5 EXISTING APPLICABLE FEDERAL AND STATE REGULATIONS

5.0 FEDERAL AND STATE LAW

The following summaries of applicable federal regulations and state law are arranged by the following categories:

- Offshore Energy Source and Mineral Exploration and Development
- Discharging or Depositing Matter into the Marine Environment
- Protection of Submerged Lands
- Navigation of Vessels
- Protection of Marine Mammals, Seabirds, and Sea Turtles
- Protection of Historical/Cultural Resources in the Marine Environment
- Introduced Species in the Marine Environment
- Operation of Motorized Personal Watercraft
- Other Federal and State Laws

5.1 OFFSHORE ENERGY SOURCE AND MINERAL EXPLORATION AND DEVELOPMENT

Federal law

Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, inter alia
OPA amends Section 311 of the CWA, 33 U.S.C. 1321 *et seq.*, to clarify federal response authority, increase penalties for spills, establish U.S. Coast Guard response organizations, require tank vessel and facility response plans, and provide for contingency planning in designated areas. OPA, however, does not preempt states' rights to impose additional liability or other requirements with respect to the discharge of oil within a state or to any removal activities in connection with such a discharge.

OPA is a comprehensive statute designed to expand oil spill prevention, preparedness, and response capabilities of the federal government and industry. OPA establishes a new liability regime for oil pollution incidents in the aquatic environment and provides the resources necessary for the removal of discharged oil. OPA consolidates several existing oil spill response funds into the Oil Spill Liability Trust Fund (Trust Fund), resulting in a $1-billion fund to be used to respond to, and provide compensation for damages caused by, discharges of oil. In addition, OPA provides new requirements of response planning by both government and industry and establishes new construction, manning, and licensing requirements for tank vessels. OPA also increases penalties for regulatory noncompliance and broadens the response and enforcement authorities of the federal government.

Title I of OPA contains liability provisions governing oil spills modeled after CERCLA, 42 U.S.C. 9601 *et seq.*, and Section 311 of the CWA. Specifically, Section 1002(a) of OPA provides that the responsible

party for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge, is liable for:

- Certain specified damages resulting from the discharged oil; and
- Removal costs incurred in a manner consistent with the National Contingency Plan.

The scope of damages for which there may be liability under Section 1002 of OPA includes:

- Natural resource damages, including the reasonable costs of assessing these damages;
- Loss of subsistence use of natural resources;
- Real or personal property damages;
- Net loss of tax and other revenues;
- Loss of profits or earning capacity; and
- Net cost of additional public services provided during or after removal actions.

Submerged Lands Act (SLA), (43 U.S.C. 1301 *et seq.*)
Under the SLA the location of energy and mineral resources determines whether or not they fall under state control. The SLA granted states title to the natural resources located within three miles of their coastline (three marine leagues for Texas and the Gulf coast of Florida). For purposes of the Submerged Lands Act, the term "natural resources" includes oil, gas and all other minerals and marine animal and plant life. States' implementation of the SLA is discussed below under State Law.

Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq*
The OCSLA established federal jurisdiction over submerged lands on the OCS seaward of state boundaries. Under the OCSLA, the Secretary of the Interior is responsible for the administration of mineral exploration and development of the OCS. The OCSLA empowers the Secretary of the Interior to grant leases to the highest qualified responsible bidder(s) on the basis of sealed competitive bids and to formulate such regulations as necessary to carry out the provisions of the OCSLA. The OCSLA provides guidelines for implementing an OCS oil and gas exploration and development program, and authorities for ensuring that such activities are safe and environmentally sound. The basic goals of the OCSLA include the following:

- To establish policies and procedures for managing the oil and natural gas resources of the OCS that are intended to result in expedited exploration and development of the OCS in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade;
- To preserve, protect, and develop oil and natural gas resources of the OCS in a manner that is consistent with the need (a) to make such resources available to meet the nation's energy needs as rapidly as possible; (b) to balance orderly resource development with protection of the human, marine, and coastal environments; (c) to ensure the public a fair and equitable return on the resources of the OCS; and (d) to preserve and maintain free enterprise competition;

- To encourage development of new and improved technology for energy resource production, which will eliminate or minimize risk of damage to the human, marine, and coastal environments; and

- To provide opportunities for state and local government participation in policy and planning decisions made by the federal government relating to exploration for, and development and production of, minerals on the OCS.

Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*
The Deep Seabed Hard Mineral Resource Act provides for regulations for developing deep seabed hard minerals, requires consideration of environmental impacts prior to issuance of mineral development permits, and requires monitoring of environmental impacts associated with any mineral development activities. With regard to minerals on the deep seabed, seabed nodules contain nickel, copper, cobalt and manganese - minerals important to many industrial uses. No commercial deep seabed mining is currently conducted, nor is such activity anticipated in the near future. However, four licenses have been issued under the Deep Seabed Hard Mineral Resources Act for exploration of seabed areas in the Clarion-Clipperton zone of the South Pacific Ocean.

Ocean Thermal Energy Conversion Act (OTEC Act), 42 U.S.C. 9101 *et seq.*
With regard to alternative energy sources from the ocean, the OTEC Act established a licensing program for facilities and plants that would convert thermal gradients in the ocean into electricity. The OTEC Act directed the Administrator of NOAA to establish a stable legal regime to foster commercial development of OTEC. In addition, the OTEC Act directed the Secretary of the department in which the USCG is operating to promote safety of life and property at sea for OTEC operations, prevent pollution of the marine environment, clean up any discharged pollutants, prevent or minimize any adverse impacts from construction and operation of OTEC plants, and ensure that the thermal plume of an OTEC plant does not unreasonably impinge on and thus degrade the thermal gradient used by any other OTEC plant or facility, or the territorial sea or area of national resource jurisdiction of any other nation unless the Secretary of State has approved such impingement after consultation with such nation. The OTEC Act also assigned responsibilities to the Secretary of State and the Secretary of Energy regarding OTEC plants.

State law

Submerged Lands Act (SLA), (43 U.S.C. 1301 *et seq.*)
Pursuant to the authority of the federal SLA state authorities range in the nature and extent of their control over ocean energy and mineral resources on state submerged lands. The range depends on each state's evaluation of different policy interests, such that activities may be restricted in certain areas and allowed in others. State management authority for oil and gas exploration and production on state submerged lands may be implemented by more than one state entity. Also, state management of energy and mineral resources is often addressed within the context of a broader state coastal management plan.

State policies also affect energy and mineral resource development on the OCS. As indicated above, federal authorities such as the OCSLA provide for consultation and coordination with affected coastal states.

5.2 DISCHARGING OR DEPOSITING OTHER MATTER INTO THE MARINE ENVIRONMENT

Federal Law

Act to Prevent Pollution from Ships (APPS) 33 U.S.C. 1901 *et seq*.

a. Oil and Noxious Liquid Substances.
The Act to Prevent Pollution from Ships, as originally enacted, implemented Protocols I and II, and Annexes I and II, of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL). Annex I of MARPOL establishes requirements to prevent the discharge of oil except in accordance with specific conditions. Annex II provisions cover the discharge of noxious liquid substances. (Annex III, which addresses the prevention of pollution by harmful substances carried by sea in packaged forms, or in freight containers, portable tanks, or road and rail wagons, is implemented by the Hazardous Material Transportation Act, 49 U.S.C. 5101 *et seq.*, inter alia.)

The APPS applies to all United States flag ships anywhere in the world and to all foreign flag vessels operating in the navigable waters of the United States or while at a port or terminal under the jurisdiction of the United States. The oil and noxious liquid substances provisions apply only to seagoing ships. The regulations implementing Annex I and Annex II of MARPOL limit discharges of oil and noxious substances, establish report requirements for discharges, and establish specific requirements for monitoring equipment and record keeping aboard vessels. In particular, the regulations require that vessels covered by APPS and MARPOL keep Oil Record Books in which all discharges, disposal, and transfers of oil are recorded.

b. Garbage and Plastics.

The APPS was amended by the Marine Plastic Pollution Research and Control Act of 1987 (MPPRCA), which implemented the provisions of Annex V of MARPOL relating to garbage and plastics. Annex V of MARPOL and the regulations implementing it apply to all vessels subject to MARPOL, whether seagoing or not, regardless of flag, on the navigable waters of the United States and in the EEZ of the United States. It applies to United States flag vessels wherever they are located.

Under the regulations implementing the APPS, the discharge of plastics, including synthetic ropes, fishing nets, plastic bags, and biodegradable plastics, into the water is prohibited. Discharge of floating dunnage, lining, and packing materials is prohibited in the navigable waters and in areas offshore less than 25 nautical miles from the nearest land. Under APPS, the definition of ship includes fixed or floating platforms. There are separate garbage discharge provisions applicable to these units. For these platforms, and for any ship within 500 meters of these platforms, disposal of all types of garbage is prohibited. In addition, all manned, oceangoing United States flag vessels of 12.2 meters or more in length engaged in commerce, and all manned fixed or floating platforms subject to the jurisdiction of the United States, are required to keep records of garbage discharges and disposals. The implementing regulations specify that no person may discharge into the sea, if the distance from nearest land is less than 12 nautical miles, food wastes, paper products, rags, glass, metal, bottles, crockery and similar refuse. However, such garbage and trash may be discharged outside of three nautical miles from nearest land after it has been passed through a grinder or comminuter so that it passes through a screen with openings no greater than 25 millimeters (one inch).

