

Re-imagining the Public Trust Doctrine to Conserve U.S. Ocean Ecosystems

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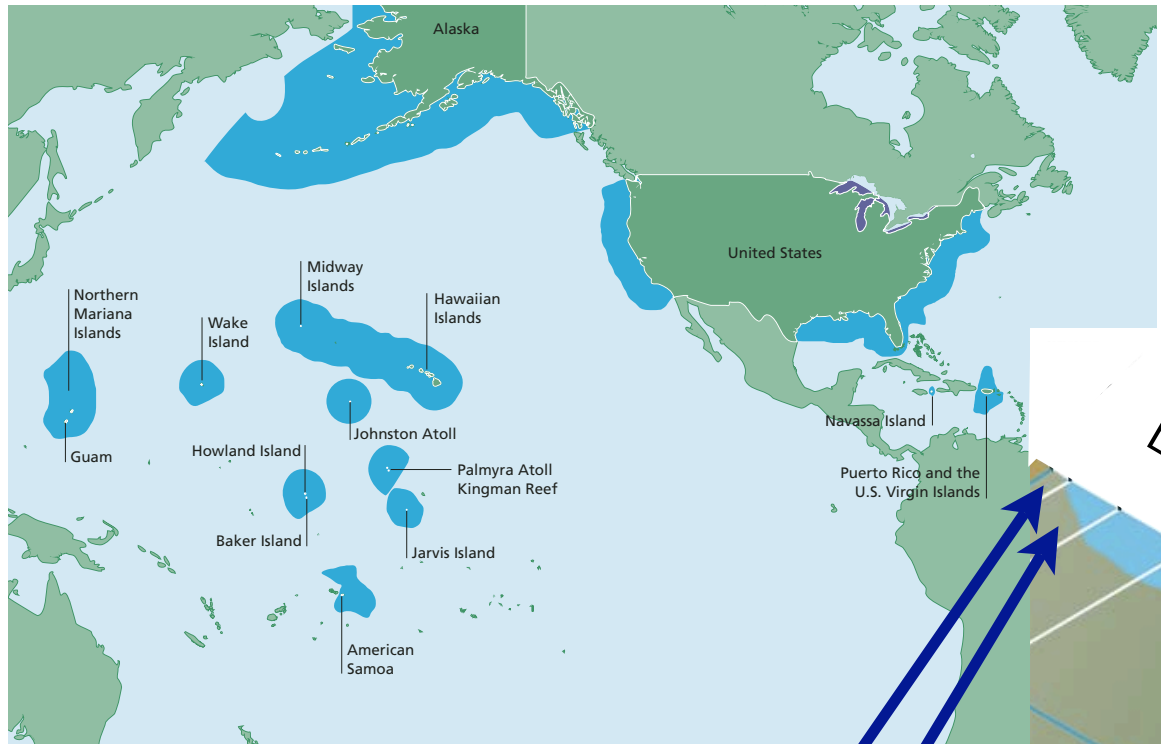
^ Institute for Environment and Society, University of Arizona

