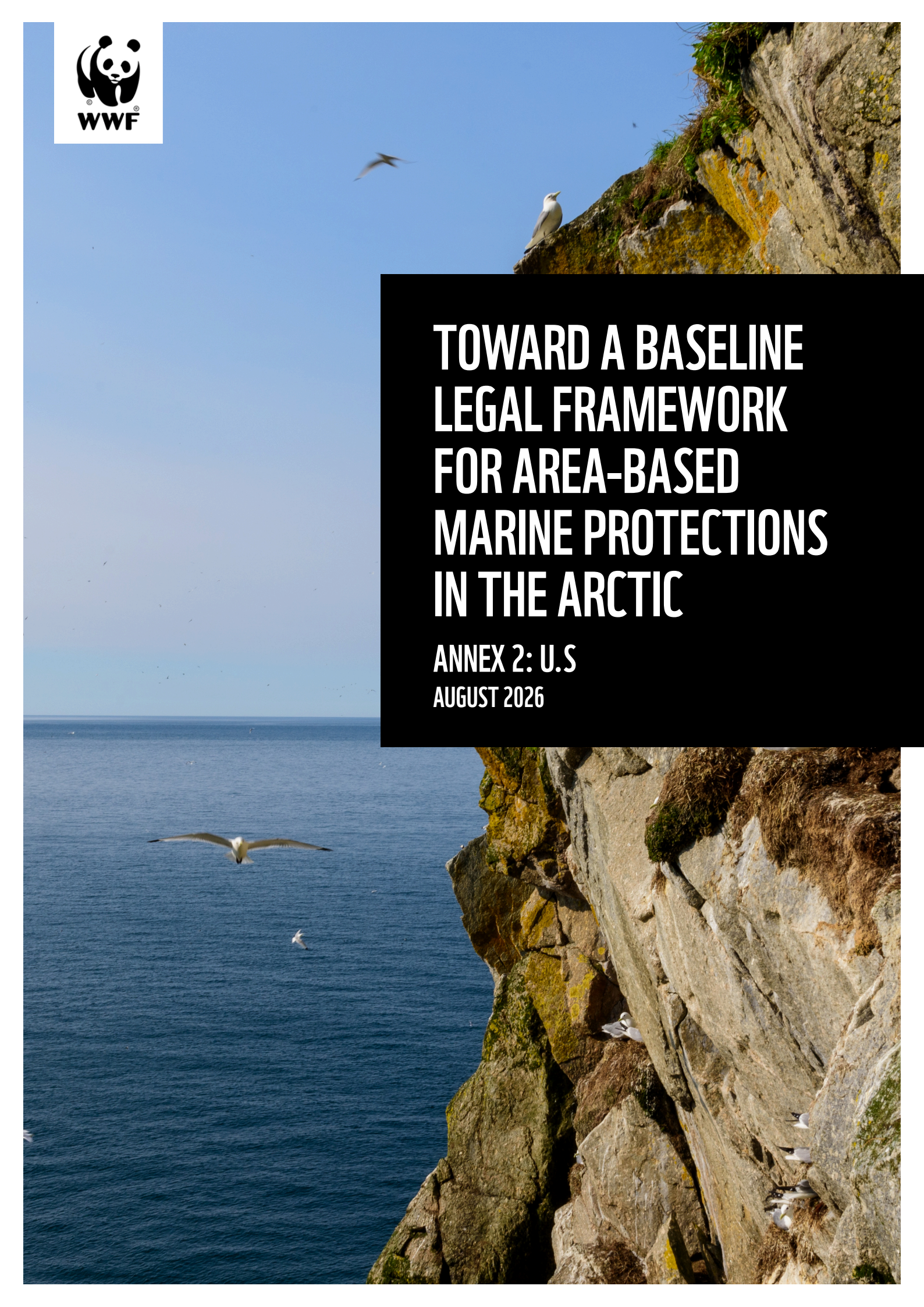


The background of the cover is a photograph of a rugged, rocky coastline. In the foreground, a steep, grey rock face with patches of yellow lichen and green moss slopes down towards the sea. Several white seabirds, likely gulls or terns, are perched on the rock. One bird is in flight in the upper left, another is perched on the edge of the rock in the upper right, and a large group of birds is visible on the rock face in the lower right. The sea is a deep blue, and the sky is a clear, pale blue.

