

TABLE OF CONTENTS

PREFACE TO THE FIFTH EDITION.....	V
ACKNOWLEDGMENTS	VII
TABLE OF CASES	XXI
TABLE OF STATUTES	XXXIII
TABLE OF REGULATIONS.....	XLI
Chapter 1. Maritime Sovereignty and U.S. Law	1
1. Introduction: U.S., UNCLOS, and Beyond.....	1
Problem	1
A. U.S. Maritime Jurisdiction in the Courts	2
1. Jurisdiction as a Coastal State	3
Mayaguezanos por la Salud y el Ambiente v. U.S.....	3
Notes and Questions.....	11
United States v. F/V Marshalls 201	15
Notes and Questions.....	18
2. Jurisdiction as a Port State	20
U.S. v. Royal Caribbean Cruises, Ltd.....	20
Notes and Questions.....	24
United States v. Pena.....	25
Notes and Questions.....	32
3. Universal Jurisdiction over Stateless Vessels and Piracy	33
U.S. v. Matos-Luchi	36
Notes and Questions.....	46
4. Human Rights and Migrant Interdiction on the High Seas	49
Movimiento Democracia, Inc. v. Johnson, Secretary of Dept.	
of Homeland Security	51
Notes and Questions.....	61
B. U.S. Congress and Maritime Sovereignty.....	62
1. The Presidential Proclamations	62
a. Continental Shelf.....	63
Presidential Proclamation 2667 Policy of the U.S. with	
Respect to the Natural Resources of the Subsoil	
and Sea Bed of the Continental Shelf September	
28, 1945.....	63
Notes and Questions.....	64
United States v. Ray.....	66
Notes and Questions.....	72
b. The EEZ and High Seas	72
Presidential Proclamation 5030 Exclusive Economic	
Zone of the United States March 10, 1983	73

	Notes and Questions.....	74
c.	U.S. Seabed Mining on the High Seas.....	75
	Deep Seabed Hard Mineral Resources Act (DSHMRA) ...	80
	Notes and Questions.....	83
d.	The 12-Mile Territorial Sea.....	85
	Presidential Proclamation 5928 Territorial Sea of the United States December 27, 1988.....	85
	Notes and Questions.....	86
2.	Baselines and Maritime Boundaries.....	88
	Problem	89
A.	U.S. Assertions of UNCLOS Provisions on the Baseline of the Territorial Sea	89
	Department of State, Limits in the Seas Series (No. 112), “US Response to Excessive National Maritime Claims,” March 9, 1992	91
	Notes and Questions	93
3.	Dispute Resolution Under UNCLOS	96
A.	Russia’s Maritime Jurisdiction in the Arctic.....	97
	In the Matter of the Arctic Sunrise Arbitration (The Netherlands v. Russian Federation)	98
	Notes and Questions	113
B.	The South China Sea Arbitration.....	118
	Notes and Questions	122
Chapter 2. State Ownership and Control of Marine Resources.....		125
1.	Resources of the Marginal Seas	126
	Problem	126
A.	The Submerged Lands Act of 1953.....	127
1.	The Tidelands Controversy.....	127
	Donna R. Christie, State Historic Interests in the Marginal Seas.....	127
2.	The Submerged Lands Act.....	129
	State of Alabama v. State of Texas.....	132
	Notes and Questions.....	138
3.	Boundary Issues Raised by the Submerged Lands Act.....	139
	United States v. Maine.....	139
	Problem	142
	Notes and Questions.....	142
B.	Outer Continental Shelf Lands Act of 1953.....	145
1.	Jurisdictional Provisions of the OCSLA, as Amended.....	145
	United States v. Alaska.....	148
	Notes and Questions.....	153
2.	Native Title and Aboriginal Rights	154
	Native Village of Eyak v. Blank	156
	Notes and Questions.....	159