+ Earthjustice

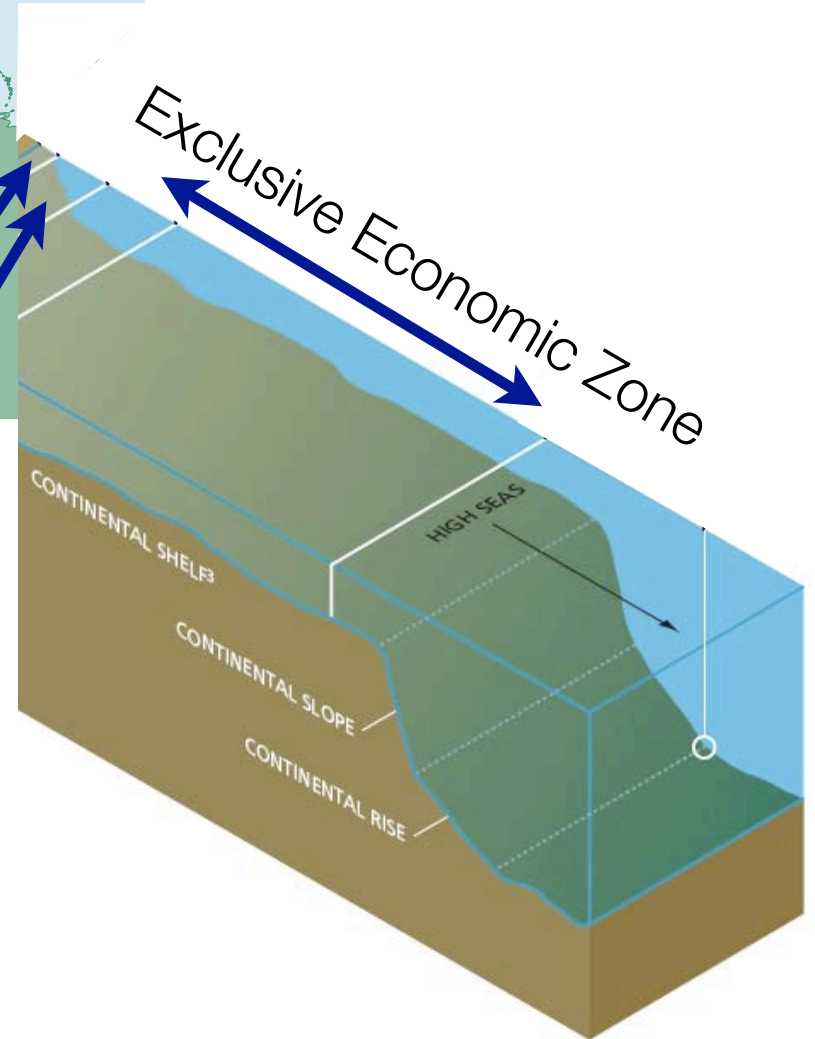


public trust doctrine

the government must manage certain common natural resources in the best interest of its citizens