TOWARD A BASELINE LEGAL FRAMEWORK FOR AREA-BASED MARINE PROTECTIONS IN THE ARCTIC

**ANNEX 2: U.S
AUGUST 2026**

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OVERVIEW

Approximately 26% of U.S. marine areas are protected by some form of marine conservation, although over 90% of these marine areas are concentrated in the Central Pacific group of large marine monuments designated between 2006 and 2016. Marine protected areas in the U.S. can be federally or sub-nationally managed, depending on the location. States and territories generally manage coastal conserved areas within 3 miles offshore, while the federal government controls marine areas located between 3 and 200 miles offshore.

U.S. federal law achieves area-based marine protection through designations that can qualify as marine protected areas (MPAs) or "other effective area-based conservation measures" (marine OECMs), collectively referred to in this document as "conserved areas." These include national marine sanctuaries, national monuments, endangered species' critical habitats, essential fish habitats, wildlife refuges, historic properties, and sites designated under coastal programs.

The federal government establishes and manages such marine conservation primarily under the auspices of the following legal authorities (and their associated regulations and orders):

- Executive Order 13158 (EO 13158)
- National Marine Sanctuaries Act (NMSA)
- Coastal Zone Management Act (CZMA)
- Antiquities Act
- Magnuson-Stevens Fishery Conservation and Management Act (MSA)
- Endangered Species Act (ESA)
- National Wildlife Refuge Systems Administration Act (NWRSA)
- National Historic Preservation Act of 1966 (NHPA)

Key federal implementing agencies include: U.S. National Oceanic and Atmospheric Administration (NOAA) and U.S. Department of the Interior, through U.S. National Park Service (NPS) and U.S. Fish and Wildlife Service (FWS). Relevant state agencies assist the federal agencies in implementation.

Purpose of this Document

This assessment supplements *Toward a Baseline Legal Framework for Area-Based Marine Protections in the Arctic* by examining the extent to which the U.S. legal framework aligns with the baseline legal elements and Arctic themes identified in that discussion draft. Rather than developing a new framework, it applies the report's analytical approach to assess how the U.S. legal framework supports effective area-based marine protection in the Arctic.

The assessment considers the U.S. legal framework as a whole, rather than any individual law or protected area designation. It evaluates the extent to which the framework reflects the baseline legal elements for effective area-based marine protection (Table 1) and addresses the associated Arctic themes (Table 2). The analysis is intended to inform discussion by identifying areas of alignment, strengths, and potential gaps relative to the baseline framework.

Table 1. Baseline Legal Elements for Area-Based Marine Protection

No.	Legal Element	Description
1	Objectives	Sets forth governmental (i.e., legislative or administrative) goals
2	Guiding principles	Establishes scientific, social, and policy principles
3	Institutional authority	Clarifies institutional authority and roles
4	Indigenous, traditional, & customary considerations	Clarifies roles and secures authority of Indigenous Peoples and groups with traditional and customary rights to marine resources
5	Area designation	Provides for formal legal designation of area
6	MPA network	Supports a framework for holistic network of marine area protections
7	Area management	Provides for on-the-water management of area
8	Monitoring & evaluation	Allows for collecting data and assessing effectiveness of conservation measures within area
9	Enforcement	Supports compliance with area's prohibitions and restrictions
10	Sustainable financing	Addresses sustainable funding for area management
11	Definitions (Interpretation)	Ensures accuracy of and consistency among legal terms
12	Application/scope	Establishes legal coverage (e.g., with respect to maritime zones)
13	Harmonization	Ensures alignment with domestic and international requirements/commitments

Table 2. Arctic Themes

	Thematic Category	Theme
A	Environment	Unique Arctic ecosystems & features
B		Climate change
C	Threats	Industrial pressures—particularly fishing & shipping
D	National approaches	Indigenous, traditional, & customary considerations
E		Intra-governmental coordination
F		Minimum protection standards
G	Regional integration	Pan-Arctic governance & processes

The premise underlying this assessment is that where a country's legal framework contains the baseline legal elements—and is capable of addressing the Arctic themes through those elements—it provides an enabling environment for robust and durable area-based marine protection in the Arctic. Conversely, the absence of one or more baseline legal elements, or an inability to address one or more Arctic themes, may indicate legal gaps that could limit or undermine effective area-based marine protection. Accordingly, this analysis evaluates the content of the legal framework itself, rather than how the law is administered, implemented, or enforced, while recognizing that these are also critical determinants of conservation outcomes.

