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## Oceans

#### Advantage \_\_\_\_\_\_\_ - The Ocean

#### Offshore wind is key to it

CASEY 12 – 4 – 12 EWEA Staff Writer, Citing International and Swedish funded studies [Zoë Casey, Offshore wind farms benefit sealife, says study, <http://www.ewea.org/blog/2012/12/offshore-wind-farms-benefit-sealife-says-study/>]

Offshore wind farms can create a host of benefits for the local marine environment, as well as combatting climate change, a new study by the Marine Institute at Plymouth University has found.

The Marine Institute found that wind farms provide shelter to fish species since sea bottom trawling is often forbidden inside a wind farm, and it found that turbine support structures can create artificial reefs for some species.

A separate study at the Nysted offshore wind farm in Denmark confirmed this finding by saying that artificial reefs provided favourable growth conditions for blue mussels and crab species. A study on the Thanet offshore wind farm in the UK found that some species like cod shelter inside the wind farm.

One high-profile issue covered by the Marine Institute study was that of organisms colliding with offshore wind turbines. The study, backed-up by a number of previous studies, found that many bird species fly low over the water, avoiding collision with wind turbine blades. It also found that some species, such as Eider ducks, do modify their courses slightly to avoid offshore turbines.

When it comes to noise, the study found “no significant impact on behaviour or populations.” It noted that a separate study in the Netherlands found more porpoise clicks inside a Dutch wind farm than outside it “perhaps exploiting the higher fish densities found”.

The study also said that offshore wind power and other marine renewable energies should be rolled out rapidly in order to combat the threats to marine biodiversity, food production and economies posed by climate change.

“It is necessary to rapidly deploy large quantities of marine renewable energy to reduce the carbon emissions from fossil fuel burning which are leading to ocean acidification, global warming and climatic changes,” the study published said.

EWEA forecasts that 40 GW of offshore wind capacity will be online in European seas by 2020 which will offset 102 million tonnes of CO2 every year. By 2030, the expected 150 GW of offshore capacity will offset 315 million tonnes of CO2 annually – that’s a significant contribution to the effort to cut carbon.

“It is clear that the marine environment is already being damaged by the increasingly apparent impacts of climate change; however it is not too late to make a difference to avoid more extreme impacts,” the study said.

“If you bring all these studies together they all point to a similar conclusion: offshore wind farms have a positive impact on the marine environment in several ways,” said Angeliki Koulouri, Research Officer at EWEA. “First they contribute to a reduction in CO2 emissions, the major threat to biodiversity, second, they provide regeneration areas for fish and benthic populations,” she added.

#### And it regenerates the oceans

MUSIAL & BUTTERFIELD 06 National Renewable Energy Laboratory [W. Musial and S. Butterfield, Energy from Offshore Wind, May 1–4, 2006, <http://www.nrel.gov/wind/pdfs/39450.pdf>]

Potential Environmental and Socio-Economic Issues. The full range of potential environmental impacts from offshore wind is unknown today in the United States, since no projects have yet been installed. The only project evaluation thus far is the 3800-page Cape Wind draft environmental impact statement (DEIS) prepared by Cape Wind Associates, under the leadership of the ACE New England District. The document, released in November 2004, did not identify any significant impacts, but a range of specific mitigation measures and monitoring studies are proposed. The ACE held several public hearings, coordinated with 17 public agencies, and received over 5000 public comments. The extensive public involvement requirements along with the transfer of jurisdiction to MMS have slowed the permitting process significantly. Recently, MMS required that the Cape Wind DEIS be expanded to include construction and operational procedures, personnel safety, and decommissioning that fit a broader “cradle-to-grave” approach -- reflecting the new MMS program authority.

The only peer-reviewed information on potential environmental impacts from offshore wind is based upon lessons learned from land-based projects and European before-and-after-control-impact (BACI) studies for installed projects. Though there is over 15 years experience with offshore wind facilities in Europe, most of the projects were quite small (less than 10 turbines) and there were not scientifically credible siting criteria, study methodologies, and mitigation strategies established. Given the higher growth rate in Europe and significant deployment plans for the next 10 years, there is now a proliferation of studies and standards.

The most credible and broad-based environmental studies in Europe for commercial facilities are based upon the Horns Rev and Nysted projects in Denmark. These 2 sites have 80 and 72 turbines, respectively. Both sites have government-sponsored BACI studies with oversight from an international scientific panel reviewing the methods, design plans, and findings from three-year post-construction evaluations. The Danish studies did identify several significant temporal impacts during the construction phase. The pile driving and increased transportation requirements, for example, created noise and disturbance to the marine environment. Consequently, they documented short-term impacts to marine mammals as they dispersed away from the area when noise levels increased. In order to mitigate these temporal impacts, pingers were used before construction began to scare away any mammals in the area to reduce the impacts of the construction noise. Satellite tracking devices and porpoise detectors were attached to the seals and porpoises to verify their movements. Since the mammals returned to the area during the operational phase, these impacts were considered “insignificant.” The actual impact to the mammals for feeding and molting is considered unknown since it is very difficult to ascertain the physical impacts on mammals in the wild and the subjects would have to be tracked for several seasons for a more definitive survey5.

There are now thousands of pages of scientific material relating to the ecological effects of offshore wind sites in Europe and the United States. A discussion of the range of environmental effects and findings along with issues related to the competing uses of the ocean is beyond the scope of this paper. To give the reader a sense of community priorities, public opinion may shed some light. A recent survey of residents of Cape Cod, MA near the proposed Cape Wind project conducted by the University of Delaware identified the following as the most important concerns [33]: Impacts on marine life, aesthetics, fishing impacts, boating and yachting safety. Unfortunately, some of these public concerns have been heightened by poorly researched media anecdotes rather than documented factual information.

The installation of wind turbines also provides some beneficial effects to the local community and ecosystem. The turbine foundations placed onto or buried into the seabed create artificial reefs or breeding grounds that have a beneficial effect on local fish populations and benthic communities. Danish studies indicate that socio-economic impacts may be positive. Over 80% of the respondents in a recent Danish study have a “positive attitude towards the establishment of new offshore wind farms.” There were, however, some concerns about the visual externalities of turbines when they can be seen from the shore (generally, less than 10 km). In the case of the Horns Rev wind site, over 1700 man-years of local jobs were created during the construction period and 2000 man-years created over the 20-year life of the projects. Approximately, one fourth of these jobs were locally based. The multiplier effects are associated with the construction activities and the manufacturing of materials as well as indirect effects from demands of inputs from goods and services.

Realistically, there is no form of electric generation that can claim to be completely benign with respect to the environment. To provide a fair assessment of the alternatives, the environmental impact of a generating facility should be compared to the impact of an equivalent power plant using a competing fuel source with the same capacity. When this comparison is conducted, the potential impacts of offshore wind to the environment appear to very benign [34].

#### Trawling destroys the oceans

VINSON 06 JD Candidate, Georgetown University [Anna, “Deep Sea Bottom Trawling and the Eastern Tropical Pacific Seascape: A Test Case for Global Action,” Georgetown International Environmental Law Review, Winter, 18 Geo. Int'l Envtl. L. Rev. 355]

Every year an area of the ocean floor twice the size of the United States is decimated by trawling, a fishing practice whereby powerful vessels drag enormous nets on heavy metal frames. Modern technology has enabled trawlers to operate in the deep sea where bottom trawling has become the greatest threat to deep sea ecology. Covering more than half of the earth's surface, the deep sea supports millions of terrestrial and aquatic organisms. As a result, it assists breeding and feeding of organisms in shallower waters that support marine fisheries worldwide. The deep sea also contains biologically rich submerged mountains called seamounts that serve as an oasis of biological productivity in the open ocean. Bottom trawling scrapes these seamounts and other deep sea structures clean, easily devastating entire ecosystems.

Recently, the United Nations declined to adopt a global moratorium to prohibit deep sea bottom trawling. Though advocates for the moratorium still urge the United Nations to consider the proposed resolution, they also seek alternate methods to terminate the bottom trawl **fish**ery. One option is to restrict **fish**ing methods through cooperative management agreements among neighboring countries. Though the effectiveness of such agreements is limited by the jurisdiction of the individual signatories, a cooperative management agreement, such as the emerging regional marine reserve in the tropical Pacific, could serve as a good trial ground for a moratorium on deep sea bottom trawling. The Eastern Tropical Pacific Seascape, a product of the cooperation and combined oceanic jurisdictions of Costa Rica, Panama, Colombia, and Ecuador, encompasses an atypically large and biodiverse area of the deep sea. Banning deep sea bottom trawling in the Eastern Tropical Pacific Seascape will protect the vital environment and resources of that region while providing an unparalleled opportunity to illustrate the benefits of a moratorium for the global community. Accordingly, this note argues that such a ban in the Eastern Tropical Pacific Seascape should be adopted.

II. DEEP SEA BOTTOM TRAWLING

The unique characteristics of the deep sea, including remarkable habitats such as seamounts, make the deep sea ecologically invaluable. Unfortunately, anthropogenic activities threaten the health of the deep sea. One of the greatest threats is deep sea bottom trawling, the global significance of which is tremendous. The ecological impact of deep sea bottom trawling is so grave that the minimal economic benefit in no way justifies the practice.

#### Overwhelms their resiliency argument

**Zakaib 11** [Gwyneth Dickey, Nature, “Overfishing hits all creatures great and small,” http://www.nature.com/news/2011/110503/full/news.2011.262.html]

Large fish species are sensitive to industrial-scale fishing, so managers tend to impose stricter fishing regulations for them. Highly productive smaller fish are thought to be hardier, so they are taken at a higher rate. Although individual stocks of small fish species have collapsed — the Pacific sardine in the 1940s, for example — fishermen and fisheries managers have, in the past, considered those to be isolated cases, Pinsky and his colleagues write.¶ "It really wasn't until our study that we realized that all these individual collapses among small fishes actually add up to a lot," says Pinsky. "All kinds of species, including the small ones that we used to think were incredibly resilient, are also vulnerable to overfishing."¶ Pinsky and his colleagues searched for evidence of stock collapses in a database tracking the abundance of commercially fished species in developed countries back to about 1950. They also included data on landings (numbers of fish brought back to port) from around the globe.¶ To their surprise, the researchers found that twice the percentage of small-sized fish stocks had collapsed compared with larger ones. Likewise, species low on the food chain had almost double the percentage of collapses compared with those at the top. The species that were fished the hardest were most prone to collapse.¶ "It's really overfishing that predicts whether or not a population will collapse," says Pinsky.¶ The pattern is probably different from on land because the principal human impacts that cause population decline are different, he says. On land, habitat loss takes away much-needed space for large, terrestrial animals. But in the ocean, fishing is a main force of population decline, and fishing pressure is adjusted for each species. "We fish more productive species harder and less productive species less hard," says Pinsky. "When you add all that together, all species end up having about the same probability of collapsing."

#### extinction

Craig 3 - Associate Dean for Environmental Programs @ Florida State University [Robin Kundis Craig, “ARTICLE: Taking Steps Toward Marine Wilderness Protection? Fishing and Coral Reef Marine Reserves in Florida and Hawaii,” McGeorge Law Review, Winter 2003, 34 McGeorge L. Rev. 155

Biodiversity and ecosystem function arguments for conserving marine ecosystems also exist, just as they do for terrestrial ecosystems, but these arguments have thus far rarely been raised in political debates. For example, besides significant tourism values - the most economically valuable ecosystem service coral reefs provide, worldwide - coral reefs protect against storms and dampen other environmental fluctuations, services worth more than ten times the reefs' value for food production. [n856](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348077471187&returnToKey=20_T15565363878&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.167770.63840861383#n856) Waste treatment is another significant, non-extractive ecosystem function that intact coral reef ecosystems provide. [n857](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348077471187&returnToKey=20_T15565363878&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.167770.63840861383#n857) More generally, "ocean ecosystems play a major role in the global geochemical cycling of all the elements that represent the basic building blocks of living organisms, carbon, nitrogen, oxygen, phosphorus, and sulfur, as well as other less abundant but necessary elements." [n858](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348077471187&returnToKey=20_T15565363878&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.167770.63840861383#n858) In a very real and direct sense, therefore, human degradation of marine ecosystems impairs the planet's ability to support life.

Maintaining biodiversity is often critical to maintaining the functions of marine ecosystems. Current evidence shows that, in general, an ecosystem's ability to keep functioning in the face of disturbance is strongly dependent on its biodiversity, "indicating that more diverse ecosystems are more stable." [n859](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348077471187&returnToKey=20_T15565363878&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.167770.63840861383#n859) Coral reef ecosystems are particularly dependent on their biodiversity. [\*265]   
Most ecologists agree that the complexity of interactions and degree of interrelatedness among component species is higher on coral reefs than in any other marine environment. This implies that the ecosystem functioning that produces the most highly valued components is also complex and that many otherwise insignificant species have strong effects on sustaining the rest of the reef system. [n860](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348077471187&returnToKey=20_T15565363878&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.167770.63840861383#n860)  
Thus, maintaining and restoring the biodiversity of marine ecosystems is critical to maintaining and restoring the ecosystem services that they provide. Non-use biodiversity values for marine ecosystems have been calculated in the wake of marine disasters, like the Exxon Valdez oil spill in Alaska. [n861](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348077471187&returnToKey=20_T15565363878&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.167770.63840861383#n861) Similar calculations could derive preservation values for marine wilderness.

However, economic value, or economic value equivalents, should not be "the sole or even primary justification for conservation of ocean ecosystems. Ethical arguments also have considerable force and merit." [n862](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348077471187&returnToKey=20_T15565363878&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.167770.63840861383#n862) At the forefront of such arguments should be a recognition of how little we know about the sea - and about the actual effect of human activities on marine ecosystems. The United States has traditionally failed to protect marine ecosystems because it was difficult to detect anthropogenic harm to the oceans, but we now know that such harm is occurring - even though we are not completely sure about causation or about how to fix every problem. Ecosystems like the NWHI coral reef ecosystem should inspire lawmakers and policymakers to admit that most of the time we really do not know what we are doing to the sea and hence should be preserving marine wilderness whenever we can - especially when the United States has within its territory relatively pristine marine ecosystems that may be unique in the world.

## EU

Advantage 2 is the EU

#### Diverging energy policy will destroy US-EU energy cooperation key to solve a litany of impacts.

Koranyi 12—David Koranyi is the deputy director of the Atlantic Council's Dinu Patriciu Eurasia Center and the editor of the book Transatlantic Energy Futures - Strategic Perspectives on Energy Security, Climate Change and New Technologies in Europe and the United States [September 4, 2012, “An Emerging Transatlantic Rift on Energy?” Natural Gas Europe, http://www.naturalgaseurope.com/romney-energy-policy-emerging-transatlantic-rift-on-energy]

American and European energy markets are on a diverging path. The US has edged closer to self-sufficiency with respect to fossil fuels, due mostly to the extensive development of its unconventional resources. From 60 percent in 2005, net petroleum imports were down to 45 percent of the US supply last year. By 2020, this rate could be further reduced close to zero, excluding Canada and Mexico. Shale gas made the United States the number one natural gas producer in the world, overtaking Russia, and revitalized manufacturing and the chemical industry.

Meanwhile, climate-conscious Europe's already high energy import dependence continues to grow. Use of renewable resources mandated by the European Union are spreading dynamically, but will take time to mature. Indigenous unconventional gas faces mixed reactions in some member states. In the wake of the Fukushima accident, nuclear energy is on decline in most countries. Ironically, coal use has increased lately in Germany, due to the nuclear power plant closures and flaws in the EU's cap-and-trade system.

Romney has proposed a plan that would widen the transatlantic gap further. He proposes to accelerate the development of America's considerable on- and offshore oil and natural resources by opening up federal lands and wildlife refuges, relaxing legislation, extending tax breaks, and approving Keystone XL that would carry shale oil from Canada; to rehabilitate coal by reverting the Environmental Protection Agency's prohibitive clean air standards introduced by the current administration; and to revitalize nuclear power by streamlining the permitting procedures.

The underlying tenet of the plan is a complete disregard for the threat of climate change, a term the document does not use. Romney renounces the "myth of green jobs creation" and promotes new jobs in the oil, gas, and coal sectors instead. The plan also stipulates that renewables can compete with other resources on a "level playing field," and implies the cessation of government support for renewable energy projects.

The plan, not to mention its implementation, will cause outrage in Europe. To most European policymakers, and the general public alike, shale oil and coal are anathemas, and the "drill baby drill" mentality is considered environmentally reckless. Brussels and other European capitals already resent that President Obama has not spent enough political capital on global climate change negotiations. Europeans worry that a Romney Administration would derail the timeframe agreed to in Cancun last December.

Moreover, Europeans believe that a pursuit of US energy independence could prove both elusive and counter-productive. Even if complete self-sufficiency is achieved, oil prices are determined on the global oil market. The United States might miss breakthroughs in technologies and. business opportunities that are offered by the global scramble for renewables. While global challenges to stable energy markets prevail, an illusion of energy independence might prompt a more isolationist stance in US foreign policy and a reduced commitment to strategic interests like Europe's energy security

A transatlantic friction is looming. Would the United States and Europe ultimately be able to reconcile their visions? The transatlantic partners share strategic interests and face common threats and challenges closely linked to energy issues, such as the proliferation of nuclear weapons, a resurgent Russia, an unstable Middle East, or China’s insatiable appetite for resources and its repercussions around the globe. The United States and Europe are uniquely positioned to develop technology, leverage financing, and share experiences in legislative and regulatory developments. In times of austerity, identifying synergies and pooling resources is paramount.

There is also plenty to build upon. Owed largely to the increased use of cheap natural gas in electricity generation, to the detriment of coal and measures like enhanced vehicle fuel economy standards, last week the US Energy Information Administration reported that energy-related CO2 emissions in the first three months of the year were the lowest since 1992 (though still much higher per capita than in Europe). While Congress and the US government are paralyzed, more than thirty US states adopted renewable energy portfolio standards similar to the EU's 20 percent target by 2020. Regional emission trading schemes are on the rise in the absence of a federal one. Texas is becoming a renewable energy technology hotspot and wind and solar powerhouse. Many in Europe are willing to learn from the US how to unlock their own shale gas potential that can serve as a bridge fuel to the EU's preferred zero-carbon future as gas emits much less CO2. Conversely, the US is looking to exploit four decades of European experience in energy efficiency improvements and demand reduction. Though politically and financially tricky, both EU member states and the United States should revisit nuclear energy as an essential component in providing affordable and sustainable energy. The list goes on.

The benefits of transatlantic cooperation are beyond doubt. The consequences of a falling out between the United States and the EU after the elections are far-reaching. A continued dialogue launched in the framework of the US-EU Energy Council in 2009 would be a way to avoid that. Joint efforts to address climate change, innovation, and investment in clean energy technologies, risk sharing, and cost reduction; joint research and development and harmonized energy diplomacy should be the cornerstones. A value gap that will undermine trust within the alliance is in nobody’s interest.

#### Energy is the litmus test for the relationship

**Koryani, 11**—Hungarian diplomat, former Undersecretary of State, foreign policy and energy expert. He is also the Deputy Director of the Dinu Patriciu Eurasia Center of the Atlantic Council of the United State (David [Editor], Tranatlantic Energy Futures, 2011, http://transatlantic.sais-jhu.edu/publications/books/Transatlantic\_Energy\_Futures/Transatlantic\_Energy\_Futures.pdf)

What Brings Us Together...¶ Transatlantic cooperation is key to addressing all the above challenges¶ and dilemmas. Due to a number of reasons, the transatlantic¶ partners are well positioned to provide answers jointly.¶ To begin with, transatlantic cooperation on energy has a rich history,¶ a decent track record and a good basis upon which to build. It picked up after the first oil crisis in 1973-74 and led to the establishment¶ of the International Energy Agency (IEA). In the 1980s the¶ transatlantic partners somewhat differed in their views on core energy¶ security issues and in their responses to challenges, such as the role of¶ Russia in providing oil and natural gas to Europe. Nonetheless,¶ transatlantic cooperation again intensified in the 1990s and 2000s on¶ various issues, such as oil and gas pipelines,9 energy efficiency, RD&D¶ cooperation, carbon capture and storage projects, smart grids, and¶ energy storage. This culminated in the establishment of the EU-U.S.¶ Energy Council in November 2009, which testified to the recognition¶ of energy as an issue of strategic importance and of great potential in¶ transatlantic cooperation.¶ The transatlantic partners share strategic interests in maintaining¶ and improving the effectiveness of a global governance system that is¶ norm-based, rule-based, and inclusive, and that ensures the security of¶ the U.S and the EU. Moreover, the EU and the U.S. have an exceptionally¶ strong incentive— exacerbated by the financial and economic¶ crisis—to reinforce existing cooperation and to share burdens by¶ pooling resources. In times of austerity and shrinking budgets, identifying¶ and exploiting synergies and avoiding duplications is a must.¶ The transatlantic community is uniquely positioned to develop¶ technology, leverage financing, and share experiences in legislative and¶ regulatory developments that are necessary to advance clean energy¶ technologies. As pluralist democracies, the EU and the U.S. are best¶ positioned to profit from the ‘democratization of energy.’ Innovation,¶ initiative, subsidiarity and self-governance, decentralized decisionmaking¶ system, management of interconnectivity, co-dependencies¶ and market integration— all these skills, which will be required to be¶ successful in the new era, are deeply ingrained in our societies.¶ Finally we face common threats and challenges closely linked to¶ energy issues, such as the proliferation of nuclear weapons, a resurgent¶ Russia, an unstable Middle East or China’s insatiable appetite for¶ resources and its repercussions around the globe.¶ ...and What Drives Us Apart¶ Critical factors of divergence cannot be discounted either, as they¶ have an almost equally strong pull. Differing climate change perceptions¶ and the lack of U.S. commitment and action is extremely dangerous,¶ as it alienates Europeans, both policymakers and the wider¶ public alike. These differences, if not solved, could drive a wedge for¶ decades between the partners, undermine trust, create a value gap and¶ hinder cooperation not only in climate change and energy issues but¶ in all other aspects as well.¶ There is in fact a chance that U.S. and European energy markets¶ could largely decouple in coming years, due in part to differences¶ regarding the need to tackle climate change, and in part to diverging¶ geopolitical and domestic trends. The U.S. has edged closer to self sufficiency¶ with respect to fossil fuels, with the extensive development¶ of its vast unconventional gas resources and increasing reliance on¶ Canadian oil sands. This could lead to a more isolationist stance in¶ U.S. policy. Meanwhile unconventional gas faces mixed reactions in¶ Europe; the EU, for example, plans to shun oil shales and tar sands in¶ its impending Fuel Quality Directive. Friction in transatlantic perceptions¶ on energy security and divergences over preferred courses of¶ action are real dangers that must be addressed head on.¶ Towards a Transatlantic Energy Alliance¶ The systemic transformation of the world of energy, triggered by¶ climate change and powered by new technologies, will likely cause the¶ reorganization of our societies. The benefits and pitfalls of transatlantic¶ cooperation are beyond doubt. Renewing the transatlantic community’s¶ leadership is essential to lead the world to a sustainable, low carbon¶ future. Transatlantic cooperation can contribute to provide¶ secure and affordable energy to people in the EU and the U.S., foster¶ economic prosperity and create jobs. Current cooperation on a wide¶ range of subjects is encouraging but inadequate. What we need is a¶ new impetus, genuine political will, adequate resources and enhanced¶ cooperation to advance a transatlantic green economy. Joint efforts in¶ addressing climate change, innovation and investment into clean¶ energy technologies, risk sharing and cost reduction, joint RD&D and harmonized energy diplomacy must be the cornerstones of a Transatlantic¶ Energy Alliance.¶ A Transatlantic Energy Alliance is desirable and feasible, but not¶ self-evident. Climate change and energy cooperation will be the litmus¶ test of converging or diverging European and American norms,¶ values and interests in the 21st century. We have to bridge our differences¶ and we have to do that quickly in order to remain in the driving¶ seat. To amend Robert Kagan’s famous line, Americans may be from¶ Mars and Europeans from Venus, but we shall all soon need to move¶ to some other planet if we do not adjust course.¶ Transatlantic Energy Futures endeavors to give you a taste of the¶ intricate and multifaceted energy challenges facing our communities.¶ It aims to do so with a strong conviction in the enduring prominence¶ and necessity of the transatlantic partnership.

#### The plan is key

#### 1.regulatory cooperation

**Portman, 10** (Michelle, Assistant Professor, Environmental Planning, Technion. Marine Renewable Energy Policy, Oceanography, Vol. 23, No. 2, <http://www.tos.org/oceanography/archive/23-2_portman.pdf>)

In the regulatory sphere, countries¶ should cooperate to craft internationally¶ recognized standards for developing,¶ testing, and measuring marine renew¶ able energy technologies. They could¶ also benefit from the exchange of expe rience with regard to environmental¶ impact assessments for commercial-¶ scale ocean energy projects. Regulatory¶ frameworks are uncertain for this sector,¶ which partially stems from limited¶ experience in applying existing regulatory regimes beyond the territorial sea¶ (Leary and Esteban, 2009). These are¶ all areas where countries can both learn¶ from one another and learn from other¶ sectors, such as offshore mining and¶ commercial fishing.

It is natural that in the rush for renewable energy, developers in countries and regions with plentiful land resources available for large energy projects, such as those needed for solar energy panel fields or expansive wind farms, may be reluctant to move into the ocean environment, regardless of public policy. However, in countries with certain geographical conditions, such as plentiful offshore wind and wave resources available close to load centers where plentiful electrical energy is needed by consumers, and a lack of other options (such as in northeastern United States and the Pacific Northwest), marine renewable energy is likely the next energy frontier. It is the government’s role to support and encourage renewable energy generation where good resources and significant needs coincide. This should be accomplished while seeking compensation for the use of public resources, protecting the environment, and avoiding conflicts in uses of ocean (and coastal) space.

Learning from a variety of international experiences can contribute a lot. Based on the experiences of other countries, particularly in Europe, with the right policies in place, US interests in the offshore renewable energy sector can be served by greater technological advances, continued cost reduction, and streamlined permitting.

#### 2. Commercial linkages

**Leone, 11**—Associate Editor, RenewableEnergyWorld.com (Steve, “For Offshore Wind to Thrive, Collaboration A Must,” July 28th, 2011, http://www.renewableenergyworld.com/rea/news/article/2011/07/for-offshore-wind-to-thrive-collaboration-a-must)

New Hampshire, USA -- If the European Wind Energy Association projections prove accurate, offshore capacity across the continent will leapfrog past traditional onshore wind developments sometime after 2030. By 2050, it predicts, offshore will be the dominant form of wind development. There's no reason to believe that this trend will play out any differently in other parts of the world as the industry sets out to take wind energy farther and deeper than its ever been.¶ If it’s true that the winds of change are coming to the wind industry, and that developments will move farther offshore behind technologies currently in the research stage, the question remains: Who will lead this emerging sector of the industry?¶ To answer that, start with the current leader — in this case, the United Kingdom.¶ According to a report from EWEA released in this week, Europe added 883 MW of offshore capacity in 2010, giving the continent 2,964 MW in total capacity. A bit less than half of that rests off the U.K. coast. The U.K. is the global leader with a total of 1341 MW, followed by Denmark (854 MW), The Netherlands (249), Belgium (195) and Sweden (164).¶ While there’s a lot of capacity at stake, there’s also a lot of money on the table. The industry, according to the report, was worth €2.6 billion ($3.77 billion) in 2010. Again, this puts the U.K. in the driver’s seat as the rest of the world considers its offshore future. But in the nascent industry, U.K. companies are marketing themselves as sources of experience for other European countries exploring offshore, such as France. More than anything, business leaders and government officials see the vast potential of the American market — particularly along the East Coast — as a way to move the industry forward as a whole.¶ U.K. Looking to U.S.¶ In the U.S., there’s been a lot of talk and a lot of hope for a place where the industry has yet to install its first offshore wind development. Still, U.K. companies have taken notice, and they see enormous potential in the waters that could eventually serve major markets like New York City, Washington and Boston.¶ One U.K. company that has crossed the Atlantic is PMSS, a global renewable energy consulting firm that recently opened a New York office to better position itself in the new market. According to Mike Rosenfeld, a Los Angeles-based vice-consul with UK Trade & Investment — the U.K. government’s international business development agency — PMSS is already working in a consulting capacity with prospective developers interested in exploring offshore wind. Scotland-based SgurrEnergy has played a prominent role in the yet-to-be-built Cape Wind development — the project that has come to define America’s movement in offshore wind.¶ Aside from individual companies looking to expand into American waters, Rosenfeld says it’s the unified vision of the two governments that has helped pique interest. Though the British government has traditionally been more supportive through policy, there have been some significant actions by American leaders to help kick-start offshore exploration. One of those — Smart from the Start — may have come later than some would have liked, but it has nonetheless laid the groundwork to facilitate siting, leasing and construction of new projects.¶ “There is already collaboration between the U.S. Department of Energy and the UK Department of Energy and Climate Change on how to accelerate deployment of offshore wind,” said Rosenfeld. “There’s no need to constantly reinvent the wheel. If there’s an opportunity to collaborate on how to get this offshore wind deployed faster, this is a good example of how government to government collaboration will come into play.”¶ Not all innovation is flowing from Europe’s more established markets to the United States. Principle Power, a Seattle-based deep water wind platform technology company, has teamed with a group of international companies, including turbine-maker Vestas, on a 2-MW floating test installation off the coast of Portugal. The project could be completed in 2012.¶ Why U.K. has emerged as a leader¶ The nation undoubtedly is looking to maintain its role as an industry leader in engineering, research and manufacturing. The U.K. has broad government support, a strong cluster of universities and places like the Energy Technology Institute, where global industries and the U.K. government have teamed to work on developing new technologies.¶ Denmark may have installed the first offshore project, but the U.K. appears to have won the inherent advantage that usually comes with the first to market. Rosenfeld says this is partly due to strong government support and ideal conditions for offshore wind.¶ "The U.K. has a resource that is considered the most viable at the moment,” said Rosenfeld. “The resource, which is the wind itself, blows pretty consistently.”¶ But even as the U.K. develops more and more offshore farms, they realize the future is likely in the areas they have not yet reached. It’s those nations that support innovation, says Rosenfeld, that will allow companies to go after farther, deeper deployment in a quest to develop commercialized wind farms far off the coast where the wind blows the strongest.¶ “Right now, the engineering challenges of deploying in deeper waters clearly is the challenge,” said Rosenfeld. “We know how to do it because we’ve done it with offshore oil drilling production. The deeper you go, the more expensive and challenging it is. Then bringing the power back is also a question. How do you bring the cost down of deploying in deep water?”

