

Chapter 17 • MARINE RESOURCES 2017 Annual Report¹

The Marine Resources Committee is immersed in diverse disciplines focused on the marine environment and its uses. The geographic scope of that focus embraces thousands of miles of national coastline, internal and territorial waters, and Exclusive Economic Zones, as well as estuarine, outer continental shelf, and international waters. Issues range from the development, management, and protection of these waters and their resources to jurisdiction and management over United States flagged vessels across the world's oceans. The 2017 review is meant to discuss the more significant events during 2017 across the full spectrum of the Committee's responsibilities, but it is not meant to be all-inclusive or exhaustive due to page limitations.

I. FISHERIES

A. *Judicial Developments*

In [*Coastal Conservation Ass'n v. U.S. Department of Commerce*](#),² the Fifth Circuit, once again, had red snapper on the bench. Several private anglers and the Association appealed the district court's dismissal of their lawsuit which challenged Amendment 40 to the Reef Fishery Management Plan and the final rule implementing the Amendment.³ Starting in 1990, the Council had implemented continually smaller catch quotas and shortened seasons to rebuild the declining stocks of red snapper; however, this goal was frustrated by the recreational sector exceeding the set quotas for practically every year from 1991 through 2014.

The Council kept shortening the length of the fishing season in federal waters (the 2014 season was 9 days), but the states of Alabama, Florida, Mississippi, Texas, and Louisiana increased their seasons to 21 days, 52 days, 21 days, 365 days, and 286 days respectively. This situation was further complicated because private recreational anglers could fish in state waters while recreational anglers fishing from federally chartered vessels had to obey the shorter federal seasons. In 2003, a moratorium on the issuance of charter vessel permits was implemented, but there was never a limit placed on the number of private anglers fishing from private boats. To correct this situation, the Secretary of Commerce issued a Final Rule in 2015, establishing two components within the

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²846 F.3d 99 (5th Cir. 2017).

³The Magnuson Stevens Act (MSA), 16 U.S.C. § 1801 (2007), first passed by Congress in 1976 to manage United States fisheries, established eight Regional Fishery Management Councils (Councils) each tasked with preparing Fisheries Management Plans (FMPs) for the conservation and management of fisheries under their geographic jurisdiction. The Councils develop the FMPs and regulations to enforce FMP provisions through a series of meetings of federal, state, Native American, and territorial fishery management officials, scientists, economists, harvesting constituents, ENGOs, and members of the general public, for approval by the Secretary of Commerce. Once approved or modified by the Secretary and put through a public notice and comment period by the National Marine Fisheries Service (NMFS or Agency), NMFS enforces the regulations.

recreational sector: charter and private angling. The stated rationale for the rule was to provide increased flexibility within the recreational sector to reduce quota over runs, which could negatively impact the rebuilding of the red snapper stocks.⁴

Plaintiffs challenged Amendment 40 on the grounds that setting separate categories for charter anglers and private anglers violated a provision of the MSA, which specified the Council's red snapper FMP should set two quotas -- recreational and commercial -- not three.⁵ The court opined that the quota for charter anglers was not a separate category but merely a sub-category of recreational anglers, dividing recreational anglers into private and charter. The court also dismissed plaintiffs' arguments that the Secretary had failed to assess and analyze the economic and social impacts of the Amendment under 16 U.S.C. section 1583(a)(9). Finally, the court determined the Secretary had not acted arbitrarily or capriciously in choosing the periods of catch data upon which to base allocations.⁶

*Territory of American Samoa v. National Marine Fisheries Service*⁷ is an interesting case involving not only the MSA but also the legal interpretation of American Samoa's Deeds of Cession executed on April 17, 1900 and July 14, 1904. Plaintiff challenged a final rule, which permitted large longline vessels to fish within 12 nautical miles of various islands of American Samoa, when previously they had to stay outside 50 nautical miles. The rule was issued pursuant to the MSA under which the federal government exercises "sovereign rights and exclusive fishery management authority over all fish, and Continental Shelf fishery resources, within the exclusive economic zone"⁸ extending from the shore of each island seaward for 200 nautical miles. The plaintiff asserted this rule was inconsistent with and did not address the rights and guarantees contained in the Deeds of Cession. Specifically, the U.S. had agreed "to safeguard and respect the property rights of the native people of American Samoa according to their customs and practices, which include cultural fishing practices", and this rule would inhibit the small American Samoa vessels (alias) from fishing free from conflict with the longline vessels 50 feet and larger.⁹

Plaintiff contended the rule was not consistent with "applicable law" thus violating both the MSA and the Administrative Procedure Act (APA).¹⁰ After dismissing the defendant's arguments that American Samoa lacked standing and was barred by the United States' sovereign immunity, the court bore down on one of the key questions – one of first impression – what is the meaning of "any other applicable law" in the MSA, which states that any regulation issued must be consistent with the fishery management plan, national standards contained in the MSA, and with "any other applicable law", the latter phrase remaining undefined. The court held that the Deeds of Cession did constitute "any other applicable law" under §1854(c)(7).¹¹

⁴*Coastal Conservation*, 846 F.3d 99.

⁵16 U.S.C. § 1883(d) (2017).

⁶*Coastal Conservation*, 846 F.3d 99. The irony behind the red snapper cases is that Secretary of Commerce Wilbur Ross increased the season for recreational private anglers from 3 to 42 days, allegedly leading to overfishing of the stock by 6 million pounds. Samuel Hill, *Department of Commerce Encouraged Overfishing of Red Snapper*, NAT'L FISHERMAN (Oct. 17, 2017). Another red snapper case heard this year is *Guindon v Pritzer*, 240 F. Supp. 3d 181 (D.D.C. 2017).

⁷No. CIVIL-16-00095 LEK, 2017 WL 1073348 (D. Haw. Mar. 20, 2017).

⁸16 U.S.C. §1811(a) (2017). The Exclusive Economic Zone is defined in Proclamation No. 5030, 48 Fed. Reg. 10,605 (Mar. 10, 1983).

⁹*American Samoa*, 2017 WL 1073348, at *7.

¹⁰5 U.S.C. §§ 551-59.

¹¹*American Samoa*, 2017 WL 1073348 at *14.

