OCEAN AND COASTAL LAW AND POLICY  
Duke Nicholas School of the Environment and Earth Sciences  
Fall Semester 2005: ENV/LAW 298.55  
Visiting Scholar Steve Roady  
Class meetings: Mondays 1:15 p.m. to 4:00 p.m. Room A-247 LSRC. 
Office Hours: Mondays 4:15 p.m. to 5:15 p.m. Room A-247 LSRC. 
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** INITIAL COURSE SYLLABUS **  
Revised September 15, 2005

This course explores the legal and policy frameworks that apply to United States ocean and coastal resources. We examine laws, policies, regulations, and cases that shape how the United States (and several states, including North Carolina) use, manage, and protect the coasts and adjacent oceans out to the 200-mile limit of the Exclusive Economic Zone. We will explore how these laws and policies guide our approaches to coastal and ocean resources, including beaches, wetlands, reefs, fisheries, endangered and threatened species, and special marine areas.

It is important to develop sensible methods for managing and protecting the oceans and coasts. Ocean and coastal ecosystems are central to life on earth. The oceans are a vital source of food. More than three-fourths of the world’s animal and plant species are found in the oceans. The coasts host more than two-thirds of the world’s major cities. In the United States, economic activity tied to the coasts and oceans generates billions in revenues annually.

There is a growing recognition that coastal and ocean resources are imperiled, both in the United States and elsewhere. Coastal development can destroy shorelines and exacerbate inshore pollution. On the oceans themselves, overfishing and pollution are significant problems. The U.S. government estimates that roughly 40% of all commercial marine fish stocks are depleted. Persistent organic pollutants poison marine mammals. Meanwhile, human activity warms ocean temperatures and causes changes in water chemistry that threaten coral reefs. In this country, two separate national commissions published reports in 2003 and 2004 suggesting improvements in ocean and coastal resource management to address many of these problems.

The required text for this course is Coastal and Ocean Law: Cases and Materials (2nd ed., West Group, 2002) (“COL”). In addition, Mr. Roady will identify supplementary weekly reading materials and post them on the Duke Blackboard system.

Mr. Roady evaluates each student in this course on three factors: (1) a research paper (approximately ¾ of the final grade); (2) a short memorandum and class presentation by a student team (approximately ¼ of the final grade); (3) participation in class discussions (discretionary factor). Please see a separate document, “Research Paper Topics,” for information about the final research paper, along with a list of possible paper topics and related questions.

Office Hours are scheduled for Mondays immediately following class meetings. In addition, please feel free to contact Mr. Roady by email at any time during the week.
I. **Background and Context**

Class #1 – August 29, 2005 – Introduction and Overview

Class #2 – September 5, 2005 – Challenges for the oceans and coasts

II. **Coastal Resources Management**

Class #3 – September 12, 2005 – Legal regimes for managing the coasts

Class #4 – September 19, 2005 – Coastal zone management planning

III. **Ocean Resources Management**

Class #5 – September 26, 2005 – Private property battles on the coasts

Class #6 – October 3, 2005 – Government regulation of fisheries, & NGO perspectives

**FALL BREAK** – **No Class scheduled for October 10, 2005**

Class #7 – October 17, 2005 – Fish population management issues

Class #8 – October 24, 2005 – Overfishing: Summer flounder and Cod

Class #9 – October 31, 2005 – Essential Fish Habitat and Marine Reserves

Class #10 – November 7, 2005 – Bycatch: Groundfish, sea turtles, sea birds

Class #11 – November 14, 2005 – NEPA – Application to the oceans

Class #12 – November 21, 2005 – ESA – Listing, designation, taking

Class #13a – (1 hour) – November 28, 2005 – MMPA – Depleted populations & remedies

Class #13b – (2 hours) – November 28, 2005 – Federal legislative update; Research Papers

Semester ends
I. **Background and Context**

Class #1 – August 29, 2005 – Introduction and Overview

- How coastal and ocean ecosystems work
- Coastal and ocean issues and key actors
- Federal/state statutory and regulatory approaches to oceans and coasts
- How ocean and coastal disputes are resolved

**Reading assignment for Class #1:** Posted on Blackboard.

Class #2 – September 5, 2005 – Challenges for the oceans and coasts

- A primer on the regulatory and judicial process at the state and federal levels
- Fishing (overfishing, bycatch, habitat destruction) and aquaculture
- Water quality protection/warming temperatures/water chemistry
- Dredge and fill activities/coastal wetlands/coastal development
- Noise pollution/sonar/cruise ships/merchant vessels/invasive species

**NOTE: Discussion teams assigned today**

**Reading assignment for Class #2:**
- COL text pages 103-146, 176-189, 775-778.
- Additional reading posted on Blackboard.

II. **Coastal Resources Management**

Class #3 – September 12, 2005 – Legal regimes for managing the coasts

- North Carolina constitutional and statutory provisions, and regulations
- Littoral rights; right of access and to accretions
- The ability of landowners to own and control coastal property
- Public ownership of, and access to, tidelands, coasts, and oceans
- The Public Trust Doctrine (emphasis on North Carolina)

**Presentation** by Discussion Team Number One: Beach access.

**Reading assignment for Class #3:**
- COL text pages 1-71, 84-95.
- Additional reading posted on Blackboard.
Class #4 – September 19, 2005 – Coastal zone management planning

Federal Coastal Zone Management Act
North Carolina coastal zone management
Main challenges for North Carolina coastal zone management

** Presentation by Discussion Team Number Two: Beach restoration.

Reading assignment for Class #4:
COL text pages 191-224, 246-253.
Additional reading posted on Blackboard.

Class #5 – September 26, 2005 – Private property battles on the coasts

The question of unconstitutional “takings” of coastal property
*Lucas v. South Carolina Coastal Council* and progeny
Short documentary on the *Lucas* case

** Presentation by Discussion Team Number Three: Wetland protection.
** Guest Lecturer: Steve Underwood, N.C. Division of Coastal Management

** NOTE: Assignment due today (9/26/05) – Final research paper topic proposals

Reading assignment for Class #5:
COL text pages 253-275.
Additional reading posted on Blackboard.

III. Ocean Resources Management

III. A. The Magnuson-Stevens Fishery Conservation and Management Act (MSA)

Class #6 – October 3, 2005 – Government regulation of fisheries and Non-Government Organization perspectives on government performance

Purposes of the Magnuson-Stevens Fishery Conservation and Management Act
Role of National Marine Fisheries Service and Regional Fishery Management Councils
Key issues facing Regional Fishery Management Councils
Key issues facing the Atlantic States Marine Fisheries Commission
Key issues facing North Carolina state fishery managers
NGO perspectives on state and federal regulation of fisheries and coastal development

** Guest Lecturer: Dr. Michelle Duval, Environmental Defense (Ph.D. Duke 1997)
** Presentation by Discussion Team Number Four: Sea level rise.

Reading assignment for Class #6: COL text pages 444-471.
Additional readings posted on Blackboard.
**Fall Break – No Class scheduled for October 10, 2005**

**Class #7 – October 17, 2005 – Fish population management issues**

PBS Documentary Film: *Empty Oceans/Empty Nets*
Fish population dynamics and global overfishing
Commercial fishing/recreational fishing interplay
Short-term versus long-term effects of management

**Presentation** by Discussion Team Number Five: Red snapper.

Reading assignment for Class #7:
COL text pages 435-444.
Additional reading posted on Blackboard.

**Class #8 – October 24, 2005 – Overfishing: Summer flounder and Cod**

Litigation against the government on ocean issues – a primer and overview
*NRDC v. Daley* (summer flounder I)
*Conservation Law Foundation v. Evans* (New England cod I)
*Oceana v. Gutierrez* (New England cod II)
The aftermath of *NRDC v. Daley* in the summer flounder fishery
The latest on the New England Council and NMFS in the cod fishery

**Possible guest speakers**: Nicholas School Cape Cod interns

**Presentation** by Discussion Team Number Six: Funding for displaced fishermen.

**NOTE: Optional assignment for today (10/24/05) – First draft papers or outlines**

Reading assignment for Class #8:
COL text pages 471-484.
Additional reading posted on Blackboard.

**Class #9 – October 31, 2005 – Essential Fish Habitat and Marine Reserves**

Essential fish habitat (EFH) provisions of the Magnuson-Stevens Act
Concept and purposes for marine sanctuaries and marine reserves
The marine reserve experience in Florida, California, and Hawai`i
Freedom to Fish Act and the future of marine reserves
Assessing and protecting EFH in the Gulf of Mexico and Alaska

**Presentation** by Discussion Team Number Seven: Marine Reserves.

Reading assignment for Class #9:
Additional reading posted on Blackboard.
Class #10 -- November 7, 2005 -- Bycatch: Groundfish, sea turtles, sea birds

The groundfish fishery bycatch problem in the Pacific and New England
The TEDs controversy in the Gulf of Mexico and the South Atlantic
Other bycatch in the shrimp fishery/BRDs (e.g., juvenile red snapper)
The bycatch situation for sea birds and sea turtles

** Guest Lecturer:** Ms. Charlotte Gray Hudson, Oceana (M.E.M. Duke 1999)

** Presentation** by Discussion Team Number Eight: Observers.

Reading assignment for Class #10:
COL text pages 484-487.
Additional reading posted on Blackboard.

III. B. **The National Environmental Policy Act (“NEPA”)**

Class #11 – November 14, 2005 – NEPA – Application to the oceans

Fishery Management Plans and Environmental Impact Statements
American Oceans Campaign v. Daley and aftermath
The Steller sea lion case in the North Pacific
The Hawai‘i longline cases
Draft federal legislation addressing NEPA and the MSA

** Presentation** by Discussion Team Number Nine: Programmatic EIS.

Reading assignment for Class #11:
COL text pages 97-103, 490-505.
Additional reading posted on Blackboard.

III. C. **Endangered Species Act (“ESA”)**

Class #12 – November 21, 2005 – ESA – Listing, designation, taking

“Best science” in the ocean context
The Hawaiian monk seal case in the Northwest Hawaiian Islands
The Steller sea lion case in the North Pacific
The right whale situation in the Atlantic Ocean
Petitions to list ocean species under the ESA

** Presentation** by Discussion Team Number Ten: Right whale.
** NOTE: Assignment due today – Final research paper **

Reading assignment for Class #12:
COL text pages 600-648.
Additional reading posted on Blackboard.
III. D. Marine Mammal Protection Act (MMPA)

Class #13a – (1 hour) – November 28, 2005 – MMPA – Depleted populations & remedies

- The no-take deadline and Take Reduction Teams
- Depleted populations versus threatened or endangered populations
- Fishing versus marine mammal preservation

Reading assignment for Class #13a:
COL text pages 575-599.
Additional reading posted on Blackboard.

IV. Ocean and Coastal Issues Update and Wrap-up

Class #13b – (2 hours) – November 28, 2005 – Federal legislative update; Papers

- Following up on Pew Oceans Commission recommendations
- Following up on United States Commission on Ocean Policy recommendations
- Review of congressional legislative proposals for reform of ocean management
- Discussion of student papers

Reading assignment for Class #13b: Posted on Blackboard.

Semester ends