

THE EU ADOPTS AN INTEGRATED MARITIME POLICY AND ACTION PLAN: IS THE U.S. FAR BEHIND OR AHEAD?

by Joan M. Bondareff*

INTRODUCTION

On October 10, 2007, the European Commission (“Commission”) announced that they had adopted a new Integrated Maritime Policy for the European Union.¹ The announcement completes a one-year period of extensive public consultation on a proposed policy called the Green Paper.² The Integrated Maritime Policy is accompanied by a detailed action plan setting out implementation mechanisms over the next few years. This Article reviews the key elements of the action plan and compares it, briefly, to the present state of U.S. policy and law on the oceans and coasts.

PURPOSE OF THE INTEGRATED MARITIME POLICY AND EUROPEAN CONTEXT

In adopting a new integrated maritime policy, the Commission noted that “Europe is intimately linked to the seas and oceans that surround it. It is not just the shipping or fisheries industries and their related activities. It is also shipbuilding and ports, marine equipment and offshore energy, maritime and coastal tourism, aquaculture, submarine telecommunications, blue biotech and the protection of the marine environment.” The Commission not only intends to pursue the development of sea-related industries, but it recognizes that the use “needs to be sustainable as the marine environment is the base resource for all maritime economic activities.” In sum, the EU policy calls for “good governance and an integrated approach...that joins up sectoral policies for maritime activities and environmental policy relating to Europe’s seas.”

A review and comparison of European maritime policy and American policy should also start with a comparison of the underlying legal regimes. For instance, the treaty that created the EU gives explicit competence to the EU only in the policy areas of transportation, fisheries, and the environment.³ All other aspects of maritime policy remain within the jurisdiction of Member States. In the case of the United States, we have a history of over 200 years of sorting out the division of authority between the federal and state governments. This starts, of course, with the early decision by the Supreme Court in *Gibbons v. Ogden* (state regulation of steamboat licenses is preempted)⁴ to the more recent decision in *U.S. v. Locke* (state regulation of tankering preempted by federal regulations).⁵ The EU will need many more years to sort out this division of responsibility.

SUMMARY OF THE KEY ELEMENTS OF THE EU MARITIME POLICY

With these objectives in mind, the Commission is proposing the following actions, described further below:

- A European Maritime Transport Space without barriers;
- A European Strategy for Marine Research;
- National integrated maritime policies to be developed by EU Member States;
- An integrated network for maritime surveillance;
- A roadmap towards marine spatial planning by Member States;
- Elimination of pirate fishing and destructive high seas bottom trawling;
- Promotion of a European network of maritime clusters;
- A review of EU labor law exemptions for the shipping and fishing sectors;
- A European Marine Observation and Data Network; and
- A strategy to mitigate the effects of climate change on coastal regions.

EUROPEAN MARITIME TRANSPORT SPACE AND SUSTAINABLE SHIPPING AND PORT POLICIES

The Commission noted that maritime transportation is vital for Europe’s trade because almost ninety percent of its external trade and over forty percent of its internal trade goes by sea. Internally, there are barriers to marine transport because voyages by ship from a port of one EU Member State to another are always considered international even when the cargo transported is comprised of internal market-cleared goods. Consequently, the Commission will launch a consultation of stakeholders on the concept of a European Space for Maritime Transport without barriers and offer options for its implementation. The aim of the consultation is to adopt a proposal before the end of 2008. The Commission also referenced its draft guidelines on the application of EC competition rules to liner and tramp shipping conferences that had been published for comment in September 2007, and stated that its final guidelines will be adopted before October 2008.⁶

SHIP DISMANTLING

The Commission is developing a new EU strategy to be presented as a Communication for ship dismantling in mid-2008. The Communication will possibly contain technical assistance to developing countries to improve their ship dismantling facilities.

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ties, promoting voluntary industry action on clean ship dismantling, e.g., by distribution of information on green facilities, and promoting research on ship dismantling. The Commission will continue, in a parallel manner, to work with the International Maritime Organization (“IMO”) on a Ship Recycling Convention scheduled for adoption in 2009, and in the work of the Basel Convention on the same subject.⁷

AIR POLLUTION

The Commission is closely following the IMO discussions on the revision of MARPOL Annex VI (setting limits on air emissions from ships)⁸ and, if it concludes that the results are insufficient, it will consider alternative proposals for action.⁹ The Commission also plans to take action to further promote the use of shore-side electricity by ships at berth in EU ports, including the possible revision of a directive to allow total or partial exemptions from electricity taxes to ships using shore electricity from the harbor so that it is competitive with untaxed bunker fuel. Further, the Commission will evaluate various options for EU legislation to reduce greenhouse gas emissions from maritime transport and will consult with stakeholders on the proposed legislation.