#### New unmanaged proliferation risks extinction

**Cimbala, 2008**

[Stephen, Distinguished Prof. Pol. Sci. – Penn. State Brandywine, Comparative Strategy, “Anticipatory Attacks: Nuclear Crisis Stability in Future Asia”, 27, InformaWorld]

If the possibility existed of a mistaken preemption during and immediately after the Cold War, between the experienced nuclear forces and command systems of America and Russia, then it may be a matter of even more concern with regard to states with newer and more opaque forces and command systems. In addition, the Americans and Soviets (and then Russians) had a great deal of experience getting to know one another’s military operational proclivities and doctrinal idiosyncrasies, including those that might influence the decision for or against war. Another consideration, relative to nuclear stability in the present century, is that the Americans and their NATO allies shared with the Soviets and Russians a commonality of culture and historical experience. Future threats to American or Russian security from weapons of mass destruction may be presented by states or nonstate actors motivated by cultural and social predispositions not easily understood by those in the West nor subject to favorable manipulation during a crisis. The spread of nuclear weapons in Asia presents a complicated mosaic of possibilities in this regard. States with nuclear forces of variable force structure, operational experience, and command-control systems will be thrown into a matrix of complex political, social, and cultural crosscurrents contributory to the possibility of war. In addition to the existing nuclear powers in Asia, others may seek nuclear weapons if they feel threatened by regional rivals or hostile alliances. Containment of nuclear proliferation in Asia is a desirable political objective for all of the obvious reasons. Nevertheless, the present century is unlikely to see the nuclear hesitancy or risk aversion that marked the Cold War, in part, because the military and political discipline imposed by the Cold War superpowers no longer exists, but also because states in Asia have new aspirations for regional or global respect.12 The spread of ballistic missiles and other nuclear-capable delivery systems in Asia, or in the Middle East with reach into Asia, is especially dangerous because plausible adversaries live close together and are already engaged in ongoing disputes about territory or other issues.13 The Cold War Americans and Soviets required missiles and airborne delivery systems of intercontinental range to strike at one another’s vitals. But short-range ballistic missiles or fighter-bombers suffice for India and Pakistan to launch attacks at one another with potentially “strategic” effects. China shares borders with Russia, North Korea, India, and Pakistan; Russia, with China and NorthKorea; India, with Pakistan and China; Pakistan, with India and China; and so on. The short flight times of ballistic missiles between the cities or military forces of contiguous states means that very little time will be available for warning and attack assessment by the defender. Conventionally armed missiles could easily be mistaken for a tactical nuclear first use. Fighter-bombers appearing over the horizon could just as easily be carrying nuclear weapons as conventional ordnance. In addition to the challenges posed by shorter flight times and uncertain weapons loads, potential victims of nuclear attack in Asia may also have first strike–vulnerable forces and command-control systems that increase decision pressures for rapid, and possibly mistaken, retaliation. This potpourri of possibilities challenges conventional wisdom about nuclear deterrence and proliferation on the part of policymakers and academic theorists. For policymakers in the United States and NATO, spreading nuclear and other weapons of mass destruction in Asia could profoundly shift the geopolitics of mass destruction from a European center of gravity (in the twentieth century) to an Asian and/or Middle Eastern center of gravity (in the present century).14 This would profoundly shake up prognostications to the effect that wars of mass destruction are now passe, on account of the emergence of the “Revolution in Military Affairs” and its encouragement of information-based warfare.15 Together with this, there has emerged the argument that large-scale war between states or coalitions of states, as opposed to varieties of unconventional warfare and failed states, are exceptional and potentially obsolete.16 The spread of WMD and ballistic missiles in Asia could overturn these expectations for the obsolescence or marginalization of major interstate warfare.

#### Unchecked Russian and Chinese expansionism causes global nuclear war

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Proliferators or nuclear states like China and Russia can then deter regional or intercontinental attacks either by denial or by threat of retaliation.168 Given a multipolar world structure with little ideological rivalry among major powers, it is unlikely that they will go to war with each other. Rather, like Russia, they will strive for exclusive hegemony in their own “sphere of influence” and use nuclear instruments towards that end. However, wars may well break out between major powers and weaker “peripheral” states or between peripheral and semiperipheral states given their lack of domestic legitimacy, the absence of the means of crisis prevention, the visible absence of crisis management mechanisms, and their strategic calculation that asymmetric wars might give them the victory or respite they need.169 Simultaneously, The states of periphery and semiperiphery have far more opportunities for political maneuvering. Since war remains a political option, these states may find it convenient to exercise their military power as a means for achieving political objectives. Thus international crises may increase in number. This has two important implications for the use of WMD. First, they may be used deliberately to offer a decisive victory (or in Russia’s case, to achieve “intra-war escalation control”—author170) to the striker, or for defensive purposes when imbalances 67 in military capabilities are significant; and second, crises increase the possibilities of inadvertent or accidental wars involving WMD.171 Obviously nuclear proliferators or states that are expanding their nuclear arsenals like Russia can exercise a great influence upon world politics if they chose to defy the prevailing consensus and use their weapons not as defensive weapons, as has been commonly thought, but as offensive weapons to threaten other states and deter nuclear powers. Their decision to go either for cooperative security and strengthened international military-political norms of action, or for individual national “egotism” will critically affect world politics. For, as Roberts observes, But if they drift away from those efforts [to bring about more cooperative security], the consequences could be profound. At the very least, the effective functioning of inherited mechanisms of world order, such as the special responsibility of the “great powers” in the management of the interstate system, especially problems of armed aggression, under the aegis of collective security, could be significantly impaired. Armed with the ability to defeat an intervention, or impose substantial costs in blood or money on an intervening force or the populaces of the nations marshaling that force, the newly empowered tier could bring an end to collective security operations, undermine the credibility of alliance commitments by the great powers, [undermine guarantees of extended deterrence by them to threatened nations and states] extend alliances of their own, and perhaps make wars of aggression on their neighbors or their own people.172

#### Conflict in the Middle East escalates to a nuclear holocaust

**London, prof**essor emeritus of **New York University**, **6/23**/10 [Herbert, “*The Coming Crisis in the Middle East”, http://www.hudson.org/index.cfm?fuseaction=publication\_details&id=7101&pubType=HI\_Opeds]*

The gathering storm in the Middle East is gaining momentum. War clouds are on the horizon and like conditions prior to World War I all it takes for explosive action to commence is a trigger. Turkey’s provocative flotilla - often described in Orwellian terms as a humanitarian mission - has set in motion a flurry of diplomatic activity, but if the Iranians send escort vessels for the next round of Turkish ships, it could present a casus belli. It is also instructive that Syria is playing a dangerous game with both missile deployment and rearming Hezbollah. According to most public accounts Hezbollah is sitting on 40,000 long, medium and short range missiles and Syrian territory has served as a conduit for military material from Iran since the end of the 2006 Lebanon War. Should Syria move its own scuds to Lebanon or deploy its troops as reinforcement for Hezbollah, **a wider regional war with Israel could not be contained.** In the backdrop is an Iran with sufficient fissionable material to produce a couple of nuclear weapons. It will take some time to weaponize missiles, but the road to that goal is synchronized in green lights since neither diplomacy nor diluted sanctions can convince Iran to change course. Iran is poised to be the hegemon in the Middle East. It is increasingly considered the “strong horse” as American forces incrementally retreat from the region. Even Iraq, ironically, may depend on Iranian ties in order to maintain internal stability. From Qatar to Afghanistan all political eyes are on Iran. For Sunni nations like Egypt and Saudi Arabia regional strategic vision is a combination of deal making to offset the Iranian Shia advantage and attempting to buy or develop nuclear weapons as a counter weight to Iranian ambition. However, both of these governments are in a precarious state. Should either fall, all bets are off in the Middle East neighborhood. It has long been said that the Sunni “tent” must stand on two legs, if one, falls, the tent collapses. Should that tent collapse and should Iran take advantage of that calamity, it could incite a Sunni-Shia war. Or feeling its oats and no longer dissuaded by an escalation scenario with nuclear weapons in tow, war against Israel is a distinct possibility. However, implausible it may seem at the moment, the possible annihilation of Israel and **the prospect of a second holocaust could lead to a nuclear exchange.**

**Coordination on regulatory issues is essential to US-EU FTA negotiations – that saves the European economy**

**Alden, 13**—the Bernard L. Schwartz senior fellow at the Council on Foreign Relations, and was project director for the CFR Independent Task Force on U.S. Trade and Investment Policy (Edward, “U.S.-EU FTA Talks Chart a New Path for Global Trade,” March 13th, 2013, <http://www.worldpoliticsreview.com/articles/12787/u-s-eu-fta-talks-chart-a-new-path-for-global-trade>)

The negotiations will carry much symbolic weight as well. The economic boost is anticipated to be modest but significant. EU projections are that European GDP would rise by as much as 0.5 percent annually with a comprehensive trade deal, and similar gains are likely for the U.S. But the stakes are bigger than those numbers would suggest. The EU remains mired in a standoff between the heavy-debt, high-unemployment countries like Greece, Spain and Italy and a northern bloc led by an export-dependent and austerity-minded Germany. The deal with the United States could offer a desperately needed new growth story. For its part, the United States is still recovering from the hangover of the 2008 financial crisis, but weaker export markets mean that President Barack Obama will fall well short of his stated goal of doubling U.S. exports by the end of 2014. So Washington, too, would welcome additional market openings.¶ Finally, the U.S. and Europe are hoping that their negotiations will set a kind of template for dealing with other countries in the future. In big developing countries like China and India, where the state plays a large economic role, foreign investors face an imposing array of regulatory barriers that make it difficult to compete on an equal footing with state-owned enterprises or other favored domestic companies. A united front between Europe and the U.S. could make it easier to tackle these issues.

#### Eurozone collapse causes World War III

Gommes, 11 -- former Columbia Law Review senior editor

(Thomas, publisher of Periscope Post, former corporate lawyer, "Eurozone in crisis: The death of the euro could trigger World War III," 12-9-11, www.periscopepost.com/2011/12/eurozone-in-crisis-the-death-of-the-euro-could-trigger-world-war-iii/, accessed 10-23-12, )

Eurozone in crisis: The **death of the euro could trigger** World War III The slow-motion demise of the euro isn’t just financial Armageddon – it could just be one step down the slippery path to World War III. At the risk of being accused of scaremongering, I’ll state my point simply and up front: Things in Europe are not as bad as they seem – they’re worse. And though the commentariat is queuing up to predict the imminent demise of the euro currency and to lament the ongoing recession, that’s not even the half of it: We’re looking at World War III. As major corporations start drawing up contingency plans for a world without the euro and as weaknesses in government finances become ever more glaring, the end of the euro currency becomes an increasingly realistic prospect. Related, the total absence of business growth, or trading among European nations raises the question of what benefits a unified trading block offers. The driving motive behind the original Coal and Steel alliance that ultimately became today’s European Union was a desire among nations, traumatised by the worst war in their collective history, to provide a deterrent against another war. My concern is that that trauma has faded, and that the fear of war has been replaced by the fear of recession. As anyone with even a fleeting familiarity with **European history** can confirm, ours **is not** exactly **a history of** love and **peace**. In fact, the period since the end of World War II has been probably the longest period of relative peace the region has ever known. Arguably, it’s no coincidence that that period of peace has coincided exactly with the ever strengthening ties that have been forged between European nations over these past 60 years. If the bonds that tie European nations together are weakened, the **incentives to avoid** total war **dwindle.** And its not as dramatic or far fetched a theory as it may at first sound. The end of the euro currency and a reversion to national currencies could quite possibly provide the impetus for a further dissolution of the union. The unraveling of painstakingly negotiated ties becomes easier and easier as each strand frays and breaks. Combine this unraveling with an ongoing or even deepening recession, and it all makes for a **combustible atmosphere**. Unfortunately, it is human nature to blame others for our woes. In an environment of unemployment, austerity, and general resentment, it is not difficult to imagine nations starting to point the finger at their neighbours. And **without the unifying effect** of a common currency, thriving trading relations, free movement of peoples, and common interests, **Europe would find itself** increasingly susceptible to war. Moreover, as so few Europeans in my generation, let alone subsequent generations, have even the slightest inkling about how horrific war is, it may be tempting to consider it as a solution to problems, or at minimum an acceptable response to perceived slights.

## Federalism

Advantage 3 is federalism

#### Offshore wind is the critical test case for federalism

Russell, ‘3 [Robert H. Russell, J.D., Harvard Law School. Mr. Russell teaches environmental law in the graduate program at Tufts University. “NEITHER OUT FAR NOR IN DEEP: THE PROSPECTS FOR UTILITY-SCALE WIND POWER IN THE COASTAL ZONE”. http://www.bc.edu/dam/files/schools/law/lawreviews/journals/bcealr/31\_2/02\_TXT.htm]

[\*PG232]II. Coastal Management: A Regulatory Collage

Expansive near-shore wind development is likely to attract controversy and opposition.59 But whether the outcry is loud or muted, the controversy will be examined through the lens of the nation’s coastal zone management program. The coastal zone program is the primary means by which federal, state, and local agencies and political units attempt to balance and harmonize intensive and contradictory patterns of use along the expansive American shore. To fully appreciate the challenges wind power faces, it is necessary to consider the values, policy objectives, and legal framework of this unusual program.60

A. The Fault Line of Coastal Policy

Over the centuries, the American coastline has become a conflict waiting to happen. From colonial times, public trust concepts have accorded to private citizens the right to engage in a variety of commercial activities along the coast and in coastal waters.61 During that early period, the states generally took the lead in regulating offshore fishing.62 Not long after, the federal government developed an interest in maintaining shoreline integrity.63 American federalism, augmented by a long tradition of local land use control, continues to ensure that coastal oversight is a relatively decentralized, and therefore complex, task.

In the twentieth century, particularly in recent decades, the potential for conflict has been realized. The 1990 U.S. population living in coastal counties stood at more than 133 million. That population is increasing nearly fifteen percent faster than in inland areas.64 By 2025, [\*PG233]nearly three-quarters of the nation is expected to live along the coast65—even though its 672 coastal counties account for only fourteen percent of the total land area of the contiguous states.66

New understanding of the enormous biological productivity of the coastal ocean—the area stretching 200 nautical miles from the shoreline to the far edge of the Exclusive Economic Zone67—has served to intensify the conflict. Today, the coastal ocean is a vital and unique ecological resource. It also is the source of fossil fuel and mineral wealth, and significant recreational opportunities.68 Offshore wind power is one of the most recent arrivals in a complicated, congested, and contentious arena. At the most general level, the challenges that confront wind development arise from the two faces of federalism: (1) state exercise of power to defend territorial waters from locally undesirable coastal uses;69 and (2) a persistent federal aversion to addressing or even identifying the most pressing of the myriad demands for coordination that test coastal management.70

B. The CZMA: A Harbinger of Devolution

The Coastal Zone Management Act (CZMA)71 establishes the structure whereby competing demands and conflicts along the coast and in state waters are mediated among federal, state, and local agen[\*PG234]cies.72 When it was enacted more than thirty years ago, the CZMA presaged a shift in regulatory authority from the federal government to the states—a trend that has accelerated over the past two decades.73 The Act and state programs it promotes mark a period of intensifying and sometimes incompatible public and private interest in coastal resources, both on land and in water. Unlike other legislation affecting the coast and ocean,74 the CZMA is designed to be general and integrative in its application. Unlike many other major environmental laws, it openly embraces a devolutionary federalism.75 It encourages states to take charge of their own coastal problems, often with little federal oversight and even less interference.

The CZMA, in fact, remains one of the few major examples of a federal statute that envisions a fully cooperative relationship among the levels of government. It is said to be both the federal government’s “first major experiment with an integrated environmental program,”76 and “the oldest national-level coastal management program in the [\*PG235]world . . . .”77 And, from a state perspective, the CZMA appears to have weathered relatively well.78 But for others, particularly those seeking to site utility-scale wind farms near populated shorelines, the early signs point to choppy waters ahead.

1. The General Approach

The Coastal Zone Management Act addresses a wide spectrum of potentially conflicting activities and uses, yet it does this in an indirect manner.79 Rather than attempting to command specific substantive results, Congress established a procedural matrix that, in its view, would achieve those results in practice.80 Its central premise is that effective coastal management can arise from comprehensive state-level planning, provided background authority is properly allocated among federal, state, and local officials.

The CZMA is intended to further the protection and development of each state’s coastal zone,81 including the coastal zone’s “natu[\*PG236]ral, commercial, recreational, ecological, industrial and esthetic resources . . . .”82 Each one of these goals is broad and vague. In the aggregate, they serve to sharpen conflict among uses and users.83

Reflecting the breadth and flexibility of these findings is the “great flexibility”84 of the Act itself. States enjoy enormous leeway in crafting customized coastal zone plans. These plans can and do address a diverse range of issues.85 Like coastal ecology itself, those issues may vary widely from jurisdiction to jurisdiction.86 The CZMA’s focus on process means that each coastal management program tends to operate like a “black box”—it can generate decisions, while failing to enunciate the clear principles and performance standards that many believe are a necessary prerequisite to coherent coastal-zone management over the long term.87

It is ironic that, at the time of its passage, the CZMA’s main legislative competitor was a more comprehensive national land-use bill that would have subsumed coastal protection. Many in the environmental community favored this broader approach because the program would have been under the control of the Department of the Interior rather than the Department of Commerce, and because it promised a stronger federal hand in state decisionmaking.88 But an influential [\*PG237]commission89 that had been clearing the path for national shoreline legislation concluded that coastal management should be largely the responsibility of the individual states. The result was a separate measure—the CZMA—guided by the principle of “cooperative federalism.”90 The more comprehensive initiative notwithstanding, coastal policy has remained a matter of state and local supervision for the past three decades. Like land-use planning and zoning,91 it has been driven by distrust of centralized federal direction.92

2. The Planning Process

The cooperative coastal zone management blueprint is not difficult to read. The CZMA program is voluntary, yet it has attracted almost unanimous participation. This has been achieved by offering participating states two benefits: money and a conditional power to block federal decisionmaking.93 To receive them, states must submit—then implement and maintain—a qualifying coastal management plan. Funding has never been generous. For all CZMA programs combined, it has averaged about $40 million a year, or a mere $1.2 million for each participating jurisdiction.94 As a result, the second inducement, so-[\*PG238]called “consistency review,”95 has come to serve as the more effective carrot.96

Once a state’s plan has been approved, federal coastal officials periodically review its implementation.97 Enforcement, however, is limited. Funds may be withheld only if implementation has failed, and then only after a process that can take more than three years to complete.98 States, of course, may update their approved coastal zone management plans to meet new challenges, but they are under no obligation to do so. Federal authorities may not manipulate or withhold grants or other funding as a means of pressuring a state to revise its coastal plan.99

A key feature of this process is the generality that is allowed, and indeed expected of,100 state coastal zone management plans.101 This is enhanced by the significant discretion the CZMA accords states to freely interpret those plans when specific conflicts arise. Typically, the burden is on a project developer to demonstrate that its activities conform to the coastal zone plan.102 But it is seldom possible to ensure con[\*PG239]formity based on review of the plan document itself. To apply coastal program standards, more process—particularly interaction with state agency staff—is required.103 But if that miscarries or fails, essentially no enforcement mechanism exists to set matters aright. The federal government exercises only limited control over how states conduct their review, and neither the CZMA nor the typical state coastal zone program makes provision for aggrieved private citizens to seek judicial relief from private developers, local governments, or the state itself.104 Although coastal zone programs vary in their priorities as well as their effectiveness, they all tend to operate in a zone of discretion lying between the federal government and shoreline municipalities.105

For wind energy, the most potentially accommodating areas of the overall statutory design are provisions for federal aid to the states, and the requirement that, to be approved, a plan must consider the “national interest,” including “the siting of . . . energy facilities which are of greater than local significance.”106 But each offers less than it appears.

Federal aid would seem to be a way to stimulate the state innovation that will be needed in many cases to accommodate wind power. But, beyond a modest baseline, the prospects are poor, given the historically low level of federal support for coastal zone management and renewable energy development.107

Moreover, when federal agencies comment on a proposed state plan or an amendment to an existing one, the CZMA has been read to assume that a state’s program addresses the national interest, including interest in energy security.108 Even if conditions change later, the plan as written remains in effect—largely, if not wholly, immune from attack.

[\*PG240] From the perspective of wind power development, the manner in which coastal plans are created, approved, implemented, and administered creates significant regulatory uncertainty.109 The plans themselves typically do not offer specific guidelines or even basic guidance—for example, guidance to help identify areas in which offshore wind generation might be favorably considered. Instead, plans elaborate upon the broad array of principles enunciated in the CZMA. Typically, they demand a complex balancing of related but often conflicting standards, while suggesting few criteria that would aid in discerning priorities among them. Finally, as will be discussed, the sheer generality of the program document makes it easier for an individual state to argue that a federally-permitted project is inconsistent with some aspect of its plan, thus blocking the siting of the project.110

Although the CZMA’s one undisputed effect has been to encourage states to view the coastal zone as a unified ecological area, this new understanding has not always inspired new modes of action.

3. Program Structure

a. Basic Design

State coastal zone programs vary widely in scope,111 as well as structure.112 Some, like North Carolina’s and California’s, are comprehensive and centralized.113 A single state agency implements the program, although some authority may be delegated to municipali[\*PG241]ties.114 The majority, however, are “networked” among the potentially numerous state and local agencies that share some say over coastal affairs. Often, a single state agency coordinates all or most of the others. The Massachusetts, Maine, New Hampshire, Virginia, Florida, and Texas coastal zone programs are of the networked variety.115 Through executive orders, policy directives, or memoranda of understanding, networked coastal programs attempt to amalgamate and shape the preexisting activities and agendas of parallel agencies.116

b. Spillover Effects

For the development of offshore wind power, the structure of the state coastal zone management system creates a potentially serious boundary, or spillover, problem.

Wind energy provides significant benefits well beyond the borders of a given jurisdiction—for example, by addressing climate change and global security issues. But a relatively small percentage of those benefits are captured locally. Moreover, in at least some cases, the local benefits of wind energy will not outweigh the locally perceived detriment to coastal “character,” aesthetics, other environmental values, and other uses of coastal resources.117

Although this spillover, or externality, problem is not unique to wind development,118 it presents itself here in an unusual posture,119 given the continuing debate over the nature and significance of the local impacts of wind, and the equity issues that a shoreline headcount cannot adequately resolve.120

[\*PG242]c. Massachusetts: A Case in Point

To understand why state territorial waters might be an unfriendly environment for wind development, it may be useful to examine a specific, representative coastal zone management program. The Massachusetts program has received high marks,121 and, like the majority, is a networked program. In addition, the state has a fairly typical range of environmental statutes, including those that address environmental impacts, the siting of power plants, ocean protection, and public trust resources.

The commonwealth’s coastal program is based on at least seven memoranda of understanding between the Massachusetts Office of Coastal Zone Management and the other state agencies that exercise supervisory authority over use and development of the coastline.122 These include the state Energy Facilities Siting Board, the Executive Office of Transportation and Construction, the Massachusetts Envi[\*PG243]ronmental Policy Act Office, the Department of Agricultural Resources, and the Department of Conservation and Recreation.123

State law does not provide the public with the means to challenge action or inaction by coastal officials, or to require the coastal office to enforce its agreements with other agencies—although two review processes might help. First, in many cases (especially those involving sizable coastal incursions), a factual record detailing environmental harms and benefits must be developed, largely through the commonwealth’s environmental impact review process.124 Second, the Energy Facilities Siting Board has the authority, but not the obligation, to facilitate the siting of for power generation projects by waiving local and state permitting requirements.125

Nonetheless, the Massachusetts regulatory system poses a number of challenges to offshore wind development. The first is its sheer complexity.126 Multiple sets of regulations address similar activities in similar language, yet they do so in seemingly uncoordinated and sometimes inconsistent ways.127 As a result, wind development may be diverted to [\*PG244]federal waters, if any shallow enough can be found.128 The second challenge is the generality of the standards.129 They demand a great deal of interpretation, which increases transaction costs. Third, the coastal zone itself is a “generalized” space, creating further uncertainty. Most, if not all, of the values that its varied resources support may require assessment each time a significant project triggers the commonwealth’s coastal protection apparatus. Although the process this necessitates may be adept at identifying discrete interests and values, it may be far less effective in translating those findings into specific conditions that apply to designated activities in specified locations. Fourth, a high degree of generality may be favored as a way to conserve agency resources, if not ocean resources. The more precise a given policy or decision, the clearer it acts as directive or precedent. Agencies may seek to avoid such precision, since one of its by-products is the assignment of priority to values and uses—and in consequence intensifying the demand for hands-on, and often controversial, resource management. [\*PG245]Finally, the commonwealth’s coastal program appears to be ambivalent about whether wind power should be encouraged or not.130 Some coastal zone management provisions seem to treat the resource as a potentially water-dependent activity that should be favored. Others lean in the opposite direction.131 This adds to the regulatory uncertainty.

Whether wind generation will be sited off the Massachusetts coast remains an open question. But the regulatory pathway that will determine the fate of each proposal has more twists than necessary.132 This does not mean the Massachusetts program is particularly weak. In fact, survey results tabulated in Appendix A suggest that the commonwealth is considerably farther along than most other eastern seaboard states in reconsidering its coastal program in light of the evident potential for utility-scale wind power in or near state waters.133

But the bottom line is the same: near-shore wind power’s potential is being dissipated by a decentralized system ill-suited to this new regulatory challenge. One unintended consequence is that developers will propose more massive projects, on the assumption that the ensuing negotiation will demand broader concessions, and that—given a basic lack of structure—the negotiation will impose additional costs that can be offset only by the extra revenue generated by more or larger turbines. Yet, this dynamic could easily heighten regulatory scrutiny, with the consequence that the entire project ultimately is [\*PG246]rejected. That outcome, however, is not consistent with existing policy in any coastal state.

C. (In)Consistency

The most unusual feature of the CZMA and the one that has drawn the most attention from courts and commentators is consistency review, its single, clear enforcement mechanism.134 In brief, consistency review permits a state whose coastal zone is affected by a federal or federally-permitted project135 to file an objection, and thereby either halt the project or force its modification—if the project is found to be incompatible with an enforceable component of that state’s federally-approved coastal zone management plan.136

Consistency has attracted wide commentary.137 Whether it hands states “veto” power over activities that may harm the coastal zone, or [\*PG247]whether its effects are more subtle and less predictable, is a matter of continuing discussion.138 Nonetheless, when adopted in 1972, the consistency provision represented “a significant innovation.”139 More than three decades later, it continues to carry symbolic, and potentially real, force.140 Indeed, responding to a 1984 Supreme Court decision limiting its scope,141 Congress in 1990 amended the CZMA to allow states to review the coastal impact of federal actions in federal waters.142

Consistency is important here because it gives states the power to reject an offshore143 wind power facility, even one to be built outside the state’s three-mile territorial limit. Although disagreement continues regarding the scope of the power and its overall utility,144 in state hands consistency review operates like a one-way ratchet. If a state does not want to encourage offshore wind, or wants to discourage a particular proposal, consistency review potentially serves to deflect both the developer’s request for federal approvals and a federal government—or at least a federal agency—that is supportive of renewable energy.145 On [\*PG248]the other hand, if state policy seeks to encourage near-shore wind, consistency review is irrelevant; it cannot be used to force a federal agency to license a project. As for the federal agency itself, consistency is not an option. The ratchet turns only one way. Thus, the CZMA is more than simply non-preemptive; it engages in a form of reverse preemption.146 Of course, if a project is opposed by both state and federal officials, the mechanism is not relevant.

But even if most agree that the consistency doctrine is more than a hobgoblin, is it in fact a barrier to projects like an offshore wind farm? No formal analysis has addressed this question.147 Yet, the way in which the process plays out suggests that it might not be a substantial barrier. State consistency objections to federal license and permit applications are reviewed by the Secretary of Commerce.148 The Secretary may override an objection if the proposal is found to be consistent with the objectives of the CZMA, or if it is otherwise essential to national security.149 In the first instance, the Secretary must base a consistency finding on each of three criteria, one of which also requires the presence of a strong national interest.150 As the discussion [\*PG249]below suggests, if review by the Secretary has had any impact at all, it has helped to stimulate oil and gas exploration on the Outer Continental Shelf.151 Whether it also might be of assistance to offshore wind power projects is questionable, given long-standing federal energy policy.

Indeed, initial data suggest that the consistency doctrine has had minimal impact. The simple truth is that most states go along with most federal licensing decisions almost all of the time. The federal Office of Ocean and Coastal Resource Management estimates that states have consented to approximately ninety-five percent of all reviewable federal actions.152 Nonetheless, of the forty cases decided on petition to the Secretary of Commerce since the early 1980s, more than a third have involved energy exploration.153 The Secretary upheld the state’s objection in half of them.154 Although one cannot confidently declare this a trend, it underscores a tendency that may be of importance to near-shore wind generation: states scrutinize big projects closely.155 Even though such proposals have been relatively infrequent, such consistently searching scrutiny, over time, may create a powerful preference for the status quo.156

By deterring or forcing the revision157 of unsound projects, the consistency provisions also may exercise a more influence in situations that do not result in a negative determination by the state. Although no [\*PG250]formal study has quantified this effect,158 most projects not initially deemed consistent are modified through negotiation.159 A recent amendment to the CZMA regulations underscores the role of negotiation, particularly between states and project proponents.160

When Congress enacted the CZMA, it accorded exceptional authority to states rather than to municipalities in the belief that the former would better reflect the national interest and thus could achieve broader consensus around any given coastal issue.161 Although controversial to some, offshore wind generation has the capacity to deliver significant environmental benefits to constituencies far larger and more dispersed than those who live within eyeshot. Nonetheless, any proposed development that lacks strong local political support is likely to run into difficulty if it is to be sited in state territorial waters.162

Nearly three decades of experience supports the conclusion that the coastal zone management program is not sufficiently well-coordinated to manage significant challenges unanticipated in 1972 or at the time of any of the Act’s later amendments. One of these challenges is offshore wind.

D. The Deceptive Authority of the Oil and Gas Meta-Narrative

The CZMA and fossil fuel exploration share a turbulent history. The Act, often to good effect, maintains a tension between state policy and federal prerogative. During the Reagan Administration’s campaign in the early 1980s to promote the development of offshore oil and gas deposits, some states took advantage of the consistency review process to try to block exploration, while others flatly refused to draft coastal [\*PG251]zone management plans that identified areas suitable for energy exploitation.163

Since then, power has alternately tilted toward and away from the states, while at the same time the policy pendulum has moved from environmental protection to energy development, and then back again. Responding to the gasoline price spike of the early 1970s,164 the 1976 CZMA amendments165 underscored an intensified federal interest in fossil fuel supplies by directing states with approved coastal management plans to address the need for, and the siting and operational impacts of, energy extraction in the coastal zone.166

The 1976 amendments included a program to compensate states affected by oil and gas development on the Outer Continental Shelf. Fourteen years later, the fund was repealed by another set of amendments,167 the most important of which was to extend state consistency review to activities that, although conducted outside the coastal zone, might have impacts within it.168. The amendments also established a smaller fund to advance environmental objectives, and to promote “procedures and enforceable policies to help facilitate the siting of energy facilities and . . . energy-related activities . . . which may be of greater than local significance.”169 Overall, the 1990 amendments have realigned the coastal zone program with what is widely viewed to be its primary purpose: environmental protection.170 The most recent set of regulatory changes, promulgated in 2000, make slight adjustments in consistency review. Their preamble identifies energy facility [\*PG252]siting as an activity that “significantly” advances the national interest.171 The pendulum may be swinging back again.172

Wind power sits on a ridge between environmental protection and economic development. Offshore, it constantly risks being perceived as the new century’s version of big oil—a corporate behemoth seeking to expropriate the Outer Continental Shelf. The issue is not whether wind energy and fossil fuel combustion have vastly different impacts on the environment.173 Clearly they do. Rather, wind power proponents will have to reject the simplistic analogy to oil and gas exploration and avoid being characterized by the narrative that has emerged from it.174 To the extent this fails, regulators will be more likely to conclude that offshore wind projects negatively affect the coastal environment and coastal uses.175 Given past patterns, the fed[\*PG253]eral government is unlikely to shore up organized wind power so it can do battle with the states.176

III. Coastal Zone Management: the Line and the Sand

The Coastal Zone Management Act (CZMA), standing alone, is often depicted as a moderately successful—albeit unusual—example of legislation that attempts to integrate environmental protection with resource management and development,177 while simultaneously enhancing principles of federalism.178 But when the inquiry is recast as a general assessment of U.S. coastal policy, the prevalent view is sharply critical.179

A. The Fickle Foundations of Federalism

More than seventy years ago Justice Brandeis set down his now-famous observation that a “single courageous State may . . . serve as a laboratory” for “novel social and economic experiments . . . .”180 Although he was writing in dissent, there is general agreement that the “happy incident” of federalism can provide the necessary space for states to test promising policy innovations.181 Indeed, state activism may help dissolve federal impasse, while checking the wider spread of misguided public programs.

Justice Brandeis may not have been considering the challenge of modern environmental protection when he suggested that states experiment with economic and social policy. Indeed, when the problems those policies seek to address have significant extra-jurisdictional impacts, state experimentation may fail. In addition, the rigorous [\*PG254]practice of federalism can obstruct or delay the realization of national goals and implementation of national norms.182 By exacerbating the spillover effect, it also may generate significant external costs.183

Though proposed as an environmental improvement rather than a problem, utility-scale offshore wind generation runs the risk of becoming a victim of federalism. To avoid this result, while providing review procedures that properly balance local, regional, and national interests, administrative coordination and broader consideration of social costs and benefits are needed. Otherwise, the final irony will be harsh: offshore wind turbines could become harder to site than oil platforms.184

B. Observations & Recommendations

The current coastal zone management regime may represent both the best prospect for the coordinated siting of wind generation and the biggest impediment to any siting at all.185 When conflicts arise in the coastal zone—often the result of a specific development challenge—the solutions suggested frequently are systemic in nature. These include assigning responsibility to the agency believed to be the most expert,186 and placing greater reliance on other branches of government.187

[\*PG255] But given the probability that change, if it is to happen at all, is more likely to happen incrementally,188 here is a short list of incremental and potentially achievable adjustments that could responsibly balance the needs of offshore wind power with other important coastal values.

