

# The SandBar

Legal Reporter for the National Sea Grant College Program



## Critical Habitat Designations for Arctic Bearded and Ringed Seals Struck Down

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### *Also in this issue*

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Court Finds the Army Corps of Engineers' Nationwide Permit 56 Unlawful

The Mid-Atlantic Council: Fishing for Power Beyond Its Constitutional Limits

Chumash Heritage National Marine Sanctuary Designated

2024 Legislative Update



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Cover page photograph of a bearded seal, courtesy of Rob Oo.

Contents page photograph of sea ice in the Chukchi Sea, courtesy of Kathryn Hansen/NASA.





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# Critical Habitat Designations for Arctic Bearded and Ringed Seals Struck Down

Katie Shaw<sup>1</sup>



Bearded seal, courtesy of Martha de Jong-Lantink.

A federal district court in Alaska has struck down critical habitat designations for two Arctic seal species, the bearded seal and the Arctic ringed seal.<sup>2</sup> The September 2024 ruling rejected the NOAA National Marine Fisheries Service's (NMFS) decision to designate 174 million acres of Arctic waters as critical habitat for the seals. Waters extending from St. Matthew Island in the Bering Sea to the edge of Canadian waters in the Arctic are no longer considered critical habitat due to the court's ruling.

## Bearded and Ringed Seals at a Glance

Bearded and ringed seals, both listed as threatened under the Endangered Species Act (ESA) in 2012, are uniquely adapted to the harsh, icy conditions of the Arctic. Bearded seals (*Erignathus barbatus*), named for their long, sensitive whiskers, inhabit seasonally ice-covered waters in Alaska, particularly across the Bering, Chukchi, and Beaufort seas.<sup>3</sup> Bearded seals rely heavily on sea ice for resting, foraging, and giving birth. Furthermore, their movements are closely tied to the seasonal





ebb and flow of ice cover. As the ice melts in spring and summer, they migrate northward to stay within regions where pack ice remains available, returning south when new ice forms in the fall.

Ringed seals (*Pusa hispida*), the smaller and more abundant of the two species, are named for their distinctive light-colored rings that pattern their dark fur.<sup>4</sup> They are found across ice-covered waters in the Arctic, including waters off the coast of Alaska. These seals are highly adapted to living with ice year-round, creating snow-covered lairs where they give birth and nurse their pups. These lairs provide the most important protection for young seals against harsh weather and predators. However, both the bearded and ringed seals' survival is increasingly jeopardized by the effects of climate change and offshore oil and gas development.

#### **A Decade of Debate: The Fight For Arctic Protections**

The effort to protect the Arctic's ice-dependent seals has been a complex and ongoing battle, deeply rooted in concerns over the impacts of climate change. In December 2012, NMFS listed bearded and ringed seals as threatened under

the ESA due to projections of long-term sea ice decline.<sup>5</sup> Under the ESA, NMFS is required to designate critical habitats for ESA-listed species in U.S. territories.<sup>6</sup> Critical habitats must specify geographical areas that contain physical or biological features that are "essential" for the conservation and recovery of certain listed species.<sup>7</sup>

In response to the December 2012 listings, NMFS proposed critical habitat designations for both species in December 2014.<sup>8</sup> However, these designations faced immediate pushback from the oil and gas industries, which opposed the listings in court. In response, the district court in Alaska overturned the ESA listings for the bearded seal in 2014 and the ringed seal in 2016.<sup>9</sup> The Ninth Circuit Court of Appeals reinstated the seals' threatened status in 2016 and 2018, reopening the path for critical habitat designations. While the listings were reaffirmed, NMFS did not initially designate critical habitat. That led to another lawsuit, filed in June 2019, against NMFS for failing to designate critical habitat areas for the two seals. This lawsuit led to a settlement in which NMFS agreed to finalize the critical habitat determinations by April 2022.

When considering new critical habitat designations for both bearded and ringed seals, NMFS considered the physical and biological features vital to the survival of each species, such as sea ice for whelping, nursing, molting, and primary prey resources. Specifically, for bearded seals, the critical habitat encompasses sea ice suitable for birthing and nursing pups, as well as for molting, and ensures the availability of essential prey. For ringed seals, the designated area provides snow-covered sea ice necessary for creating birth lairs to shelter their pups, along with suitable ice platforms for basking and molting, and access to prey.

NMFS published its proposed rules in the Federal Register to designate critical habitats for both the Arctic ringed seal and the bearded seal and, by April 2022, NMFS officially issued its Final Rule for designating critical habitats for both species, including areas of the northern Bering, Chukchi, and Beaufort seas in Alaska.<sup>10</sup> However, these designations have led to the legal battles continuing into this year, as stakeholders, particularly those from the oil and gas industries and state officials, contest the size and scope of the protected areas.