C.	State Ownership of Marine Resources	162
1.	Living Marine Resources.....	162
	Douglas v. Seacoast Products, Inc.	162
	Notes and Questions.....	173
2.	Submerged Cultural Resources	174
	Sea Hunt, Inc. v. The Unidentified Shipwrecked Vessel of	
	Vessels	175
	Notes and Questions.....	181
2.	Shared Authority over Maritime Casualties	184
A.	Preemption by Admiralty Jurisdiction.....	184
	In re Oil Spill by the Oil Rig “Deepwater Horizon”.....	185
	Notes and Questions	188
B.	Case Study: Oil Spill Response and Liability for the Deepwater	
	Horizon Disaster.....	189
1.	The Oil Spill Clean-up Process	189
	Oil Pollution Act of 1990	189
	In re Oil Spill by the Oil Rig “Deepwater Horizon”.....	190
	Notes and Questions.....	199
2.	Liability for Damages to Property and the Environment	201
	Oil Pollution Act of 1990	202
	In re Oil Spill by the Oil Rig “Deepwater Horizon”.....	205
	Notes and Questions.....	216
3.	The Phase 1 and 2 Trials	220
	In re Oil Spill by the Oil Rig “Deepwater Horizon” in the	
	Gulf of Mexico, on April 20, 2010 (Phase One)	220
	Notes and Questions.....	230
4.	Restoration of the Gulf of Mexico with Damages Awarded ...	233
	Congressional Resource Service, Gulf Coast Restoration:	
	RESTORE Act and Related Efforts	236
	Notes and Questions.....	242

Chapter 3. Public and Private Rights in Coastal Lands and Waters

		247
1.	Coasts and “Takings”	248
	Fifth Amendment to the United States Constitution	248
	Lucas v. South Carolina Coastal Council	249
	Notes and Questions	256
	Surfrider Foundation v. Martins Beach 1	259
	Notes and Questions	268
2.	Who “Owns” the Coast?.....	270
A.	The Geographic Scope of the Public Trust.....	272
	Phillips Petroleum Company v. Mississippi	273
	Problem	277
	Notes and Questions	277
B.	Alienation and the Presumption Against Private Ownership of	
	Public Trust Lands	281
	Illinois Central Railroad v. Illinois.....	282

	Problem	284
	Notes and Questions	285
C.	Criteria for Alienation of Public Trust Lands	289
	Problem	289
	People v. Chicago Park District.....	290
	Notes and Questions	292
D.	Evolution of the Public Trust Doctrine	294
	Nies v. Town of Emerald Isle.....	295
	Notes and Questions	303
3.	Private Interests of Littoral and Riparian Landowners.....	303
A.	Introduction	303
B.	Accretion, Erosion, Avulsion and Reliction.....	306
	Frank Maloney and Richard Ausness, The Use and Legal Significance of the Mean High Water Line in Coastal Boundary Mapping	306
1.	The Right to Accretions	307
a.	The General Rule	307
b.	The General Rule and Equity	308
	Schulz v. Dania	308
	Problem.....	310
	Notes and Questions.....	310
c.	Loss of the Right to Accretions	313
	Lynnhaven Dunes Condominium Asso. v. City Of Virginia Beach.....	313
	Notes and Questions.....	318
	Note on the Federal Navigation Servitude	319
d.	Interference with the Natural Process of Accretion	321
	Lummis v. Lilly	322
	Notes and Questions.....	324
	United States v. Milner	325
	Notes and Questions.....	328
2.	The Littoral Right of Access to Navigable Waters	329
a.	The Nature of the Right of Access	329
	Problem.....	329
	In re Protest of Mason	329
	Notes and Questions.....	332
	Becker v. Litty.....	334
	Notes and Questions.....	336
	Slavin v. Town of Oak Island.....	337
	Notes and Questions.....	338
3.	The Right of View	339
	Borough of Harvey Cedars v. Karan	339
	Notes and Questions.....	343
4.	Public Access and Use of Beaches and Shores	344
A.	The Scope of the Public Right of Access to Coastal Lands and Waters	344
1.	The State-Owned Beach Seaward of the MHWL	345

