

# Study: Public trust doctrine could aid management of US oceans

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Since Congress lifted a moratorium on offshore drilling last year, federal lawmakers have grappled with the issue of how best to regulate U.S. ocean waters to allow oil, wave and wind energy development, while sustainably managing critical fisheries and marine animal habitats.

A new policy paper, published April 10 in *Science* by a team of Duke University experts, argues that establishing a public trust doctrine for federal waters could be an effective and ethical solution to this and similar conflicts.

"The public trust doctrine could provide a practical legal framework for restructuring the way we regulate and manage our oceans. It would support ocean-based commerce while protecting marine species and habitats," says lead author Mary Turnipseed, a PhD student at Duke's Nicholas School of the Environment.

The public trust doctrine is "a simple but powerful legal concept," Turnipseed says, that obliges governments to manage certain natural resources in the best interests of their citizens, without sacrificing the needs of future generations.

The doctrine already is well established in the United States at the state level, where natural resource agencies are legally bound to seek legal action against private parties who are infringing on the public trust.

Extending the public trust doctrine to U.S. ocean waters would help

federal agencies better manage conflicting demands such as conservation, offshore energy development, fisheries and shipping in the 3.6 million nautical square miles of water included in the nation's territorial sea and Exclusive Economic Zone (EEZ), Turnipseed says. Currently, more than 20 different federal agencies, operating under dozens of laws, regulate species and activities in these waters, without any mandated, systematic effort to coordinate their actions for the public good.

"In the Gulf of Maine, as an example, a wide range of different activities -- including shipping lanes, ferry routes, U.S. Navy operations, fisheries and proposed wind farms -- overlap critical habitat of the endangered right whale," she says. "Most of these are regulated by separate agencies, with only piecemeal coordination. A public trust doctrine would identify these agencies as trustees of the U.S. ocean public trust, unifying them for the first time under a common mandate to manage the gulf's resources sustainably."

Many analysts, including the presidentially appointed U.S. Commission on Ocean Policy, have simply assumed that the public trust doctrine already extends to these federal waters, notes co-author Stephen Roady, senior lecturing fellow at Duke's School of Law and an environmental lawyer at Earthjustice. "Though the public trust doctrine is well suited to serve as a critical legal foundation for a coordinated, ecosystem-based federal ocean policy, it has not yet been formally articulated by the executive branch, nor has it been recognized by federal courts or expressly established in statutory law," Roady says.

The Duke researchers identify three possible avenues for establishing a public trust doctrine for federal waters.

"Each of the three branches of government has the authority to take action," says Larry B. Crowder, Stephen Toth Professor of Marine

Biology at the Nicholas School and director of Duke's Center for Marine Conservation. "The doctrine could be established by a Presidential executive order; federal courts could extend it to the U.S. territorial sea and EEZ by invoking the same precedents and statutes relied upon by state courts; or Congress could mandate it by unambiguously writing the doctrine into a federal oceans law."

Regardless of which approach is used, the need to establish the doctrine is pressing, says Raphael Sagarin, associate director for coastal and ocean policy at Duke's Nicholas Institute for Environmental Policy Solutions.

"We need to move past the failing status quo of current U.S. ocean management policies and build a vigorous mandate that provides both the authority and the responsibility for federal agencies to work jointly to manage our oceans as whole ecosystems," Sagarin says. "As we contemplate managing our ocean resources, not only for today but for future generations, we need to ask ourselves two critical questions: For whom should the country's oceans be managed? And for what purpose? The public trust doctrine answers both of these questions."

Source: Duke University ([news](#) : [web](#))

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