### The District Court Rejects Critical Habitat Designations

NMFS designated around 174 million acres of critical habitat for bearded seals and approximately 164 million acres for Arctic ringed seals, with significant overlap between the two areas, an area roughly the size of Texas. The State of Alaska filed suit, arguing that the designated areas were excessively large and would negatively impact oil and gas development in the Arctic, as well as shipping routes to North Slope communities. On September 26, 2024, the district court ruled in favor of Alaska, overturning NMFS's designations.

The district court first criticized the agency for failing to adequately explain why a smaller habitat area would not be sufficient for the species' conservation and also rejected NMFS's claim that the dynamic nature of sea ice across the region justified the large protected area. The court further ruled that NMFS failed to justify why the entire 174-million-acre area was "indispensable" for the recovery of the bearded and ringed seal populations. While NMFS argued that it was not obligated to consider conservation efforts from areas outside U.S. jurisdiction—such as Canada—when designating critical habitats, the court disagreed. It ruled that the agency should have assessed whether these efforts could have reduced the need for such extensive U.S. habitat designations. Finally, the court also faulted NMFS for failing to consider the potential economic benefits of excluding certain areas, particularly those vital to Alaska's economy and the livelihoods of North Slope residents. As a result, the court vacated the habitat designations and directed NMFS to revisit the matter.

NMFS has not publicly responded to the court's decision as the agency reviews the matter. On the other hand, Alaska Attorney General Treg Taylor has supported the ruling, stating that the federal action has no sound basis in science. He stated, "The federal government uses the same tactics again and again to prevent the people of Alaska from using their own land and resources. They identify an area or activity they wish to restrict, and they declare it unusable under the guise of conservation or preservation."<sup>11</sup>

### Conclusion

The court's decision to vacate the designations raises concerns about the future of bearded and ringed seals in a rapidly warming Arctic. Both species depend on sea ice for survival, using it as a platform for resting, breeding, and accessing food. With climate change shrinking ice cover, conservationists argue that protecting remaining habitats is crucial for the species' long-term viability. NMFS will need to revisit its analysis and potentially propose a new rule that addresses the court's ruling. Meanwhile, conservation groups may seek to appeal the ruling or push for alternative protections for the seals. ❧

### Endnotes

- <sup>1</sup> NSGLC Research Associate; 3L, University of Mississippi School of Law.
- <sup>2</sup> State of Alaska v. Nat. Marine Fisheries Serv., No. 3:23-cv-00032-SLG, 2024 WL 4298114 (D. Alaska Sept. 26, 2024).
- <sup>3</sup> *Bearded Seal*, NOAA (May 10, 2024).
- <sup>4</sup> *Ringed Seal*, NOAA (May 10, 2024).
- <sup>5</sup> The Associated Press, *U.S. Government Lists 2 Seal Species as Threatened*, CBC (Dec. 22, 2012).
- <sup>6</sup> 16 U.S.C. § 1533(a)(3)(A)(i).
- <sup>7</sup> 16 U.S.C. § 1532(5)(A).
- <sup>8</sup> *NOAA Fisheries Designates Critical Habitat for Ringed and Bearded Seals in U.S. Arctic*, NOAA (Mar. 31, 2022).
- <sup>9</sup> Alaska Oil and Gas Ass'n v. Pritzker, No. 4:13-cv-00018-RRB, 2014 WL 3726121 (D. Alaska July 25, 2014) (bearded seals); Alaska Oil and Gas Ass'n v. Nat. Marine Fisheries Serv., No. 4:14-cv-00029-RRB, 2016 WL 1125744 (D. Alaska Mar. 17, 2016) (ringed seals).
- <sup>10</sup> 87 Fed. Reg. 19180 (Apr. 1, 2022); 87 Fed. Reg. 19232 (Apr. 1, 2022).
- <sup>11</sup> Sean Maguire, *Federal Judge Vacates Designation of 174M Acres of Critical Habitat for Arctic Alaska Seals*, ANCHORAGE DAILY NEWS (Sept. 27, 2024).

# Court Finds the Army Corps of Engineers' Nationwide Permit 56 Unlawful

Ashlyn Tracy

In September 2024, a federal judge struck down the U. S. Army Corps of Engineers' (Corps) Nationwide Permit 56 (NWP 56), which authorized the installation of finfish aquaculture structures in U.S. waters.<sup>1</sup> The court found that while the Corps acted within its authority to issue NWP 56, it failed to fully comply with the Rivers and Harbors Act of 1899 (RHA) and the procedural requirements of the National Environmental Policy Act (NEPA). This decision may delay efforts to expand aquaculture activities and impact the six verifications under NWP 56.