Carriage of Liquid Bulk Dangerous Cargoes, 46 U.S.C. 3701–3718, governs the carriage of liquid bulk dangerous cargoes such as oil or hazardous materials. The chapter applies to any tank vessel operating in United States navigable waters or transferring oil or hazardous materials in any port subject to U.S. jurisdiction, with exemptions for certain vessels (Section 3702). The Secretary is required to issue regulations for the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels subject to the chapter, necessary to protect life and property, for navigation and vessel safety, and protection of the marine environment (Section 3703; regulations are found in 33 CFR and 46 CFR). Minimum standards for tank vessel construction are provided (Section 3703a); requirements for coastwise trade vessels (Section 3704); as well as minimum standards for crude oil tankers, product carriers, tankers, and self-propelled tank vessels, with certain exemption as authorized by the Secretary (Sections 3705–3709). The Secretary is directed to establish a marine safety information system to contain information about vessels subject to the chapter (Section 3717). Civil or criminal penalties may be assessed for violations of the chapter, including revocation of Customs Service clearance (Section 3718).

Clean Vessel Act of 1992, subtitle F, 5601 to 5608, of Title V of Pub. L. 102–587, amending 16 U.S.C. 777c and 777g and see 33 U.S.C. 1322 note
The purpose of the Clean Vessel Act is to provide funds to states for the construction, renovation, operation and maintenance of pumpout stations and waste reception facilities. The act requires the Department of the Interior to issue guidance on what constitutes adequate and reasonably available pumpout facilities and waste reception facilities. In order to receive a grant, coastal states are to conduct a survey to determine the number and location of such stations and facilities and the number of recreational vessels in their coastal waters with toilets and develop and submit to the Department of the Interior for approval a plan for any construction or renovation necessary to provide adequate and reasonably available stations and facilities.

Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990, 16 U.S.C. 1455b
Section 6217 of Coastal Zone Act Reauthorization Amendments of 1990 required the coastal states with federally approved coastal zone management plans to develop and submit coastal nonpoint source pollution control programs for approval by NOAA and the U.S. Environmental Protection Agency (EPA). The submissions were to lay out a state program to restore and protect coastal waters by providing for the implementation of management measures developed by the U.S. EPA. The statute gave states 30 months from the date of publication of the final U.S. EPA guidance to submit a program to NOAA and U.S. EPA for approval. The statute required that penalties be levied if a state failed to submit an approvable program within the allotted time. There has been no need to assess penalties as yet, as all the states have submitted programs found to be conditionally approvable and some have later been fully approved.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9601 *et seq.*
CERCLA is designed to respond to releases of hazardous substances and protect public health and environmental quality including natural resources.

CERCLA provides for the following two possible actions to protect the public and the environment from the harmful effects of a hazardous substance spill. Any combination of these two may be used at a particular spill.

(1) Response: CERCLA authorizes the U.S. to clean up the spilled substance either at the expense of the responsible party or with funds from the Superfund. CERCLA 104(a)(1). Example of steps include: dredging contaminated sediments, repairing leaking containers, collecting rain water runoff, and relocating displaced residents.

(2) Damages for natural resource injuries: CERCLA authorizes the trustees for natural resources to seek damages from responsible parties to restore or replace natural resources injured or destroyed by exposure to hazardous substances. CERCLA 107(a)(4)(C) and 107(f).

Federal Water Pollution Control Act, also informally called the **Clean Water Act (CWA),** 33 U.S.C. 1251 *et seq.*
The CWA establishes the basic scheme for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. The primary mechanism in the CWA regulating the discharge of pollutants is the National Pollutant Discharge Elimination System (NPDES), which is administered by the U.S. EPA. Under the NPDES program, a permit is required from U.S. EPA or an authorized state for the discharge of any pollutant from a point source into the waters of the United States. This includes discharges associated with oil and gas development on federal leases beyond state waters. A NPDES permit for certain storm water discharges also is required. In the case of discharges to the territorial sea or beyond, permits are also subject to the ocean discharge criteria developed under Section 403 of the CWA. Permits for discharges into the territorial sea or internal waters may be issued by states following approval of their permit program by U.S. EPA; in the absence of an approved state permit program, and for discharges beyond the territorial sea, U.S. EPA is the permit-issuing authority.

The CWA was amended in 1987 to include the current non-point source (NPS) program. Under this program (Section 319), states must develop management programs to address NPS runoff, including the identification of best management practices and measures. In addition, Section 319 authorizes grants to assist the states in implementing their approved management programs.

The CWA generally prohibits discharges of oil and hazardous substances into coastal or ocean waters except where permitted under MARPOL. The USCG investigates and responds to discharges of oil and hazardous substances into coastal or ocean waters in accordance with the National Contingency Plan. The USCG, with the cooperation of U.S. EPA, generally administers the National Contingency Plan when oil or a hazardous substance is discharged into coastal or ocean waters. Regional contingency plans and area contingency plans are developed to implement the NCP.

The CWA (Section 312) requires vessels with installed toilet facilities and operating on the navigable waters of the United States to contain operable marine sanitation devices certified as meeting standards and regulations promulgated under Section 312. Section 312 also allows establishment of zones where discharge of sewage from vessels is completely prohibited. Amendments made to Section 312 in 1996 require, where appropriate, the use of marine pollution control devices for operational, non-sewage, discharges from vessels of the Armed Forces.

Publicly owned sewage treatment facilities must, at a minimum, meet effluent limitations based on effluent reductions by secondary treatment, except for certain facilities discharging to coastal waters for which U.S. EPA has approved a waiver under Section 301(h).

Section 320 of the CWA establishes the National Estuary Program, which uses a consensus-based approach for protecting and restoring estuaries. There are currently 28 estuaries in the program.

The U.S. Army Corps of Engineers (USACE) implements the Section 404 permit program. Under Section 404, a permit is required for the discharge of dredged or fill materials into the waters of the U.S. that lie inside of the baseline for the territorial seas and fill materials into the territorial seas within three miles of shore. Although USACE has the permitting responsibility under the Section 404 program except in certain waters of two states (Michigan and New Jersey), which have assumed the authority, U.S. EPA is authorized to review and comment on the impact of proposed dredge and fill activities and to prohibit

discharges that would have an unacceptable impact on municipal water supplies, shellfish beds and fishery areas, wildlife and recreational areas. U.S. EPA, in consultation with USACE, is charged with developing guidelines to be used in evaluating discharges subject to Section 404. (40 CFR Part 2301.) The Section 404 permit requirement is the cornerstone for the current wetlands regulatory program. If the USACE or U.S. EPA determines that a certain property is a jurisdictional wetland, no one can discharge dredged or fill materials into it without a Section 404 permit. USACE and U.S. EPA also have cooperative agreements with the Natural Resources Conservation Service and rely on its determinations as to the presence of wetlands on agricultural lands.

Ocean Dumping Act (Titles I and II of the Marine Protection, Research, and Sanctuaries Act of 1972), 33 U.S.C. 1401 *et seq.*
The Ocean Dumping Act provides the basic authority for the U.S. EPA and the USACE to regulate ocean dumping (Title I) and for the Department of Commerce, through NOAA, to carry out research on the effects of ocean dumping and other man-induced changes on ocean systems (Title II).

Title I of the act: (1) prohibits any person, without a permit, from transporting from the United States any material for the purpose of dumping it into ocean waters (defined to mean those waters of the open seas lying seaward of the baseline from which the territorial sea is measured), and (2) in the case of a vessel or aircraft registered in the United States or flying the U.S. flag or in the case of a U.S. agency, prohibits any person, without a permit, from transporting from any location any material for the purpose of dumping it into ocean waters. Title I also prohibits any person, without a permit, from dumping any material transported from a location outside the United States into the territorial sea, or the contiguous zone extending 12 nautical miles seaward from the baseline of the territorial sea to the extent that it may affect the territorial sea or the territory of the United States. U.S. EPA issues permits regulating the ocean dumping, and the transportation for the purpose of dumping, of all material except dredged material, which is permitted by USACE. USACE permits are subject to U.S. EPA review and concurrence. The specific environmental criteria used to evaluate permit applications are developed by U.S. EPA; in the case of dredged material, this is done in coordination with USACE.

In developing criteria for the evaluation of permit applications, the statute provides that the following must be considered: (1) the need for the proposed dumping; (2) the effect of the dumping on human health and welfare, fisheries resources, marine ecosystems, and shorelines; (3) the persistence and permanence of the effects of the dumping; (4) the effect of dumping particular volumes and concentrations; (5) appropriate locations and methods of disposal or recycling, including land-based alternatives; and (6) the effect on alternate uses of the oceans.