State v. Ibbison	345
Notes and Questions.....	348
Donna R. Christie, Of Beaches Boundaries and SOBs	348
2. Easements and Dedication Above the MHWL.....	350
Jesurum v. WBTSCC Limited Partnership	351
Problems.....	355
Notes and Questions.....	355
Problem	358
3. Public Access and Customary Use of Dry Sand Beaches.....	358
Stevens v. City of Cannon Beach.....	359
Stevens v. City of Cannon Beach.....	362
Notes and Questions.....	363
4. Public Access and the Public Trust Doctrine.....	363
Matthews v. Bay Head Improvement Ass'n.....	365
Notes and Questions.....	367
Nies v. Town of Emerald Isle	368
Notes and Questions.....	368
Note on Rolling Easements	369
B. Beach Access by Legislation and Regulation.....	370
1. Statutory Recognition and Protection of Public Access	
Rights	370
Problem	370
Alford v. Walton County.....	372
Notes and Questions.....	377
2. Permit Conditions and Public Access.....	378
Nollan v. California Coastal Commission	378
Notes and Questions.....	382
Note on Beach Access and Public Interest Litigation	384
3. Federal Beach Nourishment Projects and Public Access.....	385
Problem	385
C. Regulatory Restrictions on Public Access	388
Chapter 4. Coastal Management in an Era of Climate Change.....	391
1. Addressing Climate Change Through State Coastal Zone	
Management Programs.....	391
A. Challenges to State Coastal Programs.....	392
CZMA § 303. Congressional Declaration of Policy	393
Notes and Questions	396
B. Federal Consistency: Cooperative Federalism in the Coastal	
Zone	402
CZMA § 307(c)–(d). Coordination and Cooperation	402
Weaver’s Cove Energy LLC v. Rhode Island Coastal Resources	
Management Council.....	404
Notes and Questions	420
CZMA § 307(h). Mediation of Disagreements.....	423
The Secretarial Appeal Process	423

	Decision and Findings by the U.S. Secretary of Commerce In the Consistency Appeal of Broadwater Energy LLC and Broadwater Pipeline LLC from an Objection by the State of New York.....	425
	Notes and Questions	434
C.	Using Federal Consistency to Support Renewable Energy Transition.....	437
	Note on State Coastal Planning and Offshore Wind Energy.....	439
2.	Coastal Land Management in the Face of Climate Change.....	443
A.	Regulating Shorelines and Adaptation to Sea Level Rise	444
1.	Strategies for Adaptation to Sea Level Rise (SLR)	444
	Problem	444
	Notes and Questions.....	446
2.	Beach Erosion, Sea Level Rise, and Shoreline Protection	449
a.	Shoreline Armoring: Beaches v. Private Property Rights.....	449
	Problem.....	449
	Shell Island Homeowners Ass’n v. Tomlinson	449
	Notes and Questions.....	452
b.	Soft Armoring: Beach Renourishment and Living Shorelines	457
	Notes and Questions.....	459
c.	Retreat as a Strategy: “Let It Go”.....	460
	Problem.....	460
	Notes and Questions.....	461
	Note on the Coastal Barrier Resources Act.....	463
B.	Who Pays for Today’s Failure to Plan and Tomorrow’s Costs of Adaptation?.....	465
1.	Who Pays the Price of the First Effects of Climate Change?.....	465
	St. Bernard Parish Gov’t v. United States.....	468
	Notes and Questions.....	474
2.	The Costs of Adaptation.....	477
	City of Oakland v. BP PLC	478
	Notes and Questions.....	487
3.	Preventing Climate Change as a Federal Public Trust Obligation.....	489
	Juliana v. United States	490
	Notes and Questions.....	498
3.	Coastal Waters Acidification and Dead Zones	498
A.	Preventing Dead Zones: Runoff and TDMLs.....	498
	American Farm Bureau Federation v. U.S. EPA.....	500
	Notes and Questions	513
B.	Acidification-Impaired Waters	515
	Center for Biological Diversity v. U.S. EPA	515
	Notes and Questions	531

