

**THE VOICE OF LOCAL AUTHORITIES IN COASTAL AND MARINE SPATIAL  
PLANNING IN THE NORTHEAST: INSIGHTS FROM THE REGIONAL OCEAN  
PLANNING PROCESS**

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*“Plans are worthless, but planning is everything.”<sup>2</sup>*

**I. INTRODUCTION**

In the northeastern United States, recent efforts to employ planning principles to improve coastal and ocean resource stewardship suggest an important attribute of such efforts: the consideration of local concerns and the integration of local perspectives. Yet the precise manner and degree to which such “local voice” can play a role in coastal and marine spatial planning (CMSP) remains elusive. Just as U.S. coastal waters may become crowded with a variety and intensity of uses, so too can those waters seem sometimes crowded with varying levels of government jurisdiction. Municipal boundaries may occupy expanses of ocean areas that constitute the sovereign space and proprietary interests of states. States in turn, though holding primacy in nearshore ocean waters, may be preempted by constitutionally authorized federal laws. And even as U.S. ocean waters extend beyond state boundaries, federal authorities recognize the political clout that state and local stakeholders may employ to influence the manner in which federal entities manage those areas.

This article examines two recently certified regional ocean plans to see whether and how local authorities have been afforded a voice as those efforts moved from ideals articulated by President Obama in July 2010 to final plans

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<sup>2</sup> President Dwight D. Eisenhower, Remarks at the National Defense Executive Reserve Conference (Nov. 14, 1957) (transcript available online, *The American Presidency Project* <http://www.presidency.ucsb.edu/ws/?pid=10951>).

certified and published six years later. The topic is ocean management and planning. The lens of this article is predominantly one of intergovernmental relations.

Various analyses of local-state-federal relations have been conducted over the years.<sup>3</sup> Yet little, if any, legal research has been conducted to examine the role of local governments as comprehensive ocean management and planning efforts develop. Where such analysis does exist, it highlights the need to address questions such as those at the heart of this assessment.<sup>4</sup> Researchers have noted that marine area management must reflect natural systems and be accommodated by appropriate scale authority.<sup>5</sup> But healthy skepticism exists about the prospect of intergovernmental CMSP.<sup>6</sup> This article is part of an effort to examine such issues.

Section II briefly reflects upon the crucial role that ocean use has played in U.S. history and in doing so suggests that de facto ocean planning and use has existed from the very beginning of the country's existence. Section III highlights two recently developed regional ocean plans that span ocean waters of the northeastern United States. It focuses on the role of local government and the inclusion of local voice in the development of those plans. It suggests that while rhetorical flourishes lauding local perspectives may have raised the hopes and expectations of local voice proponents, regional ocean planning efforts ultimately subordinated the role of local governments, though some mechanisms for integrating local voice remain.

Section IV identifies prospects and pitfalls as federal, state, and local entities strive to develop integrated coastal and marine spatial plans given the tensions that exist in intergovernmental ocean issues. It suggests relevant approaches and inquiries that might facilitate efforts to better integrate multi-level CMSP efforts. Section V concludes that while much rhetoric is evident suggesting local voice

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<sup>3</sup> Robert Arganoff, *Managing the Matrix: Do Collaborative Intergovernmental Relations Exist?*, 31(2) PUBLIUS: THE JOURNAL OF FEDERALISM 31, 31-56 (2001); DANIEL J. ELAZAR, AMERICAN FEDERALISM: A VIEW FROM THE STATES (New York: Harper and Row 3d ed. 1984).

<sup>4</sup> JORDAN DIAMOND ET AL., ENVTL. LAW INST., MARINE SPATIAL PLANNING IN U.S. WATERS: AN ASSESSMENT AND ANALYSIS OF EXISTING LEGAL MECHANISMS, ANTICIPATED BARRIERS, AND FUTURE OPPORTUNITIES 1-94 (2009).

