

## **NATIONAL PARK SERVICE DIRECTORS ORDERS**

### **D.O 77-1 – Wetland Protection**

DO 77-1 establishes National Park Service (NPS) policies, requirements, and standards for implementing Executive Order (E.O.) 11990: "Protection of Wetlands" (42 Fed. Reg. 26961).

Procedural Manual 77-1 can be found at:

[http://www.nature.nps.gov/water/wetlands/Wetlands\\_Protection\\_Manuals.cfm](http://www.nature.nps.gov/water/wetlands/Wetlands_Protection_Manuals.cfm) . This Manual contains detailed procedures that the NPS uses to implement the requirements of DO 77-1 and EO 11990.

### **D.O 77-2 – Floodplain Management**

DO 77-2 implements the requirements set forth in EO 11988., which was promulgated to mitigate and avoid the impacts that occur as a result of the “occupancy and modification of floodplains”. The Order is meant to 1) Reduce the risk of flood loss; 2) Minimize the impact of floods on human safety, health and welfare; and 3) Restore and preserve the natural and beneficial values served by floodplains.

Procedural Manual 77-2 can be found at: <http://www.nature.nps.gov/rm77/floodplain.cfm>.

### **Reference Manual - 83D1 – Bathing Beaches**

Manual 83D1 can be found at: [http://www.nps.gov/public\\_health/inter/info/rms/rm83d1.pdf](http://www.nps.gov/public_health/inter/info/rms/rm83d1.pdf). This manual details the procedures that parks should take to avoid the spread of waterborne diseases in beaches that are designated for bathing. This manual assists parks in complying with the requirements of the Beaches Environmental Assessment and Coastal Health Act of 2000. (Public Law 186-284)

## **EXECUTIVE ORDERS**

### **Executive Order 11988 - Floodplain Management**

Executive Order 11988 requires Federal agencies to avoid, to the extent possible, the long and short term adverse impacts associated with the occupancy and modification of floodplains.

### **Executive Order 11990 - Protection of Wetlands, 42 Fed. Reg. 26961 (May 24, 1977)**

Executive Order 11990 requires Federal agencies to minimize the destruction or degradation of wetlands, and to avoid undertaking new construction located in wetlands unless they find there is no practicable alternative to such construction.

### **Executive Order 13089 – Coral Reef Protection (63 Fed. Reg. 32701, June 16, 1998)**

Among other things, this Executive Order calls for research aimed at identifying the major causes and consequences of degradation of coral reef ecosystems, for reduction of impacts to coral reefs, and for coral reef restoration.

### **Executive Order 13158 – Marine Protected Areas (65 Fed. Reg. 34909, May 31, 2000)**

Defines MPA's as any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein. The Executive Order requires:

- The Secretaries of Commerce and the Interior to publish and maintain a list of MPA's.
- Every federal agency to identify its actions that affect the natural or cultural resources that are protected by an MPA, and, to the extent permitted by law and the maximum extent practicable, avoid harming these resources.
- Federal agencies must also annually publish a report describing its efforts to implement the E.O.
- A website containing the annual reports and information about MPA's must also be established and maintained by the Secretaries of Commerce and the Interior.

**Executive Order 13366 - Ocean Policy** (Dec. 17, 2004)

Establishes the Committee on Ocean Policy to coordinate the activities of executive departments and agencies regarding ocean and coastal-related matters.

**Executive Order – 5/12/2009 - Chesapeake Bay Protection and Restoration**

President Obama issued an Executive Order on May 12, 2009 to “protect and restore the health, heritage, natural resources, and social and economic value of the Nation's largest estuarine ecosystem and the natural sustainability of its watershed”. The Order establishes a Federal Leadership Committee (Committee) for the Chesapeake Bay.

The Committee is lead by the EPA, and includes representatives from the USDA, DOC, DOD, DHS, DOI, DOT, and such other agencies as determined by the Committee. The Committee is mandated to identify problem areas and issues and compile annual reports on the status of the Chesapeake Bay cleanup. In doing so, the EPA will use its authority under the CWA and coordination with other federal agencies to restore the water quality of the Bay. Furthermore the EPA is directed to expand public access to the Bay, Conserve the Landscape, and protect the Bay from the effects of climate change.

**SECRETARIAL ORDERS**

**Secretarial Order 3285 – Renewable Energy Development by the Department of the Interior** (March 11, 2009)

The order also establishes a task force that will identify specific zones on public lands and on the OCS where the Interior Department can facilitate the development of solar, wind, geothermal, and biomass energy, as well as small hydropower or incremental hydropower additions to existing structures.