The ocean dumping of sewage sludge and industrial waste is prohibited. In addition, radiological, chemical, or biological warfare agents, high-level radioactive waste, and medical waste may not be dumped. States may generally adopt and enforce requirements for ocean dumping activities that occur in their jurisdictional waters.

Title II of the Ocean Dumping Act requires the Department of Commerce, in coordination with the department in which the U.S. Coast Guard is operating (currently the Department of Homeland Security) and U.S. EPA, to conduct a comprehensive and continuing program of monitoring and research on the effects of dumping of material into ocean waters, coastal waters or into the Great Lakes. The title further requires the Department of Commerce, in close consultation with other appropriate departments, to conduct a comprehensive and continuing program of research into the possible long-range effects of pollution, over-fishing and human-induced changes of ocean ecosystems. The title specifies that the program must include continuing monitoring programs to assess the health of the marine environment, including but not limited to the monitoring of bottom oxygen concentration contaminant levels in biota,

sediments and the water column, diseases in fish and shellfish, and changes in types and abundance of indicator species.

Shore Protection Act of 1988, 33 U.S.C. 2601 *et seq.*
Under the Shore Protection Act of 1988, municipal or commercial waste cannot be transported by a vessel in coastal waters without a permit from the Department of Transportation. Municipal or commercial waste includes solid waste as defined by the Resource Conservation and Recovery Act, but excludes waste generated by the vessel during normal operations, construction debris, dredged or fill material, and sewage sludge. The loading, securing and off loading of these wastes must be conducted in a manner to minimize any waste deposited into coastal waters.

Solid Waste Disposal Act also known as the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*
Governs treatment, storage and disposal of solid and hazardous waste. The act also has as a goal the reduction of generation of hazardous waste.

Toxic Substances Control Act 15 U.S.C. 2601 *et seq.*
This is the first comprehensive legislation governing toxic substances, including providing the federal government authority to prevent unreasonable risk of injury to health or the environment, particularly imminent hazards.

United States Public Vessel Medical Waste Anti-Dumping Act of 1988, 33 U.S.C. 2501 *et seq.*
This act prohibits public vessels from discharging medical waste except in extremely limited circumstances, because of the serious and widespread risks to public health and to the welfare of coastal communities. Potentially infectious medical waste may only be discharged by a public vessel if: (1) the health or safety of individuals on board the vessel is threatened or during a time of war or national emergency; (2) the waste is released beyond 50 nautical miles from the nearest land; and (3) the waste is sterilized, properly packaged, and sufficiently weighted to prevent it from coming ashore.

Organotin Anti-Fouling Paint Control Act of 1988, 33 U.S.C. 2401 *et seq.*
Organotin biocides are added to paints to protect the bottom of boats from encrusting organism buildup. Because organotin has been shown to be toxic, it may pose unreasonable risks to marine and freshwater organisms. The act's purpose is to protect the aquatic environment by reducing the quantities of organotin entering the waters of the United States. The U.S. EPA is primarily responsible for the administration and enforcement of this statute.

The act generally prohibits boats less than 25 meters in length from using anti-fouling paint containing organotin. Aluminum hulls and lower drive shaft units of marine engines (outboard motors) are excepted from this act and allowed to use this paint. Penalties are available for violations. The U.S. EPA, in consultation with NOAA, was directed to monitor the ecological effects of organotin in estuaries and coastal waters for ten years beginning in 1988.

State Law

California Hazardous Waste Control Law imposes obligations on facilities for the generation of hazardous waste. The law applies to federal facilities insofar as the law requires permitting, inspections, and monitoring. State waste disposal standards, reporting duties, and submission to state inspections are required of federal facilities.

California Administrative Code, Sections 66001 through 67181 contains California's hazardous materials regulations.

California Code of Regulations Title 26 identifies wastes subject to regulations as hazardous wastes under this division and subject to the notification requirements of Health and Safety Code Section 25153.6. It provides the criteria used by the California Department of Toxic Substances Control to identify characteristics of hazardous wastes, identifies characteristics of hazardous waste, and lists particular hazardous wastes. It includes sampling procedures and requires the use of the best available technology.

California Integrated Waste Management Act of 1989 specifies waste reduction mandates for municipal solid waste facilities. California Code of Regulations Title 27, Natural Resources, Integrated Waste Management, specifies guidelines for solid waste planning (including waste diversion goals), solid waste facilities permits, and regulations for daily operations of municipal solid waste landfills. Daily operations include regulations for daily and interim cover materials, and closure/post-closure plans.

The Porter-Cologne Water Quality Control Act protects all waters of the state for the use and enjoyment of the people of California and declares that the protection of water resources be administered by the regional water quality control boards with statewide coordination managed by the State Water Resources Control Board.

Recent State Assembly Bills

In September 2004 Governor Arnold Schwarzenegger signed three assembly bills (AB) regulating discharges from "large passenger vessels," effectively cruise ships. AB 471 bans cruise ships from incinerating waste off California's coast. (AB 471 is now part of California Health and Safety code, Division 26, Part 2, Chapter 3.3, commencing with Section 39630.) AB 2093 prohibits cruise ships from dumping sewage from kitchens, sinks, and showers (graywater) in state waters. AB 2672 prohibits cruise ships from dumping sewage from toilets within three miles of shore. All three bills apply solely to California waters, which extend to 3 NM offshore.

5.3 PROTECTION OF SUBMERGED LANDS

Federal Law

Rivers and Harbors Act of 1899, 33 U.S.C. 401 *et seq.*

The Rivers and Harbors Act prohibits the unauthorized obstruction of navigable waters of the United States. The construction of any structure or the excavation or fill in the navigable waters of the United States is prohibited without a permit from the USACE. Section 13 of the Act also prohibits the discharge of refuse into navigable waters, but has been largely superseded by the CWA.

Wreck Act, 33 U.S.C. 409 *et seq.*

The Act prohibits the anchoring or tying of vessels or other craft in navigable channels in a manner that prevents or obstructs passage of other vessels or craft. Also, the act places a duty on an owner, lessee or operator of a vessel, raft or other craft that has sunk in a navigable channel to immediately mark the wreck with a buoy or beacon and to maintain such marker until the wreck is removed or abandoned. The owner, lessee, or operator has the duty to commence the immediate removal of the wreck.

(See also 5.1.1, above, for descriptions of the Submerged Lands Act and Outer Continental Shelf Lands Act)

5.4 NAVIGATION OF VESSELS

Federal Law

Carriage of Goods by Sea Act, 46 App. U.S.C. 1300–1315
The Carriage of Goods by Sea Act governs every bill of landing or similar document of title, which is evidence of a contract for the carriage of goods by sea to or from U.S. ports, in foreign trade. The Act provides for the duties and rights of the carrier, as well as the responsibilities and liabilities of the carrier and ship regarding, for example, seaworthiness, cargo and contents of a bill, as well as rights and immunities of the carrier and ship.

Harter Act, 46 App. U.S.C. 190–196
The act requires owners, masters or agents of any vessel transporting merchandise or property from or between United States ports and foreign ports to issue to shippers a bill of landing, or shipping document, stating, among other things, the number of packages, or quantity, condition of merchandise, and weight. Such document shall be *prima facie* evidence of receipt of the merchandise. It allows vessel owners limitation of liability for losses resulting from errors in navigation, dangers of sea and acts of God. Similar to the Carriage of Goods by Sea Act, except that the Harter Act: does not relieve the owner for errors in navigation if there was failure to exercise due diligence to provide a seaworthy vessel; has no statute of limitations; and does not provide a limit of liability for loss or damage of cargo.

Ports and Waterways Safety Act of 1972, as amended, (PWSA), 33 U.S.C. 1221–1236
The PWSA, as amended by the Port and Tanker Safety Act of 1978 (PTSA), P.L. 95–474, and the Oil Pollution Act of 1990, is designed to promote navigation, vessel safety, and protection of the marine environment. Generally, the PWSA applies in any port or place under the jurisdiction of the United States, or in any area covered by an international agreement negotiated pursuant to 33 CFR 2.05–30.

The PWSA authorizes the USCG to establish vessel traffic separation schemes (VTSSs) for ports, harbors, and other waters subject to congested vessel traffic. The VTSS apply to commercial ships, other than fishing vessels, weighing 300 gross tons (270 gross metric tons) or more. OPA amended the PWSA to mandate that appropriate vessels must comply with the VTSSs.

The PWSA was amended by the PTSA in 1978. Under the PTSA, Congress finds: that navigation and vessel safety and protection of the marine environment are matters of major national importance; that increased vessel traffic in the Nation's ports and waterways creates substantial hazard to life, property or the marine environment; that increased supervision of vessel and port operations is necessary in order to (1) reduce the possibility of vessel or cargo loss, or damage to life, property or the marine environment; (2) prevent damage to structures in, on, or immediately adjacent to the navigable waters of the United States or the resources within such waters; (3) insure that vessels operating in the navigable waters of the United States shall comply with all applicable standards and requirements for vessel construction, equipment, manning and operational procedures; and (4) insure that the handling of dangerous articles and substances on the structures in, on, or immediately adjacent to the navigable waters of the United States is conducted in accordance with established standards and requirements; and that advance planning is critical in determining proper and adequate protective measures for the Nation's ports and waterways and the marine environment, with continuing consultation with other federal agencies, state

representatives, affected users and the general public, in the development and implementation of such measures.