C.	Pollution from Injection Well Disposal	532
	Hawai‘i Wildlife Fund v. County of Maui.....	532
	Notes and Questions	545
Chapter 5. Oil and Gas Development on the Outer Continental Shelf		
	Shelf	547
1.	The Outer Continental Shelf Lands Act (OCSLA).....	547
A.	OCSLA and the Coastal States	548
1.	Objections by Adjacent Coastal States.....	550
	State of California v. Norton.....	550
	Notes and Questions.....	563
2.	Suspensions and Termination of Offshore Leases.....	564
	Mobil Oil Exploration & Producing Southeast, Inc. v. United States	566
	Notes and Questions.....	570
3.	Revenue Sharing with Adjacent Coastal States.....	571
	Notes and Questions.....	571
B.	Oil and Gas Development and the National Environmental Policy Act.....	572
1.	NEPA Rules in the <i>Deepwater Horizon</i> Aftermath	576
	Center for Biological Diversity v. Zinke.....	576
	Notes and Questions.....	584
2.	NEPA Review of Individual Lease Sales.....	586
	Native Village of Point Hope v. Jewell.....	586
	Notes and Questions.....	598
3.	Approval of Exploratory Drilling Plans After Deepwater Horizon	598
	Defenders of Wildlife v. Bureau of Ocean Energy Management.....	598
	Note and Question	607
C.	Long-Range OCS Policy and Planning.....	608
1.	An ‘America-First’ Offshore Energy Strategy.....	608
	Exec. Order No. 13795, Implementing an America-First Offshore Energy Strategy.....	608
	Notes and Questions.....	611
2.	Five-Year Planning for OCS Development	613
	Center for Biological Diversity v. Dept. of Interior	615
	Notes and Questions.....	617
	Center for Sustainable Economy v. Jewell	618
	Notes and Questions.....	627
3.	Presidential Withdrawals Under Section 12(a).....	629
	League of Conservation Voters v. Trump	629
	League of Conservation Voters v. Trump	636
	Notes and Questions.....	643
2.	Case Study: U.S. Arctic Oil and Gas.....	644
	Shell Offshore Inc. v. Greenpeace, Inc.	645
	Notes and Questions	649

Chapter 6. Sustainable Fisheries Law	651
1. U.S. Fisheries Jurisdiction and Enforcement	651
Problem	652
A. The Scope of U.S. Fisheries Jurisdiction	653
1. Fishing for Tuna Farms	653
In The Matter of Pesca Azteca (F/V AZTECA 1)	654
Notes and Questions.....	664
2. Fishing for Shark Fins	664
U.S. v. Approx. 64,695 Pounds of Shark Fins.....	665
Notes and Questions.....	673
3. Federal Preemption of State Marine Conservation Laws.....	675
Chinatown Neighborhood Association v. Harris	675
Notes and Questions.....	685
4. Commercial Fishing as an Interstate Privilege.....	686
Marilley v. Cal. Dept. of Fish and Game.....	686
Notes and Questions.....	695
5. State Fisheries Law and the Magnuson-Stevens Act	698
State of Maine v. Thomas.....	701
Notes and Questions.....	706
B. Evolution of the Magnuson-Stevens Act	707
1. Ending Overfishing and Rebuilding Fish Stocks	708
Natural Resources Defense Council v. National Marine	
Fisheries Service	708
Notes and Questions.....	716
2. Protecting Forage Species from Overfishing	716
Anglers Conservation Network v. Pritzker.....	717
Notes and Questions.....	723
3. The Best Available Science Standard	725
Oceana, Inc. v. Ross	725
Notes and Questions.....	736
4. Fisheries Privatization.....	737
Problem	738
Alliance against IFQs v. Brown	739
Notes and Questions.....	743
Lovgren v. Secretary of Commerce.....	745
Notes and Questions.....	756
2. U.S. Role in International Fisheries Governance	758
A. High Seas Driftnet Fisheries Enforcement Act.....	758
Humane Society of the United States v. Clinton.....	758
Notes and Questions	764
B. The Lacey Act of 1900, as Amended.....	764
United States v. Bengis.....	765
Notes and Questions	772
C. IUU Fishing and Seafood Fraud	774
Alfa International Seafood v. Ross	774
Notes and Questions	784