## Background

The Corps issues nationwide permits (NWPs) to regulate certain activities that require permits under Section 404 of the Clean Water Act or Section 10 of the RHA. NWPs have a five-year duration and authorize activities with minimal individual or cumulative adverse effects on the aquatic environment. Under Section 10 of RHA and NEPA, the Corps must analyze whether projects are suitable for nationwide authorization and consider all potential environmental impacts.

In May 2020, President Trump issued an executive order titled "Promoting American Seafood Competitiveness and Economic Growth" requiring, among other things, the Secretary of the Army to develop and propose a nationwide permit authorizing finfish aquaculture activity in U.S. waters.<sup>2</sup> NWP 56 was issued in January 2021 to authorize the installation of structures for finfish aquaculture activities in U.S. navigable waters. Specifically, NWP 56 includes the authorization of cages, net pens, anchors, and other similar structures but does not include attendant features such as docks or staging areas.<sup>3</sup> This permit includes structures that would be anchored to the seabed in waters over the Outer Continental Shelf. Before issuing NWP 56, the Corps found that 1) the permit would cause no more than minimal impacts on the environment, 2) the permit would not cause significant impacts on the human environment, and 3) the permit would not impact any species listed under the Endangered Species Act.<sup>4</sup>

Then, in November 2022, Don't Cage Our Oceans (DCOO) sued the Corps to challenge NWP 56. The group argued that the Corps acted outside of its authority because 1) the Outer Continental Shelf Lands Act (OCSLA) limits the Corps' permitting authority to structures related only to energy sources and 2) NWP 56 violated the U.S. Constitution as it allows structures to be installed that may not be operated without further congressional conveyance of property rights. Next, the plaintiffs claimed that the Corps did not comply with its obligation under RHA and NEPA when the Corps 1) narrowed the scope of their review to assessing impacts resulting from the structure and not from the actual aquaculture activities and 2) instructed district engineers to assess the cumulative impacts and mitigation measures on a case-by-case basis because it was too difficult for the Corps to predict cumulative impacts before the issuance of NWP 56. The Corps disagreed with the plaintiffs' assertions and questioned DCOO's standing to bring the lawsuit.

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**NWP 56 was issued in January 2021 to authorize the installation of structures for finfish aquaculture activities in U.S. navigable waters.**

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## DCOO's Standing

A party can bring a lawsuit if the party can establish they have standing to bring the case. To establish standing, the party must have suffered an injury in fact, show the injury is traceable to the actions of the defendant, and demonstrate that a favorable judicial decision is likely to redress the injury.<sup>5</sup> If the plaintiff is an organization bringing a lawsuit on behalf of its members, it must show that at least one of the members would have standing on their own, that the interests at stake



relate to the organization's purpose, and that neither the claim nor relief requires the participation of individual members of the organization.

The court found that DCOO sufficiently established each element for standing. First, DCOO established an injury in fact as the Corps's issuance of NWP 56 without complying with procedural requirements would impede their interests as the members live in areas evaluated for their potential for commercial aquaculture where there could be a degradation of water quality and disease transfer to wild fish. DCOO demonstrated its injury is traceable to NWP 56 and redressable because compliance with procedural requirements could lead to modifications to NWP 56, ESA consultation, or a finding that NWP 56 is not suitable for a nationwide permit.

### Authority to Issue

The court held that the Corps acted within its authority to issue NWP 56 under OCSLA and the U.S. Constitution. First, the court found that the Corps acted within its authority under the OCSLA, which grants the Corps authority to prevent obstructions to navigable waters. The court found that OCSLA's language, legislative history, and previous cases support the Corps' authority to prevent obstruction caused by the installation of structures, not just for energy resources, but for exploring, developing, and producing resources. Because DCOO failed to show that the Corps exceeded its authority under OCSLA, the court denied DCOO's request to vacate NWP 56 under this argument.

Second, the court rejected DCOO's argument that NWP 56 unconstitutionally conveys property rights. The court found that the NWP 56 does not convey property rights as the Corps' regulations disclaim any authority of the adjudication of property rights and the text of the permit disclaims the conveyance of property rights. Further, DCOO failed to provide support for their claim that every activity that could be granted under NWP 56 would require property rights that could only be granted by Congress.

### RHA & NEPA Requirements

Ultimately, the court found NWP 56 unlawful as the Corps failed to comply with the procedural obligations under RHA and NEPA to analyze potential environmental impacts to determine whether the activities would only cause minimal impacts. In its analysis, the Corps acknowledged numerous potential adverse effects if NWP 56 was approved, but it did not conduct a detailed analysis of operational activities because they claimed they could not control many of the adverse impacts identified in its Environmental Assessment (EA). Ultimately, the Corps concluded that NWP 56 will not have more than a minimal effect on the aquatic environment.