<sup>5</sup> Steven Bloye Olsen, Erik Olsen, & Nicole Schaefer, *Governance as a basis for adaptive marine spatial planning*, 15(2) JOURNAL OF COASTAL CONSERVATION 313, 313-322 (2011); Erik Olsen et al., *Place-based management at different spatial scales*, 15(2) JOURNAL OF COASTAL CONSERVATION 257, 257-269 (2011).

<sup>6</sup> Mark J. Spalding, *A New Approach to Oceans: Is Marine Spatial Planning Too Good to be True?*, E: THE ENVTL. MAGAZINE, Mar. 1, 2011, <https://emagazine.com/a-new-approach-to-oceans/>.

integrated CMSP, the near-term prospect of genuine collaborative management where local, state, and national interests are each given substantial weight may seem limited. Nonetheless, the United States' foray into comprehensive regional ocean planning has begun. Its success will depend on how a new generation of ocean planners can learn from the past to purposefully fashion the future ocean.

## II. THE EMERGENCE OF OCEAN MANAGEMENT IN THE UNITED STATES

From the birth of the United States in the late eighteenth century through the middle of the twentieth century, individual U.S. states dominated the use and management of public space along, and into, the ocean. State laws governed most fishing, a nascent offshore oil industry paid states royalties for drilling, and individual states considered the three-mile territorial sea "theirs" even as the federal government exercised authority over a limited range of interests including interstate commerce, international shipping, customs and duties, and national security issues. But a tug of war ensued when the federal government began claiming more authority over nearshore waters and submerged lands in the 1940s. Ultimately, the U.S. federal government brought its claims against the states to the Supreme Court in 1947.<sup>7</sup> The justices agreed with the federal government and long-claimed authority was wrested from the states and recognized as held by the federal government.<sup>8</sup> But the states tugged back and lobbied Congress to enact the Submerged Lands Act of 1953 which gave primary jurisdiction over most matters in the three nautical mile expanse of coastal waters and underlying lands back to the states.<sup>9</sup>

The resulting patchwork authority shared between the state and federal governments over coastal and ocean waters has been relatively stable for more than half a century. In fact, in the 1970s as Congress contemplated a federal coastal zone management law it did so recognizing substantial state authority and, avoiding conflict, fashioned a bargain with the states to give effect to, and achieve, a set of national standards.<sup>10</sup> When states have attempted to regulate activities such as shipping in their nearshore waters and harbors, the federal government has been quick to denounce such exercises as preempted by federal law.<sup>11</sup>

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<sup>7</sup> United States v. California, 332 U.S. 19, 22 (1947).

<sup>8</sup> *Id.*

<sup>9</sup> Submerged Land Act of 1953, 42 U.S.C. §§ 1301-1315 (2002).

<sup>10</sup> J. Duff, *The Coastal Management Act: Reverse Preemption or Contractual Federalism?*, 6:1 OCEAN AND COASTAL LAW JOURNAL 109, 109-118 (2000).

<sup>11</sup> *See, e.g.*, Ray v. Atlantic Ritchfield Co., 435 U.S. 151, 173-74 (1978); United States v. Locke, 529 U.S. 89, 116 (2000).

Up and down the U.S. northeast coastline, states from Maine to New Jersey acknowledge that coastal cities and towns have some authority in the management of their adjacent waters, resources, and submerged lands. Examples include the state depictions of municipal boundaries that extend offshore and regulatory authority over shellfishing. But just as the larger federal government often tamps down attempts by states to exercise offshore authority, so too do states squelch ocean jurisdictional claims of smaller units of government. Do local units of government have any say in what takes place off their coastlines? A bit perhaps, yet ordinarily the federal or state governments only engage in this inquiry when they contend the answer is “no.” Many states, along with the U.S. federal government have been employing more and more rhetoric to support the notion that local perspectives matter and local authorities ought to be given more “voice” as the upper echelons of government develop plans for comprehensive ocean management.