SOURCE: U.S. COMMISSION ON OCEAN POLICY



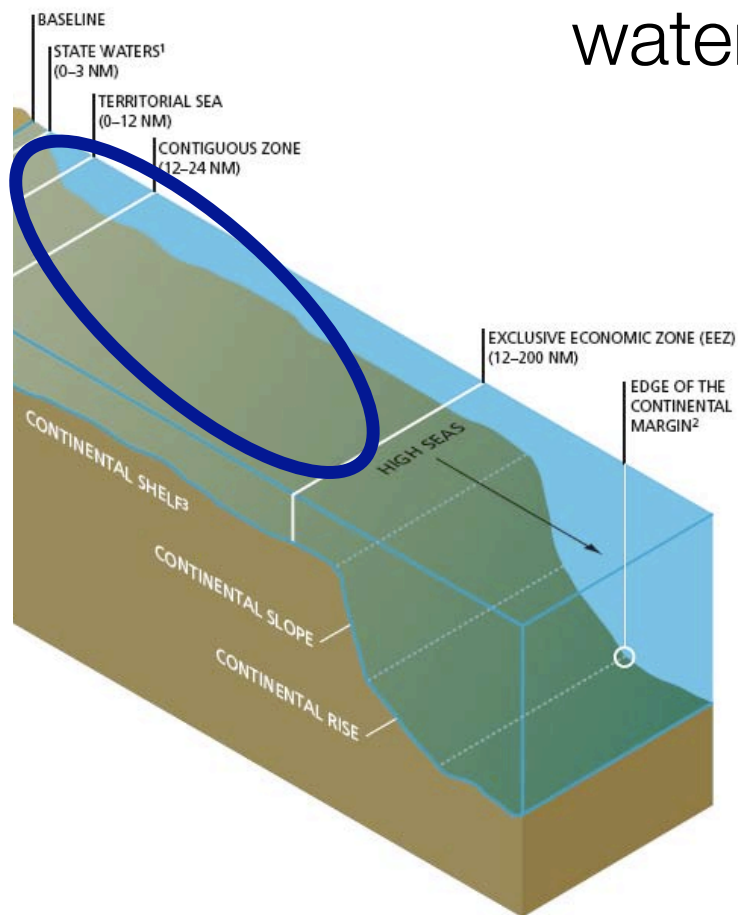
state waters

territorial sea

Exclusive Economic Zone

CONTINENTAL SHELF
CONTINENTAL SLOPE
CONTINENTAL RISE
HIGH SEAS

what if we were to enclose all U.S. waters in a **national public trust**?