The defendants argued that the Deeds of Cession only related to American Samoan land, not the surrounding waters. The court, taking guidance from Ninth Circuit Indian treaty cases, found the language in the Deeds, – “any land or any other thing” – taken together, included fishing rights, even though these were not expressly identified. It concluded that because the National Marine Fisheries Service (NMFS) failed to consider whether the rule was consistent with the Deeds of Cession, the government was arbitrary and capricious in promulgating the rule, and it was, therefore, invalid.¹²

One of the most important continuing issues for fishermen is the question of whether the government or commercial fishermen should pay for the cost of at-sea monitors (observers) required to accompany them on fishing trips. Unfortunately, while the question was raised, it was not resolved in [Goethel v. U.S. Department of Commerce](#).¹³ The First Circuit Court of Appeals found: “Because we agree with the district court that Goethel’s suit was not timely, we AFFIRM the grant of summary judgment in favor of the government, and do not reach the question of whether the industry funding requirement contravenes the edicts of the relevant statutes or the Constitution.”¹⁴

The MSA requires regulation challenges be filed within 30 days of their promulgation or when the action is published in the Federal Register.¹⁵ In *Goethel*, the Agency issued a proposed rule on March 9, 2015 and a Final Rule on May 1, 2015 indicating the observers’ costs would shift from the government to the fishermen. However, it wasn’t until November 10, 2015 that the Agency announced a date certain of January 1, 2016 when the fleet would have to start paying, not in the Federal Register, but merely by email. Goethel filed his lawsuit on December 9, 2015, more than 30 days after the publication in the Federal Register of the Final Rule but within 30 days of the email announcement. Plaintiff argued the 30-day deadline did not apply to “pre-enforcement” challenges, citing no authority. He also argued that under the APA, the November 2015 email, which set a specific date for the funding shift, was an “action” and the consummation of the agency’s decision making process. The court disagreed, stating that an action “for purposes of administrative law generally ‘includes the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.’ 5 U.S.C. §551(13)”, and the email, by contrast, was only an “update”.¹⁶

In [Turtle Island Restoration Network v. U.S. Department of Commerce](#)¹⁷ two environmental groups challenged NMFS’s decision to allow a swordfish fishery to increase its efforts, which could result in unintended deaths of endangered sea turtles. The groups also challenged a U.S. Fish and Wildlife Service (FWS) decision to issue a “special purpose” permit to NMFS authorizing the fishery to incidentally kill migratory birds. The Ninth Circuit panel reversed the district court by holding the issuance of the “special purpose” permit was arbitrary and capricious, *inter alia*, violating the plain language of the FWS’s own regulation. The Ninth Circuit panel also reversed the lower court’s decision by finding the climate based model used in the Agency’s biological opinion predicted the increase in the swordfish fishery would exacerbate the loggerhead’s decline, but NMFS failed to incorporate this information into its “no jeopardy finding.”

¹²*Id.* at *15.

¹³854 F.3d 106 (1st Cir. 2017). See Samuel Hill, [Supreme Court Decides Not to Hear Monitoring Case](#), NAT’L FISHERMAN (Oct. 5 2017).

¹⁴*Goethel*, 854 F.3d at 109.

¹⁵16 U.S.C. §§ 1855(f)(1)-(2) (2017).

¹⁶*Goethel*, 854 F.3d at 116.

¹⁷878 F.3d 725 (9th Cir. 2017).

II. MARINE MAMMALS AND THE MARINE MAMMAL PROTECTION ACT (MMPA)

A. *Judicial Developments*

In [*California Sea Urchin Commission v. Bean*](#),¹⁸ plaintiff trade groups representing fishermen asked the court to hold unlawful and set aside the action of the FWS, which, *inter alia*, eliminated a regulation immunizing fisherman who accidentally harm California sea otters on San Nicholas Island. Public Law No. 99-625, enacted in 1986, had authorized FWS to establish a California sea otter experimental population program, and the implementing regulations provided an exemption from liability for incidentally harming the sea otters under the MMPA and the Endangered Species Act (ESA). In 2012, FWS terminated the program, eliminating the exemption. On cross-motions for summary judgment, the court found under a *Chevron* deference analysis that FWS's interpretation of Public Law No. 99-625 was reasonable, deferring to FWS's interpretation that it had the discretion to terminate the program. The court granted FWS's motion for summary judgment.

B. *Legislative Developments*

Representative Adam Schiff (D-CA) introduced the [Orca Responsibility and Care Advancement Act](#) to amend the MMPA to prohibit the taking, importation, and exportation of Orcas and Orca products.¹⁹

Senator Dan Sullivan (R-AK) introduced the [Allowing Alaska Ivory Act](#) to amend the MMPA "to protect the cultural practices and livelihoods of producers of Alaska Native handicrafts and traditional mammoth ivory products."²⁰

Representatives Mike Johnson (R-LA) and Steve Scalise (R-LA) each introduced bills that would, *inter alia*, amend the MMPA to reduce unnecessary permitting delays for take.²¹

Senator James Risch (R-ID) and Representative Jaime Herrera Beutler (R-WA) each introduced the Endangered Salmon and Fisheries Predation Prevention Act, which would amend the MMPA to reduce predation by sea lions on endangered Columbia River salmon and other non-listed species.²²

Senator Bill Nelson (D-FL) introduced the [Florida Manatee Research and Recovery Act](#) "[t]o authorize research and recovery activities to provide for the protection, conservation, and recovery of the Florida manatee."²³

C. *Administrative Developments*

NMFS issued three final rules: 1) listing the [Maui dolphin](#) (*Cephalorhynchus hectori maui*) as endangered, 2) listing the South Island Hector's dolphin (*C. hectori hectori*) as threatened, and 3) reclassifying the [West Indian manatee](#) (*Trichechus manatus*) from endangered to threatened.²⁴

¹⁸239 F. Supp. 3d 1200 (C.D. Cal. 2017).

¹⁹H.R. 1584, 115th Cong. (2017).

²⁰S. 1965, 115th Cong. (2017).

²¹[SEA Act](#), H.R. 3133, 115th Cong. (2017); [SECURE American Energy Act](#), H.R. 4239, 115th Cong. § 110 (2017).

²²[S. 1702](#), 115th Cong. (2017); [H.R. 2083](#), 115th Cong. (2017).

²³S. 1747, 115th Cong. (2017).

²⁴Final Rule, *Final Rule to List the Maui Dolphin as Endangered & the South Island Hector's Dolphin as Threatened Under the Endangered Species Act*, 82 Fed. Reg. 43,701

NMFS issued three proposed rules: 1) designating critical habitat for the [Main Hawaiian Islands insular false killer whale](#) (*Pseudorca crassidens*) distinct population segment; 2) listing the [Taiwanese humpback dolphin](#) (*Sousa chinensis taiwanensis*) as an endangered species; and 3) establishing a [whale protection zone in the San Juan Islands](#) to support endangered Southern Resident killer whale recovery.²⁵