1. Feasible Recommendations

Integrate Programs Even Further. The dominant program, the CZMA, offers a highly integrative structure. The Act and its regulations ought to take advantage of this. The coastal program should encompass additional terrestrial values and uses. Ultimately, this approach would permit (or perhaps even require) individual states to account for that portion of wind power’s utility not fully valued by the existing coastal review process.189 Movement in this direction could be initiated by federal policy guidance or relatively minor regulatory adjustment.190

Selectively Alter the Consistency Doctrine. Federal agencies might be given the option to preempt the states in certain limited circumstances. This approach—dubbed “reverse consistency”—has been suggested as a means of exercising a tighter regulatory grip on aquaculture.191 It is not clear, however, whether the scope of reverse consistency could be limited in a principled way,192 or if not, how it would win the necessary acceptance among state and local officials. Nonetheless, this raises the right question: shouldn’t expert federal agencies have at their disposal more reliable means of ensuring that state activities—which can easily halt a project under the weight of permitting—do not directly undermine broader environmental objectives?

[\*PG256] “Apportion” the Ocean by Priority. Siting renewables of any scale is difficult at best.193 Here, the idea would be to adopt multi-layered “zones” in which certain activities are given preference, and others discouraged. This would build on the concept of coastally-dependent uses, while offering several advantages along all dimensions—vertical, horizontal, and temporal—including: (1) potentially many more categories; (2) development of a common means of comparison or aggregation; and (3) further categorical division within the coastal geography. While not able to achieve perfect numerical clarity or resolve all hard cases, it could provide clear answers in many situations that now lack them.194 Although the regulatory change needed to fully accomplish this is beyond the present scope, it should avoid a full-scale zoning scheme modeled on the terrestrial systems that have been in place for more than eighty years.195

Enhance Local Options. Conversely, states could create incentives for shoreline communities to encourage near-shore wind development. This might include a requirement that wind projects share revenue or profits with their nearest neighbors.196 Much of the spillover problem would remain, however, so a firm state-level presence would be necessary to encourage inter-community coordination and externality (cost and benefit) sharing.

Encourage Coastal Plan Revision. Although the CZMA itself would have to be amended to require that states respond specifically to the potential for offshore wind development, the Commerce Department and its agencies might find ways to induce states to plan for such development. The CZMA in the past has been amended to encourage such activities as aquaculture, and it is likely that encouragement could be offered by regulatory change or by administrative adjust[\*PG257]ment of existing benefit programs. The obstacles here would be: (1) mismatch between the historical lack of federal commitment to significant wind energy development and an effective level of incentive; and (2) a history of approving coastal zone management plans that are overly general.

Embark on a Policy Experiment. Oregon is the poster child of land use planning,197 and the Oregon coastal program is integral to that state’s planning tableau. It is considered by some to be one of the best programs in the nation.198 Advance planning is expressly required by the Oregon program, and pilot projects are permitted where the effects of large changes are uncertain.199 A coastal state, with or without federal support, might structure wind energy planning around a suitable pilot program. Given the need to demonstrate feasibility and impact at a commercial scale, the pilot might be substantial. Nonetheless, it would be the type of state-level experiment that would “serve as a laboratory” for more general program design and coastal policy. The data generated could be studied concurrently with commercial operation. One of the current proposals might even be selected to serve as such a pilot.200

2. Less Promising Recommendations

Public Trust Doctrine. This state-based doctrine, often fashioned by judges, suffers from many of the same ills that beset coastal policy. Moreover, extensive court involvement in day-to-day resource management can be unwieldy and time-consuming. Because of the institutional limitations of the courts—particularly state courts—public trust adjudication is likely to be inexpert and ad hoc. The better question is [\*PG258]whether state public trust principles inhibit offshore wind in ways that courts—and in some states, legislators—could hardly have intended.201 If so, those principles may need to be reconsidered.

Major Legislative or Programmatic Changes. Proposed solutions that rely on large-scale amendment of the CZMA202 may not be desirable. Those that assume major federal initiatives to jump-start the production of wind energy and other renewables are unlikely to occur. Given that a number of offshore proposals are now under discussion, or several steps toward realization, solutions that can be implemented in the near term are the ones that deserve priority.

3. Other Questions

Larger issues remain. A major one is how we think about the environment, especially our physical landscape.203 The notion of untamed wilderness lives deep in the American consciousness.204 Whether the time is ripe to accommodate a more domestic vision, one that is less dichotomized, is an open question. Yet wind power and other soft energy paths will quickly become dead ends if we are not able to countenance human action amid our “natural” backdrop.205 Indeed, if the human and the wild cannot be joined in a middle landscape, we may never resolve some of the most pressing environmental problems. Albeit flawed, the deep structure of the coastal zone management program seems designed to advance this important task.

[\*PG259]Conclusion

The state territorial sea and its coastal zone represent an important but untapped renewable energy resource. Wind power is the technology best positioned to take advantage of what this narrow but accessible band offers. After sixty years, we can draw on some hard lessons.206 Offshore wind power is poised to test our federalism—to test whether a dispersed government presence can sufficiently protect a precariously connected environment. But without far greater commitment to coordinated regulatory oversight at all levels of government, any significance may go the way of the lone turbine atop Grandpa’s Knob.207

#### The plan creates a process preemption framework

Stein, ‘9 [Amy L. Stein, Associate Professor of Law, Tulane University Law School. “AN ENHANCED FEDERAL ROLE IN RENEWABLE ENERGY SITING”. http://czarnezki.files.wordpress.com/2010/09/vls-ss-an-enhanced-federal-role-in-renewable-energy-siting.docx]

2. Process Preemption

Although full preemption of siting decisions is likely untenable, the federal government could preempt a narrower category of state laws – those that would impose more stringent siting conditions on renewable energy. As one author has noted:

Taken as a whole, many incentives exist for state-level renewable energy development; however, policy proposals toward this end often focus on structures to promote investment and not on interventions to mitigate siting difficulty. As a result, siting difficulty facing both renewable energy power plants themselves and related transmission lines could significantly affect states’ ability to meet renewable energy goals and limit their ability to take advantage of potential local economic benefits.

Professor Ostrow has advocated for a “process preemption” approach to facilities siting, one where “Congress imposes federal constraints on the siting process, but leaves primary decisionmaking power in the hands of local regulators.” She has suggested similar procedural preemptions for wind power. Such a federalism framework would allow states to continue to regulate the location and capacity of proposed power plants, but would not allow them to impose unduly burdensome requirements on proposed power plants.

Such partial preemption is not a new phenomenon. A similar form of preemption occurred with the Telecommunication Siting Policy of the Telecommunications Act. That statute prohibits states from enacting regulation that completely prohibits the siting of cell phone towers, but allows local government to regulate their locations. Furthermore, some states have already embraced preemption for renewable resources with respect to state and local power allocations. An Administrative Law Judge recently held that the Minnesota PUC is not obligated to consider or apply a county wind ordinance containing siting standards that are stricter (in terms of setback requirements) than the PUC’s statewide standards. The Minnesota Wind Siting Act provides that a state site permit for a wind project 5 MW or larger is the only site approval required. The state permit supersedes and preempts all local zoning, building, or land use rules, regulations, or ordinances.

In the same way, the federal government could embrace preemption of state laws that form barriers to renewable energy development. For example, Professor Outka has analyzed the state siting regulations in Florida and concluded that the “parameters for certification under the [Florida Power Plant] Siting Act inevitably exclude many renewable projects.” Outka argues that exclusion from the Siting Act can function as an inverse regulatory barrier to smaller non-utility renewable projects, especially since renewables projects generally do generate less than 75MW. The particular disadvantage is that non-utility renewable projects are subject to a different process than large-scale projects, one that is “not the efficient, simplified, centrally coordinated, one-stop licensing process of the Siting Act.” Furthermore, incentives exist for non-renewable power that do not have a corresponding place for renewables. Just as Congress used its power of preemption to encourage the development of LNG terminal’s “infant industry,” Congress could take a similar approach to encourage the development of renewable energy by removing state barriers to renewable energy.

#### Process preemption injects dynamic federalism into energy law

Ofosky and Wiseman, ‘12 [Hari M. Osofsky is an Associate Professor & 2011 Lampert Fesler Research Fellow, University of Minnesota Law School. Hannah J. Wiseman is an Assistant Professor at the Florida State University College of Law. “Dynamic Energy Federalism”. Minnesota Legal Studies Research Paper No. 12-44 . http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2138127&download=yes]

A. Limits of Current Approaches to Energy Federalism

An extensive legal literature has thoroughly explored many variations of federalism, including a rapidly growing cluster of scholarship in recent years focused on dynamic models. Most energy federalism scholarship, however, analyzes questions of multi-level governance in traditional terms and specific contexts. Because so much of U.S. energy law is locused at the state level, for example, much of the energy federalism literature focuses on the appropriateness of expanding federal authority. Numerous pieces explore the benefits, limitations, and viability of the United States adopting a national renewable portfolio standard as opposed to the current model, under which states set individual, and highly varied, standards and goals.124 Other scholarship similarly discusses how effective and appropriate an expansion of federal transmission siting authority would be.125

With these rather narrow applications of federalism to energy, and a tendency to rely on traditional federalism principles within these applications, energy law has largely failed to incorporate a more dynamic version of federalism emerging in other substantive areas.126 Traditional federalism scholarship focuses on spatial relationships among levels of governance in a limited way: it concentrates on interactions along a vertical axis (the local to the federal), asking which level of government is most appropriate and how concurrent authority at more than one level of government should be shared. However, a rapidly developing stream of federalism scholarship has moved beyond these static views of multi-level relationships and has begun to recognize the complex interactions among governmental and nongovernmental actors. As Hari Osofsky has analyzed in previous work, a rich scholarly literature in federalism and other areas explores multiple iterations of regulatory structures that cut across traditional governance divisions.127

Specifically, the dynamic federalism literature’s treatment of the vertical axis has moved beyond traditional state-federal questions to multilayered models that integrate actors from the smallest individual level to the largest international one.128 “Federalism” for these scholars has come to encompass not simply federal-state-local interactions,129 but also simultaneous interactions among multiple governance levels along the vertical axis.130 Moreover, as discussed in more depth in Part III, dynamic conceptions of shared governance often extend well beyond questions of concurrent authority to include evolving patterns of complicated relationships. Federal-state, local-state, and regional-local relationships often all occur simultaneously within one institution and change over time.

Dynamic federalism also at times moves beyond the primary focus on the vertical axis that dominates traditional accounts. Some of these scholars include interactions among key actors at a single level of governance as part of federalism. This horizontal dynamic federalism literature brings the role of intra-level regulatory relationships into clearer focus. For example, Noah Hall has argued that the Great Lakes–St. Lawrence River Basin Compact, which includes eight Great Lakes states, uses a cooperative horizontal federalism approach that promotes flexibility while minimizing incentives to underregulate.131 In a broader substantive context, Allan Erbsen and others have provided models for analyzing the way in which horizontal and vertical federalism dynamics interact.132

In addition to analyzing vertical and horizontal relationships among government entities in a more nuanced way, the dynamic federalism literature unpacks existing characterizations of regulatory levels; even when an approach is defined as existing at a particular level, such as within the jurisdiction of the federal government, the literature recognizes that that characterization may be incomplete, and that relationships often shift over time. For example, Ann Carlson has explored the iterative dynamics that move policy forward as the state and federal government cooperate and clash over time.133 Erin Ryan has considered the role of negotiation in creating these interactions, noting that state and federal officials at times negotiate schemes that are “federal” in name only—rejecting a system that would lodge all power at one level or another.134 This nuanced treatment of cross-cutting relationships—those that bridge levels of governance, substantive areas of the law, public/private, or other institutional divisions—has implications for governance, which Part III explores in more depth.

A few scholars have begun discussing energy law issues in these types of dynamic terms, but that scholarship, like the above-described more traditional energy federalism work, is all in relatively narrow contexts. Most critically for this Article’s analysis, none of it develops an overarching conceptual model for energy federalism. For example, as part of a broader analysis of agency coordination questions in administrative law, Jody Freeman and Jim Rossi provide examples of interagency coordination tools from energy law.135 Ashira Ostrow has developed a dynamic federalism model she terms “process preemption” in the context of renewable energy siting.136 In their analysis of transmission, Alexandra Klass and Elizabeth Wilson also reference the dynamic federalism literature and draw some models from it, including Ostrow’s.137 Ann Carlson has argued for a crosscutting federalism approach to energy efficiency standards for appliances modeled on the hybrid approach used in the automobile emissions context.138 Robin Kundis Craig, in turn, has taken a dynamic federalism approach to exploring the nexus of water, climate change, and energy law,139 and Hannah Wiseman has argued for the expansion of regional renewable energy governance to address commons and anti-commons problems in siting. With Garrick Pursley, Wiseman also has examined the possibilities for expanding municipal powers in that context.140 In the fuel extraction context, David Spence has explored the need for flexible considerations of federalism in the governance of hydraulic fracturing, describing demands for rapid response to new risks and assessing the ideal governance levels for this response.141 Finally, Hari Osofsky has proposed a dynamic federalism model for understanding the complex regulatory interactions around offshore drilling regulation and spill clean-up that occurred in the context of the BP Deepwater Horizon oil spill.142

This Article argues that the complex and evolutionary understanding of governance explored in the dynamic federalism scholarship could contribute to a more systematic approach to regulating energy than current energy federalism scholarship provides.143 A dynamic federalism approach is particularly well-suited to energy law because of the complex tripartite structure described in Part I. While detailed analyses of particular areas of energy law are important to understanding the nuances of those areas, traditional federalism approaches focused on solely choosing between the state and federal government may not adequately capture crucial dynamics among the system’s physical, market, and regulatory aspects.

Dynamic federalism, with its more complete spatialization of critical relationships, helps to ensure that this fuller understanding is incorporated into regulatory proposals. It also fosters regulatory proposals that consider key stakeholders beyond just the state and federal governments and that employ innovative governance methods. Specifically, the vertical and horizontal axes of our dynamic federalism model for energy—discussed in depth in Section II.B—considers how entities are interacting across levels of government, within levels of government, and simultaneously across and within levels of government. Understanding these relationships more systematically across many areas of energy law helps to illuminate shared governance challenges and possibilities for institutional innovation discussed in Section III and the Conclusion.

#### **Now is key. Energy policy will determine the direction of federalism**

Ofosky and Wiseman, ‘12 [Hari M. Osofsky is an Associate Professor & 2011 Lampert Fesler Research Fellow, University of Minnesota Law School. Hannah J. Wiseman is an Assistant Professor at the Florida State University College of Law. “Dynamic Energy Federalism”. Minnesota Legal Studies Research Paper No. 12-44 . http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2138127&download=yes]

II. FEDERALISM CHALLENGES TO ENERGY TRANSFORMATION

The production and movement of energy presents one of the greatest governance challenges of our time. The physical processes that underlie much of our modern energy system—including electricity generation, transportation, and distribution9—are necessary to sustain human life as we know it and yet are unusually complex and difficult to manage. Because energy is at the core of every human necessity, from enabling the provision of food, shelter, and clothing to driving economic growth and essential interpersonal communications, it is inextricably intertwined with fundamental societal values of fairness, justice, economic opportunity, and environmental protection. As humans demand energy transformation in the form of cleaner, more affordable, and more accessible energy, and as technology introduces new opportunities into an already complex system, these developments run up against the boundaries of traditional governance structures and call for rapid regulatory innovation. This innovation, in turn, requires new theoretical approaches to governance, and particularly to federalism—the guiding force behind decisions about interactions of governmental and nongovernmental actors across levels of government.

This Part provides three maps of energy governance and its challenges. First, it delineates the complex grid of physical, market, and regulatory interactions that comprise the current U.S. energy system. Next, it brings together energy federalism with dynamic federalism to introduce a model of the spatial and cross-cutting dynamics that this complex grid produces. Finally, it analyzes four energy-specific governance challenges that add an additional layer of complexity to this map. These factors, which are unique to energy due to its tripartite structure, interact with already complex federalist dimensions to further concentrate barriers to effective and dynamic governance.

#### Dynamic federalism is key to legitimate human rights commitments

**Kalb 10** - Professor of Law @ Loyola University [Johanna Kalb, “Dynamic Federalism in Human Rights Treaty Implementation,” Tulane Law Review, Vol. 84, 2010.

In Part III, I propose that applying a dynamic federalist model to VCCR implementation could provide the beginning of a path through the impasse. Given that the VCCR remains binding on the United States, and that the federal government is unlikely or unable to take actions that intrude deeply into areas of state jurisdiction to enforce it, the states must take an affirmative role in implementation if the United States is to meet its obligations. Because enforcement of the VCCR crosses traditional notions of state and federal jurisdictional boundaries, a model of treaty implementation that provides the states with a primary role in interpretation and enforcement could very well be the way that the United States can most effectively meet its VCCR obligations, while acknowledging some state authority and autonomy¶ in the area of criminal justice. I draw on Justice Breyer’s dissent in a recent VCCR case, Sanchez-Llamas v. Oregon,26 and some of the federalism scholarship on “ceilings” and “floors” in other areas of the law to explain how this model could work. I argue that this less invasive strategy could be both normatively beneficial and more¶ politically feasible to federal and state actors, and could lead to more¶ effective internalization and implementation of the United States’ international human rights commitments.

Finally, in Part IV, I extend this model to other international¶ human rights treaties. Due to the way in which many of these treaties¶ have been adopted, states arguably have the primary obligation to¶ interpret and implement them. Nonetheless, most have failed to take up the mantle of enforcement. I contend that a dynamic federalist model of treaty implementation could help motivate state involvement and legitimate the resulting activity. Pg. 1030-1031

#### That’s key to global legal checks against drone use

**Roth 13** - Executive director of Human Rights Watch, one of the world's leading international human rights organizations [[Kenneth Roth](http://www.hrw.org/bios/kenneth-roth), “[What Rules Should Govern US Drone Attacks?](http://www.hrw.org/news/2013/03/11/what-rules-should-govern-us-drone-attacks),” Human Rights Watch, March 11, 2013, pg. http://tinyurl.com/a7p38qo

As bits and pieces of the Obama administration’s legal justifications for its drone attacks trickle out, what is most striking is their deliberate ambiguity. The recent Justice Department “White Paper,” for example, is meant to give the impression that, at least for US citizen targets, the program has been carefully reviewed by lawyers, but it seems written to maximize the program’s latitude.[1](http://www.nybooks.com/articles/archives/2013/apr/04/what-rules-should-govern-us-drone-attacks/#fn-1) That is obviously troubling for people who believe that the United States should conduct its counterterrorism operations in accordance with international law. It also sets a worrying precedent as other governments inevitably develop their own drone programs.

What does international human rights and humanitarian law require? Not necessarily abolition of the drone program. Yes, there is something disconcerting about drone operators killing their targets from the comfort and safety of their office—making war too easy, as some contend. But discrepancies of power have been inherent in warfare since the advent of the bow and arrow. And from the perspective of avoiding civilian casualties, drones are an advance. Like all weapons, they are only as good as the information available to their operators and their operators’ willingness to abide by legal constraints. But with their pinpoint accuracy and ability to hover for lengthy periods to verify a target and select the most propitious moment for attack, they have the potential to reduce the costs of war to civilians.

However, drones have set off controversy since they do kill civilians and are deployed far from any traditional battlefield where combatants are fighting the United States. Some have suggested they are counterproductive, arousing much resentment in the targeted countries and creating more terrorists than they stop. Killing Taliban and al-Qaeda forces fighting US troops may be a necessary evil in a traditional armed conflict like the one in Afghanistan. But what is the justification in places like Yemen, Somalia, or possibly soon Mali? And where does northwestern Pakistan fit?

There are several conceivable rationales for the use of drones in such places, but the Obama administration has articulated none of them with clarity. One is to say that the United States is fighting a global enemy that sometimes operates from areas that do not look like traditional battlefields. The Obama administration has dispensed with its predecessor’s language of the “global war on terror,” but it cites to much the same effect the nation’s inherent right of self-defense as well as the congressional authorization for using military force to respond to the September 11 attacks. The administration continues to claim legal authority to attack terrorist suspects wherever they are found.

But can the rationale based on war be stretched this far? Should the administration really have the right to attack anyone it might characterize as a combatant against the United States? What if that person is walking the streets of London or Paris? The administration, in a statement by John Brennan, says as a matter of policy that it has an “unqualified preference” to capture rather than kill all targets. But away from a traditional battlefield, international human rights law requires the capture of enemies if possible.[2](http://www.nybooks.com/articles/archives/2013/apr/04/what-rules-should-govern-us-drone-attacks/#fn-2) Failing to apply that law encourages other governments to circumvent it as well; they may summarily kill suspects simply by announcing a “global war” without there being an actual armed conflict. Imagine the mayhem that Russia could cause by killing alleged Chechen “combatants” throughout Europe, or China by killing Uighur “combatants” in the United States. Indeed, China may already be applying this elastic definition of war, as it reportedly considered using a drone to kill a drug trafficker in Burma.

#### The impact is global wars. Drone weaken norms against war

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What kind of a future are we creating for our children? We face the prospect of a world in which every nation will have drone warfare capability, in which terror can rain down from the sky at any moment without warning.

Military planners are developing technologies for autonomous drones, aircraft that are supposedly "intelligent" and [can make their own decisions on when to unleash lethal force.](http://www.washingtonpost.com/national/national-security/a-future-for-drones-automated-killing/2011/09/15/gIQAVy9mgK_story.html) Will we give machines the power to kill people?

The development of drone weapons raises profound moral questions about the future of war. U.S. officials are fond of drone weapons because they are inexpensive and seem to make the waging of war less costly. They allow leaders to conduct military operations without risking the lives of U.S. soldiers or drawing public disapproval. They give the false impression that war can be waged with fewer costs and risks.

Any development that makes war appear to be easier or cheaper is dangerous and morally troubling. It lowers the political threshold of war. It threatens to weaken the moral presumption against the use of armed force.

The use of drones aircraft perpetuates the illusion that military force is an effective means of countering terrorism and resolving political differences. We should know better by now. After 10 years of combat in Afghanistan the threat of terrorist attack and insurgent violence remains as great as ever. May 2011 was the deadliest month for Afghan civilians since the U.N. began keeping records in 2007, the agency's [Assistance Mission in Afghanistan reported](http://unama.unmissions.org/Portals/UNAMA/Documents/2011%20Midyear%20POC.pdf). June's death toll was almost as high.

Terrorism is essentially a political phenomenon. It cannot be defeated by military means. The [RAND Corporation's 2008 report](http://www.rand.org/pubs/research_briefs/RB9351/index1.html) "How Terrorist Groups End" shows that the most effective tools against violent extremism are political processes and police operations.

The U.S. government claims that drone strikes are an effective tool against al Qaeda leaders, but most of those being killed are low-level militants.

Many important legal questions have been raised about drone strikes. The U.S. government arguably has legal authority to conduct military operations in Afghanistan, based on the original congressional authorization adopted after 9/11. It is questionable, however, whether this authority extends to Pakistan, a country that is supposedly an ally of the United States. Nor do we have legal authority to launch military strikes in Yemen, Somalia and other countries where the United States is not officially engaged in armed hostilities.

Force may be used by soldiers against combatants in legally authorized armed conflicts, but this right does not extend to civilians. [The U.S. covert counterterrorism drone campaign is managed and operated by the CIA,](http://www.newyorker.com/reporting/2009/10/26/091026fa_fact_mayer) an agency notorious for its past policy failures and violations of the law. Those who are conducting these raids operate in secret beyond the restraints of military discipline and are not subject to the Uniform Code of Military Justice.

Drone weapons are very precise, but they do not eliminate the problem of civilian casualties. White House counterterrorism adviser John Brennan claimed in June that no civilians have been killed in Pakistan in the last year because of drone strikes. The White House quickly backed away from that outlandish claim, but administration officials continue to insist that so-called collateral damage is very low.

Precise information about civilian casualties is impossible to obtain, but a new r[eport from the Bureau of Investigative Journalism](http://www.thebureauinvestigates.com/2011/10/14/grim-milestone-as-300th-cia-drone-strike-hits-pakistan/) in the UK sheds important light on the subject. Their figures show that civilian casualties occur in about one fifth of U.S. drone attacks in Pakistan. Since the drone war began in Pakistan in 2004, more than 2,000 people have been killed in these strikes, with as few as 386 and as many as 775 civilians among the dead, including as many as 170 children.

#### Dynamic federalism is key to fracking regulation

Powers, ’11 [Emily C. Powers, J.D. Candidate, Brooklyn Law School. Journal of Law & Policy. “FRACKING AND FEDERALISM: SUPPORT FOR AN ADAPTIVE APPROACH THAT AVOIDS THE TRAGEDY OF THE REGULATORY COMMONS”. LexisNexis.]

2. Adaptive Federalism and the Regulatory Commons

One theory has recently emerged that describes an "ecological" approach to environmental federalism. n142 Critiquing economics-based theories as ill equipped to address the complexity of environmental issues, not to mention the environmental law framework, Kirsten H. Engel and David E. Adelman describe "adaptive federalism" as a form of federalism that embraces flexibility and overlap, features that make ecological systems more durable. n143 According to Engel and Adelman, adaptive federalism is likely to be more responsive to the complexities and variation inherent in environmental problems and to result in higher levels of protection than the "classical" or "static" conceptions, like the matching principle, which they argue assume away critical [\*937] variables. n144 By contrast, adaptive federalism relies on the institutional stability of our existing environmental law while encouraging flexibility that allows regulators to react to an ever-evolving body of information. n145

William Buzbee's discussion of the regulatory commons supplements adaptive federalism by focusing on the operative concerns about overregulation that motivate proponents of matching approaches. n146 Buzbee points out that matching jurisdiction to environmental problems can be difficult because many issues are cross-jurisdictional. n147 Buzbee argues that even where there appears to be too much regulation, as in apparently robust regulatory frameworks, gaps develop due to perceptions of jurisdictional inadequacy, paucity of incentives, and political machinations. n148 Regulators become inattentive to regulatory opportunities because, for instance, multiple regulators share jurisdiction, or causes and effects of an activity make it difficult to identify the regulatory body with controlling jurisdiction. n149 Buzbee's discussion suggests that the etiology of commons problems is structural and behavioral, and may be pervasive even where a state has sole regulatory authority. Moreover, despite the potential for jurisdictional confusion that overlapping vertical jurisdiction presents, n150 one can conclude that regulatory commons problems are more likely to be prevented by clarifying roles and granting a variety of regulators increased responsibility for problems than by contracting jurisdiction and reducing available resources. n151

[\*938]

III. Hydrofracking: The Regulatory Framework

Several holes in federal environmental laws allow hydrofracking to escape federal oversight. n152 Some exemptions have been explicitly placed in statutes. n153 Other aspects of hydrofracking slip through loopholes in the laws or simply do not trigger the existing scheme. n154 Therefore, regulatory authority has been handed to state governments. New York's proposed regime may not provide adequate protection from hydrofracking's harms. n155 In addition, New York prevents local governments from exercising direct regulatory authority over hydrofracking processes, leaving localities vulnerable to potential environmental and public health harms. n156

A. Federal Regulation

Like any activity with an impact on the environment, federal environmental laws touch upon aspects of hydrofracking. n157 However, the oil and gas industry successfully lobbied for exemptions for hydrofracking n158 from several major federal environmental laws, many of which went into effect with the enactment of the Energy Policy Act of 2005 ("the Act"). n159 Apparently, the view that exemption from federal statutes and [\*939] reduced federal oversight of oil and gas development would lead to increased energy independence and development of so-called bridge fuels, like natural gas, prevailed in Congress. n160 However, some critics are suspicious of the motives behind what skeptics have termed the "Halliburton loophole." n161 Whatever its intent, Congress removed federal oversight of most aspects of hydrofracking and its component practices.

Section 322 of the Act exempts hydraulic fracturing from the SDWA, which protects public and municipal water supplies from underground injection and disposal of hazardous substances through imposition of water quality standards. n162 Further, the Act effectively exempted wellpad construction activities associated with hydrofracking from the National Pollutant Discharge Elimination System (NPDES) under the CWA. n163 In addition, because Congress rolled hydrofracking-related practices into its [\*940] exemption language, it potentially expanded existing oil and gas exemptions in CERCLA to aspects of site construction, drilling, and postfracking production. n164 The Act also weakened review under the National Environmental Policy Act (NEPA) by presuming that certain categorical exclusions apply for oil and gas extraction. n165 Hydrofracking is also exempt from RCRA, which provides for federal oversight of storage and disposal of hazardous materials, n166 and from toxic substance reporting requirements under EPCRA. n167

Hydrofracking is not entirely beyond the scope of federal oversight, yet significant federal involvement is unlikely given the structure of potentially applicable laws. States must still meet water quality standards under the CWA and the CAA's national ambient air quality standards via existing state-formulated plans. However, current interpretations of "navigable waterways" make it unlikely that the federal government has jurisdiction under the CWA to regulate emissions unless a "significant nexus" exists between an impacted groundwater connection and navigable waters. n168 Establishing a "significant nexus" is likely a difficult showing in the hydrofracking context, as most impacts will be on groundwater sources that are hard if not impossible to trace to navigable waters. n169 In addition, the EPA will not aggregate air [\*941] emissions from the various operations that occur on a wellpad, and the agency has exempted pollutants emitted by surface waste, like fracking fluid, from stationary source regulation under the CAA. n170 Courts are also unlikely to hold that the CAA applies to increased emissions from truck traffic. n171 Finally, although savings clauses in federal laws preserve state police powers and common law authority, n172 including tort liability for harm after the fact, standing and evidentiary hurdles typically prevent recovery in suits brought over environmental harms. n173 Thus, the federal government has effectively vacated the field, and regulation of hydrofracking is achieved via a patchwork of state policies. n174 Although industry often welcomes federal standard setting when faced with the burden of meeting a proliferation of state schemes, n175 it is apparent that in the hydrofracking context, industry supporters have preferred a state-led approach. n176

B. State Regulatory Scheme

State police power includes the authority to regulate activity that impacts natural resources and human health, and New York State has exercised this power to propose comparatively stringent [\*942] environmental regulations on hydrofracking. n177 Article 23 of the New York Environmental Conservation Law n178 ("Article 23") establishes the DEC's broad jurisdiction to regulate oil and gas extraction via its Division of Mineral Resources, n179 with dual regulatory goals of encouragement of natural gas development and protection of correlative ownership. n180 In addition, the Department of Transportation has jurisdiction over transportation of hazardous materials, n181 and the Public Service Commission regulates siting of gas gathering lines, which is not subject to public review under the State Environmental Quality Review Act (SEQRA), New York's NEPA corollary. n182

Pursuant to SEQRA, the DEC has devised a land use focused regulatory strategy over hydrofracking implemented largely via permitting and reporting requirements. n183 The DEC prepared its draft supplemental Generic Environmental Impact Statement (SGEIS), released in 2009, after receiving applications for permits to drill using high-volume hydrofracking methods. n184 The SGEIS supplements the DEC's Generic Environmental Impact Statement, n185 which outlines the agency's approach to conventional [\*943] extraction methods and which proved inadequate to address the significantly greater environmental impacts from high volume hydrofracking. n186

The regulatory strategy the DEC has presented in the SGEIS concerns many New Yorkers. The most significant concern that critics share is that the agency is inadequately funded or staffed to ensure compliance with state regulations and policies. n187 For instance, as of 2009, the Division of Mineral Resources had only sixteen enforcement staff members to oversee more than thirteen thousand conventional wells. n188 Even drillers are concerned that their permits will be held up by administrative delays because DEC's staff is inadequate to process the large number of forthcoming requests. n189

[\*944] Critics are also concerned that the DEC's plan does not address the cumulative impacts of even routine aspects of hydrofracking. n190 The SGEIS deals with these effects in a cursory fashion and asserts that too much uncertainty exists to be able to assess them with accuracy. n191 Many critics feel the DEC's failure to address these impacts is unsatisfactory, for it is the uncertainty of these effects that frustrates attempts to prepare for them and compounds the risk of harm. n192 For example, small-scale chemical spills, accidents, and incremental burdens on surface waters and infrastructure are difficult for localities to anticipate without more information about how extensive drilling will be. n193 Some also suggest that the state has not recognized the extent of hidden economic costs associated with environmental contamination and the potential loss of ecosystem services. n194 Similarly, there are concerns that emergency management plans are lacking and that worst case scenarios have not been sufficiently elaborated, in light of federal exemptions. n195 Moreover, many hold that the DEC inadequately considered the findings and conclusions of regulators from other states that have experienced harms from horizontal drilling and high-volume hydraulic fracturing. n196 There is widespread concern that the DEC has not ensured there will be full, public disclosure of chemical components in fracking fluid, and some urge public reporting requirements for frack fluid components, all locations of [\*945] drilling operations, and any spills or contamination. n197 Overall, the SGEIS leaves concern that once hydrofracking kicks into high gear, the State will not be poised to address problems that arise. Addressing emergencies and incidental effects will be largely left to localities, which bear the most risk of immediate harms from hydrofracking.

