

**States of California, Maryland, Michigan, and New York;  
Commonwealth of Massachusetts; and  
District of Columbia**

July 24, 2023

*Via electronic submission to [www.regulations.gov](http://www.regulations.gov)*

Brenda Mallory  
Chair, White House Council on Environmental Quality  
Arati Prabhakar, Ph.D.  
Director, White House Office of Science and Technology  
Chairs, Ocean Policy Committee  
1600 Pennsylvania Ave NW  
Washington, D.C. 20500

**Re: Request for Information, Ocean Justice Strategy  
(Docket No. CEQ-2023-0004; 88 FR 37518 (Jun. 8, 2023))**

Dear Chairs Mallory and Prabhakar:

The Attorneys General of California,<sup>1</sup> District of Columbia, Maryland, Massachusetts, Michigan, and New York, (collectively “States”) applaud the Ocean Policy Committee’s (“Committee”) development of an Ocean Justice Strategy. The States submit these comments in response to the Committee’s Request for Information.

Our nation boasts some of the world’s most magnificent ocean and coastal areas. Much of our cultural and economic identities are intimately tied to the coasts. From walking the picturesque beaches of Cape Cod to surfing the iconic big waves in the North Shore of Oahu, Americans have benefited from the preservation and management of our coastal waters. Unfortunately, not all Americans have access to the recreational benefits provided by the oceans, coasts, and the Great Lakes. Further, due to a legacy of racism and discrimination, maritime industrial infrastructure has often been located in neighborhoods predominantly comprised of Black, Indigenous, People of Color, and other communities historically excluded from decision making, including about ocean and coastal management, and where residents have less access to the shore.

While some States are implementing policies to address ocean and coastal injustices, additional work is needed to address the deeply ingrained disparities in coastal access and protection from coastal-related burdens. The Biden Administration’s development of an Ocean Justice Strategy is welcome news and positions the federal government as a valuable and essential partner in addressing these disparities on a national scale.

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<sup>1</sup> The California Attorney General submits these comments in his independent capacity on behalf of the People of the State of California, and with support from the California Coastal Commission and California State Lands Commission.

These comments are intended to support and inform the development of the Committee’s Ocean Justice Strategy. We look forward to working with the federal government in achieving Ocean Justice for all Americans.

## **EXECUTIVE SUMMARY**

### **I. DEFINING OCEAN JUSTICE**

The Request for Information seeks input on how to define Ocean Justice. The Ocean Justice Forum, a group comprised of environmental justice, community, Indigenous, and non-governmental organizations, defines Ocean Justice as the following:

“Ocean Justice exists at the intersection of social inclusion, ocean stewardship, and justice. It harnesses a power shift advancing the voices, full participation and leadership of historically excluded Peoples and Black, Indigenous, people of color (BIPOC) communities in ocean decision-making, ensures meaningful and equitable engagement of all communities, and delivers equal access to healthy and prospering shorelines and oceans for all.”<sup>2</sup>

We support this definition of Ocean Justice but we would also expressly include advancing the voices, meaningful participation, and leadership of people with disabilities, economically disadvantaged communities, and the youth and elderly. For purposes of this comment letter, we will refer to communities that have been historically excluded from ocean policy decisions as “Ocean Justice Communities.”

### **II. ADVANCING OCEAN JUSTICE**

This section responds to the questions asked in the Request for Information’s “Opportunities for Ocean Justice” and “Barriers to Ocean Justice” topic areas. We identify seven broad objectives that we recommend the Committee include in its Ocean Justice Strategy. We also include specific recommendations on how to advance each objective.

#### **A. Meaningful Engagement of Ocean Justice Communities Early in the Process of Developing Federal Actions and Projects Related to Using, Protecting, and Managing the Oceans, Coasts, and the Great Lakes.**

The core of every environmental justice strategy is a commitment to robust and consistent community engagement. The Ocean Justice Strategy should acknowledge how Ocean Justice Communities were historically excluded from federal decision making regarding the oceans, coasts, and the Great Lakes, and should adopt a comprehensive series of concrete, ongoing requirements to engage with Ocean Justice Communities in planning for current and future federal projects. Such projects are those that would construct and operate polluting

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<sup>2</sup> Ocean Justice Forum, *An Equitable and Just Ocean Policy Platform 4* (Sep. 2022), [https://static1.squarespace.com/static/60a7fd1ca42a161bf6bb3ae7/t/63293d1709f1c04a38b7f1c5/1663647026739/04\\_OceanJusticeForum.pdf](https://static1.squarespace.com/static/60a7fd1ca42a161bf6bb3ae7/t/63293d1709f1c04a38b7f1c5/1663647026739/04_OceanJusticeForum.pdf) (last accessed Jul. 5, 2023).

infrastructure and activities nearby to Ocean Justice Communities, and include military facilities, flood control and navigation projects, joint federal and local projects relating to trade terminals, goods movement, and freight operations, and projects facilitating the import and export of construction and bulk raw materials, among other projects. Early and consistent community engagement is central to establishing good relationships between communities, agencies, and industry. Robust community engagement gives agencies access to community residents' on-the-ground knowledge and information about their concerns, builds community support for projects, and develops creative solutions to ensure federally managed and funded facilities benefit all stakeholders. Some examples of meaningful community engagement include the following activities:

1. Engage Early with Communities and Tribes; Identify Community Liaisons.
2. Conduct Open and Accessible Public Meetings.
3. Effective Notices and Outreach.
4. Planning for Accelerated Project Timelines.

## **B. Equitable Public Access to the Oceans, Coasts, and the Great Lakes.**

Under the Public Trust Doctrine, the States hold in trust, on the public's behalf, tidal and navigable waterways and the lands beneath them. The right to access and enjoy waterways is vital to the public's well-being, as studies show that spending time in blue spaces like the coast lowers the risk of stress, anxiety, obesity, cardiovascular disease and premature death. However, because of legacies of racism and discrimination, not all have equitable access to the coast. Wealthier, white communities often have better coastal access compared to Ocean Justice Communities. This disparity is compounded by beaches shrinking due to sea level rise, private attempts to bar public beach access, and industrial, agricultural, and sewage run-off rendering beaches visited by marginalized communities unsafe.

The States encourage the federal government to partner with them to secure equitable public access to the coasts by implementing the following recommendations in its Ocean Justice Strategy:

1. Leverage federal funding to improve coastal access amenities for Ocean Justice Communities.
2. Leverage federal funding to foster recreation and expand coastal storytelling programs for Ocean Justice Communities to promote a sense of belonging to the oceans, coasts, and the Great Lakes.
3. Incorporate Ocean Justice initiatives as terms in federal permits, licenses, and legal settlements related to the Oceans, Coasts, and the Great Lakes.
4. Explore pathways to allow public access to coastal areas on or through federal property.
5. Collaborate with States, localities, and Tribes and utilize federal funding to map the locations of coastal access points and amenities nationwide.

### **C. Equitable Protection from Port and Maritime Activities.**

EPA acknowledges that while port and maritime industries are critical to supporting local and national economies, their operations can cause cumulative environmental and health impacts on Ocean Justice Communities, including air and water pollution and land use conflicts. Ocean Justice Communities suffer air pollution impacts from vehicles such as trucks, marine vessels, trains, and cargo handling equipment, as well as from stationary sources such as refineries, oil and gas terminals, and electrical facilities. Pollution from diesel emissions can cause respiratory and cardiac disease, exacerbate cancer risks, and contribute to premature mortality, especially among children and the elderly. Water pollution impairs local waterways, limits recreation, and compromises subsistence fishing, while port-related lights and noise can produce hearing impairment, blood pressure problems, and sleep deprivation.

The indirect effects of port and maritime projects also contribute to poor quality of life in Ocean Justice Communities. These projects pose public safety concerns arising from truck routes and rail crossings, and industrial structures create barriers between Ocean Justice Communities and coastal resources. These impacts are compounded when Ocean Justice Communities fail to receive the same benefits of the projects as does the larger region. Moreover, port and maritime projects can induce secondary impacts that are not always considered. For example, port projects expanding container throughput capacity can promote visitation by larger ships, which in turn could bring in more cargo, which in turn could generate more truck and rail traffic, all of which could produce compounded pollution and quality of life issues for Ocean Justice Communities living near these projects.

The Ocean Justice Strategy can alleviate the impacts of federal port and maritime projects on nearby Ocean Justice Communities by including the following:

1. Project/Facility Siting and Design Standards.
2. Protective Mitigation Measures, including:
  - a. Air Quality and Greenhouse Gas Mitigation Measures.
  - b. Noise Impacts Mitigation Measures.
  - c. Traffic Impacts Mitigation Measures.
3. Comprehensive Environmental and Health Impacts Analyses.
4. Incorporation of Environmental Justice Policies into Port Master Plans and Federal Projects and Activities at Ports.

### **D. Equitable Protection from Pollution.**

In addition to the harms associated with port and maritime activities, Ocean Justice Communities suffer disproportionate harm from other sources of pollution that affect their health and livelihoods. We highlight a few such impacts, but we recommend that the Committee comprehensively identify all of the disparate harms Ocean Justice Communities face from various sources of pollution.

1. Implement pollution prevention and management strategies that protect fisheries and the communities that rely on fisheries for sustenance or for their livelihoods.
2. Direct federal funding to remediate toxic and hazardous waste sites along the coasts that impact or may potentially impact Ocean Justice Communities.
3. Address trans-border pollution affecting Ocean Justice Communities.
4. Address agricultural pollution.

#### **E. Equitable Management and Protection of the Oceans, Coasts, and the Great Lakes.**

The Ocean Justice Strategy should include actions necessary to ensure that the ocean is protected and equitably managed. We recommend the following actions:

1. Co-manage the oceans, coasts, and the Great Lakes with Tribes and Indigenous Peoples.
2. Strengthen and develop more marine protected areas, with a focus on areas identified and/or managed by Ocean Justice Communities.
3. Increase federal funding and resources for ocean protection enforcement.
4. Minimize new federal offshore oil and gas leasing and incentivize phasing out and decommission oil and gas operations in federal waters.
5. Implement ship speed reduction requirements in federal waters to reduce air pollution and prevent marine mammal injuries.

#### **F. Address Past Harms and Injustices.**

This section responds to the Request for Information's question, "What successful regional or local efforts to remedy past harms or advance ocean justice should be applied nationwide?" To address past harms and injustices, the federal government should take the following actions:

1. Identify coastal properties that were unjustly taken from BIPOC Communities and collaboratively work with States and localities and/or leverage federal funding to restore ownership.
2. Initiate a program of tribal land transfers for management purposes to restore ownership of unjustly taken coastal land.

#### **G. Equitable Adaptation to Climate Change**

An Ocean Justice Strategy must also include provisions to ensure that Ocean Justice Communities are prepared for the impacts of climate change and that coastal adaptation strategies do not inadvertently exacerbate burdens on Ocean Justice Communities. The federal government should implement equitable adaptation policies that include the following actions:

1. Support planning and implementation of climate resilience measures for Ocean Justice Communities.
2. Consider insurance and nature-based solutions, such as restoration of marshes and wetlands, to reduce the risks of flooding and other natural disasters exacerbated by climate change.
3. Develop an inclusive coastal relocation strategy and expand federal funding for community-scale relocation.

The below comments provide more details as to how these objectives and actions can be implemented by the federal government. The States appreciate the opportunity to provide feedback on the development of this critically needed Ocean Justice Strategy.

## COMMENTS ON REQUEST FOR INFORMATION

### I. DEFINING OCEAN JUSTICE

The Request for Information seeks input on how to define Ocean Justice. Last year, a group of environmental justice, community, Indigenous, and national non-governmental organizations initiated the Ocean Justice Forum to develop a “consensus-based federal ocean policy platform that promotes racial, climate, environmental, and economic justice.”<sup>3</sup> The Forum defines Ocean Justice as the following:

Ocean Justice exists at the intersection of social inclusion, ocean stewardship, and justice. It harnesses a power shift advancing the voices, full participation and leadership of historically excluded Peoples and Black, Indigenous, people of color (BIPOC) communities in ocean decision-making, ensures meaningful and equitable engagement of all communities, and delivers equal access to healthy and prospering shorelines and oceans for all.<sup>4</sup>

We support this definition of Ocean Justice, but would also expressly include advancing the voices, meaningful participation, and leadership of people with disabilities, economically disadvantaged communities, and young and elderly people. When disasters such as hurricanes and coastal flooding strike, people with disabilities and the elderly may find it especially difficult to respond due to their inherent vulnerabilities (*e.g.*, using a wheelchair), and, as the Environmental Protection Agency (“EPA”) has recognized, governmental decision makers generally do not design emergency response plans with adequate disability accommodations in

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<sup>3</sup> Ocean Justice Forum, *An Equitable and Just Ocean Policy Platform 4* (Sep. 2022), [https://static1.squarespace.com/static/60a7fd1ca42a161bf6bb3ae7/t/63293d1709f1c04a38b7f1c5/1663647026739/04\\_OceanJusticeForum.pdf](https://static1.squarespace.com/static/60a7fd1ca42a161bf6bb3ae7/t/63293d1709f1c04a38b7f1c5/1663647026739/04_OceanJusticeForum.pdf) (last accessed Jul. 5, 2023). The Forum convened leaders from Aina Momona, Azul, Brown Girl Surf, Center for American Progress, Earthecho International, Earthjustice, Green 2.0, Greenpeace USA, Healthy Gulf, Interfaith Power & Light, Native Conservancy, Natural Resources Defense Council, North Atlantic Marine Alliance, Oceana, Taproot Earth, United Houma Nation, UPROSE, and Urban Ocean Lab. *Id.* at ii.

<sup>4</sup> *Id.* at 4.

mind.<sup>5</sup> In the wake of such emergencies, economically disadvantaged communities struggle to recover because they are less likely to be insured and governmental aid is often inequitably disbursed.<sup>6</sup> Climate change will exacerbate the intensity of natural disasters, and children, young people, and future generations will live to experience the worst of its impacts, despite being the least (or not at all) responsible for causing it.<sup>7</sup>

For these reasons, people with disabilities, economically disadvantaged communities, and young and elderly people should have a seat at the table in advancing Ocean Justice, alongside other historically excluded Peoples and BIPOC communities. For purposes of this comment letter, we will refer to communities that have been historically excluded from ocean policy decisions as “Ocean Justice Communities.” Any “Ocean Justice Community” defined by the federal government should identify the “sensitive receptors” located therein. In this document, “sensitive receptors” refers to residences, schools, public recreation facilities, healthcare facilities, places of worship, daycare facilities, community centers, or incarceration facilities.<sup>8</sup>

In addition, we urge the Ocean Policy Committee to clarify that “Ocean Justice” is a specific application of “Environmental Justice,” with a unique set of concerns and issues related to a particular natural resource.

There are several ways that federal agencies can determine whether a federal facility, project, or activity will affect an Ocean Justice Community. In California, the Office of Environmental Health Hazard Assessment developed the CalEnviroScreen tool to help understand local demographics and environmental burdens on a neighborhood-level scale.<sup>9</sup> CalEnviroScreen aggregates local environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher pollution and demographic burden than a census tract with a low score. EPA has developed a similar tool, EJScreen, which allows users to combine and analyze environmental and demographic data for specific geographic areas, and which EPA uses for community engagement, permitting and enforcement, and for evaluation of programs and policies that may affect particular communities.<sup>10</sup> The “Mapping Inequality” database developed by several universities contains historical “redlining” maps for many jurisdictions across the country that can be used to determine whether a particular community or neighborhood has a

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<sup>5</sup> U.S. EPA, *Climate Change and the Health of People with Disabilities*, Climate Change Impacts, <https://www.epa.gov/climateimpacts/climate-change-and-health-people-disabilities#3foot> (last updated Dec. 13, 2022).