III. POLAR BEARS, SEA TURTLES, SALMON, AND THE ENDANGERED SPECIES ACT (ESA)

A. *Judicial Developments*

In [Sierra Club & South Carolina Wildlife Federation v. Kolnitz](#),²⁶ two environmental organizations challenged the use of wave dissipation devices (“sea walls”) alleging they interfered with various endangered sea turtle breeding patterns, causing a “take” under the ESA. Defendants sought to dismiss the case under the *Burford* abstention doctrine,²⁷ arguing that the case should be dismissed in light of the pending state administrative actions.²⁸ The court declined to dismiss, finding that abstention is not a “license for free-form ad hoc judicial balancing of the totality of state and federal interests,” particularly when the case arises under and can be fully resolved by federal law.²⁹ On plaintiff’s motion for a preliminary injunction requiring the removal of the existing sea walls and prohibiting future sea wall development, the court found that plaintiffs proved each of the four *Winter* factors³⁰ and were, therefore, entitled to preliminary injunctive relief, ordering the immediate removal of all sea walls.³¹ In [Friends of Lydia Ann Channel v. U.S. Army Corps of Engineers](#),³² the district court granted a preliminary injunction to stop the operations of a barge fleeting facility because of the alleged imminent danger to two turtle species found in the channel.³³ On appeal, the Fifth Circuit found that under an

(Sept. 19, 2017) (to be codified at 50 C.F.R. pts. 223-24); Final Rule, *Endangered & Threatened Wildlife and Plants; Reclassification of the West Indian Manatee from Endangered to Threatened*, 82 Fed. Reg. 16,668 (May 5, 2017) (to be codified at 50 C.F.R. pt. 17).

²⁵Proposed Rule, *Endangered & Threatened Wildlife and Plants: Proposed Rulemaking to Designate Critical Habitat for the Main Hawaiian Islands Insular False Killer Whale Distinct Population Segment*, 82 Fed. Reg. 51,186 (Nov. 3, 2017) (to be codified at 50 C.F.R. pts. 224, 226); Proposed Rule, *Endangered & Threatened Wildlife and Plants; Proposed Endangered Listing Determination for the Taiwanese Humpback Dolphin Under the Endangered Species Act (ESA)*, 82 Fed. Reg. 28,802 (June 26, 2017) (to be codified at 50 C.F.R. pt. 224); Request for Comment, *Endangered & Threatened Species; Petition for Rulemaking to Establish a Whale Protection Zone for Southern Resident Killer Whales*, 82 Fed. Reg. 4276 (Jan. 13, 2017) (to be codified at 50 C.F.R. pts. 223-24).

²⁶No. 2:16-cv-03815-DCN, 2017 U.S. Dist. LEXIS 128462 (D.S.C. Aug. 14, 2017).

²⁷*Burford v. Sun Oil Co.*, 319 U.S. 315, 334 (1943) (The Supreme Court held that a federal court sitting in diversity jurisdiction may abstain from hearing a case where (1) the state courts likely have greater expertise in a particularly complex and unclear area of state law which is of special significance to the state, (2) there is a comprehensive state administrative or regulatory procedure, and (3) the federal issues cannot be decided without delving into state law).

²⁸*Sierra Club*, 2017 U.S. Dist. LEXIS 128462, at *9.

²⁹*Id.* at *13 (quoting *Martin v. Stewart*, 499 F.3d 360, 364 (4th Cir. 2007)).

³⁰*Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

³¹*Sierra Club*, 2017 U.S. Dist. LEXIS 128462 at *25.

³²701 F. App’x 352 (5th Cir. 2017).

³³No. 2:15-CV-0514, 2017 U.S. Dist. LEXIS 35237 (S.D. Tex. Mar. 13, 2017).

ESA analysis, plaintiffs failed to show turtle takes occurred and there was a reasonably certain threat of imminent harm.³⁴ Under a National Environmental Policy Act (NEPA) analysis, the court found a NEPA challenge “c[ould] only be maintained under the [APA] because NEPA confers no private right of action.”³⁵ Subsequently, the Fifth Circuit vacated the preliminary injunction dismissing the suit as moot.³⁶

In [*Maine Council of the Atlantic Salmon Federation v. National Marine Fisheries Services*](#), defendants “sought to modify the terms of existing licenses to operate four hydropower dams on the Kennebec River,” a traditional Atlantic salmon spawning waterway.³⁷ Because the salmon are protected under the ESA, the Federal Energy Regulatory Commission (FERC) obtained biological opinions (BiOps) from NMFS. The BiOps found that the proposed modifications would not jeopardize the species’ survival but would result in the incidental take of individual fish. Plaintiffs objected claiming the BiOps were arbitrary and capricious. The district court dismissed the case for lack of subject matter jurisdiction because “FERC granted the license modifications by orders adopting the terms of the BiOps” while the case was pending.³⁸ The First Circuit upheld the district court decision finding that once FERC issued the order, it was subject to the Federal Power Act’s provision for direct appellate jurisdiction of the courts of appeals.³⁹ Thus, an action challenging the BiOps must be filed directly in the appellate court.

In [*Hoopa Valley Tribe v. National Marine Fisheries Services*](#), plaintiff Tribes argued defendants failed to “reinitiate formal consultation following two years of record rates of disease among Coho salmon in the Klamath River” and sought an injunction to put protective water flows in place to reduce disease rates while the formal consultation process occurred.⁴⁰ The court granted the Tribes’ motion for a partial summary judgment and preliminary injunction finding defendants failed to comply with ESA Section 7.

Plaintiff environmental groups in [*Natural Resources Defense Council v. Norton*](#),⁴¹ alleged FWS and the Bureau of Reclamation (Bureau) failed to reinitiate consultation on the impact of the contracts on ESA-listed winter-run and spring-run Chinook salmon and the contractors had unlawfully taken winter-run and spring-run Chinook in violation of ESA Section 9. Defendants brought 12(b)(6) motions to dismiss both claims. The court found the applicable Incidental Take Statement (ITS) did not provide Section 9 liability protection to the defendants, but it nevertheless agreed with defendants’ legal interpretation and found the agency could not be the proximate cause of a take that results from non-discretionary action. However, the court noted that there was a question of fact regarding whether the Bureau did retain some discretion over the source of diversions under one of the contracts, and directed plaintiffs to proceed on that ground. Further, the court found the agency’s ability to approve transfers of contract water constituted sufficient “discretion” to

³⁴*Friends of Lydia Ann Channel*, 701 F. App’x at 355-56.

³⁵*Id.* at 357.

³⁶*Id.* at 359.

³⁷858 F.3d 690, 691 (1st Cir. 2017).

³⁸*Me. Council of the Atl. Salmon Fed’n v. Nat’l Marine Fisheries Serv. of the Nat’l Oceanic & Atmospheric Admin.*, 203 F. Supp. 3d 58, 86 (D. Me. 2016).

³⁹*Me. Council*, 858 F.3d at 693 (referring to 16 U.S.C. § 8251(b)).

⁴⁰230 F. Supp. 3d 1106, 1111 (N.D. Cal. 2017) (this opinion addressed the parallel motions in the related case, *Yurok Tribe v. Bureau of Reclamation*, 231 F. Supp. 3d 450 (N.D. Cal. 2017)).