The PTSA provides broader regulatory authority over regulated and non-regulated areas. The PTSA provides for improvements in the supervision and control of all types of vessels operating in navigable waters of the United States, and in the safety of foreign or domestic tank vessels that transport or transfer oil or hazardous cargoes in ports or places subject to United States jurisdiction. The PTSA also reflects certain tank vessel standards and requirements accepted internationally, specifically those developed by the International Conference on Tanker Safety and Pollution Prevention.

5.5 PROTECTION OF MARINE MAMMALS, SEABIRDS AND SEA TURTLES

Federal Law

Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531–1544
The ESA protects species of plants and animals listed as threatened or endangered. The Secretary of the Interior and the Secretary of Commerce determine, through regulations, whether any species are endangered or threatened. The secretaries also are required to designate critical habitat and develop and implement recovery plans for threatened and endangered species. Federal agencies must ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat.

The ESA prohibits the taking of any member of an endangered species. "Take" is defined broadly and includes harassment, harm, pursuit, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in any of this type of conduct. The requirements of the ESA are enforceable.

Fur Seal Act Amendments of 1983, 16 U.S.C. 1151–1175
The Fur Seal Act Amendments prohibit the taking of fur seals in the North Pacific Ocean, except as provided by the act. Indians, Aleuts, and Eskimos who dwell on the North Pacific Ocean may take fur seals for subsistence purposes. The Secretary of Commerce is responsible for regulating the taking of fur seals. The Amendments authorize a North Pacific Fur Seal Commission.

The Fur Seal Act Amendments also authorize the Secretary to administer the fur seal rookeries and other federal real and personal property on the Pribilof Islands.

Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378
The Lacey Act prohibits domestic and international trafficking in and possession of protected fish, wildlife, and plants. It does so in two ways. First, it requires that most shipments of fish and wildlife moving in interstate or foreign commerce be accurately marked and labeled as to their contents. Second, the Lacey Act makes it unlawful to import, export, transport, sell, receive, acquire, or purchase fish, wildlife, and certain indigenous plants taken, possessed, transported, or sold in violation of state, federal, Indian tribal, or foreign laws or regulations that relate or refer to fish or wildlife or plants. Violators are subject to both criminal and civil sanctions. The prohibitions apply broadly to all wild animals, whether dead or alive, and to any part, product, egg, or offspring, including captive-bred animals, and more narrowly to certain wild plants indigenous to the United States.

Marine Mammal Protection Act of 1972 (MMPA), 16 U.S.C. 1361–1421h
The MMPA generally prohibits taking and importation of all marine mammals, except under limited exceptions. The MMPA gives the Secretary of Commerce authority and duties under the act for all cetaceans (whales, dolphins, and porpoises) and pinnipeds (seals and sea lions, except walruses), and it give authority for other species of marine mammals to the Secretary of the Interior. It requires the Secretary to prepare and periodically revise stock assessments of marine mammal stocks (MMPA section 117). It requires the secretary to publish in the Federal Register and revise at least annually a list of commercial fisheries that categorizes the fisheries based on the incidence of serious injury and mortality of marine mammals (MMPA section 188(c)). For commercial fisheries categorized as Category I or II (frequent or occasional serious injury or mortality), the Secretary must grant an authorization to incidentally take marine mammals upon receipt of a completed registration form. The secretary is to establish a program to monitor incidental mortality and serious injury of marine mammals during commercial fishing operations (MMPA section 188(d)), which it does through its observer program. The Secretary is to implement a take reduction plan through establishment of a take reduction team for certain "strategic" stocks of marine mammals that interact with Category I or II fisheries to reduce incidental mortality and serious injury of marine mammals from commercial fishing operations (MMPA section 188(f)).

Upon request, and after making certain findings, the secretary is to authorize and prescribe regulations for incidental takes of small amounts of marine mammals (MMPA section 101(a)(5)(A)). In the same manner, the secretary is to issue or deny permits for public display (and maintain an inventory of marine mammals possessed for public display), scientific research, enhancing the survival or recovery of a stock, and educational or commercial photography, after receipt of an application to take marine mammals for those purposes (MMPA section 104). If the secretary receives a petition for a status review of the species (or on the secretary's own initiative), the secretary is to make a determination whether a species or stock is depleted or is no longer depleted. The secretary is to prepare a conservation plan as soon as possible for any species of stock that the secretary determines is depleted. (MMPA section 115). The secretary is to enforce the provisions of Title I of the MMPA (MMPA section 107).

In consultation with the Secretary of the Interior, Marine Mammal Commission, and others, the Secretary of Commerce is to establish the Marine Mammal Health and Stranding Response Program, including issuing guidance for determining at what point a rehabilitated marine mammal is releasable to the wild and collecting, periodically updated, and making available information related to marine mammal health and strandings (MMPA sections 402 and 403). The secretary is to establish a marine mammal unusual mortality event working group, issue a detailed contingency plan for responding to any unusual mortality event, designate Onsite Coordinators for unusual mortality events, and administer the Marine Mammal Unusual Mortality Event Fund (MMPA sections 404 and 405). The secretary is to maintain a National Marine Mammal Tissue Band, issue guidance for tissue collection and analysis, and maintain a central database for tissue bank and database (MMPA section 407). The secretary is to conduct the Prescott Marine Mammal Rescue Assistance Grant Program to provide grants to eligible stranding network participants (MMPA section 408).

The secretary has several discretionary duties or areas for which duties can be delegated. The secretary is to prescribe regulations deemed necessary and appropriate related to taking and importing marine mammals and to carry out the purposes of Title I, and the secretary may develop conservation and management measures to alleviate impacts on strategic stocks in certain circumstances (MMPA sections 103, 112(a), and 112(e)). The secretary may by agreement use other Federal agencies or may designate state officers for enforcement of Title I (MMPA section 107 and 109(k)). If a state develops a program that meets statutory requirements for the conservation and management of species of marine mammals,

the secretary is to transfer management authority for the species to the state after certain findings and processes, although there are no states with such authority at this time (MMPA section 109).

Migratory Bird Treaty Act, 16 U.S.C. 703–715s
Under this act, it is unlawful "to pursue, hunt, take, capture, kill, attempt to take… offer for sale, sell, offer to purchase, purchase… any migratory bird… or any part, nest or egg" of any such bird protected by the Migratory Bird Convention, except as permitted by regulations. The Secretary of the Interior is charged with determining when and to what extent these activities may be permitted, and to create regulations for this purpose. Parties wishing to acquire permits for activities otherwise prohibited can do so by submitting an application and meeting specific conditions and requirements. The MBTA also allows for the establishment of fines for violations of provisions, including misdemeanor charges. In addition, states are given the authority to enact stricter regulations for the protection of migratory birds, providing that they are not in conflict with other existing Conventions.

Whaling Convention Act of 1949, 16 U.S.C. 916 – 916l
The Whaling Convention Act of 1949 implements the International Convention for the Regulation of Whaling, signed on December 2, 1946. The President appoints the United States Commissioner to the International Whaling Commission. The Secretary of Commerce is authorized to administer and enforce the act. The act prohibits persons subject to the jurisdiction of the United States to engage in whaling, or shipping, transporting, purchasing, selling, offering for sale, importing, exporting, or possessing whales in violation of the Convention or implementing regulations. The act also has provisions for enforcement of these regulations.

National Wildlife Refuge System, 16 U.S.C. 668dd
This section of law consolidates the authorities relating to the various categories of areas administered by the Secretary of the Interior for the conservation of fish and wildlife by designating all such areas part of the National Wildlife Refuge System (the System). The law prohibits knowingly disturbing, injuring, cutting, burning, removing, destroying, or possessing any real or personal property of the United States, including natural growth, in any area of the system, or taking or possessing any fish, bird, mammal, or other wild animals within any such area without a permit. The secretary may permit areas within the System to be used for hunting, fishing, and public recreation when the secretary determines such uses are compatible with the major purposes for which such areas were established.

Another section of law, 16 U.S.C. 460k, recognizes the mounting public demands for recreational opportunities on areas administered by the Secretary of the Interior for fish and wildlife purposes, including areas within the System. This Section provides that the Secretary may administer such areas as public recreation areas when the Secretary determines that public recreation is an appropriate incidental or secondary use. Such public recreation may be permitted only to the extent that it is not inconsistent with the primary objectives for which the particular area was established.

36 CFR Part 2, Resource Protection, Public Use and Recreation for the Channel Islands National Park
The National Park Service regulations generally prohibit possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state living or dead wildlife or fish (or parts or products thereof), paleontological specimens, plants, and mineral resources and prohibits possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device or sub-bottom profiler.