C. Local Roles

As a home rule state, New York typically allows municipalities a degree of latitude to govern local activities. n198 However, Article 23 stipulates that the State's regulatory program "supersedes all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries" although local primacy over road use and property taxes are retained. n199 For instance, the State will not require local approval of permits under its State Pollution Discharge Elimination System (SPDES) and corollary Stormwater Pollution Prevention Plan (SWPPP) program. n200 Thus, localities will not have control over such critical decisions as wellpad siting, stormwater planning, erosion control, or pipeline placement. n201 The State has issued nonbinding directives to industry to consult with local planning documents and procedures in siting decisions, and operators are expected to comply with local floodplain permitting [\*946] requirements that establish broadly applicable siting and setback guidelines. n202 However, localities cannot set any laws or regulations that specifically refer to or are clearly directed at hydrofracking activities. n203 Thus, hydrofracking is not subject to zoning restrictions, although zoning has long been considered a valid exercise of local authority. n204 Localities are nonetheless expected to investigate water quality complaints n205 and provide emergency response services. n206 Waste disposal and sanitation are also typically local responsibilities, which will be dramatically impacted by the high volume of flowback water, waste, and drill [\*947] cuttings from hydrofracking operations. n207 Despite the significant emergency responsibilities and infrastructural demands hydrofracking poses, localities have few authoritative tools to help them prepare. n208

1. Local Responses

Many local officials in communities where hydrofracking activity is likely to occur have been attempting to prepare for its probable impacts. n209 Several officials in gas-rich Tioga County, an area likely to see extensive hydrofracking activity, have expressed frustration with their limited ability to influence the course of drilling or its effects. n210 In particular, some are frustrated by the fact that local discretion has been removed from activities typically subject to local input, such as permitting for construction and industrial activities. n211 Others are less concerned about the State's primacy, do not feel lack of federal oversight is an issue of concern, and downplay fears over some of hydrofracking's risks. n212 While some are concerned to an extent about threats to the environment and public health, few feel it is within his or her authority to take a position on whether hydrofracking should be encouraged or prevented. n213 Most see the value in compromise, [\*948] given the contentious nature of hydrofracking and its perceived inevitability. n214 Understandably, local officials are interested in achieving pragmatic solutions with what little regulatory authority they have. n215 Several seem persuaded that, as heavy users of natural gas, New Yorkers have an obligation to permit drilling. n216 Furthermore, local officials recognize the State's interest in encouraging gas production and understand the rationale behind cutting off local input and control. n217 Opposition at the local level could allow a few individuals to stall or prevent fracking, which would be undesirable and unacceptable n218 given the many interests in favor of drilling and the benefits that would come from gas production - even if local opposition could provide a bulwark against hydrofracking's harms.

[\*949]

2. Mitigating Impacts from Hydrofracking

Some officials in Tioga County seek to mitigate impacts from hydrofracking through traditional means of municipal control. n219 While a few towns and villages in New York State are testing their zoning discretion, n220 this power is less relevant in Tioga County, where most towns and villages do not have comprehensive zoning plans in place. n221 Therefore, concerned county officials have focused instead on tweaking traffic rules and on implementing light, noise, and wellhead protection ordinances, which restrict uses and set water quality standards within municipal borders. n222 Localities may also require ancillary service providers or businesses, such as pipe yards and chemical storage facilities, to comply with standards for lighting, traffic flow, and signage under site plan review ordinances - although site plan review does not apply to drilling or hydraulic fracturing processes themselves. n223

It is important to note the limitations of these regulatory tools. In Tioga County, for example, while twelve of the fifteen towns and villages do now have site plan review ordinances in place, only four have enacted zoning regulations. n224 The majority of towns have not enacted new ordinances in anticipation of hydrofracking besides site plan review, and enacting these measures would not ultimately be feasible. n225 Zoning plans require staff and expertise to formulate, while noise and light ordinances and traffic plans require prohibitively expensive environmental testing and [\*950] engineering consultants. n226 In addition, wellhead protection plans do not apply where a town lacks a public water supply and are not applicable to wellpad activity. n227

There are also political obstacles to implementing new measures. n228 Many towns and villages have only part-time or volunteer officials without the institutional capacity or political will to enact new ordinances. n229 Furthermore, there is frequently opposition to measures that appear to increase governmental interference with private property rights, even in protective ways. n230 In addition, county legislators have proven to be unwilling to address fears about hydrofracking given uncertainty over practical issues, n231 such as whether groundwater contamination is a serious concern. The county is also suffering from "personnel drain," as some of the best-trained and most knowledgeable workers are hired by industry in anticipation of drilling. n232 Furthermore, the State has not provided supplemental resources to help localities prepare, nor has it indicated it will do so once fracking begins in earnest. n233

Perhaps the most crucial tool localities lack is adequate [\*951] enforcement ability. n234 Towns and villages do not have the necessary financial resources to conduct adequate oversight or ensure that violations of local laws are addressed. n235 By contrast, energy companies generally have more than sufficient resources to pay small fines, which are therefore not likely to deter behavior that results in harm. n236 Energy companies also tend to have significant legal resources readily available to challenge town enforcement attempts or to counter opposition. n237

Aware of their disproportionate resources, localities have facilitated relationships with industry and sought voluntary agreements in which they seek commitments for infrastructure investments. n238 For instance, officials seek promises that industry will purchase firefighting equipment; n239 build, repave, and [\*952] maintain roads; n240 use closed systems to store fracking fluid; n241 and disclose the chemicals used in fracking mixtures. n242 In one striking example, the Tioga County Emergency Management Office will rely solely on industry to extinguish any wellpad fires. n243 In addition to realizing that basic needs will be better met if they work with private industry, local officials are interested in fostering positive and cooperative relationships with firms operating in and among their communities. n244

IV. Hydrofracking and Environmental Federalism

New York's experience with hydrofracking illustrates how an adaptive approach to regulation is more likely to result in sufficient environmental protection than an approach that attempts to match potential problems with a level of authority based on geography. While an essentially localized activity, hydrofracking nonetheless presents a regulatory challenge to state and local governments. n245 Deciding whether to encourage or limit hydrofracking requires a highly subjective analysis that relies on uncertain and incomplete [\*953] information about risk. n246 Meanwhile, state and local decisionmakers are incentivized to accept risk of harms they lack resources to prevent or mitigate. n247 Applying federal laws to hydrofracking would help relieve some of the pressures on state and local authorities by placing the burden of precaution onto energy companies. n248 Moreover, there may be appreciable benefits to fostering a flexible regime that includes responsive interaction among all three levels of government. n249 Finally, an active federal role in regulating new technologies like hydrofracking can give states and localities a better chance to formulate policies aligned with their resources and expertise, leading to increased political accountability, jurisdictional confidence, and fewer regulatory commons problems. n250

A. Strict State Primacy: A Poor Match for Hydrofracking

In many respects, the existing federal approach to regulation of hydrofracking would likely meet the approval of matching principal proponents. A land-based activity without any obvious interstate impacts, hydrofracking seems a good candidate for a state-led approach, and the federal government essentially has mandated state primacy. n251 Federal regulation would increase costs and slow fracking efforts. n252 If federal laws were operative, [\*954] industry, states, and localities would bear additional SDWA compliance burdens. n253 Energy companies would have to comply with and obtain permits under the CWA, which are costly and delay development. Aggregation of emissions from wellpad activity or truck traffic under the CAA would increase permitting and cause companies to incur pollution control costs. Removal of exemption from CERCLA would increase risk of liability that would create disincentives to drill, and strengthened NEPA review would also add time and cost to preproduction planning. Regulation under RCRA would also add time and expense to disposal of fracking byproducts. Moreover, and especially given the extensive private property interests involved in hydrofracking, local geographic, socioeconomic, geological, and hydrological differences make state regulation arguably more appropriate than federal regulation to meet unique state preferences. n254

However, an analysis of New York's experience with hydrofracking to date suggests that state primacy may well result in underprotection and even hamper production activity. n255 Notably, New York's proposed regulations are more protective than those in many other states, n256 yet its plan nonetheless has demonstrated weaknesses. n257 New York's inadequate enforcement and oversight capacity and its failure to anticipate cumulative impacts may mean that state primacy will result in unintended and undesirable outcomes. n258

First, it is important to note that New York's regulations may not result in protection of some baseline standards that EPA has established. n259 For instance, concentrations of toxic pollutants in flowback hydrofracking fluids have measured in excess of amounts [\*955] that would be permissible under the SDWA, and flowback fluids can be high in pollutants ruled hazardous under RCRA. n260 Because New York State has not updated its wetland map after pivotal Supreme Court decisions that altered federal jurisdiction over wetlands, n261 there may be pollutant releases onto what should be federally regulated land. n262 New York's ability to achieve water quality standards under the CWA may be seriously overestimated in light of criticism that the State has not accurately estimated the extent of cumulative impacts on water quality. n263 Air emissions from wellpad activities, if aggregated, might far exceed the minimum requirements that trigger the CAA. n264 These examples demonstrate that New York's scheme might result in failure to meet federal standards that would apply absent exemptions or do apply to the same or similar harms caused by other industries and suggest that as a threshold matter, state primacy over hydrofracking will create results inconsistent with existing law.

Furthermore, the New York scheme's reliance on local implementation of emergency planning, public health, waste disposal, and road regulation enhances the probability that unintended harms may occur. The level of risk that localities are expected to bear is disproportionate to the resources they have to handle that risk. n265 As a result, the State's regulatory regime is [\*956] effectively dependent on voluntary industry action. n266 Local officials hope energy companies will agree to provide necessary infrastructure - like roads - and emergency response support - like basic firefighting equipment - even though the industry has incentives to downplay and minimize concerns to the detriment of preparedness. n267 Moreover, experiences of local officials show that localities do not feel well equipped to handle even routine incidental, let alone catastrophic, impacts from fracking and that they lack reliable information to help them bargain with energy companies optimally. n268

Lack of oversight and enforcement powers at state and local levels may lead to lax, inconsistent, or insufficient compliance with existing state and local regulations. n269 Even where officials are dedicated to proactive prevention and oversight efforts, local [\*957] staffs are inadequate to conduct inspections that would ensure that companies - who may be unfamiliar with desired or mandated local practices, given variation from town to town - are heeding regulations and ordinances. n270 If noncompliance is detected, local enforcement power does not appear sufficient to induce adherence to laws. n271 Furthermore, at the state level, an insufficient number of wellpad inspectors can lead to severely reduced checks on drilling and production activities, which may make it more likely that harm-generating errors will occur. n272 If harm does occur, lack of oversight may make identification of the responsible party difficult, given the number of component processes that make up hydrofracking. n273

New York's experience also illustrates some of the difficulty of drawing jurisdictional lines around complicated environmental problems that have corollary economic benefits. New York is proceeding to set its jurisdictional lines by declaring what hydrofracking's impacts are likely to be, by establishing permitting and policy standards in its SGEIS to respond to these impacts, and by restricting local authority. n274 Yet the defects in New York's [\*958] proposed scheme suggest that state regulators have downplayed or failed to anticipate fully the gravity of uncertain impacts, which has led to inaccurate characterization of problems and poor allocation of authority. n275 Furthermore, because DEC regulators are not responsible for the kinds of issues that first responders at the local level face, such as waste disposal, road degradation, emergency response, or even local air quality, problems within the jurisdiction of localities are likely to prove beyond any local regulator's control or resources to address. n276 Moreover, the uncertainty over whether hydrofracking should be viewed as presenting problems rather than opportunities has fostered ambivalence that colors local elected officials' willingness to cast hydrofracking as a policy priority. n277 Thus, many of the attempts to address potential harms have been initiated by unelected officials who are concerned about harm and feel they should prepare now in order to help forestall foreseeable problems. n278 Unelected local officials effectively are left with a Hobson's choice - they can either curry favor with energy companies and establish voluntary agreements and risk considerable harm, or push the boundaries of what might be permitted by law, such as attempting to zone out hydrofracking, only to find they have overstepped their power and in the process have alienated and lost the ability to work with and extract concessions from gas producers. n279 In addition, confusion about jurisdiction with regard to foreseeable harms may lead local decisionmakers to be even more reluctant to grapple with [\*959] unforeseeable and novel problems that arise. n280 Drawing strict jurisdictional boundaries around an environmental issue without fully addressing the scope of possible problems or recognizing the asymmetry between local and industry resources creates a danger that the drawn boundaries will prove arbitrary or fail to account for the broad scope of consequent harms. Thus, setting strict jurisdictional lines - especially where, as here, there is pressure to underregulate n281 - might leave designated regulators unprepared, while responsibility for handling many intractable problems will be pushed off onto those who are not politically accountable. n282

#### Key to prevent catastrophic water contamination

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(Beren, Pace Environmental Law Review, "The Marcellus Shale: Bridge to a Clean Energy Future or Bridge to Nowhere?," 29 Pace Envtl. L. Rev. 321, Fall 2011, l/n, accessed 5-24-12, mss)

As noted above, the EIA's long-term projections estimate that over forty-five percent of all natural gas produced in the United States by 2035 will come from shale gas. Experience in shale gas-producing states reveals that hydraulic fracturing has significant impacts on water and air resources; with nearly half the country's natural gas supply expected to come from shale, the long-term consequences must be considered and addressed now. Reports of shale gas development in Colorado, Wyoming, Texas, and Pennsylvania highlight numerous water and air contamination problems that have arisen from shale gas production. n53 Improper [\*331] well casing, lax on-site wastewater storage practices and perhaps even the hydraulic fracturing process itself, can allow natural gas constituents to migrate into and **permanently contaminate** underground **aquifers** and private wells. n54 The dumping of flowback waters into streams and onto roads contaminates surface waters and improperly treated fracking wastewater at sewage treatment plants (often defined as publicly owned treatment works or "POTWs") damage streams and drinking water supplies, **putting** human and **ecological health at risk**. n55 Air pollutants in the form of volatile organic compounds (VOCs) and nitrous oxides (NOx), which are precursors to ground level ozone, a respiratory hazard, arise from the concentrated operation of diesel pumps, truck traffic, and on-site generators. n56 Methane gas, a highly potent greenhouse gas, and other pollution constituents are released through the drilling, fracturing, venting, flaring, condensation, and transportation processes of a well's lifecycle. n57 A. Water Pollution The New York State Department of Environmental Conservation (NYS DEC or DEC) estimates that the hydraulic fracturing process requires anywhere from 2.9 million to 7.8 million gallons of injected water combined with chemicals and sand to fracture a single well, depending on the depth of the well and geology of the area. n58 DEC estimates that over the next thirty years, "there could be up to 40,000 wells developed with the high volume hydraulic fracturing technology." n59 Reports from hydraulic fractured wells in northern Pennsylvania indicate that between nine and thirty-five percent (or 216,000 to 2.8 million [\*332] gallons) of the water-chemical solution used in fracking returns as "flowback" before a well begins to produce gas. n60 Handling and treating these high volumes of flowback water is a significant operational challenge of extracting shale gas and one that has not been met in some states. The treatment of flowback waters has proven a persistent challenge in Pennsylvania, causing environmental damage that regulators in some areas have been slow to address. n61 Former Pennsylvania Department of Environmental Protection (DEP) Commissioner John Hanger said in a DEP press release in April 2010: The treating and disposing of gas drilling brine and fracturing wastewater is a significant challenge for the natural gas industry because of its exceptionally high total dissolved solid (TDS) concentrations... . Marcellus drilling is growing rapidly and our rules must be strengthened now to prevent our waterways from being seriously harmed in the future. n62 However, the DEP has largely limited its regulatory oversight on the issue of wastewater disposal at POTWs to a request that shale gas producers "voluntarily" cease disposing of flowback water at some POTWs. n63 The issue of improper treatment of hydraulic fracturing wastewater is compounded by specific exemptions for hydraulic fracturing from certain federal environmental laws. For example, [\*333] the Energy Policy Act of 2005 amended the Safe Drinking Water Act (SDWA) to largely exempt gas drillers from the SDWA, from EPA regulation, and from disclosure of the chemicals used in hydraulic fracturing operations. n64 While some states such as New York would require drillers to meet higher standards, n65 industry has largely fought efforts to force public disclosure as well as federal efforts to study the impacts of chemicals used in hydraulic fracturing on drinking water. n66 Independent analysis of products used in some western states for the production of oil and gas revealed more than 350 products containing hundreds of chemicals, the vast majority of which have known adverse effects on human health and the environment. n67 However, industry feet dragging on public disclosure has contributed to incomplete knowledge of the chemical makeup and concentrations used in fracturing fluids, and the full extent of the risk the chemicals pose to human and environmental health is unknown. n68 The NYS DEC advised in its Revised Draft Supplemental Generic Environmental Impact Statement (Revised dSGEIS) that: There is little meaningful information one way or the other about the potential impact on human health of chronic low level exposures to many of these chemicals, as could occur if an aquifer were to be contaminated as the result of a spill or release that is undetected and/or unremediated. n69 Incomplete knowledge of the chemical constituents injected into wells during the fracturing process raise concerns about [\*334] understanding their effects on people and how to treat acute and chronic exposure. Further, as noted above, the fracturing fluids that return to the surface in flowback wastewaters create particularly daunting treatment challenges. The fracking solution pumped into the wells dissolves large quantities of salts, heavy metals such as barium and strontium, and radioactive materials. n70 When the water returns to the surface, it is stored for reuse, recycled, or treated and disposed. Currently, Pennsylvania is the only state that allows for the primary method for disposal of drilling wastewaters at POTWs. n71 Many POTWs are incapable of treating fracking wastewater and discharges of untreated fracking wastewater into surface waters create environmental and human health hazards. n72 The chemicals, radioactivity levels, and high salt concentrations pose difficulties for managers because most POTWs are not equipped to test for or treat all of these substances. n73 John H. Quigley, former Pennsylvania Secretary of the Department of Conservation and Natural Resources, stated: we're burning the furniture to heat the house ... **in** shifting away from coal and **toward natural gas**, we're trying for cleaner air, but **we're producing** **massive amounts of toxic wastewater** with salts and naturally occurring radioactive materials, and it's not clear we have a plan for properly handling this waste. n74

#### Extinction

**WWP, 10**

(Western Watersheds Project, "Protecting Watersheds," 2010, www.westernwatersheds.org/issues/protecting-watersheds, accessed 5-29-12, mss)

Protecting Watersheds A watershed is land that contributes water to a stream, river, lake, pond, wetland or other body of water. The boundary that separates one watershed from another, causing falling rain or melting snow or spring water to flow downhill in one direction or the other, is known as a “watershed divide”. John Wesley Powell put it well when he said that a watershed is: "that area of land, a bounded hydrologic system, within which all living things are inextricably linked by their common water course" The defining watershed divide in the United States is the Continental Divide which generally follows the Rocky Mountains and determines whether water flows to the Pacific or Atlantic Ocean. Our biggest watershed is that of the Mississippi River which starts in Minnesota and spreads across 40% of the lower 48 states, drawing its water from the Yellowstone, Missouri, Platte, Arkansas, Canadian, Red, Wisconsin, Illinois, Ohio and Tennessee Rivers---and their drainages. While major watersheds are clearly visible on satellite photographs and maps, within each one is an intricate web of secondary drainages, each fed by a myriad of streams and smaller creeks, many unnamed and so small a person can jump across them. In many parts of the country, particularly in the arid West, these smaller drainages may cover thousands of acres, yet collect far less water than those in the East. For example, the Hudson River has a flow equivalent to that of the Colorado, yet collects its water from a land area less than 1/20th the size required by the Colorado River which is 1,400 miles long. Because there is very little land that is truly flat, watersheds and drainages are all around us, and just about everybody in the United States is within walking distance of one whether they live in a city, on a farm, in a desert, or on an island. Some carry the names of well known rivers like the Columbia and the Rio Grande. Most, however, do not, and remain anonymous, hidden in culverts or ditches or flowing only intermittently in high deserts, unrecognized and unheralded as vital, contributing parts of the complex system that supplies all of our fresh surface water. “Surface water” runs through watersheds and drainages, from mountains or high ground to the sea. Underlying watersheds, or adjacent to most of them, however, is an even greater source of supply, “ground water”. Ground water is formed when falling rain or melting snow percolates deep into the ground over time, sometimes centuries, to a level where it is stored in porous rock and sand and accumulates there until tapped by drilled wells or comes to the surface of its own accord as a spring or artesian well. This stored ground water is commonly referred to as an “aquifer” and its level is measured in terms of a “water table”. Like watersheds, water stored in aquifers generally seeps downhill, and many, like the Mississippi River drainage, cover wide areas of the United States. The nation’s largest deposit of ground water is the Ogallala Aquifer System that underlies 8 states, Wyoming, Colorado, South Dakota, Nebraska, Kansas, Oklahoma, Texas and New Mexico. Many smaller aquifers are found across the country and some remain unnamed and uncharted. These two water resources, surface and ground water, not only **sustain all life** but are the only practical source of fresh water we have for industry, agriculture, and municipal use. And although they are often viewed as two separate entities, they are, for the most part, inextricably linked. For example, in addition to rain and melting snow, ground water springs are vital to maintaining the flow of many streams and rivers in a watershed. And a great deal of surface water, about 25% of it, percolates deep into the ground where it is stored in or helps recharge our aquifers. The remaining surface water, after evaporation, which claims some 40%, becomes the complex system of streams and rivers that flow through watersheds from the mountains or high ground to the sea. Along the way, however, some of that water is temporarily held back in ponds, wetlands and the land bordering creeks, streams and rivers where water may not be visible but lies just below the surface. These areas are collectively referred to as riparian zones, and while they constitute only a small percentage of the land in most watersheds, they are the heart and soul of a **delicately balanced** natural system that, collectively, produces our fresh water. A healthy, functioning riparian zone is a virtual classroom in life sciences---botany, biology, animal ecology, fisheries, entomology and ornithology---and contains a **miraculous diversity** of wildlife, fish, birds, bugs and an array of vegetation ranging from trees and grasses to algae and other aquatic plants. Riparian zones and the biodiversity they contain are interdependent. That is, the trees, plants, grasses, reeds, and algae provide food, shade, protection and habitat for wildlife, birds and fish. Their root systems **stabilize soil and prevent erosion** and flooding in wet seasons; and in dry seasons, this vegetation retains water and releases it slowly to maintain even stream flows. For their part, the variety of animals, fish, birds, and bugs living in these zones aerate the soil, spread pollen and seeds and eventually, when they die and fungi and bacteria break down the dead organic matter, provide nourishment for a new generation of riparian vegetation. This is an oversimplified description of a pristine riparian zone within a source watershed, that critical part of the system where water is gathered from a web of springs, bogs and creeks and begins its long, twisting journey from the mountains to the sea. Such pristine conditions still exist in some isolated areas, but today no major river arrives at its terminus in this condition, and some don’t make it at all. Along the way, watersheds are radically transformed by man. Rivers are dammed, channeled, and otherwise diverted to serve a multitude of agricultural, industrial and municipal purposes. And while a good portion of the water is eventually released back into the system, much of it is polluted and requires costly purification. Today, water conservation is one of the most serious natural resource issues facing this country, and nowhere is conservation more important than in the arid West which is literally running out of water.

#### Dynamic environmental federalism gets modeled globally

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Part Four posits a theory for when the federal government should intervene within the states to address environmental issues—effectively replacing a “devolved” federalist stance with a more “interactive” and “dynamic” federalism that learns from state experiences but ultimately sets a minimum national standard for environmental protection. This stance captures a number of benefits from devolved and centralized theories of federalism while avoiding many of their deficiencies.

The importance of exploring environmental federalism and the need for federal action on the environment extends beyond merely promoting renewable energy and addressing climate change. First, such a discussion should give pause to those who are driving for more decentralized environmental regulation or at least a general presumption towards devolution. This conclusion has far-reaching implications for other areas of social regulation where discussions about decentralization and centralization continue to dominate deliberations about the proper scale of government intervention. The lessons from environmental federalism can inform policymaking relating to areas as diverse as health care, welfare reform, tax policy, and education.

Second, the Article is an attempt to invigorate the environmental policy debate and move from discussing what we regulate to how we regulate. Focusing on the merits of the differing types of environmental federalism explores which scale of environmental regulation best maximizes social welfare, and offers a more nuanced discussion of how the states and the federal government can serve supportive roles in advancing public policy goals. For American democracy is about more than just “one person, one vote.” The opportunities for the individual voter to affect the outcome of a particular election are quite small. In contrast, under a “conversational” model of democracy, citizens can influence policymakers by participating in public conversation.23 By balancing and preserving prerogatives for local, state, and national governments in environmental policy, interactive federalism offers opportunities for meaningful involvement in the political process for millions of Americans.

Third, other countries continue to model American-style federalism. Germany, the Republic of Austria, Russian Federation, Spain, India, and Nigeria have all based parts of their government structure on American federalism, choosing to decentralize power by adopting constitutions that are more federalist than the ones that they have replaced.24 The “American experience with . . . federalism,” writes John Kincaid, “may have useful implications for an emerging federalist revolution worldwide.”25 Mikhail Gorbachev even stated that “the phenomenon of federalism affects the interests of the entire global community.”26 Given such trends, it seems likely that other countries may model American environmental federalism. If this is the case, ensuring that the United States government addresses renewable energy and climate policy at the proper scale becomes even more important for the signal it sends to the world.

#### Dynamic federalism creates a flexible legal response necessary for climate adaptation

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Emergency preparedness requires substantive and procedural coordination to harmonize initiatives at various levels of governance. Dynamic federalism can occur in a manner that allows federalist systems to address climate change.15 Nascent disaster planning has begun to harmonize the roles of the public sector’s various layers, fleshing out the means by which communities will address human security as climate risks become better understood.16 An adaptive process informed by new scientific understanding of where and in what manner climate disruptions are likely to occur provides for better planning for potential extreme flooding and heat waves. For instance, local jurisdictions can work with their national partners to update maps in order to reflect the climate impacts for given areas. Current maps are not likely to adequately guide flood insurance decisions or requisite emergency response resources. Overall, adaptation measures need to integrate policies to protect food security and such infrastructure as transportation systems and power stations in the face of fires, floods, and other potential disasters. 17

III. CHANGE IS THE ONLY CONSTANT: RESILIENCE AND

COLLABORATIVE ADAPTIVE MANAGEMENT

“Adaptation policy must operate at all scales in an interconnected network of decision making.”18 Responding resiliently at inter-linking scales to an increasing array of disasters requires cooperation. While reducing levels of greenhouse gases that contribute to climate change can achieve climate stabilization, the effects of existing accumulated atmospheric concentrations will last many years. Different kinds of adaptation are needed throughout the world, with developing countries facing the greatest need to adapt while having the least capacity to do so and lowest contribution to climate change. A comprehensive, cooperative adaptation framework can support national adaptation plans that facilitate climate-resilient development. 19 Each country should implement early warning systems, disaster risk reduction strategies, and risk management plans.20

Following a massive earthquake in Japan on March 11, 2011, philosophy and law merged in this author’s Oregonian community. Residents not only scrambled for potassium iodide while trying to make sense of disaster law and policy gone nuclear, but they also struggled with how to respond to a potential crest of water few coastlines currently have the capacity to withstand. Learning how to transcend panic and respond effectively in the long-term continues to stymie individuals and cultures alike.21 Expecting the best yet preparing for the worst should be a rational response, with communities remaining calm but recognizing likely mortality rates and geographical vulnerabilities.22

Such a rational response, however, requires technology transfer to communities lacking the capacity to warn civil society of pending disasters, comparable to the reverse 9-1-1 calls that Oregon and California residents received shortly after the Japanese earthquake.23 Wake up calls seem to be coming fast and furiously. Communities can accomplish a great deal of good by channeling crisis awareness into effective disaster planning for resilient coastlines. Recent storm surges highlight the urgent need for a collective consensus within the international community on enhancing resilience to disasters.24 If not now, then when?

Adaptation commissions facilitate integration and harmonization and, by doing so, enhance adaptive capacity.25 As recent climate negotiations have demonstrated, geo-political pendulums also affect adaptive capacity. Adaptation measures should be based on emerging and traditional “sound scientific and technological knowledge.”26 Approaches to adaptation should also be environmentally sound, informed by the best science, as well as sensible from financial and sustainability standpoints. 27 Temporal and spatial scales of adaptation are both important to framing adaptation strategies. On-the-ground results should come from “predictable, sustainable, timely, adequate and stable financial resources” on top of official development assistance by developed countries. 28 Countries can implement integrated best practices29 consistent with such international instruments as the United Nations Framework Convention on Climate Change (UNFCCC),30 the United Nations Convention to Combat Desertification,31 the Convention on Biological Diversity, 32 and the United Nations Declaration on the Rights of Indigenous Peoples.33 Periodic reviews34 of national adaptation plans should assess and update measures for “climate refugees,”35 increasing resilience through economic diversification, as well as the transfer of such adaptation technologies as levy designs, green building innovations, and a wide range of other means by which to respond to climate change.36

Professor J.B. Ruhl artfully notes that “institutional inflexibility is increasingly being adopted as a means to protect legitimate interests excluded from dominant resource allocation regimes.”37 Coordinated, flexible responses are at the core of effective climate adaptation. Existing property rights and risk will likely see unprecedented change. Traditional water, land-use and environmental law are likely to melt into something that can respond to climate instability. Both this instability and the resulting legal responses will have significant human rights implications that communities should address at the outset, rather than acknowledge in retrospect.

Rule of law is at the core of effective communities and need not be compromised in the effort to adapt effectively to climate instability. Effective climate measures can occur through coordination among all levels of governance and decision-making. This decision-making should address climate change legislatively, judicially, and administratively, while remaining mindful of the need for both flexibility and capacity building.38 Many adaptation measures can be addressed at the proactive or reactive stage. Arguably, a proactive response leaves greater flexibility with which communities can respond.39 Emergency response and disaster recovery are classic reactive adaptive measures that can be prepared for, while proactive measures include: “crop and livelihood diversification, seasonal climate forecasting, community-based disaster risk reduction, famine early warning systems, insurance, [and] water storage.” 40

While reducing vulnerability can avert directing resources to postdisaster recovery, climate vulnerabilities will remain. The level of risk will depend upon interrelated knowledge, technology, and capacity gaps.41 Robust habitat protection/restoration and emergency response systems are resilience enhancers.42 Resilience need not be the baby thrown out with the bathwater. There is a growing understanding that stationarity is giving way to a climate change-induced no-analog future in which ecological variability will not stay within known parameters.43

Professor Robin Kundis Craig notes that “water law is almost uniquely available to support some of the adaptive management regimes that climate change adaptation will require [and] public trust doctrines can be particularly well-suited to providing legal support for adaptive management-based climate change adaptation regimes.”44 Given the need for a legal system that both provides stable expectations and adapts to climate change, the common law may be in a good position to respond flexibly.45 Craig has identified at least sixteen states in the United States that have ecological public trust doctrines, and at least six states that describe such doctrines as adaptive and evolutionary.46 Explicitly includ-ing climate as a threat to public trust resources allows states to respond to climate instability through public trust doctrines.