Under the Administrative Procedures Act (APA), the court may set aside an action that is arbitrary, capricious,

an abuse of discretion, or otherwise not following the law. Applying this standard, the court concluded that the impact analysis was inadequate. The court reasoned that 1) the potential effects of the structures are within the Corps' control, 2) the Corps may not distance itself from the direct environmental impacts that could result from the structures because the aquaculture activities themselves are not authorized by NWP 56, 3) the Corps did not explain how it found that there would be no more than minimal environmental impacts from the potential adverse effects, and 4) the future assessments or mitigation tactics the Corps required for NWP 56 did not satisfy the Corps' obligation to consider the cumulative effects. In summary, since the Corps narrowed its analysis only to disclosing the foreseeable effects of NWP 56, and did not account for these effects in the EA, the Corps' findings were insufficient.

### Conclusion

Since the court determined that NWP 56 is unlawful, it is faced with the question of whether to fully vacate NWP 56 or leave it in place while the Corps revises it. While the ordinary remedy for a rule violating the APA is a cancellation of the action, the court may choose another remedy if fairness demands. Because the court found no specific projects authorized under NWP 56 addressed within the court documents, the court did not have a basis to evaluate any disruption caused by annulment of the NWP.<sup>6</sup> So, the court instructed both parties to discuss what method the court should use to decide on a remedy and file a motion or agreement proposing a schedule for resolution. On October 18th, the court granted the parties joint motion to address the remedy issue through supplemental briefings to be filed by December 13, 2024.<sup>7</sup> ❌

### Endnotes

<sup>1</sup> *Don't Cage Our Oceans, et al. v. U.S. Army Corps of Eng'rs, et al.*, 2024 U.S. Dist. LEXIS 177843 (W.D. Wash. Sept. 30, 2024).

<sup>2</sup> Exec. Order No. 13,921, 85 Fed. Reg. 28,471 (May 7, 2020).

<sup>3</sup> [Nationwide Permit 56](#), U.S. ARMY CORPS OF ENG'RS, (last visited Oct. 22, 2024).

<sup>4</sup> *Oceans*, 2024 U.S. Dist. LEXIS 177843, at \*4.

<sup>5</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

<sup>6</sup> *Id.* at \*38-39.

<sup>7</sup> Order Granting Joint Mot. to Set a Briefing Schedule, *Don't Cage Our Oceans v. U.S. Army Corps of Engineers*, No. 2-22-cv-1627 (W.D. Wash. Oct. 18, 2024).



# The Mid-Atlantic Council: Fishing for Power Beyond Its Constitutional Limits

Jonathan Scoggins<sup>1</sup>



Photo of a fishing vessel, courtesy of Frank Wittlich.

“As with many poisons, a little unconstitutional power is deadly.”<sup>2</sup> This phrase reflects Judge Bibas’ concerns when he authored a recent Third Circuit opinion considering the constitutionality of powers granted to Regional Fishery Management Council members. Two fishermen filed the suit, claiming that because some members of the Mid-Atlantic Council were not appointed by the President, certain powers granted to them under the Magnuson-Stevens Act (MSA) violated the Appointments Clause of the U.S. Constitution. The Third Circuit agreed, specifically finding the Mid-Atlantic Council’s power to veto actions of the Secretary of Commerce unconstitutional. As a remedy, the Third Circuit severed the MSA provisions granting veto power but upheld the Council’s advisory role in fishery management proposals.

## The Mid-Atlantic Council: Overview

In 1976, Congress passed the MSA to conserve and manage fisheries within the United States. The MSA also created eight Regional Fishery Management Councils tasked with developing and managing fisheries management plans within their regions. The Mid-Atlantic Council is composed of seven states and twenty-one voting members, and its jurisdiction ranges from the waters of New York to Virginia.<sup>3</sup> Of the twenty-one members, state governors appoint seven, the Secretary of Commerce appoints thirteen (each nominated by at least one state governor), and the final voting spot belongs to the regional director of the National Marine Fisheries Service. Notably, the President of the United States does not appoint the Council members, nor does the Senate confirm them.

The Mid-Atlantic Council has various advisory functions, such as holding public hearings, making periodic reports, and collaborating with scientific and statistical experts. The Council's primary duties include drafting management plans that detail conservation measures to prevent overfishing and proposing amendments to those plans. These plans are designed to ensure the long-term health and stability of U.S. fisheries and are typically accomplished by imposing annual catch limits aimed at stopping overfishing. Moreover, plans may delegate the management of fisheries to states; however, state laws and regulations must comply with the Council's management plan.

After the Council drafts a plan or amendment, there is a sixty-day period for public comments, after which the Secretary of Commerce has thirty days to approve, partially approve, or disapprove the submission; if the Secretary does not respond, the plan is enacted. If disapproved, the Secretary must explain how the submission conflicts with relevant laws and then resubmit it to the Council. Should the Council fail to revise the plan, the Secretary may create her own. Notably, the federal statute does not require the Council's approval for the Secretary's revised regulations, and the Council serves only in an advisory role when it fails to submit its own revisions.

