

Ocean Law and Policy in Massachusetts

Presentation for
Ocean Management Workshop

Wednesday November 12, 2008

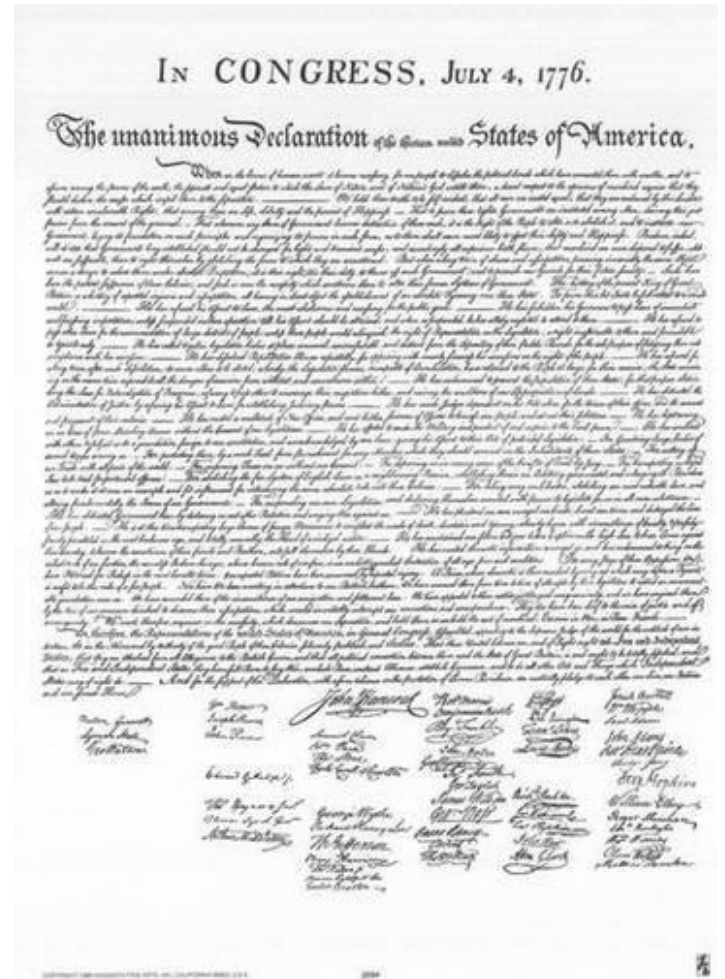
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University of Massachusetts / Boston

Looking back . . .

" He has plundered our seas,
ravaged our Coasts,
. . . . and destroyed the lives
of our people"

Declaration of Independence



Today ...

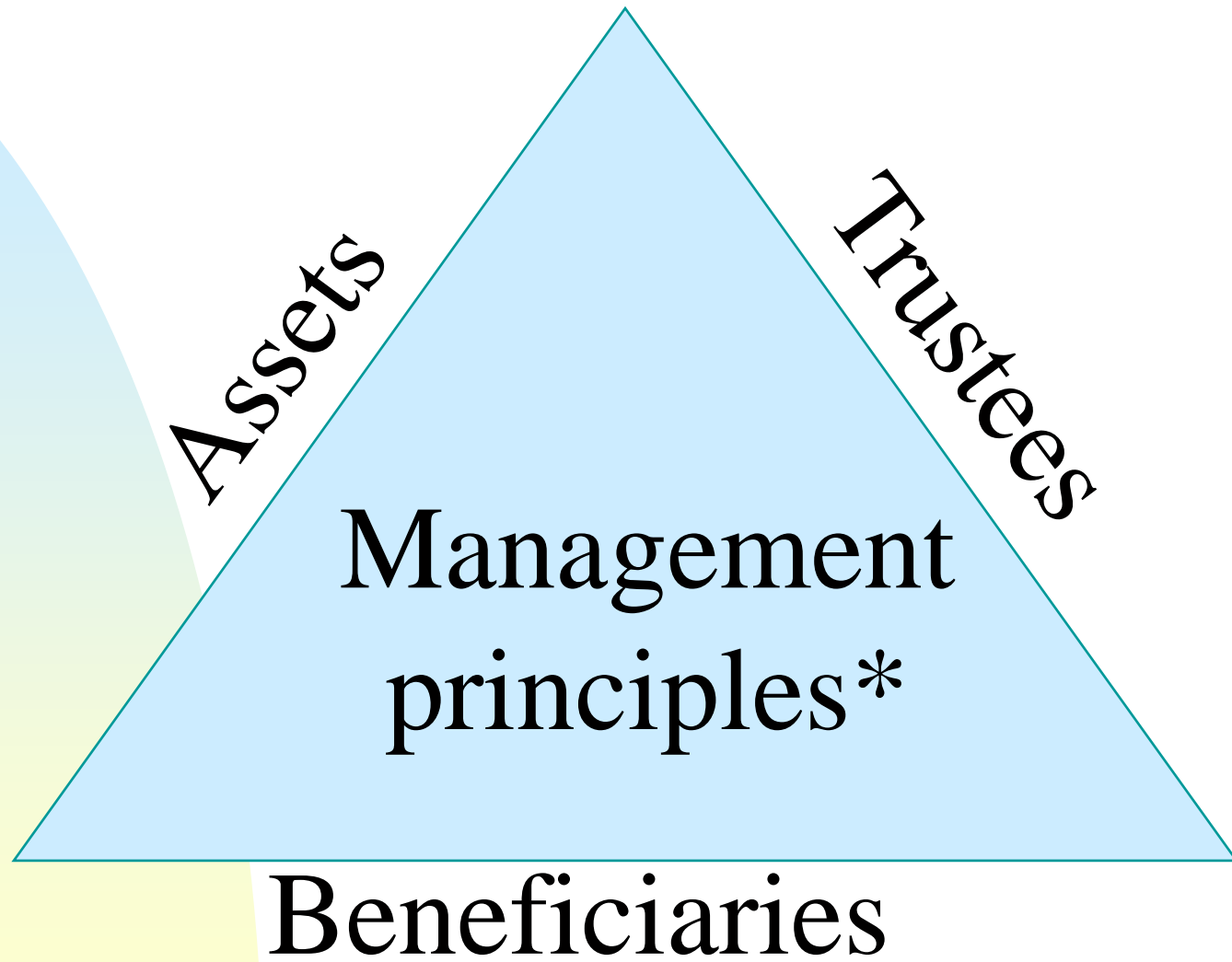
“evolving uses of the ocean represent both a considerable **opportunity** and **challenge** for the Commonwealth . . .

Conflicts between different uses within our oceans have historically been few, but as **more uses** are permitted and proposed, **greater conflict is inevitable**. . .

how should the Commonwealth effectively manage the “assets of the trust” it owns on behalf of the public to best protect and use them for the benefit of citizens today and in the future?

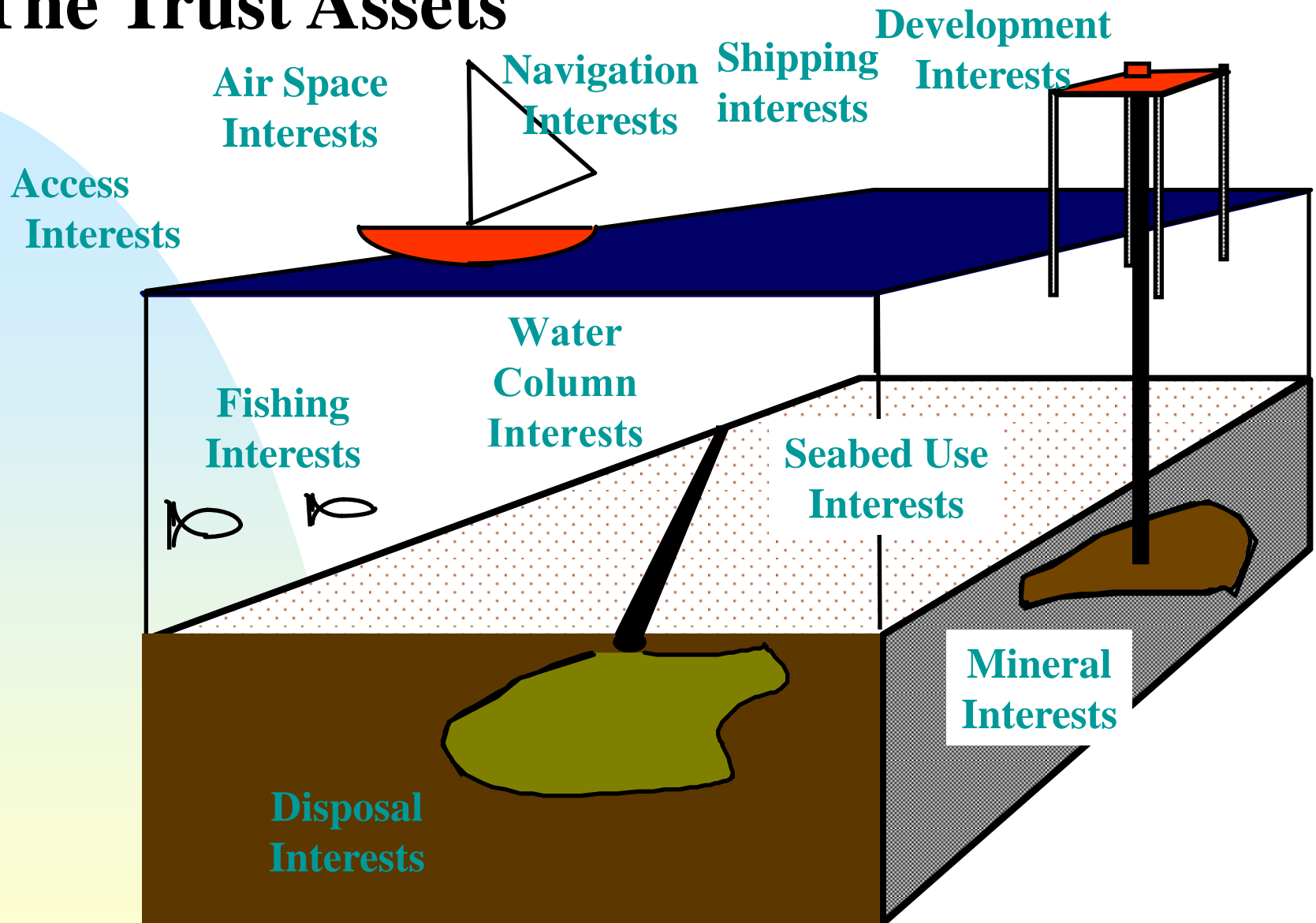
Waves of Change, The Massachusetts Ocean Management Task Force Report (March 2004)

Trust elements



* Keeping in mind all the rules that already apply

The Trust Assets



Adapted from Nichols, S., It's Our Ocean: How Well Will We Govern It? Presented at the Offshore Issues Consultation Workshop.

The Trustees



Image from www.mass.gov

Beneficiaries

Do we
have a
say?

What
about our
kids?



“youcrowd3”

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- (i) set forth the commonwealth's **goals**, siting **priorities** and **standards** for ensuring effective **stewardship** of its ocean waters held in **trust** for the benefit of the public;
- (ii) adhere to **sound management** practices, taking into account the **existing** natural, social, cultural, historic and economic **characteristics** of the planning areas;
- (iii) **conserve and protect the public trust**;
- (iv) recognize the **importance** of the waters of the commonwealth **to its citizens** who derive livelihoods and recreational benefits from fishing;
- (v) **value biodiversity and ecosystem** health;
- (vi) identify and **protect special, sensitive** or unique estuarine and marine life and **habitats**;
- (vii) address **climate change and sea-level rise**;
- (viii) **respect the interdependence of ecosystems**;
- (ix) **coordinate uses** that include international, federal, state and local **jurisdictions**;
- (x) **foster sustainable uses** that capitalize on economic opportunity without significant detriment to the ecology or natural beauty of the ocean;
- (xi) preserve and enhance **public access**;
- (xii) support the **infrastructure** necessary to sustain the economy and quality of life for the citizens of the commonwealth;
- (xiii) encourage **public participation** in decision-making;
- (xiv) and **adapt** to evolving knowledge and understanding of the ocean environment; and
- (xv) shall identify **appropriate locations** and performance standards for activities, uses and facilities allowed under sections 15 and 16 of chapter 132A.

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Migratory Bird Treaty Act

NEPA

CZMA

Federal/Int'l
shipping stds

Rivers & Harbors Act

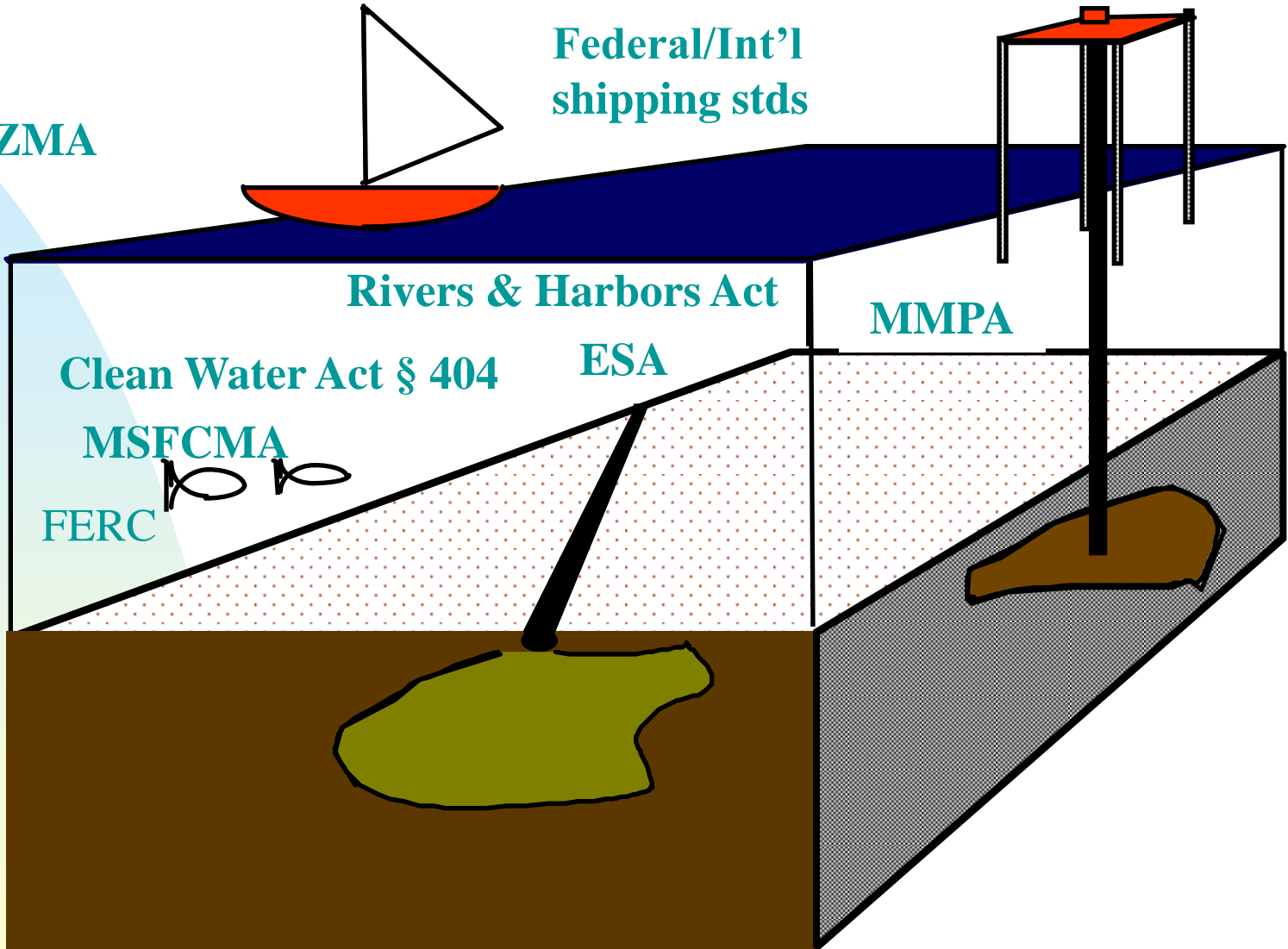
MMPA

Clean Water Act § 404

ESA

MSFCMA

FERC



Nichols, S., It's Our Ocean: How Well Will We Govern It? Presented at the Offshore Issues Consultation Workshop. Viewed at

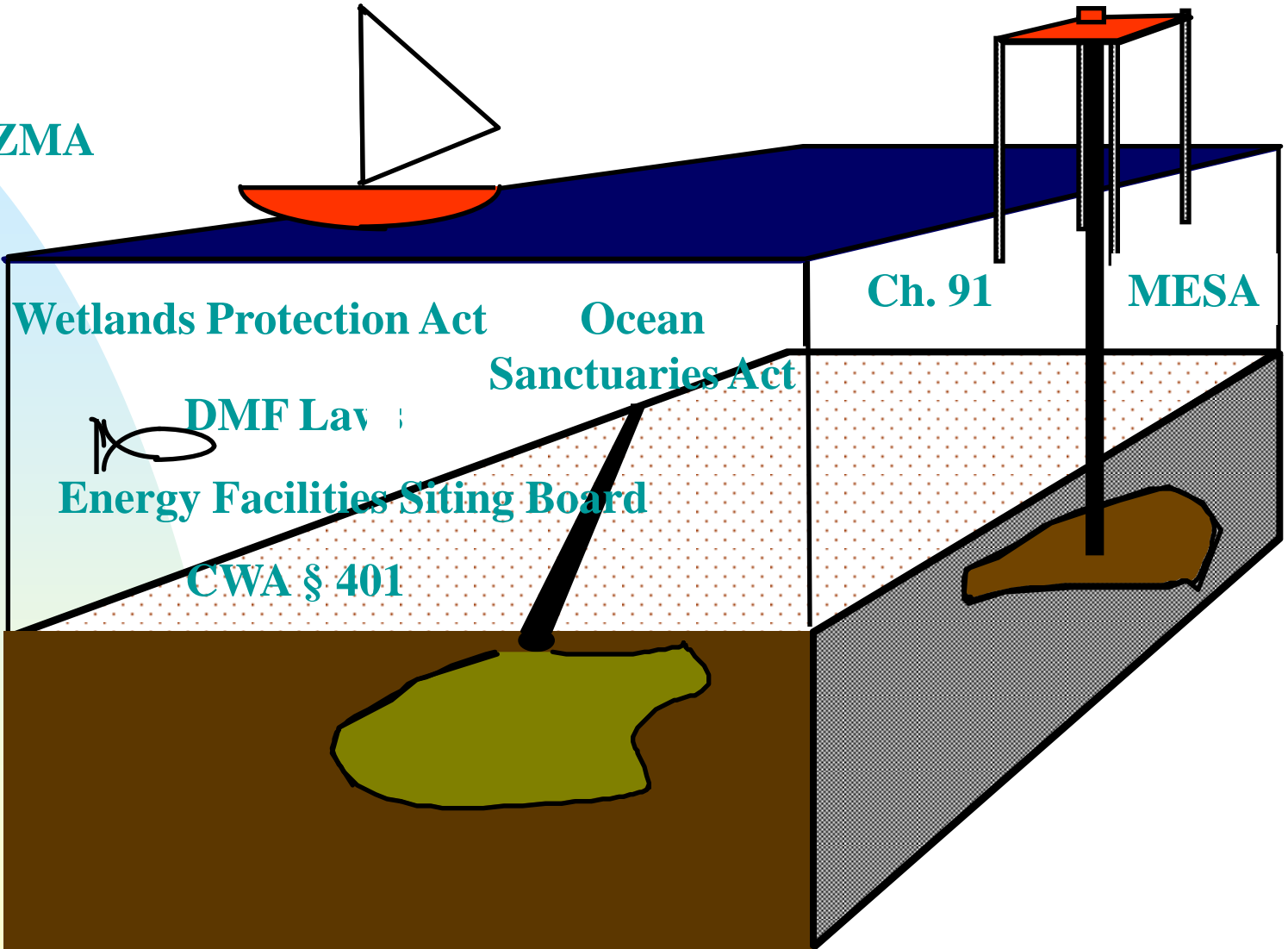
<http://gge.unb.ca/Research/OceanGov/documents/LUNCH.PPT> (July 28, 2003).

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Adapted from Nichols

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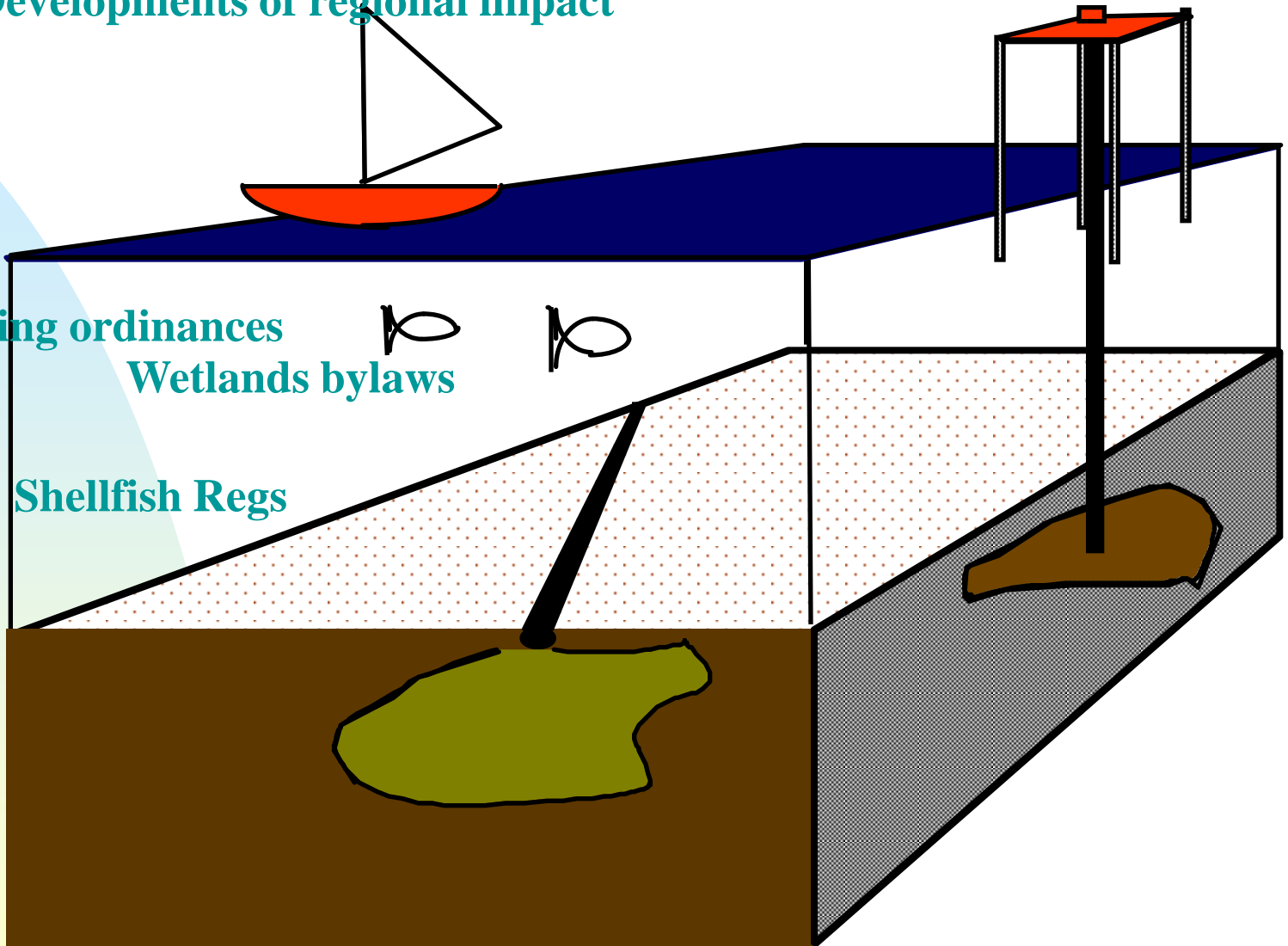
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Developments of regional impact

Zoning ordinances

Wetlands bylaws

Shellfish Regs



Adapted from Nichols

The Oceans Act of 2008

Half empty?

Half full?



Cooperative arrangements

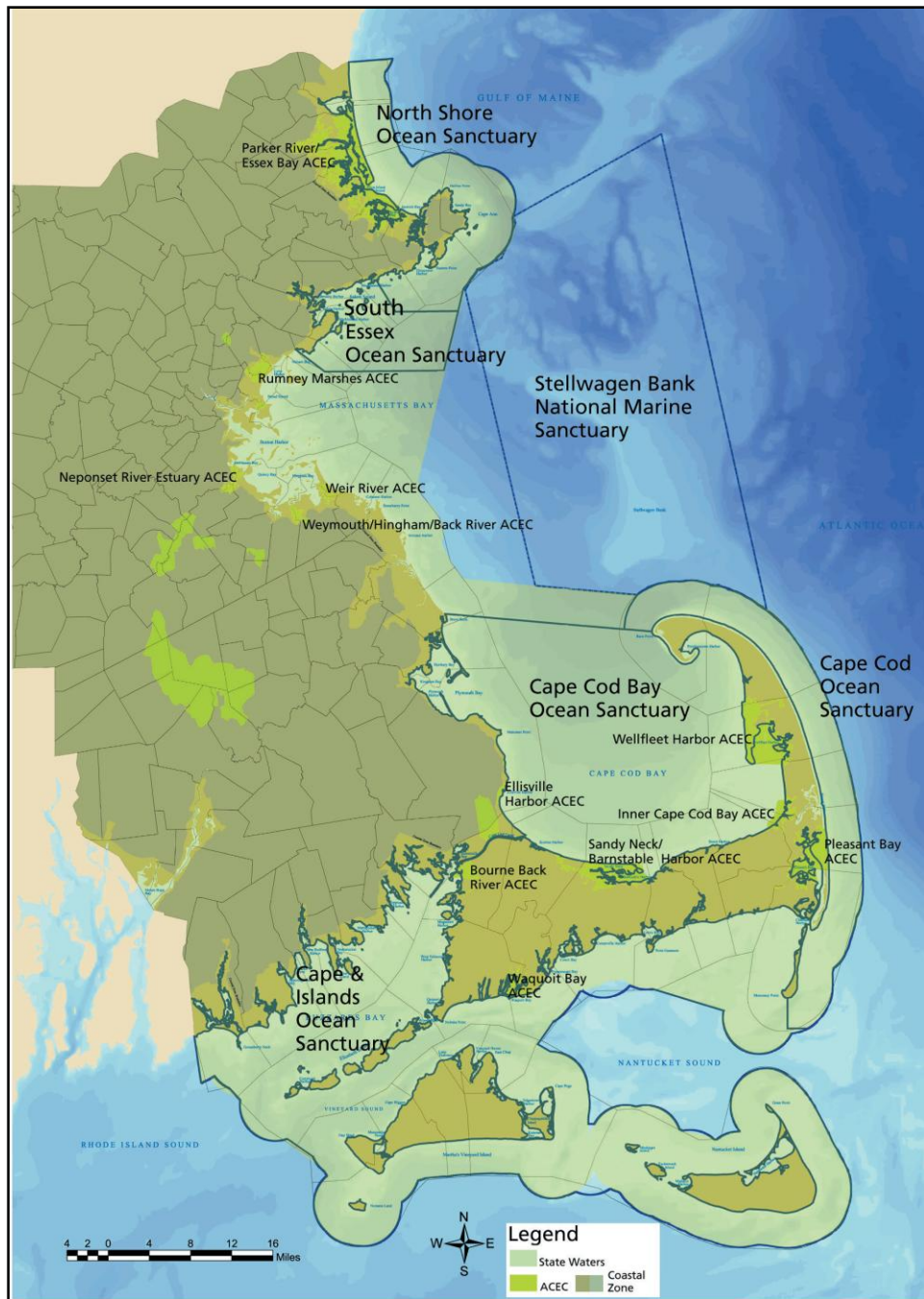
The Coastal Zone Management Act

Fisheries authority over federal waters in Nantucket Sound

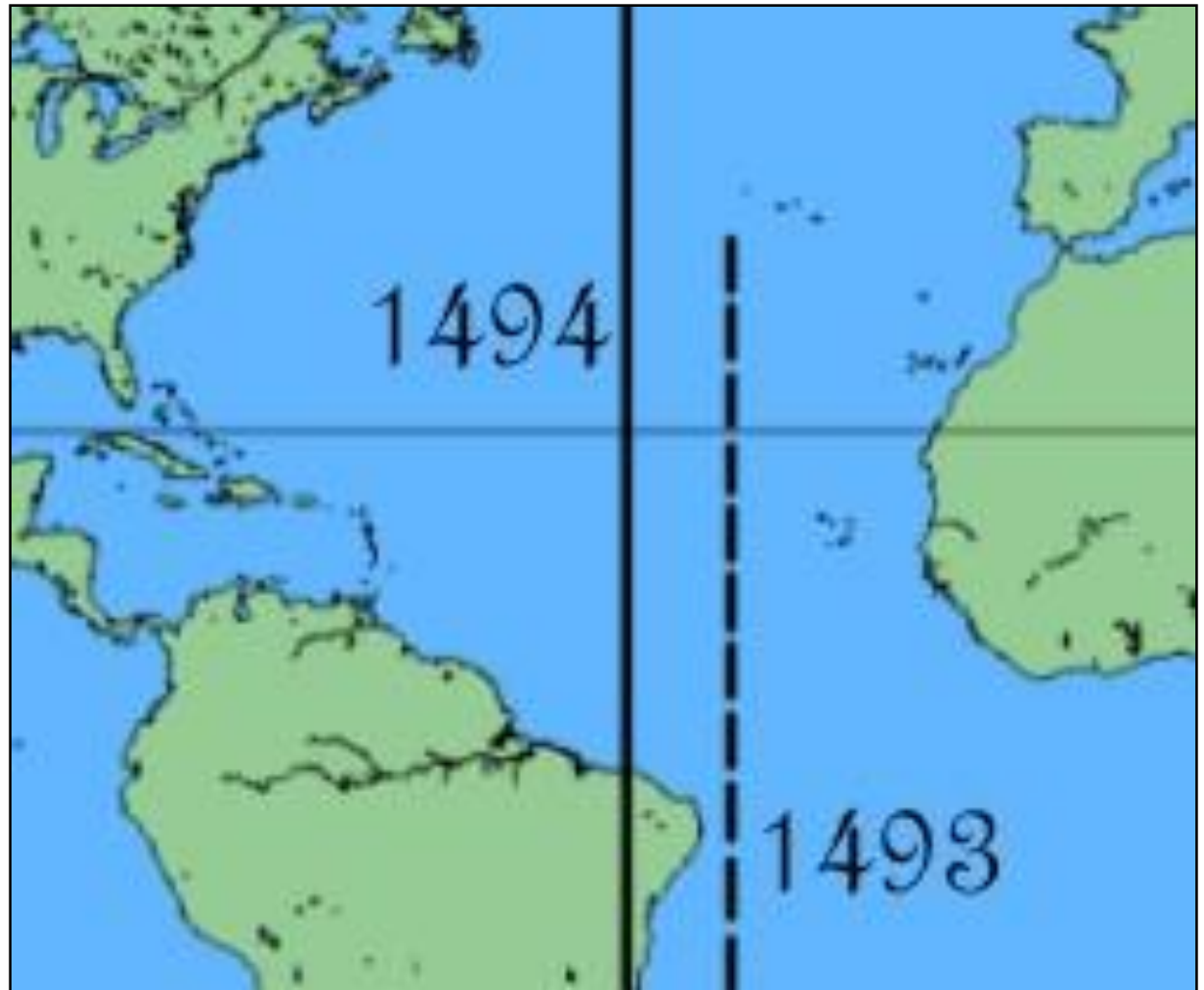
OCSLA, 43 USC § 1337(g)

Offshore Aquaculture Act of 2007 (bill in Congress)

**Waves of Change – The
Massachusetts Ocean Management
Task Force Report and
Recommendations (March 2004)**



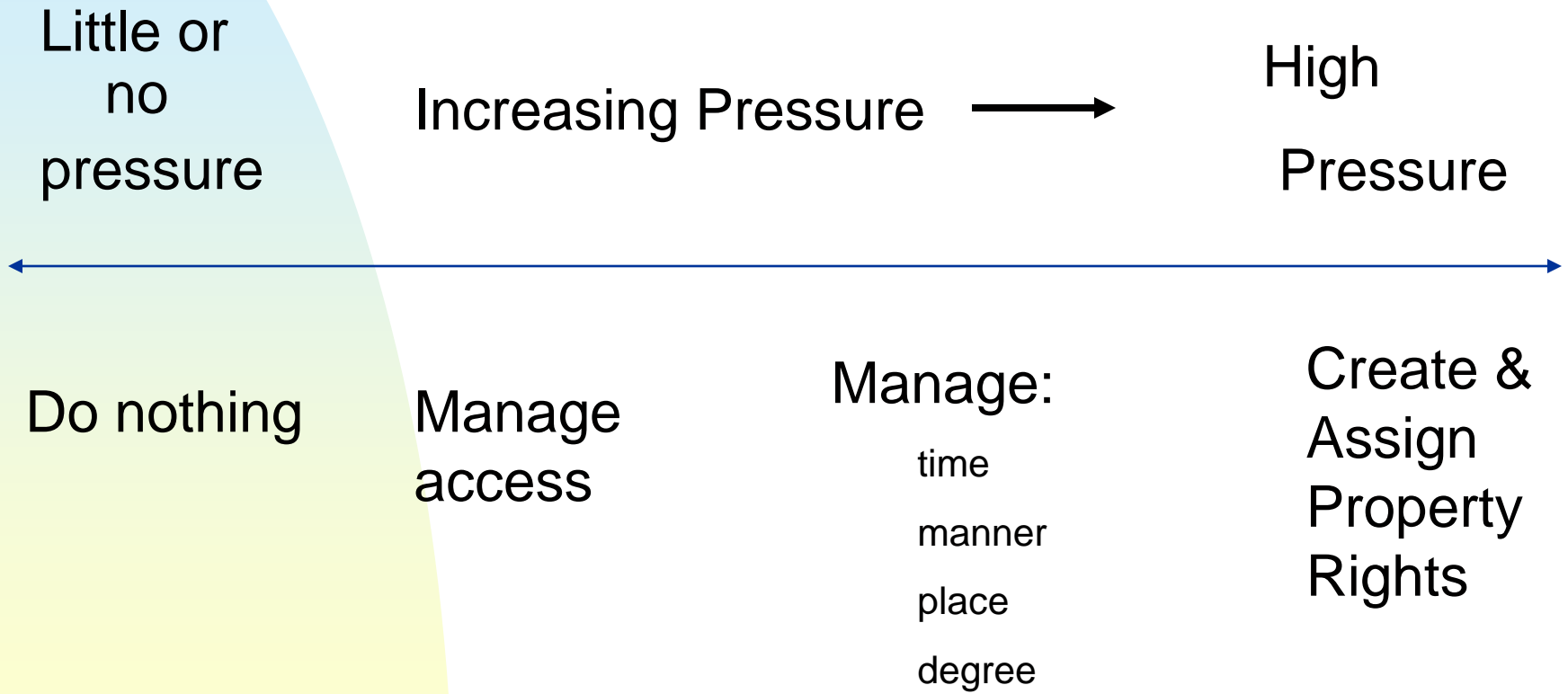
“Line drawn by Pope Alexander VI in 1493-1494 to assign colonial spheres of interest in the Americas to Portugal and Spain.”



Text and illustration from:

http://demo.lutherproductions.com/historytutor/basic/medieval/story/line_demarcation.htm

Management Options/Cost Considerations



Adapted from Rose, *Rethinking Environmental Controls: Management Strategies for Common Resources*, 1991 Duke L.J. 1 (citing Cheung, *The Structure of a Contract and the Theory of a Non-Exclusive Resource*, 13 J.L. & Econ. 49,64 (1970).

Take away points