Adaptive public trust doctrines enable states to address some waterrelated climate change. For example, judicial adaptive management may follow the approach taken in the South Dakota case of Parks v. Cooper.47 In this case, three lakes resulted from an area receiving higher than normal precipitation, perhaps a new normal for the region. Riparian landowners sued to exclude members of the public from using the new bodies of water for fishing and recreation upon a private lake argument. 48 The South Dakota Supreme Court concluded that “all water in South Dakota belongs to the people in accord with the public trust doctrine and as declared by statute and precedent, and thus, although the lake beds are mostly privately owned, the water in the lakes is public and may be converted to public use.”49

Parks v. Cooper may be at the forefront of a growing state trend to address climate change via state public trust doctrines. Should this method gain momentum, a body of common law may develop that effectively addresses climate disruptions too unpredictable at present for the public sector to feel comfortable legislating. International frameworks, national climate thresholds, state common law, local zoning, tax abatement for individuals, and civil society participation can together facilitate resilience efforts at all scales that remain mindful of human and ecological vulnerabilities.

#### global wars

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The costs and consequences of climate change on our world will define the 21st century. Even if nations across our planet were to take immediate steps to rein in carbon emissions—an unlikely prospect—a warmer climate is inevitable. As the U.N. Intergovernmental Panel on Climate Change, or IPCC, noted in 2007, human-created “warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice and rising global average sea level.”1

As these ill effects progress they will have serious implications for U.S. national security interests as well as global stability—extending from the sustainability of coastal military installations to the stability of nations that lack the resources, good governance, and resiliency needed to respond to the many adverse consequences of climate change. And as these effects accelerate, the stress will impact human migration and conflict around the world.

It is difficult to fully understand the detailed causes of migration and economic and political instability, but the growing evidence of links between climate change, migration, and conflict raise plenty of reasons for concern. This is why it’s time to start thinking about new and comprehensive answers to multifaceted crisis scenarios brought on or worsened by global climate change. As Achim Steiner, executive director of the U.N. Environment Program, argues, “The question we must continuously ask ourselves in the face of scientific complexity and uncertainty, but also growing evidence of climate change, is at what point precaution, common sense or prudent risk management demands action.”2 In the coming decades climate change will increasingly threaten humanity’s shared interests and collective security in many parts of the world, disproportionately affecting the globe’s least developed countries. Climate change will pose challenging social, political, and strategic questions for the many different multinational, regional, national, and nonprofit organizations dedicated to improving the human condition worldwide. Organizations as different as Amnesty International, the U.S. Agency for International Development, the World Bank, the International Rescue Committee, and the World Health Organization will all have to tackle directly the myriad effects of climate change.

Climate change also poses distinct challenges to U.S. national security. Recent intelligence reports and war games, including some conducted by the U.S. Department of Defense, conclude that over the next two or three decades, vulnerable regions (particularly sub-Saharan Africa, the Middle East, South and Southeast Asia) will face the prospect of food shortages, water crises, and catastrophic flooding driven by climate change. These developments could demand U.S., European, and international humanitarian relief or military responses, often the delivery vehicle for aid in crisis situations.

This report provides the foundation and overview for a series of papers focusing on the particular challenges posed by the cumulative effects of climate change, migration, and conflict in some of our world’s most complex environments. In the papers following this report, we plan to outline the effects of this nexus in northwest Africa, in India and Bangladesh, in the Andean region of South America, and in China. In this paper we detail that nexus across our planet and offer wide ranging recommendations about how the United States, its allies in the global community, and the community at large can deal with the coming climate-driven crises with comprehensive sustainable security solutions encompassing national security, diplomacy, and economic, social, and environmental development.

Here, we briefly summarize our arguments and our conclusions.

The nexus

The Arab Spring can be at least partly credited to climate change. Rising food prices and efforts by authoritarian regimes to crush political protests were linked first to food and then to political repression—two important motivators in the Arab makeover this past year.

To be sure, longstanding economic and social distress and lack of opportunity for so many Arab youth in the Middle East and across North Africa only needed a spark to ignite revolutions across the region. But environmental degradation and the movement of people from rural areas to already overcrowded cities alongside rising food prices enabled the cumulative effects of long-term economic and political failures to sweep across borders with remarkable agility. It does not require much foresight to acknowledge that other effects of climate change will add to the pressure in the decades to come. In particular the cumulative overlays of climate change with human migration driven by environmental crises, political conflict caused by this migration, and competition for more scarce resources will add new dimensions of complexity to existing and future crisis scenarios. It is thus critical to understand how governments plan to answer and prioritize these new threats from climate change, migration, and conflict.

Climate change

Climate change alone poses a daunting challenge. No matter what steps the global community takes to mitigate carbon emissions, a warmer climate is inevitable. The effects are already being felt today and will intensify as climate change worsens. All of the world’s regions and nations will experience some of the effects of this transformational challenge.

Here’s just one case in point: African states are likely to be the most vulnerable to multiple stresses, with up to 250 million people projected to suffer from water and food insecurity and, in low-lying areas, a rising sea level.3 As little as 1 percent of Africa’s land is located in low-lying coastal zones but this land supports 12 percent of its urban population.4

Furthermore, a majority of people in Africa live in lower altitudes—including the Sahel, the area just south of the Sahara—where the worst effects of water scarcity, hotter temperatures, and longer dry seasons are expected to occur.5 These developments may well be exacerbated by the lack of state and regional capacity to manage the effects of climate change. These same dynamics haunt many nations in Asia and the Americas, too, and the implications for developed countries such as the United States and much of Europe will be profound.

Migration

Migration adds another layer of complexity to the scenario. In the 21st century the world could see substantial numbers of climate migrants—people displaced by either the slow or sudden onset of the effects of climate change. The United Nations’ recent Human Development Report stated that, worldwide, there are already an estimated 700 million internal migrants—those leaving their homes within their own countries—a number that includes people whose migration isrelated to climate change and environmental factors. Overall migration across national borders is already at approximately 214 million people worldwide,6 with estimates of up to 20 million displaced in 2008 alone because of a rising sea level, desertification, and flooding.7

One expert, Oli Brown of the International Institute for Sustainable Development, predicts a tenfold increase in the current number of internally displaced persons and international refugees by 2050.8 It is important to acknowledge that there is no consensus on this estimate. In fact there is major disagreement among experts about how to identify climate as a causal factor in internal and international migration. But even though the root causes of human mobility are not always easy to decipher, the policy challenges posed by that movement are real. A 2009 report by the International Organization for Migration produced in cooperation with the United Nations University and the Climate Change, Environment and Migration Alliance cites numbers that range from “200 million to 1 billion migrants from climate change alone, by 2050,”9 arguing that “environmental drivers of migration are often coupled with economic, social and developmental factors that can accelerate and to a certain extent mask the impact of climate change.”

The report also notes that “migration can result from different environmental factors, among them gradual environmental degradation (including desertification, soil and coastal erosion) and natural disasters (such as earthquakes, floods or tropical storms).”10 (See box on page 15 for a more detailed definition of climate migrants.) Clearly, then, climate change is expected to aggravate many existing migratory pressures around the world. Indeed associated extreme weather events resulting in drought, floods, and disease are projected to increase the number of sudden humanitarian crises and disasters in areas least able to cope, such as those already mired in poverty or prone to conflict.11

Conflict

This final layer is the most unpredictable, both within nations and transnationally, and will force the United States and the international community to confront climate and migration challenges within an increasingly unstructured local or regional security environment. In contrast to the great power conflicts and the associated proxy wars that marked most of the 20th century, the immediate post- Cold War decades witnessed a diffusion of national security interests and threats. U.S. national security policy is increasingly integrating thinking about nonstate actors and nontraditional sources of conflict and instability, for example in the fight against Al Qaeda and its affiliated groups.

Climate change is among these newly visible issues sparking conflict. But because the direct link between conflict and climate change is unclear, awareness of the indirect links has yet to lead to substantial and sustained action to address its security implications. Still the potential for the changing climate to induce conflict or exacerbate existing instability in some of the world’s most vulnerable regions is now recognized in national security circles in the United States, although research gaps still exists in many places.

The climate-conflict nexus was highlighted with particular effect by the current U.S. administration’s security-planning reviews over the past two years, as well as the Center for Naval Analysis, which termed climate change a “threat multiplier,” indicating that it can exacerbate existing stresses and insecurity.12 The Pentagon’s latest Quadrennial Defense Review also recognized climate change as an “accelerant of instability or conflict,” highlighting the operational challenges that will confront U.S. and partner militaries amid a rising sea level, growing extreme weather events, and other anticipated effects of climate change.13 The U.S. Department of Defense has even voiced concern for American military installations that may be threatened by a rising sea level.14

There is also well-developed international analysis on these points. The United Kingdom’s 2010 Defense Review, for example, referenced the security aspects of climate change as an evolving challenge for militaries and policymakers. Additionally, in 2010, the Nigerian government referred to climate change as the “greatest environmental and humanitarian challenge facing the country this century,” demonstrating that climate change is no longer seen as solely scientific or environmental, but increasingly as a social and political issue cutting across all aspects of human development.15

As these three threads—climate change, migration, and conflict—interact more intensely, the consequences will be far-reaching and occasionally counterintuitive. It is impossible to predict the outcome of the Arab Spring movement, for example, but the blossoming of democracy in some countries and the demand for it in others is partly an unexpected result of the consequences of climate change on global food prices. On the other hand, the interplay of these factors will drive complex crisis situations in which domestic policy, international policy, humanitarian assistance, and security converge in new ways.

Areas of concern

Several regional hotspots frequently come up in the international debate on climate change, migration, and conflict. Climate migrants in northwest Africa, for example, are causing communities across the region to respond in different ways, often to the detriment of regional and international security concerns. Political and social instability in the region plays into the hands of organizations such as Al Qaeda in the Islamic Maghreb. And recent developments in Libya, especially the large number of weapons looted from depots after strongman Moammar Qaddafi’s regime fell— which still remain unaccounted for—are a threat to stability across North Africa. Effective solutions need not address all of these issues simultaneously but must recognize the layers of relationships among them. And these solutions must also recognize that these variables will not always intersect in predictable ways. While some migrants may flee floodplains, for example, others may migrate to them in search of greater opportunities in coastal urban areas.16

Bangladesh, already well known for its disastrous floods, faces rising waters in the future due to climate-driven glacial meltdowns in neighboring India. The effects can hardly be over. In December 2008 the National Defense University in Washington, D.C., ran an exercise that explored the impact of a flood that sent hundreds of thousands of refugees into neighboring India. The result: the exercise predicted a new wave of migration would touch off religious conflicts, encourage the spread of contagious diseases, and cause vast damage to infrastructure. India itself is not in a position to absorb climate-induced pressures—never mind foreign climate migrants. The country will contribute 22 percent of global population growth and have close to 1.6 billion inhabitants by 2050, causing demographic developments that are sure to spark waves of internal migration across the country.

Then there’s the Andean region of South America, where melting glaciers and snowcaps will drive climate, migration, and security concerns. The average rate of glacial melting has doubled over the past few years, according to the World Glacier Monitoring Service.17 Besides Peru, which faces the gravest consequences in Latin America, a number of other Andean countries will be massively affected, including Bolivia, Ecuador, and Colombia. This development will put water security, agricultural production, and power generation at risk—all factors that could prompt people to leave their homes and migrate. The IPCC report argues that the region is especially vulnerable because of its fragile ecosystem.18

Finally, China is now in its fourth decade of ever-growing internal migration, some of it driven in recent years by environmental change. Today, across its vast territory, China continues to experience the full spectrum of climate change related consequences that have the potential to continue to encourage such migration. The Center for a New American Security recently found that the consequences of climate change and continued internal migration in China include “water stress; increased droughts, flooding, or other severe events; increased coastal erosion and saltwater inundation; glacial melt in the Himala as that could affect hundreds of millions; and shifting agricultural zones”—all of which will affect food supplies. 19 Pg. 1-7

#### South Asian climate crisis goes nuclear

**Brennan 08** – Lieutenant in the United States Navy [James F. Brennan, “The China-India-Pakistan Water Crisis: Prospects for Interstate Conflict,” Submitted in partial fulfillment of the requirements for the degree of MASTER OF ARTS IN SECURITY STUDIES (FAR EAST, SOUTHEAST ASIA, PACIFIC) from the NAVAL POSTGRADUATE SCHOOL, September 2008

India and Pakistan’s enduring rivalry provides the groundwork for an unpredictable relationship between these regional powers. The partition instilled a mutual distrust that persists today. Exacerbated by the growing water crisis, the potential for conflict between these countries is high. Furthermore, the possession of nuclear weapons by these countries raises the stakes of the game.

The potential for all-out nuclear exchange is low. However, the potential in light of serious disputes over water resources raises serious concerns for parties interested in maintaining regional security. So, it is important to ensure that water issues be considered in future diplomatic efforts to ensure regional stability. In other words, interested external powers should consider a proactive approach instead of a reactive one. The propensity between these countries for conflict makes a reactive approach undesirable. In the event of a nuclear exchange, China, India and Pakistan would be decimated in minutes and the long-term effects on regional security would last for decades to follow.

The stability of the South Asian region is important for a number of reasons. These countries have a history of tense relations that tend to lead to conflict. Therefore, in order to engage these countries effectively, it may be important to address them separately at first – similar to China’s current approach to regional relations.123 As South Asia approaches a water crisis, the 1960 Indus Water Treaty is a good starting point – as it appears to pose the most relevant challenge as far as large-scale engagement is concerned. If China and South Asia cannot settle potential disputes over water, it may be up to a fourth party, such as the United States, to motivate change. pg. 45-46

#### Second, Chinese climate migration – It risks a war over the Russian Far East

**Weitz 12** - Director of the Hudson Institute’s Center for Political-Military Analysis [Richard Weitz, “Superpower Symbiosis: The Russia-China Axis,” World Affairs, [November/December 2012](http://www.worldaffairsjournal.org/issue/novemberdecember-2012), pg. http://tinyurl.com/cjcc3v2

A major worsening of China-Russia ties would actually represent a regression to the mean. The modern Chinese-Russian relationship has most often been characterized by bloody wars, imperial conquests, and mutual denunciations. It has only been during the last twenty years, when Russian power had been decapitated by its lost Soviet empire and China has found itself a rising economic—but still militarily weak—power that the two countries have managed to achieve a harmonious balance in their relationship. While China now has the world’s second-largest economy, Russia has the world’s second most powerful military, thanks largely to its vast reserves of nuclear weapons. But China could soon surpass Russia in terms of conventional military. Under these conditions, Moscow could well join other countries bordering China in pursuing a containment strategy designed to balance, though not prevent, China’s rising power.

Heightened China-Russia tensions over border regions are also a possibility. The demographic disparity that exists between the Russian Far East and northern China invariably raises the question of whether Chinese nationals will move northward to exploit the natural riches of under-populated eastern Russia. Border tensions could increase if poorly managed development, combined with pollution, land seizures, and climate change, drive poor Chinese peasants into Russian territory. Russians no longer worry about a potential military clash with China over border issues, but they still fear that the combination of four factors—the declining ethnic Russian population in the Russian Far East, Chinese interest in acquiring greater access to the energy and other natural resources of the region, the growing disparity in the aggregate size of the Chinese and Russian national economies due to China’s higher growth rate, and suspected large-scale illegal Chinese immigration into the Russian Far East—will result in China’s de facto peaceful annexation of large parts of eastern Russia. Although the Russian Federation is the largest country in the world in terms of territory, China has more than nine times as many people.

With the end of the NATO combat role in Afghanistan, an immediate source of tension could be Russian pressure on China to cease its buck-passing and join Russia in assuming the burden of stabilizing that country. Should US power in the Pacific falter, China and Russia might also become natural rivals for the allegiance of the weak states of East Asia looking for a new great-power patron. But for now such prospects linger in the background as Beijing and Moscow savor a far smoother relationship than the one they shared back in the day, when they competed to see which would achieve the one true communism.

#### Russia will fight to control the RFE. It can’t win without nuclear escalation

**Rousseau 12** - Professor and Chair of Political Science and International Relations @ Khazar University [Richard Rousseau, “Will China Colonize and Incorporate Siberia?,” Harvard International Review, July 9, 2012 | 12:07 AM, pg. http://tinyurl.com/c55zp3n

If Siberia is in fact awaiting a Chinese Future, a number of scenarios might unfold over the next decade. The worst-case scenario for Russia is not only the continuation of ethnic Chinese migration but a substantial rise of it in response to changes taking place in northern China. Russia’s Far East would then become predominantly inhabited by ethnics Chinese, resulting in a decisive change in the nature of a region already far-removed from European Russia.

Military aggression, which seems highly improbable for now, cannot be totally ruled out in the long term. Although it is a fact that the Russian army lacks the latest modern weaponry, historically its strength has always lain in its number of troops, not in its cutting-edge technology. At Poltava in 1709, Galicia in 1914 and Stalingrad in 1942, the Russians did not liberate or retake these lands because they had more advanced military technology at their disposal or developed cleverer tactics, but rather because they had a large numerical superiority over the enemy. This numerical advantage would dissipate entirely in the face of the Chinese armed forces, which are ten times larger. The inferiority of Russia’s conventional forces is also aggravated by the shortage of conscripts, a consequence of the country’s demographic decline. However, with regards to nuclear weapons, Russia’s total of approximately 10,000 nuclear warheads surpasses China‘s total of approximately 240 nuclear warheads. The Russian economy may lag far behind China’s, but the Russian Army is still a frightening force and should not be underestimated.

For instance, in June and July 2010, Russian armed forces conducted Vostok 2010, a series of 10-day unprecedented military exercises. These were made up of a set of strategic exercises that involved 20,000 troops, up to 70 warplanes and 30 warships from the Far Eastern, Siberian and Volga-Urals military districts, as well as the Pacific Fleet. Designed primarily to put the military to the test, these wargames were also a warning to Chinese military officials who were present during the exercise. Vostok 2010 simulated a response to a possible attack from China. It included the firing of live ammunition, simulated airborne assaults and amphibious assault landings.

## Solvency and Plan

### Plan

**Plan --- The United States federal government should determine federal law precludes relevant state and local restrictions on offshore wind energy.**

### 1ac

#### DOI action solves

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Changes to regulatory regimes that govern the use of submerged lands likely will play a central role in state policy development on offshore wind energy. Apart from withholding approval of proposed amendments to a state's coastal management program, the federal government has limited recourse under current law to prevent states from adopting overly-restrictive siting policies that provide for inadequate consideration of positive interstate spillovers such as air quality improvements or greenhouse gas emissions reductions. The coordination problems and international dimensions of climate change present particularly acute theoretical concerns about the ability of states to implement welfare-maximizing policies. n185 Accordingly, federal legislation may be required to insure full consideration of the environmental benefits promised by would-be developers of offshore wind energy facilities.

States generally have demonstrated an ability to consider horizontal spillovers in their policies towards offshore wind energy that cuts against calls for federal legislative action at this time. New York has taken the particularly aggressive step of actively participating in the development process of the Long Island Offshore Wind Farm, and notwithstanding the controversy surrounding Cape Wind, legislative proposals in Massachusetts leave open the possibility of development of offshore wind energy [\*418] facilities in state waters. n186 New Jersey's approach, which has included a temporary moratorium on development, raises concerns, but final judgment must be reserved until the state's Blue Ribbon Panel on Development of Wind Turbine Facilities in Coastal Waters has issued its final recommendations and the political branches have responded. n187 Furthermore, the general posture of state and federal climate change policies does not indicate that coordination problems dissuade state action on climate change generally. n188 On the contrary, if anything the states poised to host offshore wind energy facilities in the near future have been more aggressive than the federal government in attempts to reduce greenhouse gas emissions. n189

In the future, if states definitively show inattention to positive horizontal spillovers, then Congress should consider legislation on offshore wind energy facilities that preempts state regulation of submerged lands. Section 311 of the EPAct of 2005, which addresses siting of liquefied natural gas ("LNG") terminals, represents one model for future legislation that has garnered recent congressional support. Section 311 provides that the Federal Energy Regulatory Commission ("FERC") "shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal." n190 This language likely preempts more restrictive state health, safety, or welfare laws that regulate siting or construction of LNG facilities, although Section 311 explicitly reserves the rights afforded to states under several federal environmental laws (including the CZMA) and provides states with opportunities to consult with FERC on safety concerns related to pending applications. n191

Section 311 clearly illustrates the ability for federal legislation to strip states of regulatory authority given sufficient political support at the national level. The uniform regulatory regimes that result from such federal action provide for less geographic [\*419] variation in environmental preferences, but they have a theoretical basis if they address failures by states to consider positive horizontal spillovers. If states fail to adequately consider positive spillovers that potentially result from offshore wind energy facilities, federal legislation akin to Section 311 would be justified.

Conclusion

The growing general interest in wind energy development and the dispute surrounding Cape Wind has spurred considerable commentary and legislative activity that stands to shape the extent and direction of offshore wind energy development in the United States. There will be additional opportunities to evaluate theoretical assumptions underlying the environmental regulation of this promising clean energy technology as policies continue to mature through future legislative and administrative activity and as sponsors seek approval to develop additional projects. In this dynamic context, this Note attempts to begin a discussion about how issues of federalism will influence and should inform the environmental regulation of offshore wind energy development. As a descriptive matter, states in the short term will continue to play a central role in determining which projects ultimately obtain the necessary regulatory approvals. As a normative matter, a prominent state role is theoretically justified (at least for near-shore projects), on the basis of a generalized analysis of the environmental impacts expected to result from offshore wind energy projects. However, important environmental impacts - reductions in air pollution and greenhouse gas emissions, in particular - that may result from offshore wind energy projects provide strong justifications for federal oversight, particularly in the event that states fail to consider out-of-state environmental benefits as they design regulatory regimes and make siting decisions. In light of these claims, the federal government should adopt policies that encourage siting decisions that consider interstate spillovers while at the same time reflect individual coastal states' particular environmental priorities. Federal agencies can implement such policies in the context of the Department of the Interior's imminent rulemaking pursuant to Section 388 of the EPAct of 2005, although future federal legislation with preemptive effects ultimately may be necessary in the event that the state regulatory regimes develop that fail to consider positive interstate spillovers.

#### Current framework dooms offshore wind – even while onshore wind blows up.

SCHROEDER 10 J.D., University of California, Berkeley, School of Law, 2010. M.E.M., Yale School of Forestry & Environmental Studies, 2004; B.A., Yale University, 2003 [Erica Schroeder, COMMENT: Turning Offshore Wind On, October, 2010, California Law Review, 98 Calif. L. Rev. 1631]

In spite of the impressive growth in the U.S. wind industry, the United States has not kept pace with other countries in developing offshore wind facilities. Though offshore wind has been used in other countries for nearly twenty years, n11 none of the United States' current wind capacity comes from offshore wind. n12 An estimated 900,000 MW of potential wind energy capacity exists off the coasts of the United States n13 - an estimated 98,000 MW of it in [\*1633] shallow waters. n14 This shallow-water capacity could power between 22 and 29 million homes, n15 or between 20 and 26 percent of all U.S. homes. n16 The nation has failed to take advantage of this promising resource.

This failure can be ascribed in part to the unevenly balanced distribution of the costs and benefits of offshore wind technology, as well as to the incoherent regulatory framework in the United States for managing coastal resources. n17 While the most compelling benefits of offshore wind are frequently regional, **national**, or even global, the costs are almost exclusively local. **The U.S.** regulatory framework is not set up to handle this cost-benefit gap. As a result, local opposition has stalled offshore wind power development, and inadequate attention has been paid to its wide-ranging benefits.

The Cape Wind project in Massachusetts is a stark example of how local forces have hindered offshore wind power development. The project is expected to have a maximum production of 450 MW and an average daily production of 170 MW, or 75 percent of the 230-MW average demand of Cape Cod and neighboring islands. n18 In addition to this electricity boon to energy-constrained Massachusetts, n19 Cape Wind will reduce regional air pollution and global carbon dioxide emissions. n20 Nonetheless, local opponents to Cape Wind protest its effect on the surrounding environment, including its aesthetic impacts. n21 Without an effective way to champion the regional, national, and [\*1634] global benefits of offshore wind, policymakers have been unable to keep local interests from controlling the process through protest and litigation. After about ten years of waiting and fighting, Cape Wind developers have still not begun construction. Although the failure of offshore wind power in the United States is discouraging, the Coastal Zone Management Act (CZMA) offers a potential solution. With specific revisions, the CZMA could serve as the impetus that offshore wind power needs for success in the United States.

#### Solving regulatory confusion is necessary and sufficient

POWELL 12 J.D. Candidate, Boston University School of Law, 2013; B.A. Environmental Economics, Colgate University, 2007 [Timothy H. Powell, REVISITING FEDERALISM CONCERNS IN THE OFFSHORE WIND ENERGY INDUSTRY IN LIGHT OF CONTINUED LOCAL OPPOSITION TO THE CAPE WIND PROJECT, Boston University Law Review, December, 2012, 92 B.U.L. Rev. 2023]

IV. The Problem and a Proposed Solution

A. The Problem: Failure in the Current Federal-State Balance of Powers

Interest in developing offshore wind energy projects in the United States has increased dramatically in the last few years. n150 Yet the complex and changing regulatory scheme, **coupled** with the high cost and delay associated with private litigation from citizen groups challenging every step of the approval process, will likely discourage future development of wind energy projects in the United States without reform. The problem can be traced to a failure in the current federal-state balance of powers: a disconnect between the federal approval process and the inherently local nature of offshore wind energy.

Both the opposition by the Wampanoag Tribe and the overruling of the FAA's approval further illustrate this disconnect between the interests of the [\*2046] federal government on the one hand, and state and local interests on the other hand. In both instances the federal government has pursued a hard line in favor of the Cape Wind project. The DOI fully approved the project despite a warning from the Advisory Council on Historic Preservation that the project would have significant adverse effects on historic properties. The FAA similarly issued a Determination of No Hazard presumably based only on a cursory application of its regulations, and possibly under political pressure from the Obama Administration. In both instances more localized entities - Native American tribes, local citizen groups, towns, and even state agencies - have expended considerable resources to express their various views in opposition to the Cape Wind project. n151

To date, the overruling of the FAA's approval is the only legal victory on the part of the project's opposition. n152 But whatever the merits of the opposition's legal claims, the process has demonstrated the inefficiency of the current regulatory scheme. The decision of whether the Cape Wind project should go forward has now dragged on more than a decade. The saga has been an incredible waste of resources and time, as the federal government attempts to fit a square peg in a round hole, with local opposition mounting complaints with all levels federal and state agencies and courts to confuse and delay the process. There must be a more effective way to efficiently and optimally allocate the harvesting of coastal wind energy throughout the United States.

#### Disads non unique – wind PTC extension

GARDNER 12 – 31 – 12 Roll Call Staff [Lauren Gardner, Obama Suggests Cliff Deal Would Extend Wind Tax Credit, <http://www.rollcall.com/news/obama_suggests_cliff_deal_would_extend_wind_tax_credit-220432-1.html?pos=hln>]

President Barack Obama signaled Monday that a tentative agreement to avoid the fiscal cliff would also extend a critical tax benefit for the wind power industry.

In an apparent reference to the production tax credit set to expire at midnight, the president said White House and Senate negotiators have agreed to “extend tax credits for clean-energy companies that are creating jobs and reducing our dependence on foreign oil.”

The extension would be part of an agreement to avoid automatic across-the-board income tax increases slated to kick in on New Year’s Day if Congress does not act. The agreement would wrap in a package of tax credit extensions already approved by the Senate Finance Committee, including the production tax credit.

Obama said Monday afternoon that a fiscal cliff agreement between the White House and Senate Minority Leader Mitch McConnell, R-Ky., was close but had not been finalized. McConnell said later on the Senate floor that there had been agreement on tax issues but that other matters had not yet been resolved.

Preserving the tax credit would be a major triumph for the wind power industry. Congressional critics have argued that the industry is now mature enough to survive without the tax benefit. The industry has said the tax break remains critical, though even lobbyists for wind producers have proposed a phase-out over the next few years.

# 2AC

## 2AC Solv

#### No intermittency issues with offshore

SCHROEDER 10 J.D., University of California, Berkeley, School of Law, 2010. M.E.M., Yale School of Forestry & Environmental Studies, 2004; B.A., Yale University, 2003 [Erica Schroeder, COMMENT: Turning Offshore Wind On, October, 2010, California Law Review, 98 Calif. L. Rev. 1631]

Moreover, offshore wind power has certain attributes that give it added benefits compared to onshore wind. Wind tends to be stronger and more [\*1640] consistent offshore - both benefits when it comes to wind power generation. n69 This is largely due to reduced wind shear and roughness on the open ocean. n70 Wind shear and roughness refer to effects of the landscape surrounding turbines on the quality of wind and thus the amount of electricity produced. n71 While long grass, trees, and buildings will slow wind down significantly, water is generally very smooth and has much less of an effect on wind speeds. n72 In addition, because offshore wind projects face fewer barriers - both natural and manmade - to their expansion, offshore developers can take advantage of economies of scale and build larger wind farms that generate more electricity. n73

#### Offshore wind would lead to massive investment of funds toward ship building

MCTC 10 Massachusetts Clean Energy Center, “Port and Infrastructure Analysis for Offshore Wind Energy Development”online]

No purpose-built wind turbine installation vessels exist that are compliant with U.S. coastwise trade laws (i.e., "Jones Act"). These laws require vessels to be U.S.-built, U.S.-owned, and U.S.-operated. A small number of Jones Act-compliant vessels that are currently operating in the Gulf of Mexico could be used to construct the first-generation U.S. offshore wind farms. These vessels lack the efficiency associated with purpose-built wind turbine installation vessels, such as the ability to transport multiple sets of turbine components and the ability to rapidly jackup, pre-load the legs, erect the turbines, and jack-down. In order to economically and efficiently achieve GW-scale deployment of offshore wind in the United States, a fleet of purpose-built, Jones Act-compliant vessels will be needed. The industry recognizes this fact and is taking steps to develop the vessel infrastructure. NRG Bluewater Wind, for example, has teamed with the Aker Philadelphia shipyard to develop three purpose-built wind turbine installation vessels. (Bluewater Wind 2009b). Future wind turbine installation vessels are expected to focus on improving construction efficiency through faster transit speeds, larger payload capacity, and ability to erect turbines in higher wind speeds and larger sea states. Some firms are developing designs that accommodate the transport and installation of fully assembled turbines (see Figure 3-18).