*Is ocean planning new?*

To suggest that the United States has only recently engaged in long-term planning (defined broadly) offshore would be to ignore history. The very first Congress addressed important issues regarding ports, harbors, and lighthouses as part of the new nation’s effort to create a federal revenue stream made up of customs and duties.<sup>12</sup> In the late nineteenth century, the United States enacted the Rivers and Harbors Act to manage the navigability of ports and waterways.<sup>13</sup> More than a century ago, President Theodore Roosevelt used the ocean as a mechanism to plan the growth and extend the influence of the United States when he dispatched the U.S. navy to sail around the world and demonstrate the country’s military strength and capacity. When the United States entered World War II, it planned, built, and set to sea a complement of ships and mariners to circle the globe. At the end of that war, without firing a shot, President Truman claimed an expanse of offshore continental shelf areas that surpassed most of the land fought upon, occupied, and then liberated during World War II.<sup>14</sup> Beginning in the 1950s the United States began mapping and planning wide expanses of the country’s newly claimed offshore area with an eye toward oil and gas extraction that today provides the United States with vast amounts of energy and revenue.<sup>15</sup> Yet, whether those plans, charts, and maps were devoted to one form of power or another, each of those earlier enterprises was sector-oriented. In the late twentieth century ideas of integrated comprehensive coastal and ocean management emerged and buzzed through public discourse but nary such a plan emerged.

<sup>12</sup> FERGUS M. BORDEWICH, *THE FIRST CONGRESS* (Simon & Schuster 2016).

<sup>13</sup> 33 U.S.C. § 407 (1899).

<sup>14</sup> Proclamation No. 2668, 3 C.F.R. 68 (1945).

<sup>15</sup> Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1356 (1978).

### III. U.S. OCEAN PLANNING ENTERS THE 21<sup>ST</sup> CENTURY

Two substantial ocean reports suggested that as the twenty-first century dawned, the time for comprehensive ocean management had arrived. Both the Pew Commission and the U.S. Ocean Commission lamented United States reliance on sector-by-sector planning. Each recommended a more thoughtful sector-spanning approach. And when one of the world's most heavily "planned areas" exploded in the form of the Deepwater Horizon Spill in the Gulf of Mexico, the deadly disaster served, at least in part, as the impetus for comprehensive planning. Citing that spill as a "stark reminder of how vulnerable our marine environments are, and how much communities and the nation rely on healthy and resilient ocean and coastal ecosystems," President Obama issued an executive order establishing a National Ocean Council and calling for the development of regional ocean plans.<sup>16</sup> In his directive, the president explicitly highlighted the importance of *local* perspectives and participation in ocean planning four times:

- This order also provides for the development of coastal and marine spatial plans that build upon and improve existing Federal, State, tribal, **local**, and regional decisionmaking and planning processes.<sup>17</sup>
- The United States shall promote this policy by: ...ensuring a comprehensive and collaborative framework for the stewardship of the ocean, our coasts, and the Great Lakes that facilitates cohesive actions across the Federal Government, as well as participation of State, tribal, and **local** authorities, regional governance structures, nongovernmental organizations, the public, and the private sector.<sup>18</sup>
- The Council shall establish a Governance Coordinating Committee that shall consist of 18 officials from State, tribal, and **local** governments in accordance with the Final Recommendations. The Committee may establish subcommittees chaired by representatives of the Governance Coordinating Committee. These subcommittees may include additional representatives from State, tribal, and **local** governments, as appropriate to provide for greater collaboration and diversity of views.<sup>19</sup>

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<sup>16</sup> Exec. Order No. 13547, 3 C.F.R. 187, 227 (2011) (National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes).

<sup>17</sup> *Id.* at §1 para. 4 (emphasis added).

<sup>18</sup> *Id.* at §2(b)(i) (emphasis added).

<sup>19</sup> *Id.* at §7 (emphasis added).