State Law

California Endangered Species Act, Fish and Game Code 2050 *et seq*.
The California Endangered Species Act generally parallels the main provisions of the federal ESA and is administered by the CDFG. As stated in Section 2052, it is the policy of CDFG to conserve, protect, restore, and enhance any endangered or threatened species and its habitat and it is the intent, consistent with conserving the species, to acquire lands for habitat for these species. Under Section 2053, projects as proposed should not be approved if they jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of the species, if there are feasible alternatives available consistent with conserving the species or its habitat that would prevent jeopardy. In the event that a particular condition makes these alternatives infeasible, individual projects may be approved if they provide appropriate mitigation and enhancement measures.

5.6 PROTECTION OF HISTORICAL/CULTURAL RESOURCES IN THE MARINE ENVIRONMENT

Federal Law

Abandoned Shipwreck Act (ASA), 43 U.S.C. 2101 *et seq.*
The Abandoned Shipwreck Act asserts United States title to shipwrecks embedded in state submerged lands and transfers title to the state, except when the wreck is located on public or Indian land, or is a U.S. warship that has not been affirmatively abandoned. The public is given notice of the location of any shipwreck when title is asserted under the act.

Pursuant to the act, states manage a broad range of living and nonliving resources in their waters and submerged lands. Shipwrecks protected under the act offer recreational and educational opportunities for divers, tourists, users of biological sanctuaries, and historical researchers. States are encouraged to provide public access to the shipwrecks through the adoption of guidelines for the creation of underwater parks.

The Secretary of the Interior, through the National Park Service, publishes guidelines to maximize the enhancement of shipwrecks as cultural resources; foster a partnership among sport divers, salvors, and other interests to manage shipwreck resources; facilitate access and utilization of the shipwrecks; and recognize the interests of groups engaged in shipwreck discovery and salvage.

Antiquities Act of 1906, 16 U.S.C. 431 *et seq.*
The Antiquities Act has two main components: (1) a criminal enforcement component, which provides for the prosecution of persons who appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity on lands owned or controlled by the United States; and (2) a component that authorizes, through the issuance of a permit, the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity on lands owned or controlled by the United States.

The Antiquities Act has been applied in the marine environment. Where the United States has ownership or control of the submerged lands in or on which submerged cultural resources are located, the Antiquities Act permitting provision can be used to regulate salvage. It appears, however, that its reach may be

limited to regulating salvage only in marine protected areas in which the United States has the authority to protect submerged cultural resources.

Archaeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa *et seq.*
ARPA is another historic preservation statute that has been applied to the marine environment. ARPA was specifically designed to prevent looting and destruction of archeological resources. Like the Antiquities Act, ARPA has both an enforcement and a permitting component. The enforcement provision provides for the imposition of both criminal and civil penalties against violators of the act. ARPA's permitting component allows for the recovery of certain artifacts consistent with the standards and requirements of the Federal Archeological Program. While ARPA is applicable to the marine environment, its reach in this context is limited. Pursuant to the express language of the act itself, ARPA can only be applied to such areas as national parks (with federally-owned submerged lands) and wildlife refuges. The definition of public lands expressly excludes the outer continental shelf (i.e., federal exclusion or reservations under the Submerged Lands Act).

The purpose of this act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, and professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979.

National Marine Sanctuary program-wide regulations provide that "management of historical resources under the National Marine Sanctuaries Act shall be consistent, to the extent practicable, with the Federal Archeological Program by consulting the Uniform Regulations, ARPA (43 CFR part 7) and other relevant Federal regulations" (15 CFR 922.2(e)).

National Historic Preservation Act (NHPA), 16 U.S.C. 470 *et seq.*
NHPA is the largest piece of federal historic preservation legislation. It has two major components that affect the responsibilities of federal agencies managing submerged lands. First, under Section 106 of NHPA, federal agencies are to consider the effects of their undertakings (including the issuance of permits, the expenditure of federal funding and federal projects) on historic resources that are either eligible for listing or are listed on the National Register of Historic Places. Section 110 of NHPA imposes another obligation on federal agencies that own or control historic resources. Under this Section, federal agencies must consider historic preservation of historic resources as part of their management responsibilities.

36 CFR Part 2, Resource Protection, Public Use and Recreation for the Channel Islands National Park
The National Park Service regulations generally prohibit possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state living or dead wildlife or fish (or parts or products thereof), paleontological specimens, plants, and mineral resources and prohibits possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device or sub-bottom profiler.

Executive Order Number 11593 (1971)
This presidential order extended the protections of the National Historic Preservation Act of 1966 to all properties eligible for inclusion on the National Register of Historic Places and charged the federal agencies providing funds for any project to insure that such protections are afforded.

State Law

California's Native American Resource Protection Act of 2003, Chapter 1.76, Public Resources Code, Section 5097.993-5097.994
Approved by Governor Davis on September 30, 2002. A summary of the bill's provisions and applicability is as follows:

- Any person who illegally excavates, destroys, injures, or defaces a Native American historic, cultural, or sacred site, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any archaeological or historic Native American rock art, or any archaeological or historic feature of a Native American historic, cultural, or sacred site is guilty of a misdemeanor.

- The archaeological or historic site should be listed, or may be eligible for listing, in the California Register of Historic Resources pursuant to Section 5024.1.

- Pertains to public and private land.

- Punishable by imprisonment in a county jail up to one year, by a fine not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

- Each person who commits this violation is also subject to a civil penalty not to exceed fifty thousand dollars ($50,000) per violation.

- In determining the civil penalty amount, the court takes into account the extent of the damage to the resource and may consider the commercial or archaeological value of the resource involved and the cost to restore and repair the resource.

- Civil action may be brought by the district attorney, the city attorney, or the Attorney General, or by the Attorney General upon a complaint by the Native American Heritage Commission.

- All monies collected from civil penalties as a result of an enforcement action brought by a city or county, or by the Attorney General for the Native American Heritage Commission, are first utilized to repair or restore the damaged site, and the remaining monies shall be available to that city or county or Attorney General to offset incurred costs.

Title 14 California Administration Code, Section 630(a)(1), General Regulations for Ecological Reserves
No person shall mine or disturb geological formations or archaeological artifacts, or take or disturb any bird, or nests or eggs thereof, or any plant, mammal, fish, mollusk, crustacean, amphibian, reptile, or any other form of plant or animal life except at provided in subsections 630.0 (a)(2) and (a)(8). CDFG may implement enhancement and protective measures to assure proper utilization and maintenance of ecological reserves.

5.7 INTRODUCED SPECIES IN THE MARINE ENVIRONMENT

Federal Regulations

Nonindigenous Aquatic Nuisance Prevention and Control Act, 16 U.S.C. 4701 *et seq.*
The Nonindigenous Aquatic Nuisance Prevention and Control Act, directs the Secretary of the department that houses the USCG (currently the Department of Homeland Security) to issue regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through ballast water. These regulations are to be issued in consultation with the Aquatic Nuisance Task Force, composed, inter alia, of the Under Secretary of Commerce for Oceans and Atmosphere, the Director of the USFWS, the Administrator of the U.S. EPA, the Commandant of the USCG, and the Assistant Secretary of Army (Civil Works). Civil and criminal penalties are available for regulatory violations.

The act also requires the task force to implement a prevention, monitoring and control program for aquatic nuisance species in U.S. waters. States can develop comprehensive aquatic nuisance species management plans, which can be implemented with federal grants and financial assistance if the plans are approved by the task force or the Assistant Secretary of the Army (Civil Works).

The act further requires the Departments of Defense and Transportation (now applies to the Department of Homeland Security with regard to USCG vessels) to implement ballast water management programs for seagoing DoD and USCG vessels to minimize risk of introduction of non-indigenous species from releases of ballast water. The act also requires the Departments of the Interior and Commerce to conduct a ballast water management demonstration program to demonstrate preventive technologies and practices.

Carriage of Animals, 46 U.S.C. 3901–3902, provides authority for the Secretary of Agriculture to prescribe regulations governing the accommodations for the export of animals, and provides for penalties for violations of such regulations.

Lacey Act Amendments of 1981, 16 U.S.C. 3371-3378, (see also description above under section 5.1.5) prohibits domestic and international trafficking in and possession of protected fish, wildlife, and plants.

36 CFR Part 2, Resource Protection, Public Use and Recreation for the Channel Islands National Park
National Park Service Regulations in effect at Channel Islands National Park (boundaries of which include San Miguel and Prince Islands, Santa Rosa, Santa Cruz, Anacapa and Santa Barbara Islands, including the rocks, islets, submerged lands, and waters within one nautical mile of each island, 16 U.S.C. 410(ff)) prohibit introducing wildlife, fish or plants, including their reproductive bodies, into a park area ecosystem (36 CFR. Part 2 2.1(a)(2)).

State Law

Title 14 CCR 671.1 Importation, Transportation and Possession of Live Restricted Animals.

Provides for the California Department of Fish and Game to issue permits, with conditions, to import, export, transport, maintain, dispose of, or use for any purpose any animal otherwise restricted by regulation, including transgenic aquatic animals.

California Fish and Game Code 15007 prohibits spawning, incubating or cultivating transgenic and exotic species (as defined in the section) in California marine waters (0 to 3 NM offshore).