#### Key to heg

NLUS 12 Navy League of the United States [“America’s Maritime Industry The foundation of American seapower”, 2012, <http://www.navyleague.org/files/americas-maritime-industry.pdf>, Date Verification – <http://gsship.org/industry-links/>]

Defense Industrial Base: Shipbuilding The American Maritime Industry also contributes to our national defense by sustaining the shipbuilding and repair sector of our national defense industrial base upon which our standing as a seapower is based. History has proven that without a strong maritime infrastructure—shipyards, suppliers, and seafarers—no country can hope to build and support a Navy of sufficient size and capability to protect its interests on a global basis. Both our commercial and naval fleets rely on U.S. shipyards and their numerous industrial vendors for building and repairs. The U.S. commercial shipbuilding and repair industry also impacts our national economy by adding billions of dollars to U.S. economic output annually. In 2004, there were 89 shipyards in the major shipbuilding and repair base of the United States, defined by the Maritime Administration as including those shipyards capable of building, repairing, or providing topside repairs for ships 122 meters (400 feet) in length and over. This includes six large shipyards that build large ships for the U.S. Navy. Based on U.S. Coast Guard vessel registration data for 2008, in that year U.S. shipyards delivered 13 large deep-draft vessels including naval ships, merchant ships, and drilling rigs; 58 offshore service vessels; 142 tugs and towboats, 51 passenger vessels greater than 50 feet in length; 9 commercial fishing vessels; 240 other self- propelled vessels; 23 mega-yachts; 10 oceangoing barges; and 224 tank barges under 5,000 GT. 11 Since the mid 1990’s, the industry has been experiencing a period of modernization and renewal that is largely market-driven, backed by long-term customer commitments. Over the six-year period from 2000-05, a total of $2.336 billion was invested in the industry, while in 2006, capital investments in the U.S. shipbuilding and repair industry amounted to $270 million.12 The state of the industrial base that services this nation’s Sea Services is of great concern to the U.S. Navy. Even a modest increase in oceangoing commercial shipbuilding would give a substantial boost to our shipyards and marine vendors. Shipyard facilities at the larger shipyards in the United States are capable of constructing merchant ships as well as warships, but often cannot match the output of shipyards in Europe and Asia. On the other hand, U.S. yards construct and equip the best warships, aircraft carriers and submarines in the world. They are unmatched in capability, but must maintain that lead. 13

## kritik

#### Can’t reduce consumption

Blake ALCOTT Ecological Economist Masters from Cambridge in Land Economy ‘8 The sufficiency strategy: Would rich-world frugality lower environmental impact? *Ecological Economics* 64 (4) p. Science Direct

The environmental sufficiency strategy of greater consumer frugality has become popular in ecological economics, its attractiveness increasing along with awareness that not much can be done to stem population growth and that energy-efficiency measures are either not enough or, due to backfire, part of the problem. Concerning the strategy's feasibility, effectiveness, and common rationale, several conclusions can be drawn. • The consequences of the strategy's frugality demand shift – price reduction and the ensuing consumption rebound – are not yet part of mainstream discussion. • Contrary to what is implied by the strategy's advocates, the frugality shift cannot achieve a one-to-one reduction in world aggregate consumption or impact: Poorer marginal consumers increase their consumption. • The size of the sufficiency rebound is an open question. • The concepts of ‘North’ and ‘South’ are not relevant to the consumption discussion. • Even if the voluntary material consumption cuts by the rich would effect some lowering of total world consumption, changing human behaviour through argument and exhortation is exceedingly difficult. • While our moral concern for present others is stronger than that for future others, this intragenerational equity is in no way incompatible with non-sustainable impact. • Since savings effected by any one country or individual can be (more than) compensated by other countries and individuals, the relevant scale of any strategy is the world. • No single strategy to change any given right-side factor in I = f(P,A,T) guarantees any effect on impact whatsoever. • Right-side strategies in combination are conceptually complicated and perhaps more costly than explicitly political left-side strategies directly lowering impact. • Research emphasis should be shifted towards measures to directly lower impact both in terms of depletion and emissions. Lower consumption may have advantages on the individual, community, or regional level. There is for instance some truth in the view of Diogenes that happiness and quantity of consumption do not necessarily rise proportionally. Living lightly can offer not only less stress and more free time but also the personal boon of a better sense of integrity, fulfilling the Kantian criterion that one’s acts should be possible universally (worldwide). Locally it could mean cleaner air, less acid rain, less noise, less garbage, and more free space. And in the form of explicit, guaranteed shifts of purchasing power to poorer people it would enable others to eat better or to buy goods such as petrol and cars. However, given global markets and marginal consumers, one person’s doing without enables another to ‘do with’: In the near run the former consumption of a newly sufficient person can get fully replaced. And given the extent of poverty and the temptations of luxury and prestige consumption, this near run is likely to be longer than the time horizon required for a relevant strategy to stem climate change and the loss of vital species and natural resources.

#### Wind tech, not attitudinal shifts, structurally improves society. It’s more then cosmetic.

Joseph **HUBER** Inst. of Sociology @ Martin Luther University (Germany) **‘8** “Pioneer countries and the global diffusion of environmental innovations: Theses from the viewpoint of ecological modernisation theory” *Global Environmental Change* 18 p. 360-361

1. Introduction This text deals with a number of rather complex questions concerning the theory and policies of ecological modernisation. It does so in a sequence of six theses. Thesis 1 starts from a core component of ecological modernisation theory regarding the pivotal role of technological innovation in changing the ecological properties of society’s metabolism (Mol, 1995, pp. 27–59; Huber, 2004, pp. 21–58). The question then is how and by whom technological environmental innovations—TEIs, or eco-innovations, for short—are effectively developed and diffused. I argue that the most important factors, or actors respectively, are regulation by nation–state governments (thesis 2) aimed at stimulating and backing eco-innovative activities of pioneer companies (theses 3 and 5), thus creating national lead markets (thesis 3). Global environmental governance, by contrast, so far has not proven to be a suitable point of departure for developing TEIs (thesis 4). Eco-innovations diffuse by domestic and global adoption (theses 3 and 4). The diffusion of innovative regulation and of TEIs within the world-system, however, meets with specific restrictions inherent in uneven development (thesis 6). Each topic touched upon in the text is in itself rather complex. The purpose of this article, however, is to expound a coherent view of the development and global diffusion of TEIs, not least in order to establish strategic priorities for environmental policies aimed at ecological modernisation. Thesis 1: The pivotal component of ecological modernisation is advanced technology Modernisation refers to the dynamics of development and social change which characterise the transition from traditional to modern societies (cf. Harrison, 1991; Eisenstadt, 1987). The approach can be traced back to sociological classics such as Weber and Parsons, but also to Marx and neo-Marxist worldsystem theory (if stripped of purely ideological categories of dependencia theory such as mutually implied ‘over- and underdevelopment’). Sociological modernisation theory has been renewed under the headings of neo-modernisation or modernisation II (Tiryakian, 1991), and ongoing modernisation (Zapf, 1994). Modernisation is a multifunctional process encompassing interrelated and co-directional cultural changes relating to religion, science, the arts, education, politics, and nation-building, as well as more instrumental functions such as state-building, lawmaking, and the development of markets, finance, industries and technology. Moving beyond its old-industrial stage, the modernisation of society now also entails ecological modernisation, i.e., readaptation of industrial society within the global geo and biosphere by modern means such as a scientific knowledge base and advanced technology in order to upgrade the earth’s carrying capacity and make development more sustainable. Saying that technological innovation is the pivotal component of ecological modernisation does not represent a technomaniac attitude. It simply reflects the fact that the locus within the functional structure of society where humankind actually metabolises with nature is the realm of industrial operations. Industrial operations include all activities of production and consumption carried out by technology-enhanced human work. Environmental impact may have quite a number of social causes in addition to technology and the sheer size of population, e.g., consumerist attitudes, or lack of environmental awareness. But neither environmental ethics as such, nor regulatory measures nor economic mechanisms, will change the industrial metabolism unless they are geared to the unique point of immediate effect in changing society’s metabolism: new technologies and practices that change the operative structures and ecological properties of production and consumption, and thus relieve strain on resources and environmental sinks or even contribute to an ecologically benign co-evolution of human society and nature. That is why technology, including technology-enhanced producer and consumer practices, is as a matter of fact the pivotal component of ecological modernisation. Technology is not something detached from society. It is socially embedded and has its societal pre-conditions, so that understanding industrial change involves some degree of interdisciplinarity, as inherent in the approaches of socio-technical systems (cf. Mumford, 2003, 2006) and functional social-system analysis (cf. Sartorius and Zundel, 2005, pp. 10–49; Olsthoorn and Wieczorek, 2006; Huber, 2004, pp. 29–36, 200). According to the latter, technology and industrial operations of any kind are conditioned and controlled by co-related, co-directional impulses from different societal subsystems, particularly by the economy (markets and finance) as well as by public and business administration on the basis of law. Moreover, they are conditioned and controlled by formative impulses originating in politics, public opinion, knowledge base, values and life-styles. All of these subsystemic factors may analytically be treated as being separate from each other, whereas both historically and practically they have co-evolved in interdependency. Technological environmental innovations exemplify ‘greening strategies’ such as: sustainable resource management, clean technologies, benign substitution of hazardous substances, bionics (biomimicry), product design for environment, product stewardship or extended producer responsibility, recycling, lowemission processes, and add-on purification technology in emissions control and waste processing. Another way of deciding whether a technological innovation is also an environmental innovation is to determine whether a new technology contributes to significantly increased eco-efficiency and improved metabolic consistency. These terms are closely linked to sustainability discourse and the concept of industrial metabolism (Ayres and Ayres, 1996; Fischer-Kowalski, 1998; Fischer-Kowalski and Hu ttler, 1999). Criticism of the shortcomings of the previous sustainability discourse has been a key element in more recent discourse on ecological modernisation with emphasis on innovation (Andersen and Massa, 2000; Mol and Sonnenfeld, 2000; Spaargaren et al., 2000; Sonnenfeld and Mol, 2002). This context provided the starting point for the concept of metabolic consistency (cf.; Huber, 2004, pp. 29–36) ometimes also referred to as eco-effectiveness (Braungart and McDonough, 2002, p. 103). Metabolic consistency is about how to re-embed society’s metabolism within nature’s metabolism by introducing new technological regimes and practices which structurally change industrial operations and their metabolic qualities, rather than merely reduce the quantity of turnover within old structures. For example, energy demand on giga and tera levels may not be an ecological problem if it were clean energy. Currently, typical areas of TEIs include the following: regenerative, fuelless energy such as photovoltaics, wind, hydro, tidal, wave and undercurrent power, solar and, geothermal energy; substituting clean electrochemical fuel cells for pollutant furnaces and combustion engines in manifold applications, from power stations to vehicle propulsion; clean coal, notably in zero-emission central power plants on the basis of integrated gasifier combined cycle technology and carbon capture and storage. The dual purpose of these power plants can be to produce hydrogen and electricity at the same time; white transgenics1, i.e., biochemistry making use of genetically modified enzymes and micro-organisms specially bred for various production tasks, replacing the conventional hightemperature high-pressure chemistry that poses a heavy burden on the environment; replacing hazardous chemicals by more benign low-impact substances; biofeedstocks partially replacing fossils as a raw material; new ultra-light, ultra-strong materials which reduce volumes of conventional materials and energy; nanotechnology and micromachines which cause less environmental impact as compared to larger conventional machines and chemical production; sonar, photonic and microfluidic analyses substituting for conventional methods involving hazardous ingredients, and improving quality and performance of production; and in agriculture, the introduction of sound ecological practices in combination with high-tech precision farming and green transgenics. Such TEIs tend to upgrade efficiencies and be metabolically more consistent than previous technologies—although some new environmental problems might also have to be dealt with in the development of such innovations. It should be noted here that there is no such thing as an ecological standard metre, and that ecological fitness does not relate to a supposed ‘natural state’ of things. Ecological modernisation may sometimes coincide with nature conservation. More often, however, ecological modernisation is about changing, in fact developing the environment. Since humankind does this as a matter of fact, earth systems engineering and management, i.e., intentionally coshaping geo- and bio-dynamics to the best of knowledge and belief, is a necessity rather than another fall from grace (Allenby, 2005).

#### Case is a pre-requisite to changes in the direction of consumption. Without growth and minimizing conflict resources get devoted to competition.

Rasmus **KARLSSON** Poli Sci @ Lund **‘9** “A global Fordian compromise?—And what it would mean

for the transition to sustainability” *Envt’l Science and Policy*  12 p. 190-191

Though these caricatures may still hold true to a certain extent, I would argue that the last years have challenged this impasse. On one hand, the general public has grown increasingly aware of how serious our current predicament has become. On the other hand, a string of promising academic work, both in the sciences (Hoffert et al., 2002) and in green political theory (Nordhaus and Shellenberger, 2007), has finally taken up what otherwise has been a dormant position ever since the 1970s. I am referring to those who accept the gravity of the present environmental crisis yet believe that the solution can never be found in the traditional green mantra of reduction, conservation and self-denial. Instead these authors have attempted to reconcile the politics of scarcity with technological optimism, to tap into the spirit that once made grand projects like the Apollo program possible and, on this basis, move towards a politics of radical engagement. Nowhere does the need for such new politics appear more urgent than on the global level. With parts of the world (mostly in Asia) rapidly industrializing while others remaining trapped in the direst poverty, the planetary perspective goes to the heart of the sustainable transition. Not only does it show the terrible human cost of the present status-quo but also the irreversibility in the move towards modernization. Billions are now impatiently aspiring for the material living standard of the West, and given the limited ecological space of the planet (Andreasson, 2005; Rist, 1997, pp. 44–45), it is hard to see how these needs can be met without radical technological innovation. However, there are reasons to doubt the feasibility of any advanced technological paths to sustainability. Only in a climate of high and sustained economic growth would it be possible for states to set aside the vast resources necessary to bring success to long-term projects on nuclear fusion, nanotechnology and other converging technologies (Malsch, 2008). Such benign economic conditions are, just as the prospects of sustainable development more generally (Blinc et al., 2007), unlikely to come about in times of international tension, unplanned mass-migration and growing resource scarcity. This should warrant a new kind of sobering realism, an acceptance that the future of modernity is now a planetary enterprise and that we are all into this as one common human civilization.

## Nat gas DA

#### Gas prices are declining

Burtraw 12 [August 21, 2012, one of the nation’s foremost experts on environmental regulation in the electricity sector, “Falling Emissions and Falling Prices: Expectations for the Domestic Natural Gas Boom” http://common-resources.org/2012/falling-emissions-and-falling-prices-expectations-for-the-domestic-natural-gas-boom/]

Moreover, the boom in domestic natural gas production could have even more immediate affects for U.S. electricity consumers. The increased supply of gas is expected to lower natural gas prices and retail electricity prices over the next 20 years, according to a new RFF Issue Brief. These price decreases are expected to be even larger if demand for electricity continues on a slow-growth trajectory brought on by the economic downturn and the increased use of energy efficiency.For example, RFF analysis found that delivered natural gas prices would have been almost 35% higher in 2020 if natural gas supply projections had matched the lower estimates released by the U.S. Energy Information Administration (EIA) in 2009. Instead, with an increased gas supply, consumers can expect to pay $4.9 per MMBtu for delivered natural gas in 2020 instead of $6.6 per MMBtu. These trends are even more exaggerated if demand for electricity were to increase to levels projected by the EIA just three years ago, in 2009. This decrease in natural gas prices is expected to translate into a decrease in retail electricity prices for most electricity customers in most years out to 2020. Compared to the world with the lower gas supply projections, average national electricity prices are expected to be almost 6% lower, falling from 9.25 cents to 8.75 cents per kilowatt-hour in 2020. Residential, commercial, and industrial customers are all expected to see a price decrease, with the largest price changes occurring in parts of the country that have competitive electricity markets. All of these prices decreases translate into real savings for most electricity customers. The savings are largest for commercial customers, who stand to save $33.9 Billion (real $2009) under the new gas supply projections in 2020. Residential customers also stand to save big, with estimates of $25.8 Billion (real $2009) in savings projected for 2020.

#### No i/l coal – military has demand railroads

#### Wind displaces nat gas.

MIT Study Group 11 [ERNEST J. MONIZ (Study Group Chair, Professor of Physics and Engineering Systems @ MIT & Director of the MIT Energy Initiative (MITEI) HENRY D. JACOBY (Study Group Co-Chair & Professor of Management @ MIT) & ANTHONY J. M. MEGGS (Study Group Co-Chair & Visiting Engineer @ MITEI) The Future of Natural Gas An Interdisciplinary MIT Study, 2011, pg. http://web.mit.edu/mitei/research/studies/documents/natural-gas-2011/NaturalGas\_Report.pdf]

In summary, our analysis of gradual and sustained “long term” penetration of wind and solar shows that large-scale penetration of wind generation, when associated to flexible natural gas plants, will assume a mostly baseload role, and will reduce the need for other competing technologies such as nuclear, coal or even gas-fueled combined cycles, if expansion with coal and nuclear technologies does not take place because of economic, environmental or any other reasons. This effect is less pronounced in the case of the solar technology, because of its characteristic daily production pattern.

Although our analysis has been limited to a few alternative scenarios, we can observe a consistent pattern for the impact of intermittent renewable generation: We see that an increase of wind or solar output systematically results in a proportionally significant reduction of natural gas fueled production, while, at the same time, the total installed capacity of flexible generation (typically also natural gas fueled plants) is maintained or increased. Pg. 93

#### This displacement happens quickly

MIT Study Group 11 [ERNEST J. MONIZ (Study Group Chair, Professor of Physics and Engineering Systems @ MIT & Director of the MIT Energy Initiative (MITEI) HENRY D. JACOBY (Study Group Co-Chair & Professor of Management @ MIT) & ANTHONY J. M. MEGGS (Study Group Co-Chair & Visiting Engineer @ MITEI) The Future of Natural Gas An Interdisciplinary MIT Study, 2011, pg. http://web.mit.edu/mitei/research/studies/documents/natural-gas-2011/NaturalGas\_Report.pdf]

In sum, our short-term analysis shows that the most significant impacts of a quick deployment of additional wind or solar at any given future year will most likely be both a reduction in production from, and an increase in cycling of, gas-fueled NGCC plants; there is a less significant fall in production for the much-less-employed, single-cycle gas turbines and steam gas units.

The displacement of gas is greater for solar than for wind, since solar production has a stronger correlation with demand than does wind generation. Pg. 89

#### We will win a short-term link—they immediately reduce demand for natgas

MIT Study Group 11 [ERNEST J. MONIZ (Study Group Chair, Professor of Physics and Engineering Systems @ MIT & Director of the MIT Energy Initiative (MITEI) HENRY D. JACOBY (Study Group Co-Chair & Professor of Management @ MIT) & ANTHONY J. M. MEGGS (Study Group Co-Chair & Visiting Engineer @ MITEI) The Future of Natural Gas An Interdisciplinary MIT Study, 2011, pg. http://web.mit.edu/mitei/research/studies/documents/natural-gas-2011/NaturalGas\_Report.pdf]

In the short term, where a rapid increase in renewable generation occurs without any adjustment to the rest of the system, increased renewable power displaces gas-fired power generation and thus reduces demand for natural gas in the power sector. In the longer term, where the overall system can adjust through plant retirements and new construction, increased renewables displace baseload generation. This could mean displacement of coal, nuclear or NGCC generation, depending on the region and policy scenario under consideration. For example, in the 50% CO2 reduction scenario described earlier, where gas-fired generation drives out coal generation, increased renewable penetration as a result of cost reduction or government policy will reduce natural gas generation on a nearly one-for-one basis. Pg. 10

### Heg d

#### No regional rebalancing or security dilemmas—the only empirical data goes our way. [yellow]

Fettweis 11—Professor of Poli Sci @ Tulane University [Christopher J. Fettweis, “The Superpower as Superhero: Hubris in U.S. Foreign Policy,” Paper prepared for presentation at the 2011 meeting of the American Political Science Association, September 1-4, Seattle, WA, September 2011, pg. http://ssrn.com/abstract=1902154]

The final and in some ways most important pathological belief generated by hubris places the United States at the center of the current era of relative peace. “All that stands between civility and genocide, order and mayhem,” explain Kaplan and Kristol, “is American power.”68 This belief is a variant of what is known as the “hegemonic stability theory,” which proposes that international peace is only possible when there is one country strong enough to make and enforce a set of rules.69 Although it was first developed to describe economic behavior, the theory has been applied more broadly, to explain the current proliferation of peace. At the height of Pax Romana between roughly 27 BC and 180 AD, for example, Rome was able to bring an unprecedented level of peace and security to the Mediterranean. The Pax Britannica of the nineteenth century brought a level of stability to the high seas. Perhaps the current era is peaceful because the United States has established a de facto Pax Americana in which no power is strong enough to challenge its dominance, and because it has established a set of rules that are generally in the interests of all countries to follow. Without a benevolent hegemon, some strategists fear, instability may break out around the globe.70 Unchecked conflicts could bring humanitarian disaster and, in today’s interconnected world, economic turmoil that could ripple throughout global financial markets. There are good theoretical and empirical reasons, however, to doubt that U.S hegemony is the primary cause of the current stability.¶ First, the hegemonic-stability argument shows the classic symptom of hubris: It overestimates the capability of the United States, in this case to maintain global stability. No state, no matter how strong, can impose peace on determined belligerents. **The U.S. military** may be the most imposing in the history of the world, but it can only police the system if the other members generally cooperate. Self-policing must occur, in other words; if other states had not decided on their own that their interests are best served by peace, then no amount of international constabulary work by the United States could keep them from fighting. The five percent of the world’s population that lives in the United States simply cannot force peace upon an unwilling ninety-five percent. Stability and unipolarity may be simply coincidental.¶ In order for U.S. hegemony to be the explanation for global stability, the rest of the world would have to expect reward for good behavior and fear punishment for bad. Since the end of the Cold War, the United States has not been especially eager to enforce any particular rules. Even rather incontrovertible evidence of genocide has not been enough to inspire action. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. Since most of the world today is free to fight without U.S. involvement, something else must be preventing them from doing so.71 Stability exists in many places where no hegemony is present. Ethiopia and Eritrea are hardly the only states that could go to war without the slightest threat of U.S. intervention, yet few choose to do so.¶ Second, it is worthwhile to repeat one of the most basic observations about misperception in international politics, one that is magnified by hubris: Rarely are our actions as consequential upon their behavior as we believe them to be. The ego-centric bias suggests that while it may be natural for U.S. policymakers to interpret their role as crucial in the maintenance of world peace, they are almost certainly overestimating their own importance. At the very least, the United States is probably not as central to the myriad decisions in foreign capitals that help maintain international stability as it thinks it is.¶ Third, if U.S. security guarantees were the primary cause of the restraint shown by the other great and potentially great powers, then those countries would be demonstrating an amount of **trust** in the intentions, judgment and wisdom of another that would be **without precedent in** international **history**. If the states of Europe and the Pacific Rim detected a good deal of danger in the system, relying entirely on the generosity and sagacity (or, perhaps the naiveté and gullibility) of Washington would be the height of strategic irresponsibility. Indeed it is hard to think of a similar choice: When have any capable members of an alliance virtually disarmed and allowed another member to protect their interests? It seems more logical to suggest that the other members of NATO and Japan just do not share the same perception of threat that the United States does. If there was danger out there, as so many in the U.S. national security community insist, then the grand strategies of the allies would be quite different. Even during the Cold War, U.S. allies were not always convinced that they could rely on U.S. security commitments. Extended deterrence was never entirely comforting; few Europeans could be sure that United States would indeed sacrifice New York for Hamburg. In the absence of the unifying Soviet threat, their trust in U.S. commitments for their defense would presumably be lower—if in fact that commitment was at all necessary outside of the most pessimistic works of fiction.¶ Furthermore, in order for hegemonic stability logic to be an adequate explanation for restrained behavior, allied states must not only be fully convinced of the intentions and capability of the hegemon to protect their interests; they must also trust that the hegemon can interpret those interests correctly and consistently. As discussed above, the allies do not feel that the United States consistently demonstrates the highest level of strategic wisdom. In fact, they often seem to look with confused eyes upon our behavior, and are unable to explain why we so often find it necessary to go abroad in search of monsters to destroy. They will participate at times in our adventures, but minimally and reluctantly.¶ Finally, while believers in hegemonic stability as the primary explanation for the long peace have articulated a logic that some find compelling, they are rarely able to cite much evidence to support their claims. In fact, the limited empirical data we have suggests that there is little connection between the relative level of U.S. activism and international stability. During the 1990s, the United States cut back on defense fairly substantially, spending $100 billion less in real terms in 1998 that it did in 1990, which was a twenty-five percent reduction.72 To defense hawks and other believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace,” argued Kristol and Kagan.”73 If global stability were unrelated to U.S. hegemony, however, one would not have expected an increase in conflict and violence.¶ The verdict from the last two decades is fairly plain: The world grew more peaceful while the United States cut its forces.74 No state believed that its security was endangered by a less-capable U.S. military, or at least none took any action that would suggest such a belief. **No defense establishments were enhanced** to address power vacuums; **no security dilemmas drove insecurity or arms races; no regional balancing occurred** after the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped that spending back up. The two phenomena are unrelated.¶ These figures will not be enough to convince skeptics. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability, and one could also presumably argue that spending is not the only or even the best indication of hegemony, that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not be expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered.¶ However, two points deserve to be made. First, even if it were true that either U.S. commitments or relative spending account for global pacific trends, it would remain the case that stability can be maintained at drastically lower levels. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still cut back on engagement and spending until that level is determined. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if, as many suspect, this era of global peace proves to be inherently stable because normative evolution is typically unidirectional, then no increase in conflict would ever occur, irrespective of U.S. spending.75 Abandoning the mission to stabilize the world would save untold trillions for an increasingly debt-ridden nation.¶ Second, it is also worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then surely hegemonists would note that their expectations had been justified. If increases in conflict would have been interpreted as evidence for the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the relationship between U.S. power and international stability suggests that the two are unrelated. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.¶ It requires a good deal of hubris for any actor to consider itself indispensable to world peace. Far from collapsing into a whirlwind of chaos, the chances are high that the world would look much like it does now if the United States were to cease regarding itself as God’s gladiator on earth. The people of the United States would be a lot better off as well.

## Politics

### 2AC – heg

#### Claims of high-skilled labor shortages used distorted data.

Daniel Costa, 11/19/2012. Attorney and immigration policy analyst. His areas of research include a wide range of labor migration issues, including the management of U.S. guest worker programs, both high- and less-skilled migration, and immigrant workers’ rights. “STEM labor shortages?Microsoft report distorts reality about computing occupations,” Economic Policy Institute, <http://www.epi.org/publication/pm195-stem-labor-shortages-microsoft-report-distorts/>.

Microsoft Corporation recently published a report warning that there will not be enough American college graduates in computer science to fill all of the available job openings in computer-related occupations between now and 2020 (Microsoft 2012). Microsoft uses Bureau of Labor Statistics projections to claim that from 2010 to 2020 there will be an additional “1.2 million job openings in computing professions that require at least a bachelor’s degree” (Microsoft 2012, 6). Microsoft warns that since only about 40,000 Americans graduate with a bachelor’s degree in computer science each year, many of the 120,000 projected job openings in computing occupations each year will go unfilled. As further evidence to support its claim of present and future labor shortages in computer-related occupations, Microsoft points to the 6,000 job openings at the company, 3,400 of which are for “researchers, developers and engineers” (Microsoft 2012, 3).

As part of its analysis, the Microsoft report asserts that the U.S. educational system is failing to produce enough graduates in the broader science, technology, engineering, and math disciplines (also known as the STEM fields). It recommends that Congress address the alleged shortage of STEM workers between now and 2020 in part by making 20,000 new H-1B temporary “nonimmigrant” guest worker visas available each year for employers that hire foreign graduates with degrees in STEM fields from U.S. universities. In addition, the report suggests that Congress recapture unused permanent immigrant visas (“green cards”) and make 20,000 of them available annually over the next 10 years to foreign graduates in STEM fields. Microsoft claims that the federal government could raise $5 billion over a decade if it charges employers $10,000 for every new STEM H-1B visa and $15,000 for each STEM green card. These funds would then be redistributed to states “where STEM education investments are needed” (Microsoft 2012, 5).

The report also calls for strengthening the U.S. pipeline for educating and training STEM workers by: “1) strengthening K–12 STEM education, 2) broadening access to computer science in high schools, 3) increasing STEM capacity in higher education, with a special focus on computer science, and 4) helping more students obtain post-secondary credentials and degrees by addressing the college completion crisis” (Microsoft 2012, 10).

The study that produced these recommendations contains a number of flaws, the most obvious of which are addressed in this memorandum. Specifically, this paper finds:

The Microsoft report projects a labor shortage over the next eight years by incorrectly assuming that only individuals with a bachelor’s degree in computer science can fill jobs in computer-related occupations. Data analyzed for this memorandum as well as other studies show that less than one-fourth to less than one-half of workers in computing occupations have a computer science degree.

The report and Microsoft officials say a labor shortage already exists in computer-related occupations, citing as evidence the fact that the present unemployment rate of workers in those occupations (3.4 percent) is less than the 4 percent unemployment rate that prevails when the national economy is at full employment (generally understood as a 4 to 5 percent unemployment rate). But Microsoft is misleading when it uses the 4 percent full-employment unemployment rate for all workers as the point of reference. Data analyses suggest that for workers in computer-related occupations—and especially for those who hold a college degree (i.e., the workers Microsoft claims there is a shortage of)—the actual full-employment unemployment rate is closer to 2 percent.

Further evidence that there is no shortage of workers in computer-related occupations is apparent in wage trend data. For example, from 2000 to 2011, the average hourly wage for workers possessing at least a bachelor’s degree in computer and math occupations rose less than half a percent per year, compared with the sharp wage increases we would see if a labor shortage existed in these occupations.

Granting Microsoft’s request to increase the supply of STEM workers and workers in computing occupations with college degrees through additional H-1B visas and STEM green cards would propel unemployment rates in these occupations even higher, absent substantial new job creation. This is because unemployment rates for these workers are approximately double where they would stand if these labor markets were at full employment. These higher unemployment rates will keep wages from rising, which may be a desirable outcome for Microsoft but not for workers or the U.S. economy.

Contrary to its report and public statements, Microsoft (and other employers in STEM fields) already have plenty of avenues to hire and retain new foreign graduates to work in STEM occupations. Recent research suggesting that the most highly educated graduates in STEM fields are in fact remaining in the United States for the long term supports this conclusion. Keeping the best and brightest foreign STEM workers in the United States to fill labor shortages in STEM occupations should be a national priority, but recent data show that no significant labor shortages exist, and suggest that an adequate number of foreign graduates in STEM fields are already remaining in the United States to fill the limited job openings available in the stagnating U.S. labor market.

#### Not reverse causal – even if CIR is good for heg it won’t collapse in the squo

### 2AC - immigration

#### Won’t pass – don’t buy their lies

HAMILTON 2 – 28 – 13 Lamron Staff Writer – SUNY Geneso [Bella Hamilton, On immigration reform, Obama and Congress must compromise, <http://www.thelamron.com/opinion/on-immigration-reform-obama-and-congress-must-compromise-1.3001746>]

It is impossible to ignore the extent of America’s political disunity. In the current political climate, any show of bipartisanship, no matter how disingenuous, is praised. Recent immigration reform proposals are no exception.

The original plan, devised by a bipartisan group of senators, proposes an overhaul of the existing system. It aims to create a path to residency and citizenship for 11 million undocumented immigrants and to secure the southern border. It would seem that both parties are prepared to face the issue of illegal immigration head on. In President Barack Obama’s words “The good news is that for the first time in many years Republicans and Democrats seem ready to tackle this problem together.”

Similar attempts began with a bill under former President George W. Bush in 2006, ending with Obama’s Dream Act in 2010. As legislation has flared and died upon entering the Republican-controlled House, one might predict Obama’s submission. And, after securing approximately 70 percent of the Hispanic vote last election, it is in his party’s interest to pursue this issue.

Although Obama’s show of support seems sincere, given such unprecedented cooperation, Congress’ sudden willingness to cross party lines seems suspicious. Once one looks past the bill’s apparent progressiveness, its tenets are deceiving.

There are a few hurdles to the law passing, however. Key congressional players have voiced their opposition to the bill already. As Sen. Mitch McConnell stated, “This effort is too important to be written in a backroom and sent to the floor with a take-it-or-leave-it approach.” Republican dismissal jeopardizes the bill’s survival.

Obama’s scheme deviates from the GOP’s in one vital aspect: border control. Republicans suggest a hold until security is ensured. Obama considers the delay, as E.G. Austin puts it in The Economist, a “troubling form of legal limbo.”

Without implementation of an enforcement system, the influx of new, undocumented people is likely. If Obama has immigrants’ interests in mind, it is unwise to alienate conservative approval. Without agreement, efforts will come to a standstill.

U.S. Rep. Lamar Smith said, “When you legalize those who are in the country illegally, it costs taxpayers millions of dollars.” Illegal immigrants, however, already cost taxpayers $113 billion annually according to the National Research Council. Should the bill fail to pass, this situation remains stagnant. Both scenarios are undesirable.

If augmented border security is the only path to consensus, it’s improbable the bill will be passed, let alone considered.

Congress’ supposed bipartisanship is a smokescreen. In this period of dissent, the public clings to anything remotely positive. It’s a win-win situation: Both parties, in hedging a flimsy compromise, strengthen their constituencies. The president has already benefited; his approval rating is the highest it has been since 2009.

#### Obama’s capital is irrelevant

AP 3 – 27 – 13 <http://www.google.com/hostednews/ap/article/ALeqM5iro-yOddbr4F_vTzZD1xgFv9KNJQ?docId=ef575ceb4bce4bc2a8e706f72dda1718>

While overhauling the nation's patchwork immigration laws is a top second term priority for the president, he has ceded the negotiations almost entirely to Congress. He and his advisers have calculated that a bill crafted by Capitol Hill stands a better chance of winning Republican support than one overtly influenced by the president.

In his interviews Wednesday, Obama tried to stay out of the prickly policy issues that remain unfinished in the Senate talks, though he said a split between business and labor on wages for new low-skilled workers was unlikely to "doom" the legislation.

"This is a resolvable issue," he said.

The president also spoke Wednesday with Univision. His interviews followed a citizenship ceremony conducted Monday at the White House where he pressed Congress to "finish the job" on immigration, an issue that has vexed Washington for years.