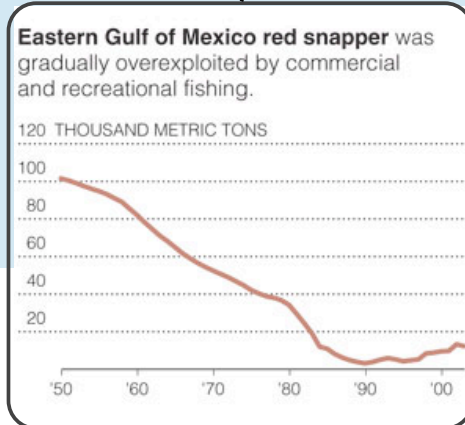
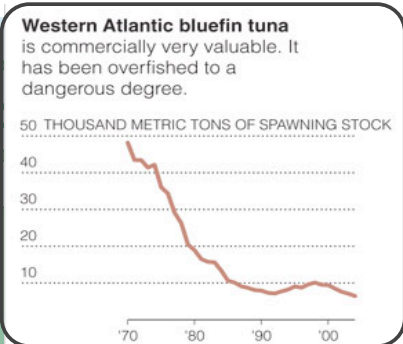
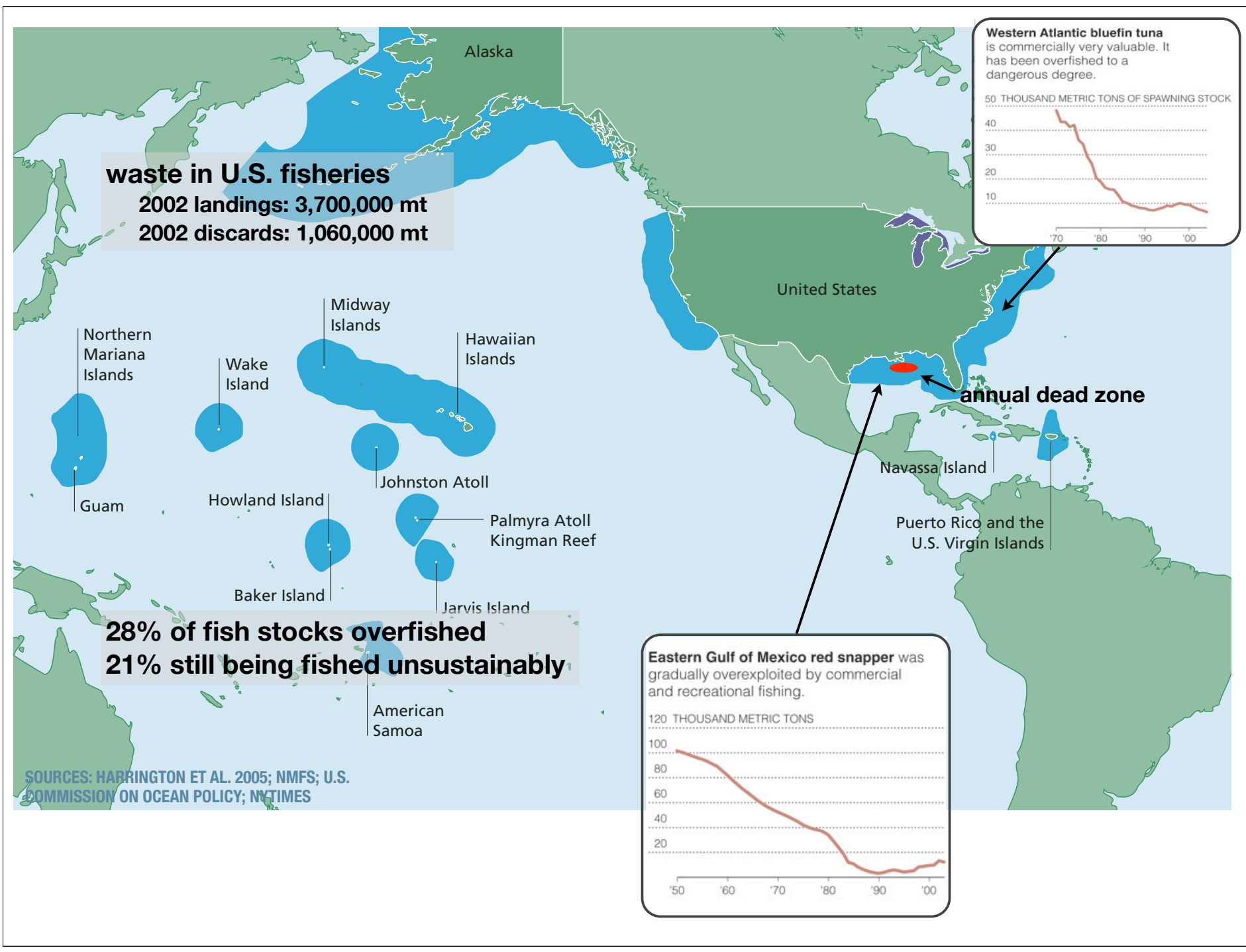
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