The Councils have the power to block or pocket veto the Secretary's actions. A pocket veto occurs when the Council fails to sign a proposed action or plan, effectively nullifying it. The Council can limit the Secretary's actions in three ways. First, it can prevent the Secretary from establishing limits on who can fish in each fishery, meaning a limited-access fishing system can only be implemented with majority approval from the Council. Second, the Council may prohibit the Secretary from allowing states to manage their own fisheries, as three-quarters of the Council must approve any delegation of power. Third, the Council may block the Secretary from repealing a prior plan since the Secretary must obtain three-quarters of the Council's approval to do so.

### **Fishermen's Lawsuit: Violation of the Appointment Clause**

In 2022, the Mid-Atlantic Council passed an amendment that lowered the catch limits for summer flounder and black sea bass, resulting in fewer fish being caught and reduced profits for commercial fishermen. In response, two fishermen filed a lawsuit against the federal government, arguing that the Council's members were acting as "Officers of the United States" in violation of the Appointments Clause.

There are two kinds of Officers of the United States: principal officers and inferior officers. The Appointment Clause of the Constitution outlines different requirements for appointing each type of officer. The President of the United States must nominate principal officers, and the Senate must confirm them. In contrast, the President, courts of law, or heads of departments within the Executive Branch may appoint inferior officers with congressional approval.

Notably, the Constitution does not outline requirements for hiring federal employees who are subordinate to Officers of the United States and have lesser duties. The Supreme Court has identified two primary differences between officers and employees: 1) officers' duties are continuing and permanent, while employees' duties are occasional or temporary, and 2) officers exercise significant authority under federal law.

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## **In 2022, the Mid-Atlantic Council passed an amendment that lowered the catch limits for summer flounder and black sea bass, resulting in fewer fish being caught and reduced profits for commercial fishermen.**

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In *Lofstad*, the Department of Commerce admitted that the Council members' duties were continuing, meaning that under the first criterion, the Council members were considered officers. Regarding the second criterion, the Third Circuit found that the Council members wielded significant authority due to their veto power. Specifically, the Council's ability to block the Secretary of Commerce from adopting a limited-access fishery system, delegating fishery management to a state, or repealing a plan constituted significant authority. Since both criteria were met, the Third Circuit concluded that the Council members were officers.

To determine whether an officer is principal or inferior, courts consider whether the officer has the power to make final decisions on behalf of the United States without oversight. The authority of principal officers is unreviewable. In contrast, the actions of inferior officers are subject to review and supervision by officials appointed by the President. In *Lofstad*, the Third Circuit found that the Council members were principal officers for two reasons. First, no principal executive officer within the Executive Branch directs or supervises the Council members' pocket vetoes. Second, the Council members exercise their pocket veto powers over a principal officer, namely the Secretary of Commerce. Therefore, the Third Circuit held that the Council members' appointments were unconstitutional because they were not nominated by the President and confirmed by the Senate.



Photo of a fishing vessel, courtesy of Michael Swan.



### The Power to Veto is Significant

The court noted that from the inception of the United States, the Founding Fathers were concerned about the power of the veto. Like the King of England's authority to veto Parliament's laws, royal governors in the colonies similarly had the power to veto acts of colonial legislatures. This British power to restrict local government angered the colonists, a sentiment reflected in the Declaration of Independence, where the King was accused of refusing to pass laws "wholesome and necessary for the public good."<sup>4</sup>

After gaining independence, the Founding Fathers did not grant any American official an absolute veto, including the President. Their concern was that unchecked veto power could elevate the President to the status of a monarch. To limit this power, the Constitution grants the President a qualified veto, meaning Congress can override it with a two-thirds majority. The Framers believed this qualified veto was crucial to maintaining the separation of powers among the branches of government.

In *Lofstad*, the Third Circuit found the Council's pocket veto power significant because it undermined the democratic chain of command. The court explained that while the President, who is elected and accountable to voters, has veto power, the Council members, who are not elected, do not share this accountability. Moreover, the Council's pocket veto cannot be overridden, unlike the President's veto.

For these reasons, the Third Circuit held the Council members' veto power to be unconstitutional.

### The Remedy to Unconstitutional Power

When a statute is deemed unconstitutional, the appropriate remedy is to sever the unconstitutional portion and leave the remainder intact. Following this principle, the Third Circuit severed the Council's pocket veto powers from Sections 1854(c)(3), 1854(h), and 1856(a)(3)(B). This severance transformed the Council members from principal officers to inferior officers. In other words, the removal of veto power meant that the Council members no longer violated the Appointments Clause. However, the Council members remain in an advisory role and are still able to propose amendments and implement regulations. ☹

### Endnotes

<sup>1</sup> NSGLC Research Associate; 3L, University of Mississippi School of Law.