The president made little progress in overhauling the nation's fractured immigration laws in his first term, but he redoubled his efforts after winning re-election. The November contest also spurred some Republicans to drop their opposition to immigration reform, given that Hispanics overwhelmingly backed Obama.

In an effort to keep Republicans at the negotiation table, Obama has stayed relatively quiet on immigration over the last month. He rolled out his immigration principles during a January rally in Las Vegas and made an impassioned call for overhauling the nation's laws during his early February State of the Union address, then purposely handed off the effort to lawmakers.

### U - generic

#### No PC – Obama needs a win

THE HILL 3 – 20 – 13 [Amie Parnes and Justin Sink, Obama honeymoon may be over, <http://thehill.com/homenews/administration/289179-obama-honeymoon-may-be-over>]

The second-term honeymoon for President Obama is beginning to look like it is over.

Obama, who was riding high after his reelection win in November, has seen his poll numbers take a precipitous fall in recent weeks.

A CNN poll released Tuesday showed Obama’s favorability rating underwater, with 47 percent approving and 50 percent disapproving of Obama’s handling of his job.

Much of the president’s agenda is stuck, with climate change regulations delayed, immigration reform mired in committee negotiations and prospects for a grand bargain budget deal in limbo at best.

On Tuesday, in a decision that underscored Obama’s depleting political capital, the White House watched as Senate Majority Leader Harry Reid (D-Nev.) announced only a watered-down version of Obama’s gun control proposals would be considered on the Senate floor.

Republicans, sensing the sea change, are licking their chops. They point to the lack of movement on Obama’s signature issues, noting the contrast to the ambitious plans outlined in the early weeks of his second term.

“The president set very high goals for himself during his State of the Union, but the reality is very little of his agenda is actually moving,” Republican strategist Ron Bonjean said. “He allowed himself to get caught up in the legislative quicksand, [and] the cement is beginning to harden. “

History isn’t on Obama’s side.

The last four presidents who won a second term all saw their poll numbers slide by mid-March with the exception of Bill Clinton, whose numbers improved in the four months following his reelection.

Clinton may have only been delaying the inevitable. His numbers dropped 5 points in April 1994. Even Ronald Reagan, buoyed by a dominant performance over Walter Mondale in the 1984 election, saw a double-digit erosion by this point in his second term.

Obama has yet to complete the first 100 days of his second term. But without a signature achievement since his reelection, he faces a crossroads that could define the remainder of his presidency.

White House aides maintain that the 24-hour news cycle makes comparisons to previous presidents difficult.

“I think the nature of our politics now is different than Ronald Reagan’s honeymoon,” one senior administration official said. “The ebb and flow of politics doesn’t follow that model anymore.”

But observers say a drop in popularity is typical for second-termers.

“There may be some typical second-term honeymoon fade happening,” said Martin Sweet, an assistant visiting professor of political science at Northwestern University. “Honeymoon periods for incumbents are a bit more ephemeral.”

But like most other presidents, Sweet added, “Obama’s fate is tied to the economy.”

“Continuing economic progress would ultimately strengthen the president but if we are hit with a double-dip recession, then Obama’s numbers will crater,” he said.

The White House disputes any notion that Obama has lost any political capital in recent weeks.

“The president set out an ambitious agenda and he’s doing big things that are not easy, from immigration to gun control,” the senior administration official said. “Those are policies you can’t rack up easily, and no one here is naive about that.”

The White House is aware that the clock is ticking to push its hefty agenda, but the official added, “The clock is not ticking because of president’s political capital. The clock is ticking because there’s a timetable in achieving all of this. [Lawmakers] are not going to sign on because the president’s popular.”

And administration officials believe they still have the leverage.

“There’s a decent amount of momentum behind all of this,” the official said. “It looks like immigration is closer [to passage] than ever before.”

Republican strategist Ken Lundberg argued that current budget fights “have cut short the president’s second-term honeymoon.”

He said this could also hurt the president’s party, warning “the lower the president’s approval rating, the bigger the consequence for vulnerable Democrats.”

“Voters want solutions, and if they see the president headed down the wrong path, lockstep lawmakers will be punished in 2014,” he said.

Democratic strategist Chris Kofinis maintained that as long as he’s president, Obama still has the leverage.

“Immigration reform doesn’t get impacted by whether Obama’s poll numbers are 55 or 45,” Kofinis said. “Does it make certain things a little more difficult? Possibly. But while his numbers may have fallen, he’s still more likeable than the Republicans are on their best day.”

Kofinis said the real question for Obama is what kind of emphasis he’s going to place on his second term because the public will have less patience than they did during his first.

“The challenge in a second term is the American people look at certain things and have a higher tolerance in a second term,” he said. “When they know you’re not running for reelection again, they hold you to a higher standard.”

Bonjean and other Republicans are aware that Obama could potentially bounce back from his latest slip in the polls and regain his footing.

“He has the opportunity to take minor legislative victories and blow them up into major accomplishments – meaning if he got something on gun control, he can tout that that was part of his agenda and the work isn’t over. If he were able to strike a grand bargain with Republicans, that’d be a legacy issue.”

Still, Bonjean added, “It’s not looking so good right now.”

#### Gun vote first – Obama pushing

PBS NEWS 3 – 28 – 13 <http://www.pbs.org/newshour/rundown/2013/03/gay-marriage-cases-now-in-justices-hands.html>

While Mr. Obama pressures Congress to adopt gun control legislation when it returns from recess, Roll Call reports that "a little-noticed Senate vote" in the wee hours of Saturday's vote-a-rama on the non-binding budget resolution may not bode well for Mr. Obama's hopes of passing tougher gun legislation. An amendment from Sen. Mike Lee, R-Utah, requiring two-thirds approval of any gun legislation didn't garner enough votes to pass, but six Democrats from gun-friendly states backed it, which should tell Mr. Obama something about the Senate's support for gun rights.

If Majority Leader Harry Reid, D-Nev., can't round up the 60 votes needed to pass Democrats' legislation, Sen. Chuck Grassley, R-Iowa, may be ready with what one GOP aide called "a break-the-glass kit." Grassley, the only Republican on the Judiciary Committee to support tougher penalties for straw purchases, is drafting an alternative gun control bill, presumably without the expanded background checks that he has opposed and which are central to the Democrats' bill.

### Internal link D

#### Obama doesn’t push the plan and DOI solves the link.

MENDELSON 10 Professor of Law – University of Michigan Law School [Nina A. Mendelson, “Disclosing “Political” Oversight of Agency Decision Making,” Michigan Law Review, Vol. 108, p.1127-1175, <http://www.michiganlawreview.org/assets/pdfs/108/7/mendelson.pdf>]

Even if presidential supervision of agency decisions is well known to the voting population, holding a President accountable for particular agency decisions is hard enough, given the infrequency of elections, the number of issues typically on the agenda at the time of a presidential election, presidencies that only last two terms, and presidential candidates who are vague about how the administrative state would run. 175 It is all the more difficult if the public does not know what influence the President may have had or may end up having on particular agency decisions. “To the extent that presidential supervision of agencies remains hidden from public scrutiny, the President will have greater freedom to [assist] parochial interests.” 176 Calling for greater disclosure to the electorate is not to say that majoritarian preferences should dictate agency decision making. Increasing transparency regarding presidential influence on a particular agency decision may or may not make agency decision making simply a “handmaiden of majoritarianism,” as Bressman suggests. 177 Instead, it could facilitate a public dialogue where citizens are persuaded that the decision made, though not the first-cut “majoritarian preference,” is still the correct decision for the country. By comparison, submerging presidential preferences undermines electoral accountability for agency decisions and reduces the chances of a public dialogue on policy. One might respond that the public already knows that the President appoints agency heads and can remove them, and that White House offices review significant agency rules before they are issued. And the public knows the content of the agency’s decision. Shouldn’t that be sufficient to ensure democratic accountability through the electoral process? 178 That level of knowledge might suffice, but only if the public perceives federal agencies as indistinguishable from the President. Voters are sophisticated enough to know, however, that agencies represent large and sometimes unresponsive bureaucracies, a view sometimes promoted by Presidents themselves. Presidents certainly do not consistently foster the view that executive branch agencies are under their complete control. Instead, they have been known to blame the agencies for unpopular decisions and to try to distance themselves. 179 Bressman gives the example of the second Bush Administration distancing itself from the IRS, while at the same time quietly pressuring the agency to revise a proposed rule requiring domestic banks to reveal the identity of all depositors, including foreign ones. 180 Administrators may also “take the fall” for an unpopular decision that is influenced by the White House, as EPA Administrator Johnson appeared to do in denying the California greenhouse gas waiver. 181 And as mentioned earlier, President Obama has selectively taken credit for federal agency actions relating to automotive greenhouse gas emissions, with his OMB only grudgingly backing an EPA proposed rule in response to political controversy. 182 Similarly, President George W. Bush distanced himself from an EPA report concluding that global warming was anthropogenic, even though that report had been reviewed by White House offices prior to its release. In answer to questions from reporters, President Bush commented, “I read the report put out by the bureaucracy.” 183 More recently, when news reports suggested that the White House was pressing the EPA to “edit” its climate change findings, the White House spokesman stated that the agency alone “ ‘determines what analysis it wants to make available’ in its documents.” 184 Finally, take the rash of resignations at the EPA in the mid-1980s, including Administrator Gorsuch and Assistant Administrator Lavelle, arising out of allegations of serious misconduct and conflicts of interest within the agency. President Reagan succeeded in distancing himself from the agency’s problems by presenting the agency as acting more or less independently. 185 Despite issuing directives, 186 Presidents certainly have a significant incentive to keep influence on agency decisions low-key and to maintain “deniability” with respect to agency actions. This minimizes the risk that influence can be characterized later as improperly motivated, that debate within the executive branch can fuel litigation over the ultimate decision, or that the President will have a political price to pay for guessing wrong about what option best serves the public interest. And, of course, keeping a low profile for presidential influence also allows more successful presidential pressure that is the result of presidential capture. 187 All this amounts to reduced electoral accountability for actions taken by administrative agencies. 188

### Offense

#### Collins turn

Conathon, 2/28/13 [Michael Conathan is the Director of Ocean Policy at American Progress. “Making the Economic Case for Offshore Wind”. Center for American Progress. <http://www.americanprogress.org/issues/green/report/2013/02/28/54988/making-the-economic-case-for-offshore-wind/>]

The U.S. offshore wind industry is emerging from the political doldrums that derailed its early days, and finding champions such as Sen. Carper in the process. Sen. Collins has championed funding for a deepwater offshore wind development project in her home state of Maine, and has taken over as lead co-sponsor of Sen. Carper’s bill following the retirement of her former colleague, Sen. Olympia Snowe (R-ME). Governors such as Maryland’s Martin O’Malley (D) have prioritized offshore wind development as well. They view it as a political victory on multiple fronts: creating jobs in construction, operation, and maintenance; contributing to a diverse energy portfolio; and moving them closer to renewable energy targets and away from polluting fossil fuels.

#### Key to agenda

Portland Press Herald, ’12 [Nov 23. “Collins’ Clout: is it likely to grow?”. http://www.pressherald.com/news/centrist-clout-seen-for-collins\_2012-11-23.html?pageType=mobile&id=1]

WASHINGTON - The departure of Olympia Snowe and other like-minded moderates from the U.S. Senate next year could further elevate Republican Sen. Susan Collins as a swing vote despite a larger Democratic majority, say some political observers.

Collins, meanwhile, said she is optimistic that some of the new and returning senators will prove wrong the predictions of a "disappearing center."

"My hope is, now that the elections are behind us, that we will see a more constructive and bipartisan approach," Collins said.

Despite an aggressive Republican campaign to retake the Senate, Democrats expanded their caucus from 53 to 55 members after accounting for Maine Sen.-elect Angus King, who has affiliated himself with the Democrats.

The policy often blamed for helping to foster partisan gridlock -- the Senate filibuster -- in many ways boosts the potential influence of moderates as the majority party scrambles to reach 60 votes needed to break a filibuster.

During a close vote, "you're always asking who are they going to reach out to, who are those five Republicans?" said Ross Baker, a former senior adviser to both Republican and Democratic senators who teaches political science at Rutgers University in New Jersey. "And, of course, at the top of everybody's list is Susan Collins."

Both of Maine's Republican senators consistently rank among the more bipartisan senators in ratings compiled by media outlets.

Earlier this year, Collins and Snowe ranked first and third, respectively, in separate measures of bipartisanship published by Congressional Quarterly and Bloomberg Government. Republican Sen. Scott Brown of Massachusetts was No. 2 in both rankings, according to reports.

The Senate has been paralyzed by a historic number of filibusters this session -- sometimes aided by Snowe, Collins and Brown siding with their Republican colleagues.

But Collins and Snowe broke ranks from time to time, endorsing President Barack Obama's 2009 stimulus package and casting key votes to end the military's "Don't ask, don't tell" policy for gay service members.

Snowe's retirement and Brown's defeat at the hands of a decidedly liberal opponent means the moderate Republican caucus will shrink next year.

"In theory, she is in a position of power because the Democrats always need 60 votes to get anything done," said Sarah Binder, a scholar of congressional process and partisanship at George Washington University and the Brookings Institution.

Collins said she doesn't expect to be a lonely moderate voice.

"The Democrats clearly gained two seats in the Senate, but they did so by running pretty conservative Democrats in states that traditionally vote Republican, so I see an expanded center," Collins said. "My hope is, they will be willing to work with the moderates on the Republican side and together we can form a cohesive group that can push through some solutions" rather than partisan positions.

With so many veteran senators retiring after this year, Collins will climb from 36th to 27th on the seniority ladder of the 100-member Senate. Among Republicans, Collins will be the ninth-highest member and the most senior Republican woman.

Seniority affects a senator's clout and his or her ability to land positions on powerful committees, where most legislative work occurs.

#### Winners Win & political capital is stupid

HIRSH 2 – 7 – 13 chief correspondent for National Journal, previously served as the senior editor and national economics correspondent for Newsweek. Overseas Press Club award for best magazine reporting from abroad in 2001 and for Newsweek’s coverage of the war on terror, which also won a National Magazine Award [Michael Hirsh, There’s No Such Thing as Political Capital, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207]

But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.

Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

## Addons

### Disease

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#### Exitnciton

**Greger ‘8** (M.D., is Director of Public Health and Animal Agriculture at The Humane Society of the United States (Michael Greger, , Bird Flu: A Virus of Our Own Hatching, <http://birdflubook.com/a.php?id=111>)

Senate Majority Leader Frist describes the recent slew of emerging diseases in almost biblical terms: “All of these [new diseases] were advance patrols of a great army that is preparing way out of sight.”3146 Scientists like Joshua Lederberg don’t think this is mere rhetoric. He should know. Lederberg won the Nobel Prize in medicine at age 33 for his discoveries in bacterial evolution. Lederberg went on to become president of Rockefeller University. “Some people think I am being hysterical,” he said, referring to pandemic influenza, “but there are catastrophes ahead. We live in evolutionary competition with microbes—bacteria and viruses. There is no guarantee that we will be the survivors.”3147 There is a concept in host-parasite evolutionary dynamics called the Red Queen hypothesis, which attempts to describe the unremitting struggle between immune systems and the pathogens against which they fight, each constantly evolving to try to outsmart the other.3148 The name is taken from Lewis Carroll’s Through the Looking Glass in which the Red Queen instructs Alice, “Now, here, you see, it takes all the running you can do to keep in the same place.”3149 Because the pathogens keep evolving, our immune systems have to keep adapting as well just to keep up. According to the theory, animals who “stop running” go extinct. So far our immune systems have largely retained the upper hand, but the fear is that given the current rate of disease emergence, the human race is losing the race.3150 In a Scientific American article titled, “Will We Survive?,” one of the world’s leading immunologists writes: Has the immune system, then, reached its apogee after the few hundred million years it had taken to develop? Can it respond in time to the new evolutionary challenges? These perfectly proper questions lack sure answers because we are in an utterly unprecedented situation [given the number of newly emerging infections].3151 The research team who wrote Beasts of the Earth conclude, “Considering that bacteria, viruses, and protozoa had a more than two-billion-year head start in this war, a victory by recently arrived Homo sapiens would be remarkable.”3152 Lederberg ardently believes that emerging viruses may imperil human society itself. Says NIH medical epidemiologist David Morens, When you look at the relationship between bugs and humans, the more important thing to look at is the bug. When an enterovirus like polio goes through the human gastrointestinal tract in three days, its genome mutates about two percent. That level of mutation—two percent of the genome—has taken the human species eight million years to accomplish. So who’s going to adapt to whom? Pitted against that kind of competition, Lederberg concludes that the human evolutionary capacity to keep up “may be dismissed as almost totally inconsequential.”3153 To help prevent the evolution of viruses as threatening as H5N1, the least we can do is take away a few billion feathered test tubes in which viruses can experiment, a few billion fewer spins at pandemic roulette. The human species has existed in something like our present form for approximately 200,000 years. “Such a long run should itself give us confidence that our species will continue to survive, at least insofar as the microbial world is concerned. Yet such optimism,” wrote the Ehrlich prize-winning former chair of zoology at the University College of London, “might easily transmute into a tune whistled whilst passing a graveyard.”3154

### 2AC LOST

#### Plan gets LOST ratified

REILLY 11 Partner Squire Sanders’ Maritime Focus Attroney, Chair of the Maritime Committee of the Public Utility, Communications and Transportation Law Section of the ABA & former chair of the NYLA Committee on Admiralty and Maritime Law [John J. Reilly, Wind Farms And The Law Of The Sea, http://www.squiresanders.com/files/Publication/7a5e6f2b-ebe7-48c4-bd3e-752b5495a53b/Presentation/PublicationAttachment/e8a171fa-0fa6-45b8-8e12-776f89fa9e1a/Law360%20-%20Wind%20Farms%20And%20The%20Law%20Of%20The%20Sea.pdf]

Ever-proliferating plans to install offshore wind farms on the U.S. continental shelf could prove the final incentive to ratify a treaty that has been adrift since 1982, when it was proposed by the U.N. Convention on the Law of the Sea.

With several East Coast states and the federal government leading the way, and the private sector in aggressive pursuit, the prospects that offshore wind turbines will play a part in U.S. energy production are better than ever before. Proof rests in examples of recent projects:

- In the first week of February, the U.S. Department of the Interior announced plans that could lead to the issuance of leases for four new East Coast wind farm’s in 2011 as part of a streamlined approval process and the U.S. Department of Energy announced that it intends to spend more than $50 million over the next five years to speed development of offshore wind farms.

- Google’s Atlantic Wind Connection Project (AWC) involves building an offshore high voltage direct current (HVDC) undersea cable transmission backbone to connect up to 6,000 megawatts of offshore wind generation along several eastern seaboard states. The AWC backbone transmission cable will ultimately power 1.9 million homes across Virginia, New York and New Jersey. Virginia and North Carolina have begun actively exploring offshore wind opportunities.

- The Interior Department’s Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) had rapid response when it sought proposals to develop wind energy projects off Maryland’s coast. Eight companies quickly expressed interest; Fishermen’s Energy was promptly selected to build 130 turbines in a 206-square-mile area of the Atlantic.

- Deepwater Wind recently revised plans submitted to BOEMRE, dramatically expanding its original plan for a 100 turbine, 350 MW wind farm. Deepwater now seeks BOEMRE approval of a 200 turbine, 1,000 MW wind farm in Rhode Island Sound. The plan includes a transmission line that would distribute electricity produced by the project to distribution centers between Massachusetts and New York.

- Secretary of the Interior Ken Salazar recently announced a revised permitting process that eliminates regulatory redundancies and “needless red tape.” Dubbed "Smart from the Start", the revised permitting process began with BOEMRE’s immediate identification of several designated Wind Energy Areas, is intended to shorten the permitting process by two to five years

- In January 2011, The U.S. Environmental Protection Agency approved the Cape Wind Project just 24 hours after the U.S. Army Corps of Engineers issued Cape Wind a permit under the Rivers and Harbors Act.

This sea change highlights significant wind energy harbingers of large projects located offshore, beyond U.S. territorial waters. As the wind farms become larger, with more turbines, they will, of course, occupy larger areas of the sea, and if these projects are located beyond the territorial waters of the U.S., they will occupy space in the international waters above the continental shelf.

But since 1982, the U.S. has refused to ratify a treaty that would protect the country’s investment in wind energy, align the U.S. with current international law of the sea and end the long-running and sometimes stormy struggle to settle who owns the sea and the land below it.

For more than a century, international law, strongly supported by the U.S. and other major trading nations, stated all nations were entitled to freedom of the sea once outside the three-mile limit of territorial waters. Starting in 1940, however, skirmishes over who owns what part of the ocean prompted intervention by the U.N.

In 1958, the U.N. developed the Convention on the Continental Shelf that recognized the rights of coastal states to explore and develop natural resources. In 1973, the U.N. Convention on the Law of the Sea took on the ambitious task of outlining a comprehensive law of the sea that speaks to a wide range of issues.

The most challenging task was establishing recognition of the right of coastal states in an Exclusive Economic Zone (EEZ) beyond the territorial sea. An EEZ extends 200 miles from the coastline and beyond when the continental shelf extends beyond 200 miles.

It took nine years and the participation of 160 nations, but in 1982 the convention presented the Law of the Sea Treaty. The treaty covers myriad issues, such as navigational rights of ships and aircraft, limits on the extension of national sovereignty over the oceans, environmental protection of the oceans, conservation of living resources and mining rights and the EEZs that play a pivotal role in the U.S.’ wind energy program.

Although sovereign rights with respect to the continental shelf remained as set forth in the 1958 convention, the EEZ section of the Law of the Seas recognizes a coastal state’s right to sovereignty over the waters and air space above the continental shelf in EEZs and includes among other rights, the right to develop and exploit wind energy in EEZs. The U.S. signed the treaty, but has never ratified it. Instead, the U.S. has relied on a patchwork of legislation and executive acts to define the country’s territorial waters that does not protect the country’s maritime interests and requires meticulous reconciliation of statutory rights. In 1976, the U.S. Congress passed the Magnuson Fishery Conservation and Management Act, which was the first unilateral declaration of exclusive rights over a 200-mile zone by a major coastal state.

Subsequently, President Ronald Reagan expanded upon the Magnuson Act’s declaration of jurisdiction and co-opted aspects of the Law of the Sea Treaty even while refusing to sign it.

In 1988, President Reagan, spurred on by national security concerns that Soviet Union vessels were spying on the U.S., issued Executive Proclamation 5923, which officially increased the outer limit of U.S. territorial waters from three miles to 12 miles. U.S. domestic law, however, largely retained the threemile limit.

Determining whether a statute’s application is limited to the three-mile limit or extends to the 12-mile limit requires a meticulous review. The U.N. has tried to ameliorate the U.S.’ principal problem with the treaty, which stemmed from a section dealing with deep sea mining. The U.N. modified the treaty in 1994. Seventy-one nations, including the U.S., approved the treaty. The U.S. signed the convention and recognizes it as general international law. The U.S. Senate, however, has not ratified the treaty, despite a series of bipartisan presidential endorsements. The Clinton, Bush and Obama administrations have all endorsed the treaty. President Bill Clinton sent the treaty to the Senate in 1994 for advice and consent. The Senate did not act on the treaty. Thirteen years later, President George W. Bush urged the Senate to approve the treaty, stating in part that the treaty “will secure U.S. sovereign rights over extensive marine areas ... and it will give the U.S. a seat at the table when rights that are vital to our interest are debated and interpreted.” The Senate Foreign Relations Committee voted 17-4 to send the treaty to the full Senate for a vote. That did not happen. Secretary of State Hillary Clinton in 2009 said ratifying the Law of the Sea would be one of her priorities. As of early 2011, however, the Senate has not consented to the convention and thus it has not been ratified by the U.S.

In a more puzzling development, the U.S. has considerable domestic legislation that conforms to the unratified treaty. The U.S. is in the awkward position of selecting specifically selected rights afforded by the treaty while refusing to accept some of the obligations the treaty imposes. This stance is at odds with the significant progress made over the past 12 months by proponents of offshore wind projects on the U.S. continental shelf and stands to block additional progress. Perhaps ratification relies on a clear understanding of the billions of dollars that will be invested in offshore wind farms. Many of these wind farms, which will provide a permanent, direct source of energy to some of the most densely populated areas in the U.S., will be built and maintained beyond U.S. territorial waters, and on the surface of international waters. The U.S. cannot continue to rely solely on its own unilateral declaration of international law to justify the development of wind energy on its continental shelf. The Senate is risking an opportunity to protect rights and investments which are vital to our interests by continuing to refuse to ratify a treaty that establishes and recognizes both EEZs and the rights of coastal nations to develop wind energy in their EEZs.

#### Key to Asian stability

Haider, 3/13/13 [Ziad, attorney at White & Case LLP and previously served as a White House Fellow in the US Department of Justice and as a national security aide in the US Senate. “US Must Adopt Law of the Sea”. <http://yaleglobal.yale.edu/content/us-must-adopt-law-sea>]

WASHINGTON: Since the Obama administration's announced pivot to Asia, challenges have piled up in the region. With the exception of North Korea’s nuclear brinkmanship, most of the challenges involve growing tension in the South China Sea and East China Sea. The US must devise a policy on these maritime disputes that preserves freedom of navigation and commerce, ensures regional stability, and upholds treaty commitments while avoiding military entanglements. A holistic strategy is required that calibrates the first term’s diplomatic and military efforts while heeding the legal dimensions of these disputes, including the key role of the UN Convention on the Law of the Sea, or UNCLOS.

Asia’s maritime disputes primarily consist of three: The South China Sea dispute involves Brunei, China, Malaysia, the Philippines, Taiwan and Vietnam. In 2012, China and the Philippines engaged in a naval standoff over the Scarborough Shoal while Vietnam accused China of cutting the seismic cables of one of its vessels exploring for oil and gas. In the East China Sea, China and Japan, and also Taiwan, are clashing over the Senkaku or Diaoyu Islands. The pendulum has swung in the past two months between talk of a political summit for reducing tensions to the Chinese locking weapons-guiding radar on Japanese ships. In the Sea of Japan, Japan and South Korea are contesting the Takeshima or Dokdo Islands.

These disputes have ebbed and flowed for decades, including China and Vietnam clashing over the Spratly Islands in 1988 resulting in the deaths of 70 Vietnamese sailors, but have steadily heated up since 2005. Some experts hone in on China’s assertiveness, citing its grand strategy of developing an island chain defense in the Pacific and extending its naval power. For all parties, upholding sovereignty while capturing valuable fish stock and energy resources is another factor; fish stocks closer to shore have dwindled, and deep-sea exploration technology has advanced. Nationalism plays a role, given that some of the islands traded hands under the shadow of the region’s colonial and imperial Japanese past. Japan’s newly elected right-leaning leadership, for example, has hardened Chinese suspicions on the maritime issues.

Given this complex backdrop, the Obama administration can engage on these disputes in three ways.

First, it must sustain its intensive diplomacy and emphasis on showing up in the region to ensure, as former Assistant Secretary of State Kurt Campbell noted, that “cooler heads prevail.” This includes encouraging ASEAN and China to conclude a maritime Code of Conduct building on the 2002 Declaration on the Conduct of Parties. While efforts to advance the code ran aground during the November 2012 ASEAN-China Leaders Meeting, with the parties failing to even agree on a regional crisis hotline, picking up this thread must be a key second-term priority.

In addition, the administration should continue to proffer models for joint exploration of resources to encourage thinking beyond traditional notions of sovereignty. One such model is based on the 1920 Spitsbergen Treaty that granted Norway sovereignty over the disputed Spitsbergen archipelago in the Arctic while prohibiting military fortifications and permitting other signatories to undertake mining activities.

Second, the administration must refine its military commitment to the region. Alongside enhancing capacity through weapons sales, exercises and troop rotations, it should foster greater communication among the regional maritime entities – vital given the ambiguous overlay of maritime law enforcement and naval forces in these disputes and the risk of inadvertent conflict. From bolstering arrangements such as the Western Pacific Naval Symposium that convenes the United States, China and most of the ASEAN states in discussing maritime security issues to creating a South China Sea Coast Guard Forum to enhance information sharing, scope exists for more robust dialogue mechanisms.

More fundamental are three issues relating to US capabilities and commitments, alongside those posed by sequestration defense cuts. First, how should the US balance, reassuring its allies and protecting its interests without triggering rumblings of encirclement in Beijing? As Secretary of State John Kerry noted in his confirmation hearing, given that “we have a lot more forces out there than any other nation in the world, including China…we need to be thoughtful on how we go forward.” Second, should conflict erupt in Asia’s waters, resulting in US intervention and execution of the new air-sea battle strategy to gain access to an operational area, what political strategy will follow suit to resolve the conflict? Third, how do US treaty obligations relate to these disputes? While Article 5 of the 1960 US-Japan Security Treaty is understood to extend to the Senkakus, the applicability of the 1951 US-Philippines Mutual Defense Treaty to a conflict in the South China Sea is less clear. Internal clarity on US obligations and red lines is thus critical.

Third, the administration must elevate its legal strategy for managing these disputes. Ratification of UNCLOS to which the US de facto adheres is essential, as former Secretary of State Hillary Clinton testified before the Senate last year, to ensure that US navigational rights and its ability to credibly challenge other countries’ behavior are on the strongest legal footing.

Given that the contesting parties are actively resorting to the Convention to bolster their claims, ratification is critical for US credibility. Even China whose claims are largely based on historical record cites UNCLOS to which it is a party, for example, in adopting a “straight base line approach” to its claim in the East China Sea. In January, the Philippines filed a claim with an UNCLOS tribunal alleging that China’s nine-dash claim to the South China Sea is contrary to UNCLOS. Conceding that China has not accepted the tribunal’s jurisdiction on sovereignty claims and maritime boundaries, the Philippines has argued that the tribunal can assess the “interpretation and application” of China’s obligations under UNCLOS. While China has stated that it will not participate in the proceeding, the Philippines intends to pursue its claim.

Whether other parties bring such claims remains to be seen. Although arbitration offers a clean and contained alternative to fluctuating diplomacy and skirmishes, precluding US “interference” as China desires, China does not view arbitration as a bilateral solution and, moreover, assumes that time is on its side. As such, for the United States to have the standing to call for a much needed rules-based approach to these disputes, it must formally adopt the rules.

Asia’s maritime disputes are a disruptive force for US interests; however, they present an opportunity. A shortsighted view would conclude that the opportunity presented is a strategic opening for the United States and a regional tilt given recent Chinese heavy handedness. The reality is that states in the region have no interest in choosing sides. According to the National Intelligence Council’s Global Trends 2030 report, they will instead increasingly be pulled in both directions: economically toward China and security-wise toward the US. Moreover, given Sino-US economic interdependence, a China that perceives itself subject to containment and doubles down militarily is not in US interests.

The opportunity presented instead is for the United States to demonstrate leadership in the region that combines deft diplomacy, considered military engagement and an adherence to international law as an enabling rather than enfeebling force. Doing so will test its ability to remain an effective Pacific power while navigating the rise of another – all this to preserve an order with which US security and economic interests are inextricably linked in this century.

#### Nuke war

**Hellman 12** – Professor Emeritus of Electrical Engineering @ Stanford University [[Martin Hellman](http://www-ee.stanford.edu/%7Ehellman/) (His current project, [Defusing the Nuclear Threat](http://nuclearrisk.org), has been endorsed by a former Director of the National Security Agency, Stanford's President Emeritus, and two Nobel Laureates), “Another Early Warning Sign,” Defusing Nuclear Threats, Posted on [September 28, 2012](http://nuclearrisk.wordpress.com/2012/09/28/another-early-warning-sign/), pg. http://tinyurl.com/9r9vdhr

The “World Anti-Fascist War” is what we call World War II – a war in which Japanese aggression killed almost 20 million Chinese, most of them civilians. The infamous “[Rape of Nanking](http://en.wikipedia.org/wiki/Rape_of_Nanking)” is the best known of numerous atrocities and war crimes that Japan inflicted on China. This is not to say that the Senkaku/Diaoyu should be returned to China, only that we need to be aware of how high emotions run on both sides, and that China has some legitimate grievances from the past.

And, of course, Japan was not uniquely blood thirsty. Millions of Chinese died at Chinese hands during the Chinese Civil War; the mistakes of Mao’s Great Leap Forward led to millions of deaths; and the Cultural Revolution killed somewhere between half a million and three million more Chinese, some by public beatings that could be likened to atrocities during the Rape of Nanking.