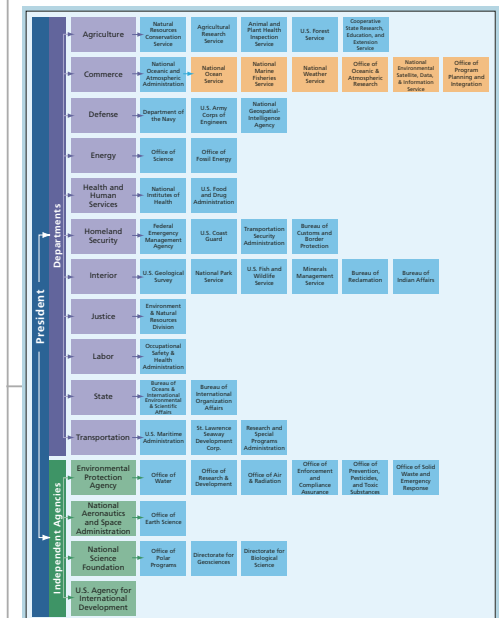
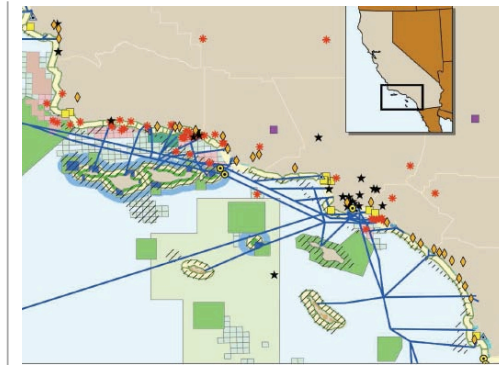
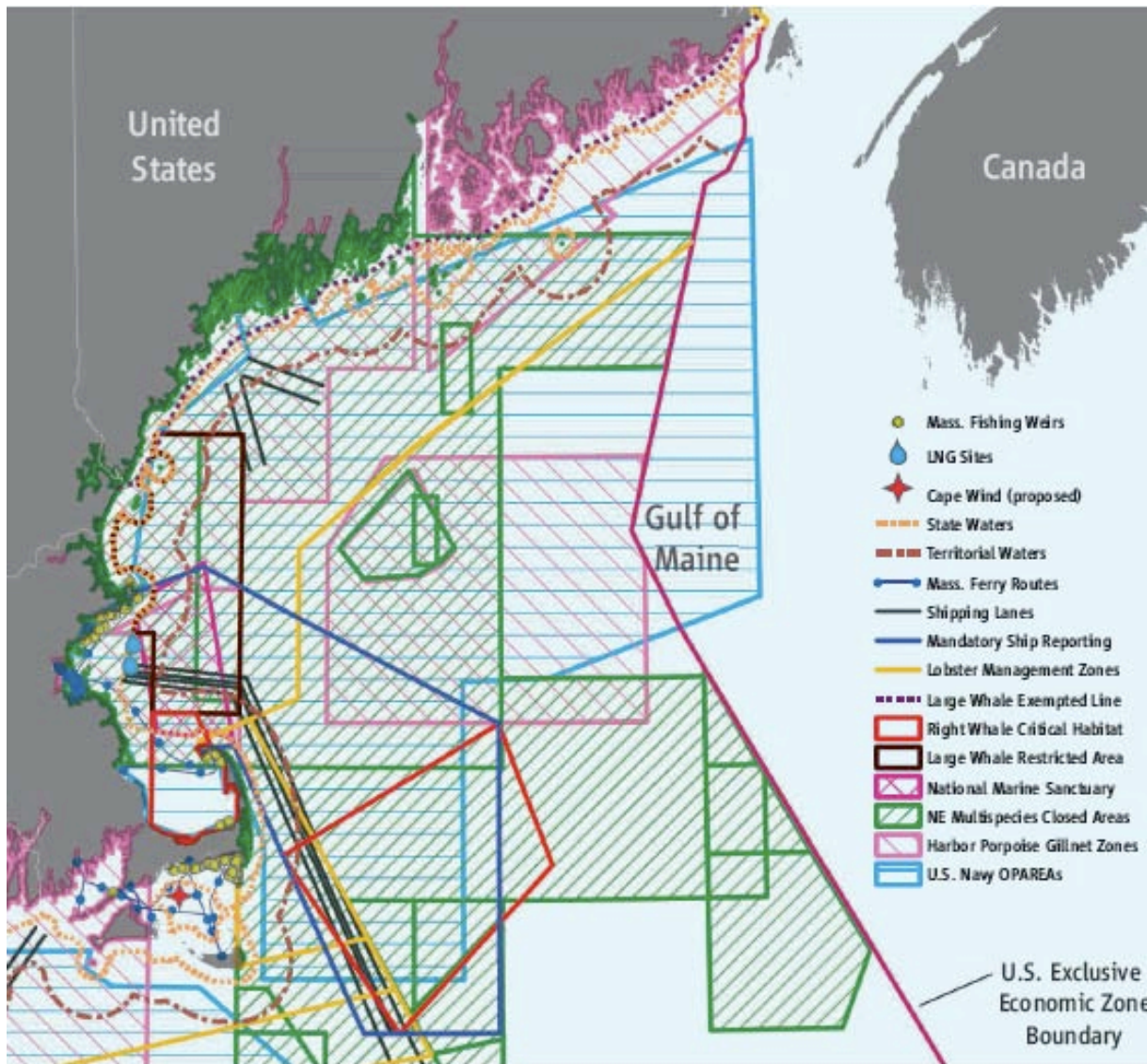
- legal standpoint?
- utility standpoint?