And the National Ocean Council echoed the import of local interests as it developed its Marine Planning Handbook, employing “local” terminology thirty-two times.<sup>20</sup> The strongest of those references include the Council’s direction that local governments ought to have a seat at the table in regional ocean planning efforts. The Marine Planning Handbook states that “[r]egional planning bodies are groups composed of representatives from different levels of government in a region: State, tribal, Federal, regional fishery management council, and **local government.**”<sup>21</sup> The handbook further notes that “[s]trong partnerships among Federal, state, tribal, **local authorities**, and regional ocean partnerships, is [sic] essential to a truly forward looking comprehensive marine planning effort.”<sup>22</sup>

Toward the end of the Obama administration, two federally coordinated regional ocean plans emerged. On October 14, 2016, the Northeast Regional Planning body submitted the Northeast Ocean Plan to the National Ocean Council for certification.<sup>23</sup> The Mid-Atlantic Regional Planning Body followed suit a month later, submitting its Regional Ocean Action Plan.<sup>24</sup> On December 7, 2016, the National Ocean Council announced its acceptance of both plans.<sup>25</sup>

The Northeast Ocean Plan encompasses federal waters and interests that stretch from the U.S. maritime border with Canada in the Gulf of Maine down along New Hampshire’s offshore waters, around Massachusetts Bay, across the ocean waters off Rhode Island and into Connecticut’s expanse of Long Island Sound. An advocate of “local voice” might be heartened by the document’s rhetoric. The northeast plan employs variations of the term “local” 45 times (54 if you

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<sup>20</sup> NAT’L OCEAN COUNCIL, MARINE PLANNING HANDBOOK (July, 2013), [https://obamawhitehouse.archives.gov/sites/default/files/final\\_marine\\_planning\\_handbook.pdf](https://obamawhitehouse.archives.gov/sites/default/files/final_marine_planning_handbook.pdf).

<sup>21</sup> *Id.* at 2 (emphasis added).

<sup>22</sup> *Id.* at 18 (emphasis added) (referencing Appendix: Model Charter for Regional Planning Bodies).

<sup>23</sup> Northeast Ocean Plan for National Ocean Council Certification, 81 Fed. Reg. 72,622, 72,622-24 (Oct. 19, 2016), *available at* <https://www.federalregister.gov/documents/2016/10/20/2016-25372/northeast-ocean-plan-for-national-ocean-council-certification>.

<sup>24</sup> Submittal of Mid-Atlantic Regional Ocean Action Plan for National Ocean Council Certification, 81 Fed. Reg. 76,635, 76,635-37 (Nov. 3, 2016), *available at* <https://www.federalregister.gov/documents/2016/11/03/2016-26623/submittal-of-mid-atlantic-regional-ocean-action-plan-for-national-ocean-council-certification>.

<sup>25</sup> Christy Goldfuss & John P. Holdren, *The Nation’s First Ocean Plans*, THE WHITE HOUSE BLOG: PRESIDENT BARACK OBAMA (Dec. 7, 2016, 9:02 AM), <https://obamawhitehouse.archives.gov/blog/2016/12/07/nations-first-ocean-plans>.

scrutinize the notes and appendices).<sup>26</sup> Yet, the weight of “local voice” might be more readily discernible upon perusing the membership of the plan. While the Marine Planning Handbook suggests that local governments ought to be among the members of the regional bodies tasked with developing the plans, they are conspicuous by their absence in the northeast plan. The Northeast Regional Planning Body (NERPB) lists as its members: the six New England states; six federally recognized tribes; nine federal agencies; the New England Fishery Management Council; and two ex-officio members (New York and Canada).<sup>27</sup> Local authorities or governments are not listed as distinct members.<sup>28</sup>

The sibling Mid-Atlantic plan also spends a fair bit of ink on “local” phraseology. Fifteen instances of localized terms appear in the body of that plan.<sup>29</sup> But a review of the membership list runs counter to that emphasis. The Mid-Atlantic planning body includes the six coastal states stretching from New York to Virginia; two federally recognized tribes; eight federal agencies; and, the Mid-Atlantic Fishery Management Council.<sup>30</sup> Like the Northeast Ocean Plan, local authorities or governments are not listed as distinct members.<sup>31</sup>