**Secretarial Order 3226 - Climate Change and the Department of the Interior** (January 16, 2009)

This Order provides guidance to bureaus and offices within the Department of the Interior (DOI) on how to provide leadership by developing timely responses to emerging climate change issues. The main goals of this order are to:

- implement renewable energy generation projects on lands managed or occupied by the bureau or office;
- Provide incentives for activities to encourage the sequestration of greenhouse gas emissions, including carbon dioxide.
- Partner, consistent with existing policies, authorities, and programs, with State, local, and private bodies and individuals in support of projects and activities that contribute to the conservation of species, natural communities, and lands and waters placed at risk by changing climate conditions.
- Consider and analyze potential climate change impacts when undertaking long-range planning exercises, setting priorities for scientific research and investigations, and/or when making major decisions affecting DOI resources.

**Secretarial Order 3284 - Delegation of Management Responsibility for the Pacific Remote Islands Marine National Monument, Rose Atoll Marine National Monument and the Marianas Trench Marine National Monument** (January 16, 2009)

This Order delegates the responsibilities given to the Secretary of the Interior over the emergent and submerged lands and waters of the Monuments to the Director of the Fish & Wildlife Service.

The Director of the Service is mandated to provide for the “proper care and management of the monument, including all objects of scientific and historic interest therein; the conservation of fish and wildlife; and the development of programs to assess and promote national and international monument-related scientific exploration and research.”

**FEDERAL STATUTES**

**Abandoned Shipwreck Act of 1987 - 43 U.S.C. 2101-2106**

The ASA declares the US policy that States carry out their responsibilities to develop appropriate and consistent policies to:

- protect natural resources and habitat areas;
- guarantee recreational exploration of shipwreck sites; and
- allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title I of the National Historic Preservation Act [16 U.S.C. 470 et seq.], for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

The United States asserts title to any abandoned shipwreck that is:

- embedded in submerged lands of a State;

- embedded in coralline formations protected by a State on submerged lands of a State; or
- on submerged lands of a State and is included in or determined eligible for inclusion in the National Register

**Antiquities Act** – 16 U.S.C. § 431

The Antiquities Act allows the President to declare historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest situated on lands owned or controlled by the US as National Monuments. An example of the Antiquities Act in the Coastal arena occurred in June of 2006 when President George W. Bush established the Papahānaumokuākea Marine National Monument.

**Beaches Environmental Assessment & Coastal Health Act (BEACH)** (EPA) – Public Law 186-284

This statute is an amendment to the Federal Water Pollution Control Act (FWPCA), aka The Clean Water Act. The main focus of the BEACH Act is to set up an implement monitoring and notification programs for coastal states. Under the BEACH Act:

- Each State having coastal recreation waters must adopt and submit to the Administrator of the EPA, water quality criteria and standards for the coastal recreation waters of the State for those pathogens and pathogen indicators for which the Administrator of the EPA has published criteria under section 304(a) of the FWPCA.
- The Administrator of the EPA may award a grant to a State or a local government to implement a monitoring and notification program.
- Within 3 years after the date of the enactment of this section, each Federal agency that has jurisdiction over coastal recreation waters adjacent to beaches or similar points of access that are used by the public shall develop and implement, through a process that provides for public notice and an opportunity for comment, a monitoring and notification program for the coastal recreation waters
- In the case of a State that has no program for monitoring and notification that is consistent with the performance criteria, the Administrator of the EPA shall conduct a monitoring and notification program for the listed waters based on a priority ranking established by the Administrator.

**Clean Air Act (CAA)** – 42 U.S.C. § 7401 et. seq.

The main goal of the CAA is to set emission standards for stationary and mobile sources of air pollution to ensure compliance with ambient air quality standards. The CAA is vast and complex and should be read thoroughly for compliance purposes. The following non-inclusive list details the main provisions of the CAA:

- The CAA sets six “criteria pollutants”, being sulfur dioxide, particulate matter smaller than 10 microns; nitrogen oxides; carbon monoxide; ozone; and lead.
- The CAA sets National Ambient Air Quality Standards (NAAQS) that determine ceilings for criteria pollutants that cannot be exceeded within the US.

- The states are required to set up operating permit programs under the supervision of the EPA for all sources of air pollution.
- State Implementation Plans (SIPs) are created in order to meet NAAQS. The SIPs include emission standards, permit, monitoring and siting requirements.
- If a state's ambient air quality exceeds the NAAQS then Prevention of Significant Deterioration (PSD) permits are required by the SIPs.
- All sources of air pollution created or modified after 1970 must meet New Source Performance Standards (NSPS).