Overall, the assessment finds that the U.S. legal framework for area-based marine protection is relatively robust with respect to the baseline legal elements and addresses some, but not all, of the Arctic themes. At the same time, opportunities exist to strengthen the framework through legislative amendments, new regulations, and further policy development to more effectively address certain legal elements and Arctic themes.

Part I introduces the principal U.S. federal legal authorities and policies relevant to area-based marine protection. Part II assesses the alignment of the U.S. legal framework with the baseline legal framework for area-based marine protection in the Arctic. Part III presents key observations and takeaways. The Annex lists the legal instruments and policy documents consulted for this assessment.

Summary of Key U.S. Legal Authorities and Policies for Area-Based Marine Protection

Executive Order 13158: Marine Protected Areas

The U.S. does not have one law in which it addresses various types of its area-based marine protections. Instead, the U.S. has several statutes that authorize designation and management of areas that differ by the authority and type.

EO 13158, however, brings them together. The EO calls on the relevant federal agencies to expand protection of their existing and new MPAs, and to work together to establish and strengthen “a scientifically based, comprehensive national system of MPAs representing diverse U.S. marine ecosystems, and the Nation’s natural and cultural resources.”

Section 2 of the EO broadly defines an MPA to include “any area of marine environment reserved by any law or regulation to provide lasting protection of resources.” It also defines the marine environment as “the areas of coastal and ocean waters, Great Lakes, and connecting waters, submerged lands thereunder” under the jurisdiction of the United States.

Section 4 of the EO requires interagency consultations to develop a national system of MPAs. It also requires interagency coordination and sharing of tools and information to expand protection of existing areas and create new MPAs. This includes the use of: science-based identification and prioritization of natural and cultural resources for protection; integrated assessments of ecological linkages; an assessment of threats and gaps in the level of protection; science-based criteria for monitoring and evaluation of effectiveness; identification of “emerging threats and user conflicts,” as well as management and enforcement solutions; and identification of opportunities to improve linkages to international MPA programs.

Section 5 instructs the federal agencies whose actions affect protected natural and cultural resources to identify such actions and to avoid harm to resources to the maximum extent practicable. Section 6 similarly requires agencies to prepare and make public annually a report of actions taken by the agency to implement the EO.

Sections 7 and 8 state that any establishment of MPAs is still subject to the jurisdiction and control of states, tribes and treaty rights, territories, other presidential proclamations, and international law.

While the EO does not explicitly refer to the Arctic, it contains many provisions that are important to address Arctic themes.

National Marine Sanctuaries Act: national marine sanctuaries

The NMSA authorizes the Department of Commerce to designate as national marine sanctuaries areas of “special national significance” due to their special qualities (e.g., conservation, ecological, historical, cultural, scientific, etc.), their resource or human-use values, or the communities of living marine resources they harbor (Section 303). The Act also establishes a National Marine Sanctuary System.

Stated purposes of the Act include, among others: “to maintain the natural biological communities in the national marine sanctuaries,” to protect natural habitats and ecological processes, to develop coordinated plans for the management of these areas due to concerns

about their health and resilience, and “to create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques” (which could potentially support dynamic ocean management).

The Act contains designation standards, which include consideration of whether the existing authorities are inadequate to ensure comprehensive conservation and management of the area, including with regard to resource protection, scientific research, and public education. Other factors considered during designation include: the area’s “natural resource and ecological qualities,” cultural significance, present and potential uses and activities, public benefits, the area’s scientific value, and existing authorities.

Section 303 of the Act requires the Secretary of Commerce to consult with other relevant governmental agencies and representatives of other entities, as well as “other interested persons” when making determinations about the area designations. Plans for the established areas are developed in coordination with appropriate federal agencies, state and local governments, Native American tribes and organizations, and others.

Under the Act, the Secretary may establish Advisory Councils, members of which may include, among others, scientific organizations, representatives of local user groups, and conservation organizations.