Given the level of irrationality that this possible on both sides, and the reasonable arguments that each side can advance for its claims to these islands, it is not in our national security interests to issue security guarantees to Japan over these islands. There is too much risk that our “insurance policy” will have to pay off, potentially with a nuclear war and millions of American deaths. Such an outcome is unlikely, but if we keep risking small chances of being destroyed, eventually one will realize that potential.

### Oceans – pharma

#### Trawling destroys the ocean floors – key for the biotech industry

PROWS 08 Adviser on oceans and law of the sea – Permananet Mission of Palau to the UN since 05 – Board of Directors of the Center for International Environmental AdvocacyJ.D. NYU School of Law [Peter, “A Mouse Can Roar: Small Island States, the United Nations, and the End of Free-For-All Fishing on the High Seas,” Colorado Journal of International Environmental Law and Policy, Winter, 19 COLO. J. INT'L ENVTL. L. & POL'Y 1]

By contrast, the environmental and economic damage bottom trawling causes to deep sea ecosystems is incalculable. Deep sea coral, sponges, and other organisms have recently shown promise to the pharmaceutical and biotechnology industries for new drugs and useful products. n85 Over the last twenty-five years, scientists have sampled only about 250 out of an estimated 15,000 deep sea seamounts and less than 0.1 percent of the abyssal plain. n86 Yet already, dozens of patents have been issued in the United States and the United Kingdom for products and organisms associated with deep sea hydrothermal vents and at least half a dozen deep sea compounds are in development for medical use. n87 The biotechnology industry is, in effect, now in a race against industrial fishing for the deep seas.

#### The impact is bioterror

**Washington Post 1** (Justin Gillis, “Scientists Race for Vaccines,” November 8, Lexis)

U.S. scientists, spurred into action by the events of Sept. 11, have begun a concerted assault on bioterrorism, working to produce an array of new medicines that include treatments for smallpox, a safer smallpox vaccine and a painless anthrax vaccine. At least one major drug company, Pharmacia Corp. of Peapack, N.J., has offered to let government scientists roam through the confidential libraries of millions of compounds it has synthesized to look for drugs against bioterror agents. Other companies have signaled that they will do the same if asked. These are unprecedented offers, since a drug company's chemical library, painstakingly assembled over decades, is one of its primary assets, to which federal scientists usually have no access."A lot of people would say we won World War II with the help of a mighty industrial base," said Michael Friedman, a onetime administrator at the Food and Drug Administration who was appointed days ago to coordinate the pharmaceutical industry's efforts. "In this new war against bioterrorism, the mighty industrial power is the pharmaceutical industry."Researchers say a generation of young scientists never called upon before to defend the nation is working overtime in a push for rapid progress. At laboratories of the National Institutes of Health, at universities and research institutes across the land, people are scrambling.But the campaign, for all its urgency, faces hurdles both scientific and logistical. The kind of research now underway would normally take at least a decade before products appeared on pharmacy shelves. Scientists are talking about getting at least some new products out the door within two years, a daunting schedule in medical research. If that happens, it will be with considerable assistance from the nation's drug companies. They are the only organizations in the country with the scale to move rapidly to produce pills and vials of medicine that might be needed by the billions. The companies and their powerful lobby in Washington have been working over the past few weeks to seize the moment and rehabilitate their reputations, tarnished in recent years by controversy over drug prices and the lack of access to AIDS drugs among poor countries. The companies have already made broad commitments to aid the government in the short term, offering free pills with a wholesale value in excess of $1 billion, as well as other help. The question now is whether that commitment will extend over the several years it will take to build a national stockpile of next-generation medicines. A good deal of basic research is already going on at nonprofit institutes that work for the government under contract, and scientists there say they are newly optimistic about the prospects of commercial help. "The main issue is, can we get the facilities?" said John Secrist III, vice president for drug discovery and development at Southern Research Institute in Birmingham, which is looking, under federal grant, for antiviral drugs to treat smallpox. Given the new mood in the country, he said, "if we come up with a molecule that's going to be of help, then I have no doubt that we could very rapidly convert that into doses for humans." Many of the projects that could lead to new drugs and vaccines were underway before Sept. 11, thanks partly to an extensive commitment NIH made two years ago. Others, like the smallpox project Eli Lilly initiated, have been started from scratch in recent weeks. Before Sept. 11, NIH had planned to spend $93 million on next-generation bioterrorism research this budget year. That was nearly double the amount in the prior year, but now the actual figure is likely to jump by tens of millions. Other parts of the government, including the Department of Defense, are spending millions as well, often in cooperation with NIH. Much of the immediate focus is on better defenses for smallpox and anthrax, two bioterror agents theoretically capable of killing millions. Smallpox was eradicated from the United States in 1949 and from the rest of the world in 1978. The last remaining stocks of virus are supposedly secure in two repositories in the United States and Russia. Some terrorist groups are feared to have gotten their hands on virus samples from Russia, and if that's true, they could set off a worldwide epidemic. Stopping such an outbreak would require mass vaccinations. The government has a stockpile of old smallpox vaccine, but the supply is limited. It is, moreover, a primitive product, not substantially different from the vaccine discovered by English physician Edward Jenner in 1796.

#### extinction

**Matheny 7** – Research associate with the [Future of Humanity Institute](http://en.wikipedia.org/wiki/Future_of_Humanity_Institute) @ [Oxford University](http://en.wikipedia.org/wiki/Oxford_University) [Jason G. Matheny (PhD candidate in Applied Economics and Master’s in Public Health at [Johns Hopkins University](http://en.wikipedia.org/wiki/Johns_Hopkins_University)), “Reducing the Risk of Human Extinction,” [Risk Analysis.](http://www.blackwell-synergy.com/doi/full/10.1111/j.1539-6924.2007.00960.x) Volume 27, Number 5, 2007, pg. http://www.upmc-biosecurity.org/website/resources/publications/2007\_orig-articles/2007-10-15-reducingrisk.html]

Of current **extinction** risks, the **most severe** may be **bioterrorism**. The knowledge needed to engineer a virus is modest compared to that needed to build a nuclear weapon; the necessary **equipment and materials are increasingly accessible** and because biological agents are **self replicating**, a weapon can have an **exponential effect** on a population (Warrick, 2006; Williams, 2006).5 Current U.S. biodefense efforts are funded at $5 billion per year to develop and stockpile new drugs and vaccines, monitor biological agents and emerging diseases, and strengthen the capacities of local health systems to respond to pandemics (Lam, Franco, & Shuler, 2006).

# 1AR

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#### High production and low prices for natural gas now

**Handley 3-28** [Meg, US News and World Report, “Is the U.S. too dependent on natural gas for electricity?” http://www.usnews.com/news/articles/2013/03/28/is-the-us-too-dependent-on-natural-gas-for-electricity?page=2]

But heightened sensitivity to environmental challenges, such as carbon emissions and climate change, coupled with the nation's so-called "shale gale" is changing all that, ushering in an era where cheap natural gas generates an increasing amount of the nation's electricity and powers more vehicles.¶ Just four years ago, natural gas cost about $9 per million British thermal units (BTU) according to government data, much too expensive to compete with coal in generating electricity. But thanks to hydraulic fracturing, developers have been able to tap into massive stores of natural gas trapped in shale formations across the country, driving up supplies and driving down prices. Last year, gas prices fell below $2 per million BTUs, ousting coal as the cheapest fuel to produce electricity, and causing utilities to increasingly rely on natural gas over coal.¶ According to the Energy Information Administration, natural gas accounted for just 19 percent of the nation's electricity generation in 2005. Now that figure is closer to 30 percent. If projections about the decline in nuclear and coal capacity are correct, some industry watchers say natural gas will generate close to half of the nation's electricity in coming years.¶ That might be an encouraging prospect with prices at historic lows, but given industry efforts to soften the slide in prices — including scaled-back gas production and new storage facilities to prevent supply gluts — shale gale or not, rock-bottom costs for natural gas can't last forever. As of Thursday, natural gas futures were at $4.05 per million BTUs, according to Reuters, up from $1.82 around this time last year.

#### Natural gas ultra cheap – high production

**Obel 3-1** [Mike, IBT, Potential Surge Of US LNG Exports From Shale Natural Gas Boom Splits Corporate America; One Side Gets Allied With Environmentalists; http://www.ibtimes.com/potential-surge-us-lng-exports-shale-natural-gas-boom-splits-corporate-america-one-side-gets-allied]

The mood was celebratory. "If you had told me 10 years ago I'd be standing up on this podium making this announcement, I would not have believed you,” said Liveris, citing the “miracle” of the shale boom. "Even though Texas had its great mechanisms to attract business, the cost of energy, the cost of feedstocks, which would have been the price of oil and the price of gas, was pricing the United States out of the market." He was referring to the recent revolution in the ability to extract natural gas from the country’s vast shale formations using hydraulic fracturing, aka fracking, which has led to a bounty of cheap natural gas, one of Dow’s key raw materials.¶ As production has surged -- to about 25 billion cubic feet in 2012 from 17.28 billion cubic feet in 1985 (based on monthly reports of the U.S. Energy Information Administration, or EIA) -- the commodity’s price has plummeted: In one case, it went from more than $13 per million British thermal unit in the summer of 2008 to $3.18 per MMBtu a year later. Since then, its price has ranged from a monthly low of $2.98 to a high of around $4, a real bargain by any measure. That’s as good for manufacturers as it is bad for natural-gas producers and drilling companies, since low prices mean reduced exploration and production.

### Exporst

**No exports- not profitable**

**Ebinger et al 12** (Charles, Senior Fellow and Director of the Energy Security Initiative – Brookings, Kevin Massy, Assistant Director of the Energy Security Initiative – Brookings, and Govinda Avasarala, Senior Research Assistant in the Energy Security Initiative – Brookings, “Liquid Markets: Assessing the Case for U.S. Exports of Liquefied Natural Gas,” Brookings Institution, Policy Brief 12-01, http://www.brookings.edu/~/media/research/files/reports/2012/5/02%20lng%20exports%20ebinger/0502\_lng\_exports\_ebinger.pdf).

LNG exports will help to sustain market liquidity in what looks to be an increasingly tight LNG market beyond 2015 (see Figure 10). Should LNG exports from the United States continue to be permitted, they will add to roughly 10 bcf/day of LNG that is expected to emerge from Australia between 2015 and 2020. Nevertheless, given the projected growth in demand for natural gas in China and India and assuming that some of Japan’s nuclear capacity remains offline, demand for natural gas will outpace the incremental supply. This makes U.S. LNG even more valuable on the international market. Although it will be important to global LNG markets, it is unlikely that the emergence of the United States as an exporter of LNG will change the existing pricing structure overnight. Not only is the market still largely dependent on long-term contracts, the overwhelming majority of new liquefaction capacity emerging in the next decade (largely from Australia) has already been contracted for at oil-indexed rates.108 The incremental LNG volumes supplied by the United States at floating Henry Hub rates will be small in comparison. But while U.S. LNG will not have a transformational impact, by establishing an alternate lower price for LNG derived through a different market mechanism, U.S. exports may be central in catalyzing future changes in LNG contract structure. As previously mentioned, this impact is already being felt in Europe. A number of German utilities have either renegotiated contracts or are seeking arbitration with natural gas suppliers in Norway and Russia. The Atlantic Basin will be a more immediate beneficiary of U.S. LNG exports than the Pacific Basin as many European contracts allow for periodic revisions to the oil-price linkage.109 In the Pacific Basin this contractual arrangement is not as common and most consumers are tied to their respective oil-linkage formulae for the duration of the contract.110 Despite the increasing demand following the Fukushima nuclear accident, however, Japanese LNG consumers are actively pursuing new arrangements for LNG contracts.111 There are other limits to the extent of the impact that U.S. LNG will have on global markets. It is unlikely that many of the LNG export facilities under consideration will reach final investment decision. Instead, it is more probable that U.S. natural gas prices will have rebounded sufficiently to the point that exports are not commercially viable beyond a certain threshold. (Figure 11 illustrates the estimated costs of delivering LNG to Japan in 2020.) This threshold, expected by many experts to be roughly 6 bcf/day by 2025, is modest in comparison to the roughly 11 bcf/day of Australian LNG export projects that have reached final investment decision and are expected to be online by 2020.

### eu

#### European supply thumps russia

Graeber, 2/18/13 [Daniel, writer and political analyst. OilPrice.com, “Is Europe Next for a Shale Natural Gas Boom?”. http://oilprice.com/Energy/Natural-Gas/Is-Europe-Next-for-a-Shale-Natural-Gas-Boom.html]

Chevron and Royal Dutch Shell are getting an early start on shale exploration campaigns in eastern European countries. With the United States fast emerging as a shale natural gas leader, European economies eager to bolster their own energy independence are working to follow suit. Shell plans to spend more than $400 million to tap into Ukrainian shale, while Chevron has similar ambitions in eastern Romania. While regional shale gas production isn't going to match that seen in the United States, it's expected to eventually weaken the Russian grip on the region's energy sector.

The U.S. Energy Department's Energy Information Administration estimates that, together, Bulgaria, Hungary and Romania may hold many trillion cubic feet of shale natural gas. That was enough to give U.S. supermajor Chevron the confidence to move ahead with an exploration campaign there. The company began taking on shale concessions in 2010 and has since announced plans to start exploration. If EIA estimates are close to accurate, there may be enough shale gas in Romania to cover its energy needs for the next 40 years. The company, however, still needs environmental permits to move forward with its campaign.

Royal Dutch Shell, meanwhile, announced in January it was spending $10 billion to develop the shale potential in neighboring Ukraine. Chief Executive Officer Peter Voser said on the sidelines of last month's economic summit in Davos, Switzerland, that his company sees "a lot of potential" in Ukraine, where the EIA puts the reserve estimate for shale natural gas at 42 trillion cubic feet. That's the third largest for shale of any of the Eastern European countries. Kiev says domestic natural gas productions should eventually eliminate the need for imports altogether.

### 1AR Fett

#### Retrenchment solves the impact—theory and the empirical record prove.

MacDonald & Parent 11—Professor of Political Science at Williams College & Professor of Political Science at University of Miami [Paul K. MacDonald & Joseph M. Parent, “Graceful Decline? The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4 (Spring 2011), pp. 7–44]

Our findings are directly relevant to what appears to be an impending great power transition between China and the United States. Estimates of economic performance vary, but most observers expect Chinese GDP to surpass U.S. GDP sometime in the next decade or two. 91 This prospect has generated considerable concern. Many scholars foresee major conflict during a Sino-U.S. ordinal transition. Echoing Gilpin and Copeland, John Mearsheimer sees the crux of the issue as irreconcilable goals: China wants to be America’s superior and the United States wants no peer competitors. In his words, “[N]o amount of goodwill can ameliorate the intense security competition that sets in when an aspiring hegemon appears in Eurasia.” 92

Contrary to these predictions, our analysis suggests some grounds for optimism. Based on the historical track record of great powers facing acute relative decline, the United States should be able to retrench in the coming decades. In the next few years, the United States is ripe to overhaul its military, shift burdens to its allies, and work to decrease costly international commitments. It is likely to initiate and become embroiled in fewer militarized disputes than the average great power and to settle these disputes more amicably. Some might view this prospect with apprehension, fearing the steady erosion of U.S. credibility. Yet our analysis suggests that retrenchment need not signal weakness. Holding on to exposed and expensive commitments simply for the sake of one’s reputation is a greater geopolitical gamble than withdrawing to cheaper, more defensible frontiers.

Some observers might dispute our conclusions, arguing that hegemonic transitions are more conflict prone than other moments of acute relative decline. We counter that there are deductive and empirical reasons to doubt this argument. Theoretically, hegemonic powers should actually find it easier to manage acute relative decline. Fallen hegemons still have formidable capability, which threatens grave harm to any state that tries to cross them. Further, they are no longer the top target for balancing coalitions, and recovering hegemons may be influential because they can play a pivotal role in alliance formation. In addition, hegemonic powers, almost by definition, possess more extensive overseas commitments; they should be able to more readily identify and eliminate extraneous burdens without exposing vulnerabilities or exciting domestic populations.

We believe the empirical record supports these conclusions. In particular, periods of hegemonic transition do not appear more conflict prone than those of acute decline. The last reversal at the pinnacle of power was the AngloAmerican transition, which took place around 1872 and was resolved without armed confrontation. The tenor of that transition may have been influenced by a number of factors: both states were democratic maritime empires, the United States was slowly emerging from the Civil War, and Great Britain could likely coast on a large lead in domestic capital stock. Although China and the United States differ in regime type, similar factors may work to cushion the impending Sino-American transition. Both are large, relatively secure continental great powers, a fact that mitigates potential geopolitical competition. 93 China faces a variety of domestic political challenges, including strains among rival regions, which may complicate its ability to sustain its economic performance or engage in foreign policy adventurism. 94

Most important, the United States is not in free fall. Extrapolating the data into the future, we anticipate the United States will experience a “moderate” decline, losing from 2 to 4 percent of its share of great power GDP in the five years after being surpassed by China sometime in the next decade or two. 95 Given the relatively gradual rate of U.S. decline relative to China, the incentives for either side to run risks by courting conflict are minimal. The United States would still possess upwards of a third of the share of great power GDP, and would have little to gain from provoking a crisis over a peripheral issue. Conversely, China has few incentives to exploit U.S. weakness. 96 Given the importance of the U.S. market to the Chinese economy, in addition to the critical role played by the dollar as a global reserve currency, it is unclear how Beijing could hope to consolidate or expand its increasingly advantageous position through direct confrontation. In short, the United States should be able to reduce its foreign policy commitments in East Asia in the coming decades without inviting Chinese expansionism. Indeed, there is evidence that a policy of retrenchment could reap potential benefits. The drawdown and repositioning of U.S. troops in South Korea, for example, rather than fostering instability, has resulted in an improvement in the occasionally strained relationship between Washington and Seoul. 97 U.S. moderation on Taiwan, rather than encouraging hard-liners in Beijing, resulted in an improvement in cross-strait relations and reassured U.S. allies that Washington would not inadvertently drag them into a Sino-U.S. conflict. 98 Moreover, Washington’s support for the development of multilateral security institutions, rather than harming bilateral alliances, could work to enhance U.S. prestige while embedding China within a more transparent regional order. 99 A policy of gradual retrenchment need not undermine the credibility of U.S. alliance commitments or unleash destabilizing regional security dilemmas. Indeed, even if Beijing harbored revisionist intent, it is unclear that China will have the force projection capabilities necessary to take and hold additional territory. 100 By incrementally shifting burdens to regional allies and multilateral institutions, the United States can strengthen the credibility of its core commitments while accommodating the interests of a rising China. Not least among the benefits of retrenchment is that it helps alleviate an unsustainable financial position. Immense forward deployments will only exacerbate U.S. grand strategic problems and risk unnecessary clashes. 101

#### Growing relative power will only strengthen the liberal order to ensure peace.

Ikenberry 11—PhD, Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs [May/June issue of Foreign Affairs, G. John, “The Future of the Liberal World Order,” http://www.foreignaffairs.com/articles/67730/g-john-ikenberry/the-future-of-the-liberal-world-order?page=show]

Pronouncements of American decline miss the real transformation under way today. What is occurring is not American decline but a dynamic process in which other states are catching up and growing more connected. In an open and rule-based international order, this is what happens. If the architects of the postwar liberal order were alive to see today's system, they would think that their vision had succeeded beyond their wildest dreams. Markets and democracy have spread. Societies outside the West are trading and growing. The United States has more alliance partners today than it did during the Cold War. Rival hegemonic states with revisionist and illiberal agendas have been pushed off the global stage. It is difficult to read these world-historical developments as a story of American decline and liberal unraveling. In a way, however, the liberal international order has sown the seeds of its own discontent, since, paradoxically, the challenges facing it now -- the rise of non-Western states and new transnational threats -- are artifacts of its success. But the solutions to these problems -- integrating rising powers and tackling problems cooperatively -- will lead the order's old guardians and new stakeholders to an agenda of renewal. The coming divide in world politics will not be between the United States (and the West) and the non-Western rising states. Rather, the struggle will be between those who want to renew and expand today's system of multilateral governance arrangements and those who want to move to a less cooperative order built on spheres of influence. These fault lines do not map onto geography, nor do they split the West and the non-West. There are passionate champions of the UN, the WTO, and a rule-based international order in Asia, and there are isolationist, protectionist, and anti-internationalist factions in the West. The liberal international order has succeeded over the decades because its rules and institutions have not just enshrined open trade and free markets but also provided tools for governments to manage economic and security interdependence. The agenda for the renewal of the liberal international order should be driven by this same imperative: to reinforce the capacities of national governments to govern and achieve their economic and security goals. As the hegemonic organization of the liberal international order slowly gives way, more states will have authority and status. But this will still be a world that the United States wants to inhabit. A wider array of states will share the burdens of global economic and political governance, and with its worldwide system of alliances, the United States will remain at the center of the global system. Rising states do not just grow more powerful on the global stage; they grow more powerful within their regions, and this creates its own set of worries and insecurities -- which is why states will continue to look to Washington for security and partnership. In this new age of international order, the United States will not be able to rule. But it can still lead.

### 1AR Flaring

#### Ozone resilient

#### AP, 5/22/2006. Associated Press. “Study: Ozone Hole Will Contract, May Disappear by 2050,” http://www.foxnews.com/story/0,2933,196417,00.html.

#### TOKYO — The ozone hole over the Antarctic is likely to begin contracting in the future and may disappear by 2050 because of a reduction in the release of chlorofluorocarbons and other ozone-depleting gases, according to a team of Japanese scientists. The findings are based on a series of numerical simulations carried out by Eiji Akiyoshi of the National Institute for Environmental Studies, near Tokyo, using projected emissions of chlorofluorocarbons and other gases blamed for the ozone hole. According to a report posted Friday on the institute's Web site, the hole is at its largest now but is likely to gradually start contracting around 2020 and disappear by around 2050. The team's findings are in line with research by other scientists.

#### No increases in UV from ozone depletion. And any consequence is miniscule.

Singer and Crandall 91 [S. Fred, Prof Env Sci—UVA and former Dir. US Weather Satellite Program, and Candace, Editorial Dir.—Science and Environmental Policy Project, San Diego Union-Tribune, “Is the ozone doomsday scenerio based on hype?”, 7-7, L/N]

If the amount of ozone is reduced, more UV reaches the earth's surface.) Quite the contrary: Ground measurements of UV radiation taken at eight U.S. locations since 1974, and published in the journal Science in 1988 by Joseph Scotto and colleagues, show a slight decrease at most locations. 2. All skin-cancer estimates are based on the observation that these cancers occur more frequently as one moves south toward the equator, presumably because of increases in UV radiation due to the higher angle of the sun. It's actually a bit more complex than that. In warmer climates people also spend more time out-of-door and expose more of their skin to the sun. These factors -- rather than UV intensity -- may account for a large part of the observed increased increase in skin-cancer rates. 3. Behavioral factors aside, the increased risk of skin cancer from a 5 percent depeletion of stratospheric ozone, causing (theoretically) a 10 percent increase in UV intensity, is equivalent to moving 60 miles to the south, say from Los Angeles to San Diego. These facts are rarely revealed to the public, and certainly not by the EPA. The ozone hype suggests that the issue of CFC control is now based on politics rather than science.

### 1AR Russia

#### Russian economic slowdown now

**Economic Times 3-21** [Russian economy close to stagnating in February, http://articles.economictimes.indiatimes.com/2013-03-21/news/37903373\_1\_russian-economy-cent-andrei-klepach]

Russia's economy slowed sharply in February as exports declined, the Deputy Economy Minister said on Thursday, adding to pressure on the central bank to support growth by easing borrowing costs.¶ Andrei Klepach said gross domestic product rose 0.1 per cent year-on-year in February, down from 1.6 per cent in January. Month-on-month, the economy contracted 0.1 percent.¶ The slowdown was mostly due to exports, which fell 6.9 per cent in January-February, while retail sales were also weak, he said.¶ Retail sales rose by 2.5 per cent year-on-year in February, after a 3.5 per cent rise in the previous month, the Federal Statistics Service said on Wednesday. Analysts polled by Reuters had forecast a rise of 3.3 percent.¶ The central bank left rates unchanged at its meeting last week. Last month chairman Sergei Ignatyev said the bank could consider cutting rates when inflation falls.¶ Consumer prices rose 0.1 per cent in the week to March 18, bringing inflation since the start of the year to 1.8 per cent compared to 1.2 per cent in the same period of 2012. The central bank aims to keep inflation within a 5-6 per cent range this year.¶ Klepach said last month that Russia's economy will probably grow between 3 per cent and 3.3 per cent this year.¶ Renaissance Capital economist Ivan Tchakarov attributed February's poor growth outcome to declining commodity prices and contracting output in several key industrial sectors, calling it "**a stark reminder that the Russian economy has now almost ground to a halt**."

#### Impact empirically denied—Russia’s economy is endemically weak and has been wrecked many times

**Friedman 09** – Founder and CEO of STRATFOR, founder of the Center for Geopolitical Studies, former professor of political science, PhD in Government

(George, 7/2“The Russian Economy and Russian Power.” http://www.cdi.org/russia/johnson/2009-141-11.cfm)

Russia has been an economic wreck for most of its history, both under the czars and under the Soviets. The geography of Russia has a range of weaknesses, as we have explored. Russia’s geography, daunting infrastructural challenges and demographic structure all conspire against it. But the strategic power of Russia was never synchronized to its economic well-being. Certainly, following World War II the Russian economy was shattered and never quite came back together. Yet Russian global power was still enormous. A look at the crushing poverty ­ but undeniable power ­ of Russia during broad swaths of time from 1600 until Andropov arrived on the scene certainly gives credence to Putin’s view. The problems of the 1980s had as much to do with the weakening and corruption of the Communist Party under former Soviet leader Leonid Brezhnev as it had to do with intrinsic economic weakness. To put it differently, the Soviet Union was an economic wreck under Joseph Stalin as well. The Germans made a massive mistake in confusing Soviet economic weakness with military weakness. During the Cold War, the United States did not make that mistake. It understood that Soviet economic weakness did not track with Russian strategic power. Moscow might not be able to house its people, but its military power was not to be dismissed. What made an economic cripple into a military giant was political power. Both the czar and the Communist Party maintained a ruthless degree of control over society. That meant Moscow could divert resources from consumption to the military and suppress resistance. In a state run by terror, dissatisfaction with the state of the economy does not translate into either policy shifts or military weakness ­ and certainly not in the short term. Huge percentages of gross domestic product can be devoted to military purposes, even if used inefficiently there. Repression and terror smooth over public opinion. The czar used repression widely, and it was not until the army itself rebelled in World War I that the regime collapsed. Under Stalin, even at the worst moments of World War II, the army did not rebel. In both regimes, economic dysfunction was accepted as the inevitable price of strategic power. And dissent ­ even the hint of dissent ­ was dealt with by the only truly efficient state enterprise: the security apparatus, whether called the Okhraina, Cheka, NKVD, MGB or KGB. From the point of view of Putin, who has called the Soviet collapse the greatest tragedy of our time, the problem was not economic dysfunction. Rather, it was the attempt to completely overhaul the Soviet Union’s foreign and domestic policies simultaneously that led to the collapse of the Soviet Union. And that collapse did not lead to an economic renaissance. Biden might not have meant to gloat, but he drove home the point that Putin believes. For Putin, the West, and particularly the United States, engineered the fall of the Soviet Union by policies crafted by the Reagan administration ­ and that same policy remains in place under the Obama administration. It is not clear that Putin and Russian President Dmitri Medvedev disagree with Biden’s analysis ­ the Russian economy truly is “withering” ­ except in one sense. Given the policies Putin has pursued, the Russian prime minister must believe he has a way to cope with that. In the short run, Putin might well have such a coping mechanism, and this is the temporary window of opportunity Biden alluded to. But in the long run, the solution is not improving the economy ­ that would be difficult, if not outright impossible, for a country as large and lightly populated as Russia. Rather, the solution is accepting that Russia’s economic weakness is endemic and creating a regime that allows Russia to be a great power in spite of that.

### 1AR Japan

#### Relations resilient -- China and North Korea guarantee

Bowring 7/27/09 (Philip, Consultant Editor of the online news magazine Asia Sentinel, columnist for the International Herald Tribune, and former editor of the Far Eastern Economic Review. “America's Balancing Act.” http://www.nytimes.com/2009/07/28/opinion/28iht-edbowring.html?hpw)

Mrs. Clinton’s appearance certainly gave a boost to Asean ministers — whose meetings had often failed to lure her predecessor. But the reality is that Washington’s Asia policies cannot change much. Although the gradual exit from Iraq and the end of “war-on-terror” rhetoric have helped re-balance Washington’s attention, the United States has many interests pulling it in different directions — China, India, Japan, nonproliferation, trade, climate change, etc. The key is balance, not change. Sad to say for Asean, Southeast Asia does not pull in any definable direction. At the Phuket meeting, Clinton focused attention on North Korea, a country where Asean members have no discernible influence, and on Myanmar, whose government is impervious to foreign rhetoric. The United States is conscious of its declining influence in Southeast Asia. Washington’s Middle East obsessions were partly to blame, but more important has been the rise of China as an economic power. Competition among China, Japan and South Korea to help Asean countries has stimulated East Asian economic cooperation. China has pushed “friendship” through free trade agreements that look good on paper. With the United States in recession and its financial institutions disgraced, it may seem like a poor time to imagine that America can revive its influence with official visits and rhetoric. The White House has failed to push a free trade deal with South Korea through Congress, so it can forget about reaching anything like that with Asean. Yet, paradoxically, this may be the best of times for the region to remember how dependent it remains on the United States. Few Asean members want to see the security umbrella — to which most contribute — diminished by U.S. budget pressures and engagements elsewhere. Member states that had been embracing China’s rapid rise are beginning to wonder whether it is now proving to be too fast for their good. Indeed, Beijing has shown poor timing by resurrecting historic claims to the whole South China Sea. Events in Xinjiang and Tibet have also been reminders of resentment over Han Chinese settlements. To all this, one must add the benefits of the Obama effect on perceptions of America, particularly in Islamic Southeast Asia. The economic crisis has been a reminder that Southeast Asia’s economic health remains more dependent on a global system that the United States still dominates. China’s influence will continue to increase, but that makes it more important for the region not to neglect its other links. Washington does not need new policies in Southeast Asia. A little attention will go a long way, as will speaking softly while being as helpful as possible on issues like disaster relief, fighting terrorism, building trade and maintaining financial stability. Superficially, things may look different in Japan, where the Liberal Democratic Party, for decades a faithful servant of U.S. policies, will probably soon be replaced by the Democratic Party of Japan, which, in theory, remains wary of the U.S. military presence, is opposed to Japanese military involvement overseas, and wants to improve relations with China. But the party is backtracking on these positions as elections approach, so foreign policies are unlikely to change significantly. The rise of China and the enigma of nuclear North Korea will keep the United States and Japan in alliance for a long while yet.

**Empirically the alliance has been incapable of preserving stability in the region.**

#### DiFilippo, ‘2

[Anthony, Prof. Sociology at Lincoln University, “The Challenges of the U.S.-Japan Military Arrangement: Competing Security Transitions in a Changing International Environment,” pg. 13]

One thing that has not changed about the U.S.-Japan security alliance in the fifty years that it has existed is that it is supposed to have maintained regional stability. If stability is defined as a state where war or the high level threat of war does not exist, then the alliance has not been terribly effective. Although the Soviet Union never attacked Japan during the Cold War, other serious destabilizing forces have appeared despite the continued existence of the bilateral alliance. The Korean War, which began in June 1950, did not end after the signing of the U.S.-Japan Security Treaty in 1951 nor after the accord went into effect in 1952. The alliance did not prevent China from developing nuclear weapons-hardly a stabilizing event in the region. The U.S.-Japan alliance did not prevent or end the Vietnam War. More recently, the U.S.-Japan security alliance did not stop the Democratic People's Republic of Korea (North Korea) from beginning a nuclear weapons program in the early 1990s, thwart Pyongyang's missile development efforts, or discourage it from launching a projectile over Japan without prior notice in August 1998. With the bilateral alliance in effect for decades, China went ahead with nuclear testing in 1995 to assure that its nuclear arsenal was capable of neutralizing the threats it perceives from the other nuclear powers.