PORTS

In October 2007, the Commission also adopted a new Communication on Ports containing a set of guidelines to bring more transparency and maintain a level playing field in the ports sector.¹⁰

EUROPEAN STRATEGY FOR MARINE RESEARCH

To provide the basis to underpin the EU Maritime Policy, the Commission announced that it would take action to develop a Maritime Research Strategy in consultation with Member States and with stakeholders in a European Marine Science Partnership. The Strategy itself will be proposed in a Communication in 2008.

INTEGRATED MARITIME POLICIES

The Commission has proposed that maritime functions be integrated across EU Member States and recommends that Member States integrate their own maritime policies. As noted above, the EU can only make recommendations in these areas which are left essentially to the purview of Member States. The Commission realizes that there are regulatory barriers to achieving an integrated EU maritime function, and therefore will issue in 2008 a set of guidelines on common principles and stakeholder involvement for maritime policies and report on the actions of Member States by 2009. To assist Member States to unify their maritime policies, the Commission will develop a more integrated network of surveillance systems for European waters, a program of marine spatial planning, and an EU Marine Observation and Data Network, described below.

INTEGRATED NETWORK OF MARITIME SURVEILLANCE

Building on earlier proposals, in February 2008, the Commission will adopt a Communication on a European Border Surveillance System (“EUROSUR”). This system will link existing surveillance systems at the Member State level and provide for a common information sharing environment for the maritime domain, covering initially the Mediterranean Sea and the Black Sea. This so-called “system of systems” is intended to increase EU security by preventing illegal immigration and trafficking of human beings, and also reduce the death toll at sea. The European GALILEO system will provide an advanced technological platform for the development of satellite-based surveillance applications.¹¹

In the second half of 2008, the Commission will announce in a Communication a detailed work plan for further steps towards the integration of all European maritime surveillance systems. Part of the creation of a European network for maritime surveillance will include improved cooperation between the coast guards of Member States. The EU may have preferred to establish a unified coast guard, as the United States has, but this certainly would infringe upon the jurisdiction and sovereignty of Member States.

MARINE SPATIAL PLANNING AND INTEGRATED COASTAL ZONE MANAGEMENT

An earlier Green Paper produced by the EU on Maritime Policy identified the increase in competing activities on coasts and seas as a source of potential conflict to be managed. Therefore, in 2008, the Commission

will propose a road map to facilitate and encourage the further development of marine spatial planning in Member States, and examine different options, including zoning, to make different maritime activities compatible, including the maintenance and strengthening of biodiversity. In 2009, the Commission will set up a system for the exchange of best practices in marine spatial planning and integrated coastal zone management.

As EU Commissioner Joe Borg stated in a February 22, 2007 speech in Sopot, Poland, “spatial planning,” or the coordination of maritime activities in European coastal regions and waters, can “help ensure the economically and environmentally sustainable development of coastal regions.”¹² At the same time, the Commissioner applauded the development by some Member States of pilot projects for implementing such spatial planning, notably Germany, the United Kingdom, Ireland, and the Netherlands.¹³

INCREASED FISHERY REGULATIONS AND REVIEW OF LABOR LAW EXCLUSIONS

The Commission observed that “the current situation of European fisheries cannot be deemed as satisfactory,” and

EU proposes to build on an existing system of maritime clusters to promote a European network of such clusters.

“efforts to achieve capacity reduction, and the conservation and restoration of fish stocks must go hand-in-hand with improving the social well-being of those active in the sector.”¹⁴ Consequently, the Commission announced that, in 2008, it will adopt a Communication on the overall application of the ecosystem approach to the Common Fisheries Policy. One of the top priorities for a Common Fisheries Policy will be the elimination of the dumping overboard of dead, unwanted fish as by-catch. The Commission is also preparing a draft regulation on combating illegal, unregulated, and unreported (“IUU”) fishing. Finally, the Commission will come forward with a legislative proposal to regulate destructive fishing practices on the high seas by EU fishing vessels, e.g., bottom trawling.

The Commission has agreed to undertake an assessment of the situation concerning the exclusion of maritime professions from EU social legislation and working conditions in a Communication to be launched later this month. Further, the Commission will work towards establishing a Certificate of Maritime Excellence to be endorsed on a voluntary basis with the aim of supplying highly knowledgeable personnel to the shipping industry.