The Act includes sections for interagency cooperation and application of relevant international laws as it pertains to the act (Sections 304 and 305, respectively). The interagency consultations are mandatory when a federal action that is internal or external to an established sanctuary, including private actions authorized by permits, might harm sanctuary resources. During interagency consultation (required under Section 304(d)), NOAA is required to recommend “reasonable and prudent alternatives” to protect resources whenever the relevant agency is engaging in actions that are likely to destroy or injure a sanctuary resource. The Act also requires relevant federal agencies to prepare and update management plans regarding day-to-day activities within each sanctuary under Section 304(a) and (e). Fishing regulations must be prepared consistent with the conservation objectives for the area.

Management of Sanctuaries is delegated by Commerce to NOAA’s Office of National Marine Sanctuaries under Section 308; the Office has the authority to issue regulations for each sanctuary and for the system as a whole.

Enforcement of the Act includes authorization of NOAA to assess civil penalties (up to \$130,000 per day per violation) for violations of the Act and its implementing regulations and for damages against people that injure sanctuary resources (Sections 306, 307, and 312).

While the Act does not explicitly refer to the Arctic, many of the Act’s provisions are important to address Arctic themes.

Coastal Zone Management Act: areas designated under coastal programs

The CZMA, enacted in 1972 and administered by NOAA, provides for the management of the nation’s coastal resources, including the Great Lakes. The Act aims to “preserve, protect, develop, and where possible, to restore or enhance the resources of the nation’s coastal zone” (Section 303(1)). It establishes three national programs for coastal management: the National Coastal Zone Management Program, the National Estuarine Research Reserve Program, and the Coastal and Estuarine Land Conservation Program. The Act defines coastal zones, coastal waters, coastal resources of national significance, and more, under section 304.

The National Coastal Zone Management Program is a voluntary partnership between NOAA and U.S. states and territories. States and territories wishing to participate must prepare management programs and submit them to NOAA for approval. Currently, Alaska is the only coastal U.S. state that does not have a NOAA-approved coastal management program. Each program must address protection of coastal waters generally (including designation of habitats) and identify critical coastal areas.

The National Estuarine Research Reserve Program supports the National Estuarine Research Reserve System – a network of coastal states’ estuarine areas, established in partnership between coastal states and NOAA. Prior to designating an area nominated by a state’s Governor, NOAA must find that it represents ecosystem “that is suitable for long-term research and contributes to the biogeographical and typological balance of the System” (Section 315). Even states that do not have approved coastal management programs can participate in this program and receive financial assistance (15 CFR § 921.4).

The Coastal and Estuarine Land Conservation Program aims to “protect[] important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses” (Section 1456d). Under the program, NOAA provides grants to support areas that “can be effectively managed” and “have significant ecological value” (Section 1456d). The law-mandated guidelines issued by NOAA state that this program is available to states and territories that have approved coastal management programs or national research reserves.

A key aspect of the CZMA is NOAA’s ability to administer grants to coastal states. Under sections 306, 306A, 308, 309, and 315 the agency is authorized to make grants available to eligible coastal states to assist with certain objectives or to administer the state’s management program. The Act also specifies, under Section 307, that the CZMA is still subject to existing laws, other jurisdictional authorities, and interagency cooperation.

The Act requires NOAA to review the performance of coastal states with respect to their coastal management plans; such reviews include written evaluations and public participation in the review process (Section 312). The agency must also prepare and submit to the President and Congress a Coastal Zone Management report every two fiscal years (Section 316).

Antiquities Act: national monuments

The Antiquities Act grants the U.S. President the authority to designate national monuments that contain landmarks or objects of historical or scientific interest. The Act aims to reserve “the smallest area compatible with the proper care and management of the objects to be protected” (Section 431) as a means for addressing concerns of theft from and destruction of these sites.

Activities in marine national monuments are regulated by NOAA Fisheries and the FWS. The Act establishes several tools for archaeological resource protection, including securing permission from federal land managers before conducting any investigations or removing objects, penalties for unauthorized activities, and requiring that excavated materials be permanently preserved in public museums. In addition, the Act authorizes the U.S. Department of Agriculture, Department of Interior, and Department of War to review and grant permits to qualified institutions for activities on national monuments.

