

# *Changes in U.S. Ocean Governance*



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# Outline

- National Oceans Policy
- Law of the Sea Treaty
- Endangered Species Act
- Marine Mammal Protection Act
- Marine Protective Areas
- Questions

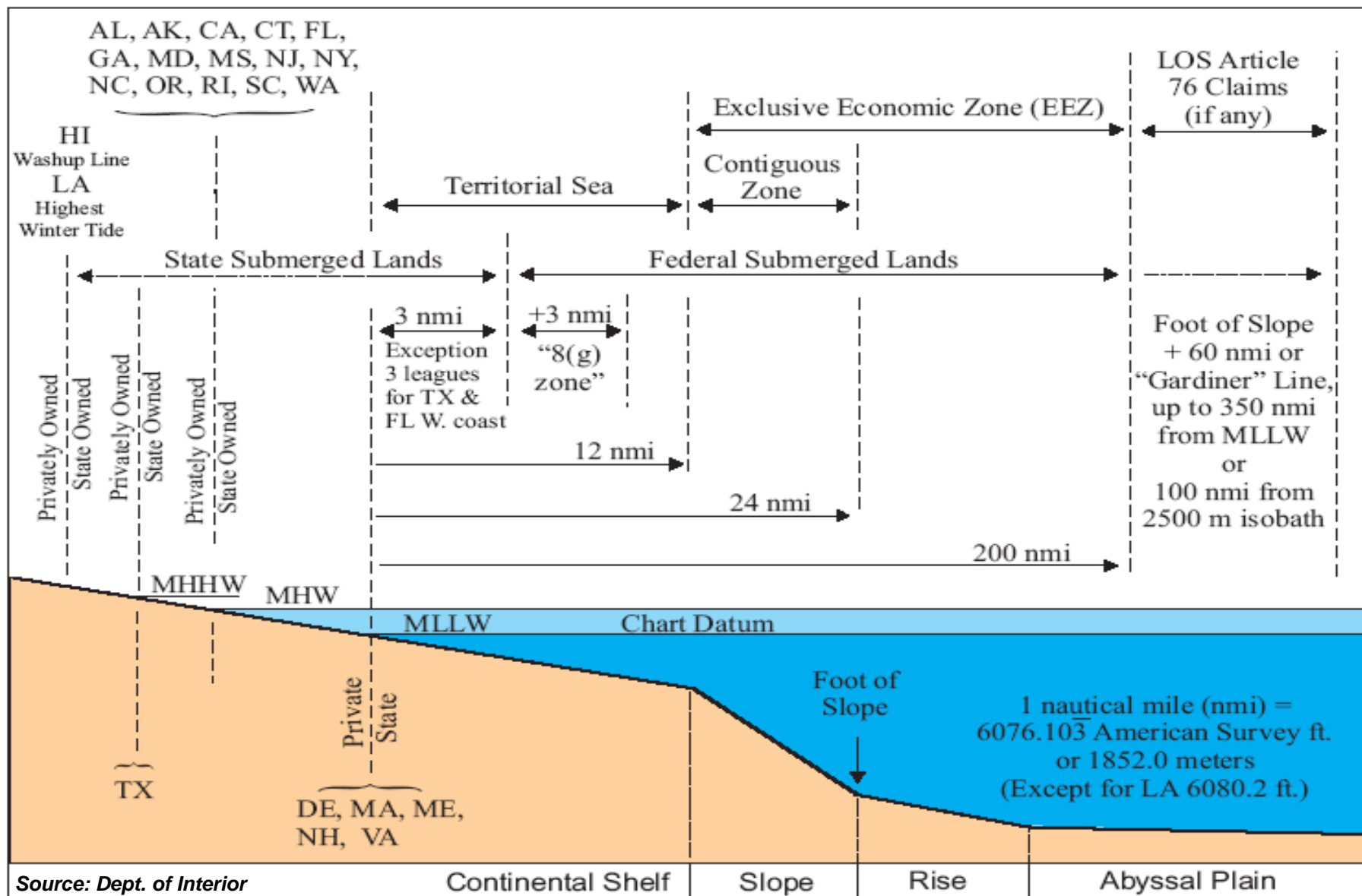
# National Oceans Policy

# United States - Exclusive Economic Zone (3 Billion Acres – 4.1 Million Sq. Miles)



Source: DOI

# Offshore Jurisdiction



Source: Dept. of Interior

# Nation Oceans Policy – Why???

- Currently our country lacks a clear national policy governing the use of the oceans that touch our shorelines
- U.S. governance of the oceans is confusing, has overlapping jurisdiction between agencies and is covered by fragmented laws
- The oceans that touch U.S shores are managed by over 140 different federal laws and implemented by 18 different federal agencies