PROMOTION OF A EUROPEAN NETWORK OF MARITIME CLUSTERS

The EU proposes to build on an existing system of maritime clusters to promote a European network of such clusters. A maritime cluster is a region within which maritime industries and related activities may be co-located.¹⁵

A EUROPEAN MARINE OBSERVATION AND DATA NETWORK

A new European Maritime Observation and Data Network (“Network”) will be proposed in 2009, on the basis of a road map to be published in 2008. According to Commissioner Borg, in an October 19, 2007 presentation to the Conference of Peripheral Maritime Regions of Europe, the Network will serve as a “genuine driver for the integrated governance of maritime affairs.”¹⁶ The Network also will provide opportunities for high-technology commercial companies in the maritime sector and improve the efficiency of marine observation and the management of marine resources and marine research. It will be integrated with the global initiative for a Group of Earth Observation System of Systems, called GEOSS, and the European contribution called Global Monitoring for Environment and Security, or GMES. On a related note, the Commission, in the second half of 2008, will propose a program for the development of mutually compatible and multi-dimensional mapping of seas in Member States’ waters.

A STRATEGY TO MITIGATE THE EFFECTS OF CLIMATE CHANGE ON COASTAL REGIONS

In 2008, the Commission will propose a Community strategy for disaster prevention and the development of a Strategy for Adaptation to Climate Change, with a focus on coastal regions. In particular, the Commission is examining the potential of new off-shore technologies such as carbon capture and geological storage to meet the EU’s climate change objectives. By the end

of this year, the Commission will propose a legal framework for carbon capture and storage, including the removal of obstacles to storage in sub-sea formations.¹⁷ The Commission recognizes that seabed storage will also require an international legal framework and cooperation. The transport of CO₂ to sub-sea sites also should be included, according to the Commission, in new marine spatial planning. Finally, “the technology used must ensure that the environmental gain from carbon storage is [not] offset by deterioration of the local marine environment.”¹⁸

PROMOTING EUROPE’S LEADERSHIP IN INTERNATIONAL MARITIME AFFAIRS

The Commission plans to take a higher profile in international maritime organizations and to encourage Member States to ratify international maritime conventions. On the international front, the Commission will produce, in 2008, a report on strategic issues for the EU relating to the Arctic Ocean. Further, the Commission, before the end of 2009, will put forward a strategy for the protection of high seas biodiversity through the designation of marine protected areas. Finally, the Commission will celebrate a European Maritime Day and create a European Atlas of the Seas.

A COMPARISON OF THE EU MARITIME POLICY TO U.S. OCEANS POLICY: REVIEW OF THE REPORTS OF TWO OCEAN COMMISSIONS

A starting point for comparing the work of the EU with that of the United States is to review the recommendations of two recent ocean policy commissions in the United States, the U.S. Commission on Ocean Policy and the Pew Oceans Commission. Both Commissions called for major reforms and restructuring of U.S. ocean law and policy.

In the first place, the U.S. Commission on Ocean Policy, established by the Oceans Act of 2000, consisted of Presidential appointees.¹⁹ The U.S. Commission on Ocean Policy issued its report, entitled *An Ocean Blueprint for the 21st Century*, on September 20, 2004.²⁰ In recognition of the fact that it has been thirty-five years since anyone had undertaken a comprehensive review of U.S. ocean policy, the Ocean Blueprint called for significant changes in the management of U.S. oceans, coasts and Great Lakes, and recommended the creation of an “effective national ocean policy that ensures sustainable use and protection of our oceans, coasts and Great Lakes for today and far into the future.”²¹

The Ocean Blueprint called for the reform of the management structure for ocean policy decision-making in the United States and strengthening of many ocean and coastal resource management policies. In brief, the Ocean Blueprint called for:

- A new National Ocean Policy Framework, including the establishment of a National Ocean Council within the Executive Office of the President;
- The establishment of regional ocean councils to coordinate ocean policy across state lines;
- Coordinated governance of offshore waters;
- An organic act for the National Oceanic and Atmospheric Administration (“NOAA”);

- Increased investment in science and exploration;
- The launch of an integrated ocean observing system;
- Reauthorization and strengthening of the Coastal Zone Management Act to enable states to incorporate a watershed focus;
- Guarding people and property against natural hazards;
- Conserving and restoring coastal habitat;
- Supporting marine commerce and transportation through the development of an integrated national freight transportation strategy;
- Addressing coastal water pollution and limiting pollution from vessels;
- Preventing the spread of invasive species;
- Achieving sustainable fisheries and setting a new course for sustainable marine aquaculture;
- Managing offshore energy and other mineral resources; and
- Establishing a dedicated Ocean Policy Trust Fund to carry out the Commission's recommendations.