<sup>2</sup> *Lofstad v. Raimondo*, No. 24-1420, 2024 WL 4314257, at \*4 (3d Cir. Sept. 25, 2024).

<sup>3</sup> 16 U.S.C. § 1852(a)(1)(B) (2024).

<sup>4</sup> *Lofstad*, 2024 WL 4314257, at 4 (quoting The Declaration of Independence ¶¶ 3–4 (U.S. 1776)).

# Chumash Heritage National Marine Sanctuary Designated

Terra Bowling



View of the Chumash Heritage National Marine Sanctuary, courtesy of the National Marine Sanctuary Foundation.

In October 2024, NOAA designated the Chumash Heritage National Marine Sanctuary (NMS) off the central California coast.<sup>1</sup> The sanctuary, at more than 4,500 square miles, is the third largest in the national marine sanctuary system and the first to be nominated for designation by a tribe. The sanctuary's unique cultural and biological resources, including the history and heritage of the Chumash and other Indigenous communities in the area, will be managed with Indigenous and tribal community involvement.

## NMSA

The National Marine Sanctuaries Act (NMSA) sanctuary designation involves a multi-step process led by NOAA. The NMSA authorizes the Secretary of Commerce to designate and protect national marine sanctuaries of national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities.<sup>2</sup> Community-led groups may submit potential

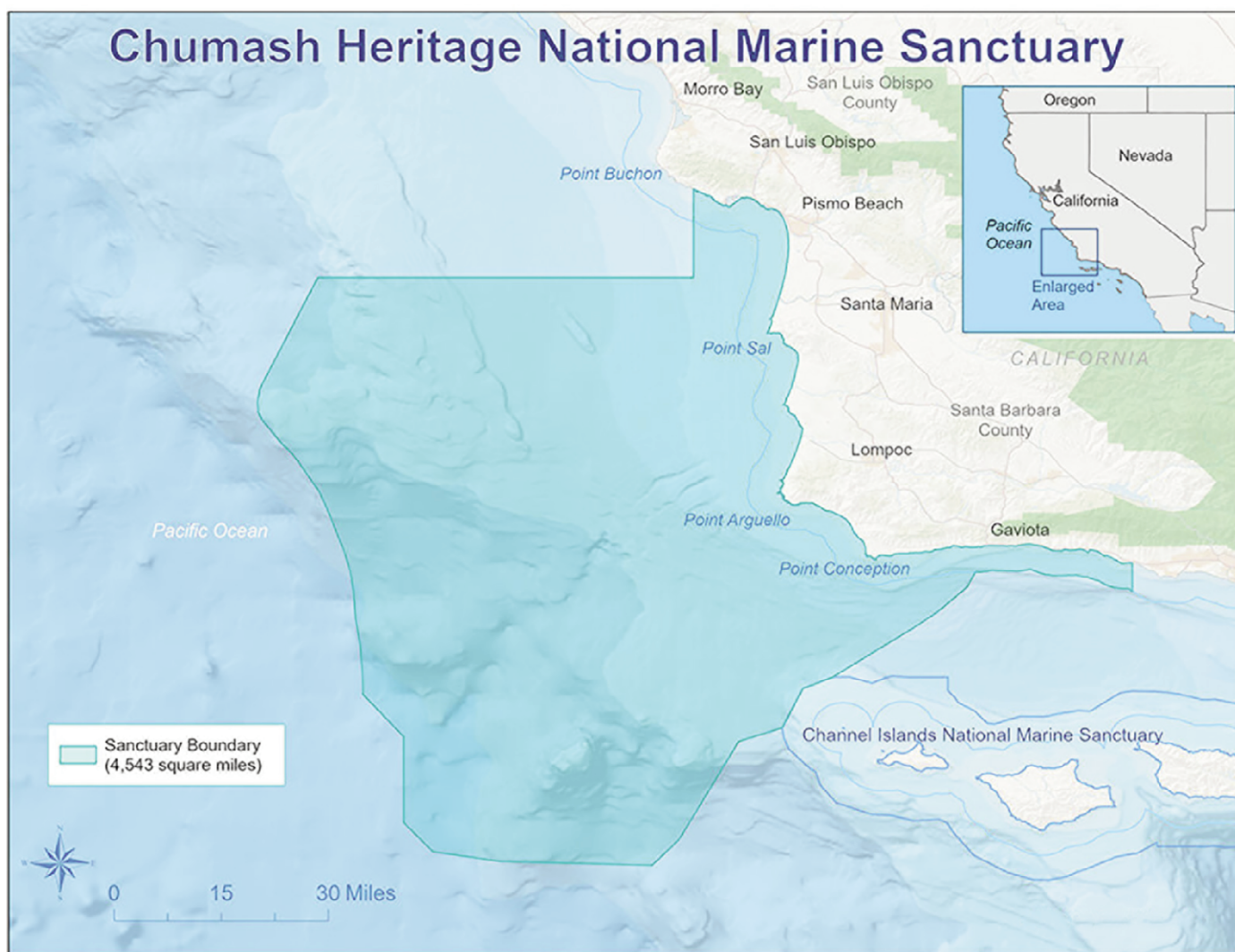
sites for national marine sanctuary designation. NOAA reviews these nominations and, if appropriate, it will place the area in an inventory of areas that it may consider for designation. Since the passage of the NMSA, the NOAA Office of National Marine Sanctuaries has established seventeen national marine sanctuaries and two marine national monuments.<sup>3</sup>