The National Ocean Council’s acceptance of the two plans seems to submit to the jettisoning of local governments as deserving distinct membership on regional planning bodies when it acknowledges the composition of the two bodies, referring to the all-but-local “collaboration among states, tribes, federal agencies, and Fishery Management Councils.”<sup>32</sup>

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<sup>26</sup> NORTHEAST REGIONAL PLANNING BODY, NORTHEAST OCEAN PLAN 1-203 (2016) *available at* [https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/NortheastOceanPlan\\_October2016.pdf](https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/NortheastOceanPlan_October2016.pdf).

<sup>27</sup> *Id.* at 3.

<sup>28</sup> *Id.* See also *id.* at 1 (referencing letter dated Oct. 14, 2016); NORTHEAST REGIONAL PLANNING BODY, NORTHEAST OCEAN PLAN ADOPTION MEMO AND STATE ADDENDUM 1-8 (2017), *available at* <http://neocanplanning.org/wp-content/uploads/2017/01/NE-Plan-Adoption-Memo-and-State-Addendum.pdf>.

<sup>29</sup> MID-ATLANTIC REGIONAL PLANNING BODY, MID-ATLANTIC REGIONAL OCEAN ACTION PLAN 1-138 (2016) *available at* [https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/MidARegionalOceanActionPlan\\_November2016.pdf](https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/MidARegionalOceanActionPlan_November2016.pdf).

<sup>30</sup> *Id.* at 7.

<sup>31</sup> BUREAU OF OCEAN ENERGY MANAGEMENT, ADOPTION OF THE MID-ATLANTIC REGIONAL OCEAN ACTION PLAN MEMO 1-21 (2016), *available at* <https://www.boem.gov/Mid-Atlantic-Regional-Plan-Adoption-Memo/>.

<sup>32</sup> Goldfuss, *supra* note 25.

*Does lack of membership for local authorities mean lack of voice?*

Advocates of local voice might naturally be disappointed by the seeming dissolution of the role of local government in regional ocean planning efforts. The initial promise so clearly laid out in the president's ocean planning executive order seems to have faded as regional plans were fashioned and finally came to fruition. A pessimistic interpretation might suggest that local authorities were robbed of the local voice they were promised. And what they may be deprived of seems emphasized each time the rights, interests and opportunities of "members" is suggested in the Marine Planning Handbook's recommendations for collaborative decision-making, i.e.:

- *de facto* veto authority by blocking necessary consensus;<sup>33</sup>
- opportunity to develop additional rules and procedures;<sup>34</sup>
- bring (and seek to resolve) a dispute on an issue;<sup>35</sup> and propose alternative recommendations.<sup>36</sup>

As outlined above, there is plenty of fodder to support the contention that local authorities have lost some of the influence they would have reasonably expected upon reading the statement of the president and the document drafted by the National Ocean Council. The explicit references and emphases in the executive order and the Marine Planning Handbook, augmented by the "local" rhetoric sprinkled throughout the two regional ocean plans, supports the notion that local authorities should have garnered their own distinct memberships on the regional planning bodies that developed their respective ocean plans. But does lack of membership mean lack of voice?

Further scrutiny of the regional ocean planning efforts suggests that, while local governments (and the voices they employed) merited a place in ocean planning, that place never came with an entitlement, nor would it be washed away if not given membership status. The National Ocean Council seems to have realized that local governments (often characterized in U.S. law as "creatures of the states"<sup>37</sup> in which they reside) could have their interests sufficiently represented by their respective states. The council counts local government

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<sup>33</sup> NAT'L OCEAN COUNCIL, *supra* note 20, at 29 § F(1).

<sup>34</sup> NAT'L OCEAN COUNCIL, *supra* note 20, at 29 § F(2).