A set of similar recommendations was adopted by the Pew Oceans Commission, a privately-funded commission which issued its report, entitled *America's Living Oceans: Charting a Course for Sea Change*, in 2003.²²

REACTION OF THE U.S. ADMINISTRATION AND CONGRESS TO THE COMMISSION REPORTS

The Bush Administration reacted to the report of the U.S. Ocean Commission by issuing an Executive Order on December 17, 2004, establishing an inter-agency Committee on Ocean Policy.²³ The Committee would be part of the Council on Environmental Quality ("CEQ"), and be chaired by the Chairman of CEQ. In addition, representatives of the Departments of State, Defense, the Interior, Agriculture, Health and Human Services, Commerce, Labor, Transportation, Energy, and Homeland Security, among others, would serve on the Committee.²⁴ The purpose of the Committee would be to coordinate the activities of departments and agencies regarding ocean-related matters in an integrated and effective manner to advance the environmental, economic, and security interests of present and future generations of Americans.²⁵

At the same time, the Bush Administration submitted to Congress its own Ocean Action Plan, responding to the recommendations of the U.S. Commission on Ocean Policy.²⁶ The Action Plan committed the Bush Administration to undertake the following priority tasks: (1) establish a new Cabinet-level Committee on Ocean Policy (completed, see above); (2) work with Regional Fisheries Councils to promote greater use of market-based systems for fisheries management; (3) build a Global Earth Observation Network, including a mechanism for integrated ocean observation; (4) develop an ocean research priorities plan and implementation strategy; (5) support accession to

the UN Convention on Law of the Sea; (6) implement coral reef local action strategies; (6) support a regional partnership in the Gulf of Mexico; (7) seek passage of an organic act for NOAA within the Department of Commerce; and (8) implement the Administration's National Freight Action Agenda.²⁷

The U.S. Congress conducted hearings on the Commissions' recommendations and has begun to implement some of the key recommendations.²⁸ How the Congress and Administration are doing in implementing these recommendations has become the focus of a new Joint Ocean Commission Initiative.²⁹ Admiral James D. Watkins and Mr. Leon Panetta, chairs of the U.S. Commission and Pew Commission, respectively, co-chair the Initiative. The Initiative has also issued a series of report cards on how Congress and the Administration are doing.³⁰ For example, in its 2006 report card, the Initiative noted that "progress on ocean policy reform has been uneven, and the modest progress that has been made is jeopardized by a lack of funding to support the implementation of promising initiatives and plans at all levels of government."³¹

Most of the grades issued by the Joint Task Force were below average. However, it widely credited the work of Congress and the Administration in passing the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.³² This Act strengthened the role of science in CEQ decision-making and required an end to over-fishing.³³ It also contained new tools to eliminate IUU fishing.

It is beyond the scope of this Article to examine the report cards in greater detail except as they relate to an overall comparison of U.S. and European maritime policies, below.

THE EU'S CALL FOR AN INTEGRATED MARITIME POLICY COMPARED TO THE POLICY RECOMMENDATIONS OF THE U.S. OCEAN COMMISSION(S) AND IMPLEMENTATION

In a remarkably similar manner and within somewhat similar time frames, the EU and the United States have undertaken comprehensive reviews of their maritime policies and developed very similar recommendations. Both the EU and the U.S. Ocean Commissions call for increased attention to maritime and coastal issues in recognition that they have in many instances been neglected for years and there is a need for increased attention, resources, and new governance mechanisms.

On first examination, it appears that the EU's call for an Integrated Maritime Policy is far ahead of the U.S. Ocean Commission's call for an Ocean Blueprint for the 21st Century because the latter has not been implemented to any great degree in legislation or funding mechanisms. However, the United States in many respects is ahead of the EU in paying attention to coastal regions and has the advantage of a well-established system of federal environmental legislation to work with.

The United States has yet to ratify the UN Convention on the Law of the Sea.

The EU is a relatively new legal body and the European Commission's call for integrated action requires the cooperation of its Member States especially in the critical areas of marine spatial planning, the development of maritime clusters, and the creation of a unified coast guard.

In the area of marine spatial planning, the United States already has two important laws that call for such planning, one in coastal regions and one in offshore waters. The first is the Coastal Zone Management Act of 1972,³⁴ which calls for a nationwide program of integrated state coastal management programs for state-defined coastal regions with federal oversight, policy guidance and grants for their development and implementation.³⁵ In exchange for federal funds, states develop what would be the equivalent of spatial plans for their coastal regions.³⁶ Within these regions, the states must develop systems of conflict resolution and ensure that development will be sustainable.³⁷ The states also have the authority to extend their policies to offshore development through the use of the so-called federal consistency process.³⁸ If a state objects to an offshore development permit by the federal government, the project can not proceed unless the Secretary of Commerce overrides the state's objection.³⁹ To date, thirty-four coastal states have developed approved coastal management plans.⁴⁰

The United States also has an extensive system of marine spatial planning for special marine areas within the 200-mile Exclusive Economic Zone ("EEZ"), established by title III of the Marine Protection, Research and Sanctuaries Act.⁴¹ To date, the United States has established fourteen marine sanctuaries, including the Hawaiian Humpback Whale Sanctuary, the Channel Islands (California) Marine Sanctuary, and the Farallon Islands (California) Marine Sanctuary.⁴² This is a major piece of federal legislation that establishes a plan for conflict resolution and protection of unique resources, such as coral reefs, fisheries habitats, and whale calving areas, within extensive offshore marine areas.⁴³

Given the extensive legislative framework for marine spatial plans both within coastal zones and offshore marine areas in the EEZ, it can be said that the United States is substantially ahead of the EU in this particular area of promoting sustainable coastal development.