utility?

public trust doctrine

“It is the policy and duty of the United States government to manage, protect, and restore its ocean trust resources for the benefit of current and future generations.”





SOURCES: CROWDER ET AL. 2006; TURNIPSEED ET AL. 2009; U.S. COMMISSION ON OCEAN POLICY

A cacophony of activities, mostly regulated by separate federal agencies



THE WHITE HOUSE
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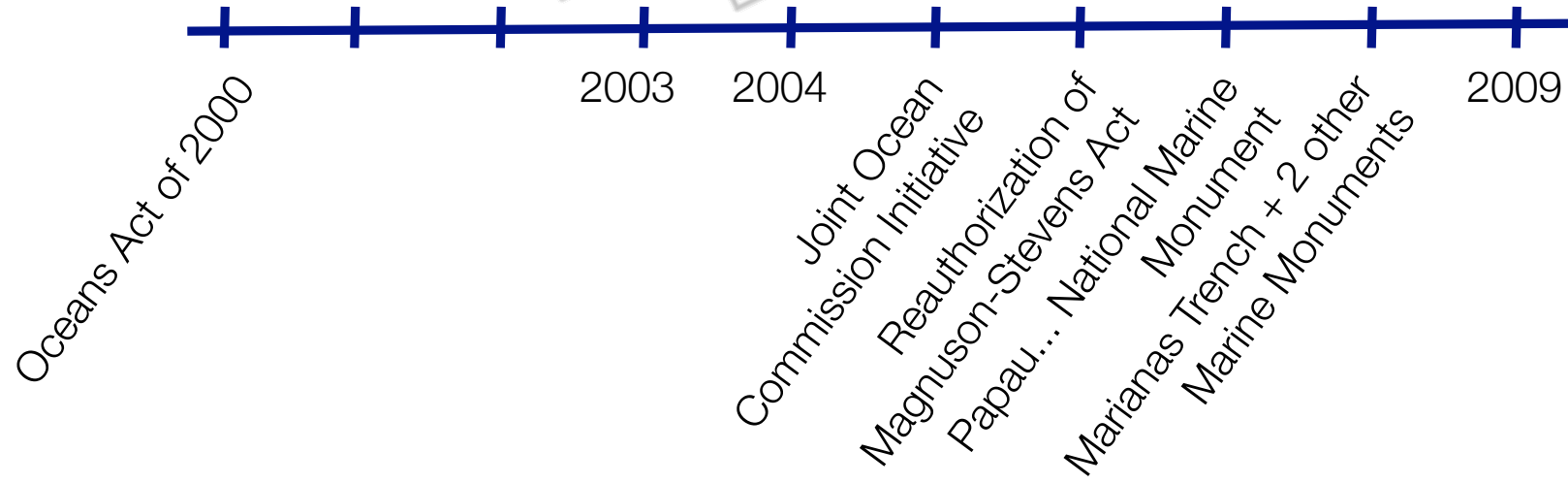
For Immediate Release June 12, 2009

June 12, 2009

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: NATIONAL POLICY FOR THE OCEANS, OUR COASTS,
AND THE GREAT LAKES

June 12, 2009



Oceans 21

National Oceans Protection Act

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The United States has “a stewardship responsibility to maintain healthy, resilient, and sustainable oceans, coasts, and Great Lakes resources for the benefit of this and future generations.”

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How do we operationalize a “stewardship responsibility?”