⁴¹236 F. Supp. 3d 1198 (E.D. Cal. 2017), *granted in part, denied in part sub nom.*, [*NRDC v. Zinke*](#), No. 1:05-cv-01207 LJO-EPG, 2017 U.S. Dist. LEXIS 138172 (E.D. Cal. Aug. 28, 2017).

trigger Section 9 liability and allowed plaintiffs to proceed on the ground that such approval proximately caused the alleged take.⁴²

The Ninth Circuit in [San Luis & Delta-Mendota Water Authority v. Haugrud](#),⁴³ found the Bureau had authority under 1955 legislation to order additional water releases to the Trinity River from the Lewiston Dam beyond the amount designated in an official release schedule, where necessary to protect downstream fish populations, including salmon and steelhead populations. The Court held the general language in the 1955 Act trumped later legislation that seemed to prescribe, or at least authorize, more limited releases. However, on the allegation that defendants violated the ESA by implementing a flow augmentation release without conducting a formal Section 7 consultation, the court determined plaintiffs failed to establish standing because “they failed to establish a ‘reasonable probability of the challenged action’s threat to [their] concrete interest,’ and because section 7 was not designed to protect their asserted economic interest.”⁴⁴

B. Legislative Developments

Several bills were introduced in both the Senate and House that would amend the MMPA to allow the importation of polar bear parts taken legally in Canadian sport hunts.⁴⁵

Representative Bill Posey (R-FL) introduced the [Seismic Moratorium Act](#), which would prevent any person from conducting geological or geophysical activities off the Florida coastline, allowing the moratorium to be terminated only if impacts to people and populations of marine mammals, sea turtles, and fish were minimal.⁴⁶

Senator Bill Nelson (D-FL) and Representative Debbie Wasserman Schultz (D-FL) each introduced the Marine Oil Spill Prevention Act, which would, *inter alia*, require an assessment of NOAA’s ability to respond to oil spill impacts on marine sanctuaries, monuments, other protected areas, marine mammals, fish, corals, sea turtles, other protected species, and efforts to rehabilitate these species.⁴⁷

Senator James Risch (R-ID) and Representative Jaime Herrera Beutler (R-WA) each introduced the Endangered Salmon and Fisheries Predation Prevention Act, which would amend the MMPA to reduce predation on endangered Columbia River salmon and other non-listed species.⁴⁸

Senator Lisa Murkowski (R-AK) and Representative Don Young (R-AK) each introduced the Genetically Engineered Salmon Labeling Act to ensure that consumers can make informed decisions when purchasing salmon.⁴⁹

Representative Don Young (R-AK) introduced the [Prevention of Escapement of Genetically Altered Salmon in the United States Act](#).⁵⁰

⁴²*Id.* at 1240.

⁴³848 F.3d 1216 (9th Cir. 2017).

⁴⁴*Id.* at 1234 (quoting *Hall v. Norton*, 266 F.3d 969 (9th Cir. 2001)).

⁴⁵See Hunting Heritage and Environmental Legacy Preservation for Wildlife Act, [S. 1514](#), 115th Cong. (2017); [S. 1395](#), 115th Cong. (2017); [S. 1066](#), 115th Cong. (2017); [H.R. 6936](#), 115th Cong. (2017); Polar Bear Conservation and Fairness Act, [H.R. 3668](#), 115th Cong. (2017); [H.R. 1054](#), 115th Cong. (2017); Restoration of the U.S.-Russia Polar Bear Conservation Fund Act, [H.R. 225](#), 115th Cong. (2017); and Polar Bear Conservation and Fairness Act, [H.R. 224](#), 115th Cong. (2017).

⁴⁶H.R. 2469, 115th Cong. (2017).

⁴⁷[S. 74](#), 115th Cong. (2017); [H.R. 2261](#), 115th Cong. (2017).

⁴⁸[S. 1702](#), 115th Cong. (2017); [H.R. 2083](#), 115th Cong. (2017).

⁴⁹[S. 1528](#), 115th Cong. (2017); H.R. 204, 115th Cong. (2017).

⁵⁰H.R. 206, 115th Cong. (2017).

In response to [*Yurok Tribe v. Bureau of Reclamation*](#),⁵¹ Representative Jared Huffman (D-CA) introduced the [Yurok Tribe Klamath River Chinook Salmon Emergency Disaster Assistance Act of 2017](#) to provide appropriations to mitigate the economic losses to the Tribe.⁵²

C. Administrative Developments

NMFS issued two proposed rules: (1) to [withdraw certain regulations](#) around fishery-related activities “to reduce incidental bycatch and mortality of sea turtles in the southeastern U.S. shrimp fisheries and to aid in the protection and recovery of listed sea turtle populations;” and (2) to [observe identified fisheries](#) “to learn more about sea turtle interactions in a given fishery , evaluate measures to prevent or reduce sea turtle takes and to implement the prohibition against sea turtle takes.”⁵³

NMFS requested comments on: [draft guidelines for marine mammal response](#) in northern Alaska in an effort to increase preparedness for wildlife response under the Oil Pollution Act of 1990; and the [Navy’s request “for authorization to take marine mammals incidental to Ice Exercise 2018 . . . activities](#) proposed within the Beaufort Sea and Arctic Ocean north of Prudhoe Bay, Alaska.”⁵⁴

NMFS issued a [notice](#) proposing to conduct a study to assess the extent of interactions between recreational anglers on piers and other shore-based fishing structures and sea turtles.⁵⁵

FWS issued two notices: 1) the availability of the [Polar Bear Conservation Management Plan](#), stating the [U.S.-Russia Polar Bear Commission](#) “unanimously agreed to maintain the annual taking limit adopted in 2010 for the Alaska-Chukotka polar bear population;” and 2) the availability of “[draft revised marine mammal stock assessment reports](#) for two stocks of polar bears” and requesting comments⁵⁶

The Department of Interior (DOI) [announced](#) the availability of the [Final Report: Review of the Department of the Interior Actions that Potentially Burden Domestic Energy](#) prepared pursuant to Executive Order 13783, “Promoting Energy Independence and Economic Growth.” The report, *inter alia*, reviewed the Chukchi Sea marine mammal incidental take regulations, expiring in 2018.⁵⁷

⁵¹231 F. Supp. 3d 450 (N.D. Cal. 2017).

⁵²H.R. 2330, 115th Cong. (2017).

⁵³Proposed Rule, *Sea Turtle Conservation; Shrimp Trawling Requirements*, 81 Fed. Reg. 91,097 (Dec. 16, 2016) (to be codified at 50 C.F.R. pt. 223); Proposed Rule, *2018 Annual Determination to Implement the Sea Turtle Observer Requirements*, 82 Fed. Reg. 48,674 (Oct. 19, 2017) (to be codified at 50 C.F.R. pt. 222).