## Path to Designation

In 2015, a community consortium led by the Northern Chumash Tribal Council submitted a nomination for the Chumash Heritage NMS. NOAA began the sanctuary designation process in November 2021 by publishing notice that it would conduct scoping and prepare a draft Environmental Impact Statement.<sup>4</sup> In 2023, NOAA released a draft management plan, a proposed rule with terms of designation and proposed regulations, and a draft environmental impact statement.

During the public comment period, fishing and offshore energy groups raised concerns about overlapping existing and





Map of the Chumash Heritage National Marine Sanctuary.

potential uses of the area.<sup>5</sup> As a result, the sanctuary's boundaries exclude areas where future subsea electrical transmission cables and floating offshore substations could be installed outside the sanctuary to connect a wind energy area to an electrical power grid. The agency may consider expanding the sanctuary after transmission cables have been placed.<sup>6</sup>

### Sanctuary Management

The final management plan for the Chumash Heritage NMS describes actions that NOAA will take to manage the sanctuary, including twelve issue or program-based action plans.<sup>7</sup> Notably, the Indigenous Cultural Heritage Action Plan has a framework for collaborative co-stewardship of the sanctuary with federally recognized Native American Tribes and non-federally recognized Indigenous groups. It describes how sanctuary management would involve Tribal and Indigenous perspectives and collaboration in a variety of management actions, such as protecting sensitive or sacred sites, and other submerged cultural resources. 🐟

### Endnotes

- <sup>1</sup> Chumash Heritage National Marine Sanctuary, 89 Fed. Reg. 83554 (Oct. 16, 2024)(to be codified 15 CFR pt. 922).
- <sup>2</sup> 16 U.S.C. §§ 1431-1445 (c-1).
- <sup>3</sup> [National Marine Sanctuaries](#).
- <sup>4</sup> Notice of Intent To Conduct Scoping and To Prepare a Draft Environmental Impact Statement for the Proposed Chumash Heritage National Marine Sanctuary, 86 Fed. Reg. 62512 (Nov. 10, 2021).
- <sup>5</sup> Chumash Heritage National Marine Sanctuary, *supra* note 1.
- <sup>6</sup> NOAA, Biden-Harris Administration, [NOAA designate 3rd-largest national marine sanctuary](#) (Oct. 11, 2024).
- <sup>7</sup> [Chumash Heritage National Marine Sanctuary Final Management Plan](#) (Oct. 2024).



# 2024 Legislative Update

*Summaries by the Congressional Research Service,  
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## **Duck Stamp Modernization Act of 2023**

***Public Law No: 118-25 (S. 788)***

Modifies provisions regarding the Migratory Bird Hunting and Conservation Stamp, commonly referred to as the duck stamp, including to allow an individual to be carrying an electronic stamp, rather than a paper stamp, at the time of taking waterfowl. The act requires states to issue electronic stamps at the time of purchase and the Department of the Interior to issue a paper stamp after March 10 each year to each individual who purchased an electronic stamp for the preceding waterfowl season. The electronic stamps are valid through the first June 30 after issuance.

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## **Migratory Birds of the Americas Conservation Enhancements Act of 2023**

***Public Law No: 118-51 (H.R. 4389)***

Reauthorizes through FY2028 and revises the Neotropical Migratory Bird Conservation Act, which provides financial assistance for projects to promote the conservation of neotropical migratory birds. The bill increases the cap on the federal share of project costs. It also directs the Department of the Interior to report on an advisory group established under the act. If applicable, Interior must include a description of the composition of the advisory group in the report.

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## **Bolstering Ecosystems Against Coastal Harm Act**

***Public Law No: 118-117 (H.R. 5940)***

Amends the Coastal Barrier Resources Act to expand the John H. Chafee Coastal Barrier Resources System.