**Coastal Barrier Improvement Act of 1990** – Public Law 101-591

The CBIA amends the Coastal Barrier Resources Act (see below) and eliminates federal flood insurance for privately-owned structures located in otherwise undeveloped coastal barrier areas in park units. However, insurance is provided if the structures or facilities were completed before November 16, 1991, or unless the NPS certifies that the structure is used in a manner consistent with park purposes. The purpose of the Coastal Barrier Improvement Act is to discourage further development of coastal barrier areas.

**Coastal Barrier Resources Act (CBRA)** – 16 USC §3501 et seq

The CBRA designated various undeveloped coastal barrier islands for inclusion in the Coastal Barrier Resources System (System) administered by the U.S Fish & Wildlife Service. Areas so designated were made ineligible for direct or indirect Federal financial assistance that might support development with the exception of emergency life-saving activities. Exceptions for certain activities, such as fish and wildlife research, are provided, and National Wildlife Refuges and other, otherwise protected areas are excluded from the System.

Currently the act covers over 3 million acres of coastal barrier habitats, and the new act would allow other lands to be voluntarily added to these acres. Also, the revised act would launch a pilot cooperative digital-mapping program.

**Coastal Wetlands Planning, Protection & Restoration Act of 1990 (CWPPRA)** - 16 U.S.C. § 3952 et seq.

The Coastal Wetlands Planning, Protection and Restoration Act program (CWPPRA or "Breaux Act") provides for targeted funds to be used for planning and implementing projects that create, protect, restore and enhance wetlands in coastal Louisiana.

The U.S. Army Corps of Engineers administers accounting and tracks project status of all CWPPRA projects. The USACE also constructs those approved CWPPRA projects whenever the USACE is assigned lead agency for that project. All other projects are constructed by either the EPA, FWS, National Resource Conservation Service (Department of Agriculture), or NOAA.

**Coastal Zone Management Act (CZMA) (NOAA)** – 16 U.S.C. § 1451 et seq.

Under the CZMA each coastal state must formulate a State Management Plan. The plans will detail how the state's coastal resources will be protected and utilized and how the authority for

such will be allocated within the state. States submit their plans to the Secretary of Commerce, through the National Oceanic and Atmospheric Administration. The Secretary then must consult with other affected federal government agencies prior to approving the coastal state's plan.

The state must then implement the plan and any activities taking place within the state's coastal waters or the OCS must be compatible with the plan. Federal agencies prepare "Consistency Certifications" and submit them to NOAA for every federal agency activity within or adjacent to the State's Coastal Zone. In addition, the CZMA authorizes funding for state research which may be expended in National Park Service Units.

#### **Coral Reef Conservation Act (CRCA) - 16 U.S.C. §6401 et seq**

The CRCA establishes a program of Federal matching grants for the conservation of coral reefs to be administered by the National Oceanic and Atmospheric Administration (NOAA). Organizations eligible to submit grant proposals include any natural resource management authority of a State or local government, as well as educational institutions and nongovernmental organizations with expertise in coral reef conservation. **[May not have been reauthorized]**

#### **Deep Seabed Hard Minerals Resource Act (DSHMRA) - 30 U.S.C. § 1401 et seq.**

DSHMRA is creates an interim program to regulate the exploration for and the commercial recovery of hard mineral resources of the deep seabed by United States Citizens, until an international treaty is entered into force by the US. DSHMRA is also meant to accelerate and facilitate the environmental assessment of such development, create a framework to conserve these resources and improve deep seabed mining technology.

#### **Deepwater Port Act of 1974 (DPA) - 33 U.S.C. § 1501 et seq.**

Under the DPA, the Secretary of Transportation has the authority to issue licenses to own, construct, and operate a deepwater port. In 2002, the Maritime Transportation Security Act amended the DWPA to include the storage, transportation, and handling of natural gas, allowing industry to pursue construction of offshore terminals for receiving liquefied natural gas (LNG).

#### **Disaster Mitigation Act - Public Law 106-390**

The Disaster Mitigation Act, implemented by FEMA, reinforces the importance of pre-disaster infrastructure mitigation planning to reduce disaster losses nationwide. The Act is aimed primarily at the control and streamlining of the administration of federal disaster relief and programs to promote mitigation activities. The Act also establishes minimum mitigation standards for public and private structures.

#### **Endangered Species Act (ESA) – 16 U.S.C. §§ 1531-1544**

The ESA lists endangered or threatened species of flora and fauna and protects such species and their habitats from "takings" by any person. Shorelines often provide threatened and endangered species habitats which can shape management and planning for Coastal Federal lands including National Parks.