While the Act and corresponding regulations expressly address limitations on permits for activities that might damage the protected landmarks, they do not address other activities that could potentially be conducted in the protected areas. A recent Executive Order – EO 14276 –

instructs the Secretary of the Interior to recommend to the President all marine national monuments that could be opened to commercial fishing.

Magnuson-Stevens Fishery Conservation and Management Act: essential fish habitats

The MSA governs marine fisheries management in U.S. federal waters. The MSA established U.S. jurisdiction of the EEZ to 200 nautical miles, created Regional Fishery Management Councils (Councils) representing coastal states and fishery stakeholders, and instituted national standards for fishery management plan (Section 301).

The purposes of the MSA (Section 4) are, among others, to “conserve and manage the fishery resources found off the coasts of the United States” and “to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities” that may affect the habitat. The Department of Commerce, through NOAA Fisheries, implements the Act.

The MSA requires the Secretary of Commerce to set guidelines for the Councils to identify essential fish habitats in fishery management plans and adverse impacts on the habitats. The Secretary also sets a schedule for the amendment of the management plans and for the review and updating of the habitats’ identifications based on scientific information. The MSA requires that the Western Pacific Council considers “traditional indigenous fishing practices” during the preparation of any fishery management plan.

The Act also creates a consultation process for essential fish habitats. It requires that each federal agency consults with the Secretary with regard to any activity it authorizes, funds, or undertakes that “may adversely affect” an essential fish habitat.

The MSA contains enforcement provisions, and establishes civil and criminal penalties for violations of fishery management plans (sections 308 and 309).

Endangered Species Act: critical habitats

The ESA aims to conserve endangered and threatened species by regulating activities that could harm such species (i.e., “taking” or hunting, killing, etc.) and the critical habitats of the species. The Secretary of Commerce (through NOAA Fisheries) and the Secretary of the Interior (through FWS) jointly implement the Act, with NOAA Fisheries being responsible for most marine species.

The Secretary, by regulation, declares which species are endangered or threatened and designates appropriate critical habitats. The Secretary makes these determinations based on the best scientific and commercial data available, and taking into account efforts to protect such species by any foreign country or political subdivision.

The Act requires interagency cooperation. Specifically, Section 7 of the Act mandates all federal agencies to consult with the Secretary to ensure that none of the actions they authorize, fund, or carry out are likely to destruct or negatively modify the established critical habitats. The Act, however, allows the Endangered Species Committee to issue an exemption for such an action in certain circumstances. The Act also states that “the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.” The Committee has recently used the national security exemption to authorize oil and gas activities in the Gulf of Mexico without consultations under the ESA.

The Act also requires consultations with states.

National Wildlife Refuge System Administration Act: wildlife refuges

The NWRSA governs management and administration of the National Wildlife Refuge System, a network of lands and waters for the conservation of fish, wildlife, and plant resources and habitats. The Secretary of the Interior, through FWS, administers the Act.

The Secretary of the Interior's duties under the Act include, among others: monitoring the status and trends of wildlife and plants within each refuge; providing for the conservation of wildlife, plants, and their habitats; ensuring biological integrity and environmental health of the system for future generations; ensuring effective coordination, interaction, and cooperation between FWS and fish and wildlife agencies of relevant states, as well as owners of land adjoining refuges.

The use of areas designated as wildlife refuges may occur if FWS issues a permit, upon determining that such use is "compatible" with the National Wildlife Refuge System's mission and the specific purpose established for the refuge. Each refuge has its own regulations.

The Act contains provisions on enforcement, violations, and penalties.

National Historic Preservation Act: historical properties

The NHPA establishes a national preservation program and a system for protecting historic resources, including archaeological resources, on land or water.

The Act provides for the designation and management of historic properties.

Importantly, the Act creates a consultation process that requires federal agencies to consider the effects of their undertakings or actions on historic properties (including Native American remains). The goal of the consultation is to identify which historic properties might potentially become affected by the federal action, assess the potential effects, and seek to avoid impact. The federal agencies must explore steps to avoid, minimize, or mitigate adverse effects of their actions on the designated historic properties.

The Act explicitly requires the Secretary to consult with Indian tribes and Native Hawaiian organizations about any potential undertaking that may affect a historic property that is of religious and cultural significance to them.