⁵⁴Notice, *Draft Arctic Marine Mammal Disaster Response Guidelines*, 82 Fed. Reg. 3293 (Jan. 11, 2017); Request for Comments, *Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy 2018 Ice Exercise Activities in the Beaufort Sea & Arctic Ocean*, 82 Fed. Reg. 48,683 (Oct. 19, 2017).

⁵⁵Notice, *Proposed Information Collection; Comment Request; Recreational Angler Survey of Sea Turtle Interactions*, 82 Fed. Reg. 32,790 (July 18, 2017).

⁵⁶Notice, *Endangered & Threatened Wildlife & Plants; Notice of Availability of Polar Bear Conservation Management Plan*, 82 Fed. Reg. 2392 (Jan. 9, 2017); Notice, *U.S.-Russia Polar Bear Commission; Maintenance of Annual Taking Limit for the Alaska-Chukotka Polar Bear Population*, 82 Fed. Reg. 17,445 (Apr. 11, 2017); Notice, *Marine Mammal Protection Act; Stock Assessment Reports*, 82 Fed. Reg. 28,526 (June 22, 2017).

⁵⁷Final Report, *Final Report: Review of the Department of the Interior Actions that Potentially Burden Domestic Energy*, 82 Fed. Reg. 50,532 (Nov. 1, 2017) (to be codified

IV. DEEP SEABED MINING, CONTINENTAL SHELF DELINEATION, THE ARCTIC, AND OTHER ISSUES UNDER THE 1982 LAW OF THE SEA CONVENTION

A. *Deep Seabed Mining*

The International Seabed Authority (ISA) held its 23rd annual session in Kingston, Jamaica from August 8-18, 2017. The Assembly discussed, *inter alia*, the final report on the first periodic review of the ISA pursuant to Article 154 of the United Nations Convention on the Law of the Sea (UNCLOS) and reviewed the ISA's draft regulations on the exploitation of marine minerals on the international seabed. The Secretariat released the draft regulations as submitted to the ISA Legal and Technical Commission, which convened from July 31-August 9, 2017.⁵⁸

As of August 9, 2017, three new contracts were signed since the 22nd session of the ISA, and one more is expected to be signed before the end of 2017; four agreements were signed for a five-year extension of exploration contracts with two more expected to be signed by the end of 2017.⁵⁹ The total number of exploration contracts for polymetallic sulphides is now 17 with two contracts for cobalt-rich ferromanganese crusts.⁶⁰

One of the new exploration contracts was signed on May 12, 2017 between the ISA and China Minmetals Corporation for 15 years.⁶¹ China is also sponsoring another contractor for exploration of polymetallic nodules in the Clarion Clipperton Zone, for which a five-year extension was signed.⁶²

In January 2017, the ISA issued a discussion paper to advance stakeholder discussion in connection with the development and drafting of Regulations on Exploitation for Mineral Resources in the Area (Environmental Matters).⁶³ On August 25, 2017, the ISA released its "Draft regulations on exploitation of mineral resources in the Area" for stakeholder comments with a deadline of December 20, 2017.⁶⁴

B. *Continental Shelf Delineation*

The Commission on the Limits of the Continental Shelf (the Commission) held its 43rd session at United Nations Headquarters from January 30 to March 17, 2017.⁶⁵ The purpose of the Commission is to make recommendations to coastal states on matters relating to the establishment of the outer limits of their continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, based on information submitted to the Commission by coastal states. As of March 1, 2017,

at 25 C.F.R. chs. I-III, V-VII, 30 C.F.R. chs. II, IV-V, VII, XII, 36 C.F.R. ch. I, 43 C.F.R. subtitles A-B, 50 C.F.R. chs. I, IV).

⁵⁸[Summary of the Twenty-Third Annual Session of the International Seabed Authority: 8-18 August 2017](#), EARTH NEGOTIATIONS BULLETIN, Vol. 25, No. 151 (Aug. 21, 2017).

⁵⁹*Id.*

⁶⁰[Fact Sheet](#), *Contractors for Seabed Exploration*, INT'L SEABED AUTH.

⁶¹[China Minerals Corporation Signs Exploration Contract with the International Seabed Authority](#), INT'L SEABED AUTH. (May 12, 2017).

⁶²*Id.*

⁶³[ISA Issues Discussion Paper on the Development of "Environmental Regulations" for the Exploitation in the Area](#), INT'L SEABED AUTH. (Jan. 25, 2017).

⁶⁴[Draft Regulations on Exploitation of Mineral Resources in the Area](#), INT'L SEABED AUTH. (Aug. 25, 2017).

⁶⁵[Press Release](#), United Nations, Commission on Limits of Continental Shelf Concludes Forty-Second Session (Dec. 6, 2016).

sixty-seven coastal states made eighty-three submissions, including seven joint submissions, several partial submissions, and five revised submissions based on Commission recommendations. To date, the Commission issued twenty-six recommendations, two of which were for revised submissions.⁶⁶

The Commission considered submissions made by: the Russian Federation, for the Arctic Ocean; Brazil, for the Brazilian Southern Region; Uruguay; the Cook Islands, for the Manihiki Plateau; Norway, for Bouvetoya and Dronning Maud Land; South Africa for the mainland of the territory of the Republic of South Africa; the Federated States of Micronesia, Papua New Guinea and Solomon Islands, jointly, for the Ontong Java Plateau; France and South Africa, jointly, for the area of the Crozet Archipelago and the Prince Edward Islands; Kenya; Mauritius, in the region of Rodrigues Island; Nigeria; Seychelles, for the Northern Plateau Region; France for Reunion and the Saint-Paul and Amsterdam Islands; Cote d'Ivoire; and Sri Lanka.⁶⁷ The Commission approved five recommendations: the submissions made by Argentina; Uruguay; the Cook Islands, for the Manihiki Plateau; South Africa for the mainland territory of the Republic of South Africa; and the Federated States of Micronesia, Papua New Guinea and Solomon Islands, jointly, for the Ontong Java Plateau.⁶⁸ As of April 17, 2017, the Commission had 12 submissions under active consideration.⁶⁹ To date, the U.S. has made no formal submission to the Commission.⁷⁰

C. *Arctic Developments*

On May 11, 2017, Secretary of State Rex Tillerson chaired the 10th Arctic Council Ministerial Meeting in Fairbanks, Alaska. Representatives from the eight Arctic nations convened to review and approve work completed under the two-year U.S. chairmanship to improve sustainable development and environmental protection in the Arctic.⁷¹ The Arctic nations were joined by delegations from the Council's indigenous permanent participation organizations and observers. At the conclusion of the meeting, the U.S. transferred the chairmanship of the Council to Finland. Member states expressed their concerns to the Secretary that the U.S. was pulling out of the Paris Climate Agreement.⁷²

According to the State Department, under U.S. leadership, the Council completed an assessment of gaps in telecommunication capabilities across the region; created a new tool, the Arctic Ship Traffic Database, to track shipping routes in anticipation of increased activity; and concluded a landmark scientific cooperation agreement, through negotiations led by the U.S. and Russia, which is intended to “usher in a new era of Arctic science by breaking down the barriers to research and exploration in the region.”⁷³

On October 25-26, 2017, the Arctic Council met in Oulu, Finland for the first Senior Arctic Officials' meeting held during the Chairmanship of Finland.⁷⁴ The meeting opened

⁶⁶*Id.*

⁶⁷UNCLOS Meeting of States Parties, [Letter dated 17 April 2017 from the Chair of the Commission on the Limits of the Continental Shelf addressed to the President of the twenty-seventh Meeting of States Parties](#) (Apr. 17, 2017).