#### **Energy Policy Act of 2005 (EPAct) – Public Law 109-58**

The Energy Policy Act of 2005 authorizes the Secretary of the Interior to issue leases, easements, or rights-of-way on the OCS for activities that; support exploration, development, production, or storage of oil or natural gas, except that a lease, easement, or right-of-way shall not be granted in an area in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium; support transportation of oil or natural gas, excluding shipping activities

**Estuary & Clean Waters Act - Public Law 106-457**

To provide Federal assistance for estuary habitat restoration projects and to promote efficient financing of such projects; and to develop and enhance monitoring and research capabilities through the use of the environmental technology innovation program associated with the National Estuarine Research Reserve System established by section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. § 1461) to ensure that estuary habitat restoration efforts are based on sound scientific understanding and innovative technologies.

There is established an estuary habitat restoration program under which the Secretary of the Army may carry out estuary habitat restoration projects and provide technical assistance in accordance with the requirements of this title.

**Estuary Protection Act - 16 U.S.C. §§ 1221-1226**

Authorized the Secretary of the Interior, in cooperation with other Federal agencies and the States, to study and inventory estuaries of the United States, including land and water of the Great Lakes, and to determine whether such areas should be acquired by the Federal Government for protection.

Further, the Act:

- Authorized the Secretary of the Interior to enter into cost-sharing agreements with States and subdivisions for permanent management of estuarine areas in their possession;
- Required Federal agencies to assess the impacts of commercial and industrial developments on estuaries; and
- Required the Secretary, when approving any state grants for acquisition of estuaries, to establish conditions to ensure the permanent protection of estuaries, including a condition that the lands not be disposed of without the prior approval of the Secretary.

**Federal Power Act – 16 U.S.C. § 791 et seq.**

The Federal Power Act calls for cooperation between the Federal Energy Regulatory Commission (FERC) and other Federal agencies in licensing and relicensing power projects. Under this act FERC is authorized to issue licenses for the construction, operation and maintenance of dams, water conduits, reservoirs, and transmission lines to improve navigation and to develop power from any streams or other bodies of water over which it has jurisdiction.

The 1992 amendments (Public Law 102-486), directed the Secretary of Energy, in consultation with the Secretaries of the Interior and the Army, to study cost-effective opportunities to increase hydropower production from federally-owned or operated facilities. The amendments also authorized a study on the Nation's principal river basins to find opportunities to more efficiently generate hydroelectric power from federal facilities.

**Federal Water Pollution Control Act (Clean Water Act) – 33 U.S.C. § 1251 et seq.**

Enacted in 1972 and amended in 1977 and 1987, the Clean Water Act authorizes and directs:

- The EPA to set effluent limits for a range of pollutants based on industry-by industry standards that take the costs of control technology into account;
- The States to set ambient water quality standards for receiving waters by calculating Total Maximum Daily Loads (TMDLs);
- The EPA, or states which have been delegated federal permitting authority, to issue permits for discharges under the National Pollutant Discharge Elimination System (NPDES). These permits are required for “the discharge of pollutants” defined as “any addition of any pollutant to navigable waters from any point source” (33 U.S.C. §§ 1342(a) & 1362(12)(A))
- The Army Corps of Engineers to issue Section 404 permits for the discharge of dredged or fill materials into navigable waters.
- Criminal penalties for persons who knowingly discharge pollutants into municipal sewers or for industrial wastewater that contains excessive concentrations of toxics in violation of federal pretreatment standards.

**Federal Water Power Act – Public Law 66-280**

Created the Federal Power Commission, now the Federal Energy Regulatory Commission (FERC). The Act also established the right to charge reasonable rates for energy produced and supplied.

**Fish & Wildlife Act of 1956 - 16 U.S.C. §§ 742a-742j**

The Fish and Wildlife Act establishes a comprehensive national fish, shellfish, and wildlife resources policy with emphasis on the commercial fishing industry. The Act emphasizes that the Act be administered with regard to the inherent right of every citizen and resident to fish for pleasure, enjoyment, and betterment and to maintain and increase public opportunities for recreational use of fish and wildlife resources. Further, the Act established a Bureau of Sport Fisheries and Wildlife and a Bureau of Commercial Fisheries within the US Fish and Wildlife Service.

The Act requires the Secretary of the Interior to:

- Develop measures for "maximum sustainable production of fish";
- Make economic studies of the industry and recommend measures to insure stability of the domestic fisheries;
- Undertake promotional and information activities to stimulate consumption of fishery products; and
- Take steps "required for the development, advancement, management, conservation, and protection of the fisheries resources," and take steps "required for the development, management, advancement, conservation, and protection of fish and wildlife resources" through research, acquisition of land and water or interests therein, development of existing facilities, and other means.