Alignment with Baseline Legal Framework for Area-Based Marine Protection in the Arctic

The U.S. legal framework for area-based marine protection in the Arctic aligns well with the Arctic baseline in terms of most legal framework elements and some Arctic themes. However, certain elements and themes could be addressed more effectively. Findings with respect to baseline legal framework elements and Arctic themes are summarized in Table 3.

As discussed above in Part I, the U.S. has at least seven national laws that empower multiple federal agencies to establish and support MPAs and OECMs in Arctic waters. The available categories of areas are:

- national marine sanctuaries (under NMSA)
- areas designated under coastal programs (under CZMA)
- national monuments (under the Antiquities Act)

- essential fish habitats (under MSA)
- critical habitats (under ESA)
- wildlife refuges (under NWRSA), and
- historic properties (under NHPA)

These legislative acts, when viewed collectively, address most of the key legal framework elements — with the exception of articulating a strong, clear role for Indigenous Peoples under the law of federal marine protection and identifying sustainable funding mechanisms. The acts also, to some extent, contain provisions that could be used to address Arctic themes. Specifically, some of the acts contain provisions related to the use of science (which could be used to address the Arctic theme of climate change), industrial pressures and other user conflicts, intra-governmental coordination, and — to some degree — Indigenous, traditional, and customary considerations. However, the acts lack provisions that expressly address the Arctic environment, minimum protection standards, and pan-Arctic governance and processes. That being said, the presence of regulation-making authority could potentially be used to address these themes. The Arctic thematic categories involving national approaches are somewhat addressed by the U.S. legal framework.

Table 3. Assessing the U.S. legal framework for area-based marine protection in the Arctic against baseline legal framework elements & Arctic themes

Baseline Legal Framework Elements			Arctic Themes			
1	Objectives	• ✓	Environment	A	Unique Arctic ecosystems & features	• • (although there are some references to ecological and scientific significance)
2	Guiding principles	•		B	Climate change	• • (although there are references to the use of science)
3	Institutional authority	•	Threats	C	Industrial pressure—particularly fishing & shipping	•
4	Indigenous, traditional, & customary considerations	•				
5	Area designation	• ✓	National approaches	D	Indigenous, traditional, & customary considerations	• •
6	MPA network	•		E	Intra-governmental coordination	•
7	Area management	•		F	Minimum protection standards	• •
8	Monitoring & evaluation	•	Regional integration	G	Pan-Arctic governance & processes	• •
9	Enforcement	• ✓	Key • = present (legal element) expressly addressed (Arctic theme) ✓ = robustly or extensively addressed • = absent (legal element) not or minimally addressed (Arctic theme) • = potential to be addressed through regulation			
10	Sustainable financing	•				
11	Definitions (Interp.)	•				
12	Application/scope	•				
13	Harmonization	•				

Where the U.S. legal framework meets the baseline

The baseline elements are mostly present within the patchwork of U.S. laws reviewed, with the exception of sustainable financing and Indigenous, traditional, and customary considerations. However, certain elements and Arctic themes could be more extensively addressed.

The elements that the U.S. legal framework addresses particularly well include application, definitions, objectives, institutional authority, area designation, area management, and enforcement. Objectives, in particular, are robust in most of the statutes reviewed, especially the NMSA. The legal framework is also generally clear on the designation and management of areas, with the designation processes involving various types of consultations. The legal framework also contains enforcement provisions, setting forth offenses and penalties.

With regard to Arctic themes, the U.S. legal framework addresses intra-governmental coordination and industrial pressures, including fishing pressures, particularly well.

Intra-governmental coordination. The U.S. legal framework for marine protection is a patchwork of interrelated laws, and the majority of the laws reviewed require consultations between federal agencies, which often have overlapping jurisdictions with respect to the marine environment. There is also federal and state and Tribal government cooperation, most often through states and regions generating management plans for marine areas or resources that are then approved by the federal government. Furthermore, EO 13158 directs federal agencies to work together for the purpose of creating a comprehensive national system of MPAs.

Industrial pressures, including fishing. Many laws described above contain provisions that require federal agencies whose actions may interfere with the conservation objectives for the areas to: 1) consult with the agency managing the area; and 2) cancel or adjust their action in a way that prevents harm to the area. This can help address various industrial pressures, as long as there is a conserved area already in place. With regard to fishing in particular, under the NMSA, fishing regulations must be developed with the conservation objectives for the sanctuary in mind.