⁶⁸*Id.*

⁶⁹*Id.*

⁷⁰*Id.*

⁷¹[10TH ARCTIC COUNCIL MINISTERIAL MEETING](#), U.S. DEP'T OF STATE (MAY 10-11, 2017).

⁷²Yereth Rosen, [U.S. Ends Arctic Council Chairmanship with Reluctance on Climate Action](#), ALASKA DISPATCH NEWS (May 11, 2017).

⁷³David A. Balton, [The Arctic Council: Fostering Cooperation, Preservation, & Prosperity in the Far North](#), DIPNOTE (May 10, 2017).

⁷⁴[Senior Arctic Officials Gather for First Meeting During Finland's Arctic Council Chairmanship](#), ARCTIC COUNCIL (Oct. 18, 2017).

with the appointment of Nina Buvang Vaaja as the new director of the Arctic Council Secretariat.⁷⁵ The Council focused on its work on black carbon and methane, plans for an Arctic Resilience Forum to take place in September 2018 in Rovaniemi, Finland, and the ratification of the 2017 scientific cooperation agreement.⁷⁶

Domestically, President Trump moved to repeal Obama-era executive orders that would bar oil and gas drilling in the Arctic to open up the coastal plain of the Arctic National Wildlife Refuge (ANWR) for drilling. On April 28, 2017, President Trump signed Executive Order 13795 to roll back restrictions on oil and gas development in the Arctic, Chukchi and Beaufort Seas, as well as the Northern Bering Sea Climate Change Resilience strategy put into place by President Obama in December 2016.⁷⁷ Secretary of the Interior Ryan Zinke said it would take about two years to decide what new areas could be put up for auction in the Arctic.⁷⁸ Meanwhile, Congress is working on legislation, as part of its budget reconciliation process, to open sections of ANWR to oil and gas development. Sponsored by Senator Lisa Murkowski, S. 49 allows up to 2,000 acres of the coastal plain of ANWR to be developed with wells and support facilities.⁷⁹ Congress included language opening sections of the coastal plain of ANWR to oil and gas development in the final days of the first session of the 115th Congress as part of the “Tax Cuts and Jobs Act of 2017.”⁸⁰

Finally, the Coast Guard has partnered with the Marine Exchange of Alaska to develop a program to provide critical navigational safety information to Arctic mariners via digital means, in recognition of the fact that the “Arctic coast of the United States is not conducive to the traditional types of Aids to Navigation used elsewhere in the country,” according to Dave Series of the 17th Coast Guard District.⁸¹

D. *Implementation of the Polar Code*

The International Code for Ships Operating in Polar Waters (Polar Code) entered into force on January 1, 2017. Coast Guard policy guidance of December 12, 2016 stated the goal of the Code is to provide for safe ship operation and the protection of the polar environment by addressing risks present in Polar Waters, which are not adequately mitigated by other International Maritime Organization regulations.⁸²

On September 21, 2017, the Coast Guard issued its final rule adding the Polar Ship Certificate, valid for five years, to the list of certificates needed by certain U.S. and foreign-flag ships if they engage in international voyages in polar waters.⁸³ The Coast Guard estimates (1) the new requirement will affect twenty-three U.S.-flagged vessels; (2) a

⁷⁵[Arctic Council Meets in Finland, Addresses Pollution Prevention & Education](#), ARCTIC COUNCIL (Oct. 26, 2017).

⁷⁶*Id.*

⁷⁷Exec. Order No. 13,795, 82 Fed. Reg. 20,815 (May 3, 2017).

⁷⁸Juliet Eilperin, [Trump Signs Executive Order to Expand Drilling Off America’s Coasts: ‘We’re opening it up’](#), WASH. POST (Apr. 28, 2017).

⁷⁹Chris D’Angelo & Nick Visser, [Lisa Murkowski Introduces Bill to Open Arctic Wildlife Refuge to Oil Drilling](#), HUFFINGTON POST (Nov. 9, 2017).

⁸⁰[Pub. L. 115-97 \[H.R. 1\]](#), 131 Stat 2054.

⁸¹Loretta Haring, [Research, Development, Testing and Evaluation: Arctic Navigational Safety Information System](#), COAST GUARD COMPASS (Nov. 14, 2017).

⁸²[Letter](#), Implementation of the Int’l Code for Ships Operating in Polar Waters (Polar Code), U.S. DEP’T OF HOMELAND SEC. (Dec. 12, 2016).

⁸³Final Rule, *Adding the Polar Ship Certificate to the List of SOLAS Certificates and Certificates Issued by Recognized Classification Societies*, 82 Fed. Reg. 44,108 (Sept. 21, 2017) (to be codified at 42 C.F.R. pts. 2, 8).

classification society can issue the certificate; and (3) the certificate must be in place by the first renewal or intermediate examination of the vessel after January 1, 2018.⁸⁴

E. 1982 Law of the Sea Convention

The States Parties to UNCLOS met at United Nations headquarters from June 12-15, 2017. The meeting was attended by representatives of States Parties to UNCLOS and observers, including the International Seabed Authority, the Commission on the Limits of the Continental Shelf, and the International Tribunal for the Law of the Sea.⁸⁵ The United States is not a party to UNCLOS and participated as an observer. There is no indication the Trump Administration will ask the Senate to accede to UNCLOS.