**Fish & Wildlife Conservation Act (Nongame Act) - 16 U.S.C. §§ 2901-2911**

The Act encourages states to develop conservation plans for nongame fish and wildlife of ecological, educational, aesthetic, cultural, recreational, economic or scientific value. Pursuant to amendments adopted in 1988 and 1989 the Secretary of the Interior is directed to undertake certain activities to research and conserve migratory nongame birds.

**Fish & Wildlife Coordination Act** - 16 U.S.C. § 661 et. seq.

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 the National Marine Fisheries Service and the U.S. Fish and Wildlife Service before issuing a permit for activities that modify any body of water.

**Fish Restoration & Management Projects Act** - 16 U.S.C. §§ 777 et seq.

Under the Act, the Secretary of the Interior is authorized and directed to cooperate with State fish and game departments in fish restoration and management projects by agreeing upon the fish restoration and management projects to be aided under standards fixed by the Secretary of the Interior. A state may submit programs or projects for fish restoration in two ways:

- The state prepares and submits to the Secretary a comprehensive fish and wildlife resource management plan which insures the perpetuation of these resources for the economic, scientific, and recreational enrichment of the people; or
- The State fish and game department submits to the Secretary full and detailed statements of any fish restoration and management project proposed for that State.

**Gulf of Mexico Energy Security Act of 2006 (GOMESA)** – Public Law 109-432

GOMESA was signed into law by President George W. Bush on December 20, 2006. This Act opened up two additional areas in the Gulf of Mexico to leasing and places a moratorium until 2022 on other Gulf of Mexico Areas. Additionally GOMESA increased the distribution of oil and gas revenues to coastal states to 37.5 percent.

**High Seas Fishing Compliance Act of 1995** - 16 U.S.C. §§ 5501-5509

This act requires that all commercial fishing vessels of United States registry have a permit to fish on the high seas. The high seas are defined as those waters beyond the Exclusive Economic Zone (EEZ), or seaward of 200 miles. Permits for such fishing are issued by the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA).

**John H. Chafee Coastal Barrier Resources System Act** - 16 U.S.C. § 3503 et seq.

Signed by President Clinton, this act changes the name of the Coastal Barrier Resource System to the John H. Chafee Coastal Barrier Resources System. (see Coastal Barrier Resource Act)

**Magnuson-Stevens Fishery Conservation & Management Act** - Public Law 94-265

The Act is meant to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone; and (B) exclusive fishery management

authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resource.

Additionally, under the act, projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat are reviewed in light of protection of fish resources. In undertaking this review the Secretary shall:

- consult with the Secretary of State with respect to foreign fishing; and
- consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

The Act provides for the preparation and implementation of fishery management plans meant to achieve and maintain the optimum yield from each fishery. Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may:

- Require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to:
  - Any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone...or for anadromous species or Continental Shelf fishery resources beyond such zone...;
  - The operator of any such vessel; or
  - Any United States fish processor who first receives fish that are subject to the plan;
- Designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

#### **Marine Mammal Protection Act - 16 U.S.C. § 361 et seq.**

(Implementing Regulations can be found at 50 CFR Part 216)

The MMPA prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. The MMPA was amended substantially in 1994 to provide for certain exceptions to the take prohibitions, such as for Alaska Native subsistence and permits and authorizations for scientific research. The National Marine Fisheries Service, NOAA, is responsible for the permitting for exceptions, exemptions and incidental take permits.

#### **Marine Plastic Pollution Research and Control Act - 33 U.S.C. § 1905**

Under this Act, ports, terminals and recreational marinas are required to have adequate and convenient "reception facilities" for their regular customers. This is meant to ensure that the ports are able to handle the reception of garbage from incoming vessels.

#### **Marine Protection, Research & Sanctuaries Act - 33 U.S.C. 1401-1445**

The Act created a procedure for developing marine sanctuaries out to the edge of the continental shelf called the National Marine Sanctuary Program. The Act authorizes NOAA to create and

manage the sanctuaries in “areas of national significance and protect coastal and marine resources and encourage scientific research.

Title I of the MPRSA is also known as the Ocean Dumping Act and regulates the dumping of waste materials into the marine waters.

### **Maritime Transportation Security Act of 2002 (MTSA) - Public Law 107-295**

The MTSA amended the Deepwater Port Act of 1974 by expanding the scope to include deepwater natural gas ports. This Act also resulted in the transferring of jurisdiction over Deepwater Liquefied Natural Gas ports that lie outside of state coastal waters from FERC to the Department of Transportation.