# Nation Oceans Policy

- On June 12, 2009, President Obama signed a Memorandum establishing an *Interagency Ocean Policy Task Force*, led by the Chair of the Council on Environmental Quality
- The President's memorandum charged the Task Force with, within 90 days, developing recommendations that include:
  - ▶ A national policy for the oceans, our coasts, and the Great Lakes;
  - ▶ A United States framework for policy coordination of efforts to improve stewardship of the oceans, our coasts, and the Great Lakes; and
  - ▶ An implementation strategy that identifies and prioritizes a set of objectives the United States should pursue to meet the objectives of a national policy.
- On September 10, 2009, the Task Force submitted its interim report to the President addressing the first three tasks outlined above
- On July 19, 2010, the final report is issued

# Nation Oceans Policy

Presidential Executive Order 13547 -- *Stewardship of the Ocean, Our Coasts, and the Great Lakes* – signed on July 19, 2010

## Purpose:

“The ocean, our coasts, and the Great Lakes provide jobs, food, energy resources, ecological services, recreation, and tourism opportunities, and play critical roles in our Nation's transportation, economy, and trade, as well as the global mobility of our Armed Forces and the maintenance of international peace and security.”



# National Oceans Policy

## The oceans policy of the United States shall be to:

- ❑ (i) **Protect, maintain,** and **restore** the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources;
- ❑ (ii) **Improve** the **resiliency** of ocean, coastal, and Great Lakes ecosystems, communities, and economies;
- ❑ (iii) **Bolster** the **conservation** and sustainable uses of land in ways that will improve the health of ocean, coastal, and Great Lakes ecosystems;
- ❑ (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, and adapt to a changing global environment;

# National Ocean Policy – cont.

- ❑ (v) **Support** sustainable, safe, secure, and productive **access** to, and uses of the ocean, our coasts, and the Great Lakes;
- ❑ (vi) **Respect** and **preserve** our Nation's maritime heritage, including our social, cultural, recreational, and historical values;
- ❑ (vii) **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;

# National Ocean Policy – cont.

- ❑ (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;
- ❑ (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
- ❑ (x) ***Foster a public understanding*** of the value of the ocean, our coasts, and the Great Lakes to build a foundation for improved stewardship.

# National Oceans Policy

The United States shall “promote” this policy by:

- ❑ Ensuring a ***comprehensive and collaborative framework*** for the stewardship of the ocean, our coasts, and the Great Lakes that facilitates cohesive actions across the Federal Government, as well as participation of State, tribal, and local authorities, regional governance structures, nongovernmental organizations, the public, and the private sector;
- ❑ Cooperating and exercising ***leadership*** at the ***international level***;
- ❑ Pursuing the United States' accession to the ***Law of the Sea Convention***; and
- ❑ ***Supporting ocean stewardship*** in a fiscally responsible manner.

# National Oceans Policy - Administration

## National Ocean Council (Council)

- ❑ The Chair of the Council on Environmental Quality and the Director of the Office of Science and Technology Policy, shall be the Co-Chairs of the Council;
- ❑ the Secretaries of State, Defense, the Interior, Agriculture, Health and Human Services, Commerce, Labor, Transportation, Energy, and Homeland Security, the Attorney General, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, the Under Secretary of Commerce for Oceans and Atmosphere (Administrator of the National Oceanic and Atmospheric Administration), the Administrator of the National Aeronautics and Space Administration, the Director of National Intelligence, the Director of the National Science Foundation, and the Chairman of the Joint Chiefs of Staff;
- ❑ the National Security Advisor and the Assistants to the President for Homeland Security and Counterterrorism, Domestic Policy, Energy and Climate Change, and Economic Policy;
- ❑ an employee of the Federal Government designated by the Vice President; and
- ❑ such other officers or employees of the Federal Government as the Co-Chairs of the Council may from time to time designate.