<sup>6</sup> Anna Rhodes & Max Besbris, *Analysis: How disasters like Hurricane Ian can make inequality worse*, PBS News Hour (Oct. 4, 2022, 4:48 PM), <https://www.pbs.org/newshour/nation/analysis-how-disasters-like-hurricane-ian-can-make-inequality-worse>.

<sup>7</sup> Intergovernmental Panel on Climate Change, IPCC Sixth Assessment Report, *FAQ 3: How will climate change affect the lives of today’s children tomorrow, if no immediate action is taken?*, IPCC Sixth Assessment Report, <https://www.ipcc.ch/report/ar6/wg2/about/frequently-asked-questions/keyfaq3/> (last visited Jul. 5, 2023).

<sup>8</sup> See, e.g., Cal. Health & Safety Code section 42705.5, subd. (a)(5) (“‘Sensitive receptors’ includes hospitals, schools and day care centers, and such other locations...”).

<sup>9</sup> State of California Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0 (May 1, 2023), <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

<sup>10</sup> U.S. EPA, *How Does EPA Use EJScreen?*, EJScreen: Environmental Justice Screening and Mapping Tool (Feb. 24, 2023), <https://www.epa.gov/ejscreen/how-does-epa-use-ejscreen>.

history of exclusion, under-investment, and over-pollution.<sup>11</sup> Finally, the Center for Disease Control and Prevention’s Agency for Toxic Substances and Disease Registry maintains an Environmental Justice Index that works similarly to California’s CalEnviroScreen tool: the index accumulates data from the U.S. Census Bureau, the EPA, the U.S. Mine Safety and Health Administration, and the Centers for Disease Control and Prevention “to rank the cumulative impacts of environmental injustice on health for every census tract,” and the index then ranks each tract on 36 environmental, social, and health factors.<sup>12</sup> The Ocean Justice strategy should require agencies to consider using some or all of these and other similar databases to determine whether a federal project, facility, or activity could impact an Ocean Justice Community.

## II. ADVANCING OCEAN JUSTICE

This section largely responds to the questions asked in the Request for Information’s “Opportunities for Ocean Justice” and “Barriers to Ocean Justice” topic areas. We have identified seven broad objectives that we recommend the Committee include in its Ocean Justice Strategy. We have also included specific recommendations on how to advance each objective.

### A. Meaningful Engagement of Ocean Justice Communities Early in the Process of Developing Federal Actions and Projects Related to Using, Protecting, and Managing the Oceans, Coasts, and the Great Lakes.

The core of every environmental justice strategy is a commitment to robust and consistent community engagement. The Ocean Policy Committee’s Ocean Justice Strategy should acknowledge how Ocean Justice Communities have historically been excluded from federal decision making regarding the oceans, coasts, and Great Lakes, and should adopt a comprehensive series of concrete, ongoing requirements to engage with Ocean Justice Communities in planning for current and future federal projects. Such projects are those that would construct and operate polluting infrastructure and activities nearby to Ocean Justice Communities, and include military facilities, U.S. Army Corps of Engineers flood control and navigation projects, joint federal and local projects relating to trade terminals, goods movement, and freight operations, and projects facilitating the import and/or export of construction and bulk raw materials, among other projects.<sup>13</sup> Early and consistent community engagement is central to

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<sup>11</sup> Robert K. Nelson et al., *Mapping Inequality: Redlining in New Deal America*, Mapping Inequality, <https://dsl.richmond.edu/panorama/redlining/#loc=5/36.985/-97.734> (last visited Jul. 12, 2023).

<sup>12</sup> Agency for Toxic Substances and Disease Registry, *Environmental Justice Index*, Place and Health <https://www.atsdr.cdc.gov/placeandhealth/eji/index.html> (last reviewed June 2, 2023).

<sup>13</sup> For example: the U.S. Army Corps of Engineers’ Civil Works Program manages commercial waterways, maintains flood control projects, generates hydroelectric power, supplies water storage for various users, and assists in the remediation of contaminated sites. U.S. Army Corps of Eng’rs, *Sustainable Solutions to America’s Water Resource Needs*, Civil Works Strategic Plan 2014-2018 10 (Dec. 31, 2014); the Corps’ Military Missions division constructs military installations, engages in military base pollution remediation, and manages Department of Defense real estate services, among other activities. U.S. Army Corps of Eng’rs, *Military Missions*, Missions, <https://www.usace.army.mil/Missions/Military-Missions/>, (last visited Jul. 12, 2023); the Corps’ San Francisco, Sacramento, and Los Angeles districts each list multiple civil, military, and commerce-related projects currently underway. U.S. Army Corps of Eng’rs San Francisco District, *Civil Works Projects, Projects and Programs*, <https://www.spn.usace.army.mil/Missions/Projects-and-Programs/Current-Projects/>, (last visited Jul. 12, 2023); U.S. Army Corps of Eng’rs Sacramento District, *USACE Project Public Notices, Media*,



establishing good relationships between communities, agencies, and industry. Robust community engagement helps to give agencies access to community residents' on-the-ground knowledge and information about their concerns, build community support for projects, and develop creative solutions to ensure federally managed and funded facilities benefit all stakeholders. Some examples of robust and meaningful community engagement include the following activities:

1. Engage Early with Communities and Tribes: Identify Community Liaisons.

The federal Ocean Justice Strategy should require engagement with all affected communities and tribes early in the project planning process so that their input and concerns can help shape the project from inception.<sup>14</sup> One way to achieve this engagement is to create a community advisory board made up of local residents to review and provide feedback on project proposals in early planning stages.<sup>15</sup> Agencies should also identify a person or establish a committee—either within the community or within the federal agency—to act as a community liaison concerning project construction activity and operations and provide contact information for the community liaison to the surrounding community. If feasible, tribal and community member liaisons should be compensated for their work and efforts.

2. Conduct Open and Accessible Public Meetings.

When presenting potential projects affecting Ocean Justice Communities, agencies should conduct a series of community meetings at times and locations convenient to members of the affected community, such as during after-work hours from 6:00 p.m. to 9:00 p.m., and at locations within the community such as recreation centers and libraries, or along transit lines. Agencies should also provide child-care and food services for those attending the meetings. Agencies should also provide translation or interpretation in residents' native language, and provide copies of project informational documents and materials in multiple languages.<sup>16</sup>

For public meetings broadcast online or otherwise held remotely, agencies should provide access and public comment by telephone and supply instructions for access and public comment with ample lead time before the meeting.

Agencies should post project information in hard copy in public gathering spaces and on a website about the project. The information should include a comprehensive project description, maps and drawings of the project design, and information about how the public can provide input and be involved in the project approval process. The information should be in a format that is easy to navigate and understand for members of the affected community, and should be provided in multiple languages.

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<https://www.spk.usace.army.mil/Media/USACE-Project-Public-Notices/>, (last visited Jul. 12, 2023); U.S. Army Corps of Eng'rs Los Angeles District, *Projects & Studies*, Civil Works, <https://www.spl.usace.army.mil/Missions/Civil-Works/Projects-Studies/>, (last visited Jul. 12, 2023).

<sup>14</sup> See Amy Vanderwarker et al., *SB 1000 Implementation Toolkit: Planning for Healthy Communities*, Cal. Env't Just. All., 36-37 (Oct. 2017), <https://caleja.org/2017/09/sb-1000-toolkit-release/> [hereinafter *SB 1000 Toolkit*].

<sup>15</sup> *Id.* at 46-48.

<sup>16</sup> *Id.* at 40-41.

### 3. Effective Notices and Outreach.

Agencies should provide notice of project details and meetings by mail to residents and sensitive receptors<sup>17</sup> within a defined radius of the project and along transportation corridors to be used by vehicles visiting the project, and by posting a prominent sign on the project site. Notices should be provided in a variety of formats, including physical mail, electronic mail, website postings, and text messages. All notices should include a brief project description and directions for accessing complete information about the project and for providing input on the project. Notices should be printed in multiple languages. Agencies should also partner with local community-based organizations to solicit community feedback, leverage local networks, co-host meetings, and build support.<sup>18</sup>

### 4. Planning for Accelerated Project Timelines.

Some federal agencies are required to produce project-related studies and analyses on accelerated timelines. For example, the U.S. Army Corps of Engineers is required, to the extent practicable, to complete a project feasibility report in under three years, costing no more than \$3 million, and to perform concurrent evaluation of the project by all three levels of Army Corps hierarchy.<sup>19</sup> Agencies subject to such accelerated timelines should modify, expedite, and expand their community engagement efforts so that outreach occurs before accelerated deadlines make collaboration impractical.

## **B. Equitable Public Access to the Oceans, Coasts, and the Great Lakes.**

Under the Public Trust Doctrine, the States hold in trust, on the public's behalf, tidal and navigable waterways and the lands beneath them.<sup>20</sup> The right to access and enjoy waterways is vital to the public's well-being, as studies have shown that spending time in blue spaces like the

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<sup>17</sup> In this document, "sensitive receptors" refers to residences, schools, public recreation facilities, healthcare facilities, places of worship, daycare facilities, community centers, or incarceration facilities. *See also* Cal. Health & Safety Code § 42705.5(a)(5) (West 2018) ("Sensitive receptors" includes hospitals, schools and day care centers, and such other locations...").

<sup>18</sup> SB 1000 Toolkit, *supra* note 12, at 38.

<sup>19</sup> 33 U.S.C. § 2282c(a) (2020); *See also* U.S. Army Corps of Eng'rs, *SMART Planning Feasibility Studies: A Guide to Coordination and Engagement with the Services*, 3 (2015), [https://planning.erdc.dren.mil/toolbox/library/smart/SmartFeasibility\\_Guide\\_highres.pdf](https://planning.erdc.dren.mil/toolbox/library/smart/SmartFeasibility_Guide_highres.pdf).

<sup>20</sup> *See* Joseph L. Sax, *The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention*, 68 Mich. L. Rev. 471, 476, 489-91 (1970). Many state courts have recognized the public's right to access and enjoy waterways under the Public Trust Doctrine. *See, e.g., State v. Venice of Am. Land Co.*, 125 N.W. 770, 778 (Mich. 1910) (holding that the waters of the Great Lakes and their submerged lands are held "in trust for the use and benefit of the [state of Michigan's] people."); *Marks v. Whitney*, 491 P.2d 374, 379-80 (Cal. 1971) (recognizing the public's right to access tidelands in California); *Borough of Neptune City v. Borough of Avon-By-The-Sea*, 294 A.2d 47, 54-55 (N.J. 1972) (extending Public Trust Doctrine to recreational use of trust resources such as beaches in New Jersey); *Just v. Marinette Cty.*, 201 N.W.2d 761, 767-78 (Wis. 1972) (holding that the State of Wisconsin has a duty under the Public Trust Doctrine to abate pollution and to prevent further pollution in its navigable waters); *Boston Waterfront Development Corp. v. Commonwealth*, 393 N.E.2d 356, 359-61 (1979) (summarizing history of public trust doctrine).

coast lowers the risk of stress, anxiety, obesity, cardiovascular disease and premature death.<sup>21</sup> Sadly, however, because of legacies of racism and discrimination, “the coast is not equally available to all.”<sup>22</sup> Wealthier, white communities often have better coastal access compared to Ocean Justice Communities.<sup>23</sup> This disparity is compounded by beaches that shrink due to sea level rise,<sup>24</sup> private property owners’ attempts to bar public beach access,<sup>25</sup> and industrial, agricultural, and sewage run-off rendering beaches visited most by marginalized communities unsafe.<sup>26</sup>

Many States have been on the forefront of safeguarding the public’s right to equitably access the coast. In California, all people have a right under the state constitution to access navigable waters.<sup>27</sup> The California Coastal Act, which governs land use and conservation decisions in the California Coastal Zone, further emphasizes the importance of public coastal access.<sup>28</sup> Charged with carrying out these important mandates and policies, the California Coastal Commission is statutorily authorized to consider environmental justice and the equitable distribution of environmental benefits throughout the state when acting on coastal development permit applications or appeals under the California Coastal Act.<sup>29</sup> Under its Environmental Justice Policy, the Commission ensures public access by protecting, encouraging, and providing

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<sup>21</sup> Michail Georgiou, et al., *Mechanisms of Impact of Blue Spaces on Human Health: A Systematic Literature Review and Meta-Analysis*, 18 Int. J. Environ. Res. Health, 2486 (2021).

<sup>22</sup> Dan R. Reineman, et al., *Coastal Access Equity and the Implementation of the California Coastal Act*, 36 Stan. Envtl. L. J. 89, 104 (2016); See, e.g., Chris Burrell, *Historic racism still raises barriers to beach access*, GBH News (Sept. 2, 2022), <https://www.wgbh.org/news/local-news/2022/09/02/historic-racism-still-raises-barriers-to-beach-access> (reporting that in Massachusetts, “wealthy beach towns’ practices that ban nonresidents outright or make it hard to park anywhere close to their beaches are a form of racism rooted in a history of discriminatory housing markets.”); Kelsey Goldbach, *Racism is deeply ingrained in the history of CT’s beaches. An author explains why*, Conn. Pub. Radio (Jul. 6, 2023), <https://www.ctpublic.org/news/2023-07-06/racism-is-deeply-ingrained-in-the-history-of-cts-beaches-an-author-explains-why> (reporting that the “proliferation of private beach associations and restrictive housing practices [w]as the primary ways public spaces became effectively segregated in Connecticut.”)

<sup>23</sup> Reineman, *supra* note 20, at 99.

<sup>24</sup> See, e.g., Ute Eberle, *Beach loss through sea level rise will affect underserved communities the most*, Sea Grant California (Jan. 30, 2023), <https://caseagrants.ucsd.edu/news/beach-loss-through-sea-level-rise-will-affect-underserved-communities-most> (study found that by 2100, up to 67 percent of California’s beaches are projected to disappear, with this loss being felt hardest by BIPOC communities that rely the most on public amenities such as parking and picnic tables that will be destroyed with the rising tides).

<sup>25</sup> See, e.g., *Surfrider Found. v. Martins Beach 1, LLC*, 221 Cal.Rptr.3d 382, 388 (Cal. Ct. App. 2017) (upholding trial court order enjoining private coastal landowner from closing off public access to beach).

<sup>26</sup> See, e.g., Joshua E. Smith, *Tijuana sewage hit San Diego beaches at record pace in 2022. What will this summer bring?* L.A. Times, Feb. 25, 2023, <https://www.latimes.com/california/story/2023-02-25/tijuana-sewage-closed-san-diegos-beaches-record-pace> (reporting that transboundary sewage from Tijuana caused routine closures at Imperial Beach in San Diego, California, a beach predominantly visited by Latinx communities); NBC 10 Boston, *Contamination Concerns Persist at King’s Beach in Lynn*, NBC 10 Boston, Aug. 1, 2022, <https://www.nbc10.com/news/local/contamination-concerns-persist-at-kings-beach-in-lynn/2796059/> (reporting that King’s Beach, the only public beach in Lynn, Massachusetts, serving a population that is over 40 percent Latinx, routinely closed due to sewage and storm runoff).

<sup>27</sup> Cal. Const. art. X, § 4 (prohibiting exclusion of “the right of way to [navigable] water whenever it is required for any public purpose.”).

<sup>28</sup> Cal. Pub. Res. Code §§ 30210-14 (West 1976).