The MTSA creates a consistent security program for all the nation’s ports to better identify and deter threats. The MTSA requires vessels and port facilities to conduct vulnerability assessments and develop security plans including:

- Passenger, vehicle and baggage screening procedures;
- Security patrols;
- Establishing restricted areas;
- Personnel identification procedures;
- Access control measures; and/or
- Installation of surveillance equipment.

MTSA also required the establishment of Area Maritime Security Committees in all US ports to coordinate the activities of all port stakeholders, including other federal, local and state agencies, industry and the boating public.

### **Methane Hydrate Research & Development Act - Public Law 106-193**

The Act authorizes the Secretary of Energy, in consultation with Interior, Defense, Commerce, and the Director of the National Science Foundation, to implement a research and development program and award grants, contract or cooperative agreements to institutions of higher learning and industrial enterprises. The programs are for research and exploratory drilling in furtherance of the research programs.

### **Migratory Bird Treaty Act – 16 U.S.C. § 703 et seq.**

This Act provides for the protection of all migratory birds and their parts (including eggs, nests, and feathers). The Act implements the international conventions entered into between the United States and Canada, Japan, Mexico, and Russia, for the protection of selected species of birds that combine to form a common resource.

### **National Aquaculture Act (NQA) - 16 U.S.C. § 2801 et seq.**

The NQA declares a national aquaculture policy that:

- Establishes and implements a national aquaculture development plan;

- Establishes the Department of Agriculture as the lead Federal agency with respect to the coordination and dissemination of national aquaculture information by designating the Secretary of Agriculture as the permanent chairman of the coordinating group; and
- Establishes a National Aquaculture Information Center within the Department of Agriculture

In formulating the National Aquaculture Development Plan, the Secretary of Agriculture shall, to the extent practicable, take into account any significant action that:

- Has been, or is proposed to be, undertaken by any other Federal department or agency, any State agency, or any person, and
- May affect the implementation of the Plan.

**National Environmental Policy Act (NEPA) – 42 U.S.C. § 4321 et seq.**

NEPA requires that the federal government to take a “hard look” at all reasonable alternatives before commencing any major federal action. The analysis of alternatives is contemplated via an Environmental Analysis (EA) resulting in a Finding of No Significant Impact (FONSI) or an Environmental Impact Statement (EIS) resulting in a Record of Decision (ROD). Furthermore, agencies can develop Categorical Exclusions (CATEX) for actions which the impacts are known, routine and minor.

NEPA requires the environmental analysis to be completed prior to the irretrievable dedication of federal resources. Additionally NEPA facilitates and fosters public participation in the federal decision making process. Although NEPA does not require an agency to take a certain action, it does require the agency to make a thoughtful and thorough consideration of alternatives.

**National Fishery Enhancement Act - 33 U.S.C. § 2101 et seq.**

This Act allows states to apply to the Secretary of Transportation for the use of obsolete ships that would be designated for scrapping so that the state can sink such ships and use them as offshore artificial reefs for the conservation of marine life.

**National Flood Insurance Act of 1968 – 42 U.S.C. § 4001 & 4128**

The Act created the National Flood Insurance Program (NFIP) as a response to the financial loss suffered from Hurricane Betsy in 1965. The Program allows FEMA to manage hazards through incentives and regulation. The program supplies flood insurance to communities that adopt building standards and land use controls that minimize flood damages and property loss. The program also imposes penalties on communities that are prone to floods but choose not to participate.

**National Historic Preservation Act (NHPA) - 16 U.S.C. § 470 et seq.**

Under section 106 of the 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.

Under section 110, federal agencies must consider historic preservation of historic resources as part of their management responsibilities.

**National Invasive Species Act of 1996** – Public Law 104-332

This Act reauthorized and modified NANPCA as well as extended it to cover the Hudson River region. The Act required record keeping, reporting, sampling and monitoring of vessels for compliance with the voluntary guidelines issued by the US Coast Guard

**National Marine Sanctuaries Act (NMSA)** - 16 U.S.C. § 1431 et seq.

The NMSA authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries. The National Marine Sanctuary Program is administered by the Sanctuaries and Reserves Division of NOAA.

The Secretary is authorized to issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines such authorization is necessary to establish conditions of access to and use of any sanctuary resource; or to promote public use and understanding of a sanctuary resource. However, the Secretary may only authorize the activity if it is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources.

**National Marine Sanctuaries Amendments Act of 2000** (S. 1482)

This Act reauthorizes the National Marine Sanctuaries Act (NMSA) and provides scholarships for work in oceanography, marine biology, and maritime archeology as well as protect the coral reefs off the northwestern Hawaiian Islands.