In addition, the MSA focuses on sustainable fishing, regulating fishing through management plans and designation of essential fish habitats. The Act addresses fishing pressures in the Arctic through the North Pacific Fishery Management Council and its Arctic Management Plan, where the Council instituted a closure of certain fishing activities in the Arctic Management Area, pending scientific information to determine whether commercial fishing is environmentally and economically sustainable.

Where the U.S. legal framework falls short of the baseline

The U.S. legal framework falls short primarily with respect to specific Arctic themes. The following six themes and elements are key areas where the U.S. framework does not meet the baseline requirements.

Minimum protection standards. Few of the authorities surveyed mention specific protection standards or criteria. EO 13158 calls for science-based criteria and protocols for monitoring and evaluating the effectiveness of MPAs (Section 4(5)). Section 301 of the MSA provides national standards for fishery conservation and management, but not for essential fish habitats (although the Secretary issues guidance). Overall, the lack of strong minimum protection standards can hinder protection within the conserved areas.

Climate change (and science-based considerations for marine protection). Climate change, as a significant threat to Arctic ecosystems and inhabitants, was mentioned in EO 13754 (now revoked), which established the Northern Bering Sea Climate Resilience Area, with the goal of conserving the area and addressing climate-specific impacts. EO 13158, the MSA, and the NMSA do not mention climate change, but do mention the use of science. Section 4(1) of EO 13158 calls for science-based prioritization of natural and cultural resources; Section 3(c)(3) of the MSA assures that the national fishery conservation and management program is based upon the best scientific information available; and Section 301(b)(5) of the NMSA aims to coordinate and promote scientific research related to the resources of marine areas under the Act. While such provisions are a start, they are not comprehensive; nor do they indicate that the science considered must be climate science.

Indigenous, traditional, and customary considerations. While a handful of the laws reviewed for this analysis mention Indigenous Peoples, there is no established mechanism for Indigenous Peoples not only to participate but to serve as decision-makers in marine protection processes, and to engage meaningfully and early in the process (rather than at its conclusion).

For example, the NMSA states a goal of developing coordinated protection and management plans with appropriate states, agencies, and Tribes (Section 301(b)(7)). However, the law does not contain any requirements for when or how NOAA must engage Tribes in the development of the plans. The MSA requires Tribal representation on one regional council (Pacific) but not for others, including the Arctic (Section 302(f)). The MMPA allows NOAA Fisheries or FWS to enter cooperative agreements with Alaska Native organizations with the goal of conserving marine mammals and providing co-management of subsistence use by Alaska Natives (Section 119). However, there is no language explaining the value of such agreements, nor are there provisions explaining how the agencies make decisions on cooperative agreements.

In 2021, the Secretaries of Interior and Agriculture issued Joint Secretarial Order 3403 to engage Tribes in more meaningful ways, including through co-stewardship agreements, "meaningful consultation at the earliest phases of planning," and consideration of Indigenous knowledge. This order recognizes Tribal sovereignty, Indigenous rights, and Tribes' integral role in decision-making related to the management of land and water resources. However, these provisions are not codified and can easily be changed.

Unique Arctic ecosystems & features. Only the MSA has an Arctic-specific consideration, and even that is only to establish the Arctic Fishery Management Plan (Arctic FMP) that eventually established the Arctic Management Area. While the laws surveyed in Part I contain provisions about areas of special ecological and scientific value (relevant to the Arctic), they are not extensive. Nor do they specifically refer to Arctic environmental features, such as sea ice.

Sustainable financing. Although the U.S. legal framework does have examples of authorized appropriations for certain legislation, there are no examples of continuous or sustainable funding mechanisms (such as special funds used for area-based marine protections), as authorization of appropriations changes with each new session of Congress. Nor do the laws reviewed mention non-governmental finance mechanisms. Some acts specify amounts for particular year ranges, but this is not necessarily a sustainable funding source. While the federal government does regularly provide grants for state implementation of protection schemes (most notably under the CZMA), these grants are also finite sources of financing.

Pan-Arctic governance & processes (and lack of common platform for data). Although there are occasional references to international considerations, there are no robust legal provisions that would enable pan-Arctic governance and processes. This hinders data-collection efforts needed for conservation. Generally, the laws reviewed contain no requirements for a common platform to collect and share data about marine protection areas or for the MPA network.