In other areas, the United States is lagging seriously behind the EU. For example, as of this writing, the United States has yet to ratify the UN Convention on the Law of the Sea although it was negotiated and approved by the UN some twenty-five years ago. As the *New York Times* editorialized on October 31, 2007, the debate over the Law of the Sea Treaty pits the Bush Administration, the environmental community, the military, the oil, shipping, and fishing industries, and the top Democratic and Republican members of the Senate Foreign Relations Committee against a "handful of cranky right-wingers."⁴⁴ The Senate held an important hearing on the subject, and recently, the Senate Foreign Relations Committee voted out a resolution on accession. The full Senate expects to take up the question of ratification in 2008. It is possible that before the end of 2008 the United States could become a party to this international agreement

which the United States itself took the lead in negotiating.⁴⁵

The United States is making progress in ending destructive fishing practices as the EU has begun to do as well. As noted above, in the last Congress, the United States enacted significant amendments to the Magnuson-Stevens Fishery Conservation and Management Act which called for an end to over-fishing, enhanced the role of science in fishery management, and strengthened the controls on IUU fishing.⁴⁶ The work of Congress in passing this law was lauded by the Joint Ocean Commission Initiative, as well.

The EU Maritime Policy calls for increased cooperation between the coast guards of Member States. The United States already has a unified federal Coast Guard which provides security for all waters within the EEZ, as well as further offshore as needed, to protect U.S. port state interests.⁴⁷ Moreover, if the U.S. Coast Guard promulgates regulations in an area of maritime safety, the federal regulations will preempt conflicting state laws and regulations.⁴⁸

With respect to sustainable shipping practices, the two proposals are close to a draw. For example, the United States is helping the IMO to negotiate a new convention on ship recycling.⁴⁹ The United States, however, has yet to ratify the Basel Convention, and it is unclear whether the United States agrees that ship scrapping is regulated under that Convention as a matter of law. A number of EU Member States are parties to the Basel Convention, but the practice of many States is to continue to send their old ships to third-world countries for disposal.⁵⁰

The EU has called for the development of a new integrated maritime surveillance system. The United States has taken significant steps to create and fund a new border surveillance initiative, called the Secure Border Initiative, or SBI-Net.⁵¹ The U.S. Coast Guard has undertaken new programs to monitor the maritime borders of the United States, too, called Maritime Domain Awareness.⁵² Recently, the U.S. Department of Homeland Security contracted with a team led by Boeing to establish SBI-Net. SBI-Net is a comprehensive plan by the U.S. Department of Homeland Security to gain operational control of the U.S. borders through the integration of increased staffing, international enforcement, detection, technology, and infrastructure.⁵³

The United States already has a unified marine transport space that allows all transportation between the fifty states to exist without any barriers. The EU is just beginning to create a European Transport Space without barriers. A similar system extends to transportation between the United States and Canada, on the one hand, and United States and Mexico, on the other, through the North American Free Trade Agreement.⁵⁴

The United States, however, like the EU, is just beginning to examine the question of establishing a new system of marine highways to divert trucks off highways and alleviate congestion and air pollution. The U.S. Maritime Administration has undertaken to support this initiative, called Short Sea Shipping.⁵⁵ Authority for a new Short Sea Shipping Program, to transport goods by waterways, was passed by the U.S. House of Representatives this year and included in a larger energy bill.⁵⁶ However, it remains to be seen if Congress will enact this bill this year.

Both the EU and the U.S. Ocean Commission called for an integrated program of maritime research. The Joint Commission Task Force gave the Congress and White House a failing grade of “F” in their last report card for failing to develop an integrated budget for federal ocean and coastal programs and a near-failing grade of “D+” for failing to address chronic under-funding of ocean science and education.⁵⁷ At the same time, the Task Force credited the Administration with developing an Ocean Research Priorities Plan and Implementation Strategy.⁵⁸ The EU has just begun its work on an integrated marine research program so it is too soon to evaluate the EU on this element of its work.

