voice. Achieving a coordinated position is challenging because single Member States may have dissenting positions due to stronger dependencies on specific resources and uses, e. g. a national economy dependent on fisheries. This means that every negotiation on the international level follows an internal coordination of 27 Member States' positions with varying authority. The success of the coordination depends heavily on the strength of the respective Presidency of the Council and its ability to integrate opposing views. The coordination process itself may also be accomplished by the Committee of Permanent Representatives (COREPER), which is responsible for preparing the work of the Council and to which issues can be referred that have not been agreed upon at the working group level.⁷⁹ The level of dedication of the Presidency to the topic also depends on its own involvement in the topic; for example, a landlocked Member State may be less sensitive to maritime issues.

⁷⁵ TFEU Art.17 par.1.

⁷⁶ Rotating every 6 months before the Treaty of Lisbon, now designed as a 'triple-shared presidency' for the duration of 18 months, although each of the three members shall in turn chair for a six-month period, see Art. 1 of the Declaration on Article 16(9) of the Treaty on European Union concerning the European Council decision on the exercise of the Presidency of the Council. The concept is that old member states will pass their experience to the co-presidency new members.

⁷⁷ TFEU. Art.4 par.3.

⁷⁸ European Court of Justice, 2009.

⁷⁹ TFEU. Art. 240

Time plays a critical role in the coordination process. It is not always easy to assure that difficulties arising during internal coordination will be resolved in a timely manner before the start of a session. That being said, EU coordination meetings are held on-site so that the dynamics of negotiations can be incorporated into the EU position as a method of handling this issue.

2.4.4 The Treaty of Lisbon: consequences for EU international participation

With the Treaty of Lisbon entering into force in December 2009, the foundation was laid for a more efficient, democratic, and coherent representation of the EU on the international stage. The Treaty of Lisbon provides the EU with several provisions that reinforce the coherence and the transparency of EU external relations, notably in maritime affairs. While a sizeable part of the EU Maritime Policy's objectives are oriented toward cross-boundary cooperation, the Treaty of Lisbon gives Europe a clear voice to promote its values and interests in the international arena. Thus, many maritime issues will be directly addressed with international partners and international organizations or fora by the new High Representative for the EU in Foreign Affairs and Security Policy, who is also Vice-President of the Commission. The High Representative has competence over areas relating principally or exclusively to matters of common foreign or security policy, such as piracy. The consistency of EU external action will also be enhanced by the new European External Action Service that assists the High Representative.

The key change resulting from the Treaty of Lisbon is the legal authority given to the EU. The EU will be able to conclude international agreements, join international organizations and take action as a single entity. Moreover, under provisions of the Treaty of Lisbon, the development of EU Maritime Policy's objectives can be fostered by using several instruments. First, economic, financial and technical cooperation measures with third countries other than developing countries. Incidentally, commitments and objectives enacted by the United Nations and others international organizations enclose this cooperation pattern without prejudice to Member States to keep their own competence. For that matter, the European Commission intends to promote regional cooperation on the development of cross-cutting tools for integrated policy making, especially for the integrated surveillance of maritime activities, the improvement of marine knowledge, maritime spatial planning and integrated coastal management zones, marine technology development, and the enhancement of dialogue on protection for the marine environment at both bilateral and regional level. In addition, as recommended in the EU strategy for Marine and Maritime Research, the EU and third country partners should enhance participation in large-scale international research programs going beyond national jurisdictions and deep-sea research. The second type of instrument that could be employed refers to the conclusion of agreements with one or more third countries or international organizations. The third and last tool that could be used to boost EU external action dedicated to the Maritime Policy is related to the harmonious development of trade measures, in particular through the common commercial policy. Thus, the European Commission considers the opportunity to renew the Generalised System of Preferences foreseen for 2015 in order to give more importance to international maritime governance.

3 United States ocean and coastal policy

This chapter describes the decision making structures and processes for development and implementation of ocean and coastal policies in the US. It begins with a description of the US strategic interests in coasts and oceans, including a vision for the future of ocean and coastal management. It then describes both the overall governance structure and the important state-federal relationship concerning ocean and coastal policy in the US. It ends with comments on the potential for integration of government and management across all of the relevant public and private sectors involved with coasts and oceans.

3.1 US strategic interests and vision for ocean management

US involvement in ocean and coastal policy began early in the history of the country with policies such as the 3-mile Territorial Sea, which was established in 1793 at the recommendation of Secretary of State Thomas Jefferson. This was the first significant step in the ocean enclosure movement, and other coastal nations soon followed.⁸⁰ Today, the marine surface area under US jurisdiction is nearly 4.5 million square miles, an area 23 percent larger than the nation's land area.⁸¹

Because of the relative geographic isolation of the US, buffered by the vast Atlantic and Pacific Oceans, naval military power has had prominent influence in the nation's federal government and international decisions. Historically, many of the most significant ocean policy positions of the US have been heavily influenced by military issues. Also related to its geophysical position, merchant shipping has historically been an important US economic sector for the trade of goods and services and has influenced US international policies on issues, including maritime jurisdictions.

Ocean and coastal activities contribute significantly to the economy and culture of the US. Most ocean and coastal activity originally developed around commercial and industrial facilities such as ports and harbors. Maritime fisheries were prominent in the early years of the country, but have diminished in relative importance economically and socially as other coastal uses have expanded. Since the mid-1990s, the character of coastal areas has changed significantly with the growth of the tourism and retirement industries and a trend of migration of the populace away from the historically industrial middle of the country to the Sunbelt areas of the west and south.⁸² Population migration to US coastal communities has put significant and growing pressure on coastal environments and resources. For instance, between 1997 and 2007, more than three-quarters of US growth occurred in coastal states, whether measured by population, employment, or Gross Domestic Product (GDP).⁸³

Today, the oceans and coasts play a critical role in the US economy and quality of life of American citizens. Ocean-dependent industries generate approximately \$138 billion for the United States every year, 2.5 times more than the agriculture industry. In 2007, the coastal leisure and hospitality sector contributed more than \$505 billion and over 13 million jobs to the US economy. The coastal trade, transportation, and utilities sectors generated an

⁸⁰ Cicin-Sain & Knecht, 2000.

⁸¹ Pew Oceans Commission. 2003.

⁸² Cicin-Sain & Knecht, 2000.

⁸³ National Ocean Economics Program, 2009.

additional \$2.4 trillion. Counties within coastal watersheds contribute approximately 69 percent of the nation's GDP or \$7.9 trillion. According to the National Ocean Economics Project, 30 US coastal states accounted for 80 percent of our jobs in 2007.⁸⁴

The vision for the future of ocean and coastal activity in the US and for the governance of those activities is one of significantly increased human activity and a subsequent need for improved policy and management of ocean and coastal resources at all levels of government. In particular, growing attention is being paid by stakeholders and decision makers to the need for management to be:

- Integrated across all major sectors and agencies
- Based on quality, peer-reviewed science
- Utilizing an ecosystem-based approach
- Involving stakeholders at all stages of the policy development and implementation
- Increasingly attentive to the ocean-related responsibilities of the US in the global context

3.2 The ocean policy framework in the US

The US operates at the federal level with three separate branches of government. The executive branch is headed by the President of the United States and includes the various departments and agencies of the federal government. The US Congress is the legislative branch and includes two chambers, the House of Representatives and the Senate. The 435 members of the House of Representatives are apportioned among the states based on population and serve two-year terms. The Senate provides two seats per state, and the 100 Senators serve staggered six-year terms. Therefore, every two years all representatives and approximately one-third of the senators face re-election, which creates a potential shift in which political party stands in the majority in the two chambers. The Supreme Court makes up the judicial branch and judges appropriate issues by the standard of the US Constitution.

Laws passed by Congress are assigned to specific agencies within the executive branch, usually the Cabinet departments (e.g., Department of Commerce, Department of Energy). The departments are headed by a Presidentially-appointed Secretary who manages a number of sub-agencies that address specific governance tasks. There are also a number of non-Cabinet or independent agencies, such as the Environmental Protection Agency (EPA), the National Aeronautical and Space Administration (NASA), and the Interstate Commerce Commission (ICC). The President has some powers of Proclamation apart from Acts of Congress, but these are normally limited in scope and duration. The federal budget is determined by Congress and assigned to the executive branch and independent agencies with little flexibility in shifting funds among major assignments.

3.2.1 The legislative branch

The structure and procedures of Congress have an important impact on policy making in the US, including for ocean and coastal management. Ideas for legislation can be generated

⁸⁴ National Ocean Economics Program, 2009.

anywhere (e. g. by members of Congress, stakeholder groups, think tanks), but bills are introduced by individual members of Congress, usually with co-sponsors, into their respective chamber. Both the Senate and House have committees with jurisdiction over specific issues, also referred to as authorizing committees. Typically, pieces of legislation must pass relevant committees before they are moved to the floor of the chamber for further amendment and a final vote by the full membership of Congress.

Congressional committee assignments are made by the leadership of each chamber, the Speaker of the House of Representatives and Majority Leader of the Senate, and are based on the interests of the individual members and the seniority and political clout they carry. There are numerous committees that may have jurisdiction over ocean-related legislation, depending on the exact nature of the legislation and how many other potential topics it may touch. Any significant piece of ocean-related legislation can fall under the jurisdiction of a number of committees in each chamber, which would require the bill to be discussed by and successfully voted through each committee before it is moved to the floor of a given chamber. This can be very time consuming, particularly when committees have overlapping jurisdictions of particular aspects of legislation and conflicting views on how the substance of a bill should be addressed. Some of the key committees in the House of Representatives with jurisdiction over ocean and coastal issues and the federal agencies that are charged with addressing them are the Committee on Natural Resources and Committee on Science and Technology. In the Senate they are the Committees on Commerce, Science, and Transportation; Energy and Natural Resources; and Environment and Public Works.

While these authorizing committees specify actions and identify funding levels for those actions, it is the appropriations committee of each chamber that determines specific funding levels for discretionary programs in the federal government's annual appropriations process. Membership on this committee is highly prized for it conveys a great deal of power and allows members to channel money toward specific projects and activities that benefit their constituents.

The federal budget development process for fiscal years that begin in October is initiated with submission of a specific request for funding by the President to Congress in February of most years. This begins a series of negotiations within the House and Senate and between the two chambers, which ultimately leads to a budget resolution that determines limits on spending for particular areas. The appropriations committees make final decisions on exactly how much each program in each agency will receive. Individual members may also "earmark" funding for specific projects they wish to have funded, a publicly-maligned but widespread process intended to generate support for members among their constituents. Funding for ocean issues, as measured by funding for the main agencies with jurisdiction over ocean and coastal management, has been chronically insufficient despite calls for increased funding to address a wide range of critical and long-neglected ocean issues.

A defining characteristic of the US political system, which greatly impacts the workings of Congress, is the dominance of two major political parties, the Republican Party and the Democratic Party. The party that holds the majority of members in either of the two chambers of Congress gains a significant advantage over the other. Specifically, the majority party gains leadership of the chamber, including chairmanship of every committee. Bi-partisanship or cooperation between the parties on major pieces of legislation is an increasingly rare phenomenon, particularly on high profile issues that garner public attention. The fairly equal and frequently fluctuating strength of the two parties and the contentious nature of many

issues mean that legislative matters are often settled through political and procedural maneuvering rather than compromise on the substance.

A large number of national priorities at any given time also means that floor time in either chamber is very limited. The leader of each chamber determines which bills will be given floor time and many bills that pass committees do not make it to the floor for a final vote unless committee chairs, other members, and the American public apply significant pressure and influence. Ocean and coastal issues, which may be important to individual members of some coastal states but rarely enjoy broad-based attention and momentum, often fail to make it to the floor of a chamber as stand-alone pieces of legislation. Those that are successfully voted out of committee and eventually passed by Congress are usually attached to higher priority bills with a greater certainty of moving forward. For example, in 2009 Congress passed the Omnibus Public Land Management Act to which ocean champions in Congress attached a number of ocean-related bills that otherwise are unlikely to have become law. The five bills included were the Ocean and Coastal Mapping Integration Act, Ocean Exploration and Undersea Research Program Act, Integrated Coastal and Ocean Observation System Act, Federal Ocean Acidification Research and Monitoring Act, and Coastal and Estuarine Land Conservation Act.

3.2.2 The executive branch

The President is the leader of the executive branch and by virtue of his ability to attract attention to issues, veto legislation passed by Congress, and serve as leader of his party he holds significant power beyond management of federal agencies. However, it is his authority over federal agencies that creates the greatest impact on management of day-to-day issues of government, including those related to ocean and coastal resources.

Eleven cabinet-level departments (each with numerous sub-agencies) and four independent agencies manage some aspect of ocean and coastal resources.⁸⁵ Some of the key agencies responsible for managing ocean and coastal resources are:

- **National Oceanic and Atmospheric Administration (NOAA).** NOAA is located in the Department of Commerce and despite its relatively low public profile makes up the vast majority of the Department's budget and authorities. The agency is considered the lead ocean agency for management of ocean and coastal resources. It has a number of responsibilities, including management of federal fisheries under the Magnuson-Stevens Fishery Conservation and Management Act, management of grants to states pursuant to the Coastal Zone Management Act, provision of information and services related to prediction of weather and ocean conditions, including for significant natural events. NOAA is also the major source and repository for scientific information about the nation's oceans and atmosphere and leads a number of important ocean and coastal science and management programs.
- **Environmental Protection Agency (EPA).** The EPA is an independent agency whose mission is to protect human health and safeguard the natural environment upon which life depends. Its major authorities include implementation and enforcement of some of the most significant environmental protection laws in the

⁸⁵ US Commission on Ocean Policy, 2004.

US, including the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, and others related to the clean-up of contaminated lands and regulation of toxic substances. In implementing several laws under its authority, EPA sets national standards that states and tribes enforce through their own regulations while others are directly regulated at the federal level. In particular, the role the EPA plays through regulating wetlands, dredge materials, and water quality monitoring, is critical to maintaining and restoring the health of ocean and coastal ecosystems.

- **US Coast Guard (USCG).** USCG is located in the Department of Homeland Security. It is the principal federal marine enforcement agency for environmental and natural resource regulations in US ocean and coastal waters. It regulates vessel and port safety and security, provides search and rescue at sea, and enforces numerous environmental protection and natural resource management laws, including those related to marine fisheries and marine mammals.
- **Department of the Interior (DOI).** DOI's mission is to protect the nation's resources for future generations, provide access to the nation's natural and cultural heritage, provide wise stewardship of energy and mineral resources, foster sound use of land and water resources, and conserve and protect fish and wildlife. Several agencies within DOI have ocean and coastal functions. The Minerals Management Service manages the nation's natural gas, oil, other mineral resources, and renewable energy project development on the outer continental shelf (OCS). The US Fish and Wildlife Service is responsible for conservation, protection, and enhancement of freshwater fish, wildlife and plants, and their habitats. It implements and enforces laws such as the Endangered Species Act, Migratory Bird Treaty Act, and Marine Mammal Protection Act and manages the National Wildlife Refuge System, which includes numerous refuges located in ocean and coastal areas. Finally, the National Park Service manages the nation's National Park System, which includes national parks, monuments, and preserves in ocean and coastal areas, as well as designated national seashores on the Atlantic, Pacific, and Gulf of Mexico shores.
- **The United States Geological Survey (USGS).** USGS is a multi-disciplinary science organization that focuses on biology, geography, geology, geospatial information, and water. While it does not directly formulate policy, USGS research is used by many other agencies to advise best management practices for both geologic and ecologic issues including coral health, invasive species, coastal erosion, sea level rise, and water quality. Although several federal agencies conduct physical research in the ocean and coastal zone, only the USGS has the unique roll of conducting a wide range of research on the physical processes impacting the nation's coasts and oceans. Many other agencies depend on the USGS to frame coastal geologic questions in both a regional and national perspective and to generate information that will help focus regulations and make them more effective. Furthermore, as many national policies shift towards ecosystem-based management, the USGS is relied upon to provide the geologic aspects of the interdisciplinary approaches being constructed.⁸⁶

⁸⁶ Committee to Review the USGS Coastal and Marine Geology Program, National Research Council, 1999.]

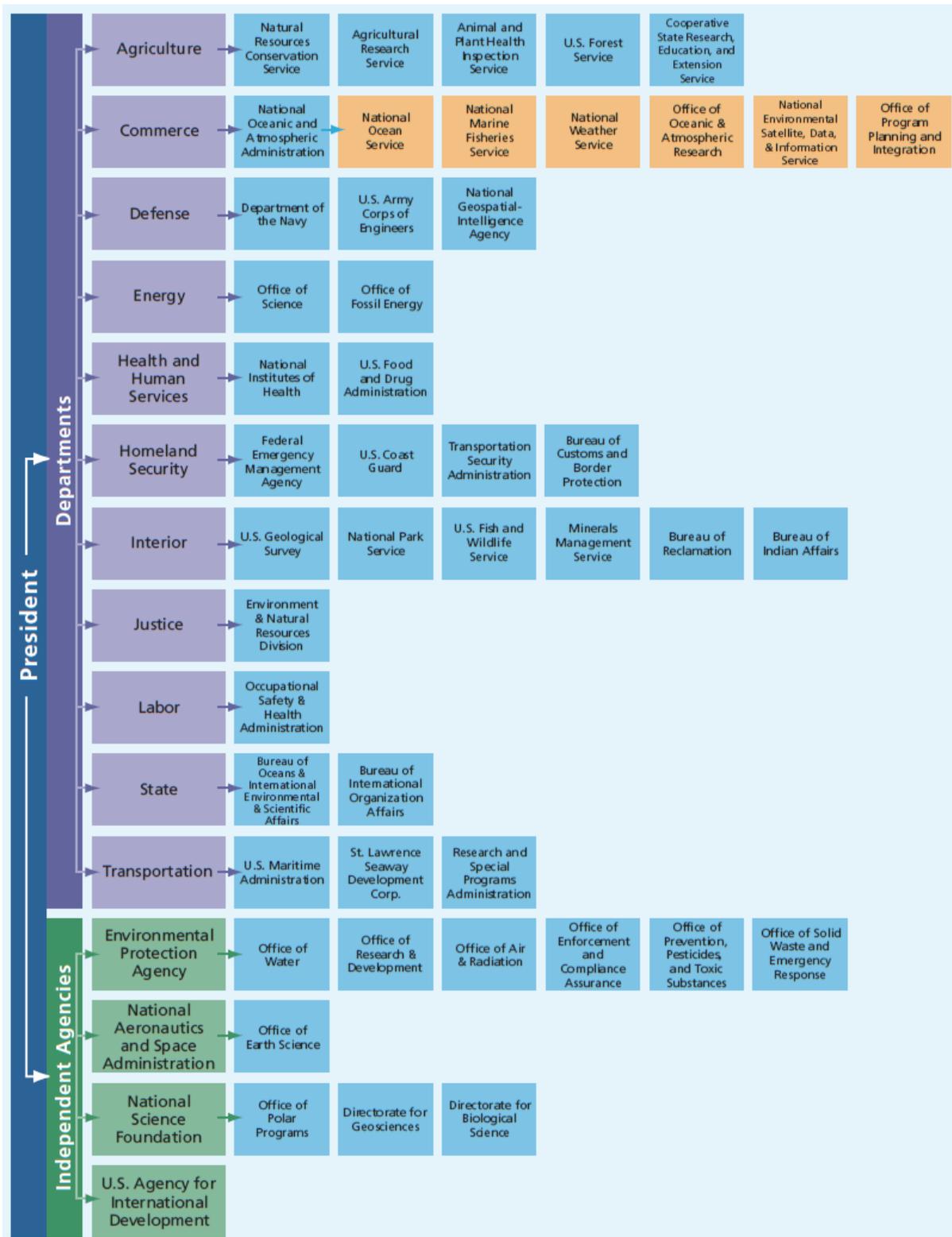
Other important agencies include the US Army Corps of Engineers (USACE), the US Navy, the National Science Foundation, and the National Aeronautics and Space Administration.

Many provisions of laws passed by Congress assign actions to specific agencies but are written generally, giving the Executive some flexibility to interpret how the agencies will implement laws. When Congress gives federal agencies new or revised assignments or the President decides to change the way existing laws are carried out, agencies undergo a very specific process under the Administrative Procedure Act for developing and issuing regulations through a public consultation process.

Among the President's authorities that do not require public consultation or congressional approval are the coordination of federal agencies among one another and presidential proclamations. One such recent action was the designation by President George W. Bush of the Papahānaumokuākea Marine National Monument in the ocean waters surrounding the Northwest Hawaiian Islands in 2007.

The following figure presents an overview of the US department and agencies concerned with coastal, marine and maritime activities. Since the publication of this figure the Mineral Management Service (under the Department of Interior) has changed its name to Bureau of Ocean and Energy Management, Regulation and Enforcement.

Figure 2 Ocean and coastal activities conducted by federal departments and agencies



Source: US Commission on Ocean Policy, 2004, p. 78.

3.2.3 The judicial branch

An important role of the judiciary in development of public policy is to adjudicate charges that the legislative and executive branches have exceeded their authorities under the US Constitution or that the executive branch is not carrying out its responsibilities as required under the law. The Supreme Court of the US is the ultimate authority in this regard.

While some ocean policy matters, particularly those related to fisheries and endangered species, are frequently resolved in lower courts, these are rarely elevated to the Supreme Court. The Court has occasionally adjudicated cases related to fisheries management, water quantity and quality disputes, coastal property rights, and greenhouse gas emissions.

Box 2: The role of stakeholders

The role of participation by the public and stakeholders is emphasized by both custom and law in the US. The system has been characterized as one with multiple points of access for citizens. Interested individuals and organizations are regularly provided opportunities to influence individual elected officials and the legislative and executive bodies as a whole.

A number of key procedural laws protect and encourage public and stakeholder participation in the formation of regulations, including those related to oceans and coasts. For example, the Administrative Procedure Act (APA) established rules that federal agencies must follow related to notification of the public of proposed regulatory changes and provision of opportunities for the public to provide feedback during the rulemaking process. The National Environmental Policy Act (NEPA) further required that federal agencies must consider the environmental effects of their proposed activities, evaluate possible alternative actions, and make that information available to the public. It applies to any major activity funded, implemented, or regulated by the federal government that could have an impact on the environment, including ocean and coastal impacts. Most states have adopted similar legislation at the state level. In addition, several other federal laws include similar public engagement requirements.

An extremely active, established system of lobbying exists for the purpose of influencing the federal government system. In 2007 there were over 17,000 federal lobbyists based in Washington, DC alone. This has led to a competitive atmosphere with private firms that specialize in lobbying providing services to paying clients and for-profit organizations making significant investments in lobbying on behalf of their interests. Major industry lobbyists include the oil and gas sector, commercial and recreational fishing groups, offshore renewable energy organizations, boating and shipping groups, and several others. The non-profit sector, which includes many nonprofits that focus mainly or exclusively on ocean issues, is also active in lobbying, though with smaller budgets they often rely more heavily on mobilizing their members and the general public to sway the opinions of their elected representatives.

Several efforts have been made recently to limit the ability of lobbyists to influence government leaders, in particular members of Congress, most notably through campaign finance limitations and lobbying disclosure rules. However, such attempts are often weakened or thwarted entirely by US Supreme Court interpretations of the extent of the US Constitution's First Amendment, which guarantees citizens' freedom of speech and freedom to petition the government for a redress of grievances.

3.3 Major federal ocean and coastal laws

Many serious challenges the US faces in maintaining the health of ocean and coastal ecosystems and economies stem from a fundamental mismatch between the way natural systems work and the way the activities that affect them are managed. This mismatch means that management is often fragmented by an outdated and disjointed collection of laws, institutions, and jurisdictions. This leads to decision making that is uncoordinated and rarely reflects the interconnections within and among ocean and coastal ecosystems and the

people who depend on them. Instead, this collection of laws and agencies manages individual species, places, and sectors of human activity as if they were isolated. This isolation results in management decisions that rarely take into account the cumulative impacts of the range of human activities. At the federal level alone, oceans and coasts are managed under more than 140 different federal laws implemented by a wide range of federal agencies, some of which are discussed above. Each of these laws is important, but is targeted to an individual goal, resource, or area.

Federal law generally applies to areas of the ocean beyond the 3 nautical mile jurisdiction from shore that most states and territories possess to the 200 mile US EEZ (Texas, the west coast of Florida, and Puerto Rico are exceptions with 9 nautical miles of jurisdiction). Coastal lands generally fall under the jurisdiction of states, with shore-side private property rights extending in most states to either the mean high or low tide lines.

An important foundation for federal management of oceans and coasts in the US is the public trust doctrine under which the bottom and water column resources seaward of the land are held in trust by the government for the benefit of the citizens of the state or nation. While there can be private ownership or other property interests in public trust lands, the government has a duty to ensure that the public's interest in those lands is protected. Public interests have traditionally been considered to include navigation, fishing, and commerce, but have also been interpreted to include additional interests such as recreational uses, environmental protection, and preservation of scenic beauty.

In addition to NEPA and APA, important procedural laws described above, the following federal statutes make up the body of law that provides for management of a range of ocean and coastal resources and the human activities that affect ocean and coastal ecosystems and economies. Some of these laws establish partnerships between the federal government and states for sharing decision making and management authority. Others can be considered more top-down where federal law requires certain standards to be met or action to be taken and federal agencies are given the authority to enforce those laws. In addition to the laws summarized below there exist a number related to safety at sea, maritime operations⁸⁷ and implementation of international conventions in which the US is a member.

3.3.1 Coastal management

Management of US coastal areas is influenced by numerous laws and programs at the local, state, and federal levels. The authority over land use that states possess and typically delegate to local governments has a major impact on private property rights in those areas. However, several federal laws provide incentives for states to use their authority to manage coastal lands in accordance with national goals and standards.

The **Coastal Zone Management Act (CZMA)** provides for, but does not require, states to develop approved Coastal Zone Management Programs (CZMP) in return for federal assistance in the form of funding and technical support. The resulting CZMPs are based entirely in state and local law. A significant incentive for states to participate is what is known as the "federal consistency" provision, which provides states that have approved CZMPs the

⁸⁷ For example, the Commercial Fishing Industry Vessel Safety Act, Maritime Transportation Security Act, Hazardous Materials Transportation Act.

ability to require that federal activities with foreseeable effects on coastal uses or resources be consistent with enforceable policies of those states' CZMPs. The act also creates the National Estuarine Research Reserve System, which supports states in setting aside land for conservation, education, and research.

The **National Flood Insurance Act** established the National Flood Insurance Program under which the Federal Emergency Management Agency maps flood-prone areas and provides flood insurance to owners of residential or commercial structures in those areas if their communities have adopted building standards and land use controls that minimize flood damages and property loss.

The **Coastal Barrier Resources Act** discourages development on designated coastal barrier islands and other geographic features by restricting certain federal financial assistance, including flood insurance coverage, loans, USACE development projects, and funding for construction of infrastructure.

3.3.2 Living marine resources

Ecosystem interactions, particularly in the marine setting, make management of living marine resources challenging. This is particularly true in light of the conflicting goals of many laws governing their management: some aim simultaneously to harvest species for maximum economic benefit and conserve them to ensure sustainable stocks, others to protect the health and biodiversity of marine ecosystems, still others to prevent the extinction of certain species.

The **Magnuson Stevens Fishery Management and Conservation Act** creates eight Regional Fishery Management Councils composed of voting members representing states and stakeholders chosen by state Governors. These Councils develop Fishery Management Plans that are submitted to NOAA for approval based on 10 National Standards specified in the law and implementation by NOAA's National Marine Fisheries Service. These standards include requirements to maximize fishing yield and protect the sustainability of the species. The act was reauthorized and amended in 2005 to increase the role of science and encourage consideration of ecosystem impacts in decision making.

The **Marine Mammal Protection Act** prohibits, with some exceptions, the "taking" of marine mammals – defined as killing, capturing, injuring, or harassing – in US waters or by any US citizen on the high seas, as well as the importation of marine mammals and marine mammal products to the US. The Marine Mammal Protection Act (MMPA) specifies that the federal government is the sole policy and management authority for marine mammals wherever they occur unless such management is specifically delegated to a particular state.

The **Endangered Species Act** provides for the designation of species as threatened or in imminent danger of extinction and then prohibits the killing, injury, harassment, and trade of those species. It also requires the US Fish and Wildlife Service or National Marine Fisheries Service to develop a recovery plan, identify critical habitat, and establish special management for those areas.

3.3.3 Ocean and coastal pollution from land-based sources

Pollution from land-based point and nonpoint sources can have serious adverse effects on ocean and coastal waters. Point sources of pollution, such as from industrial outfall pipes,

have been relatively successfully controlled in the US, but nonpoint sources, such as runoff from agricultural and urban areas, remain a significant challenge.

The **Clean Water Act** sets forth national goals to make all waters of the US fishable and swimmable and eliminate the discharge of pollutants into US waters. Regulations under the act establish national discharge and effluent standards, implement a permit program, hold states accountable for water quality standards and total maximum daily load determinations, and provide assistance to states. It also provides for the protection of wetlands and created a program to protect major estuaries in the US.

The **Clean Air Act** regulates air pollution from stationary and mobile sources. In implementing the act, the Environmental Protection Agency employs a number of strategies and tools for addressing different sources and types of pollution, including standards based on human health and welfare implemented by state programs, technology-based standards, and market based cap-and-trade programs.

The **Farm Bill Conservation Programs** are designed to control soil erosion and include programs to preserve highly erodible soils and provide financial and technical assistance to farmers and ranchers who implement certain conservation practices.

The **Ocean Dumping Act** provides for regulation of the ocean disposal of wastes within US jurisdiction, including a ban on dumping of sewage sludge or industrial waste into ocean waters.

The **Comprehensive Environmental Response, Compensation, and Liability Act** is a remedial and corrective law (rather than preventative) that creates a mechanism for responding to the health and environmental dangers posed by toxic materials that may have been released, discharged, or buried prior to the adoption of laws regulating these practices or which were illegally deposited. It creates a funding mechanism for cleanup, called Superfund, which is based on the polluter pays principle.

The **Resource Conservation and Recovery Act** was enacted to protect both ground and surface water from by establishing regulations for the ways in which hazardous materials may be disposed.

3.3.4 Fuels, minerals, and energy production from the oceans

The submerged lands off of US coasts contain valuable nonliving resources that play a significant role in US national security and economic development. Ever-improving technologies allow for the discovery and exploitation of resources in ever deeper waters, presenting both vast economic opportunities and on-going environmental and human health risks that must be managed. Several laws establish authority over these resources and programs to manage risks.

The **Submerged Lands Act**, while not exclusive to energy and minerals development, is highly relevant in this regard as it established state jurisdiction over the waters, submerged lands, and resources they contain within the three miles of states' shorelines. It also reaffirmed the federal claim to the OCS, which contains those lands seaward of state jurisdiction.

The **Outer Continental Shelf Lands Act** authorizes the leasing of offshore tracts on the OCS for exploration and development of minerals such as oil, gas, sand, and gravel by private companies. 5-year Lease Plans are managed by the Minerals Management Service

(MMS) (recently renamed Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)) and includes collection of royalties (resource rent) that goes to the federal treasury. The 2005 Energy Policy Act amended the Outer Continental Shelf Lands Act (OCSLA) to authorize MMS to issue leases for the development of alternative energy sources on the OCS, though an interagency dispute with the Federal Energy Regulatory Commission resulted in a Memorandum of Understanding (MOU) that gave that agency jurisdiction over hydrokinetic energy projects.

The **Oil Pollution Act** made responsible parties strictly responsible for cleanup costs and damages for discharges of oil, though the law contains limits on liability. It also created the Oil Spill Liability Fund to cover claims where the parties responsible for a spill cannot be found or are unable to pay for cleanup costs and damages.

The **Deep Seabed Hard Mineral Resources Act** established a regime for deep seabed mining by entities under US jurisdiction pending US accession to the UN Convention on Law of the Sea or some other multilateral treaty respecting the sea bed.

The **Ocean Thermal Energy Conversion Act** established a licensing program for facilities and plantships that would convert thermal gradients in the ocean into electricity. No applications for a commercial license have been received since passage of the act in 1980.

The **Rivers and Harbors Act** prohibits obstruction of navigable waters of the US, except where permitted by the US Army Corps of Engineers. Notably, the act has importance beyond energy and minerals development, particularly in that navigable waters have been deemed to include wetlands.

The **Deepwater Ports Act** established a licensing system for development of deepwater ports, floating or fixed structures used for loading, unloading, or handling oil. The structures covered under the act are not only those used for energy and minerals extraction, though these uses are of great significance.

3.3.5 Submerged cultural resources in the oceans

Cultural resources in the waters and submerged lands of the oceans include historic shipwrecks, sunken aircraft, lighthouses, and prehistoric archaeological sites. Federal statutes strive to protect specific resources that would otherwise be subject to the admiralty law of salvage under which a salvor has the right to possess objects found at sea.

The **Abandoned Shipwreck Act** codifies responsibility for the protection of a subset of shipwrecks that are abandoned, embedded in state submerged lands, and historic.

The **National Historic Preservation Act** requires federal agencies to take into account the effect of activities they conduct or permit on sites, structures, or object that are included in or eligible to be included in the National Register of Historic Places.

3.3.6 National marine sanctuaries and other marine protected areas

The term marine protected area (MPA) is broad and encompasses estuarine, nearshore, and offshore areas protected for a variety of reasons, including protection of environmental, cultural, and historical resources. They are management tools that can be created by all levels of government – local, state, tribal, and federal. Two major federal laws address creation of such areas.

In addition to these laws, the President also has authority to establish Marine National Monuments and issue Executive Orders related to establishment of protected areas. In 2000, President George W. Bush issued Executive Order 13158 establishing a network of MPAs that includes the National Marine Sanctuaries, marine-based National Wildlife Refuges, and state marine conservation areas. In 2007, he created the Papahānaumokuākea Marine National Monument and the Pacific Remote Islands Marine National Monument.

The **National Marine Sanctuaries Act** authorizes the designation of areas of the marine environment for special protection that possess special environmental, recreational, cultural, scientific, and aesthetic qualities.

The **Coastal and Estuarine Land Conservation Act** created a program to protect important coastal and estuarine areas by providing property acquisition grants to coastal states with approved coastal zone management plans under the Coastal Zone Management Act. It was passed in 2009.

Box 3: Enhancing marine science

There has been recognition in recent years of the need to enhance the nation's marine sciences enterprise. While needs are extensive and ongoing, three laws were enacted in 2009 to provide for updated and expanded ocean mapping and observations and to better understand ocean acidification from global climate change.

The NOAA Undersea Research Program Act and the Ocean and Coastal Mapping Integration Act strive to create informed management, use, and preservation of ocean and coastal areas and the Great Lakes through research and mapping.

The Integrated Coastal and Ocean Observation System Act established a system designed to address regional and national needs for ocean information.

The Federal Ocean Acidification Research and Monitoring Act directs the coordination of federal activities on ocean acidification and establishment of an interagency working group. It develops a plan for federal research and monitoring on ocean acidification.

3.4 Prospects for US ocean governance

Several attempts to improve the US ocean governance coordinating structure have been made over the past 50 years, with varying success. Both President George W. Bush and President Barack Obama have made concerted efforts to address the need for an overarching national ocean policy. Those efforts recently culminated in an Executive Order signed by President Obama that established a National Policy for the Stewardship of the Oceans, Our Coasts, and the Great Lakes.

The Stratton Commission: The first post-WWII action was the Marine Resources Research, Engineering and Development Act of 1966. This Act created the Sea Grant College Program and authorized a federal Marine Science Council, informally called the Stratton Commission after its Chair, Julius Stratton. This Commission stimulated the creation of the National Oceanic and Atmospheric Administration and passage of the federal Coastal Zone Management Program. The passage of several other marine-related laws followed in the 1970s, but each assigned authority and responsibility to a specific, individual agency. Agencies were admonished to cooperate with each other, and often review each others' policies and regulations, but there has been little formal integration beyond that.

The Ocean Commissions: In the early 2000s two national level commissions were formed to review the ocean and coastal policies of the US. The US Commission on Ocean Policy (USCOP) was a congressionally mandated group appointed by the President George W. Bush, and the Pew Oceans Commission was created and funded by the Pew Charitable Trusts, a private non-profit organization. The USCOP had a broad scope that included offshore commercial development, science and technology, and education, while the Pew Oceans Commission focused on living marine resources. However, the general findings of the two commissions were very complementary. Both commissions:

- Called for the creation of a national ocean policy to unify and guide the actions by the multiple federal agencies with ocean management responsibilities and bring greater coherency to the numerous laws addressing ocean, coastal, and Great Lakes resources. They stressed the need for a comprehensive strategy for moving ocean management away from the current single-sector focus toward an ecosystem-based approach.
- Recommended integration of ocean and coastal policies and management activities across all relevant agencies and levels of government using an ecosystem-based approach.
- The commissions also urged increased funding for management, science and research, and enforcement.

The recommendations of these two commissions have been carried forward by many organizations, including the Joint Ocean Commission Initiative, which has been dedicated to stimulating meaningful ocean policy reform consistent with the ocean commission recommendations since members of both commissions formed the group in 2005.

Bush Administration efforts: Following the issuance of the USCOP report, the Bush Administration, as required by law, responded by releasing the *US Ocean Action Plan* in 2004, which laid out a number of existing initiatives and planned actions to advance the USCOP recommendations. To implement the plan, President Bush created a cabinet-level Committee on Ocean Policy to coordinate ocean-related activities among the federal agencies responsible for ocean and coastal resource management. In 2006, the *National Ocean Research Priorities Plan* was released, representing the first coordinated national research planning effort involving the 25 federal agencies that support ocean science. The federal agencies have made some progress on actions laid out in the *Research Priorities Plan*, including advancement in ocean observing, but activities remain limited due to a lack of secure funding for implementation of the plan. The Committee on Ocean Policy helped improve cooperation and coordination between federal agencies but was limited by the lack of true authority to direct federal agency actions, the lack of a high level advisor focused on ocean issues (the Committee was chaired by the head of the White House Council on Environmental Quality (CEQ), who is responsible for multiple environmental issues), and the lack of sustained funding for implementation activities.

Obama Administration efforts: When President Obama came into office in 2009, his Administration took initiative to reinvigorate the national effort to implement the recommendations of the ocean commissions. In the absence of a policy landscape favorable to broad legislative ocean policy reform, President Obama issued a proclamation on June 12, 2009, declaring June National Oceans Month and delivering a presidential memorandum creating the Interagency Ocean Policy Task Force. The Task Force is led by CEQ and composed of leaders of the federal agencies with jurisdiction over the management of ocean

and coastal resources. The Task Force was charged with developing recommendations within 180 days for:

- A national policy that ensures protection, maintenance, and restoration of oceans, our coasts and the Great Lakes
- A federal coordinating structure to implement the national ocean policy effectively
- A framework for effective coastal and maritime spatial planning⁸⁸

After a rigorous public engagement process to develop preliminary recommendations, in September 2009 the Task Force released its *Interim Report* proposing a national ocean policy that significantly advances the effort to develop a strong, cohesive, and effective system to manage US oceans, coasts, and Great Lakes.⁸⁹ The Interim Report was followed by the Task Force's *Interim Framework for Effective Coastal and Marine Spatial Planning*, which offers a strategy for implementation of the national ocean policy, presenting a cooperative, integrated approach to ocean, coastal, and Great Lakes management that emphasizes the importance of a regional focus and stakeholder input.⁹⁰

The Task Force accepted public comments on both reports. While stakeholders have variously expressed strong support or concern about the coastal and maritime spatial planning effort, meaningful progress on improving interagency coordination and elevation of ocean issues within federal agencies are broadly supported anticipated outcomes.

National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes: On July 19, 2010, The Interagency Ocean Policy Task Force released its final recommendations, *Final Recommendations Of The Interagency Ocean Policy Task Force*.⁹¹ On the same day, President Obama signed Executive Order 13547 establishing a National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes.

The Executive Order adopts most of the final recommendations in the Interagency Task Force report and directs executive agencies to implement those recommendations under the guidance of a National Ocean Council charged with coordinating federal activities related to ocean and coastal management. Based on the Interagency Task Force recommendations, the order establishes a national policy to ensure the protection, management and conservation of the US ocean, coastal, and Great Lakes ecosystems and resources, respond to climate change and ocean acidification through adaptive management, and coordinate with national security and foreign policy interests. The order also provides for the development of coastal and marine spatial plans that build upon existing Federal, State, tribal, local, and regional decision making and planning processes, which will pave the way for a more integrated, comprehensive, ecosystem-based, flexible, and proactive approach to planning and managing sustainable multiple use of the ocean, coasts, and the Great Lakes.⁹²

According to the Interagency Task Force Final Recommendations, implementation of the national ocean policy is to be completed within five years over a three phase process. The National Ocean Council will carry out Phase I during the first 12 months of implementation. Among other activities, it includes establishing a National Ocean Council Strategic Action Plan, convening and organizing federal representatives in the identified regions, organizing

⁸⁸ The White House, 2009.

⁸⁹ The White House Interagency Ocean Policy Task Force, 2009a.

⁹⁰ The White House Interagency Ocean Policy Task Force, 2009b.

⁹¹ The White House Council on Environmental Quality, 2010.

⁹² The White House Office of the Press Secretary, 2010.

and convening a national workshop and coastal and marine spatial planning simulation exercise, forming regional planning bodies, developing a capacity assessment and identification of initial regional steps, and planning a stakeholder and scientific participation process. Phase II will take place over months 9-24 of the five year implementation plan. Phase II will build on the coastal and marine spatial planning implementation and focus on building capacity and testing specific issues or elements of the process. Phase III will begin in month 18 and finish with the completion of the implementation process at the five year point. Phase III will involve continued efforts to advance the actions and steps of Phases I and II. Regional planning bodies will widen their efforts to establish comprehensive coastal and marine spatial planning, with the ultimate goal of achieving multi-objective, multi-sectoral coastal and marine spatial plans in all regions.

3.5 Progress at the state level

Compared to other countries, sub-national state governments play prominent roles in the US. This stems from a history rooted in the principle of federalism, where the importance of the US as a federation of individual states, with the central government only having those powers assigned to it by the Constitution and the rest (e. g., most land-use planning authority) vested in the individual states, is emphasized. State and region-based governance are critical elements in managing such sectors as marine fisheries and areas such as coastal zones. Recently, localized efforts to improve ocean and coastal management and coordination have started developing in several coastal states as well as multi-state initiatives in regions that share important ocean and coastal ecosystems.

Under the new national ocean policy, all relevant federal agencies will be required to participate in the development of integrated coastal and marine spatial plans around the country. Many coastal states are already making progress on integrated ocean and coastal management reforms and spatial planning efforts. Some have taken meaningful action on ocean and coastal issues, creating statewide initiatives supported by interagency coordinating and planning structures that could potentially serve as guides as other states and regions begin developing coastal and marine spatial plans to comply with the national ocean policy. Individual state efforts of note include:

- California: Marine Life Protection Act
- Oregon: Territorial Sea Plan
- Washington: Puget Sound Partnership and Marine Waters Planning and Management Act
- New York: Ocean and Great Lakes Ecosystem Conservation Act
- Massachusetts: Massachusetts Ocean Act
- Rhode Island: Rhode Island Ocean Special Area Management Plan

States are also working to better coordinate across state lines on a regional basis. Since the release of the Pew Oceans Commission report and the US Commission on Ocean Policy report, which both made recommendations for stronger regional alliances, nearly every coastal and Great Lakes state has joined together with other states on a regional scale to cooperate in addressing shared ocean and coastal issues. Each multi-state regional entity has coordinated with relevant federal agencies to varying extents. They also have achieved different degrees of success in setting and achieving shared objectives. The multi-state regional entities that have been created and the states that they include are:

- West Coast Governors' Agreement on Ocean Health: California, Oregon, Washington
- Gulf of Mexico Alliance: Texas, Louisiana, Mississippi, Alabama, Florida
- Governors' South Atlantic Alliance: North Carolina, South Carolina, Georgia, Florida
- Mid-Atlantic Regional Council on the Ocean: New York, New Jersey, Delaware, Maryland Virginia
- Northeast Regional Ocean Council: Maine, New Hampshire, Massachusetts, Vermont, Rhode Island, Connecticut.
- Great Lakes Regional Collaboration: Wisconsin, Ohio, Indiana, Michigan, New York, Minnesota, Illinois, Pennsylvania. (Although the Great Lakes are freshwater bodies, the Council is worth noting as a prime example of a strong interstate effort.)

The Interagency Ocean Policy Task Force Final Recommendations propose nine regional planning areas composed of coastal and Great Lakes states. Relevant Federal, State, and tribal authorities from each region will partner to form regional planning bodies. The regional planning bodies will develop coastal and marine spatial plans for their specific regions and interact with the National Ocean Council to ensure consistency in the implementation of the national ocean policy. As the regional planning bodies begin to organize, existing multi-state regional partnerships will provide a strong resource and potential model for their organization. The regional planning areas identified by the Interagency Task Force include:

- Alaska /Arctic Region: Alaska
- Caribbean Region: Puerto Rico and U.S Virgin Islands
- Great Lakes Region: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin
- Gulf of Mexico Region: Alabama, Florida, Louisiana, Mississippi, and Texas
- Mid-Atlantic Region: Delaware, Maryland, New Jersey, New York, Pennsylvania, and Virginia
- Northeast Region: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
- Pacific Islands Region: Hawaii, Commonwealth of the Northern Mariana Islands, American Samoa, and Guam
- South Atlantic Region: Florida, Georgia, North Carolina, and South Carolina
- West Coast Region: California, Oregon, and Washington

3.6 US international cooperation

In the United States the Secretary of State, on behalf of the President, is ultimately responsible for negotiating all international agreements and policy between the United States and other countries. Within the State Department there are multiple directorates that each specialize in a particular field of policy. The Oceans and Fisheries Directorate has two offices dedicated to issues pertaining to the world's oceans. The Office of Marine Conservation specializes in international conservation and the management of living marine resources, including efforts to manage shared commercial fisheries on a sustainable basis and to reduce the impacts of fishing on protected species and vulnerable marine ecosystems. The Office of Ocean and Polar Affairs focuses on international ocean law and policy, marine

pollution, marine mammals, Arctic and Antarctic affairs, maritime boundaries, and marine science.

Although the State Department maintains official control of international negotiations, it may defer to other government agencies when the issue concerned is under that agency's jurisdiction, particularly if the other agency has more specialized knowledge or experience in the field. EPA is responsible for negotiating and enforcing international agreements pertaining to ocean pollution, for example, as it is responsible for pollution control regulations domestically. Similarly, NOAA is the official representative to ICCAT and works to establish and enforce international catch limits because it is responsible for regulating fishing within the United States.

While other departments are allowed to make international agreements, they must submit a draft text or summary of the proposed agreement, a precise citation of the Constitutional, statutory, or treaty authority for such agreement, and other relevant background information to the State Department to be checked for consistency with US foreign policy objectives. The agreement is then reported to Congress as required by the Case Act (1 U.S.C. 112a and 112b). This system allows the State Department to maintain control over international policy while providing for a more direct connection between the agencies creating policy within the United States and analogous agencies in foreign governments.⁹³

Box 4: US Agency participation in international fora

Representation by State Department:

- UN General Assembly
- United Nations Framework Convention on Climate Change (UNFCCC)
- Antarctic Treaty
- Protocol on Environmental Protection to the Antarctic Treaty

Representation by NOAA:

- ICCAT
- Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) (through the Antarctic Marine Living Resources Program (AMLR))
- Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas
- International Convention for the Regulation of Whaling (ICRW) (Secretary of Commerce)

Representation by EPA:

- International Convention on the Prevention of Pollution from Ships (MARPOL) 73/78
- London Convention (Implemented through the Marine Protection, Research, and Sanctuaries Act of 1972)
- Global Plan of Action for the Protection of the Marine Environment from Land-

⁹³ U.S. Department of State, Oceans, Fisheries and Polar affairs; US Department of State, Reporting International Agreements to Congress under Case Act (Text of Agreements).

based Activities (GPA)

Representation by USCG:

- UN Fish Stocks Agreement (UNFSA)
- IMO

Representation by USFWS:

- CITES (implemented through the Endangered Species Act)
- Convention on Wetlands of International Importance, Especially as Waterfowl Habitat (Ramsar Convention)

With regard to **international treaties**, the US faces some procedural obstacles. In order to ratify an international treaty, the US Senate must vote two-thirds in favor of ratification. This constitutional requirement and a number of procedural rules of the Senate present significant obstacles for any international agreement to be legally binding in the US. Because of these challenges and long-held cultural values that prioritize independence, the US exercises caution and is often resistant to arrangements made through United Nations auspices and organizations. Executive branch activities have varied considerably in their commitment to international negotiation and agreement, with Democratic administrations typically being more open to cooperation and Republican administrations often favoring a more nationally-focused approach.

In the case of the 1982 United Nations Convention on the Law of the Sea (UNCLOS),⁹⁴ the global legal framework designed to promote peaceful, rational use of the world's oceans, the US has not yet acceded despite significant bipartisan domestic support for the treaty. Many prominent US leaders from both political parties have expressed the view that accession to UNCLOS is crucial for maintaining key US interests, including national security, economic opportunity, and responsible stewardship. Among the limitations preventing the treaty from reaching the Senate for a vote are the low prioritization of the issue, the overloaded congressional calendar, and the significant Senate floor time that debate is likely to require even though the two-thirds majority needed is virtually guaranteed. The US currently recognizes UNCLOS as a codification of customary international law.

The United States plays a large role in influencing **international environmental policy** in a number of fora. However, the United States is limited to an “observer” role in of some of the most important marine and environmental agreements, including UNCLOS, MARPOL Annex IV, and CBD. In all three of these conventions either the President has not signed the agreement or the United States Senate has not ratified the treaty. Regardless of its status in these agreements, the United States still provides technical and scientific support to all of the countries that have ratified the conventions.

Although the United States was integral in developing UNCLOS, the treaty has not been signed by the President nor ratified by the Senate. This does not, however, prevent the

⁹⁴ The UNCLOS Convention was opened for signature on 10 December 1982 in Montego Bay, Jamaica and entered into force in accordance with its article 308 on 16 November 1994, 12 months after the date of deposit of the sixtieth instrument of ratification or accession. See UN Division for Ocean Affairs and the Law of the Sea, 2010a.

United States from observing the convention as customary international law. Directly after the conference was completed President Reagan instructed US agencies to comply with all provisions of UNCLOS, except Part XI, dealing with deep-sea mining, the US's main objection to the convention. In 1994, with the US playing a key role in negotiations, Part XI was reworked to address the major concerns of some countries. While the United States has not ratified any part of UNCLOS, US regulations are analogous to all of the provisions of the agreement allowing for complete cooperation between the US and countries who have acceded to the convention. Many US agencies and organizations are currently advocating that the US Senate officially ratify UNCLOS to allow for greater negotiating capacity in international maritime affairs.

In contrast to UNCLOS, the United States has ratified the majority of MARPOL. The only exception is Annex IV dealing with sewage discharge in the waters off the coast of member countries. In the US, Section 312 of the Clean Water Act prohibits the discharge of any sewage within territorial waters without first being treated by a certified Marine Sanitation Device (MSD). Annex IV also requires a certified sewage treatment device; however, there are no specified performance standards within territorial waters. In addition, Annex IV provides standards for discharges between three and twelve miles (5-19km), standards which are not required by the US. As the US has not ratified Annex IV, foreign ships do not have to abide by the convention within US waters, but they do have to meet US standards, including specified No-Discharge Zones, within three miles of shore. The similarity between Section 312 and Annex IV allows the United States to effectively cooperate with foreign nations on reducing the amount of sewage discharged into near-shore waters without actually ratifying the agreement. At this time the US does not intend to ratify Annex IV, and there is not a great push from agencies and organizations to do so.

Despite the Convention on Biological Diversity having the signature of the President, it is still waiting for ratification from the Senate. The United States played a key role in drafting the agreement and much of the convention was modeled on US conservation laws. Although the US is one of only two countries to have not ratified the convention, the other being Andorra, every measure of the agreement could be achieved under existing national, state, and territorial laws. Currently, the US has "observer" status in the CBD, and US delegations cannot directly participate in negotiations or final decision-making. This puts the US at a disadvantage when attempting to affect global conservation goals and sustainable use efforts. The United States' observer status does not prohibit government officials nor representatives from industry and environmental groups from participating in the CBD's twenty-four work programs, which help set the agenda for key conservation and sustainable use activities around the world. These delegations actively participate in a number of work groups and help direct the development of new conservation policies that are beneficial to both the United States and conservation in general.⁹⁵

In North America, US cooperation with Canada to the north and with Mexico and Central and South America to the south vary depending on the issue. For example, the US and Canada have had significant disputes on EEZ demarcation, driven by both fishery and offshore mineral conflicts on the east, west and Arctic coasts. On fisheries issues, relations have been particularly difficult. Fisheries disputes have focused in particular on salmon

⁹⁵ US Department of State. Law of the Sea Convention; EPA, 2010; Copeland, 2008; Jenkins, et al, 2008.

fisheries on the west coast and lobster fisheries on the east coast. On the other hand, there has been successful cooperation on fisheries such as Pacific Halibut through the International Pacific Halibut Commission. The US and Mexico have strained relations on fisheries dating from the period when the US exempted tuna from the MSA, and confiscations, retaliatory embargoes, and cancellation of Governing International Fishery Agreements resulted. The North American Free Trade Agreement has caused mixed reactions among stakeholder in the three countries and differing perceptions of fairness and effectiveness on issues, including fishery products.

Several regional initiatives in the US coordinate among partners in Mexico and Canada to carry out joint research and management strategies to address shared resources. For example, the Gulf of Mexico Alliance described above collaborates with the six Mexican Gulf States to promote responsible management of the Gulf's resources. They have partnered on activities that advance their shared priorities, including environmental education initiatives and efforts to improve water quality monitoring.

The Gulf of Maine Council was established in 1989 by the governments of Maine, New Hampshire, and Massachusetts in the US and Nova Scotia and New Brunswick in Canada to foster cooperative actions within the Gulf of Maine watershed. This effort brings together government and nongovernmental officials to coordinate activities that include monitoring water quality and habitat health, conducting comprehensive seafloor mapping and biological and geological surveys, and restoring critical coastal habitats in the region.

In the Great Lakes, cooperation between the US and Canada resulted from the passage of the Great Lakes Water Quality Agreement, which was first signed by the two countries in 1972 and has been revised and amended several times. This agreement commits the US and Canada to working together to restore and maintain the ecosystem integrity of the Great Lakes. Joint activities under the bi-national agreement address shared priorities including water quality, invasive species, habitat restoration, and contaminants. In addition, both countries contribute to periodic science-based assessments of the health of the ecosystem. A recent review of the Agreement concluded that it was outdated in regards to current threats to the ecosystem – including new contaminants and invasive species and the impacts of climate change- and in 2009 US and Canadian leaders agreed to negotiate a new agreement. The Great Lakes Water Quality Agreement is considered a model of international cooperation.

The US also partners with Canada and Mexico to enhance the protection of marine biodiversity through the North American Marine Protected Areas Network (NAMPAN). Through this effort, the three countries work to jointly prioritize conservation actions and address common challenges. They share lessons learned, new technologies, and data and information to increase the capacity of each country to conserve critical habitats. Formed under the auspices of the Commission for Environmental Cooperation, NAMPAN strives to establish a globally representative system of MPAs through North America

4 Comparison of EU and US ocean and coastal policies

4.1 Introduction

The EU and the US have very different decision-making structures for creating and implementing ocean policy. Nevertheless, as two highly developed regions, their interests and policy objectives tend to align, although not always in perfect synchronicity in terms of priority or strategy. This section provides a comparison of major EU and US marine policies and background on the most important emerging marine issues, both at the domestic and international levels. The chapter begins with a comparison of the state of EU and US policy, specifically focusing on EU and US policy development in the areas of MSP (known as “maritime spatial planning” in the EU and “coastal and marine spatial planning” in the US), ocean renewable energy development, marine research, and maritime safety and security. The section then outlines EU and US priorities for ocean governance and summarizes positions within major international fora, including the Organisation for Economic Co-operation and Development (OECD), the World Trade Organization (WTO) and the UN.

4.2 Domestic policies and positions

The EU and US have similar priorities for improving domestic and international ocean governance. While the EU is focusing on integrating many aspects of maritime governance through the IMP, the US has set up integrative structures and national priority objectives, such as ecosystem-based management, CMSP, and improved coordination, through the national ocean policy. Both regions have similar goals moving forward: both seek strong leadership from Member States/states on rallying support for effective ocean policies, improving the knowledge and innovation base on marine science and increasing the sustainability and economic vitality of coastal communities. Both the EU and US are concerned about emerging threats to oceans and coasts around the world, largely due to climate change and increased use of natural resources. Annex A presents a comparative table on the consistency of policy objectives for the EU and US as described in the Marine Strategy Framework Directive and US National Policy on Stewardship of the Ocean, Our Coasts, and the Great Lakes (Executive Order 2010).

It appears that in both the US and the EU, ocean governance strategies are developing at the regional level, particularly with regard to marine spatial planning.

4.2.1 Maritime spatial planning (MSP) and Coastal and marine spatial planning (CSMP)⁹⁶

Both the EU and the US have adopted MSP/CSMP as an approach for the sustainable management of their oceans and have incorporated the process in their respective ocean policies.

Maritime spatial planning in the EU: The EU’s Integrated Maritime Policy encompasses MSP and, similar to the US, developed a “Roadmap for Maritime Spatial Planning” in 2008.⁹⁷

⁹⁶ A difference in terminology used exists between the EU and US on this issue, with the EU calling the activity ‘maritime spatial planning’ (MSP) and the US calling it ‘coastal and marine spatial planning’ (CMSP). Both MSP and CMSP refer to the same process.

This roadmap was presented and discussed at a series of workshops in 2009. The EU-level MSP framework would be based on 11 points that many stakeholders have approved, including basing MSP on ecosystem management, transparent development, stakeholder participation, and ensuring that MSP is applied in accordance with international law. Coordination within and among Member States is crucial. The EU envisions MSP will utilize both legally binding measures as well as guidelines. The MSP will furthermore be closely linked to the Integrated Coastal Zone Management (ICZM) process. While the US does not mention renewable energy as a priority in MSP, the EU lists it in addition to marine transport, offshore oil and gas, and fishing as priority activities for marine use.

Currently there is uneven development of MSP among Member States, with implementation largely occurring within regional sea basins. At the EU level there are similar MSP 'test projects'. Ultimately the EU and the US are utilizing different processes for developing comprehensive regional marine spatial planning strategies, with the US having a clearer overall picture of how the federal CMSP structure will develop and the EU carrying out significant planning and analysis of MSP impacts while working with Member States to implement parts of MSP. Since the EU is more at the implementation stage, it can potentially contribute advice and share recommendations for best practices and success with the US as it embarks on the planning stages under the National Oceans Council (NOC). Both regions will likely experience difficulty in ensuring MSP/CMSP are cohesive with existing laws and minimizing regulatory barriers to important areas of development like renewable energy and blue carbon. The European Commission and the US National Ocean Council could work together as they deal with these issues.

Coastal and marine spatial planning in the US: US domestic marine policy has undergone a number of significant reforms in the past several years under the Obama Administration, with the establishment of the National Ocean Policy through Executive Order as discussed in Chapter 3. The National Ocean Policy identifies several national priority objectives, including coastal and marine spatial planning, as a tool to help implement the National Ocean Policy. Coastal and marine spatial planning (CMSP) is defined in the Interagency Ocean Policy Task Force *Final Recommendations* as:

a comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning process, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas. Coastal and marine spatial planning identifies areas most suitable for various types or classes of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystem services to meet economic, environmental, security, and social objectives. In practical terms, coastal and marine spatial planning provides a public policy process for society to better determine how the ocean, our coasts, and Great Lakes are sustainably used and protected – now and for future generations.

The Executive Order creates a National Oceans Council (NOC) which will implement the national ocean policy. It will also oversee regional CMSP development over the next five years and implementation going forward. A large portion of the CMSP development process will take place over the next three years and leading up to 2015 the NOC will review draft

⁹⁷ COM (2008) 791 final.

regional plans. It is important to note that there is some concern that, given the CMSP framework's stand-alone nature, there could be conflict between CMSP recommendations and existing state/local laws.

4.2.2 Ocean renewable energies

Both the EU and the US support the development of ocean renewable energy recognizing the economic and environmental benefits that they can provide. The EU has been a leader in ocean renewable energy development – especially regarding wind power – and the US has made advances toward development in this sector in the last couple of years.

Ocean renewable energy development in the EU: The EU prioritizes ocean energy research in its current Framework Programme 7, and since 1990 has spent upwards of EUR 60 million with Framework Programme funding alone on marine power production optimization, wave energy conversion, salinity gradient power, deep offshore platforms. Furthermore, it has been working to allow ocean energy to break into the renewables market through the Intelligent Energy Europe program. EU Member States, especially the UK, Ireland, Denmark, Portugal, France, and Germany, have additionally contributed millions toward ocean energy deployment and grid connection. EU industry predicts ocean renewables could reach 21 GW of installed capacity in Europe by 2020. Relevant decision making bodies in the EU include:

- European Commission, DG Research
- Intelligent Energy Europe
- European Ocean Energy Agency, which is coordinating a European Commission ocean energy project on market development

Ocean renewable energy development in the US: The US has been slow to prioritize funding for ocean renewable technologies, but has taken several important steps in the past two years to encourage their development by establishing the national ocean policy through a Presidential Executive Order and prioritizing the development of a national CMSP framework.⁹⁸ BOEMRE has established a new regulatory structure for energy development on the outer continental shelf, which allows for issuing commercial leases for offshore electricity production. The US and EU could cooperate more on market penetration of ocean renewable technologies through business trade organizations, research projects, and coordinated federal/regional incentives for ocean renewables, which in the US have decreased since 2009. Relevant decision making and trade bodies in the US include:

- National Ocean Council (co-chaired by Council on Environmental Quality and Office of Science and Technology Policy), which will lead development of regional CMSP up to 2015 and will be seeking stakeholder and expert input throughout this process
- Federal Energy Regulatory Commission (FERC), which has authority over siting marine and hydrokinetic technologies
- Ocean Research and Resources Advisory Panel (ORRAP)
- BOEMRE and NOAA, which recently announced \$5 million for siting and permitting offshore renewable energy projects

⁹⁸ The White House Office of the Press Secretary, 2010.

- Ocean Renewable Energy Coalition

4.2.3 Maritime/Marine research

Both the EU and the US have highlighted the importance of maritime/marine research in recent policy documents. They recognize the need to facilitate efforts across sectors, although the EU seems to place stronger emphasis on cross-border and third country cooperation.

Maritime research in the EU: As part of the IMP, the EU outlined its strategy for marine and maritime research in 2008.⁹⁹ It aims to provide better integration between marine and maritime research areas, and to facilitate improved joint work between these two areas. It outlines the following key components:

- *Capacity building:* This area includes: building of new research and observation infrastructure; developing further support for specialized pan-European research structures; developing new interdisciplinary skills, education and innovation capacities; and exploring new financing schemes combining a variety of funding sources.
- *Integration:* This area includes: identifying interdisciplinary research goals across traditionally isolated research sectors (e.g. climate change, transport, bioenergy, food); increasing integration and efficiency of marine databases; building on existing marine clusters in the framework of the 'Regions of Knowledge' initiative; and providing support to screen marine and maritime technology expertise to accelerate transfer at the EU level.
- *Synergies:* This area includes: building on existing research schemes to identify and propose new cross-national research schemes; facilitating the pooling of public funding through ERA-NET+; coordinating with existing EU level schemes to finance research¹⁰⁰; preliminary implementation of Article 169 of the TEU¹⁰¹; and defining and implementing joint programming.
- *New forms of governance in research:* This area involves designing an effective and innovative governance framework for research that enhances dialogue between the marine and maritime research sectors, while engaging scientists, policy-makers and the public. The envisioned framework should: achieve consensus among marine and maritime stakeholders at the EU level; stimulate interdisciplinary cooperation; promote exchange between marine science and marine and maritime industries; explore how scientists can be better involved in the commercial exploitation of their research; foster dialogue between scientists and policy-makers; and strengthen partnerships with third countries, particularly those sharing sea basins.

Marine research in the US: The importance of scientific knowledge and data are underscored in the 2010 *Final Recommendations of the Interagency Ocean Policy Task*

⁹⁹ COM (2008) 534 final.

¹⁰⁰ Schemes identified in the strategy in this regard include: the Competitiveness and Innovation Framework Program, European Cooperation in Science and Technology (COST), Cohesion Policy funds, and EUREKA.

¹⁰¹ Article 169 of the TEU allows for the participation of the EU in the research and technical development of several Member States outside of the EU framework, with the aim of providing better coordination and eliminating overlap.

Force, particularly as relates to the effective implementation of MSP.¹⁰² To this end, the report highlights the need for a “robust national information management system dedicated to coastal and marine scientific data and information products” to be implemented by National Ocean Council (NOC) in coordination with regional bodies.

The system, which is currently under development, will be compatible with existing Federal information sources, include effective governance and accountability across agencies and build upon existing data systems and initiatives where possible. State agencies, tribes, academia, private sector, stakeholders and other non-governmental actors will be encouraged to provide information to this system, which will be set up with either a central portal or regional portals. The NOC would be responsible for identifying priority areas of need for marine scientific knowledge and data.

Additionally, the report highlighted the following principles for the management and dissemination of this information¹⁰³:

- Marine scientific knowledge and data are a national strategic asset and should be managed on an ongoing basis in order to meet planning needs;
- This information should be made available to stakeholders with nationally compliant metadata about the information sources;
- Federal agencies will improve this metadata in order to increase the ease and efficiency with which information can be retrieved and managed; and
- Marine scientific knowledge and data that is collected, produced or disseminated by Federal agencies must meet government wide information quality standards.

4.2.4 Marine security and safety

The EU and US share a strong interest in security and safety of the oceans, coasts and seas. There is an opportunity for closer collaboration between the US Coast Guard (USCG) and European Maritime Safety Agency (EMSA) and sharing best practices in safety regulations.

EU maritime security and safety: Though the EU has long encouraged Member States to ratify a number of international agreements on maritime safety, such as the International Convention for the Safety of Life at Sea (SOLAS) and MARPOL conventions, it was only with the 1992 adoption of the TEU that the EU gained a specific competence in the safety of maritime transport. Since 1993, the EU has enacted a wide array of measures intended to improve maritime safety, a process which was accelerated by significant shipping disasters, such as the 1999 *Erika* and 2002 *Prestige* oil spills.

Unlike the US, the EU has no unified coast guard, relying instead upon the maritime services and coast guards of Member States. An EU agency, the EMSA exists to provide technical and scientific support to Member States, strengthen Port State Control (PSC), audit classification societies, and develop a methodology for accident investigation.¹⁰⁴

The most recent major action taken by the EU on maritime safety is the Third Maritime Safety Package, which was adopted by the European Council and European Parliament in

¹⁰² The White House Council on Environmental Quality. 2010.

¹⁰³ The White House Council on Environmental Quality. 2010, p. 67.

¹⁰⁴ For more on EMSA, see: <http://www.emsa.europa.eu/>

2009. This package consists of 6 directives and 2 regulations, and follows two prior packages instituted as a direct response to the *Erika* incident. Some of the main components are as follows:

- The Flag State Directive requires Member States to ensure that all ships flying their flag adhere to relevant IMO standards, and ensure that an IMO audit of their maritime administrations is conducted at least every 7 years.¹⁰⁵ The Directive on Vessel Traffic Monitoring establishes a network for information sharing and provides for better data collection in order to increase maritime safety and prevent environmental damage from vessel activities.¹⁰⁶ The Accident Investigation Directive provides guidelines for Member States on the technical investigation and analysis of maritime accidents. Furthermore, it establishes an EU database on Maritime accidents.¹⁰⁷
- A directive and regulation were adopted to strengthen the oversight and standards of the non-governmental classification societies that establish and evaluate the technical standards for the construction and operation of ships and offshore rigs.¹⁰⁸ Furthermore, these policies institute a requirement for mutual recognition of the class certificates awarded by all classification societies recognized by the EU, using the most demanding and rigorous standards as the reference point.
- The Port State Control Directive institutes an EU-wide target of inspections for 100% of ships visiting EU ports and anchorages, with frequency of inspections varying according to perceived risk (for instance, high-risk ships will receive inspections every six months, medium-risk ships every twelve months).¹⁰⁹ This goal supplants the existing 25% inspection rate target for Member States. Though Member States were required to implement this directive by the end of 2010, there may still be opportunities for collaboration and best-practice sharing from the US, as this new stance strongly implies the potential for harmonization. Strong similarities between the US PSC regime and the Third Maritime Safety Package may facilitate closer cooperation.¹¹⁰

US marine security and safety: The US has a longstanding record of implementing regulations and legislation for maritime safety, security and prevention of environmental damage from maritime activities. The maritime safety and maritime environmental protection regime for the US is articulated in Titles 46 and 33 in the US Code. Other key pieces of federal legislation for US maritime safety include the 1972 Ports and Waterway Safety Act, the 1978 Port and Tanker Safety Act, 1990 Oil Pollution Act, 2002 Maritime Transport Security Act, and the Security and Accountability For Every Port Act of 2006 (SAFE Port Act). Additionally, many states with strong maritime interests have adopted further maritime safety legislation.

Though the US is party to many international agreements on maritime safety and pollution prevention, it has maintained a unilateral stance on a number of key areas. For example, the US unsuccessfully lobbied for an international agreement mandating the use of double hulls

¹⁰⁵ Official Journal of the European Union, 2009a.

¹⁰⁶ Official Journal of the European Union, 2009b.

¹⁰⁷ Official Journal of the European Union, 2009c.

¹⁰⁸ Official Journal of the European Union, 2009d; Official Journal of the European Union, 2009e.

¹⁰⁹ Official Journal of the European Union, 2009f.

¹¹⁰ Christodoulou-Varotsi, 2009, p. 103.

on tankers as early as 1973. It was only in light of the adoption of the 1990 Oil Pollution Act that amendments were made to MARPOL creating mandates for double hull technology.¹¹¹ Additionally, unlike the EU, whose Member States participate in the Paris Memorandum of Understanding, the US does not participate in any regional agreements on PSC. Instead, the US has implemented its own system, as outlined in the 1994 Port State Control Initiative, which is carried out by the USCG, and focuses upon identifying high risk foreign vessels based upon performance records of vessel owners, flag states, and classification societies.¹¹²

The USCG serves as the main body responsible for maritime safety, maritime security and the prevention of pollution from maritime activities. There is potential for cooperation between the USCG and the EMSA, as was evidenced during the 2010 Deepwater Horizon oil spill in the Gulf of Mexico. During this time, the EMSA provided assistance in the form of an oil skimmer. Moving forward, there may be scope for additional exchange of technical knowledge and best practices between the EMSA and the USCG.

4.3 International maritime governance

The EU and US have slightly different priorities in international ocean governance, largely due to the different logistical challenges that face the two regions. The following outlines EU and US priorities for international maritime governance.

EU priorities for international maritime governance: In general, the EU has demonstrated more commitment to a binding international framework for ocean governance, and is more concerned with integrating the variety of regulatory issues for oceans, at least within the EU.

Most international agreements related to the ocean are signed by both EU member states and the European Commission, although some treaties only allow nations as full members. The extent of EU-level involvement in international fora is a function of the developing state of EU competence over a large variety of marine issues.¹¹³ In terms of external priorities, through the IMP the EU has identified access to international maritime markets for European industries, sustainable exploitation of the deep seas, protecting marine biodiversity, reduced ship pollution and decreasing illegal activities as highly important issue areas. In areas of European Commission competence, the Commission can enter into international agreements.

While the development of competences creates some difficulty for complete integration of EU marine policies (for example, the European Commission is party to UNCLOS but only an observer to the IMO), and the heterogeneity of Member State positions complicates achieving a EU-wide position on some international issues, the EU nevertheless has put forth a set of priorities for international ocean governance under the IMP. One of the EU's top priorities is to achieve global membership in UNCLOS and the supplementary UN Fish Stocks Agreement, which may encounter some difficulties depending on the ability of the US to ratify UNCLOS. This priority reflects the EU's stated preference for a system of international ocean governance firmly based upon the rule of law.

¹¹¹ Christodoulou-Varotsi, 2009, pp. 59-60.

¹¹² For more on the USCG see: <http://homeport.uscg.mil/>

¹¹³ Wouters et al. 2009

Like many other areas of EU policy, sustainable development is a key tenet of the EU position on international ocean governance, particularly as regards the protection of marine biodiversity. The EU views a number of international bodies as important fora in this regard, including the CBD and UNCLOS. With regard to the latter, the EU has sought to strengthen this body's existing obligations for the protection of the marine environment by proposing an Implementation Agreement that would promote the use of integrated approaches for the perseverance of marine biodiversity in areas beyond national jurisdiction. In 2008, the EU transposed a 2006 UNGA resolution for the protection of vulnerable marine habitats from destructive bottom fishing gear, and is consequently pursuing effective international implementation.¹¹⁴

The EU has also stressed climate change as a key priority for the international dimension of the IMP, and views the successful negotiation of a post-2012 climate change agreement through the UNFCCC as a main priority in this regard. As regards other international institutions, the EU views the IMO as having a responsibility for implementing global emission reduction measures and believes that measures in this regard should be implemented in the near future. The EU has also stated its intention to provide technical and financial assistance for adaptation to developing coastal and island states, through the establishment and usage of initiatives such as the Global Climate Change Alliance.¹¹⁵

Social and economic issues have also been identified as a key theme for consideration under the international dimension of the IMP. In 2009, the Commission published a Communication that presented the primary strategic goals for the EU's maritime transport system through 2018, which stressed that European ocean policy consistently aims to reflect economic, social, and environmental concerns. Shipping is regarded as a cornerstone of economic growth and the EU aims to maintain the competitiveness of its maritime transport industry at a global level. Achieving this will be challenging in light of the significant advantage foreign competitors sometimes have in terms of government support, access to cheap capital and abundant labor, and flexible enforcement of international standards. For this reason, the European Commission will pay increased attention to the promotion of international maritime labor standards and regard institutions like the International Labour Organization (ILO) as key partners in this respect.

With regard to marine research, the EU has identified the need for enhanced cooperation with third countries in large-scale international research partnerships, as recommended by the Commission in a 2008 communication.¹¹⁶ However, neither this Communication nor the 2009 Communication on the international dimension of the IMP identifies specific venues or fora where such international research collaboration could take place.

US priorities for international maritime governance: The US National Ocean Policy highlights the importance of international maritime governance, stating that among other things, "it is the policy of the United States to exercise rights and jurisdiction and perform duties in accordance with applicable international law, including respect for and preservation of navigational rights and freedoms, which are essential for the global economy and international peace and security."

¹¹⁴ Official Journal of the European Union, 2008.

¹¹⁵ COM (2008) 534 final.

¹¹⁶ COM (2008) 534 final.

The Executive Order establishing the National Ocean Policy outlines that the US will promote its new policy in several ways, one of which is by “cooperating and exercising leadership at the international level.” Another strategy identified by the Executive Order for promoting the National Ocean Policy is to pursue US accession to the Law of the Sea Convention.

Among the nine national priority objectives of the *Final Recommendations of the Interagency Ocean Policy Task Force*, which serve as the major objectives of the National Ocean Policy and guide its implementation, is an emphasis on addressing environmental stewardship in the Arctic Ocean and adjacent coastal areas in the face of climate-induced and other environmental changes.

The *Final Recommendations* also identify strengthening and integrating “Federal and non-Federal ocean observing systems, sensors, data collection platforms, data management, and mapping capabilities into a national system, and integrate that system into international observation efforts” as a national priority objective that has wide-reaching impacts for global marine science. Additionally, under the Magnuson-Stevens Act, the US is committed to implementing IUU fishing provisions. Finally, climate change adaptation and mitigation are priorities of the Obama Administration, however because binding international commitments must be passed through the US Senate, the US’s ability to sign onto international agreements on ocean governance is limited.

Both the US and EU participate in international agreements and negotiations through a number of global fora on a wide variety of issues. The following presents a brief overview of major fora, including the OECD, UN and WTO.

4.2.5 Organisation for Economic Co-Operation and Development (OECD)

The OECD consists of 32 countries committed to democracy and a market-based economy. Key goals include supporting sustainable economic growth, in part by ensuring that environmental consequences of economic and social growth are taken into account. A key function of the OECD is collection and statistical analysis of economic and social data. The United States and 21 EU Member States are members of the OECD.¹¹⁷

Among other sustainability-related issues, the OECD advises governments on sustainable fisheries resource management and provides economic and policy analysis for the fish sector. They aim to identify and highlight the positive characteristics of sustainable fisheries policies and management practices, as well as to determine best uses of market-based approaches in the fishing sector.¹¹⁸ An annual review of fisheries (published biannually) includes information on regulatory initiatives in member countries related to fisheries management, bilateral agreements, trade and aquaculture.¹¹⁹ The **OECD Committee for Fisheries**, established in 1961, provides a forum for Member states to discuss economic and policy aspects of fisheries.¹²⁰ The Committee meets twice per year, and its four focus areas for 2009-2011 include: 1) sustainable development of aquaculture, 2) adaptation of fisheries

¹¹⁷ OECD. Available at: <http://www.oecd.org> [Accessed September 24, 2010]

¹¹⁸ OECD. Fisheries.

¹¹⁹ OECD. Review of fisheries.

¹²⁰ OECD. Fisheries: About.

to climate change, 3) certification schemes for fisheries and aquaculture, 4) economics of rebuilding fisheries.¹²¹

The EU itself is not a member of the OECD, and given the OECD's limited focus on marine issues (namely fisheries, for which there are other existing avenues of discussion of which the EU is a member, e.g. regional fisheries management organizations (RFMOs)), this is not likely to be an ideal forum for discussion between the US and the EU. However, because fisheries is an EU-level competence for the EU OECD countries, such discussion would nevertheless at least partially reflect EU positions on fisheries issues, which are discussed in more detail below, along with US positions.

4.2.6 World Trade Organization (WTO)

At the Doha Ministerial Conference in 2001, it was agreed that stronger rules are needed related to fisheries. At the Hong Kong Ministerial Conference in 2005, it was agreed to begin WTO rules negotiations on anti-dumping, subsidies, fisheries subsidies and regional trade. The negotiations group is currently considering proposals from multiple delegations in response to the Chair's text on fisheries subsidies, including the US and the 'Friends of Fish' group, which includes Argentina, Australia, Chile, Colombia, the United States, New Zealand, Norway, Iceland, Peru and Pakistan. There is no submission yet from the EU or any EU Member State.¹²²

The WTO deals only with issues of trade, and given the US and EU's strong trade relationship and interdependency, the WTO is a potential forum for cooperation. However, marine-related agreements established under the WTO may be limited in scope and issues such as fisheries will require action in other fora.

4.2.7 United Nations (UN)

The UN hosts a number of ocean-related international meetings.¹²³ A key forum for maritime governance is the **United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS)**. The General Assembly established the process in 1999 to review annual developments related to ocean affairs and the law of the sea. The process is open to all members of the United Nations, parties to UNCLOS and all entities that have been invited to participate in the work of the General Assembly. It aims to identify areas where further cooperation and coordination could be enhanced. The most recent meeting took place on 21-25 June 2010. The meeting focused on capacity-building in ocean affairs and the law of the sea, with a specific focus on marine science. The conference proceedings state the following conclusions:

1. Existing capacity is limited, and there are challenges to effective capacity-building;
2. Increasing capacity through further development of marine science is critical;
3. A wide range of stakeholders is necessary to increase capacity at multiple scales, and in particular, in marine science.¹²⁴

¹²¹ OECD. Four major areas of work.

¹²² WTO. Negotiations on fisheries subsidies.

¹²³ UN Division for Ocean Affairs and the Law of the Sea. 2010b.

¹²⁴ UN General Assembly, 2010a.

The meeting also touched on the **UN development of a regular process for global marine assessment**. In 2005, the General Assembly endorsed the need for a "regular process" for global reporting and assessment of the state of the marine environment. As part of the start-up phase for the regular process, an 'Assessment of Assessments' was completed in 2009 to serve as the foundation for the process.¹²⁵ The most recent meeting took place 30 August-3 September 2010. While no formal report of the meeting was published as of the writing of this report, the provisional agenda indicated that discussion would focus on agreeing to a framework on an upcoming integrated assessment as follows: Phase 1) 2010-2012: develop strategy for integrated ocean assessment and Phase 2) 2012-2014: produce integrated assessment focused on cross-cutting themes (e.g. food security) to serve as baseline for future assessments.¹²⁶

In addition, there is a **UN Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction** that examines the subject and seeks to promote international cooperation and coordination on the issue. The third meeting of the Ad Hoc Open-ended Informal Working Group was held on 1-5 February 2010. The working group developed a set of recommendations for areas beyond national jurisdiction to the General Assembly that include the following:

- Focus on further data collection and scientific research of marine biological diversity;
- Promote capacity-building and technology transfer;
- Enhance cooperation and coordination, such as through regional seas conventions and RFMOs, to exchange best practices and implement joint programs;
- Strengthen integrated and ecosystem-based approaches
- Request comprehensive environmental impact assessments;
- Develop area-based management tools, in particular marine protected areas, pursuant to the 2012 Johannesburg Plan of Implementation of the World Summit on Sustainable Development;
- Develop legal regime for marine genetic resources.¹²⁷

EU position: The EU position on governance of marine areas beyond national jurisdictions is that there is a need for a new UNCLOS implementation agreement for the protection of biodiversity and for the preservation, exploration, and exploitation of marine genetic resources (MGRs) beyond national jurisdictions.¹²⁸

US position: While the US holds a similar position with respect to the need to implement practical management tools and undertake capacity building for developing States, it holds a divergent view with respect to the need for a new legal regime or the development of any new global regulatory instruments for areas beyond national jurisdiction, including an UNCLOS Implementation Agreement. Statements by the US in various fora, including the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and

¹²⁵ UNEP, IOC-UNESCO, 2009.

¹²⁶ Provisional agenda available here: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/508/26/PDF/N0950826.pdf?OpenElement>.

¹²⁷ UN General Assembly, 2010b.

¹²⁸ Earth Negotiations Bulletin, 2006. and see: European Commission 2006c.

sustainable use of marine biological diversity beyond areas of national jurisdiction, explicitly indicate a preference for focusing on implementing the existing framework and avoiding the development of new legal or regulatory instruments that may impede scientific research.

United Nations Framework Convention on Climate Change (UNFCCC)

Some of the most pressing environmental concerns related to oceans are the effects of climate change on marine biodiversity, overall marine ecosystem health, and sea level rise, which are linked with food security and water quality and availability concerns. Dialogue on the incorporation of marine issues into existing climate change discussions, within and beyond the UNFCCC, has occurred at regular meetings of the **Global Forum on Oceans, Coasts, and Islands** since 2001, and is a central location for international thinking and cooperation on a broad range of relevant environmental and management issues. At the Global Forum's most recent meeting in Cancun during the UNFCCC COP16 in 2010, workshop participants focused on the need to "build a comprehensive strategy on oceans and climate".¹²⁹ This would include:

- Identifying the role of oceans and coastal areas in reducing carbon emissions;
- Their ability to fit into existing climate frameworks (e.g. the UN Collaborative Program on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD));
- The need for identifying ocean-relevant indicators and targets to be used in future climate agreements (e.g. a biochemical target for reducing ocean acidification);
- The need to incorporate water management into adaptation and development planning, and a greater focus on the adaptation needs of coastal areas in general;
- Determining the appropriateness of using geoengineering techniques, accounting for their effects on the marine environment;
- Stimulating off-shore renewable energy development through the UNFCCC and other mechanisms.

In particular, the importance of building coastal wetlands and other ecosystems into the REDD+ framework was emphasized, through developing better models and understanding of "blue carbon," such as mangrove forests and other coastal ecosystems with significant carbon sequestration potential. The workshop co-chair was heartened by the increasing high-level attention to ocean issues in climate discussions. Because this is a relatively new topic, there do not appear to be established US and EU positions. Technical barriers however are likely to be immense, and it should be reminded that the REDD+ mechanism is still not operational. In addition, providing some more sources of flexibility may be appealing, but it only makes sense if the US establishes a carbon cap and the EU strengthens its own cap under the EU Emissions Trading System.

Emissions from shipping could also be addressed by UNFCCC Parties, and the EU has encouraged faster action on this issue. One suggestion from Norway indicated that the UNFCCC Conference of Parties (COP) could set the emissions reduction target for maritime emissions and IMO could establish the binding agreement and mechanism for meeting the target. All revenues resulting from the implementation of a CO₂ charge or an operator emissions trading could be committed to the financing mechanism under the UNFCCC. Such an approach would provide incentives for developing nations to support the inclusion of

¹²⁹ IISD, 2010.

maritime transport emissions in a post-2012 climate regime as it would have the potential to provide a major source of climate finance.

Specifically related to fisheries, the **UN Fish Stocks Agreement (UNFSA)**¹³⁰ aims to ensure conservation and management of fisheries resources. It complements the 1993 FAO Compliance Agreement and the 1995 FAO Conduct for Responsible Fisheries.¹³¹ The most recent meeting of the UN Fish Stocks Agreement was held on 16-17 March 2010 and focused on recent developments related to illegal fishing and enhancing cooperation among Regional Fisheries Management Organizations (RFMOs).¹³² Further detail on RFMOs is provided, below. An additional forum to develop new methods for cooperation is the **FAO Committee on Fisheries (COFI)** which is "the only global inter-governmental forum where major international fisheries and aquaculture problems and issues are examined and recommendations addressed to governments, regional fishery bodies, non-governmental organizations (NGOs), fishworkers, FAO and international community, periodically on a world-wide basis."¹³³ COFI has two subcommittees dedicated to fish trade and aquaculture, respectively.

4.2.8 Regional Fisheries Management Organizations

Regional Fisheries Management Organizations (RFMOs) are international organizations dedicated to the conservation and protection of fish stocks in the high seas. Each RFMO represents countries with fish interests in the area. RFMOs support scientific research on regional fish stocks and related migratory species, set and allocate quotas in their region, and monitor and enforce fishing activities. The UNFSA and Code of Conduct for Responsible Fisheries are used to develop criteria to review the performance of each RFMO.

The following RFMOs have regional importance in the Northern Atlantic:¹³⁴

International Commission for the Conservation of Atlantic Tunas (ICCAT)

ICCAT is responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and its adjacent seas. Their mandate includes approximately 30 species of direct interest. ICCAT was established through the Convention for the Conservation of Atlantic Tunas, which came into force in 1969. Currently there are 48 contracting parties to ICCAT, including the US and the EU.¹³⁵

While ICCAT members have had some success in maintaining "good" stocks of yellowfin, skipjack and bigeye tuna, concerns over the health of these species in some areas remain (especially in the Gulf of Guinea).¹³⁶ The most stringent regulations have been enacted to

¹³⁰ Note, the complete title is: 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.

¹³¹ FAO, Compliance Agreement. Parties to this Agreement. FAO. Conduct of Responsible Fisheries.

¹³² Informal Consultations of States Parties. 2010.

¹³³ FAO, Committee on Fisheries.

¹³⁴ It is important to note that the International Council for the Exploration of the Sea (ICES) has been coordinating marine research and providing scientific advice for the North Atlantic and adjacent seas since 1902. Its network of 1600 scientists is supported by 20 member countries (including the US and many European countries) through the Convention for the International Council for the Exploration of the Sea (1964). Further information is available at: <http://www.ices.dk/indexfla.asp>.

¹³⁵ ICCAT, 2010.

¹³⁶ Cialino, 2010, p. 17

increase stocks of bluefin tuna, for which fishing was limited beginning in 1981 for the western stock. Limits for the eastern stock were enacted in the early 1990s. TACs for bluefin tuna in the Western Atlantic are highly limited and are shared by only a handful of countries (US, Japan, Canada, UK [Bermuda], France [St. Pierre et Miquelon] and Mexico).

EU position: In order to reach new agreements on reduced TAC levels, the EU was excused for 1000t of overharvest from 2007. Official ICCAT estimates have the Eastern Atlantic stock, on which many European nations fish, in better shape than the Western Atlantic stock, thus making it easier for the EU to oppose larger harvest reductions that might facilitate more rapid stock rebuilding. There has been less contention over management of the western stock, which is currently under a management regime that was proposed by the US, and which as noted above has strict individual country TACs.

US position: According to NOAA, the US has been supportive of strong conservation measures for the eastern bluefin tuna stock, particularly due to concerns about the intermixing of the western and eastern stocks.¹³⁷ The eastern stock, according to a 2006 assessment, has a “high risk of fishery and stock collapse.” The US is concerned that ICCAT is not adopting sufficiently strict enough, particularly for the Eastern Atlantic stock. TACs. NOAA’s analysis of a 2006 EU proposal for the eastern stock management plan, which was subsequently adopted by ICCAT, set TACs nearly double the scientific recommended level.¹³⁸ The TACs have subsequently been reduced several times to attain scientific recommended levels (less than 15,000t) in an attempt to head off the incorporation of bluefin tuna in CITES, which would have prohibited bluefin tuna international trade. The US indicated it would support the inclusion of bluefin tuna in CITES unless ICCAT reduced TACs to science-based levels, and has recently found Atlantic Bluefin to be a “Species of Concern” but has declined to list them under the U.S. Endangered Species Act. Compliance with TAC levels and data records on catch levels, particularly for the Eastern Atlantic stock, has been generally poor since the implementation of the 2006 management plan.

North Atlantic Salmon Conservation Organization (NASCO)

NASCO is responsible for conservation, restoration and management of Atlantic salmon. It was established by the Convention for the Conservation of Salmon in the North Atlantic Ocean in 1984 and includes seven parties bordering the North Atlantic Ocean including the US and the EU.¹³⁹ The US and the EU are both members of the West Greenland Commission (WGC), and have separate memberships in the North American Commission (NAC) and the North-East Atlantic Commission (NEAC). However, both the US and EU can submit and vote on proposals in other Commissions which are relevant to salmon stocks originating within their territories. The US has not had a commercial salmon fishery since 1948, due to critically low stock levels, and stock levels in the jurisdiction of the WGC are suffering reduced reproductive capacity.¹⁴⁰ Very little fisheries activity is taking place, and is unlikely to resume until after 2012 in order to allow for meeting the conservation objectives adopted by NASCO. ICES indicates that climate effects may be reducing the efficacy of conservation efforts.

Northwest Atlantic Fisheries Organization (NAFO)

¹³⁷ Cialino, 2010, p. 17

¹³⁸ Cialino, 2010, p. 18

¹³⁹ NASCO, 2010.

¹⁴⁰ Cialino, 2010, p. 28

NAFO is responsible for all fish stocks in the northwest Atlantic Ocean not covered by any other convention. NAFO was founded in 1979 by the International Commission of the Northwest Atlantic Fisheries. The NAFO scientific council is responsible for the advice on the status of the fish stocks as requested by the coastal states or fisheries commissions. Currently NAFO has 12 contracting parties, including the US and the EU.¹⁴¹ At its 2010 Annual Meeting, NAFO adopted measures to implement the precautionary principle, which was supported by the EU. The US has pushed for this RMFO to determine fishing allocations on a basis other than fishing history, though these concerns were not incorporated into a recent set of proposed amendments to NAFO. When several fish stocks previously under moratorium were opened again in 2009, the US pushed for allocating TACs by using the precautionary principle.¹⁴² This option was voted down by the Fisheries Commission.

4.2.9 International Maritime Organization (IMO)

The International Maritime Organization (IMO) is a specialized agency of the UN, which was established through the Convention establishing the International Maritime Organization (IMO), adopted in Geneva in 1948. It is responsible for development of a comprehensive regulatory framework for shipping, which includes safety and the environment. Within this comprehensive framework, there are a number of international treaties, including the **International Convention for the Prevention of Pollution from Ships (MARPOL Convention)**, which is the main international convention designed to prevent pollution of the marine environment from ships, either from operational or accidental causes. Its six annexes each cover a different form of marine pollution from ships, and all parties must accept the first two annexes (i.e. Annex I: Prevention of pollution by oil and Annex II: Control of pollution by noxious liquid substances). The remaining annexes are voluntary. In addition, MARPOL designates "Special Areas" and "Particularly Sensitive Sea Areas" (PSSAs), which restricts activity in areas that are agreed to be potentially more vulnerable to pollution from oil, garbage, or sulphur emissions. There are 136 countries that are parties to MARPOL, including the US and all EU Member States.

The IMO also has a number of committees and sub-committees that handle a variety of issues. The **Marine Environment Protection Committee (MEPC)** is the IMO's highest technical body on marine pollution. The next MEPC meeting is scheduled for 27 September - 1 October 2010 and the provisional agenda shows they are scheduled to discuss harmful aquatic species in ballast water, reduction of greenhouse gas (GHG) emissions from ships and identification and protection of Special Areas and Particularly Sensitive Sea Areas, among other items.¹⁴³

The IMO has also facilitated discussion on managing emissions from ships since 2003, with the US and EU member states contributing many positions and suggestions. Maritime emissions account for 4% of global emissions.¹⁴⁴

The international community can also take a more decentralized approach and regulate shipping-related GHG emissions through the IMO. Movement towards finalizing such an IMO agreement on market-based mechanisms for reducing shipping emissions may start in

¹⁴¹ NAFO, 2010.

¹⁴² Cialino, 2010, p. 34

¹⁴³ IMO. Marine Environment Protection Committee. 2010.

¹⁴⁴ Europa, 2010.

2011.¹⁴⁵ GHG regulation could be incorporated into MARPOL Annex VI through a three-quarter majority vote.

EU position: Individual EU member states (e.g. Belgium, Netherlands and Sweden) have supported the development of the Energy Efficiency Design Index (EEDI) for new ships. Discussion on the need for market mechanisms and their form has taken place within the IMO since 2003, and the slow progression has resulted in the EU investigating its own regional policy options for reducing shipping emissions. The EU Directorate General for Climate Action (DG CLIMA) indicated in a recent analysis that the lack of progress on an international agreement on shipping emissions under both the UNFCCC and the IMO has led to consideration of EU policy that would apply to all ships (above a certain size) visiting European Economic Area ports.¹⁴⁶ The EU is also investigating the feasibility of a regional or international emissions trading system for ship emissions, either linked to the EU Emissions Trading Scheme or as a separate programme.¹⁴⁷ The EU has said it will move forward alone if there is no international agreement by the end of 2011.¹⁴⁸

US position: The US EPA has participated in the IMO discussions on reducing GHG emissions from ships. The most recent US proposal for a market mechanism (from the IMO Marine Environment Protection Committee 61, October 2010) is a Ship Efficiency Credit Trading (SECT) scheme in addition to the EEDI requirements. This addresses the GHG emissions reduction concern by requiring that ships meet certain efficiency standards and allow trading of credits.¹⁴⁹

In general, the US and various EU member states appear to be on the same page in the IMO ship emissions negotiations. All IMO members are currently in the process of determining key components of the ultimate market mechanism, including minimizing carbon leakage (thereby increasing global coverage) and treatment of various ship types and sizes. Developing countries are particularly concerned about the extent of global coverage, while developed countries like the US and EU are concerned about balanced application of any international emissions reduction regime (i.e. including certain emerging economies and developing countries). It is unclear if the US would follow the EU in instituting a less encompassing or regional mechanism for reducing shipping emissions, given the US's consistent stance on the need for broad geographic coverage.

4.2.10 Summary

The CALAMAR Project and its expert participants have identified a number of areas with potential for further EU-US cooperation. These opportunities are spelled out in the CALAMAR working group papers and the second and third summary reports of the project. In particular, a few issues appear to have strong potential for increased transatlantic cooperation. Table 1 below summarizes a selection of these issues.

¹⁴⁵ Bodansky, 2010, p. 5

¹⁴⁶ European Commission, 2010c.

¹⁴⁷ European Commission, 2010c.

¹⁴⁸ COM (2010) 265 final.

¹⁴⁹ Marine Environmental Protection Committee, 2010.

Table 1: Summary of potential areas for transatlantic cooperation

Areas where cooperation is possible	Comments
Domestic marine spatial planning	Both the US and EU may be open to input in several steps of its coastal marine spatial planning development procedure.
Improving marine research	Both the EU and the US prioritize this issue area in their marine policy planning.
Marine security and safety	Both the EU and US prioritize this issue area in their marine policy planning. Opportunities may exist for the exchange of best practices as the EU implements new Port State Control measures.
Blue carbon	This is a relatively new issue, on which the US and EU could coordinate their position under the UNFCCC.
Shipping emissions	The EU and US both agree that the IMO is the appropriate international body for regulating emissions from shipping, and that any mechanism for doing so should have broad international coverage. Their recommendations on mechanisms currently differ and they may also differ on the appropriate role of the UNFCCC in this issue,
Fisheries governance	The EU and US tend to agree on many fisheries issues (science-based management, reducing and ending fishery subsidies, etc.). The two regions have different policy strategies on fisheries issues, particularly bluefin tuna; however, the underlying goals for restoring and protecting fisheries are the same.
Ocean policy integration	This is a priority for both the US and EU.
Governance of areas beyond national jurisdiction (ABNJ)	The US and EU hold different views on whether a new international regime is needed on this issue.
The future of UNCLOS	Many US officials and political leaders support the ratification of UNCLOS, however political factors have impeded the US from joining the Convention to date.
Ocean renewable energy	The US is further behind in the development of ocean renewable energy, however it has indicated a commitment to increasing renewable energy projects. The EU prioritizes ocean renewable energy. Cooperation on research is possible and the US could be open to increasing its commitment.

5 Potential for EU and US cooperation

The EU and US are leaders in international policy development and also have a long history of bilateral cooperation that is represented in a number of agreements, joint statements and councils, as well as formal dialogues on a wide variety of topics. In addition, informal mechanisms of cooperation range from regular contact between heads of delegations, to international collaboration and capacity-building through NGOs and university partnerships. Bilateral collaboration fosters strong relationships on both sides of the Atlantic in industry, science, environment and other areas. However, strengthened transatlantic collaboration is needed to ensure transfer of best practices in maritime governance, especially related to the implementation of future climate change adaptation and mitigation measures and pollution prevention.

The following section presents an overview of the various existing mechanisms for collaboration between the US and EU, as well as a general overview of recent discussions in key international fora related to maritime governance. The section benefits from information collected via questionnaire from selected CALAMAR Co-chairs. This summary is

intended to provide a springboard for discussion in the CALAMAR working groups about how transatlantic collaboration in maritime affairs could be improved.

5.1 Bilateral cooperation

There are a number of bilateral agreements between the EU and the US concerning a variety of subjects, such as the EU-US Science and Technology Agreement (2004), which offers a broad framework for collaboration across multiple fields. The EU and US have also collaborated on energy policy and security as outlined in the Joint Statement on Energy Security and Climate Change, and reinforced by the establishment of the US-EU Energy Council, which was formed in late 2009 to develop cooperation in the areas of energy security and markets, energy policies and regulation, as well as energy technologies and research cooperation.

With respect to fisheries, in 1997 the US and EU began the United States-European Union High Level Fisheries Consultation to promote transatlantic cooperation in the field of fisheries and fisheries research. The most recent public information provides a brief outline of the agenda from 2007, which includes discussion of RFMO performance reviews, IUU fishing, capacity, destructive fishing practices, NAFO, IATTC, the South Pacific non-tuna RFMO, sea turtles, and CITES. ICCAT topics discussed included the bluefin tuna recovery plan, the working group on capacity, and the working group on MCS issues. Recently, NOAA's Seafood Inspection Program began issuing a United States attestation in accordance with Council Regulation (EC) No. 1005/2008 for Products Caught by U.S-Flagged Vessels aimed to combat IUU fish from entering the EU.

The EU and US can undertake enhanced cooperation on the bluefin tuna issue, which as highlighted in section 4 has been a source of tension, as well as issues relevant to other stocks such as tracking and trade, by increasing the relevance of the United States-European Union High Level Fisheries Consultation.

While there is no formal instrument or legislation behind the US-EU High Level Fisheries Consultation, US and EU representatives have been meeting on a near annual basis since 1997 to facilitate cooperation on fisheries issues. There was no meeting in 2008 and 2009, and it appears that the next meeting has not yet been scheduled. To maintain relevance and efficacy, the Consultation could likely benefit from a broader involvement of stakeholders and representatives within the US and EU governments. Given the US and EU's history of disagreement over fisheries management strategies, such bilateral discussions would appear to be useful in continuing to build common positions as opposed to establishing opposing views on the international stage.

Additional discussions through the consultation could include developing fisheries management to reduce climate impacts, comprised of rehabilitating fish stocks and coastal areas to serve as fish nurseries and carbon sinks (e.g. mangroves, sea grass, etc.). The EU and US could also discuss how to maximize the effectiveness of the UN Fish Stocks Agreement, which continually identifies shortcomings of fully exploited and over exploited fish stocks in spite of the international agreement.

In addition, there is some level of cooperation among different countries' navies; however there is no public information on these discussions. Members of the CALAMAR dialogue are encouraged to consider navy and coastguard cooperation in their deliberations.

5.1.1 Transatlantic dialogue

A number of formal dialogues have effectively built relationships in many sectors. As part of the New Transatlantic Agenda,¹⁵⁰ launched in 1995, the US and the EU have participated in multiple dialogues on subjects ranging from business to the environment, including:

The Transatlantic Legislators Dialogue (TLD)¹⁵¹ aims to strengthen and enhance the level of political discourse between European and American legislators at all levels of government. In existence in one form or another since 1972, the TLD has allowed EU and US policies to develop in concert with each other, resulting in the development of more harmonized approaches to issues of joint concern, and has been helpful in preventing disputes in sensitive areas before they occur. It is unclear whether the dialogue has ever tackled maritime issues.

The Transatlantic Business Dialogue (TABD)¹⁵² aims to improve trade relations between the United States and Europe by fostering innovation, expanding economic growth and promoting job creation. The TABD is working to create a barrier free transatlantic market, and is working closely with US and EU governments on WTO negotiations to frame global trade regulations. TABD discussion on a barrier free transatlantic market has implications for multiple sectors (e.g. transport and energy) related to maritime governance.

The Transatlantic Consumer Dialogue (TACD)¹⁵³ contributes to the discourse between the EU and the US by transmitting consumers views on policy issues of interest on both sides of the Atlantic. By bringing together representatives from over 65 consumer organizations in the EU and the US, the TACD provides an additional viewpoint to legislators on both sides of the ocean. One of the key issue areas discussed in the TACD is 'Sustainability and Climate Change' that focuses on how governments can transition to more sustainable economy and promote sustainable consumption patterns.

The Transatlantic Environmental Dialogue (TAED)¹⁵⁴ was a successful but short-lived forum to discuss environmental issues and solutions. It was intended to create interactions among EU and US government agencies and NGOs. The dialogue only lasted two years and was discontinued in 2001 due to lack of funding.

Pilot Projects – Transatlantic Methods for Handling Global Challenges was launched in 2007, the European Commission Directorate General for External Relations (DG RELEX) 'Pilot Projects' program aims to 'fund innovative ventures between European and US policy makers that cannot be pursued under existing instruments of cooperation between the US and the EU'. In addition to the CALAMAR project, the program currently funds six additional 18-month long dialogues that range from immigration issues, food security and human health to energy efficiency and security strategies.¹⁵⁵ Past dialogue projects funded by the program include Transatlantic Policy Options for Supporting Adaptation in the Marine Arctic (Arctic

¹⁵⁰ European Union - Delegation of the European Commission to the United States, 1995.

¹⁵¹ TLD, Transatlantic Legislators' Dialogue.

¹⁵² TABD. 2010.

¹⁵³ European Commission, 2007e.

¹⁵⁴ Spencer, 2009.

¹⁵⁵ European External Action Service, 2010.

TRANSFORM), which brought together high-level experts from the EU and US to discuss policy options for key issue areas related to Arctic marine governance.¹⁵⁶

5.2 Key opportunities and challenges for cooperation

The advent of new leadership and recent ocean policy initiatives on both sides of the Atlantic have brought opportunities to enhance cooperation and increase integrated ocean governance through mutual exchange and fostering of stakeholder networks. The benefits of such cooperation are clear, given the shared interests of the EU and US regarding integrated ocean governance. The challenge before the EU and the US is to conserve marine resources while further developing the maritime economy in an environmentally sustainable manner that safeguards not only their own marine heritage, but that of the entire world. Putting the necessary changes into practice will not be easy and will require significant commitment and political will. The second CALAMAR report addresses key opportunities and challenges for transatlantic cooperation in detail.

For the EU, questions of ocean governance revolve around the recognition that the economic importance of its maritime sector is closely linked to the need to protect and maintain healthy marine ecosystems. As evidenced by the EU's IMP, integrated approaches are seen by the EU as a promising method of building consensus among stakeholders and overcoming possible conflicts of interest among ocean users. The use of cross-sectoral policy tools such as maritime spatial planning must take a complex regulatory framework into consideration, in which competences and responsibilities are divided among different institutions and levels of government. In the past, the elaborate distribution of competences and responsibilities among the EU and its Member States has tended to somewhat hamper the EU's capacity to take part in international negotiations and to conclude binding agreements. The EU faced difficulties in becoming a full member of international maritime organizations, and participation was frequently restricted to the observer status, even in areas in which the EU has exclusive competences. Additionally, extensive coordination with its Member States is often challenging in the face of time constraints and the persistence of national interests. However, changes brought about by the Lisbon Treaty are intended to improve the situation, and the European Commission is now endowed with the legal competences needed to represent the EU's interests as a whole and in a more coherent manner.

Under the US administration of President Obama, formulating a new approach to ocean policy has become a high priority and is founded upon an ecosystem-based approach that includes a framework for coastal and maritime spatial planning. The establishment of the Interagency Ocean Policy Task Force in June 2009 and the tight six-month schedule to produce recommendations for the development of a new national ocean policy and implementation strategy underlined the Obama Administration's commitment to integrated approaches to managing ocean and coastal resources. President Obama signed an Executive Order in July 2010 establishing the National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes and according to the Interagency Task Force *Final Recommendations*; the National Ocean Policy is to be implemented in three phases over the next five years.

¹⁵⁶ Arctic TRANSFORM, 2009.

5.2.1 EU/US cooperation in the North Atlantic

A major portion of the North Atlantic lies between the EU and the US. For this reason a strong partnership is particularly useful and desirable. Despite the number of pertinent issues that could benefit from cooperation between the EU and the US, relatively few have resulted in direct cooperation. The EU and the US have few direct bilateral agreements on maritime policy issues except through organizations such as ICCAT and on pelagic fisheries and participation as signatories on the MARPOL convention. Fora such as these are achieving varying degrees of success.

5.2.2 EU/US cooperation beyond the North Atlantic

The EU and the US not only share the notion of a global responsibility for sustainable development, but also have concrete political and economic interests in marine waters beyond the Northern Atlantic. The mainland and island territories of the United States directly border and lie within the Pacific and the Arctic region. Territories of the EU are scattered throughout the all the oceans of the world, providing extensive EEZs and fishing areas to EU Member States.

These territories might gain importance if and when exploitation of new marine resources begins or if climate change alters surrounding conditions, as might occur with the opening of new sea routes due to the melting of the Arctic Ocean.

It lies in the interest of the EU, as well as the US, to develop legal regimes governing the exploitation of marine resources in a way reflecting their traditions and interests. Furthermore, new partners and rising powers should be integrated into these regimes and act according to established standards. The EU and the US, therefore, should foster strategic alliances at both bilateral and international levels to develop strategies that balance exploitation and conservation needs as well as societal and social objectives.

In addition to the existing bilateral and international fora, as described above, there are a number of additional opportunities for new or stronger participation from either the US or EU.

Convention on the Protection of the Marine Environment of the North-East Atlantic (OSPAR Commission): The OSPAR Commission is a Regional Management Organization under the UNEP Regional Seas Programme. It aims to protect the marine environment of the North-East Atlantic through an ecosystem-based management approach. Its six strategic areas include: 1) Biodiversity and Ecosystem Strategy, 2) Eutrophication Strategy, 3) Hazardous Substances Strategy, 4) Offshore Industry Strategy, 5) Radioactive Substances Strategy and 6) Strategy for the Joint Assessment and Monitoring Programme, which ensures the previous five strategies are effectively protecting the marine environment. Fifteen European participate in OSPAR. The United States is one of many countries invited to observe.¹⁵⁷

Arctic Council: The Arctic Council is an intergovernmental body established in 1996 to promote sustainable development and protect the Arctic environment. It is comprised of the eight Arctic member states (Canada, Denmark/Greenland/Faroe Islands, Finland, Iceland, Norway, Sweden, The Russian Federation, and United States) as well as six indigenous

¹⁵⁷ OSPAR, 2010a.

organizations who are Permanent Participants. Non-Arctic state Permanent Observers include, France, Germany, Poland, Spain, the Netherlands and the United Kingdom. The EU applied for Permanent Observer status in 2009; however, the decision was postponed by the Council.

UN High-Level Conference on Sustainable Development: (HLCSD) or Rio+20, to take place in Rio de Janeiro in 2012, is considered to be a major stepping stone in formalizing and integrating many components of oceans and climate. Some of the goals for leading up to Rio+20 include the development of an oceans, coasts and islands fund and incorporating language on climate change into UNCLOS. This arena can act as a deadline and a stage for the US and the EU to align ocean policies and present their strategy for cooperation on environmental marine issues. The US-EU dialogue leading up to the HLCSD could include:

- Discussing the need for and beginning to building the basis for an integrated ocean convention, as discussed during the Global Forum workshop in Cancun. This discussion could occur within UNEP or the UN Economic and Social Council, or occur as a bilateral discussion between the EU and US on what kind of ocean governance would garner US support.
- Identifying costs of inaction, with researchers in both the US and EU collaborating on research and modeling techniques to further refine predictions on climate impacts.
- Addressing user and access rights through an international marine spatial planning framework (see section below).
- Linking management of freshwater, oceans and coasts
- Linking Integrated Water Resources Management (IWRM) and integrated ocean and coastal management, identifying costs of not doing so
- Achieving ecosystem-based management
- Cooperating on Large Marine Ecosystems (LME) projects and marine biodiversity, networks of marine protected areas, marine areas beyond national jurisdiction, such as the Arctic LME discussed below
- Identifying case studies for possible funding
- Identifying geographic areas of common interest

In order to strengthen management of the Arctic LME, the EU and US would have to work with other Arctic nations to ensure ecosystem-based governance in Arctic marine areas through, for example, Arctic Council working groups on the Conservation of Arctic Flora and Fauna and the Protection of the Arctic Marine Environment, as well as the Arctic Monitoring and Assessment Program. OSPAR has identified greater cooperation with these working groups as an important strategy for increasing the efficacy of biodiversity protection efforts.¹⁵⁸ The US, as an Arctic state, is automatically included in the Arctic Council's discussions and decisions.

Specialized and decentralized agencies: As previously mentioned, the EU has a number of specialized, decentralized agencies, such as the European Maritime Safety Agency, FRONTEX, the Fisheries Control Agency and the European Environmental Agency. Given the specialized technical and functional nature of these agencies, it is possible that they might serve as good channels for transatlantic cooperation, particularly as regards the

¹⁵⁸ OSPAR, 2010b, p. 21.

exchange of knowledge and best practices on specific issues. To this end, they might serve as more efficient venues for cooperation than the broader Directorate-Generals of the Commission. Furthermore, these agencies have also served as the basis for more tangible forms of cooperation, as was the case in June 2010 when the EMSA provided assistance to clean up efforts in the Gulf of Mexico in the wake of the Deepwater Horizon oil spill.¹⁵⁹

In general, there are surprisingly few formal venues for bilateral discussions on maritime policy between the US and EU, with collaboration focusing largely on the fisheries sector. Targeted cooperation between the two could enhance both national policies as well as further protection efforts in the high seas. At the most fundamental level, the two could adopt each other's definitions of basic concepts, such as ecosystem-based management and marine spatial planning, and utilize to a greater degree work already completed by the other party (e.g. EU IUU regulations).

5.3 The CALAMAR dialogue

The CALAMAR dialogue aimed to identify further opportunities for cooperation between the EU and US within the North Atlantic to foster the sustainable management of marine resources. The following four multi-stakeholder working groups of CALAMAR developed recommendations on how to improve transatlantic ocean governance:

- Integrated Marine Policies and Tools working group
- EU/US Transatlantic Cooperation working group
- Oceans and Climate Change working group
- High Seas working group

Each of the working groups developed a set of specific policy recommendations. The Integrated Marine Policies and Tools working group covered key issues such as effective monitoring and data sharing, comprehensive stakeholder involvement, transboundary management issues, the determination of cumulative impacts or the identification of clear authority.

The EU/US Transatlantic Cooperation working group addressed topics such as how to effectively link science and policy, how to make use of integrated ecosystem assessments in the North Atlantic, how to promote the use of green maritime technology, how to improve transatlantic cooperation between the EU and US in monitoring, control and surveillance and how to foster cooperative strategies between the EU and US to promote sound management of ocean and coastal resources.

The Oceans and Climate Change working group focused on priority topics like ocean related mitigation strategies in shipping and the promotion of alternative energy, on coastal adaption measures like shoreline protection or planned retreat strategies as well as on climate change related scientific cooperation.

The High Seas working group identified mechanisms for further integration of management approaches in the High Seas, including the development of a process for environmental impact assessment (EIAs) of activities in the high seas and the establishment of marine protected areas. Other possible issues include flag state responsibilities; access and benefit

¹⁵⁹ European Maritime Safety Agency, 2010.

sharing of genetic resources and ecosystem services; and monitoring and surveillance on the high seas.

The EU and the US have a unique opportunity to make use of the current political momentum and the general willingness to implement integrated approaches in ocean governance. Putting integrated approaches into practice is easier said than done and the challenges lying ahead on both sides of the Atlantic should not be underestimated.

It will be essential to establish a lasting cooperation among key stakeholders to allow for the necessary exchange of best practices and the identification of key issues to be addressed. A shared transatlantic understanding of current developments is critical to the ability of stakeholders on both sides of the Atlantic to safeguard the diversity of our marine biodiversity and to ensure maritime development that is both environmentally and economically sound.

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Annex A: Comparative table on consistency of policy objectives in the EU and US¹⁶⁰

<p>US National Policy on Stewardship of the Ocean, Our Coasts, and the Great Lakes (Executive Order 2010)¹⁶¹</p>	<p>EU Marine Strategy Framework Directive 2008/56 (MSFD)¹⁶² <i>(and related Commission decision 2010/477 on criteria for good environmental status, referenced where appropriate)</i></p>
<p><i>Section. 2. Policy.</i></p> <p>(a) To achieve an America whose stewardship ensures that the ocean, our coasts, and the Great Lakes are healthy and resilient, safe and productive, and understood and treasured...</p>	<p>Art. 1.1. Member States shall take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020 at the latest.</p> <p>Art. 3.5. "good environmental status" means the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive (...), and the use of the marine environment is at a level that is sustainable (...), i.e.:</p> <p>(a) the structure, functions and processes of the constituent marine ecosystems (...) allow those ecosystems to function fully and to maintain their resilience to human-induced environmental change (...).</p>
<p>... so as to promote the well-being, prosperity, and security of present and future generations, it is the policy of the United States to:</p>	<p>Art. 1.3. Marine strategies shall apply an ecosystem-based approach to the management of human activities, (...) while enabling the sustainable use of marine goods and services by present and future generations.</p> <p>Art. 3.5. (...) the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations.</p>
<p>(i) protect, maintain, and restore the health ...</p> <p>...and biological diversity of ocean, coastal, and</p>	<p>Art. 1.2. (...) marine strategies shall be developed and implemented in order to:</p> <p>(a) protect and preserve the marine environment, prevent its deterioration or, where practicable, restore marine</p>

¹⁶⁰ This document was presented by Carlos Berrozpe-Garcia, European Commission, DG Environment to support recommendations developed at the final CALAMAR conference on 11-12 April 2011 in Lisbon, Portugal.

¹⁶¹ <http://www.whitehouse.gov/the-press-office/executive-order-stewardship-ocean-our-coasts-and-great-lakes>

¹⁶² http://ec.europa.eu/environment/water/marine/index_en.htm

<p>US National Policy on Stewardship of the Ocean, Our Coasts, and the Great Lakes (Executive Order 2010)¹⁶¹</p>	<p>EU Marine Strategy Framework Directive 2008/56 (MSFD)¹⁶² <i>(and related Commission decision 2010/477 on criteria for good environmental status, referenced where appropriate)</i></p>
<p>Great Lakes ecosystems and resources;</p>	<p>ecosystems in areas where they have been adversely affected;</p> <p>(b) prevent and reduce inputs in the marine environment, with a view to phasing out pollution as defined in Article 3(8), so as to ensure that there are no significant impacts on or risks to marine biodiversity, marine ecosystems, human health or legitimate uses of the sea.</p> <p>Art. 3.5.</p> <p>5. "good environmental status" means the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive (...), i.e.:</p> <p>(a) the structure, functions and processes of the constituent marine ecosystems, (...) allow those ecosystems to function fully (...). Marine species and habitats are protected, human-induced decline of biodiversity is prevented and diverse biological components function in balance;</p> <p>(b) hydro-morphological, physical and chemical properties of the ecosystems (...), support the ecosystems as described above (...). Adaptive management on the basis of the ecosystem approach shall be applied with the aim of attaining good environmental status.</p> <p>Annex I (Qualitative descriptors for determining good environmental status)</p> <p>Descriptor 1. Biological diversity is maintained. The quality and occurrence of habitats and the distribution and abundance of species are in line with prevailing physiographic, geographic and climatic conditions.</p> <p><i>(see also related criteria of good environmental status in relation to biodiversity in Commission Decision 2010/477, Annex, Part B, Descriptor 1).</i></p>
<p>(ii) improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies;</p>	<p>Art. 1(3). (...) the capacity of marine ecosystems to respond to human-induced changes is not compromised (...).</p> <p>Art. 3.5. (...) (a) the structure, functions and processes of the constituent marine ecosystems (...) allow those ecosystems to function fully and to maintain their</p>

<p>US National Policy on Stewardship of the Ocean, Our Coasts, and the Great Lakes (Executive Order 2010)¹⁶¹</p>	<p>EU Marine Strategy Framework Directive 2008/56 (MSFD)¹⁶² <i>(and related Commission decision 2010/477 on criteria for good environmental status, referenced where appropriate)</i></p>
	<p>resilience to human-induced environmental change (...).</p>
<p>(iii) bolster the conservation and sustainable uses of land in ways that will improve the health of ocean, coastal, and Great Lakes ecosystems;</p>	<p>Art. 1.4. The integration of environmental concerns into, the different policies, agreements and legislative measures which have an impact on the marine environment.</p> <p><i>(see also multiple references to land-based policies such as the EU Common Agricultural Policy, to the Water Framework Directive which already aims to tackle land-based pollution; some examples of pressures in Annex III Table 2 are land-based).</i></p>
<p>(iv) use the best available science and knowledge to inform decisions affecting the ocean, our coasts, and the Great Lakes, and enhance humanity's capacity to understand, respond, ...</p> <p>... and adapt to a changing global environment;</p>	<p>Recital 23. Since programmes of measures executed under marine strategies will be effective only if they are devised on the basis of a sound knowledge of the state of the marine (...), provision should be made for the preparation at national level of an appropriate framework, including marine research and monitoring operations, for informed policymaking. (...)</p> <p>Art. 8.1. Member States shall make an initial assessment of their marine waters, taking account of existing data where available (...)</p> <p>Recital 34. In view of the dynamic nature of marine ecosystems and their natural variability, and given that the pressures and impacts on them may vary with the evolvement of different patterns of human activity and the impact of climate change, it is essential to recognise that the determination of good environmental status may have to be adapted over time. Accordingly, it is appropriate that programmes of measures for the protection and management of the marine environment be flexible and adaptive and take account of scientific and technological developments. Provision should therefore be made for the updating of marine strategies on a regular basis.</p> <p>Art. 3.5. Adaptive management on the basis of the ecosystem approach shall be applied with the aim of attaining good environmental status.</p> <p>Art. 17.1. (Updating) Member States shall ensure that, in respect of each marine region or subregion concerned,</p>

<p>US National Policy on Stewardship of the Ocean, Our Coasts, and the Great Lakes (Executive Order 2010)¹⁶¹</p>	<p>EU Marine Strategy Framework Directive 2008/56 (MSFD)¹⁶² <i>(and related Commission decision 2010/477 on criteria for good environmental status, referenced where appropriate)</i></p>
	<p>marine strategies are kept up to date.</p> <p>2. For the purposes of paragraph 1, Member States shall review, in a coordinated manner as referred to in Article 5, the following elements of their marine strategies every six years after their initial establishment.</p> <p>Article 24.1. Annexes (...) may be amended in the light of scientific and technical progress.</p> <p><i>Commission decision 2010/477 on criteria for good environmental status:</i></p> <p><i>Recital 5. It is therefore appropriate that the Commission revises this Decision [in the future], (...) in time to support a successful update of marine strategies that are due by 2018 pursuant to Article 17 of that Directive, as a further contribution to adaptive management.</i></p>
<p>(v) support sustainable, safe, secure, and productive access to, and uses of the ocean, our coasts, and the Great Lakes;</p>	<p>Art. 1.3. Marine strategies shall apply an ecosystem-based approach to the management of human activities, (...) while enabling the sustainable use of marine goods and services by present and future generations.</p> <p>Art. 3. 5. "good environmental status" means (...) the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations.</p> <p>Art. 3.8. (...) legitimate uses of the sea (...), impairment of the sustainable use of marine goods and services.</p> <p>Art.8. (...) Member States shall make an initial assessment of their marine waters, (...) comprising the following: (...) (c) an economic and social analysis of the use of those waters and of the cost of degradation of the marine environment.</p>
<p>(vi) respect and preserve our Nation's maritime heritage,... ... including our social, cultural, recreational, and</p>	<p>Recital 3. The marine environment is a precious heritage that must be protected, preserved and, where practicable, restored (...).</p>

<p>US National Policy on Stewardship of the Ocean, Our Coasts, and the Great Lakes (Executive Order 2010)¹⁶¹</p>	<p>EU Marine Strategy Framework Directive 2008/56 (MSFD)¹⁶² <i>(and related Commission decision 2010/477 on criteria for good environmental status, referenced where appropriate)</i></p>
<p>historical values;</p>	<p>8. (...) the hindering of marine activities, including (...) recreation and other legitimate uses of the sea, (...) reduction of amenities or, in general, impairment of the sustainable use of marine goods and services.</p>
<p>(vii) exercise rights and jurisdiction and perform duties in accordance with applicable international law, ...</p> <p>...including respect for and preservation of navigational rights and freedoms, which are essential for the global economy and international peace and security;</p>	<p>Recital 17. The Community and its Member States are each parties to the United Nations Convention on the Law of the Sea (Unclos) (...). The obligations of the Community and its Member States under those agreements should therefore be taken fully into account in this Directive.</p> <p>Art. 3.8. (...) legitimate uses of the sea (...), impairment of the sustainable use of marine goods and services.</p>
<p>(viii) increase scientific understanding of ocean, coastal, and Great Lakes ecosystems as part of the global interconnected systems of air, land, ice, and water, including their relationships to humans and their activities;</p>	<p>Recital 34. (...) support for associated research should be continuously enshrined in research and development policies. Recognition of marine issues in the Seventh Framework Programme on Research and Development is an important step in that direction.</p> <p>Recital 22. Account should also be taken of biodiversity and the potential for marine research associated with deep-water environments.</p> <p><i>Commission decision 2010/477 on criteria for good environmental status:</i></p> <p><i>Recital 3. (...) there is a substantial need to develop additional scientific understanding for assessing good environmental status in a coherent and holistic manner to support the ecosystem-based approach to management. An improved scientific knowledge needs to be developed (...).</i></p>
<p>(ix) improve our understanding and awareness of changing environmental conditions, trends, and their causes, and of human activities taking place in ocean, coastal, and Great Lakes waters; and</p>	<p><i>Commission decision 2010/477 on criteria for good environmental status:</i></p> <p><i>Recital 4. (...) the determination of good environmental status may have to be adapted over time, taking into account the dynamic nature of marine ecosystems, their natural variability, and the fact that the pressures and</i></p>

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	<p><i>impacts on them may vary with the evolution of different patterns of human activity and the impact of climate change.</i></p> <p><i>Annex, Part A, point 10. Progress towards good environmental status is taking place in the context of continuous broader changes in the marine environment. Climate change is already having an impact on the marine environment, including on ecosystem processes and functions. In developing their respective marine strategies, Member States need to specify, where appropriate, any evidence of climate change impacts. Adaptive management on the basis of the ecosystem-based approach includes the regular update of the determination of good environmental status.</i></p>
<p>(x) foster a public understanding of the value of the ocean, our coasts, and the Great Lakes to build a foundation for improved stewardship.</p>	<p>ANNEX VI - Programmes of measures (...)</p> <p>(8) Communication, stakeholder involvement and raising public awareness.</p> <p>Article 19 (Public consultation and information)</p> <p>1. In accordance with relevant existing Community legislation, Member States shall ensure that all interested parties are given early and effective opportunities to participate in the implementation of this Directive (...).</p> <p>2. Member States shall publish, and make available to the public for comment, summaries of the following elements of their marine strategies (...).</p>