(Implementing Regulations - 15 CFR Part 922)

**National Oceanographic Partnership Act** - Public Law 104-201

NOPA Creates the National Oceanographic Partnership Program and its governing body, the National Ocean Research Leadership Council, to promote the national interest in natural security, economic development, quality of life, and strong science education and communication through improved knowledge of the ocean.

**National Park Service Organic Act** – 16 U.S.C. § 1 et seq.

Establishes the National Park Service whose “purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

**National Wildlife Refuge System Administration Act of 1966** – 16 U.S.C. §§ 668dd-668ee

This Act provides for the administration and management of all areas in the system, including "wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas."

The Secretary is authorized to permit by regulations the use of any area within the system provided "such uses are compatible with the major purposes for which such areas were established."

The Act delegates the authority to administer the system to the Secretary of the Interior through the United States Fish and Wildlife Service.

**National Wildlife Refuge System Improvement Act of 1997** – 16 U.S.C. §§ 668dd-668ee

“The National Wildlife Refuge System Improvement Act (Improvement Act) amended the Refuge System Administration Act in 1997 by establishing a unifying mission for the Refuge System, a new process for determining compatibility of uses on refuges, and a requirement that each refuge will be managed under a Comprehensive Conservation Plan, developed in an open public process. This Act states first and foremost that the mission of the National Wildlife Refuge System be focused singularly on wildlife conservation.” [www.fws.gov](http://www.fws.gov)

**Natural Gas Act (NGA)** – Public Law 75-688

Under the NGA, the Federal Power Commission has jurisdiction over the regulation of interstate natural gas sales. The FPC has the authority to set "just and reasonable rates" for the transmission or sale of natural gas in interstate commerce.

Under section 7 of the NGA, a “certificate of public convenience and necessity” is issued and permits pipeline companies to charge customers for some of the expenses incurred in pipeline construction and operation. Additionally, the NGA requires approval by FERC before any pipeline facility or services can be abandoned.

Under Section 3 of the NGA, Federal approval by the Department of Energy is required for the import and export of natural gas, including liquefied natural gas (LNG). Furthermore, FERC must approve the siting, construction, and operation of onshore LNG import and export facilities.

Under the NGA the Federal Power Commission was deemed the lead regulatory agency, but this authority was transferred to FERC and the Department of Energy in 1977, by the Department of Energy Organization Act.

**Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA)** – 16 U.S.C. § 4701

This Act addressed the problem of ballast water and invasive species. The US Coast Guard was prompted to issue voluntary guidelines for ballast water exchange to combat the entry and spread of invasive species in the Great Lakes.

**North American Wetlands Conservation Act** - 16 U.S.C. § 4401 et seq.

The main provisions of the Act:

- Obligates annual appropriations in order for the US Fish & Wildlife Service (FWS) to implement the North American Waterfowl Management Plan, which seeks to restore and maintain the diversity, distribution, and abundance of waterfowl that existed from 1970 to 1979 by solving habitat problems with a focus on seven priority habitat areas.

- Authorizes up to \$30 million per year for North American wetlands conservation projects.
  - States and private groups or individuals can receive matching grants for wetlands conservation projects if the projects further the goals of the North American Waterfowl Management Plan and international migratory bird treaties and if they entail public/private partnerships.
  - Grants are available for acquisition of land or water rights and for restoration, management, or enhancement of wetlands.

**Oceans Act of 2000** – Public Law 106-256

The Oceans Act establishes a Commission which develops a National Oceans Report which makes recommendations to the President and Congress on ocean and coastal issues. The President then responds to these recommendations in a “National Ocean Policy” that he submits to Congress.

The Commission establishes a multi-disciplinary science advisory panel that assists the Commission in preparing its report, ensuring that the scientific information considered is based on the best available data.

The Commission must provide a copy of their draft report to the Governor of each coastal state whose comments will be included in the Commission’s final report. Under this Act the President of the United States must develop his National Ocean Policy in consultation with the states.

**Ocean Dumping Act** - 16 U.S.C. § 1401 et seq.

The ODA amends and consist of Titles I and II of the Marine Protection, Research, and Sanctuaries Act. This Act provides the basic authority for the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) to regulate ocean dumping. Title I prohibits any person, without a permit, from:

- Transporting from the U.S. 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). In the case of a vessel or aircraft registered in the U.S. or flying the U.S. flag, or in the case of a U.S. agency, the act prohibits any person, without a permit, from transporting from any location any material for the purpose of dumping it into ocean waters; and
- Dumping any material transported from a location outside the U.S. 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 U.S. EPA issues permits regulating the ocean dumping of all material except dredged material, which is permitted by COE.