A final element of comparison is in the area of climate change. The EU Maritime Policy calls for the development of new sustainable strategies to protect coastal regions from the effects of global climate change and also specifically calls for the development of an innovative system of sub-sea disposal of carbon. The Joint Commission Initiative gave the Bush Administration and Congress the grade of “D+” last year for failing to recognize the ocean’s role in climate change, but has not endorsed sub-sea disposal of carbon as an option. While most European nations are signatories to the Kyoto Protocol, the United States is not. Therefore, the author concludes that the United States is lagging behind the EU in the areas of

recognizing the serious effects of global climate change and calling for specific actions to reduce greenhouse gas emissions.⁵⁹

CONCLUSION

The good news is that both the EU and the United States have finally come to recognize the importance of the sea and coasts to their future not only as economic zones of interest but also as zones that contain significant resources that must be protected, restored, and maintained if we are not to lose them and our way of living in the twenty-first century. If only it were a race to the finish to see who could protect these regions and resources the most, the EU or the United States, the marine regions of both continents and the populations living therein would all benefit. For now, I call it a draw, and as an interested bystander, I encourage both governments to do more to live up to their promises and commitments to create improved maritime policies and governance structures.



Endnotes: The EU Adopts an Integrated Maritime Policy

¹ See EUROPEAN COMMISSION, AN INTEGRATED MARITIME POLICY FOR THE EUROPEAN UNION (Oct. 2007), available at www.ec.europa.eu/maritimeaffairs (last visited Nov. 7, 2007) [hereinafter MARITIME POLICY].

² MARITIME POLICY, *Id.*

³ See Treaty on European Union, July 29, 1992, 1992 O.J. (C 191), available at <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0001000001> (last visited Nov. 15, 2007).

⁴ *Gibbons v. Ogden*, 22 U.S. 1 (1824).

⁵ *U.S. v. Locke*, 529 U.S. 89 (2000).

⁶ *Draft Guidelines on the Application of Article 81 of the EC Treaty to Maritime Transport Services*, 2007 O.J. (C 215) 3, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:215:0003:01:EN:HTML> (last visited Nov. 14, 2007).

⁷ The United States has not ratified the Basel Convention and has not taken an official position whether the dismantling of ships is the cross-border transport of hazardous materials subject to the Basel Convention. See Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, 1673 U.N.T.S. 57, available at www.basel.int (last visited Nov. 7, 2007).

⁸ See International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), Nov. 2, 1973, 2 I.L.M. 1319 (1973), available at http://www.imo.org/Conventions/mainframe.asp?topic_id=258&doc_id=678 (last visited Nov. 5, 2007).

⁹ Legislation is pending in the U.S. Congress to ratify MARPOL Annex VI (H.R. 802, passed the House on March 26, 2007). At the same time, there is some movement afoot to implement stronger emission requirements. See American Association of Port Authorities, *Port Association Applauds House Passage of Bill to Reduce Pollution From Ships* (Mar. 27, 2007), <http://www.aapa-ports.org/Press/PRdetail.cfm?itemnumber=2455> (last visited Nov. 14, 2007).

¹⁰ ESPO NEWS, *Commission Announces Environmental Guidelines for Port Development* (Oct. 10, 2007), available at <http://www.espo.be/pages/ezine.aspx?newsletter=766> (last visited Nov. 14, 2007).

¹¹ ESA.int, Galileo Navigation, www.esa.int/esaNA/galileo.html (last visited Nov. 14, 2007).

¹² See Joseph Borg, Comm’r, European Comm’n Responsible for Fisheries & Mar. Affairs, Address at the International Consultation Conference From Education to Employment—How to Create a Successful Image of Seafaring in Europe: Role of the Future EU Maritime Policy in Shaping New Standards of Maritime Education and Employment (Feb. 22, 2007), available at http://ec.europa.eu/maritimeaffairs/speeches/speech220207_en.html (last visited Nov. 15, 2007).

¹³ Borg, *id.*

¹⁴ *Commission Working Document on An Integrated Maritime Policy for the European Union*, at 18, COM (2007) 574 final (Oct. 10, 2007), available at http://ec.europa.eu/maritimeaffairs/pdf/ActionPaper/EN_Action_plan_final.pdf (last visited Nov. 15, 2007) [hereinafter *Maritime Policy for the EU*].

¹⁵ ENMC, European Network of Maritime Clusters, www.european-network-of-maritime-clusters.eu (last visited Nov. 5, 2007) [hereinafter *Maritime Clusters*] (describing the existing network of maritime clusters).

¹⁶ *Maritime Clusters*, *id.*

¹⁷ France for many years has supported a program of sub-seabed disposal of high-level radioactive waste. See Nuclear Energy Agency, Index to Unrestricted Radioactive Waste Management Committee Documents for 2002, available at www.nea.fr/html/rwm/docs/2002 (last visited Nov. 7, 2007).

¹⁸ *Maritime Policy for the EU*, *supra* note 14, at 26.