<sup>29</sup> Cal. Pub. Res. Code § 30604(h) (West 2017); see also Cal. Pub. Res. Code § 30013 (West 2017) (legislative findings to advance the principles of environmental justice and civil rights under the Coastal Act).

lower-cost recreational facilities and recreational opportunities such as parks, trails, surf spots, campgrounds, and associated free or low-cost parking areas.<sup>30</sup>

In order to strengthen and affirm the public's access rights, New Jersey has codified the Public Trust Doctrine: "The public has longstanding and inviolable rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines for navigation, commerce, and recreational uses, including, but not limited to, bathing, swimming, fishing, and other shore-related activities."<sup>31</sup> Massachusetts, too, has long enshrined aspects of the public trust doctrine in statute through the Massachusetts Public Waterfront Act (or Waterways Act), the nation's oldest law of its kind, which now serves as the primary means by which Massachusetts protects and promotes the public's right to access and use tidelands and waterways.<sup>32</sup>

However, despite notable State efforts, only 10 percent of the U.S. coast and the Great Lakes is covered by strong legal protections for public access, according to a recent study by the Center for American Progress.<sup>33</sup> As a nation, we have much work to do. Therefore, the States encourage the federal government to partner with them to secure equitable public access to the coasts, by implementing the following recommendations in its Ocean Justice Strategy:

1. Leverage federal funding to improve coastal access amenities for Ocean Justice Communities.

Despite often living near to oceans, coasts, and the Great Lakes, Ocean Justice Communities do not enjoy consistent or equitable access to the coasts and beaches. For example, studies document that approximately 62 percent of Californians encounter difficulties when trying to access the coast, with limited affordable accommodations, parking, and public transportation being the primary obstacles to easier access.<sup>34</sup> The presence of industrial and government maritime facilities on the coast can also limit Ocean Justice Communities' access to coastal resources and amenities.<sup>35</sup> While some facilities and uses must be developed on the

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<sup>30</sup> California Coastal Commission, *Environmental Justice Policy*, California Coastal Commission 7 (Mar. 8, 2019), [https://documents.coastal.ca.gov/assets/env-justice/CCC\\_EJ\\_Policy\\_FINAL.pdf](https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf).

<sup>31</sup> N.J. Stat. Ann. § 13:1D-150 (West 2019).

<sup>32</sup> 1866 Mass. Acts 107 (ch. 179, secs. 1-8) (codified as amended at Mass. Gen. Laws ch. 91, §§ 1-64). The Massachusetts Public Waterfront Act is "generally viewed as an encapsulation of the Commonwealth's public trust authority and obligations," *Arno v. Commonwealth*, 457 Mass. 434, 454 (2010), but Massachusetts' "authority and obligations under the [Act] are not precisely coextensive with its authority and obligations under the public trust doctrine," *Fafard v. Conservation Comm'n of Barnstable*, 432 Mass. 194, 200 n.11 (2000).

<sup>33</sup> Kat So et al., *How To Fix Americans' Diminishing Access to the Coasts*, Ctr. for Am. Progress (Oct. 4, 2022), <https://www.americanprogress.org/article/how-to-fix-americans-diminishing-access-to-the-coasts/>.

<sup>34</sup> Jon Christensen & Philip King, *Access for All: A New Generation's Challenges on the California Coast*, UCLA, (2017), <https://www.ioes.ucla.edu/project/coastal-access-california/>; See also Chris Clarke, *Study: Coastal Access is About More Than Locked Gates*, KCET (Jan. 26, 2017), <https://www.kcet.org/redefine/study-coastal-access-is-about-more-than-locked-gates>.

<sup>35</sup> G. Solis, KPBS, *National City Mayor Wants to Finish What He Started Last Decade*, KPBS, Dec. 30, 2022, <https://www.kpbs.org/news/local/2022/12/30/national-city-mayor-wants-to-finish-what-he-started-last-decade>; see also FOX5 San Diego, *National City Struggles with Port, Businesses to Use its Waterfront Property*, FOX5 San

coast,<sup>36</sup> the federal government can help ensure that such facilities are thoughtfully sited to minimize impacts on Ocean Justice Communities and that those Communities are compensated for any impacts, such as through the provision of water-based benefits.

In response to these concerns, the California Legislature adopted a bill in 2017 directing the State Coastal Conservancy to develop a program to facilitate development of lower-cost coastal accommodations within a half-mile of the coast.<sup>37</sup> The federal government's Ocean Justice Strategy should expand on efforts such as those in California to create more affordable options to access coastal amenities. The federal government should consider providing federal funds to supplement local efforts to develop more low-cost coastal recreational facilities and accommodations and to offset parking, transit, and use fees. Critically, the federal government should provide funding and resources to local Ocean Justice Communities whose access to the coast is impeded by federal facilities, such as military bases, and should work with local stakeholders to create access and right-of-way corridors, transit options, and affordable recreational amenities at sites along the coast that are presently obstructed by the presence of nearby federal facilities. For example, in 2022 the San Diego Unified Port District approved a development plan for the San Diego Bayfront adjacent to National City that would create new coastal amenities and recreational opportunities in an area formerly devoted to maritime and freight industrial uses.<sup>38</sup> The federal government should consider similar measures for Ocean Justice Communities adjacent to federal properties and projects. Notably, in 2008, the U.S. Navy agreed to a plan that would allow public access to Iroquois Point beach in Hawaii, which was formerly restricted to military personnel and private tenants.<sup>39</sup>

In sum, the federal government's Ocean Justice Strategy should commit to a program that (1) identifies sites where federal facilities or projects, or federally funded facilities or projects, are limiting coastal access for Ocean Justice Communities; (2) commits funding to measures promoting affordable access to coastal amenities and resources; and (3) develops plans and procedures to create access to the coasts and beaches on or adjacent to federal and military facilities that currently restrict public access.

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Diego, June 1, 2015, <https://fox5sandiego.com/news/national-city-struggles-with-port-businesses-to-use-its-waterfront-property/>.

<sup>36</sup> See, e.g., Stanley Reed & Ivan Penn, *A Giant Wind Farm is Taking Root Off Massachusetts*, N.Y. Times, June 28, 2023, <https://www.nytimes.com/2023/06/27/business/energy-environment/marthas-vineyard-wind-farm-massachusetts.html>.

<sup>37</sup> State Coastal Conservancy: Lower Cost Coastal Accommodations Program, ch. 838, sec. 3, § 31411-14, Assemb. B. 250 (2017); See also Dan Weikel, *Proposed Legislation Calls for More Affordable Overnight Accommodations Along California Coast*, L.A. Times, Feb. 1, 2017, <https://www.latimes.com/local/lanow/la-me-ln-coastal-accommodations-20170201-story.html>.

<sup>38</sup> Tammy Murga, *Port Approves Long-Awaited Plan to Improve Bayfront in National City*, San Diego Union-Tribune, Nov. 16, 2022, <https://www.sandiegouniontribune.com/communities/south-county/story/2022-11-16/port-approves-long-awaited-plan-to-improve-bayfront-in-national-city>.

<sup>39</sup> Gene Park, *Iroquois Point Beach to Open to Public*, Honolulu Star-Bulletin, Mar. 19, 2008; See also Asami Miyazawa, *Public Beach Access: A Right for All—Opening the Gate to Iroquois Point Beach*, 30 U. Haw. L. Rev. 495, 495-97.

2. Leverage federal funding to foster recreational opportunities and expand coastal storytelling programs for Ocean Justice Communities to promote a sense of belonging to the oceans, coasts, and the Great Lakes.

Beaches and coasts have the potential to enhance individual and community wellbeing by providing public spaces to play, exercise, relax, and gather in community.<sup>40</sup> However, legacies of racial discrimination and exclusion continue to impact outdoor recreation accessibility, with BIPOC and low-income communities experiencing “diminished outdoor recreation opportunities and access to nature.”<sup>41</sup> To date federal efforts to address outdoor recreation disparities include the re-establishment of the Federal Interagency Council on Outdoor Recreation (“FICOR”), tasked with creating more affordable and equitable outdoor opportunities.<sup>42</sup> In fulfillment of its mission, FICOR launched the “Every Kid Outdoors Pass,” which provides every U.S. fourth grader and their family free access to over 2,000 federal lands and waters.<sup>43</sup> In addition, federal funding initiatives such as the Outdoor Recreation Legacy Program,<sup>44</sup> America the Beautiful Challenge,<sup>45</sup> and investments through the Bipartisan Infrastructure Law<sup>46</sup> seek to improve outdoor equity through developing and conserving outdoor recreation spaces and facilities. While the federal response to outdoor recreation disparity has been a good start, there is more work to be done.

Acknowledging that infrastructure improvements alone cannot adequately bridge outdoor recreation inequity, the California Coastal Conservancy has established “Explore the Coast Grants” and the “Coastal Stories Grant Program,” both of which should serve as a model here. Explore the Coast Grants fund programs like Brown Girl Surf, which offers surfing lessons and ocean education to girls and women who identify as BIPOC.<sup>47</sup> Explore the Coast Grants also fund programs like the Amah Mutsun Trust’s Summer Camp, which reconnects native youth to the coastal territories of the Amah Mutsun Tribal Band and provides culturally relevant environmental education as well as recreational activities like tide-pooling.<sup>48</sup> Recognizing that coastal recreation equity includes fostering inclusive and welcoming outdoor spaces, the Coastal

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<sup>40</sup> Jinwon Kim et al., *Environmental Justice and Public Beach Access*, 18 City & Community 49, 50–53 (2019).

<sup>41</sup> Jenny Rowland-Shea et al., *The Nature Gap: Confronting Racial and Economic Disparities in the Destruction and Protection of Nature in America*, Ctr. For Am. Progress, 21 (2020).

<sup>42</sup> *Fact Sheet: Biden-Harris Administration Launches Effort to Create More Affordable and Equitable Outdoor Recreation Opportunities*, The White House (Jul. 21, 2022) [hereinafter *Fact Sheet*] <https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/21/fact-sheet-biden-harris-administration-launches-effort-to-create-more-affordable-and-equitable-outdoor-recreation-opportunities/>.

<sup>43</sup> *Every Kid Outdoors*, Nat’l Park Serv., <https://www.nps.gov/kids/every-kid-outdoors.htm> (last updated Jan. 14, 2020).

<sup>44</sup> *Outdoor Recreation Legacy Partnership Grants Program*, Nat’l Park Serv., <https://www.nps.gov/subjects/lwcf/outdoor-recreation-legacy-partnership-grants-program.htm> (last updated Mar. 17, 2023) (provides grant assistance to economically disadvantaged communities to develop and renovate public parks and outdoor recreation spaces).

<sup>45</sup> *America the Beautiful Challenge*, Nat’l Fish & Wildlife Found., <https://www.nfwf.org/programs/america-beautiful-challenge?activeTab=tab-3> (provides grant assistance for land-scape scale conservation and restoration projects).

<sup>46</sup> *Fact Sheet*, *supra* note 38.

<sup>47</sup> *Explore the Coast Grants*, Cal. Coastal Conservancy, <https://scc.ca.gov/grants/explore-the-coast-grants/> (last visited Jul. 14, 2023).

<sup>48</sup> *Id.*

Stories Grant Program also funds storytelling installations, including murals, signs, monuments, or guides that represent “communities and voices that have been historically excluded in the storytelling of California’s coast.”<sup>49</sup> To adequately address outdoor recreation disparity, the federal government should launch similar federal funding initiatives designed to provide coastal recreation experiences, educational opportunities, and storytelling installations for Ocean Justice Communities.

3. Require Ocean Justice initiatives as a term and condition of federal permits, licenses, and legal settlements related to the Oceans, Coasts, and the Great Lakes.

Federal agencies are required to address environmental injustices “[t]o the greatest extent practicable and permitted by law.”<sup>50</sup> The Ocean Justice Strategy should, thus, direct federal agencies to maximize opportunities to require Ocean Justice initiatives as a term and condition of federal permits, licenses, or other approvals, and legal settlements.

As a model, in California, the California Coastal Commission, under its Environmental Justice Policy,<sup>51</sup> often requires applicants for a coastal development permit—an authorization to develop within the California Coastal Zone<sup>52</sup>—to fund Ocean Justice projects as a term and condition of the permit. For instance, the Commission required a permit applicant seeking to develop a new beach-side swimming pool in Long Beach, as a permit condition, to include a bus route that brought children from the inner city to play and receive free or discounted lessons at the pool.<sup>53</sup> In an application to renovate an aging harbor, the Commission required that the developer create an environmental education program for underserved youth.<sup>54</sup> The Ocean Justice Strategy should direct federal agencies similarly to include Ocean Justice initiatives in their permitting and licensing processes.

Most federal environmental enforcement actions result in settlements.<sup>55</sup> As a term and condition of settlement, alleged violators often undertake a Supplemental Environmental Project—“a project to provide tangible environmental or public health benefits to the affected community or environment, that is closely related to the violation being resolved, but goes beyond what is required under federal, state or local laws.”<sup>56</sup> The Ocean Justice Strategy should require that federal agencies considering Supplemental Environmental Projects prioritize Ocean Justice projects, in consultation with affected communities, when violations relate to the oceans, coasts, and the Great Lakes.

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<sup>49</sup> *Coastal Stories Grant Program*, Cal. Coastal Conservancy, <https://scc.ca.gov/coastal-stories-grant-program/> (last visited Jul. 14, 2023).

<sup>50</sup> Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (Feb. 11, 1994).

<sup>51</sup> California Coastal Commission, *supra* note 28, at 7.

<sup>52</sup> Cal. Pub. Res. Code § 30600(a) (West 1976).

<sup>53</sup> Laylan Connelly, *Coastal Commission on a mission: Funding, focus aims at beach access for all*, Orange Cty. Register (Jul. 7, 2023), <https://www.ocregister.com/2023/07/07/coastal-commission-on-a-mission-funding-focus-aims-at-beach-access-for-all/>.

<sup>54</sup> *Id.*

<sup>55</sup> U.S. Env't Prot. Agency, *Supplemental Environmental Projects (SEPs)*, Enforcement (last updated Apr. 24, 2023) <https://www.epa.gov/enforcement/supplemental-environmental-projects-seps#facts>.

<sup>56</sup> *Id.*

4. Explore pathways to allow public access to coastal areas on or through federal property.

The federal government owns more than a quarter of all land in the United States.<sup>57</sup> Federal lands serve many purposes, from preservation and recreation to military bases and training grounds.<sup>58</sup> Many military installations are located next to the ocean, sometimes in areas with prime surfing beaches.<sup>59</sup> However, access through military installations is typically restricted. In situations where a coastal area is accessible only through such federal property, the general public loses access to what would normally be considered public trust lands, the tidelands.

The Ocean Justice Strategy should encourage federal agencies, including the military, to explore creative ways to maximize public access to coastal areas on or adjacent to federal property. The establishment of San Onofre State Beach, one of California’s most popular beaches,<sup>60</sup> serves as an example of a time when the federal government successfully partnered with a state to improve public access to public trust lands. San Onofre State Beach is home to “the break known as Lower Trestles—with its consistent, peeling waves and occasional perfect barrel—[] one of the world’s iconic surf spots.”<sup>61</sup> While the State of California manages and operates this public beach, it is actually located on federal property, Marine Corps Base Camp Pendleton.<sup>62</sup> Prior to the state beach’s establishment, the Marine Corps prohibited the general public from enjoying “Southern California’s best surf break,” often confiscating surfers’ boards when they were caught “trespassing.”<sup>63</sup> That all changed in 1971, when the federal government (at the direction of President Richard Nixon, working with California Governor Ronald Reagan) leased to the State of California the portion of Camp Pendleton now known as San Onofre State Beach, which is now open to the public.<sup>64</sup>

In a more recent example of federal-state collaboration, in 2020, the U.S. Fish and Wildlife Service, the Air Force, the California Coastal Commission, and the City of Lompoc worked together to improve public coastal access at Surf Beach, located on and managed by Vandenberg Air Force Base (now called Vandenberg Space Force Base), while also retaining protections for the habitat of a protected species.<sup>65</sup> The City of Lompoc, a predominantly Latinx

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<sup>57</sup> Cong. Rsch. Service, *Federal Land Ownership: Overview and Data* (Feb. 21, 2020), 2, <https://sgp.fas.org/crs/misc/R42346.pdf> (finding that the federal government owns 28 percent of all land in the U.S.).

<sup>58</sup> *Id.*

<sup>59</sup> Jon R. Anderson, *Best military surf spots: Exclusive beaches in 5 hubs*, Off Duty Military Times (Aug. 12, 2015), <https://www.militarytimes.com/off-duty/2015/08/12/best-military-surf-spots-exclusive-beaches-in-5-hubs/>.

<sup>60</sup> Cal. Dep’t of Parks and Recreation, *San Onofre State Beach, Park Info*, [https://www.parks.ca.gov/?page\\_id=647](https://www.parks.ca.gov/?page_id=647) (last visited Jul. 7, 2023).

<sup>61</sup> Alex Roth, *Surf in Chief: Why Richard Nixon Is Responsible for One of the World’s Greatest Waves*, Twenty Magazine (Nov. 18, 2016), <https://surftwenty.com/surfer-in-chief/>.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Cal. State Parks Found., *San Onofre Timeline*, Park Protection, <https://www.calparks.org/what-were-doing/park-protection/savesanonofre/timeline> (last visited Jul. 7, 2023).

<sup>65</sup> NOAA, Off. for Coastal Mgmt., *California Balances Habitat Conservation with Public Beach Access* (2020), <https://coast.noaa.gov/states/stories/balance-habitat-conservation-with-public-beach-access.html>.



community,<sup>66</sup> is located 10 miles from Surf Beach, which is the nearest public beach for Lompoc residents (the next closest beach is 20 miles away).<sup>67</sup> Surf Beach is inhabited by small shorebirds, the western snowy plovers, which are threatened under the Endangered Species Act.<sup>68</sup> For most summers between 2012 and 2018, the entire beach was closed to visitors as part of a policy to protect the western snowy plovers.<sup>69</sup> At the urging of Lompoc community members, and given the recent growth in the population of these small shorebirds, the U.S. Fish and Wildlife Service, the Air Force, and the California Coastal Commission worked together to launch a pilot program that allows visitors to enjoy the beach all summer long, while continuing to monitor plover populations to ensure their continued protection.<sup>70</sup>

5. Collaborate with States, localities, and Tribes and utilize federal funding to map the locations of coastal access points and amenities nationwide.

A basic but critical component of equitable access is ensuring that the general public knows where and how to access the coast. Sometimes beaches and other access points are hidden due to misleading or nonexistent signs or poorly marked or maintained routes to the beach.<sup>71</sup> States and localities have started mapping coastal access points to help make this information more accessible. For example, the California Coastal Commission has created a public dataset and map that shows the locations of over 1,500 beach access points along with descriptions, photos, and lists of amenities.<sup>72</sup> Hawaii,<sup>73</sup> Massachusetts,<sup>74</sup> Florida,<sup>75</sup> New Hampshire,<sup>76</sup> and other states and local governments have created similar maps.

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<sup>66</sup> U.S. Census Bureau, *QuickFacts, Lompoc, California*, <https://www.census.gov/quickfacts/lompoccitycalifornia> (last visited Jul. 7, 2023) (61.4 percent Hispanic or Latino).

<sup>67</sup> Zac Ezzone, *Coastal Commission supports new Surf Beach plan*, Sun News (Dec. 18, 2019), <https://www.santamariasun.com/news/coastal-commission-supports-new-surf-beach-plan-14800587>.

<sup>68</sup> NOAA, Off. for Coastal Mgmt., *supra* note 64.

<sup>69</sup> Chase Brewster, et al., *Surf's Up! Celebrating public recreation and shorebird conservation at Surf Beach in Santa Barbara County*, U.S. Fish and Wildlife Service (Jul. 31, 2020), <https://www.fws.gov/story/2020-07/surfs-celebrating-public-recreation-and-shorebird-conservation-surf-beach-santa>.

<sup>70</sup> *Id.*

<sup>71</sup> Robert García & Erica Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast*, 2 Stanford J. C.R. and C.L. 143, 159–60, 183–85 (2005) (discussing misleading signs and confusing access routes at beaches in Malibu).

<sup>72</sup> Cal. Coastal Comm'n, *YourCoast*, <https://www.coastal.ca.gov/YourCoast/#/map> (last visited Jul. 5, 2023).

<sup>73</sup> Haw. Statewide GIS Program, *Shoreline Public Access*, <https://geoportal.hawaii.gov/datasets/shoreline-public-access-1/explore> (last visited Jul. 5, 2023) (displaying dataset of over 200 shoreline access points on the island of Oahu and availability of amenities such as restrooms, lifeguards, and trash receptacles); Maui County Shoreline Access, *Map Viewer*, <https://www.mauishorelineaccess.net/> (last visited Jul. 14, 2023) (displaying shoreline access points on islands of Maui, Molokai, and Lanai).

<sup>74</sup> Mass. Off. of Coastal Zone Mgmt., *Massachusetts Coast Guide Online*, <https://arcg.is/1CKium> (last visited Jul. 5, 2023) (interactive map displaying more than 1,900 sites including beaches, boat ramps, and trails along the coast that are open to the public and links to more information).

<sup>75</sup> Fla. Dep't of Env't Prot., *Florida Public Beach Access Sites*, <https://geodata.dep.state.fl.us/datasets/FDEP::florida-public-beach-access-sites> (last visited Jul. 5, 2023) (displaying over 2,000 beach access points and some information about parking, amenities, and accessibility features).

<sup>76</sup> N.H. Dep't of Env't Services, *Public Beaches and Coastal Access Sites*, New Hampshire Coastal Atlas, [https://www4.des.state.nh.us/CoastalAtlas/All\\_Sites.html](https://www4.des.state.nh.us/CoastalAtlas/All_Sites.html) (last visited Jul. 5, 2023) (listing land and boat access sites with details such as hours, phone number, and amenities).

The federal government should utilize these existing state and local maps, as well as federal mapping tools such as EJScreen,<sup>77</sup> to develop and fund a comprehensive map or map compilation of coastal access points across the country. The most useful map would include details on how to access each site, fees, amenities, parking, and accessibility features. Not only would a centrally located, easy-to-find map help the public enjoy the shoreline, it would also provide the government with crucial information about disparities in coastal access. For example, if coastal access were utilized as an overlay in the EJScreen tool, then the government would be able to identify where Ocean Justice Communities are located and analyze the proximity of access points to Ocean Justice Communities. Since these communities may live farther from the beach, amenities such as parking, restrooms, picnic tables, and drinking water are important, and a map would also help visualize the specific disparities in access to beaches with these amenities.<sup>78</sup> In order to implement this recommendation, we suggest that the government explore various funding avenues, like the National Oceanic and Atmospheric Administration’s (“NOAA”) Sea Grant program, as well as state and local partnerships.<sup>79</sup> Additionally, the federal government should direct federal funding to advance the development of state and local mapping initiatives.

### C. Equitable Protection from Port and Maritime Activities.

EPA has acknowledged that while port and maritime industries are critical to supporting local and national economies, their operations can cause cumulative environmental and health impacts on Ocean Justice Communities, including air and water pollution and land use conflicts.<sup>80</sup> Ocean Justice Communities suffer air pollution impacts from vehicles such as trucks, marine vessels, trains, and cargo handling equipment, as well as from stationary sources such as refineries, oil and gas terminals, and power generation facilities.<sup>81</sup> Air pollution from diesel emissions can cause respiratory and cardiac disease, exacerbate cancer risks, and contribute to premature mortality, especially among vulnerable populations such as children and the elderly.<sup>82</sup> Water pollution from port and maritime industries impairs local waterways, limits water recreation opportunities, and compromises subsistence fishing, while port-related lights and noise can produce hearing impairment, blood pressure problems, and sleep deprivation.<sup>83</sup>

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<sup>77</sup> U.S. Env't Prot. Agency, *EJScreen*, EPA's Environmental Justice Screening and Mapping Tool, <https://ejscreen.epa.gov/mapper/> (last visited Jul. 5, 2023).

<sup>78</sup> Ute Eberle, *Beach loss through sea level rise will affect underserved communities the most*, Sea Grant California, <https://caseagrants.ucsd.edu/news/beach-loss-through-sea-level-rise-will-affect-underserved-communities-most> (last visited Jul. 5, 2023). Further, this mapping would allow the government to monitor how sea level rise may change these sites and amenities in the future. *Id.* (“For example, with one meter of sea level rise, San Diego County is expected to lose more than one-quarter of the picnic areas, as well as half of its lifeguard towers and nearly 15% of restrooms at coastal access sites. If the sea level rises by two meters, it will destroy nearly half of the beach parking in the county.”).

<sup>79</sup> The Sea Grant program facilitated the development of the “Shoreline-RI” website, for example, an interactive online directory of beaches, shorelines, water access points in Rhode Island. Shoreline-RI, <https://www.shoreline-ri.com/#> (last visited Jul. 21, 2023).

<sup>80</sup> U.S. Env't Prot. Agency, *Environmental Justice Primer for Ports*, (Mar. 2020), 1, <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100YMNT.pdf> (last viewed Jul. 6, 2023).

<sup>81</sup> *Id.* at p. 6.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

The indirect effects of port and maritime projects also contribute to poor quality of life in Ocean Justice Communities. Port and maritime projects pose public safety concerns arising from truck routes and rail crossings, and industrial structures can create barriers between Ocean Justice Communities and coastal resources.<sup>84</sup> These impacts are compounded by the fact that Ocean Justice Communities fail to receive equitable benefits from port and maritime projects.<sup>85</sup> Moreover, port and maritime projects can induce secondary impacts that are not always considered when evaluating projects and facilities. For example, port projects expanding container throughput capacity can promote visitation by larger ships, which in turn could bring in more cargo, which in turn could generate more truck and rail traffic. These activities could produce compounded pollution and quality of life issues for nearby Ocean Justice Communities.<sup>86</sup>

There are several ways in which a federal Ocean Justice Strategy can alleviate the impacts of federal port and maritime projects on nearby Ocean Justice Communities. For one, government entities can take a holistic view of coastal management planning to ensure an appropriate balance of industrial and other uses, prepare for climate change impacts, and minimize impacts on neighboring communities.<sup>87</sup>

The California Attorney General has developed a guidance document identifying several best practices for siting and constructing warehouse projects.<sup>88</sup> Many of these strategies could be modified to apply to federal port and maritime projects near Ocean Justice Communities, including the following:

1. Project/Facility Siting and Design Standards.

Federal project facilities should site their property lines a significant distance from the nearest sensitive receptors, and should require setbacks from the property line of the nearest sensitive receptor to federal facility doors, loading areas, and truck drive aisles. Similarly, facilities should locate doors, loading areas, and truck drive aisles on the opposite side of the

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at p. 7.

<sup>86</sup> For example, the U.S. Army Corps of Engineers' turning basins expansions project at the Port of Oakland will significantly increase capacity for larger container ships, but the Corps' initial NEPA analysis did not consider whether the project would impose cumulative and indirect effects on the environment and the local community. The Corps later issued revised NEPA documents. See U.S. Army Corps of Engineers, Oakland Harbor Turning Basins Widening, CA, Apr. 26, 2023, [https://www.spn.usace.army.mil/Portals/68/docs/P%20and%20Programs/Oakland%20Harbor%20Turning%20Basin/2023%20Re-Release%20Documents/1\\_Oakland%20Draft%20draft\\_for%20rerelease.pdf?ver=7DpgRLIPRTXncgzht5EeA%3d%3d](https://www.spn.usace.army.mil/Portals/68/docs/P%20and%20Programs/Oakland%20Harbor%20Turning%20Basin/2023%20Re-Release%20Documents/1_Oakland%20Draft%20draft_for%20rerelease.pdf?ver=7DpgRLIPRTXncgzht5EeA%3d%3d) (last visited Jul. 7, 2023).

<sup>87</sup> See, e.g., Mass. Exec. Off. of Energy & Env't Aff., Decision on the City of Salem's Request for Approval of the Salem Municipal Harbor Plan Renewal & Designated Port Area Master Plan Pursuant to 301 CMR 23.00 (May 17, 2023) (approving coastal management plan to promote renewable offshore energy development while advancing community benefits, public access, and waterfront climate resiliency measures).

<sup>88</sup> Cal. Dept of Just., Off. of the Att'y Gen., *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act* (Sept. 2022), <https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf>.

building from the nearest sensitive receptors—e.g., placing dock doors on the north side of the facility if sensitive receptors are near the south side of the facility.

Agencies should provide enough on-site parking to prevent trucks and other vehicles from parking or idling on public streets, and should prevent truck queuing spillover onto surrounding streets by positioning entry gates and loading docks well within the property lines of the federal facility. Agencies should also screen the federal facility site perimeter and onsite areas with significant truck traffic (e.g., dock doors and drive aisles) by creating physical, structural, and/or vegetative buffers that prevent or substantially reduce pollutant and noise dispersion from the facility. To that end, agencies should require federal facilities to maintain onsite trees and vegetation, including replacing any dead or unhealthy trees and vegetation.

## 2. Protective Mitigation Measures.

Agencies should require a suite of mitigation measures on federal facilities and projects to prevent Ocean Justice Communities from suffering environmental or health impacts from federal projects. Examples of specific mitigation measures are as follows:

### *a. Construction and Operations Air Quality and Greenhouse Gas Mitigation Measures.*

Agencies should take steps to reduce harmful emissions from construction and operational activities, including the following measures:

- Require phase-in of marine vessel shore-power requirements and other alternative control technologies, and provide federal funding for shore-power and alternative control technology infrastructure development. Marine vessels use diesel engines while at berth to power auxiliary systems, but these engines produce significant amounts of particulate matter, nitrogen oxides, carbon dioxide, and toxic air pollutants that harm nearby communities.<sup>89</sup> By contrast, powering these vessels' systems using grid electricity from shore-power systems instead typically produces *zero* onsite emissions.<sup>90</sup> California adopted landmark at-berth emissions control regulations in 2007, and expansions to these regulations began being implemented in January 2023.<sup>91</sup> California's regulations require certain vessel entering regulated California ports to use shore power or a CARB-approved capture-and-control technology to reduce emissions, which the state estimates will reduce marine vessel air pollution by 90 percent and reduce cancer risk for nearby communities by 55 percent.<sup>92</sup> The federal government should support and scale these efforts by adopting similar at-berth requirements for vessels calling at federal facilities

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<sup>89</sup> U.S. Env't Prot. Agency, *Shore Power Technology Assessment at U.S. Ports* (last updated May 25, 2023), <https://www.epa.gov/ports-initiative/shore-power-technology-assessment-us-ports>.

<sup>90</sup> *Ibid.*

<sup>91</sup> Cal. Air Resources Bd., *California approves updated "At-Berth" regulation, expanding efforts to cut pollution from ships in California ports* (Aug. 27, 2020), <https://ww2.arb.ca.gov/news/california-approves-updated-berth-regulation-expanding-efforts-cut-pollution-ships-california>.

<sup>92</sup> *Id.*

and projects, and should provide federal funding to assist local agencies with constructing at-berth emissions control infrastructure.

- Require off-road construction equipment to be hybrid electric-diesel or zero-emission, where available, and encourage all diesel-fueled off-road construction equipment to be equipped with Tier IV-compliant engines or better. This requirement should be included in applicable bid documents, purchase orders, and contracts.
- Encourage use of electric-powered construction hand tools, forklifts, and pressure washers, and provide electrical hook-ups to the power grid rather than use of diesel-fueled generators to supply their power.
- Mandate use of paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Incentivize all heavy-duty vehicles engaged in drayage to or from the federal project or facility to be zero-emission, and incentivize tenants to use zero-emission light- and medium-duty vehicles as part of operations.
- Facilitate efforts to have all on-site motorized operational equipment, such as forklifts and yard trucks, be zero-emission, with the necessary charging or fueling stations provided.
- Install solar photovoltaic systems on the federal project site of a specified electrical generation capacity that is equal to or greater than the building's projected energy needs, including all electrical chargers, and design project building roofs to accommodate the maximum future coverage of solar panels and install the maximum solar power generation capacity feasible.
- Install electric plugs for electric transport refrigeration units at every dock door and require truck operators with transport refrigeration units to use the electric plugs when at loading docks. Construct and maintain electric light-duty vehicle charging stations proportional to the number of employee parking spaces at the facility (for example, requiring at least 10% of all employee parking spaces to be equipped with electric vehicle charging stations.).
- Prohibit off-road diesel-powered equipment from being in the "on" position for more than 10 hours per day, and forbid idling of heavy equipment for more than three minutes. Forbid project trucks from idling for more than three minutes and require operators to turn off engines when not in use; require operators to establish and promote rideshare programs that discourage single-occupancy vehicle trips and provide financial incentives for alternate modes of transportation, including carpooling, public transit, and biking; and provide meal options onsite or shuttles between the facility and nearby meal destinations to avoid a need for truck drivers to make additional local truck trips to obtain meals.
- Install and maintain air filtration systems at sensitive receptors within a certain radius of the federal facility or project, install and maintain air monitoring stations proximate to sensitive receptors and the federal facility, and make the resulting data publicly available in real time. Agencies should endeavor to meet green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking.
- Install and maintain vegetation and tree canopy for residents in and around the federal project area.

*b. Noise Impacts Mitigation Measures.*

Agencies should incorporate measures into federal facilities and projects to reduce or eliminate noise impacts to surrounding communities:

- Prepare noise impact analyses for federal facilities and projects that consider all reasonably foreseeable federal project noise impacts, including to nearby sensitive receptors. Reasonably foreseeable project noise impacts encompass noise from both construction and operations activities, including stationary, on-site, and off-site noise sources.
- Construct physical, structural, or vegetative noise barriers on and/or off the federal project site; require location and parking of stationary construction equipment as far from sensitive receptors as possible, direct emitted noise away from sensitive receptors; and require all combustion-powered construction equipment to be surrounded by a noise protection barrier.
- Limit operation hours to daytime hours on weekdays, where feasible. Orient public address systems onsite away from sensitive receptors and set system volume at a level not readily audible past the property line.

*c. Traffic Impacts Mitigation Measures.*

Agencies should incorporate measures into federal projects to reduce traffic impacts to nearby Ocean Justice Communities:

- Prepare truck routing plans describing the federal facility's hours of operation and the facility's plans to route trucks to and from the facility to designated truck routes that avoid passing sensitive receptors. The plan should include measures for preventing truck queuing, circling, stopping, and parking on public streets, such as signage, pavement markings, and queuing analysis and enforcement.
- Fund and/or construct new or improved transit stops, sidewalks, bicycle lanes, and crosswalks in proximity to the federal facility or project, with special attention to ensuring safe routes to schools, and consult with local public transit agencies to secure increased public transit service to the project area.
- Collaborate with local agencies and stakeholders to fund, construct, and contribute to efforts to create more low-cost coastal recreational facilities and accommodations and to offset parking, transit, and use fees. Provide funding and resources to local Ocean Justice Communities whose access to the coast is impeded by federal facilities such as military bases, and work with local stakeholders to create access and right-of-way corridors, transit options, and affordable recreational amenities at sites along the coast that are presently obstructed by the presence of nearby federal facilities.

### 3. Comprehensive Environmental Impacts and Health Risk Analyses.

Federal projects and facilities must fully analyze all reasonably foreseeable project and facility impacts, including cumulative and indirect impacts.<sup>93</sup> When analyzing cumulative and indirect impacts, the analysis must thoroughly consider the facility or project's incremental impact in combination with past, present, and reasonably foreseeable future projects or facilities.<sup>94</sup>

To meaningfully analyze cumulative and indirect impacts, agencies should prepare quantitative air quality and greenhouse gas emissions studies for every federal facility or project that will be located and operated nearby an Ocean Justice Community. Agencies should also prepare quantitative health risk assessments that analyze the facility's or project's potential adverse health impacts on nearby residents, sensitive receptors, and onsite workers for every federal facility or project that will be located and operated nearby an Ocean Justice Community.

Agencies should also disclose the anticipated air pollution from the entire expected length of facility- or project-related truck trips. Project analyses should calculate facility or project truck trip length based on likely truck trip destinations, rather than just the distance from the facility to the edge of the air basin, local jurisdiction, or other artificially truncated endpoint. All air pollution associated with every federal facility or project should be considered, regardless of where those impacts occur.

### 4. Incorporation of Environmental Justice Policies into Port Master Plans and Federal Projects and Activities at Ports.

In California, the California Coastal Act requires each port in the state to draft and adopt port master plans that map proposed land and water use areas, identify navigation and commercial traffic management measures, analyze the effects of development on marine habitat and water quality, and include provisions for public participation, among other requirements.<sup>95</sup> A variety of local, state, and federal environmental justice policies could be incorporated into port master plans, especially local pollution control and environmental equity plans. Examples of such plans that could be incorporated into port master plans include the community emission reduction plans developed by frontline communities pursuant to California Assembly Bill 617 (2017-2018) to improve their local environmental conditions.<sup>96</sup> However, many port master plans fail to incorporate these plans and strategies, and so the emissions reductions strategies in these plans are not implemented consistently. Moreover, many Ocean Justice Communities still struggle to receive services or reimbursement for environmental and health impacts caused by

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<sup>93</sup> 42 U.S.C. § 4332(c); C.F.R. § 651.16; 40 C.F.R. § 1502.16(b); 40 C.F.R. §§ 1508.1(g)(2), (g)(3).

<sup>94</sup> 32 C.F.R. § 651.16, *supra*.

<sup>95</sup> Cal. Pub. Res Code § 30711.

<sup>96</sup> Cal. Health & Safety Code § 44391.2; *see also* Cal. Air Resources Bd., *Community Air Protection Program Communities*, <https://ww2.arb.ca.gov/capp-communities> (last visited Jul. 10, 2023).

nearby port and maritime projects occurring on lands that are dedicated to the public trust and are intended to benefit society overall.<sup>97</sup>

The federal government’s Ocean Justice Strategy should require, as a condition of receipt of federal funds, that ports adopt environmental justice policies in their master plans. This measure would ensure that port master plans contain a uniform set of core environmental justice standards and would reduce the current variability in the scope and effect of environmental justice policies in port master plans. The federal government should also require that federal facilities and projects occurring on public trust lands nearby Ocean Justice Communities provide funding and other resources to help alleviate the individual and cumulative impacts of their activities. This funding should be directly tied to services that alleviate the impacts of port and maritime activities, such as medical services, recreational facilities, and enhanced safety personnel. The funding should also supplement local efforts to develop low-cost coastal recreational facilities and accommodations, to offset parking, transit, and use fees, and to create access and right-of-way corridors, transit options, and affordable amenities at sites along the coast that are presently obstructed by the presence of nearby federal facilities.

#### **D. Equitable Protection from Pollution.**

In addition to the harms associated with port and maritime activities, Ocean Justice Communities suffer disproportionate harm from other sources of pollution that affect their health and livelihoods. We highlight a few such impacts here that merit attention. However, we recommend that the Committee comprehensively identify all of the disparate harms Ocean Justice Communities face from various sources of pollution.

1. Implement pollution prevention and management strategies that protect fisheries and the communities that rely on fisheries for sustenance or for their livelihoods.

Pollution that enters aquatic environments, including microplastics, heavy metals, per- and polyfluoroalkyl substances (“PFAS” or “forever chemicals”), polychlorinated biphenyls (“PCBs”), and mercury, often bioaccumulate in fish and other marine organisms.<sup>98</sup> When

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<sup>97</sup> Historically, the public trust doctrine has referred to “the basic right of the public to use its waterways to engage in ‘commerce, navigation, and fisheries,’” but “the doctrine has been broadened by various landmark court decisions to include the right to swim, boat, and engage in other forms of water recreation, and even to preserve lands in their natural state in order to protect scenic and wildlife habitat values.” Cal. State Lands Comm’n, *Public Engagement, What is the Public Trust?*, <https://www.slc.ca.gov/public-engagement/> (last visited Jul. 7, 2023). Public trust lands include the tidal and submerged lands and the beds of lakes, streams and other navigable waterways and “are to be held in trust by the State for the benefit of the people of California.” *Id.*

<sup>98</sup> See, e.g., Inês F. Sequeira et al., *Worldwide contamination of fish with microplastics: A brief global overview*, 160 *Marine Pollution Bulletin* 1, 1 (2020) (finding, based on a literature review, that a median of 60% of fish contain microplastics); Joanna Burger & Michael Gochfield, *Heavy metals in commercial fish in New Jersey*, 99 *Env’t Rsch.* 403, 403 (2005) (finding heavy metals in commercial fish in New Jersey including arsenic, lead, mercury, and selenium); Norstrom, Karin, et al., *External exposure and bioaccumulation of PCBs in humans living in a contaminated urban environment*, *Env’t Int’l* (Apr. 24, 2009) (finding diet to be dominant source of exposure for PCBs that accumulate most in humans); U.S. Food & Drug Administration, *Mercury Levels in Commercial Fish and Shellfish (1990-2012)*, <https://www.fda.gov/food/environmental-contaminants-food/mercury-levels-commercial-fish-and-shellfish-1990-2012>.



humans consume otherwise nutrient-rich fish and other seafood, potential contamination poses a large risk to our health, including increasing the risk of disease and organ damage.<sup>99</sup> Ocean Justice Communities bear a disproportionate amount of this risk. Contaminated fish have been found to be more prevalent near low-income communities and communities of color, and individuals in these communities more often consume self- or locally caught fish.<sup>100</sup> Further, studies have shown that Ocean Justice Communities are less likely to be aware of fish contamination advisories due to linguistic, literacy, and other barriers, as well as a lack of targeted communication approaches.<sup>101</sup>

However, even when people who rely on fish for sustenance or for their livelihood do know that fish are contaminated, they often will continue to eat the fish for a variety of reasons. First, fishing practices and the act of consuming fish can be intrinsic components of cultural identity, tradition, and way of life—with economic, social, and spiritual dimensions—for some Indigenous and other coastal communities.<sup>102</sup> If these communities were to stop fishing due to contamination risk, it could mean the erosion of their culture.<sup>103</sup> Second, fish and seafood are a critical and affordable source of nutrition for some people on the coast, and foregoing fish due to contamination may mean forgoing a meal altogether.<sup>104</sup> Finally, fishing can be a necessary source of income.<sup>105</sup>

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<sup>99</sup> See, e.g., Isangedighi A. Isangedighi & Gift S. David, *Heavy Metals Contamination in Fish: Effects on Human Health*, 2 J. Aquatic Sci. and Marine Biology 7, 9 (2019) (outlining the harm from heavy metals, like lead and mercury, in fish including damage to the nervous system, organ damage, lower energy, and long-term diseases such as Alzheimer's).

<sup>100</sup> Mass. Dep't of Pub. Health, *Massachusetts State Health Assessment* 80 (2017), <https://www.mass.gov/doc/2017-massachusetts-state-health-assessment/download> (“MDPH has identified public health fish advisories by Environmental Justice (EJ) areas where Black, Asian and Hispanic populations and/or non-English speaking and/or low-income populations are more prevalent. Greater health risks from consuming contaminated fish occur more often in EJ areas because residents often depend on locally-caught fish as a regular part of their diet.”); Susan L. Schantz et al., *Contaminant profiles in Southeast Asian immigrants consuming fish from polluted waters in northeastern Wisconsin*, 110 Env't Rsch. 33, 39 (finding elevated levels of PCB contamination in immigrant communities in northeastern Wisconsin due to consumption of locally-caught fish); Caron Chess, Joanna Burger, & Melanie Hughes McDermott, *Speaking Like a State: Environmental Justice and Fish Consumption Advisories*, 18 Soc'y & Nat. Res. 267, 268–69 (2005) (summarizing studies that indicate that fisherman of color more often eat their own catch).

<sup>101</sup> Joanna Burger et al., *Fishing in Urban New Jersey: Ethnicity Affects Information Sources, Perception, and Compliance*, 19 Risk Analysis 217, 224 (1999) (finding that Hispanic and Black communities were less likely be aware of fishing and crabbing advisories than white communities); Chess, Burger, & McDermott, *supra* note 100, at 269–70.

<sup>102</sup> Catherine O'Neill, *Variable Justice: Environmental Standards, Contaminated Fish, and "Acceptable" Risk to Native Peoples*, 19 Stan. Env't. L. J. 3, 3 (2000) (describing the importance of salmon for tribal communities in the Pacific Northwest and stating that fish are “crucial for subsistence, in the sense of a culture or way of life with economic, spiritual, social, and physical dimensions—a way to *be* Yakama, or to *be* Tulalip.”).

<sup>103</sup> Max Liboiron, *Pollution is Colonialism* 107 (2021) (“The stakes of not eating [contaminated food] are cultural genocide, where the languages, practices, knowledge, and thus relations with the Land are killed to the point that they are no longer reproduced by successive generations.”).

<sup>104</sup> O'Neill, *supra* note 98, at 10–12.

<sup>105</sup> Catherine O'Neill, *Risk Avoidance, Cultural Discrimination, and Environmental Justice for Indigenous Peoples*, 30 Ecology L. Q. 1, 36 (2003).

We recommend that the Committee include pollution prevention and management strategies that protect the communities that rely on fisheries in its Ocean Justice Strategy. One of the key strategies used by federal, state, and local officials now is the issuance of fish contamination advisories. Federal advisories, such as those issued by EPA, should be targeted to the languages, literacy level, and communication methods used by people fishing and consuming the fish, as EPA has already noted in its guidance to state and local health officials.<sup>106</sup>

However, ultimately pollution prevention is necessary to address the cultural and nutritional importance of fish consumption in the long-term.<sup>107</sup> The federal government should focus its efforts on researching key types, sources, and locations of pollution contaminating fish and standards and strategies to eliminate it. The National Environmental Justice Advisory Council created a report and recommendations on fish consumption and environmental justice in 2002.<sup>108</sup> The federal government should review, update, and evaluate its performance using this report. Since Native Americans are particularly impacted and contamination conflicts with tribes' treaty fishing rights,<sup>109</sup> the federal government should fund research and pollution mitigation efforts in these communities, as well as provide funding and technical assistance for tribal monitoring and consultation. Finally, any contamination or water pollution standards should take into account communities' consumption patterns that may differ from the amount, types, and uses of fish consumed by the "average" American.<sup>110</sup>

2. Direct federal funding to clean up toxic and hazardous waste sites along the coasts that impact or may potentially impact Ocean Justice Communities.

Contaminated areas and facilities containing hazardous substances along the coast face increased risks in the coming years as sea levels and the corresponding risks of flooding continue to increase. In California, for instance, at least 400 hazardous sites, such as power plants, refineries, hazardous waste facilities, and Superfund sites, are projected to experience flooding events by 2100 if little is done to slow climate change.<sup>111</sup> These flooding events could expose residents in nearby communities, whose residents are disproportionately poor or People of Color, to pathogens and harmful substances.<sup>112</sup> EPA recently launched a data visualization tool to assist

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<sup>106</sup> U.S. EPA, *Identify Target Audiences and Channels*, <https://www.epa.gov/fish-tech/2-identify-target-audiences-and-channels> (last visited Jul. 7, 2023) (suggesting development of "strategies that are attuned to the needs and wants of different intended target audience segments, i.e. the groups to whom fish consumption advisory experts want to communicate the message").

<sup>107</sup> See Elizabeth Hoover, *Cultural and health implications of fish advisories in a Native American community*, 2 *Ecological Processes* 1, 10 (2013) (finding that fish advisories changed behaviors of Mohawk community of Akwesasne resulting in lost "cultural and social connections developed around fishing" and fish being "replaced with high-fat high-carb processed foods").

<sup>108</sup> National Environmental Justice Advisory Council, *Fish Consumption and Environmental Justice* (2002), [https://www.epa.gov/sites/default/files/2015-02/documents/fish-consump-report\\_1102.pdf](https://www.epa.gov/sites/default/files/2015-02/documents/fish-consump-report_1102.pdf).

<sup>109</sup> Valoree S. Gagnon et al., Michigan Technological University, *Eliminating the Need for Fish Consumption Advisories in the Great Lakes Region 7* (2018), <https://www.mtu.edu/social-sciences/docs/res-fishconsumption-policybrief-030718.pdf>.

<sup>110</sup> O'Neill, *supra* note 98, at 12–13.

<sup>111</sup> Univ. of Cal., Berkeley, *Toxic Tides: Sea Level Rise, Hazardous Sites, and Environmental Justice in California*, <https://sites.google.com/berkeley.edu/toxictides/home> (last visited Jul. 12, 2023).

<sup>112</sup> *Id.*

states and coastal communities in assessing their risk of flooding due to sea level rise and prepare to take the necessary steps to prevent this harm.<sup>113</sup> EPA recommends adopting measures such as constructing physical barriers, placing of engineering controls such as pumps and other electrical equipment in strategic locations, and designing climate-adaptive infrastructure that can contain, monitor, and treat contaminated floodwater.<sup>114</sup>

Some states, like California, have already begun to address these toxic flood risks by implementing state-funded climate resilience and adaptation programs, reassessing coastal planning efforts, and redefining “vulnerable communities” to include those likely to be affected by climate change.<sup>115</sup> However, certain communities remain better positioned to take these risk mitigation measures than others, so implementation of federally-funded projects such as those recommended by EPA will likely be necessary to ensure that climate adaptive measures are equitably prioritized in all coastal communities.

### 3. Address trans-border pollution affecting Ocean Justice Communities.

Several Ocean Justice Communities are uniquely impacted by trans-border pollution, especially the border communities at the U.S.-Mexico border in San Diego County, California. Sewage spilling over the U.S.-Mexico border into south San Diego County has plagued local Ocean Justice Communities for decades and frequently results in contaminated water and closed beaches.<sup>116</sup> The international nature of these impacts delays and limits resolution of these issues. Problems with the border sewage system has resulted in numerous water quality violations, which continue to perpetuate local water and beach contamination problems.<sup>117</sup> Indeed, recent reports disclose that up to half of the \$300 million recently appropriated by the EPA to double the capacity of the wastewater treatment plant at the border will instead pay for deferred maintenance on the current, compromised system.<sup>118</sup>

To relieve Ocean Justice Communities on both sides of the U.S.-Mexico border plagued with this decades-long sewage crisis, the federal government should immediately prioritize funding and projects to finally resolve and cease the transboundary sewage flows.<sup>119</sup> The federal

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<sup>113</sup> U.S. EPA, *Effects of Coastal Sea Level Rise on US Hazardous Waste* (May 18, 2023), <https://rcrapublic.epa.gov/rcra-public-web/action/posts/5> (last visited Jul. 12, 2023).

<sup>114</sup> U.S. EPA, Press Release, *EPA Launches Interactive Map of Sea Level Rise Around Hazardous Waste Sites Along the U.S. Coastline to Help Facilities and Communities Become More Resilient to Climate Change*, <https://www.epa.gov/newsreleases/epa-launches-interactive-map-sea-level-rise-around-hazardous-waste-sites-along-us> (May 18, 2023).

<sup>115</sup> Univ. of Cal., Berkeley, *supra* note 107.

<sup>116</sup> J. Emerson Smith, *Tijuana Sewage Blasted San Diego’s South Bay Beaches at Record Pace in 2022. What Will This Summer Bring?*, San Diego Union-Tribune (Feb. 25, 2023), <https://www.sandiegouniontribune.com/news/environment/story/2023-02-25/tijuana-sewage-closed-san-diegos-beaches-record-pace> (last visited Jul. 7, 2023).

<sup>117</sup> J. Emerson Smith, *San Diego’s Efforts to Plug Tijuana Sewage Suffer \$150M Setback*, San Diego Union-Tribune (June 23, 2023), <https://www.sandiegouniontribune.com/news/environment/story/2023-06-23/san-diego-federal-plant-treating-tijuana-sewage-needs-repairs> (last visited Jul. 7, 2023).

<sup>118</sup> *Id.*

<sup>119</sup> Led by the Mayor of Imperial Beach, several San Diego County mayors sent the Biden Administration a letter urging it to declare a federal emergency to address this trans-border sewage crisis. Letter by Mayor Paloma Aguirre,

government should also undertake a nationwide study to identify other cross-border pollution problems that need resolution.

#### 4. Address agricultural pollution in the Great Lakes.

Agricultural pollution poses serious risks to our oceans and Great Lakes, making portions of these water bodies periodically unsuitable for swimming, fishing, and drinking, as a result of algae blooms caused by excessive nutrients, and contamination with dangerous pathogens and microorganisms. For the last two decades, algae blooms in Lake Erie have been so large that they are visible from outer space.<sup>120</sup> Relatedly, these toxic algae blooms have impacted drinking water in the City of Toledo, forcing the city to shut down water service for nearly half a million people until the algae blooms subside.<sup>121</sup> Similarly, excess nutrients and sediment pollute the Chesapeake Bay, where nearly half of the excess nutrients are from agricultural sources.<sup>122</sup>

Under the Clean Water Act, the federal government, in partnership with states, uses total maximum daily load (“TMDL”) planning to limit pollution to impacted waters, including Lake Erie and the Chesapeake Bay. TMDL planning is typically a long process requiring cooperation between multiple states and federal oversight, often leading to litigation.<sup>123</sup> Relatedly, under the Clean Water Act, point sources of pollution must obtain National Pollution Discharge Elimination System (“NPDES”) permits that, among other things, assure that their pollution does not cause or contribute to water quality impairment. However, the NPDES permitting system does not address much of the agricultural pollution harming our oceans and the Great Lakes.

The federal guidelines for Concentrated Animal Feeding Operations (“CAFOs”) do not apply to smaller farms and do not apply to farms without demonstrated discharges to surface water. But even CAFOs without demonstrated discharges to surface water are impacting water quality.<sup>124</sup> Over the years, CAFOs have expanded in both number and size, resulting in increasingly concentrated discharges of waste, directly to surface water through runoff and direct discharges, as well as through groundwater from leaking waste storage structures and improperly

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et al. to Biden-Harris Administration (Jun. 16, 2023),

[http://www.imperialbeachnewsca.com/opinion/article\\_08bb4302-1795-11ee-91eb-ff6a70c596ee.html](http://www.imperialbeachnewsca.com/opinion/article_08bb4302-1795-11ee-91eb-ff6a70c596ee.html).

<sup>120</sup> Photo: Lake Erie algal bloom is now so large that it can be seen from space, ABC News 5 Cleveland (Aug. 16, 2019), <https://www.news5cleveland.com/news/local-news/oh-cuyahoga/photo-lake-erie-algal-bloom-is-now-so-large-that-it-can-be-seen-from-space> (last visited Jul. 14, 2023); Toxic algae bloom in Lake Erie from space, EarthSky (Oct. 22, 2011), <https://earthsky.org/earth/view-from-space-toxic-algae-bloom-in-lake-erie/> (last visited Jul. 14, 2023).

<sup>121</sup> Lake Erie's toxic algae blooms: Why is the water turning green? National Science Foundation (Apr. 8, 2019), <https://new.nsf.gov/news/lake-eries-toxic-algae-blooms-why-water-turning> (last visited Jul. 14, 2023).

<sup>122</sup> Pollution in the Bay, Maryland Dep't of the Environment, <https://mde.maryland.gov/programs/Water/TMDL/TMDLImplementation/Pages/pollution-in-the-chesapeake.aspx> (last accessed Jul. 14, 2023).

<sup>123</sup> See, e.g. *Am. Farm Bureau Fed'n v. U.S. E.P.A.*, 984 F. Supp. 2d 289, 294 (M.D. Pa. 2013), *aff'd*, 792 F.3d 281 (3d Cir. 2015).

<sup>124</sup> Miralha, Lorryne, et al., *The spatial organization of CAFOs and its relationship to water quality in the United States*, J. of Hydrology (Oct. 2022), <https://www.sciencedirect.com/science/article/abs/pii/S0022169422008733> (last accessed Jul. 14, 2023).

managed production areas, and from land application areas to which far too much CAFO waste has been applied.

The Ocean Justice Strategy should provide guidance to all relevant federal agencies, such as EPA, to consider more stringent restrictions to address discharges to surface water through groundwater, including discharges from land application areas where CAFOs spread their waste. Some states are already including requirements like groundwater monitoring and prohibition of land application during wintertime.<sup>125</sup> The federal government should consider establishing requirements for smaller farms, including farms that elect to receive CAFO waste to fertilize their crops. The federal government should provide a sufficient baseline so that states who issue permits including only federal requirements still safeguard our oceans and the Great Lakes from their pollution.

#### **E. Equitable Management and Protection of the Oceans, Coasts, and the Great Lakes.**

The Ocean Justice Strategy should include actions necessary to ensure that the ocean is protected and equitably managed. We would recommend the following actions:

1. Implement co-management of the oceans, coasts, and the Great Lakes with Tribes and Indigenous Peoples.

Tribal communities historically located in coastal areas have traditional practices and cultural ties to the oceans, coasts, and the Great Lakes. As tribal ownership of coastal land has been dramatically reduced, however, the unique perspective of tribal management of coastal, marine, and other aquatic resources has been largely overlooked. While we understand that federal agencies currently consult with tribes in various aspects of ocean and aquatic resources management, and that the Department of the Interior and the Department of Agriculture have entered into co-stewardship agreements with tribes regarding the management of certain federal lands,<sup>126</sup> we recommend that the federal government expand those efforts as part of its Ocean Justice Strategy.

In an effort to reintroduce tribal resource management perspectives, California recently enacted legislation authorizing the transfer of state-owned coastal property to a nonprofit organization comprised of tribes to manage the area with the objectives of maintaining natural habitat, protecting Native American cultural resources, and providing public access.<sup>127</sup> While the California legislation applies to the management of coastal land, we believe that a similar arrangement could be entered into with regard to marine areas and the Great Lakes. The California legislation transfers exclusive management of the coastal land to the tribal nonprofit

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<sup>125</sup> See e.g. Wis. Admin. Code § NR 243.14(6)-(7).

<sup>126</sup> See *FACT SHEET: Biden-Harris Administration Announces New Actions to Support Indian Country and Native Communities Ahead of the Administration's Second Tribal Nations Summit*, THE WHITE HOUSE (November 30, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/30/fact-sheet-biden-harris-administration-announces-new-actions-to-support-indian-country-and-native-communities-ahead-of-the-administrations-second-tribal-nations-summit/> (last visited Jul. 12, 2023)

<sup>127</sup> Cal. Sts. & Hy. Code § 118.9.

organization.<sup>128</sup> With regard to marine areas and the Great Lakes, we believe that a cooperative co-management arrangement between tribes and the federal government is most appropriate for areas under federal jurisdiction, and it is our understanding that federal agencies have begun to undertake such efforts in certain areas of the country.<sup>129</sup> To allow tribal access to decision-making and to better support the vibrancy and health of the oceans and the Great Lakes, for all communities, we urge the federal government to expand such efforts and to include establishment of co-management of the oceans and the Great Lakes with tribes and Indigenous peoples in its Ocean Justice Strategy.

2. Strengthen and develop more marine protected areas, with a particular focus on areas identified and/or managed by Ocean Justice Communities.

A marine protected area (“MPA”) is a zone of marine and Great Lakes waters that a federal, state, tribal, or local government designates for conservation, and thus protects from certain kinds of human activity.<sup>130</sup> Types of MPAs include “no-access” areas that prohibit all human access, “no-take” areas that prohibit extractive activities, and “multiple-use” areas that allow some activity such as fishing.<sup>131</sup> MPAs are a crucial tool for preserving biodiversity,<sup>132</sup> conserving cultural heritage,<sup>133</sup> restoring fisheries,<sup>134</sup> and strengthening local economies.<sup>135</sup> For example, California established a network of 124 ecologically-connected state MPAs pursuant to its 1999 Marine Life Protection Act.<sup>136</sup> The goal of the statewide MPA system is to protect the broader marine ecosystem through an interconnected and adaptive approach, and its first

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<sup>128</sup> *Id.*

<sup>129</sup> See NOAA, *Tribal Programs*, <https://marineprotectedareas.noaa.gov/aboutmpas/programs/tribal/> (last visited Jul. 12, 2023).

<sup>130</sup> See Exec. Order No. 13,158, 65 Fed. Reg. 34909 (May 26, 2000) (defining MPA as “any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein”); see also CAL. FISH & GAME CODE § 2852(c) (Deering 2023) (defining marine protected area in California). MPAs in the U.S. include National Marine Sanctuaries, Marine Monuments, Wildlife Refuges, Parks, state and local counterparts, and more. National Marine Protected Areas Center, *Marine Protected Areas: Tools for a Healthy Ocean 1* (2021), <https://nmsmarineprotectedareas.blob.core.windows.net/marineprotectedareas-prod/media/docs/20210107-mpa-fact-sheet-update-v3.pdf>.

<sup>131</sup> National Marine Protected Areas Center, *Definitions and Classification System for U.S. Marine Protected Areas 4*, <https://nmsmarineprotectedareas.blob.core.windows.net/marineprotectedareas-prod/media/docs/20200715-mpa-classification.pdf>.

<sup>132</sup> Sarah E. Lester, *Biological effects within no-take marine reserves: A global synthesis*, 384 MARINE ECOLOGY PROGRESS SERIES 33, 44 (2009) (noting that no-take marine reserves increase species richness in protected communities).

<sup>133</sup> *Cultural Heritage Marine Protected Areas*, National Marine Protected Areas Center, <https://marineprotectedareas.noaa.gov/nationalsystem/culturalheritage/> (last visited Jul. 3, 2023).

<sup>134</sup> Manfredi Di Lorenzo et al., *Assessing spillover from marine protected areas and its drivers: A meta-analytical approach*, 21 Fish and Fisheries 906, 713 (2020) (finding a “33% higher fish abundance and 54% higher biomass” near MPA borders).

<sup>135</sup> Luke Brander et al., IVM Institute for Environmental Studies, *The benefits to people of expanding Marine Protected Areas 57* (2015) (finding that MPAs strengthen local coastal economies and that if 10% of the marine area was protected then “each dollar invested yields a return of around 20 dollars in benefits”).

<sup>136</sup> Cal. Fish & Game Code § 2850–63 (Deering 2023); Cal. Dep’t of Fish & Wildlife, *California’s Marine Protected Area Network: Decadal Management Review ES-2* (2022) <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=209209&inline>.

comprehensive evaluation, conducted in 2022, indicates success so far.<sup>137</sup> Fish in the MPAs are bigger and more abundant, MPA ecosystems recovered more quickly from a marine heatwave, and MPAs act as “valuable living laboratories” by enhancing research opportunities.<sup>138</sup> Developing and managing the California MPA system involves significant collaboration among state and federal agencies, tribes, and nongovernmental organizations, including the Tribal Marine Stewards Network, a partnership of tribes that supports co-management of marine resources.<sup>139</sup>

We recommend that the federal government include the development of more MPAs in its Ocean Justice Strategy. To ensure that a range of different communities receives the benefits of MPAs, we recommend that the government emphasize areas that are important to or managed by Ocean Justice Communities. The Chumash Heritage National Sanctuary is one example. In 2013, the Northern Chumash Tribal Council nominated an area along 156 miles of the Central California Coast to be a National Marine Sanctuary—a type of MPA that is managed by the National Oceanic and Atmospheric Administration (“NOAA”).<sup>140</sup> If designated by NOAA, this area would become the first tribally nominated sanctuary in the United States and would help preserve both the marine ecosystem and extremely important sacred Chumash sites.<sup>141</sup> The Sanctuary would be managed with the input of a community-based Sanctuary Advisory Council.<sup>142</sup>

Along with developing more MPAs like the Chumash Heritage National Sanctuary, we also recommend that the federal government support meaningful engagement with Ocean Justice Communities. Specifically, we recommend that the government explore ways to: (1) continue promoting community MPA nomination processes and provide grants and technical assistance to support participation; (2) ensure that MPAs are managed and evaluated with a holistic ecosystem- and community-level focus, rather than using indicators primarily related to fishery stocks and fishing industry concerns; (3) integrate and fund community science, (4) integrate tribal-led science and co-management;<sup>143</sup> and (5) ensure frequent and transparent public input opportunities, especially for Ocean Justice Communities.

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<sup>137</sup> Cal. Dep’t of Fish & Wildlife, *supra* note 132, at ES-4.

<sup>138</sup> *Id.* at ES-4, 37.

<sup>139</sup> *Id.* at ES-3; Tribal Marine Stewards Network, <https://tribalmsn.org/> (last visited Jul. 6, 2023) (“The Tribal Marine Stewards Network aims to return management of our ocean and coastal territories to California Tribes and to ensure Indigenous Knowledge drives decision-making, resulting in healthy and viable communities and ecosystems for future generations.”).

<sup>140</sup> *About the Proposed Chumash Heritage Sanctuary*, Chumash Heritage National Marine Sanctuary, <https://chumashsanctuary.org/about/> (last visited Jul. 3, 2023).

<sup>141</sup> *Id.*

<sup>142</sup> 16 U.S.C. § 1445a(a).

<sup>143</sup> Tribal priorities and themes identified during engagement opportunities as part of California’s Decadal Management Review include co-management of resources between tribes and state agencies, capacity-building for tribal MPA management, improved education and outreach, and enhanced fishing enforcement, particularly as it pertains to species that tribes rely on. Cal. Dep’t of Fish & Wildlife, *supra* note 132, at 23.

3. Direct more federal funding and resources for ocean protection enforcement.

NOAA's Office of Law Enforcement is charged with enforcing over 40 laws and regulations related to the protection of fisheries, marine sanctuaries, and other ocean resources on over 4 million square miles of ocean.<sup>144</sup> However, of NOAA's \$1.26 billion budget for Fiscal Year 2023, only \$82 million was earmarked for enforcement purposes at its 50 field offices (or roughly \$1.64 million per field office).<sup>145</sup>

Many coastal states, such as California, have agencies that work collaboratively with NOAA to "fill in the gaps" using state ocean conservation laws, some of which incorporate federal laws by reference, and share other resources. But enforcement is not uniform throughout the country. At the same time, it is important to note that a small subset of violators may rely on fishing for personal sustenance, as opposed to commercial gain, and cultural and language differences may leave them unaware that their actions are illegal. Opportunities exist for improved education and communication in these circumstances. For example, in areas with increased illegal non-commercial fishing, it may be beneficial to place signs summarizing applicable laws in multiple languages. Increased funding to NOAA for enforcement and education purposes could improve the protection of ocean resources and ecosystems for all Americans.

4. Minimize new federal offshore oil and gas leasing and incentivize phasing out and decommissioning existing oil and gas operations in federal waters.

Offshore drilling is incompatible with principles of ocean justice and we urge its phase-out on a federal level. Offshore drilling burdens frontline communities, places coastal ecosystems and economies at risk, and exacerbates climate change.<sup>146</sup> The damaging impacts of offshore drilling do not stop at the shoreline. Offshore drilling requires onshore infrastructure like pipelines, waste disposal facilities, and refineries that contribute to air and water pollution and damage coastal wetlands and estuaries.<sup>147</sup> Offshore drilling has been especially devastating in the Gulf of Mexico, contributing to extensive loss of coastal wetlands, leaving Gulf communities more vulnerable to flooding and extreme weather events.<sup>148</sup> Despite the significant impacts of offshore drilling on coastal ecosystems and communities, the Department of the Interior ("DOI") has proposed new offshore oil and gas leasing in the Gulf of Mexico and Cook

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<sup>144</sup> NOAA, *Enforcement*, <https://www.fisheries.noaa.gov/topic/enforcement> (last visited Jul. 12, 2023).

<sup>145</sup> NOAA, Budget Estimates: Fiscal Year 2024 Congressional Submission, 32, <https://www.commerce.gov/sites/default/files/2023-04/NOAA-FY2024-Congressional-Budget-Submission.pdf>; NOAA, *NOAA Enforcement Field Offices*, <https://www.fisheries.noaa.gov/contact-directory/noaa-enforcement-field-offices> (last visited Jul. 12, 2023); NOAA's Sanctuaries Enforcement Asset Forfeiture Fund does also receive proceeds from civil penalties and forfeiture claims for violations of NOAA sanctuary regulations. These funds must be spent on resource protection within the sanctuary where the violation occurred. NOAA, Budget Estimates, *supra* note 141, at 29.

<sup>146</sup> Ctr. for Biological Diversity, et al., *Critical Gulf: The Vital Importance of Ending New Fossil Fuel Leases in the Gulf of Mexico* (2016), 2-7, [https://www.biologicaldiversity.org/publications/papers/CriticalGulf\\_08-2016](https://www.biologicaldiversity.org/publications/papers/CriticalGulf_08-2016).

<sup>147</sup> Environment America, et al., *Offshore Drilling, Onshore Damage: Broken Pipelines, Dirty Refineries and the Pollution Impacts of Energy Infrastructure* (Dec. 4, 2019), 4-5, <https://environmentamerica.org/center/resources/offshore-drilling-onshore-damage/>.

<sup>148</sup> Ctr. For Biological Diversity, *supra* note 142.



Inlet of Alaska for the 2023-2028 program cycle.<sup>149</sup> The Inflation Reduction Act (“IRA”) passed in 2022 additionally provides that DOI must offer at least 60 million acres for oil and gas leasing on the outer continental shelf within one year of any offshore wind lease sale for up to ten years.<sup>150</sup> Following passage of the IRA, DOI has opened up 73.3 million acres in the Gulf of Mexico to new oil and gas leasing.<sup>151</sup> Continued federal support for offshore drilling jeopardizes coastal ecosystems and economies with direct impacts on Ocean Justice Communities.

Several states have recognized the environmental and public health risks associated with offshore drilling and have enacted legislation banning drilling off state-controlled shorelines. For example, New Jersey passed legislation prohibiting offshore drilling for oil or natural gas exploration, development, and production, finding such activities pose an unacceptable risk to the states coastal resources and continued viability of tourism and commercial fishing industries.<sup>152</sup> Expanding on state efforts to ban offshore drilling, New Jersey Congressman Frank Pallone has introduced the COAST Anti-Drilling Act, which would permanently prohibit offshore oil and gas drilling in federal waters along the Atlantic Coast including the Straits of Florida.<sup>153</sup> Similar bills have been introduced that would permanently prohibit offshore drilling in federal waters off the West Coast and Eastern Gulf of Mexico.<sup>154</sup> To protect coastal resources and communities, the Committee should work with Congress to permanently end new oil and gas leasing in federal waters. The Committee should additionally acknowledge that existing offshore drilling infrastructure continues to harm Ocean Justice Communities and must be phased out to achieve ocean justice.

Further, as we move away from fossil fuels and toward a greener economy, the costs of decommissioning aging oil and gas infrastructure, such as offshore platforms, should be paid by the oil and gas industry, not taxpayers.<sup>155</sup>

5. Implement ship speed reduction requirements in federal waters to reduce air pollution and prevent marine mammal injuries and fatalities.

Several studies demonstrate that reducing ocean-going vessel speeds as they approach local ports can produce significant reductions in air pollutant emissions. A June 2012 study performed for the California Air Resources Board concluded that reducing vessel speeds to 12 knots or less 20 to 40 miles from ports resulted in reductions of 69 percent, 61 percent, and 56 percent of particulate matter 2.5, carbon monoxide, and nitrogen oxide emissions from these

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<sup>149</sup> *National OCS Oil and Gas Leasing Program for 2023-2028*, Bureau of Ocean Energy Mgmt., <https://www.boem.gov/oil-gas-energy/national-program/national-ocs-oil-and-gas-leasing-program-2023-2028>.

<sup>150</sup> Cong. Rsch Serv., IN11980, *Offshore Wind Provisions in the Inflation Reduction Act*, 1 (2022).

<sup>151</sup> Bill Chapel & Jeff Brady, *The Biden Administration Sells Oil and Gas Leases in the Gulf of Mexico*, NPR (Mar. 29, 2023), <https://www.npr.org/2023/03/29/1166802809/gulf-of-mexico-oil-gas-leases-drilling>.

<sup>152</sup> *Shore Tourism & Ocean Protection from Offshore Oil & Gas Act*, A.B. 839, Leg., 218th Sess. (N.J. 2018).

<sup>153</sup> *COAST Anti-Drilling Act*, S.617, 118th Congress (2023-2024).

<sup>154</sup> *West Coast Ocean Protection Act of 2023*, S.22, 118th Congress (2023-2024); *Florida Coastal Protection Act*, H.R. 1443, 118th Congress (2023-2024).

<sup>155</sup> See U.S. Government Accountability Office, *Offshore Oil and Gas Resources: Actions Needed to Better Protect against Billions of Dollars in Federal Exposure to Decommissioning Liabilities* (Dec. 2015), <https://www.gao.gov/assets/gao-16-40.pdf> (last visited Jul. 7, 2023).

vessels, respectively.<sup>156</sup> A March 2021 EPA fact sheet cited similar studies showing that reducing ship speeds to 12 knots 20 miles away from ports would cut fuel consumption and emissions by 70 to 75 percent.<sup>157</sup>

Similarly, ocean-going vessel speed reduction programs have also been shown to reduce marine mammal injuries and fatalities. NOAA cites to studies showing that vessel speed is a contributing factor to whale collisions, including endangered North Atlantic right whales, and that the force of impacts increases with vessel speed.<sup>158</sup> To prevent collisions with marine mammals, NOAA has instituted mandatory seasonal vessel speed reductions along certain portions of the U.S. eastern seaboard and certain California coastlines.<sup>159</sup>

Protecting whales and other marine mammals is of particular importance to several Indigenous Peoples such as Native Hawaiians, whose “culture acknowledges the whale as an ancient being . . . honored as ‘aumākua which are family or personal gods, deified ancestors who might assume the shape of either animals, plants, or natural phenomena.”<sup>160</sup> To protect both Ocean Justice Communities and marine mammals, the Ocean Policy Committee’s Ocean Justice Strategy should evaluate imposing vessel speed reduction programs along all U.S. coastlines that are inhabited by Ocean Justice Communities and/or are frequented by transiting marine mammals. The dramatically beneficial reductions in pollution and marine mammal collisions realized by vessel speed reduction programs favor a scaled-up program that addresses many more miles of coastline. Additionally, although seasonal vessel speed reduction programs may be appropriate to avoid marine mammals’ seasonal migrations, there is no obvious reason to limit vessel speed reductions to only certain seasons when the purpose of those reductions is to improve air quality. Accordingly, the federal government should further consider imposing year-round vessel speed reduction requirements, rather than limiting them to only certain seasons.

## **F. Address Past Harms and Injustices.**

This section responds to the Request for Information’s question, “What successful regional or local efforts to remedy past harms or advance ocean justice should be applied nationwide?”

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<sup>156</sup> Cal. Air Resources Bd. and University of California, Riverside, *In-Use Emissions Test Program at VSR Speeds for Oceangoing Container Ship* (Jun. 2012), <https://ww2.arb.ca.gov/sites/default/files/classic/ports/marinevess/vsr/docs/vsr.pdf> (last visited Jul. 7, 2023).

<sup>157</sup> U.S. EPA, *Port Operational Strategies: Vessel Speed Reduction* (Mar. 2021), <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P10119QQ.pdf#page=3> (last visited Jul. 7, 2023); see also U.S. EPA, *Marine Vessel Speed Reduction Reduces Air Emissions and Fuel Usage* (Mar. 31, 2023), <https://www.epa.gov/ports-initiative/marine-vessel-speed-reduction-reduces-air-emissions-and-fuel-usage> (last visited Jul. 7, 2023).

<sup>158</sup> NOAA, *Vessel Speed Reduction to Protect Whales*, <https://farallones.noaa.gov/eco/whales/vessel-speed-reduction.html> (last visited Jul. 7, 2023).

<sup>159</sup> *Id.*

<sup>160</sup> NOAA, *Native Hawaiian Culture*, Hawaiian Islands Humpback Whale National Marine Sanctuary, <https://hawaiihumpbackwhale.noaa.gov/heritage/native-culture.html> (last accessed Jul. 8, 2023).

1. Identify coastal properties that were unjustly taken from BIPOC Communities and collaboratively work with States and localities and/or leverage federal funding to restore ownership.

The United States has a history of unjustly taking property from Ocean Justice Communities—whether under the guise of eminent domain or by physical force—and depriving them of the economic, recreational, aesthetic, and other benefits of coastal property ownership. The Ocean Justice Strategy should address these grave injustices and follow the lead of states and localities that are already working to do so. For example, California recently returned a coastal land parcel that was condemned and stolen from a Black family in the 1920s.<sup>161</sup> In 1912, Willa and Charles Bruce purchased a beachfront property in what would become the city of Manhattan Beach.<sup>162</sup> There, the Bruces began a flourishing seaside resort that welcomed fellow Black families to recreate, relax, and enjoy the beach.<sup>163</sup> But because of the racist complaints of white neighbors, city officials used eminent domain to condemn the property along with the land of other Black neighbors, claiming that the parcels were needed to construct a public park.<sup>164</sup> Nonetheless, the parcel was left undeveloped for decades before being transferred to Los Angeles County.<sup>165</sup> In 2021, after a concerted effort by the family, community activists, and other advocates, the State passed a law authorizing the County to return the property, known as Bruce’s Beach, to its rightful owners.<sup>166</sup> The County returned the property to the Bruce family in 2022.<sup>167</sup>

Studies have shown that eminent domain disproportionately impacts communities of color<sup>168</sup> and many landowners from Ocean Justice Communities have had their land stolen through a variety of methods, losing out on significant generational wealth and opportunities.<sup>169</sup> Additionally, discriminatory land use and housing policies such as redlining<sup>170</sup> further obstructed

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<sup>161</sup> Cal. Pub. Res. Code § 5002.6 (Deering 2023); S. 796, 2021 Leg., Reg. Sess. (Cal. 2021); *see also* Jesus Jimenez, *Los Angeles County Votes to Return Beach Seized in 1924 From a Black Family*, N. Y. TIMES, June 28, 2022, <https://www.nytimes.com/2022/06/28/us/bruces-beach-black-descendants.html>.

<sup>162</sup> City of Manhattan Beach, *Bruce’s Beach Task Force: History Subcommittee Report 5* (2021), <https://www.manhattanbeach.gov/home/showpublisheddocument/46327/637539367135870000>.

<sup>163</sup> *Id.* at 6–7.

<sup>164</sup> *Id.* at 9–11; *see also* Bill Chappell, *The Black family who won the return of Bruce's Beach will sell it back to LA County*, NPR, January 4, 2023, <https://www.npr.org/2023/01/04/1146879302/bruces-beach-la-county-california>.

<sup>165</sup> City of Manhattan Beach, *supra* note 158, at 24–25; *Bruce’s Beach*, Los Angeles County Chief Executive Office, <https://ceo.lacounty.gov/ardi/bruces-beach/> (last visited Jun. 30, 2023) (“No park was built, and the land sat empty for decades. The City of Manhattan Beach finally built a park in 1956 on the land behind the Bruce’s Beach resort and other shoreline property, nearly 30 years later.”).

<sup>166</sup> S. 796, 2021 Leg., Reg. Sess. (Cal. 2021).

<sup>167</sup> Los Angeles County Chief Executive Office, *supra* note 161; Jimenez, *supra* note 16157.

<sup>168</sup> Dick M. Carpenter & John K. Ross, *Testing O’Connor and Thomas: Does the Use of Eminent Domain Target Poor and Minority Communities?*, 46 *Urban Studies* 2447, 2447 (“Results reveal that such project areas are, in fact, disproportionately populated by those who are poor, minority and less educated.”).

<sup>169</sup> Danny Hajek, A Martinez, & Kelly Dickens, *A Black family got their beach back — and inspired others to fight against land theft*, NPR, Oct. 10, 2021, <https://www.npr.org/2021/10/10/1043821492/black-americans-land-history> (Thomas W. Mitchell, a property law scholar at Texas A&M University, estimates that “the total loss of generational wealth for Black Americans across the U.S. falls into the trillions.”).

<sup>170</sup> “Redlining was the practice of outlining areas with sizable Black populations in red ink on maps as a warning to mortgage lenders, effectively isolating Black people in areas that would suffer lower levels of investment than their

BIPOC property ownership.<sup>171</sup> The federal government should undertake further research in this area, including a comprehensive study to identify properties in coastal areas, like Bruce’s Beach, that were unjustly taken from Ocean Justice Communities. The government should then leverage federal funding and work with states and localities to restore ownership and otherwise remedy these harms.

2. Initiate tribal land transfers to restore ownership of unjustly taken coastal land.

Tribal communities with cultural ties to coastal areas rely on access to ancestral lands to maintain traditional practices. However, tribal ownership of ancestral coastal lands has been largely lost and the unique perspective of Native American culture in the management of coastal lands has been largely overlooked. As part of a targeted effort to empower tribes to protect and manage their ancestral lands, California recently enacted legislation authorizing the transfer of state-owned coastal property to a nonprofit organization comprised of tribes to manage that land.<sup>172</sup> The legislation requires that the land be managed exclusively for public access, to maintain natural habitat, and to protect Native American cultural resources.<sup>173</sup>

To allow for the preservation of tribal culture, to ensure equitable access to coastal resources, and to restore ownership of unjustly taken coastal land, we recommend that the federal government consider tribal land transfers in its Ocean Justice Strategy. We recommend that the federal government implement a program of tribal coastal land transfers for management purposes, with adequate federal funding, in cooperation with state and local governments. The program should ensure that the substantive requirements of existing federal, state, and local law for preserving such areas remain applicable, and that coastal access for the public and any existing easements survive the land transfers. We believe that the California legislation provides a model that achieves those objectives.

### **G. Equitable Adaptation to Climate Change**

An Ocean Justice Strategy must also include provisions to ensure that Ocean Justice Communities are prepared for the impacts of climate change and that coastal adaptation strategies do not inadvertently exacerbate burdens on Ocean Justice Communities.<sup>174</sup> The federal government should implement equitable adaptation policies that include the following actions:

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white counterparts.” Perry, Andre M., et al., America’s formerly redlined neighborhoods have changed, and so must solutions to rectify them, Brookings Institute (Oct. 14, 2019), <https://www.brookings.edu/articles/americas-formerly-redlines-areas-changed-so-must-solutions/>.

<sup>171</sup> Gross, Terry, *A ‘Forgotten History’ Of How The U.S. Government Segregated America*, National Public Radio (May 3, 2017), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>.

<sup>172</sup> Cal. Sts. & Hy. Code § 118.9.

<sup>173</sup> *Id.* The land would revert to state ownership if not managed for those purposes.

<sup>174</sup> For example, when wealthy coastal communities erect seawalls to protect their homes and other infrastructure, they risk flooding neighboring coastal communities that may not have the resources to similarly armor their shorelines. This highlights the importance of considering equity when implementing adaptation measures in response to sea level rise.

1. Support planning and implementation of climate resilience measures for Ocean Justice Communities.

Many entities are appropriately preparing for how to respond to sea level rise, increased extreme weather events, and other concrete effects of climate change that are increasingly threatening coastal communities. For example, Massachusetts is encouraging climate adaptation and risk mitigation at the municipal level through the Municipal Vulnerability Preparedness grant program (“MVP”), which provides support for cities and towns in Massachusetts (as well as tribes and regional planning entities) to begin the process of planning for climate change resiliency and implementing priority projects.<sup>175</sup> The state awards communities with funding to complete vulnerability assessments and develop action-oriented resiliency plans. Communities who complete the MVP program become certified as an MVP community and are eligible for MVP Action Grant funding and other opportunities. Ocean Justice Communities, however, while at the greatest risk from the threats posed by climate change, likely have the least resources to enable them to effectively identify and begin to mitigate such risks, and take advantage of such resources. An Ocean Justice Strategy should include programs to support to encourage, facilitate, and fund Ocean Justice Communities in identifying climate risks and preparing for impacts.

2. Consider the role of insurance and nature-based solutions, such as restoration of marshes and wetlands, in reducing the risks of flooding and other natural disasters that are being exacerbated by climate change.

Severe ocean-related climate events such as flooding and rising sea levels have resulted in a greater risk of widespread property damage for many at-risk communities. Flooding is most likely to occur in low-lying areas that are populated by minority, low-income communities with limited resources to address damage.<sup>176</sup> When these disasters occur, property owners with disaster insurance are generally able to rebuild and repair much more quickly than those without it.<sup>177</sup> Yet, insurance companies are increasingly raising rates or even refusing to insure entire communities due to the growing costs of insuring these communities against the rapidly expanding risk of climate-related disasters.<sup>178</sup>

Historically, government assistance has centered on post-disaster recovery through agencies like the Federal Emergency Management Agency (“FEMA”) instead of looking for

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<sup>175</sup> Mass. Exec. Off. of Energy & Env’t Aff., Municipal Vulnerability Preparedness (MVP) program, <https://www.mass.gov/municipal-vulnerability-preparedness-mvp-program>.

<sup>176</sup> Thomas Frank, *Flooding Disproportionately Harms Black Neighborhoods: The Impacts of Floods Can Exacerbate Existing Racial and Social Inequality*, *Sci. Am.* (June 2, 2020), <https://www.scientificamerican.com/article/flooding-disproportionately-harms-black-neighborhoods/>.

<sup>177</sup> Cal. Dept. of Ins., *Protecting Communities, Preserving Nature, and Building Resiliency: How First-of-Its-Kind Climate Insurance Will Help Combat the Costs of Wildfires, Extreme Heat, and Floods*, <https://www.insurance.ca.gov/ccf/docs/climate-insurance-report.pdf>, 11, citing Carolyn Kousky, *The Role of Natural Disaster Insurance in Recovery and Risk Reduction*, 11 *Ann. Rev. of Res. Econ.* (Oct. 14, 2019).

<sup>178</sup> Deloitte Ctr. for Fin. Serv., *Climate Risk: Regulators Sharpen Their Focus* (2019), 5-6, <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/financial-services/us-fsi-climate-risk-regulators-sharpen-their-focus.pdf>; Coral Davenport, *Climate Change Poses Major Risks to Financial Markets, Regulator Warns*, *N.Y. TIMES*, (June 11, 2019), <https://www.nytimes.com/2019/06/11/climate/climate-financial-market-risk.html%20%20WHARTON>.

risk-mitigation strategies that could keep insurance available and affordable. An estimated 95% of flood insurance policies in the United States are provided by the FEMA-managed National Flood Insurance Program (“NFIP”), a federally-funded program established, in part, because of the lack of affordable private residential flood insurance.<sup>179</sup> This is quickly becoming unsustainable, though. Since Hurricane Katrina hit in 2005, NFIP has been unable to make sufficient payouts to cover property losses due to flooding, or even to cover its own payouts through its premiums.<sup>180</sup> NFIP currently owes over \$20.5 billion to the U.S. Treasury.<sup>181</sup>

Recently, the Biden Administration advocated for investment in nature-based solutions that could mitigate damage from climate-related disasters.<sup>182</sup> These nature-based solutions include the restoration of coastal marshes, oyster reefs, and seagrass meadows to reduce coastal flooding and absorb carbon dioxide (also known as “blue carbon,” or carbon absorbed and stored underwater by saltwater ecosystems).<sup>183</sup> Blue-carbon ecosystems provide a natural barrier to coastal flooding events and remove carbon from the atmosphere at a much greater rate than land ecosystems.<sup>184</sup> For instance, a square meter of seagrass removes and buries about half a pound of carbon from the atmosphere, a rate that is three times the carbon storage rate of tropical rainforests, seven times the rate of temperate forests, and ten times the rate of grasslands.<sup>185</sup>

California’s Department of Insurance (“CDI”) similarly recommends investment in nature-based solutions, but in conjunction with specialized insurance-based solutions.<sup>186</sup> These include mechanisms such as parametric insurance, community-based insurance, and other risk transfer tools that would facilitate early co-financing by governments and insurers for nature-based community projects, thus reducing the anticipated risk for insurers and making disaster insurance more accessible.<sup>187</sup> CDI also suggests the creation of a credit-exchange market for nature-based solutions that would allow private investors to value and invest in natural infrastructure like coastal marshes and wetlands.<sup>188</sup> Credits earned by the development of flood-resistant natural infrastructure could be traded on the marketplace as a common currency.<sup>189</sup> When considering nature-based solutions, the Ocean Policy Committee should study innovative

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<sup>179</sup> Wharton Sch. of the Univ. of Pa. Risk Mgmt. & Decision Processes Ctr., *The Emerging Private Residential Flood Ins. Market in the U.S.*, 14, <https://riskcenter.wharton.upenn.edu/wp-content/uploads/2018/07/Emerging-Flood-Insurance-Market-Report.pdf>.

<sup>180</sup> Columbia Climate Sch., *With Climate Impacts Growing, Ins. Cos. Face Big Challenges* (Nov. 3, 2022), <https://news.climate.columbia.edu/2022/11/03/with-climate-impacts-growing-insurance-companies-face-big-challenges/>.

<sup>181</sup> Fed. Emergency Mgmt. Agency, 20 Watermark 2 (2022), [https://www.fema.gov/sites/default/files/documents/fema\\_watermark-q4-fy22.pdf](https://www.fema.gov/sites/default/files/documents/fema_watermark-q4-fy22.pdf).

<sup>182</sup> See generally, White House Ocean Policy Comm., *Ocean Climate Action Plan* (March 2023); White House, *Opportunities to Accelerate Nature-Based Solutions: A Roadmap for Climate Progress, Thriving Nature, Equity, & Prosperity: A Report to the Nat’l Climate Task Force* (Nov. 2022).

<sup>183</sup> Ocean Climate Action Plan, *supra* note 177, at 11-14.

<sup>184</sup> NOAA, *Understanding Blue Carbon*, <https://www.climate.gov/news-features/understanding-climate/understanding-blue-carbon> (last visited Jul. 12, 2023).

<sup>185</sup> *Id.*

<sup>186</sup> Cal. Dep’t of Insurance, *supra* note 172; White House, *supra* note 177, at 26-27 (touching briefly on the advantages of innovative finance models).

<sup>187</sup> Cal. Dep’t of Insurance, *supra* note 172, at 42.

<sup>188</sup> *Id.* at 69.

<sup>189</sup> *Id.*

finance concepts like these that could incentivize private insurers and investors to join forces with federal, state, and local governments to accelerate developing this critical natural infrastructure.

3. Develop an inclusive coastal relocation strategy and expand federal funding for community scale relocation.

Sea level rise is projected to displace 13.1 million Americans by 2100.<sup>190</sup> As such, voluntary buyout programs are increasingly being adopted to prepare communities for climate change by relocating people to safer areas.<sup>191</sup> Federal initiatives on this front include the recently launched Voluntary Community Driven Relocation Program, which coordinates with Tribal Leaders to relocate community infrastructure away from imminent threats.<sup>192</sup> The Biden Administration also launched a new Community Driven Relocation Subcommittee to develop strategies for working collaboratively with communities to support relocation away from high risk regions.<sup>193</sup> However, apart from the recently created Voluntary Community Driven Relocation Program, federal programs have provided limited support for climate migration and are generally not designed to pre-emptively relocate entire communities to reduce the risk from “a slow moving climate change hazard” like sea level rise.<sup>194</sup>

Moreover, climate buyout programs have been found to produce inequitable outcomes for low-income or BIPOC communities due to disparities in property valuation, access to program assistance, and emphasis on individual over community-scale buyouts.<sup>195</sup> Designing programs that involve an inclusive and participatory action planning process, as well as wrap-around services, reduce barriers associated with buyout programs.<sup>196</sup> For example, New Jersey’s Blue Acres Buyout Program uses state funds to hire legal, financial, and policy experts as resources for residents during the buyout process.<sup>197</sup> To adequately address coastal resilience, the Committee should leverage federal funding to create a community scale coastal relocation grant program. This program should include funding for resident-centered advocacy services and community outreach to bolster equity in coastal buyouts. The Committee should additionally develop a coastal relocation strategy that incorporates input from Ocean Justice Communities and considers both short and long-term climate threats in coastal relocation efforts.

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<sup>190</sup> Mathew E. Hauer et al., *Millions Projected to be at Risk from Sea-Level Rise in the Continental United States* 6 Nature Climate Change 691 (2016).

<sup>191</sup> Katherine Lieberknecht & Elizabeth J. Mueller, *Planning for Equitable Climate Relocation: Gaps in Knowledge and a Proposal for Future Directions*, Journal of Planning Literature, 3 (2023).

<sup>192</sup> FEMA Efforts Advancing Community Driven Relocation, FEMA (Dec. 2, 2022), <https://www.fema.gov/fact-sheet/fema-efforts-advancing-community-driven-relocation>

<sup>193</sup> *Id.*

<sup>194</sup> U.S. Gov’t Accountability Off., GAO-20-488, A Climate Migration Pilot Program Could Enhance the Nation’s Resilience and Reduce Federal Fiscal Exposure 30–31 (2020).

<sup>195</sup> Katherine Lieberknecht & Elizabeth J. Mueller, *supra* note 186, at 4.

<sup>196</sup> *Id.* at 5–6.

<sup>197</sup> Linda Shi, et al., *Equitable Buyouts? Learning from State, County, and Local Floodplain Management Programs*, Climatic Change 8–9 (2022).

### III. CONCLUSION

Our comment letter recommends including certain objectives and actions in the Ocean Justice Strategy that we, the undersigned States, believe are necessary to advance Ocean Justice. However, the voices that matter most in the end are those of Ocean Justice Communities. We hope that the Committee continues to solicit information from the public and state and local partners. We urge the Committee to conduct robust outreach, beyond this Request for Information, to Ocean Justice Communities to ensure that the Ocean Justice Strategy is developed in a way that truly reflects the needs of those communities.

The States appreciate the opportunity to provide information to support the Committee's development of an Ocean Justice Strategy. We look forward to continuing to work with the federal government in advancing Ocean Justice.

Respectfully submitted,

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