Chapter 7. Marine Conservation Law	787
1. Statutory Framework for Marine Conservation	787
A. The Marine Mammal Protection Act.....	788
B. The Endangered Species Act of 1973	789
Cayman Turtle Farm, Ltd. v. Andrus	791
Notes and Questions	800
2. ESA Endangered Species and Critical Habitat.....	800
A. Listing of Endangered Species	800
Alaska Oil and Gas Association v. Pritzker.....	801
Notes and Questions	814
B. Designation of Critical Marine Habitat	816
Center for Biological Diversity v. Evans	817
Notes and Questions	824
3. Taking Marine Wildlife.....	825
A. Intentional Takes	826
1. Captive Display Take and Import Permits	826
Georgia Aquarium, Inc. v. Pritzker	826
Notes and Questions.....	843
People for the Ethical Treatment of Animals, Inc. v. Miami	
Seaquarium	844
Notes and Questions.....	851
2. Subsistence and Cultural Takes.....	852
B. Accidental Takes in Fisheries.....	853
State of Louisiana ex rel. Guste v. Verity	853
Notes and Questions	862
C. Trade Measures and Accidental Takes in Foreign Fisheries	864
1. Dolphin-Safe Tuna.....	865
a. Foreign Tuna Embargoes Under the MMPA	866
b. The Dolphin-Safe Label.....	869
Earth Island Institute v. Evans	870
Notes and Questions.....	875
2. Marine Mammal Takes in Non-Purse Seine Fisheries	875
a. The Classification of Fisheries	876
b. Take Reduction Planning	876
c. The Zero Mortality Rate Goal Rule	878
D. Noise Harassment and Habitat Degradation	878
1. Incidental Harassment Authorizations.....	878
2. Navy Sonar and Training.....	879
Natural Resources Defense Council v. Evans.....	879
Notes and Questions.....	886
3. Habitat Degradation as Taking.....	887
E. Regulation to Promote Recovery of Endangered Species.....	888
1. Vicarious Governmental Liability for Takes	888
Strahan v. Coxe.....	888
Notes and Questions.....	894
2. Federal Agency Duties Under Section 7	896

3.	Citizen Suits to Compel Agency Action to Prevent Takes of Endangered Marine Life	897
	Center for Biological Diversity v. Ross.....	898
	Notes and Questions.....	907
4.	Recovery Plans and Species Reintroductions	909
	California Sea Urchin Commission v. Bean.....	910
	Notes and Questions.....	918
Chapter 8. Protecting the Marine Environment		921
1.	Vessel Source Pollution.....	921
A.	Air Pollution.....	921
	Pacific Merchant Shipping Ass'n v. Goldstene	922
	Notes and Questions	937
B.	Maritime Oil Spills	938
	United States v. Massachusetts	938
	Notes and Questions	950
C.	Ballast Water and Invasive Species.....	953
	Natural Resources Defense Council v. U.S. EPA	954
	Notes and Questions	963
2.	Marine Plastic Pollution	964
A.	State Law Plastic Bag Bans.....	965
	City of Laredo v. Laredo Merchants Asso.	965
	Notes and Questions	975
	Save the Plastic Bag Coalition v. City of Manhattan Beach	976
3.	Ocean Protected Areas	987
A.	National Marine Sanctuaries	987
	Personal Watercraft Industry Association v. Department of Commerce.....	987
	Notes and Questions	993
B.	Commercial Activities in Marine Protected Areas	994
1.	Commercial Recreation	994
	Kaneohe Bay Cruises, Inc. v. Hirata	994
	Notes and Questions.....	1001
2.	Liability for Damage to Sanctuary Resources	1001
	United States v. Great Lakes Dredge & Dock Co.....	1001
	Notes and Questions.....	1010
C.	No-Take Reserves Within National Parks and Marine Sanctuaries	1011
	Ventura County Commercial Fishermen's Ass'n v. Cal. Fish & Game Comm'n.....	1011
	Coastside Fishing Club v. Cal. Resources Agency.....	1015
	Notes and Questions	1022
D.	Marine National Monuments	1022
	Massachusetts Lobstermen's Association v. Ross	1022
	Notes and Questions	1033
INDEX.....		1035