¹⁹ Oceans Act of 2000, 33 U.S.C. § 857-19 (2007).

²⁰ See U.S. COMMISSION ON OCEAN POLICY, FINAL REPORT: AN OCEAN BLUEPRINT FOR THE 21ST CENTURY (Sept. 20, 2004), available at http://www.oceancommission.gov/documents/full_color_rpt/welcome.html (last visited Nov. 7, 2007) [hereinafter *BLUEPRINT*].

²¹ *BLUEPRINT*, *id.* at 1.

Endnotes: The EU Adopts an Integrated Maritime Policy
continued on page 85

⁵³ Montana Wilderness Ass'n v. Fry, 408 F. Supp. 2d 1032 (D. Mont. 2006) (deciding to maintain jurisdiction until BLM submitted proof that it had completed an adequate NEPA analysis of oil and gas leases, a federal court in Montana cited the importance of ensuring that the NEPA process not be "reduced to a series of hurdles to be cleared en route to a predetermined result" and, in discussing the testimony from the BLM State Director, repeatedly emphasized its "concern over BLM's ability to fulfill its procedural obligations without favoring a predetermined outcome").

⁵⁴ GUIDELINES FOR ECOLOGICAL RISK ASSESSMENT, *supra* note 21, at 5.

⁵⁵ 42 U.S.C. § 4332(C).

⁵⁶ 40 C.F.R. § 1508.18(a).

⁵⁷ The eleven Western states are: California, Washington, Oregon, Idaho, Nevada, New Mexico, Utah, Colorado, Wyoming, Montana, and Arizona.

⁵⁸ BLM, WIND ENERGY DEVELOPMENT PROGRAMMATIC EIS INFORMATION CENTER, available at <http://windeis.anl.gov/> (last visited Nov. 1, 2007).

⁵⁹ BLM, OIL SHALE & TAR SANDS LEASING PROGRAMMATIC EIS, available at <http://ostseis.anl.gov/index.cfm> (last visited Nov. 3, 2007).

⁶⁰ OIL SHALE & TAR SANDS LEASING PROGRAMMATIC EIS, *id.*

⁶¹ BLM, GEOTHERMAL RESOURCES LEASING PROGRAMMATIC EIS, available at http://www.blm.gov/wo/st/en/prog/energy/geothermal/geothermal_nationwide.html (last visited Nov. 1, 2007).

⁶² The Cheney Energy Task Force released its recommendations for expediting oil and gas exploration and development while reassessing the use of protective lease stipulations or other measures. Executive Orders 13211 and 13212 were released at the same time directing federal agencies to follow these recommendations and to take actions to "accelerate the completion of energy-related projects." In 2003, the BLM issued Instruction Memoranda Nos. 2003-233 and 2003-234, which formalized a requirement for the BLM to manage its lands to expedite review, accelerate completion and impose the "least restrictive constraints" on oil and gas development. In addition to the new categorical exclusions discussed above, the Energy Policy Act of 2005 also prescribed shortened review periods for approving applications for permits to drill, provided an exemption from the Clean Water Act for certain oil and gas development activities, and established five pilot project offices to focus on processing applications for permits to drill. Pub. L. No. 109-58, § 366, 365 (Aug. 8, 2005).

⁶³ Morton, Weller, Thomson, Haefele, & Culver, *supra* note 11.

⁶⁴ See *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976).

⁶⁵ *Northcoast Envtl. Ctr. v. Glickman*, 136 F.3d 660, 688 (9th Cir. 1998).

ENDNOTES: THE FUTURE OF THE POLAR BEAR RESTS ON THIN ICE *continued from page 46*

¹ European Space Agency News, *Satellites witness lowest Arctic ice coverage in history* (Sept. 14, 2007), available at http://www.esa.int/esaCP/SEMTC13J6F_index_0.html (last visited Nov. 17, 2007).

² See Laura Hansen & Christopher R. Pyke, *Climate Change and Federal Environmental Law*, SUSTAINABLE DEV. L. & POL'Y, Winter 2007, at 28.

³ John M. Broder & Andrew C. Revkin, N. Y. TIMES, *Warming May Wipe Out Most Polar Bears, Study Says* Sept. 8, 2007, at A 11, available at <http://www.nytimes.com/2007/09/08/science/earth/08polar.html> (last visited October 14, 2007).

⁴ Press Release, Center for Biological Diversity, Conservation Groups Advance Protections For Polar Bear from Global Warming (Dec. 27, 2006), available at <http://www.biologicaldiversity.org/swcbd/PRESS/polar-bear-12-27-2006.html> (last visited Nov. 17, 2007).