Discussion and Takeaways

Discussion

Overall, the U.S. has a relatively robust legal framework for area-based marine protection at the national level. This framework offers approaches to designate various types of conserved areas, to manage them, and to ensure enforcement. However, there are several areas in which the legal framework could be strengthened.

First, the legal framework does not secure a role for Indigenous Peoples in area-based marine protection. Specifically, it does not (1) provide opportunities for Indigenous Peoples to designate area-based marine protections or initiate area-based marine protection processes; (2) provide for early engagement of Indigenous Peoples in the process; or (3) provide a designated forum, separate from the general consultation process, to elevate their voices.

In addition, the legal framework could benefit from strong co-management provisions enabling a range of arrangements — agreements, councils, and management plans. Provisions could specifically be drawn to engage Indigenous Peoples in co-management so that arrangements reflect their needs and preferences. Funding and various other support (including, potentially, equipment) for co-management would be particularly important. Similarly, management of conserved areas would benefit from incorporating traditional knowledge, which, currently, is not required by the law.

Second, the legal framework could benefit from codifying certain practices or providing more details about them. For example, while EO 13158 calls for federal agencies to create a network of MPAs, there are no laws or regulations setting forth requirements related to the operation of the network, including how data is collected, analyzed, and shared among the entities that need it. The U.S. legal framework could build on the network requirement by codifying this national system in legislation and by developing more specific guidelines for consultations between entities.

Takeaways

This assessment yields several takeaways to facilitate effective marine protection in the Arctic:

First, it would be useful for the U.S. legal framework for area-based marine protection to articulate a clear and robust role for Indigenous Peoples. Especially in the Arctic, it would be useful for the law to define the role of Indigenous Peoples in area-based marine protection, create mechanisms that engage Indigenous Peoples in ways that support their needs and practices, and elevate their role in decision-making processes, including area designation, management, and enforcement.

There are certain underlying principles that would, if adopted, inform how federal agencies interact with Tribal Governments. Such principles include recognition of Tribal sovereignty, a duty to consult, and respect for Indigenous rights, Indigenous knowledge, and practices related to marine stewardship. These principles are reflected, for example, in Joint Secretarial Order 3403. Their codification could support a stronger, more Indigenous-led model of ocean stewardship, facilitating a holistic approach to marine conservation.

Second, the U.S. legal framework could deploy its extensive existing regulatory authority under current marine protection legislation to address priority thematic concerns for the Arctic.

Regulations could be developed and issued, for example, to -

- expressly require the use of science, climate data, and other information useful for addressing climate change in area-based marine protection;
- protect unique Arctic features, including sea ice;
- expressly facilitate the use of dynamic ocean management and provide more broadly for how the designation and management of Arctic conserved areas should account for climate impacts;
- address sustainable financing;
- address minimum protection standards; and
- reference and incorporate into law pan-Arctic processes, including by facilitating coordination between countries in designating and managing conserved areas to build regional MPA networks; sharing data, tools, and resources; and sharing information about threats and climate impacts.

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The contents of this report, including any errors or omissions, are solely the responsibility of the authors. The authors welcome corrections and additions. This document is an educational resource, and nothing contained herein is intended to serve as legal advice.

ANNEX: Table of Authorities

Acts, Regulations, and Orders—

Antiquities Act of 1906, 54 U.S.C. §§ 320301-320303

Coastal Zone Management Act of 1972, 16 U.S.C. § 1451 *et seq.*

Endangered Species Act, 16 U.S.C. § 1531 *et seq.*

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*

National Marine Sanctuaries Act, 16 U.S.C. § 1431 *et seq.*

National Wildlife Refuge System Administration Act, 16 U.S.C. § 668dd *et seq.*

National Historic Preservation Act of 1966, 16 U.S.C. § 470 *et seq.*

National Estuarine Research Reserve System Regulations, 15 CFR Part 921

National Marine Sanctuary Program Regulations, 15 CFR Part 922

Executive Order 13158: Marine Protected Areas, 65 FR 34909

Executive Order 14276: Restoring American Seafood Competitiveness, 90 FR 16993

Executive Order 13754: Northern Bering Sea Climate Resilience (now revoked)

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Policies, Plans, Strategies, & Reports—

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