At the meeting, delegations reaffirmed UNCLOS sets out the legal framework within which all activities in the oceans and seas must be carried out.⁸⁶ Several delegations highlighted UNCLOS's role in maintaining international peace and security, reinforcing friendly relations among States, protecting and preserving the marine environment and ensuring the sustainable use of the oceans and marine resources.⁸⁷

On November 6, 2017, nations agreed to recommend to the United Nations General Assembly elements that would be considered in the development of a new treaty on marine biodiversity of areas beyond national jurisdiction.⁸⁸ A comprehensive global assessment of the marine environment released in 2015 found widespread evidence of particularly strong negative trends in marine biodiversity.⁸⁹ The General Assembly will decide when to convene an intergovernmental conference to work on the new treaty, which would fall under UNCLOS. Many countries want the conference to start in 2018.⁹⁰

On September 23, 2017, a Special Chamber of the International Tribunal for the Law of the Sea delivered its judgment on the dispute concerning delimitation of the maritime boundary between Ghana and Cote d'Ivoire in the Atlantic Ocean.⁹¹ It found it has jurisdiction to delimit the maritime boundary between the Parties in the territorial sea, in the exclusive economic zone, and on the continental shelf both within and beyond 200 nautical miles. The Chamber also found that there is no tacit agreement between the Parties to delimit these boundary limits and rejected Ghana's claim that Cote d'Ivoire is estopped from objecting to the "customary equidistance boundary."⁹² The Chamber, while setting the precise maritime boundary between the two nations, found that Ghana did not violate the sovereign rights of Cote d'Ivoire.⁹³

The maritime boundary dispute between China and the Philippines, adjudicated in 2016 by a panel of the International Tribunal, continues to fester in the South China Sea. While seeking greater economic relations with China, President Rodrigo Duterte of the Philippines has chosen not to enforce the ruling of the Tribunal, which held on all accounts

⁸⁴*Id.* at 44,112.

⁸⁵[Annual Report of the International Tribunal for the Law of the Sea for 2016](#), SPLOS/304 (June 12-16, 2017).

⁸⁶*Id.* at 14-15.

⁸⁷*Id.*

⁸⁸[Countries Agree to Recommend Elements for New Treaty on Marine Biodiversity of Areas Beyond National Jurisdiction](#), UNITED NATIONS (July 24, 2017).

⁸⁹*Id.*

⁹⁰*Id.*

⁹¹[Press Release](#), Int'l Tribunal for the Law of the Sea, Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Cote D'Ivoire, U.N. Doc. ITLOS/Press 264 (Sept. 23, 2017).

⁹²*Id.* at 3.

⁹³*Id.* at 3-4.

for the Philippines and against China on its claim to sovereignty in seven man-made islands in the South China Sea.⁹⁴ China continues to construct runways, surface-to-air missiles, and radar systems on the islands.⁹⁵ At a November 10-12, 2017 meeting of Southeast Asian leaders in Vietnam, President Trump offered to mediate the dispute over territorial claims in the South China Sea.⁹⁶ No one seems to be taking him up on the offer.

V. COASTAL ZONE MANAGEMENT ACT AND MARINE SPATIAL PLANNING

A. *Judicial Developments*

In [*Board of Commissioners of the Southeast Louisiana Flood Protection Authority-East v. Tennessee Gas Pipeline Company, LLC*](#),⁹⁷ the Fifth Circuit ruled on March 3, 2017 against the Board's claim for damages to coastal lands and increased flood protection costs because the standard of care found in federal regulatory schemes, including the Coastal Zone Management Act of 1972 (CZMA), while giving rise to federal jurisdiction over the complaint, did not create a duty on defendants to protect the Board from increased flood protection costs that arise out of coastal erosion allegedly caused by defendants' dredging activities. In deciding against the Board, the court affirmed the district court's ruling that the issuance of permits licensing oil and gas exploration activities under the CZMA does not impose private duties to prevent environmental damage.⁹⁸

B. *Administrative Developments*

There is a proposed rule, pending since November 2016, for changes to regulations for the review of changes to state coastal programs.⁹⁹ The timing of that rule is dependent upon the development of the new website to support the new review process, but the final rule is expected to be published this fiscal year.

C. *Marine Spatial Planning Developments*

On January 17, 2017, representatives of six New England states and six tribes entered into an agreement with the Federal Government to create the Northeast Ocean Plan.¹⁰⁰ The purpose of the Plan and its accompanying Ocean Data Portal is to promote healthy ocean ecosystems, enable more effective decision making, and pursue compatibility among ocean uses in New England waters.¹⁰¹ The Plan was developed pursuant to Executive Order 13547, "Stewardship of the Ocean, Our Coasts, and the Great Lakes."¹⁰² It remains to be seen whether the Trump Administration will continue the ocean planning work under this Executive Order.

⁹⁴[Phil. v. China](#), PCA Case No. 2014-19 (Perm. Ct. Arb. 2016).

⁹⁵[Trump Offers to Mediate on South China Sea](#), MAR. EXEC. (Nov. 12, 2017).

⁹⁶*Id.*

⁹⁷850 F.3d 714 (5th Cir. 2017).

⁹⁸*Id.* at 727-28.

⁹⁹Proposed Rule, *Changes to the Coastal Zone Management Act Program Change Procedures*, 81 Fed. Reg. 78,514 (Nov. 8, 2016) (to be codified at 15 C.F.R. Pt. 923).

¹⁰⁰[The Northeast Ocean Plan](#), NE. REG'L PLANNING BODY (last visited Apr. 30, 2018).

¹⁰¹*Id.*

¹⁰²Exec. Order No. 13,547, 75 Fed. Reg. 13,547 (July 19, 2010).

The five member states of the Mid-Atlantic Regional Ocean Action Plan, finalized in December 2016, began to pivot in 2017 to its implementation.¹⁰³ The focus will be on maintaining the health of the region's ocean ecosystem; identification of priority science and research needs for the region; and continued collaboration and communication on ocean issues between the federal government, states and tribes.

The Commissioner of New York's Department of Environmental Conservation announced the [New York Ocean Action Plan](#) on January 23, 2017.¹⁰⁴ The Plan will cover the ten-year period of 2017-2027, with the goal of achieving better-managed and healthier ocean ecosystems that will benefit people, communities, and the natural world.¹⁰⁵ The Plan contains four goals that will guide New York's priorities, including (1) ensure the ecological integrity of the ocean ecosystem; (2) promote economic growth, coastal development and human use of the ocean in a manner that is sustainable; (3) increase resiliency associated with climate change; and (4) empower the public to participate in decision making and ocean stewardship.¹⁰⁶

On October 13, 2017, Washington State released its draft marine spatial plan for its Pacific Coast, which was open for comments until December 12, 2017.¹⁰⁷ The draft plan provides information on ocean uses and resources and a framework for evaluating new ocean uses on Washington's Pacific Coast.¹⁰⁸ A draft programmatic environmental impact statement (EIS) accompanies the draft plan.¹⁰⁹

VI. OFFSHORE WIND ENERGY

A. *Judicial Developments*

1. [Fisheries Survival Fund v. Jewell](#)

In December 2016, a coalition of fishing advocates; local towns; and municipalities in New Jersey, New York, and Rhode Island brought the first ever legal challenge to the DOI Bureau of Ocean Energy Management's (BOEM) offshore wind leasing program in the Federal District Court for the District of Columbia.¹¹⁰ Plaintiffs are challenging BOEM's February 2017 issuance of a commercial wind lease to Statoil Wind US, LLC approximately 11 miles off the coast of New York, alleging BOEM failed to adequately solicit input from the fishing industry and other affected stakeholders regarding the proposed site's suitability for wind development and identify potential alternative lease locations. Plaintiffs also allege NEPA requires BOEM to prepare a full EIS considering potential wind project effects on the lease area prior to issuing a lease, which BOEM did not do. Cross-motions for summary judgment were filed in September and October 2017 and are awaiting the court's decision.