⁵ U.S. GEOLOGICAL SURVEY, USGS SCIENCE TO INFORM U.S. FISH & WILDLIFE SERVICE DECISION MAKING ON POLAR BEARS EXECUTIVE SUMMARY, available at http://www.usgs.gov/newsroom/special/polar_bears/docs/executive_summary.pdf (last visited Nov. 14, 2007) [hereinafter U.S. GEOLOGICAL SURVEY].

⁶ U.S. GEOLOGICAL SURVEY, *id.* at 1.

⁷ Jeffrey Kluger, *A Big Win for Polar Bears*, TIME, Dec. 27, 2006, available at <http://www.time.com/time/health/article/0,8599,1572970,00.html> (last visited Oct. 14, 2007).

⁸ U.S. GEOLOGICAL SURVEY, *supra* note 5, at 4.

⁹ Press Release, U.S. Geological Survey, Future Retreat of Arctic Sea Ice Will Lower Polar Bear Populations and Limit Their Distribution (Sept. 7, 2007), available at <http://www.usgs.gov/newsroom/article.asp?ID=1773> (last visited Nov. 17, 2007).

¹⁰ John M. Broder & Andrew C. Revkin, *supra* note 3.

¹¹ ERIC DEWEAVER, U.S. DEP'T OF INTERIOR, UNCERTAINTY IN CLIMATE MODEL PROJECTIONS OF ARCTIC SEA ICE DECLINE: AN EVALUATION RELEVANT TO POLAR BEARS (2007), available at http://www.usgs.gov/newsroom/special/polar_bears/docs/USGS_PolarBear_DeWeaver_GCM-Uncertainty.pdf (last visited Nov. 19, 2007).

¹² See Thomas Homer-Dixon, Op-Ed, *A Swiftly Melting Planet*, N.Y. TIMES, Oct. 4, 2007, at A29.

¹³ ABC NEWS, *Arctic Melting Leaves Countries Sparring* (Sept. 18, 2007) available at <http://www.abcnnews.go.com/WN/Story?id=3621021> (last visited Nov. 17, 2007).

¹⁴ See generally 16 U.S.C. § 1536 (2007) (requiring interagency cooperation).

¹⁵ 16 U.S.C. § 1532 (2007) (defining "taking" under the ESA as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct").

¹⁶ See *Babbitt v. Sweethome Chapter of Communities for a Great Oregon*, 515 U.S. 687 (1995) (interpreting the term take to include significant habitat modification or degradation that actually kills or injures wildlife).

¹⁷ Kluger, *supra* note 7.

ENDNOTES: THE EU ADOPTS AN INTEGRATED MARITIME POLICY *continued from page 52*

²² See PEW CHARITABLE TRUSTS, AMERICA'S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE (June 2, 2003), available at http://www.pewtrusts.org/our_work_ektid30009.aspx (last visited Nov. 5, 2007).

²³ Exec. Order No. 13,366, 69 Fed. Reg. 76,591 (Dec. 17, 2004).

²⁴ Exec. Order No. 13,366, *id.*

²⁵ Exec. Order No. 13,366, *id.*

²⁶ See generally COUNCIL ON ENVIRONMENTAL QUALITY COMMITTEE ON OCEAN POLICY, OCEAN ACTION PLAN, www.ocean.ceq.gov (follow "Ocean Action Plan" link on bottom of page) (last visited Nov. 5, 2007) [hereinafter OCEAN ACTION PLAN].

²⁷ OCEAN ACTION PLAN, *id.*

²⁸ See, e.g., *Hearing before the U.S. Sen. Comm. on Commerce, Science, and Transp.*, 108th Cong. (Apr. 22, 2004) (testimony of James D. Watkins, Chairman, U.S. Comm'n on Ocean Policy), available at http://www.oceancommission.gov/newsnotices/prelim_testimony.html (last visited Nov. 5, 2007).

²⁹ About Us, Joint Ocean Commission Initiative, www.jointoceancommission.org/about-us.html (last visited Nov. 14, 2007).

³⁰ U.S. Ocean Policy Report Card, 2006, Joint Ocean Commission Initiative, http://64.233.167.104/custom?q=cache:_gGkJ45VPCMJ:www.jointoceancommission.org/images/report-card-06.pdf+report+card&hl=en&ct=clnk&cd=1&gl=us&client=google-coop-np (last visited Nov. 15, 2007).

³¹ Report Card, *id.*

³² 16 U.S.C. § 1851 *et seq.* (2007).

³³ U.S. Sen. Comm. on Commerce, Science & Transp., *Ocean Policy Report Card Praises Fisheries Conservation Efforts Led by Stevens and Inouye* (Jan. 30, 2007), available at http://commerce.senate.gov/public/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=248728&Month=1&Year=2007 (last visited Nov. 14, 2007).

³⁴ 6 U.S.C. § 1451-65.

³⁵ 16 U.S.C. § 1452.