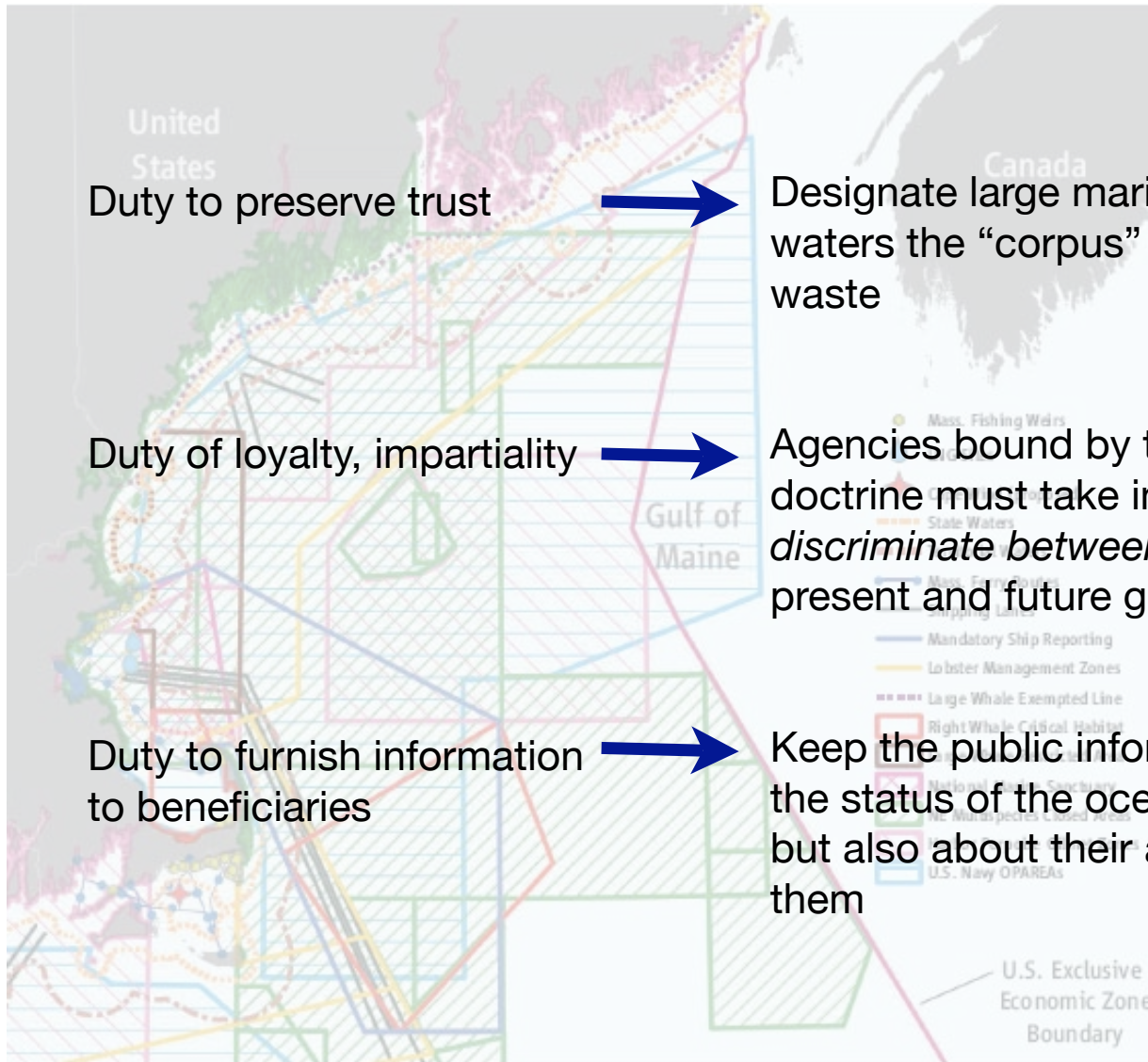
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Trust Law

"A public trustee is endowed with the same duties and obligations as an ordinary trustee." *Slocum v. Borough of Belmar*, 569 A.2d 312, 317 (N.J. Super. Ct. Law Div. 1989)

Powers and duties that are ascribed to private and charitable trustees include:

- (1) the **duty to preserve trust resources** and not to waste them;
- (2) the **duty to administer the trust loyally**, in the interest of its beneficiaries **(both present and future)**; and
- (3) the **duty to provide complete and accurate information** to trust beneficiaries regarding the management of the trust.