¹⁰³[Mid-Atlantic Regional Ocean Action Plan Focus Shifts to Implementation](#), MID-ATLANTIC REGIONAL COUNCIL ON THE OCEAN (Mar. 10, 2017).

¹⁰⁴[New York Ocean Action Plan](#), N.Y. DEP'T OF ENVTL. CONSERVATION, (last visited Apr. 30, 2018).

¹⁰⁵*Id.* at 2.

¹⁰⁶*Id.* at 18-79.

¹⁰⁷[Washington State Releases Draft Marine Spatial Plan](#), WASH. MARINE SPATIAL PLANNING (Oct. 13, 2017).

¹⁰⁸*Id.*

¹⁰⁹*Id.*

¹¹⁰236 F. Supp. 3d 332 (D.D.C. 2017).

2. Public Employees for Environmental Responsibility, IBLA No. 17-____ (Filed Nov. 21, 2017).

On December 1 2017, Cape Wind Associates, LLC submitted an application to BOEM to relinquish its 46 square mile federal wind energy lease off the coast of Massachusetts, officially ending the company's 16-year effort to build the 130MW Cape Wind energy project in Nantucket Sound.¹¹¹ BOEM [recently reaffirmed its 2011 Cape Wind project approval](#) in response to a 2016 D.C. Circuit Court of Appeals decision invalidating BOEM's Cape Wind EIS.¹¹² On November 21, 2017, project opponents, including plaintiffs in the D.C. Circuit case, appealed BOEM's decision to re-affirm the project to the Interior Board of Land Appeals, challenging the validity of [BOEM's August 2017 Supplemental EIS](#). That appeal will likely be withdrawn. The Cape Wind project was first proposed in 2001 and has faced opposition almost from the start, including numerous legal challenges seeking to terminate the federal lease the company obtained in 2010.

B. Federal and State Project Updates

1. Maryland Renewable Energy Credits Awarded

On May 11, 2016, the Maryland Public Service Commission (PSC) [awarded a total of \\$1.8 billion in offshore renewable energy credits \(OREC\)](#) to two prospective offshore wind developers: US Wind, Inc., a subsidiary of Italian developer Renexia, which holds a federal lease offshore Ocean City, Maryland and Skipjack Offshore Energy, LLC, a unit of Deepwater Wind Holdings LLC, which holds a federal lease offshore Delaware through its subsidiary, GSOE I, LLC. Authorized by the [2013 Maryland Offshore Wind Energy Act \("Act"\)](#),¹¹³ the ORECs guarantee the developers a levelized price of \$131.93 per megawatt-hour (MW/h) generated for a term of 20 years, beginning January 2021 for U.S. Wind and 2023 for Skipjack.

2. North Carolina Commercial Wind Energy Lease Issued

On October 10, 2017, BOEM [issued a commercial wind energy lease](#) offshore Kitty Hawk, North Carolina for \$9,066,650 to Avangrid Renewables, LLC, a subsidiary of Spanish public electric utility, Iberdola. Avangrid has 4.5 years to submit its plans to BOEM to develop its lease.¹¹⁴

3. BOEM Approves Site Assessment Plans on Leases Offshore Rhode Island, Massachusetts, and Virginia

In 2017, BOEM approved three Site Assessment Plans (SAP) authorizing the installation and operation of meteorological buoys on the following federal offshore wind leases: (1) [Lease OCS-A 0486, offshore Rhode Island and Massachusetts](#) (a.k.a. "Revolution Wind," owned by Deepwater Wind New England, LLC), SAP approved

¹¹¹[It's Over: Cape Wind Ends Controversial Project](#), CAPE COD TIMES (Dec. 1, 2017)

¹¹²[Pub. Emps. for Env'tl. Responsibility v. Hopper](#), 827 F.3d 1077 (D.C. Cir. 2016).

¹¹³See [Maryland Public Service Commission Starts Reviewing Offshore Wind Applications](#), OFFSHORE WIND (Nov. 22, 2016).

¹¹⁴Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Issued to Avangard Renewables, LLC, Dept. of Interior, Bureau of Ocean Mgmt. (Oct. 4, 2017).

October 12, 2017¹¹⁵; (2) [Lease OCS-A 0500, offshore Massachusetts](#) (owned by Bay State Wind LLC, subsidiary of Danish energy company Ørsted), SAP approved June 29, 2017¹¹⁶; and (3) [Lease OCS-A 0483, offshore Virginia](#) (owned by Dominion Virginia Power), SAP approved October 12, 2017¹¹⁷.

4. Revolution Wind Responds to Massachusetts Request for Proposals to Supply Renewable Energy

On March 31, 2017, Massachusetts electric distribution companies Unitil, National Grid, and Eversource, in coordination with the Massachusetts Department of Energy Resources, issued a [Request for Proposals \(RFP\) for Long-term Contracts for Clean Energy Projects](#) that specifically solicits proposals from offshore wind developers.¹¹⁸ Deepwater Wind New England, LLC submitted a [proposal](#) to supply 288 MW, 144MW, or 96 MW to the Massachusetts grid based on three possible development scenarios for its “Revolution Wind” project, which is contemplated for federal lease [OCS-A 0486](#) offshore Rhode Island and Massachusetts.¹¹⁹ Each version of the project incorporates a 40MW/h battery component engineered by Tesla to ensure consistent power output. The electric distribution companies are anticipated to select winning bids in July 2018.

¹¹⁵*Commercial Wind Leasing Offshore Rhode Island and Massachusetts*, BUREAU OF ENERGY MGMT. (last visited Feb. 7, 2018).

¹¹⁶*Commercial Wind Leasing Offshore Massachusetts*, BUREAU OF ENERGY MGMT. (last visited Feb. 7, 2018).

¹¹⁷*Commercial Lease for Wind Energy Offshore Virginia*, BUREAU OF ENERGY MGMT. (last visited Feb. 7, 2018).

¹¹⁸Request for Proposals for Long-Term Contracts for Clean Energy Projects, Mass. Dep’t of Energy Res. (Mar. 31, 2017).

¹¹⁹Proposal for the Sale of Energy and RECs from the Revolution Wind Project, REVOLUTION WIND (July 27, 2017).