5.8 OPERATION OF MOTORIZED PERSONAL WATERCRAFT

Federal Law

36 CFR 3.24, Regulation of Personal Watercraft
National Park Service regulations prohibit personal watercraft use in units of the National Park system, including the waters of the Channel Islands National Park.

5.9 OTHER FEDERAL AND STATE LAWS

There are other existing applicable federal and state laws that do not fall within the nine regulatory categories listed above. They are listed below under the following five sub-categories:

- Sustainability or Sustainable Development of Biological Resources
- Marine Environmental Quality
- Tourism and Recreation
- U.S. Marine Transportation
- Lightering
- Cross-cutting Federal Law

5.9.1 Sustainability or Sustainable Development of Biological Resources

Federal Law

Anadromous Fish Conservation Act, 16 U.S.C. 757a–757g
The Anadromous Fish Conservation Act provides authority to enter into cooperative agreements to conserve, develop, and enhance anadromous fish resources, including conducting research and investigations, stream clearances, and constructing and maintaining devices to assist with feeding, spawning, and migration. The act authorizes the Secretary of the Interior to enter into cooperative agreements with one or more states for the purpose of conserving, developing, and enhancing anadromous fish resources and the fish in the Great Lakes and Lake Champlain that ascend streams to spawn.

Control or Elimination of Jellyfish or Sea Nettles, 16 U.S.C. 1201–1205
The Secretary of Commerce is authorized to cooperate with, and provide assistance to, the states in controlling and eliminating jellyfish and other such pests and in conducting research for the purposes of controlling floating seaweed. Congress also consents to any compact or agreement between any two or more states for the purpose of carrying out a program of research, study, investigation, and control of jellyfish and other such pests in the coastal waters of the United States.

Driftnet Impact Monitoring, Assessment and Control Act, 16 U.S.C. 1822 note
The Secretary of Commerce, through the Secretary of State is required to seek to secure international agreements to implement an international ban on large-scale driftnet fishing. The Secretary of Commerce,

after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating (currently the Department of Homeland Security), must submit a periodic report to Congress describing the steps taken to carry out the act. If the Secretary of Commerce determines that such driftnet fishing "diminishes the effectiveness" of an international fishery conservation program, or if the Secretary of Commerce or the Interior determines that such driftnet fishing results in taking which "diminishes the effectiveness" of any international program for endangered or threatened species, the secretary making such finding shall certify such fact to the President pursuant to the Pelly Amendment, 22 U.S.C 1978.

Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972–972h
The Eastern Pacific Tuna Licensing Act of 1984 implements the Eastern Pacific Ocean Tuna Fishing Agreement, signed in San Jose, Costa Rica, on March 15, 1983. The Secretary of State is authorized to act on behalf of the United States and appoint a United States representative to the representative body. The Secretary of Commerce, in cooperation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, promulgates necessary regulations. The act provides for enforcement of the act and its implementing regulations.

Fish and Wildlife Act of 1956 and associated provisions, 16 U.S.C. 742a–742d, 742e–742j, 742k, 744–748, 750–753, 753a–753b, 754, 758–758d, 760a–760g.
The Fish and Wildlife Act of 1956, among other things, authorizes NOAA's National Marine Fisheries Service (NMFS) to conduct investigations and prepare and disseminate information and reports regarding fish and their habitats in order to provide for the proposed development of fish resources.

Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c
The Fish and Wildlife Coordination Act requires that wildlife conservation receive equal consideration with other features of water-resource development. The act requires that federal permitting and licensing agencies consult with NMFS and the USFWS before issuing a permit or license for activities that modify any body of water. NMFS provides comments and recommendations to prevent loss of, and damage to, fish populations and their habitats.

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801–1883
Under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), the United States claimed sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the EEZ. The MSFCMA establishes a procedure for authorizing foreign fishing and prohibits unauthorized foreign fishing within the EEZ.

The MSFCMA establishes national standards for fishery conservation and management within the EEZ. The FCMA established eight Regional Fishery Management Councils each composed of the principal state official with fishery management responsibility, the relevant regional administrator of NMFS, and individuals appointed by the Secretary of Commerce who are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. The Councils are responsible for preparing and amending fishery management plans for each fishery under their authority that requires conservation and management.

Fishery management plans describe the fisheries and contain necessary and appropriate conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States. The plans are submitted to the Secretary of Commerce for approval. If approved, the Secretary of Commerce promulgates implementing regulations. The Secretary of Commerce may prepare Secretarial fishery management plans if the appropriate council fails to develop such a plan. The MSFCMA also provides for enforcement of the act.

The National Aquaculture Act of 1980, 16 U.S.C. 2801–2810
The purpose of the National Aquaculture Act of 1980 is to promote aquaculture in the United States. The Secretaries of Agriculture, Commerce, and the Interior are required to establish and periodically amend a National Aquaculture Development Plan. The secretaries are required to submit a biennial report to Congress that contains a description and evaluation of the actions undertaken with respect to the plan. The secretaries are to provide information and assistance on aquaculture activities.

The National Fishing Enhancement Act of 1984 (Artificial Reefs), 16 U.S.C. 1220, 33 U.S.C. 2101 *et seq.*
The National Fishing Enhancement Act was enacted to promote and facilitate the establishment of artificial reefs. The Secretary of Commerce, in consultation with Secretaries of the Interior and Defense, the Secretary of the Department in which the Coast Guard is operating, the Administrator of the Environmental Protection Agency, Regional Fishery Management Councils, States, Interstate Fishery Commissions and individuals, shall develop and publish a long-term plan which must include geographic, hydrographic, biological, ecological, social, economic, design, material, and other criteria for artificial reef construction; mechanism for monitoring compliance with permit requirements and managing use of the reefs; synopsis of existing information on artificial reefs and needs for further research; and an evaluation of alternatives for facilitating transfer of artificial reef construction materials to person holding permits.

The Secretary of the Army will issue permits for construction of artificial reefs and will notify the Secretary of Commerce of any need to deviate from the Commerce long-term plan.

5.9.2 Marine Environmental Quality

Federal Law

Clean Air Act (CAA), 42 U.S.C. 7401 *et seq.*
The CAA is divided into six principal subchapters. Subchapter I addresses air pollution from stationary sources and requirements for states to develop plans to meet health-based standards. (Also, subchapters IV-A, V, and VI deal with specific stationary source programs.) Part A of subchapter I contains the basic provisions to control air pollution from stationary sources. Based on statutory criteria, the U.S. EPA is required to list criteria pollutants and, for each such pollutant, establish primary and secondary National Ambient Air Quality Standards (NAAQSs). Each state (or U.S. EPA, if the state declines) must submit to U.S. EPA a state implementation plan with individual emission limitations and procedures to ensure timely attainment of the NAAQSs for each air quality region within the state.

Part A also includes, among other things, key specialized stationary source programs. For example, U.S. EPA must adopt emission standards for categories of hazardous air pollutants (HAPs) in accordance with a specified schedule. (HAPs are listed in the statute.) Section 112(m) of the CAA directs U.S. EPA, in cooperation with the NOAA, to assess the extent of atmospheric deposition of HAPs (and, in the discretion of U.S. EPA, other air pollutants) to the Great Lakes, Chesapeake Bay, Lake Champlain and coastal waters (defined, for purposes of the subsection, as estuaries under the National Estuary Program and National Estuarine Research Reserves). The assessment program is to, among other things, establish a monitoring network, investigate sources and deposition rates, evaluate any adverse effects to public health or the environment, and assess the contribution of such deposition to violations of water quality standards established pursuant to the Clean Water Act. U.S. EPA is to submit biennial reports to Congress on the matter and issue a determination as to whether the other provisions of Section 112 are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects associated with HAP deposition. If U.S. EPA determines that the authorities of Section 112 are not adequate, the agency

is directed to promulgate such further emission standards or control measures under Section 112 as may be necessary and appropriate.

Part B of Subchapter I is repealed; Part C addresses the "prevention of significant deterioration" program, designed to limit the deterioration of air quality in regions with air cleaner than the minimum federal air quality standards. Part D addresses plan requirements for non-attainment areas.

Subchapter II addresses emission standards for moving sources. Subchapter III addresses administration and enforcement. Amendments to Subchapter III made in 1990 require U.S. EPA, following consultation with the Department of the Interior and the U.S. Coast Guard, to establish regulatory requirements to control air pollution from OCS sources (except in the Gulf of Mexico, over which the Department of the Interior has jurisdiction). Subchapter IV-A addresses acid deposition. This subchapter was added in 1990 to reduce emissions of pollutants, primarily sulfur dioxide and nitrogen dioxide, leading to the formation of acid precipitation. Subchapter V addresses permits, requiring each state to submit to U.S. EPA for approval a permit program covering basically every pollution source subject to the CAA. If a state fails to submit and implement an approved program, U.S. EPA is to step in. Subchapter VI addresses stratospheric ozone depletion. The CAA also establishes a great waters program, which looks specifically at the impacts of air deposition of nutrients and toxics in coastal waters.

Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*
The CZMA strives to preserve and protect coastal zone resources. Also, through the CZMA, states are encouraged to develop coastal zone management programs (CZMPs) that allow economic growth compatible with the protection of natural resources, the reduction of coastal hazards, the improvement of water quality, and sensible coastal development. The CZMA provides financial and technical incentives for coastal states to manage their coastal zones consistent with CZMA standards and goals.

State coastal zones include the coastal waters and adjacent shorelands that extend inland to the extent necessary to control shorelands, the use of which have a direct and significant impact on coastal waters and to control those geographical areas likely to be affected by or vulnerable to sea level rise. For federal approval, a CZMP must: (1) identify the coastal zone boundaries; (2) define the permissible land and water uses within the coastal zone that have a direct and significant impact and identify the state's legal authority to regulate these uses; (3) inventory and designate areas of particular concern; (4) provide a planning process for energy facilities; (5) establish a planning process to control and decrease shoreline erosion; and (6) facilitate effective coordination and consultation between regional, state, and local agencies. NOAA grants the requisite federal approvals for CZMPs and oversees subsequent implementation of the programs.

A state with a federally approved CZMP is eligible for financial assistance and gains a legal mechanism to control federal permits and activities that affect the state's coastal zone. Federal agency activities that affect any land or water use or natural resource of the coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the state CZMP. Federally licensed or permitted activities that affect any land or water use or natural resource of the coastal zone must be consistent with the enforceable policies of the CZMP. The Secretary, however, can override a state's determination of inconsistency if the Secretary finds that the federally licensed or permitted activity is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security.

The CZMA establishes the National Estuarine Research Reserve System (NERR). States may seek Federal approval and designation of certain areas as NERRs if the areas qualify as biogeographic and typological representations of estuarine ecosystems and are suitable for long-term research and

conservation. Once an area is designated as a NERR, federal financial assistance is available for acquisition of property and management, research, and education related to the NERR.

See also Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

National Coastal Monitoring Act, 33 U.S.C. 2801 *et seq.*
The National Coastal Monitoring Act, also known as title V of the Marine Protection, Research, and Sanctuaries Act of 1972, provides joint authority for the U.S. EPA and NOAA to establish a comprehensive national program for consistent monitoring of the nation's coastal ecosystems. The act provides that the program is to include, but is not limited to: identification and analysis of the status of environmental quality in the nation's coastal ecosystems (including, but not limited to, assessment of ambient water quality, benthic environmental quality, and health and quality of living resources); identification of sources of environmental degradation affecting the nation's coastal ecosystems; assessment of the impact of governmental programs and management strategies and measures designed to abate or prevent the environmental degradation of the nation's coastal ecosystems; assessment of the accumulation of floatables along coastal shorelines; analysis of short-term and long-term trends in the environmental quality of the nation's coastal ecosystems; and the development and implementation of intensive coastal water quality monitoring programs (after designation of intensive coastal monitoring areas).

National Contaminated Sediment Assessment and Management Act, 33 U.S.C. 1271
Section 1271 of the National Contaminated Sediment Assessment and Management Act requires the U.S. EPA, in consultation with NOAA and the Department of the Army, to conduct a comprehensive national survey of data regarding sediment quality and a continuing program to assess such quality.

National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*
NEPA requires, among other things, that for every major federal action significantly affecting the quality of the human environment, the agency prepare a detailed statement regarding:

> (i) the environmental impact of the proposed action; (ii) any adverse environmental effects that cannot be avoided should the proposal be implemented; (iii) alternatives to the proposed action; (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (v) any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented.

This document is called an EIS. It is, in essence, a detailed discussion of the environmental consequences of a given proposed agency action, and it must be made available to the agency decision-maker on the matter, the public, and other agencies.

Under the regulations implementing NEPA, a document called an environmental assessment is used to determine whether a federal action rises to the level of a "major federal action significantly affecting the quality of the human environment," thus triggering the requirement to prepare an EIS. Based on the environmental assessment, if an action does not rise to that level, a Finding of No Significant Impact is made.

Title IV of the Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1447a to 1447f
The purpose of Title IV of the Marine Protection, Research, and Sanctuaries Act of 1972, is to establish regional research programs, under effective federal oversight, to: (1) set priorities for regional marine and coastal research in support of efforts to safeguard the water quality and ecosystem health of each region;

and (2) carry out such research through grants and improved coordination. The regions are: the Gulf of Maine, greater New York bight, mid-Atlantic, South Atlantic, Gulf of Mexico, California, North Pacific, Alaska, and insular Pacific.

Specifically, a regional marine research board is to be established for each region, consisting of eleven members -- three appointed by NOAA, two by the U.S. EPA, and six by governors of states located within the region. Each board is to develop and submit to NOAA and U.S. EPA for approval a comprehensive marine research plan for the region, to be updated at least every four years. Each board is also to: (1) provide a forum for coordinating research among research institutions and agencies, (2) provide for review and comment on its research plan by affected users and interests, (3) ensure that the highest quality of research projects will be conducted to carry out the plan, and (4) prepare, for transmittal to Congress by NOAA and U.S. EPA, a periodic report on the marine environmental research issues and activities within the region.

Each marine research plan is to include: (1) an overview of the environmental quality conditions in the coastal and marine waters of the region and expected trends in these conditions; (2) a comprehensive inventory and description of all marine research related to water quality and ecosystem health expected to be conducted during the four-year term of the plan; (3) a statement and explanation of the marine research needs and priorities applicable to the marine and coastal waters of the region over the upcoming ten-year period with emphasis on the upcoming three-to-five-year period; (4) an assessment of how the plan will incorporate existing marine, coastal, and estuarine research and management in the region; and (5) a general description of marine research and monitoring objectives and timetables for achievement through the funding of projects under this title so as to meet the priorities specified in the plan in accordance with item (3) above.

Each board may annually submit a grant application to NOAA to fund projects aimed at achieving the research priorities set forth in the relevant research plan. The title provides that the boards shall cease to exist on October 1, 1999, unless extended by Congress. Authorization of appropriations for the title expired at the end of fiscal year 1996.

Water Resources Development acts, 33 U.S.C. 2280 *et seq.*, *inter alia*
Among other things related to the USACE, the implementing regulations for the Water Resources Development acts require mitigation for damages to fish and wildlife resources resulting from water resource projects.

State Law

California Coastal Zone Management Program, as amended January 1988 (California Public Resources Code, Division 20—California Coastal Act), and the establishment therein of the California Coastal Zone, have been approved by NOAA. This gives the California Coastal Commission consistency authority over coastal projects undertaken by federal agencies.

The California Coastal Commission implements the policies of the California Coastal Act. According to Section 30236, any substantial alteration of rivers or streams shall incorporate the best mitigation measures feasible, and be limited to one of three things: flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development. This act also requires protecting environmentally sensitive habitat against any significant disruption of habitat values; only uses dependent on those resources are allowed within those areas (Section 30240a).

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) deals with chemicals and substances determined by California to cause cancer or reproductive toxicity. The regulations and a list of chemicals/substances involved are published in Division 2 of Title 22 beginning with Section 12000 of the CCR. It is also published in Title 26, which contains the regulations on toxic substances.

5.9.3 Tourism and Recreation

Federal Law

National Park Service Organic Act, 16 U.S.C. 1, *et seq.*
This act creates the National Park Service (NPS) in the Department of the Interior. The NPS is charged with promoting and regulating the use of federal areas known as national parks, monuments, and reservations. Such areas are established by Congress through specific legislation.

5.9.4 United States Marine Transportation

Federal Law

Coast and Geodetic Survey Act, 33 U.S.C. 883a–k
The Secretary of Commerce is authorized to conduct hydrographic and topographic surveys, tide and current observations, geodetic-control surveys, field surveys for aeronautical charts, and geomagnetic, seismological, gravity, and related geophysical measurements to provide nautical and aeronautical charts and other information for safe marine and air navigation. Also, these charts and information have commercial and industrial uses and fulfill engineering and scientific purposes. This information is collected, assimilated, and distributed by the NOAA under its authority in the act.

International Regulations for Preventing Collisions at Sea, (72 COLREGS), 33 U.S.C. 1051- 1053, 1061-1094
The International Regulations for Preventing Collisions at Sea provides binding comprehensive regulations for the prevention of collisions on the water. The 72 COLREGS apply beyond established demarcation lines. In the United States, the 72 COLREGS govern ship navigation on non-internal waters. The scope of the 72 COLREGS include Steering and Sailing Rules, e.g., conduct of vessels in sight of one another, conduct of vessels in restricted visibility; Lights and Shapes, and Sound and Light Signals. The statute also contains special provisions for ships of war, vessels proceeding under convoy, and fishing vessels engaged in fishing as a fleet. Civil penalties may be assessed for violations of the 72 COLREGS.

46 U.S.C.
Title 46 of the United States Code is integral to maritime transportation as it comprehensively addresses shipping. Title 46 is broken down into three general subtitles:

(I) General; (II) Vessels and Seamen; and (III) Maritime Liability. Subtitle II contains laws governing vessels, cargo and passengers including, for example, laws pertaining to design and construction of vessels, vessel manning and pilotage, and carriage of cargo or passengers.

