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# Structural Options for Improving MMS/BOEM Decision Making on Offshore Drilling

Jody Freeman

Archibald Cox Professor of Law  
Director, Environmental Law and Policy Program  
Harvard Law School



# Interagency Consultation – Overview

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- **OCSLA**
  - Weak
- **Other Statutes**
  - Narrow scope
- **NEPA**
  - Procedural only



# OCSLA

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- **Five Year Plan**
  - Must respond to DOJ but not other agencies
- **Lease Sale Stage**
  - Consultation requirement weak
- **Development and Production**
  - No requirement to respond to comments



# Other Statutes

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- **Clean Air Act**
    - PSD permit required from EPA
  - **Clean Water Act**
    - NPDES permit required from EPA
  - **Marine Mammals Protection Act**
    - Incidental take permit required from NMFS
  - **Endangered Species Act**
    - No jeopardy consultation with FWS and NMFS
  - **Magnuson Stevens Fishery Conservation and Management Act**
    - Essential Fish consultation required with NOAA
  - **Coastal Zone Management Act**
    - Consistency review required with states
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# NEPA

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- Umbrella requirement
- Procedural statute - no substantive obligations
- Onus on agencies to comment
- No mitigation required
- No worst case analysis required



# More Robust Requirements

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1. Action Agency must consult and respond
2. Action Agency must provide reasons
3. Default = adopt recommendations of outside agencies
4. Concurrence of outside agency required before proceeding
5. Outside Agency has joint authority to implement program



# OMB/OIRA Regulatory Review

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- Executive Order 12866
- Cost-Benefit Analysis for “economically significant regulatory action”
- Arguably Covers OCS 5 Year Plans
- Forum for Inter-Agency Input
- Review of Analytic Basis for Action



# Outside Expert Advice

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- Environmental Studies Program
  - Reviewed by Science Committee
- Technology Assessment and Research Program
  - No outside review



# Advisory Committees – Key Design Features

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- Members chosen based solely on expertise
- Independent from agency and other political control
- Independent budget and staff
- Tailored charter
- Authority to take up matters of own initiative
- Authority to review work product
- Reports to agency head and Congress
- Conflict of interest requirements
- Agency required to justify departing from recommendations
- Exempt from FACA



# National Academy of Engineering

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- Ongoing review and advisory role
  - Available technology, best practices, operational integrity
- Recommendations to MMS/BOEM or Secretary
- Report to Congress
- DOI obligation to respond or explain deviation



# Examples of Advisory/Independent Boards

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- **Nuclear Waste Technical Review Board**
  - Members screened by NAS
  - Appointed solely for expertise
  - FACA exempt
- **Clean Air Scientific Advisory Committee**
  - Appointed based on technical qualifications
  - Conflicts of interest checked
  - Reports directly to EPA Administrator
- **National Transportation Safety Board**
  - Independent agency
  - Independent staff and significant budget
  - Members chosen for technical qualifications