<sup>35</sup> NAT'L OCEAN COUNCIL, *supra* note 20, at 29 § F(3).

<sup>36</sup> NAT'L OCEAN COUNCIL, *supra* note 20, at 29 § F(2).

<sup>37</sup> *Coleman v. Miller*, 307 U.S. 433, 441 (1939) (referencing municipalities as "creatures of the state").



participation as an imperative as it conceptualizes the role of local government members and calls on the planning bodies to elicit “substantive participation” from them.<sup>38</sup> Indeed it follows up on that directive by suggesting how local governments might be provided a membership voice via a Federal Advisory Committee. But then the council provides an alternative approach noting that a planning body has another option. Rather than providing local governments with their own distinct membership places, a planning body might “provide mechanisms for local government input to the marine planning process through its State representatives on the regional planning body.”<sup>39</sup>

The two approved plans indicate that both the Northeast and Mid-Atlantic regional planning bodies employed the latter option. If local voice advocates think this a lesser option, a few important realities might salve the sting. Numerous opportunities were afforded local governments and other local interests (public, private, and nongovernmental) to voice their interests and concerns during the dozens of hearings that each planning body instituted as they developed, revised, and refined their respective plans. And while local governments have not garnered distinct member status on either of the first two certified regional ocean plans, President Obama’s executive order did call on the National Ocean Council to create a Governance Coordinating Committee (GCC), which has, since its creation, included members from local government.<sup>40</sup>

Finally, local ocean issues are often removed spatially and jurisdictionally from many of the substantive planning processes contemplated in the regional ocean plans. The regional plans, solicited by executive order, directed at federal agencies and authorities, implementable only through existing federal authority, and evaluated and certified by a National Ocean Council housed in the executive branch of the federal government, spend inordinate time, space, and ink focusing on federal waters and acknowledging the limits on their authority to reach into state and local ocean waters. A thorough review of the plans leaves a reader with the impression that they are statements of self-restriction as often as they are aspirational plans for sound ocean stewardship.

And to the degree that existing federal authority does apply to certain activities and issues in state waters and submerged lands, it is the states that hold the substantial sovereignty and proprietary interests in closer ocean areas even

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<sup>38</sup> NAT’L OCEAN COUNCIL, *supra* note 20, at 3.

<sup>39</sup> NAT’L OCEAN COUNCIL, *supra* note 20, at 3.

<sup>40</sup> See Exec. Order No. 13547, *supra* note 16, at 231.

when such ocean space is regarded as within municipal boundaries. While the Submerged Lands Act gives primacy to state authority over much of the space and activity in nearshore ocean waters, and many states in turn consider municipal boundaries to collectively occupy that state space, the federal government retains primacy over certain uses, activities, and impacts (e.g., shipping, immigration, customs, environmental protection). As a result, much of the northeastern U.S. ocean space serves as a seascape of three levels of government.

Submerged lands stretching out three nautical miles and much of the activity in the water column above “belong” to the state. Many municipal boundaries stretch out to the state-federal offshore delineation (albeit encompassing state lands). And the federal government maintains a few important jurisdictional authorities. If regional ocean plans employ sufficient deftness in fulfilling federal obligations while accommodating state objectives, federal authorities might effectively “model” enhanced intergovernmental collaboration to states, who might in turn demonstrate similar accommodation to local governments.

#### **IV. INTEGRATED COASTAL AND MARINE SPATIAL PLANNING: PROSPECTS AND PROBLEMS**

If comprehensive, integrated, intergovernmental, multi-sector coastal and marine spatial planning was the objective set forth by President Obama in July 2010 and developed in the succeeding six years by a host of local, state, federal, public, private, and nongovernmental participants, a simple question might be: did it work? The answer, as is often the case, depends upon whether you are in the glass is “half full” or “half empty” category of observers. An examination of the first two federally certified regional ocean plans supports observer dependent reality. Both can be true simultaneously.