# National Oceans Policy – Priority Objectives

- ❑ **Ecosystem-Based Management**: Adopt ecosystem-based management as a foundational principle for comprehensive management of the ocean, our coasts, and the Great Lakes.
- ❑ **Coastal and Marine Spatial Planning**: Implement comprehensive, integrated, ecosystem based coastal and marine spatial planning and management in the United States.
- ❑ **Inform Decisions and Improve Understanding**: Increase knowledge to continually inform and improve management and policy decisions and the capacity to respond to change and challenges. Better educate the public through formal and informal programs about the ocean, our coasts, and the Great Lakes.
- ❑ **Coordinate and Support**: Better coordinate and support Federal, State, tribal, local, and regional management of the ocean, our coasts, and the Great Lakes. Improve coordination and integration across the Federal Government and, as appropriate, engage with the international community.
- ❑ **Resiliency and Adaptation to Climate Change and Ocean Acidification**: Strengthen resiliency of coastal communities and marine and Great Lakes environments and their abilities to adapt to climate change impacts and ocean acidification.

# National Oceans Policy – Priority Objectives (cont.)

- ❑ **Regional Ecosystem Protection and Restoration**: Establish and implement an integrated ecosystem protection and restoration strategy that is science-based and aligns conservation and restoration goals at the Federal, state, tribal, local and regional levels.
- ❑ **Water Quality and Sustainable Practices on Land**: Enhance water quality in the ocean, along our coasts, and in the Great Lakes by promoting and implementing sustainable practices on land.
- ❑ **Changing Conditions in the Arctic**: Address environmental stewardship needs in the Arctic Ocean and adjacent coastal areas in the face of climate-induced and other environmental changes.
- ❑ **Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure**: Strengthen and integrate 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.

# National Oceans Policy (CMSP)

## Coastal and Marine Spatial Planning (CMSP)

"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."



# National Oceans Policy (CMSP - Goals)

- Support sustainable, safe, secure, efficient, and productive uses of the ocean, our coasts, and the Great Lakes, including those that contribute to the economy, commerce, recreation, conservation, homeland and national security, human health, safety, and welfare;
- Protect, maintain, and restore the Nation's ocean, coastal, and Great Lakes resources and ensure resilient ecosystems and their ability to provide sustained delivery of ecosystem services;
- Provide for and maintain public access to the ocean, coasts, and Great Lakes;

# National Oceans Policy (CMSP - Goals)

- Promote compatibility among uses and reduce user conflicts and environmental impacts;
- Improve the rigor, coherence, efficiency, and consistency of decision-making and regulatory processes;
- Increase certainty and predictability in planning for and implementing new investments for ocean, coastal, and Great Lakes uses; and
- Enhance interagency, intergovernmental, and international communication and collaboration.

# National Oceans Policy – the Future

## Pending Issues

- Creation of Regional Planning Bodies
- Issuance of NOP Implementation Plan
- Publish CMSP Handbook

## Challenges

- Congressional Engagement
- Legislative Appropriations
- Stakeholder Involvement