Part B (Chapters 31 through 47) provides authority and responsibility for the inspection and regulation of vessels by the USCG. Part B specifies vessels subject to inspection and inspection procedures, as well as vessels exempt from inspection.

3201-3205: Management of Vessels; requires the Secretary to prescribe regulations which establish a safety management system addressing, for example, safety and environmental protection, and procedures for safe operation of vessels in compliance with U.S. and international law, for responsible vessels and persons subject to the chapter. The Secretary is to issue Safety Management Certificates and a Document of Compliance to requesters complying with safety management plans.

4301-4311: Recreational Vessels; contains the laws applicable to recreational vessels. The Secretary is authorized to issue regulations establishing, for example, minimum safety and equipment standards (Section 4302; regulations are found in 19 CFR, 33 CFR, 46 CFR). The chapter expressly preempts state law establishment of a recreational vessel or associated equipment performance or other safety standard that is not identical to regulations under Section 4302 (Section 4306).

Interstate Commerce Act, 49 U.S.C. 10101 *et seq., inter alia*
The Interstate Commerce Act provides for the regulation of rates and services of competing interstate carriers. Part B (chapters 131–149) addresses water carriers, defined as a person providing water transportation for compensation (Section 13102(22)). The transportation policy of part B is to "ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States." In overseeing the modes of transportation, the United States will, among other things, recognize and preserve the inherent advantage of each mode of transportation; promote safe, adequate, economical, and efficient transportation; encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices; and in overseeing transportation by water carrier, to encourage and promote service and price competition in the noncontiguous domestic trade (Section 13101). The Secretary and the Surface Transportation Board (formerly the Interstate Commerce Commission) have jurisdiction over transportation by water carrier Section 13521).

Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102–240, *inter alia*
The purpose of the act is to develop a national surface transportation system that is economically efficient and environmentally sound, provides the foundation for a global economy, and that will move people and goods in an energy efficient manner. The act provides that the system will consist of all forms of transportation in a unified, interconnected manner, including transportation systems of the future, to reduce energy and air pollution while promoting economic development and supporting the national preeminent position in interstate commerce.

Merchant Marine Acts
Merchant Marine Act of 1920, 46 U.S.C. 861, *inter alia*
Merchant Marine Act of 1928, 46 U.S.C. 866, *inter alia*
Merchant Marine Act of 1936, 46 U.S.C. 1101, *inter alia*
The Merchant Marine Acts sought to promote the continued development of the American Merchant Marine. The purpose as stated in the Act of 1920 is that it is necessary for the national defense and proper growth of foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned by U.S. citizens (Section 861). The Act of 1928 provided the Secretary of Transportation authority to remodel and improve the fleet. The Act of 1936 sought to foster continued development and maintenance of the merchant marine. The Act also prevents unjust discrimination by carriers.

Shipping Acts
Shipping Act of 1916, 46 U.S.C. 801 *et seq.*
Shipping Act of 1984, 46 App. U.S.C. 1701–1720, *inter alia*

The Shipping Acts are intended to establish a non-discriminatory regulatory process for the common carriage of goods by water in the commerce of the United States. The Shipping Acts were modeled on the Interstate Commerce Act. The Act of 1916 governs transportation by water of passengers and property on the high seas or Great Lakes between states, territories, districts or possessions. Carriers are required to establish and file "joint and reasonable rates" with the Federal Maritime Commission. The Act of 1984 governs foreign commerce (repealing provisions of the Act of 1916 re: foreign commerce), and has as its purposes: to establish a non–discriminatory regulatory process for the common carriage of goods by water in foreign commerce of the United States; to provide efficient and economic transportation system in the ocean commerce of the United States, that is responsive and in harmony to international shipping practices; and to encourage development of an economically sound and efficient United States flag liner fleet capable of meeting national security needs. The act allows ocean carriers the right to establish intermodal or through rates in agreements that must be filed with the Federal Maritime Commission.

Admiralty Extension Act (AEA), 46 U.S.C. 740
The AEA expressly defines the scope of admiralty and maritime jurisdiction of the United States. Such jurisdiction included all cases of damage or injury to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land. Suits under the AEA may be brought *in rem* or *in personam*. However, the AEA provides that any suit brought against the U.S. under the Public Vessels Act (see below) or Suits in Admiralty Act (see below) shall constitute the exclusive remedy, for all suits not otherwise filed under the Federal Torts Claim Act. The AEA was enacted to eliminate the confusion over the lines between land and water, e.g., those cases where persons or property on land was damaged by ships.

Public Vessels Act, (PVA), 46 U.S.C. 781–790
The PVA provides authority for bringing an admiralty cause of action against the United States for damages caused by U.S. public vessels. Thus, the PVA waives sovereign immunity by the United States in cases involving public vessels. Public vessel is not defined in the PVA, but case law provides direction. The PVA contains provisions for the venue of suits brought thereunder, counterclaims, suits by nationals of foreign governments, and exemptions and limitations of liability. The PVA also expressly provides it shall not be construed to recognize the existence of or as creating a lien against any United States public vessel.

Suits in Admiralty Act, as amended (SAA), 46 U.S.C. 741–752
The SAA provides the authority to bring admiralty suits against the United States. Such suits may be brought *in personam*, and no United States vessel or cargo may be seized under the SAA. If a suit is brought under the SAA, it is the exclusive remedy available to a claimant. The SAA provides a statute of limitations (2 years) after the cause of action arises. The United States is entitled to all exemptions and all limitations of liability accorded by law to owners, charterers, operators or agents of vessels. The SAA also provides procedures in the event a vessel within the scope of the SAA is seized by foreign jurisdictions. The SAA authorizes arbitration, compromise, or settlement of claims. The SAA also provides that a crew of a United State vessel may recover compensation for salvage services. Finally, any money recovered by a suit brought by the United States shall be deposited in the U.S. Treasury to the credit of the department having control of the vessel or cargo with respect to such cause of action.

5.9.5 Lightering

Federal Law

33 CFR Part 156_Oil and Hazardous Material Transfer Operations These regulations provide comprehensive requirements for all oil transfer operations. The regulations provide requirements that

address such matters as: the designated person in charge of transfer operations, advance notice to the Coast Guard about planned transfer operations, certain conditions and equipment requirements that must be met before the transfer operations may begin, communications between all parties involved in the transfer, discharge containment and reporting procedures, transfer monitoring equipment, procedures for discharge cleanup, procedures regarding the declaration of inspection that must be completed prior to transfer operations, required and prohibited conduct by personnel during the transfer operation, and equipment tests and inspections. The regulations also provide certain requirements that apply specifically to lightering operations, such as: 24 hour advance "pre-arrival" notices of plans to conduct lightering and detailed and comprehensive information about the vessels involved and the planned lightering operation; 72 hour advance notice of the need for Tank Vessel Examinations (where appropriate); immediate reporting if fire, explosion, collision, grounding or any similar emergency, which poses a threat to the vessels involved, occurs during lightering; and reporting on any discharge that occurs during lightering operations. The regulations also provide the requirements and procedures for designating lightering zones and explain that in geographic areas in which lightering zones have been designated, no lightering may occur outside of the designated zones. To date four lightering zones have been designated in the U.S. and all four are located within the Gulf of Mexico.

State Law

Title 14, California Code of Regulations 840 – 845.2 California regulations provide comprehensive requirements for all oil transfer operations within or that may have an effect on marine waters of the State. The regulations stipulate that no vessel may transfer cargo oil upon marine waters of the State where the cargo oil is to be lightered, unless the vessel meets all of the general oil transfer requirements, both the transfer and receiving vessel have on board certain certificates/letters and an International Oil Pollution Prevention certificate (or equivalent) at the time of transfer. The general regulations provide requirements at every phase of lightering operations: pre-transfer, during transfer, and following transfer operations. The regulations require that: certain conditions be met in order for transfer operations to occur, communications be maintained between parties involved in the transfer, certain containment and response equipment and spill cleanup equipment, reports, and designation of and qualifications for parties in charge of transfer operations.

5.9.6 Cross-cutting Federal Law

Federal Law

National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.*, also known as title III of the Marine Protection, Research, and Sanctuaries Act of 1972. The NMSA provides the Secretary of Commerce with the authority to designate and manage marine areas of special national significance as National Marine Sanctuaries. The NMSA lists conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and esthetic as qualities that might give an area special national significance.
The NMSA's purposes and policies include comprehensive and coordinated conservation and management; maintaining natural biological communities and, where appropriate, restoring and enhancing natural habitats, populations, and ecological processes; enhancing public awareness, understanding and appreciation of the marine environment; and facilitating, to the extent compatible with the primary objective of resource protection, all public and private uses of resources not prohibited pursuant to other authorities.

Among the factors the Secretary must consider in determining whether an area merits designation as a National Marine Sanctuary are present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, other commercial and recreational

activities, and research and education and the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism.