

## ***How Will Ocean Policy Changes Affect Your Business?***

Current U.S. ocean laws and policies are the product of recommendations formulated over thirty years ago by the Stratton Commission. At that time, policymakers adopted a legal framework that placed a primary focus on oceans as a resource for scientific exploration, commerce, and fisheries. The ocean laws developed around that time struck a certain balance between resource use and ecological concerns, but nevertheless preceded enactment of most of the major federal environmental protection laws of the 1970s and 1980s.

In the past decade, scientists, policymakers, stakeholders and concerned citizens have coalesced around growing evidence, both qualitative and quantitative, that current U.S. ocean policies have not protected ocean, marine and coastal resources in a satisfactory manner. Depleted fisheries that were abundant supplies of food a generation ago, increasing incidence of beach closings, loss of hundreds of acres of coastal wetlands and estuary habitats – these and other signs of decline have in recent years garnered the attention of the United Nations, private foundations such as the Pew Charitable Trusts, and U.S. and state government leaders.

Today, then, there is a growing consensus among many different constituencies that a variety of human activities and natural forces – on land and in the oceans – have combined in largely unforeseen ways to create adverse impacts to our oceans. In addition to evidence of declining fisheries and loss of wetland and estuary environments, major concerns include threatened and endangered marine life, ocean pollution, invasive species, and loss of critical coral reef habitat – and how to protect resources while still providing for exploration and use of seemingly vast ocean resources. With a populace that has grown up in an era of strong federal environmental protection policies, there is today in the U.S. broad societal support for environmentally sound ocean policies and practices. Not surprisingly, then, several recent efforts have addressed the growing consensus that use and management of our oceans must change.

Official federal efforts to formally examine these issues began in 2000, when Congress created the U.S. Commission on Ocean Policy, and charged it with developing a coordinated and comprehensive national ocean policy. The goal of the Commission's effort is to substantially update and improve current laws and policies, through recommendations for executive and legislative action. The Commission has been reviewing existing ocean laws, policies and practices, as well as public and scientific testimony, comments and data, and later this year will make recommendations for needed changes.

The scope of the Commission's charge is broad, looking at a wide range of issues "from ocean governance to the stewardship of marine resources and pollution prevention to enhancing and supporting marine science, commerce and transportation." Specific issues that the Commission is reviewing include marine health and life; ocean ecosystems, biodiversity and resources; oil, gas, other mineral and pharmaceutical exploration and development; pollution and water quality; international trade and treaties; science and public education; and coastal development, including estuary and wetland impacts.

The Commission released its Preliminary Report to the public on April 20, 2004, and is accepting comments from the public until May 21, 2004. The Commission will review comments from stakeholders and then prepare and present its findings to Congress and the President later this year.

***Significant management, legal, business and policy changes will likely follow; do you know how these changes might positively or negatively impact your interests?***

For example, recommendations the Commission makes related to the depletion of commercial fishing stocks will certainly impact that industry in its current configuration; also consider, however, the potential implications of such recommendations for other industries such as aquaculture and coastal development. Recommendations involving ocean-borne commerce will certainly affect freight transportation and leisure travel on the ocean, as well as port development, infrastructure and cleanup. Expect to see recommendations to improve technology and management practices to address issues such as ballast water, invasive species and waste disposal.

Land-based activities with ocean impacts, in addition to direct ocean use, will be a large focus of the recommendations. According to the United Nations, land uses are attributed with causing approximately 80% of ocean pollution concerns such as toxicity and other water quality impacts from contaminants such as nutrients, pesticides and mercury (water- and airborne), habitat and ecosystem destruction and decline, and fish and beach advisories. Current storm water management and municipal waste water systems will likely be impacted by expected pollution prevention recommendations. Changes in how the federal government approaches our ocean resources will affect state, regional and local planning and economic development strategies.

The Commission's work presents both risk and opportunity. Industries, individuals, governments and communities that rely upon the ocean – through direct use and through the impact to ocean resources of their land-based activities – will be affected by the forthcoming recommendations. The changes

could be profound and significant, with the impacts on current and planned activities both positive and negative.

For these reasons, affected business and government interests should participate in the present opportunity for public comment, prior to the Commission formulating its final findings and recommendations. For more information on how the forthcoming ocean policy changes may impact your business, please contact Karen Hansen at 202-789-6056 or [khansen@bdlaw.com](mailto:khansen@bdlaw.com).