Duty to preserve trust



Designate large marine ecosystems in U.S. waters the “corpus” of the trust and disallow waste

Duty of loyalty, impartiality

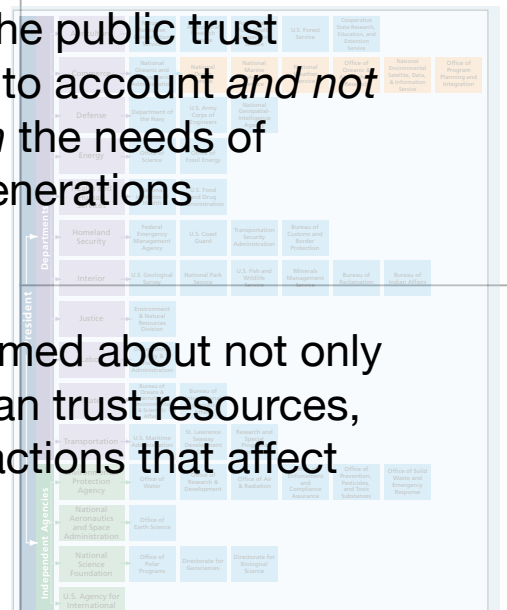
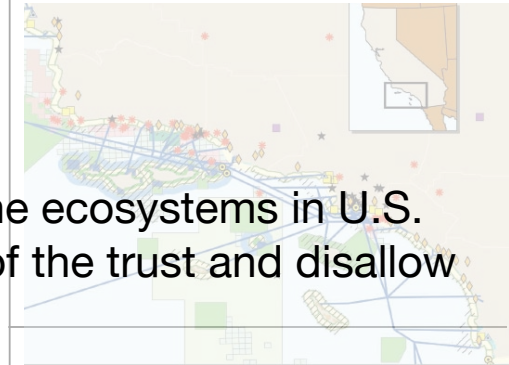


Agencies bound by the public trust doctrine must take into account *and not discriminate between* the needs of present and future generations

Duty to furnish information to beneficiaries



Keep the public informed about not only the status of the ocean trust resources, but also about their actions that affect them



SOURCES: CROWDER ET AL. 2006; TURNPISEED ET AL. 2009; U.S. COMMISSION ON OCEAN POLICY

“With a clear national policy and a revitalized, empowered, unifying and comprehensive framework to coordinate efforts among Federal, State, tribal, and local authorities, including regional governance structures, non-governmental organizations, the private sector, and the public, *we can work together towards the changes needed to secure the health and prosperity of the ocean, our coasts, and the Great Lakes.*”



THE WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY

Interim Report
Of The
Interagency Ocean Policy
Task Force
September 10, 2009



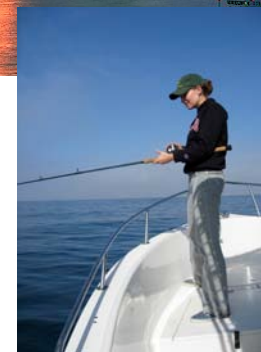
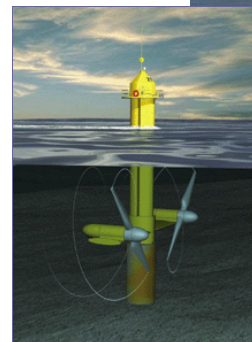
MIA: STEWARDSHIP? FOR THE BENEFIT OF
CURRENT AND FUTURE GENERATIONS?

A carefully articulated federal ocean public trust doctrine would . . .

1) provide a common, overarching mandate and a suite of enforceable trusteeship duties;

2) work at multiple levels to help Congress and federal agencies reshape the regulatory framework used to manage U.S. ocean space; &

3) provide legal underpinning for immediate action towards ecosystem-based management.



SOURCES: KEN GRAHAM-ACCENT AK,
ENERGYPORTAL.EU, MCT LTD.

Thank you

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