**Ocean Thermal Energy Conversion Act of 1980 (OTEC Act)** – 42 U.S.C. § 9111

The OTEC Act gave NOAA lead responsibility for licensing the construction, ownership, location and commercial operation of OTEC plants. The Act calls for:

- Licensing requirements;
- The Licensee to obtain an Attorney General Opinion;
- Consultation between NOAA and other interested Federal Agencies; and
- Federal Register publication and public hearings prior to issuance of a license

**Oil Pollution Act** – 33 U.S.C. §§ 2701-2761

The OPA imposes liability for cleanup and damages on “each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone”.

**Outer Continental Shelf Lands Act (OCSLA)** – 43 U.S.C. § 1331 et seq.

The OCSLA designates the Department of the Interior, MMS, as the lead agency to administer the leasing of the Outer Continental Shelf for alternative energy as well as oil & gas, and prescribe necessary regulations. The regulations are meant to prevent waste and conserve of the natural resources of the OCS, and protect correlative rights.

The OCSLA requires MMS to develop and implement 5 year plans to offer leases for the OCS. Currently MMS is engaging in an alternative energy rulemaking, which is in the OMB clearance stage.

**Rivers & Harbors Act of 1899 (RHA)** - 33 U.S.C. § 401 et seq.

Under sections 9 & 10 of the RHA, the U.S. Army Corps of Engineers is authorized to regulate the construction of any structure or work within navigable waters.

- The Corps' jurisdiction under RHA is limited to "navigable waters," or waters subject to the ebb and flow of the tide shoreward to the mean high water mark that may be used to transport interstate or foreign commerce.
- After receiving an application for a section 10 RHA navigation permit, the Corps issues a public notice to solicit information from the public, adjacent property owners, and state, local, and federal agencies.
- The Corps is required to consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to protect and conserve wildlife resources.

**Shore Protection Act of 1988** - 33 U.S.C. § 2601 et seq.

Under the SPA, the Department of Transportation issues permits for the transportation of municipal or commercial waste by a vessel in coastal waters. Municipal or commercial waste includes solid waste as defined by the Resource Conservation and Recovery Act (RCRA - 42 U.S.C. § 6901) but excludes waste generated by the vessel during normal operations, construction debris, dredged or fill material, and sewage sludge.

**Submerged Lands Act** – 43 U.S.C. § 1301 et seq.

The SLA gave title to and ownership of the lands beneath navigable waters, with the boundaries of the states, to the respective states, along with the natural resources within such lands. The Act

also gave the states the right and power to manage, administer, lease, develop and use the lands and resources granted.

Additionally, the SLA approved and confirmed the seaward boundary of the states as “a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary.” The SLA also respected the boundaries of TX and FL to be three marine leagues.

### **Sustainable Fisheries Act - Public Law 104-297**

The SFA includes amendments to the Magnuson-Stevens Fishery Conservation & Management Act. Through the Act, Congress established a requirement that the Secretary of Commerce:

- Prepare advisory guidelines based on the national standards;
  - The guidelines aid in the development of fisheries management plans, and
  - Provide guidance to the Secretary in the review and approval of those fisheries management plans
- Expand on and interpret the national standards, providing more detailed requirements for fisheries management under MSFCMA.

### **Territorial Submerged Lands Act – 48 U.S.C. § 1705 ?**

Congress transferred ownership of submerged lands out to three nautical miles to Guam, the Virgin Islands, and American Samoa through the Territorial Submerged Lands Act.

### **Water Resources Development Act (WRDA) - 33 U.S.C. § 2201 et seq.**

The WRDA authorizes and directs the Army Corps of Engineers (Corps) on projects for navigation, flood control, flood damage reduction, environmental restoration, recreation, hurricane and storm damage reduction, ecosystem restoration, shore protection and damage reduction, aquifer storage and recovery, snagging and sediment removal, beneficial use of dredged materials and navigation mitigation throughout the country.

### **Watershed Protection & Flood Prevention Act - 16 U.S.C. §§ 1001-1009**

The act authorizes federal assistance to local organizations for planning and carrying out projects in watershed areas for conservation and use of land and water, and for flood prevention.

The Secretary of Agriculture is required to submit to Congress plans for works of improvement in watershed or sub-watershed areas where the federal contribution exceeds \$5 million or the plan includes a structure with a capacity greater than 2,500 acre feet. These plans must be submitted for comment to the secretary of the interior if they include works of improvement for reclamation or irrigation or affect lands or wildlife under the Department of the Interior's jurisdiction