# United Nations Convention on the Law of the Sea

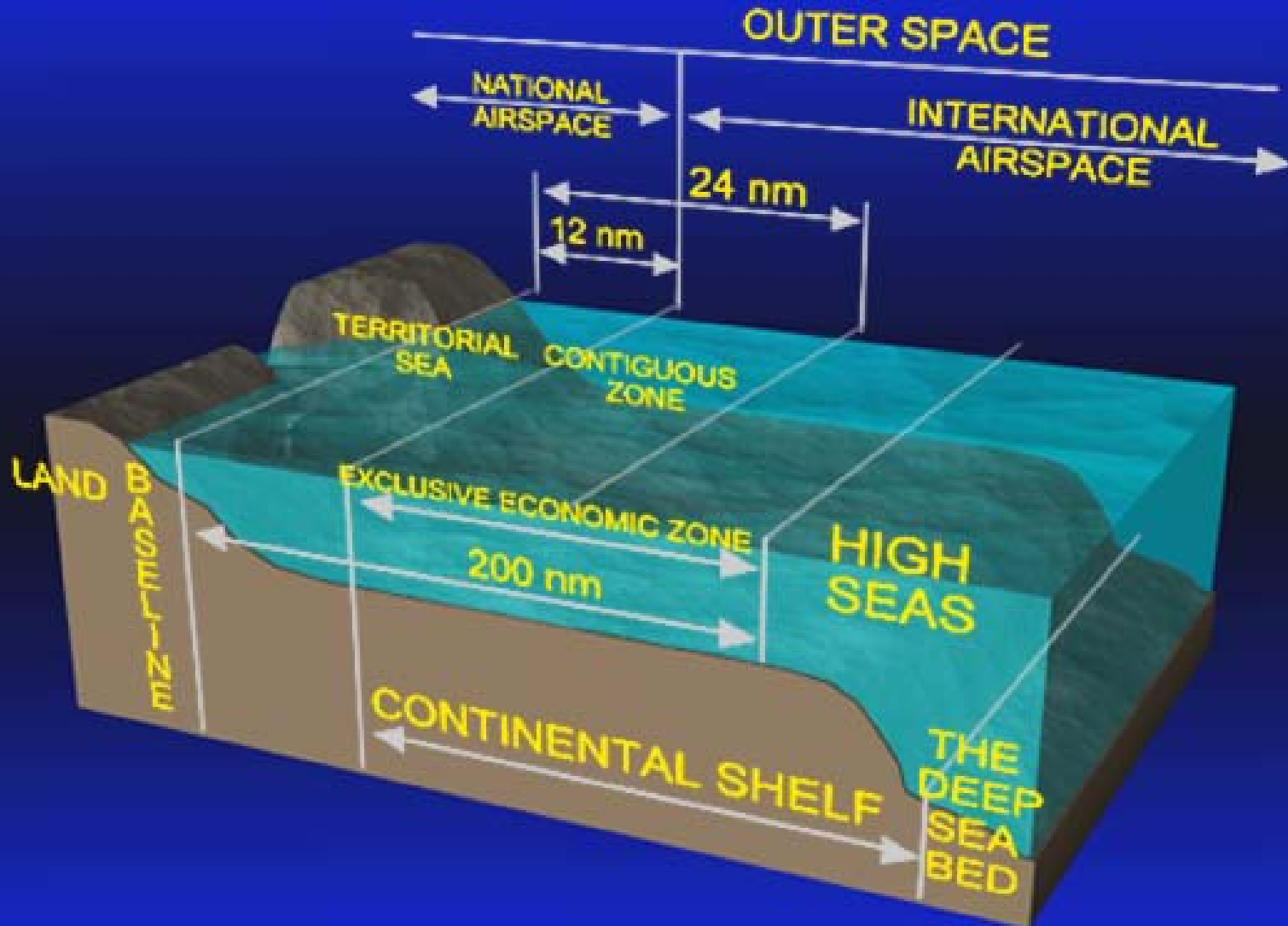


# Law of the Sea Treaty (LOST)

The United Nations Convention on the Law of the Sea (UNCLOS) treaty is a comprehensive international framework that defines the rights and responsibilities of nations in their use of the world's oceans. It establishes guidelines for coastal nations' maritime zones and boundaries, the environment, navigational rights, and the management of marine natural resources including energy development, laying cables and pipelines, mining and marine scientific research.



# LEGAL REGIMES OF OCEANS AND AIRSPACE AREA



# Law of the Sea - Highlights

- 9 year negotiation, 1973-1982
- Over 161 nations and the European Union have signed and ratified the treaty
- 1982 – US declined to ratify
- 1983 – President Reagan's Ocean Policy Statement (Adopts EEZ)
- 1994 – Part XI Revision, submitted to Senate for advice and consent



# Law of the Sea - U.S. Claims

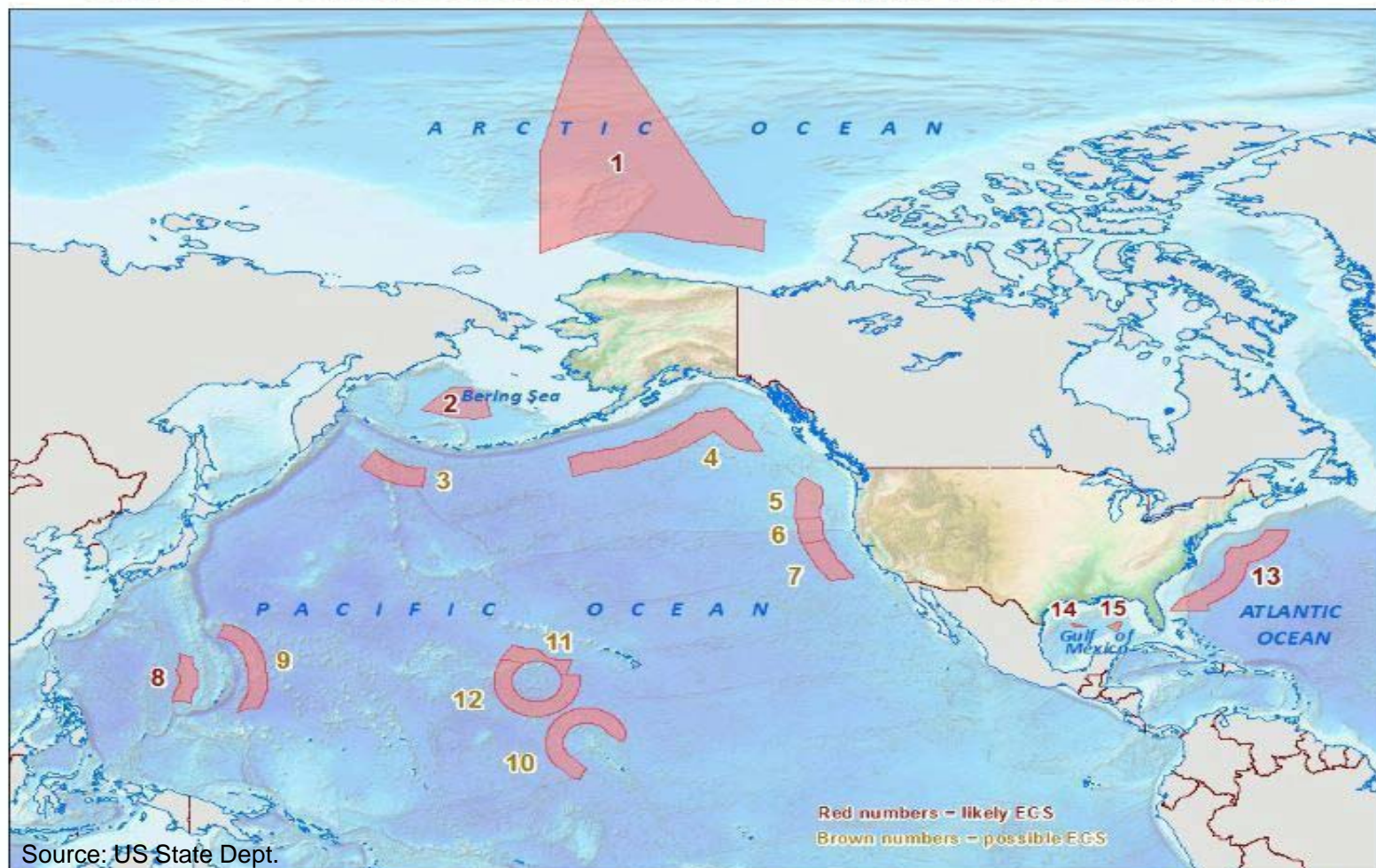
- 12 mile territorial sea
- 200 mile Exclusive Economic Zone
  - Brings 4.1 million square miles of ocean under U.S. jurisdiction (7% of the Earth's surface)
  - Rights to extent the EEZ
- Sovereign rights over the exploration and exploitation of the natural resources of our continental shelf





# Extended EEZ

## Areas of Possible United States' Extended Continental Shelf



The shaded area on this map illustrates where the U.S. is considering collecting and analyzing data and does not represent the official U.S. Government position on where it has extended continental shelf. This map is without prejudice to boundary depictions and future negotiations.

# Law of the Sea Benefits

- America's right to lay claim to vast areas of the Arctic, which, absent U.S. ratification, cannot be established and recognized internationally;
- Unfettered ability in foreign waters to lay and maintain undersea communications cables that keep America connected across the globe;
- American rights of passage, navigation and safety along critical maritime transit routes, including through the South China Sea and the Strait of Hormuz;
- Access to economically important minerals in international waters, including rare earth minerals widely used in medical equipment, modern technology such as smart phones, flat screen TVs, electric vehicles and U.S. defense systems.

# Law of the Sea

## Current Status

- Senate Hearings
- Public Debate
- Vote of Ratification

# **Endangered Species Act (ESA) & Marine Mammal Protection Act (MMPA)**

# Endangered Species Act (ESA)

- The purpose of ESA is to protect and recover imperiled species and the ecosystems upon which they depend (December 28, 1973)
- The Act is administered by the U.S. Fish and Wildlife Service (FWS) and the Commerce Department's National Marine Fisheries Service (NMFS). The FWS has primary responsibility for terrestrial and freshwater organisms, while the responsibilities of NMFS are mainly marine wildlife such as whales and sea turtles.
- Under the ESA, species may be listed as either endangered or threatened. "Endangered" means a species is in danger of extinction throughout all or a significant portion of its range. "Threatened" means a species is likely to become endangered within the foreseeable future. All species of plants and animals, except pest insects, are eligible for listing as endangered or threatened.

# Marine Mammal Protection Act (MMPA)

- All marine mammals are protected under the MMPA. The MMPA prohibits, with certain exceptions, the take of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. (October 31, 1972)
- The Department of Commerce through the National Marine Fisheries Service (NMFS) is charged with protecting whales, dolphins, porpoises, seals, and seal lions. Walrus, manatees, otters, and polar bears are protected by the Department of the Interior through the U.S. Fish and Wildlife Service (FWS). The Animal and Plant Health Inspection Service, a part of the Department of Agriculture, is responsible for regulations managing marine mammals in captivity.

# ESA/MMPA - Background

- Increasing public concern over the impact of industry and society as a whole on the marine environment especially to the animals that live in the oceans
- News events (Atlantic: Right Whale)
- Increased regulation and regulatory engagement throughout the world
- In the U.S. there is more scrutiny concerning exploration and production operations on the marine mammals and endangered/threatened species

# ESA/MMPA - Takes

- An ESA take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct of a listed (endangered or threatened) species.”
- An MMPA take is defined as “to harass, hunt, capture, kill or collect, or attempt to harass, hunt, capture, kill or collect any marine mammal.”



# What happened to cause a focus on the oil and gas industry?

- Navy's Low and Mid-Range Frequency Sonar
- NGO interest
  - Natural Resources Defense Council
    - Sounding the Depths published
    - Lawsuit over Navy Low Frequency Sonar (LFS) Array Permit

# When did we find out about the new focus?

- OCS Lease Sale 184 (2002)
- ESA - Section 7 Consultation
- Biological Opinion
- Lease Stipulations; Notice to Lessees (NTL)

# What does this all mean?

- More restrictions on E&P activities in the GOM by BOME, BSEE and NMFS under both ESA and MMPA.
- More scrutiny on seismic activities and the explosive removal of offshore structures.
- Potential focus on other manmade sound sources in the water that are created from operations.

# E&P Operations

- What are the areas of concern?
  - Physical & Behavioural
    - Sound in the Water
    - Vessel Strikes
    - Discharges

# Manmade Sound in the Water

- Seismic Surveys
- Geo-hazard Surveys
- Drilling activity
  - Vertical Seismic Profiles
  - Operational Noise
- Construction Activity
- Lease Production Operations
- Associated Vessel Activity
- Platform Removal and Site Cleanup

# Vessel Strikes

- Seismic Vessels
- Crew Boats
- Supply Vessels
- Tugs
- Barges
- Drilling Vessels

# Discharges

- Produced water
- Drill cuttings
- Drilling muds
- Rain water runoff
- Air emissions
- Other wastes
  - (e.g. Trash and Debris)

# MMPA Defines Two Levels of Harassment

- **Level A**: “any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild”
- **Level B**: “any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild {by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering} but which does not have the potential to injure a marine mammal or marine mammal stock in the wild”



# MMPA Small Take Authorizations

Authorizations are issued, upon request, when the activities are determined by NOAA Fisheries to:

- (1) Have a negligible impact on the species or stock of marine mammal(s) ;
- (2) Take only small numbers of marine mammals; and
- (3) Not have an unmitigable adverse impact on the availability of marine mammals intended for subsistence uses.

# Small Take Authorizations

## Incidental Harassment Authorization "IHA"

(3-month to 3-year process)

- No potential for serious injury or mortality or the potential for injury and death can be prevented through mitigation measures
- One-year "IHA"

# Small Take Authorizations

Letter of Authorization "LOA"  
(6 month to 12-year process)

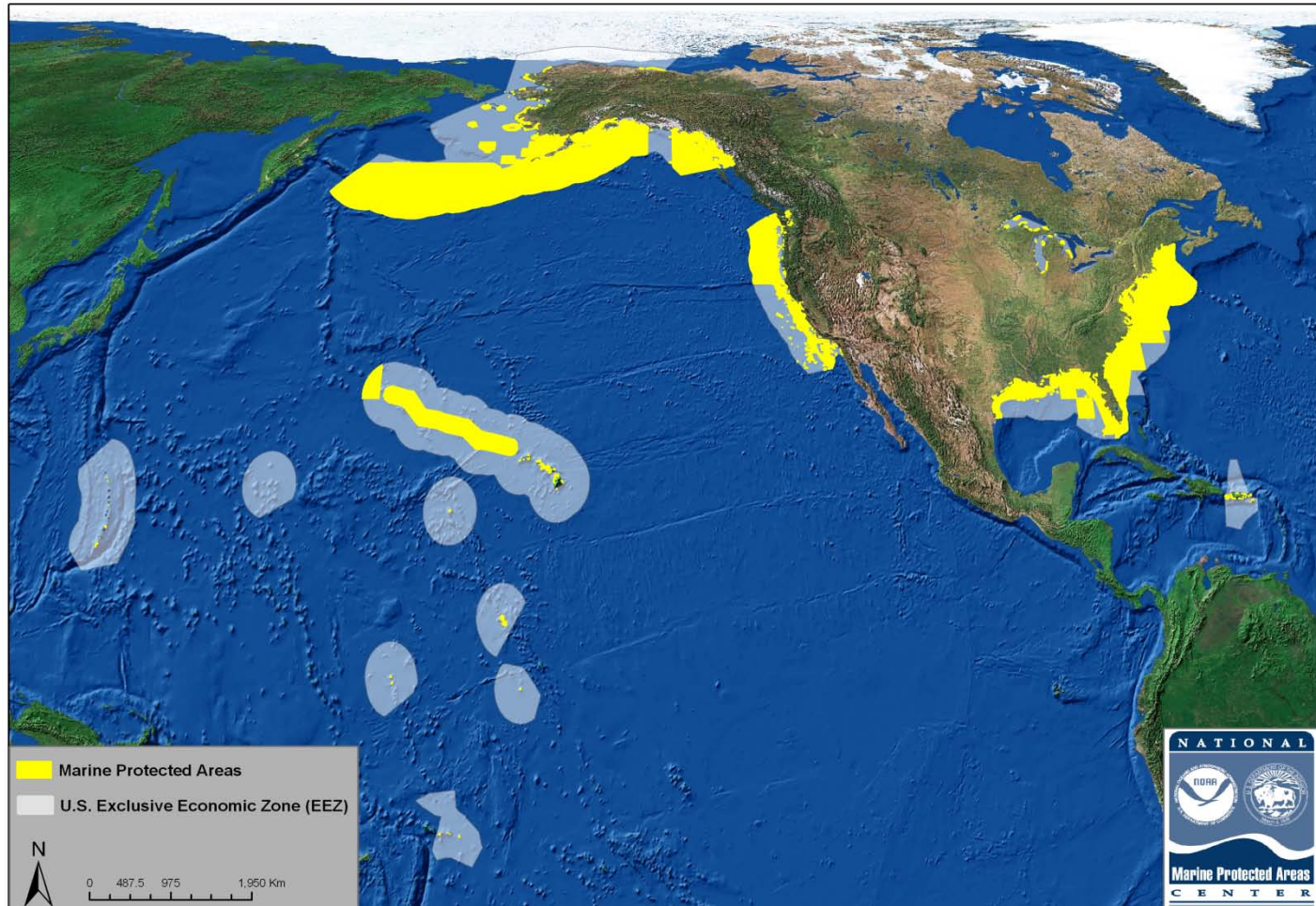
- Potential for serious injury or mortalities and there are no mitigation measures that could be taken to prevent injury or death
- On-going, multi-year projects
- Requires creation of 5-year regulations
- One-year renewable "LOA" issued once regulations are promulgated

# Where do we go from here???

- New Geological and Geophysical ITA Rulemaking in the Gulf of Mexico
- Renewal of the ITA for Explosive Removal of Offshore Structures
- Comprehensive Biological Opinion for the Gulf of Mexico
- Discussion of other lease operations

# Marine Protected Areas

# Marine Protected Areas





***Questions ???***