For those who highlight the achievements and prospects of these first two regional planning efforts, it is quite evident that the planning process was a years-long convening, informing, inquiry-prompting, thought-provoking enterprise resulting in formative documents that should serve as salient foundations for ocean use and stewardship scenario-analyses. Certainly the prospects for ocean planning are improved today due to these planning efforts.

For those who lament a diminution of local voice, the perceived problem may frame consideration for future solutions. What avenues do local interests have in regional ocean planning? While lacking distinct member status, the planning directives, documents, and representation that do endure provide some, but

perhaps not ideal, participatory voice. Are there other means for local interests to exert their influence? Three come to mind, each of which resides in local-state intergovernmental relationships.

Local governments can continue to lobby states to integrate local concerns into state prerogatives and positions, including the manner in which states employ their interests via the consistency provisions provided in the federal Coastal Zone Management Act (CZMA). Local governments can also educate and advocate to prompt states to embark on efforts to win by losing, for example in the form of local and state attempts to regulate federal matters in local and state waters. States attempting to regulate shipping, ship construction, equipment, and personnel standards to protect state and local waters face certain defeat under principles of preemption.<sup>41</sup> But state attempts to prescribe law or proscribe activity, while challenged by the federal government as an inviolate invasion of maritime jurisdiction, may prompt federal authorities to promulgate federal rules that give effect to the state's original objectives.

Finally, local (and state) authorities may be able to "signal" their interests in federally governed ocean and coastal matters to prompt otherwise reluctant federal agencies to take action in nearshore waters. The designation of No Discharge Zones (NDZs) by the Environmental Protection Agency (EPA) serves as a model. While EPA has broad authority under the Clean Water Act to "restore and maintain the chemical, physical and biological integrity of the nations' waters," Congress was sensitive to the concerns of local and state governments, and the communities they represent, when it comes to prohibiting vessel discharges.<sup>42</sup> As a result, the Act's approach to designating NDZs is purposeful when it calls for the integration of state concerns.<sup>43</sup>

While the regional ocean planning processes are assuredly non-prescriptive, they might nevertheless elicit lessons from these intergovernmental facilitating approaches to managing ocean space and use. As alluded to above, regional ocean plans might emphasize the consistency provision of the CZMA and in so doing elicit state and local perspectives and priorities. Regional ocean planning processes might welcome state and local ecological stewardship objectives related to shipping and navigation affirmatively, rather than responsively, and in so doing beneficially pre-empt juridical pre-emption. And, *a la* the NDZ designation process, federal ocean planning might institutionalize efforts to ask state, regional,

<sup>41</sup> See *United States v. Locke*, 529 U.S. 89, 112-13 (2000); *United States v. Massachusetts*, 724 F.Supp.2d 170, 188 (2010).

<sup>42</sup> Clean Water Act, 33 U.S.C. §§ 1251- 1387 (1987).

<sup>43</sup> Exec. Order No. 13547, *supra* note 16, at 227.

and local groups whether and how certain ocean expanses might be afforded greater environmental protection.

## V. CONCLUSION

As set out above, coastal and marine spatial planning efforts in the northeastern region of the United States are emerging and evolving at a steady pace. As those efforts progress, a variety of nods are given to the importance of local interests. Indeed, explicit language in federal and state ocean plans suggest such local voice is imperative. The first two plans merit kudos and perhaps a few concerns. How, if at all, will the remaining regions of the U.S. ocean be planned to achieve the objectives set forth in the July 2010 executive order to, among other things, “protect, maintain and restor[e] ... the health of ocean, coastal, and Great Lakes ecosystems.”<sup>44</sup> President Eisenhower’s adage cited at the outset is apt. And President Obama’s twenty-first century executive order seems to employ that mid-twentieth century wisdom. Read carefully and in tandem with the plans that were wrought from the 2010 *National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes*, the value to be derived by the recent efforts in the northeast and mid-Atlantic is more likely to result **from the planning** than the plans.

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<sup>44</sup> Exec. Order No. 13547, *supra* note 16, at 227.