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## **Coastal Habitat Conservation Act of 2023**

***Public Law No: 118-138 (H.R. 2950)***

Provides statutory authority for the Coastal Program of the U.S. Fish and Wildlife Service (FWS). Under the voluntary program, the FWS works with partners to provide technical and financial assistance for habitat restoration projects, habitat protection projects, and related activities in priority coastal areas.

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## **Pensacola and Perdido Bays Estuary of National Significance Act of 2024**

***Public Law. No. 118-152 (S. 50)***

Revises the National Estuary Program to require the Environmental Protection Agency (EPA) to give priority consideration to selecting the Pensacola and Perdido Bays in Florida as estuaries of national significance. Under the existing program, the EPA protects and restores the water quality and ecological integrity of estuaries of national significance. The EPA may not use any amounts appropriated to carry out the national estuary program for the Pensacola and Perdido Bays 1) in FY2024, nor 2) in FY2025 unless the total amount appropriated to carry out the program for FY2025 is at least \$850,000 more than the total amount appropriated to carry out that program for FY2023.



### **Great Salt Lake Stewardship Act**

***Public Law No: 118-169 (H.R. 4094)***

Allows the Department of the Interior to use certain unexpended funds from the Central Utah Project Completion Act to conduct water conservation measures in the Great Salt Lake basin.

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### **Drought Preparedness Act**

***Public Law No: 118-170 (H.R. 4385)***

Reauthorizes through FY2028 the Reclamation States Emergency Drought Relief Act of 1991, which allows the Bureau of Reclamation to provide drought assistance to Hawaii or certain western states.

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### **Water Monitoring and Tracking Essential Resources (WATER) Data Improvement Act**

***Public Law No: 118-174 (H.R. 5770)***

Reauthorizes through FY2028 the United States Geological Survey's 1) Federal Priority Streamgauge network—previously known as the National Streamflow Information Program—that tracks the amount of water in streams and rivers; 2) groundwater monitoring program, including the National Groundwater Monitoring Network; and 3) grants for water estimation, measurement, and monitoring technologies and methodologies.

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### **Atchafalaya National Heritage Area Expansion**

***Public Law No: 118-176 (H.R. 6843)***

Expands the boundaries of Atchafalaya National Heritage Area to include Lafourche Parish, Louisiana. It also expands the membership of the local coordinating entity to include the parish.

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### **Colorado River Salinity Control Fix Act**

***Public Law No. 118-183 (H.R. 183)***

Modifies the Colorado River Basin Salinity Control Act to increase the federal cost share of certain salinity control programs that reduce the salt load in the Colorado River and other waters in the basin.

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### **Lahaina National Heritage Area Act**

***Public Law. No. 118-184 (H.R. 8219)***

Directs the National Park Service to assess the suitability and feasibility of designating Lahaina, Maui County, Hawaii, as the Lahaina National Heritage Area under the National Heritage Areas Act.

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### **America's Conservation Enhancement Reauthorization Act of 2024**

***Public Law. No. 118-198 (S. 3791)***

Reauthorizes through FY2030 and modifies several wildlife and conservation programs, including the Chronic Wasting Disease Task Force, the management of invasive species under the Fish and Wildlife Coordination Act, the North American Wetlands Conservation Act, the National Fish and Wildlife Foundation Establishment Act, the Chesapeake Bay Program, the Chesapeake Bay Initiative Act of 1998, and fish habitat conservation projects under the America's Conservation Enhancement Act. In addition, the bill modifies the America's Conservation Enhancement Act, including to provide statutory authority for the U.S. Fish and Wildlife Service (FWS) to carry out a black vulture livestock protection program that allows one public entity per state to hold a statewide depredation permit to protect commercial agriculture livestock from black vulture predation. It also authorizes appropriations for the FWS to complete the National Fish Habitat Assessment and the associated database. Finally, the bill extends through FY2030 a prohibition on the Environmental Protection Agency taking any action to regulate the lead content of sport fishing equipment or components under the Toxic Substances Control Act.

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### **Bald Eagle Designated National Bird**

***Public Law. No. 118-206 (S. 4610)***

Amends title 36, United States Code, to designate the bald eagle as the national bird.

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*The University of Mississippi*

***THE SANDBAR***

Sea Grant Law Center  
Kinard Hall, Wing E, Room 258  
University, MS 38677-1848



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# Littoral Events

## **National Working Waterfront Network Conference**

*February 4-6, 2025  
San Diego, CA*

For more information, visit: <https://nationalworkingwaterfronts.com/nwwn-2025-conference-san-diego>

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## **Aquaculture America**

*March 6-10, 2025  
New Orleans, LA*

For more information, visit: <https://www.was.org/meeting/code/AQ2025>

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## **Association of Flood Plain Managers Conference**

*May 18-22, 2025  
New Orleans, LA*

For more information, visit: <https://www.floods.org/conference>