



EUROPEAN UNION

DELEGATION TO THE UNITED STATES OF AMERICA

ENVIRONMENT AND OCEANS IN THE US

JUNE 2023

Authors: [REDACTED], Counsellor for Environment and Oceans

[REDACTED]

[REDACTED]

Visa: [REDACTED], Head of Section for Global Issues and Innovation



Contents

Overview2

Senate focus on the ocean3

Congressional plans for environment-related legislation before 2024 elections4

Corporate Sustainability Due Diligence Directive4

Air pollution breaks records in June5

New York deforestation bill inspired by EU adopted by state legislature6

White House releases rulemaking agenda7

Administration8

- President Biden announces USD 600 million for climate change adaptation in coastal communities.....8
- USAID releases yearly climate action report and announces USD 9.7 million for sustainable fishing in Ecuador.....8
- EPA to review gas power plant pollution rule8
- Department of the Interior to the rescue of Hawaii’s forest birds9
- Administration still fighting President Trump’s deregulation of wildlife protection.....9
- Federal energy regulatory clears controversial West Virginia pipeline9
- US Coast Guard stages joint drills in the South China Sea9

Congress10

- Bill to make NOAA an independent US agency formally tabled in the House10
- Senate committee holds hearing on Amazon deforestation, cattle supply chain10
- Hearing on the Council on Environmental Quality (CEQ) 2024 budget11

Courts12

- Supreme Court delivers a string of conservative rulings, including on access to water.....12

States12

- Alaska to benefit from USD 278 million for water infrastructure.....12
- North Carolina stakeholders to protect salt marshes13

Private sector13

- Report evaluates plastic bag recycling programs at retail locations.....13

Overview

Americans woke up in June to the nightmarish consequences of **climate-induced air pollution** from wildfires thousands of kilometres away, in Canada. For a number of days in June, some East Coast cities in the U.S. suffocated under the worst air quality levels in the planet. In spite of apocalyptic pictures of iconic New York skylines, political reactions were generally few and far between.

However, the pictures may have given momentum to the New York state legislature: it passed an important **tropical deforestation-free procurement act**, which now awaits Governor Hochul's (D) signature. The New York act is inspired by our EU deforestation regulation and, in a happy coincidence, it was adopted at around the time our own regulation entered into force. New York has now become the first state to take a small step in the EU's direction but others are considering to follow: Massachusetts, California and Colorado.

Back in DC, Senators tabled drafts of **ocean bills**; three pieces mostly led by the two Alaskan Senators with some bipartisan support: on ocean acidification, on blue economy clusters and on seafood labelling. Another interesting piece of ocean-related legislation may affect NOAA – this time tabled in the House. Congressman Lucas (R-Oklahoma) wants NOAA to be a separate agency (but has no bipartisan support so far). As regards international fisheries, USAID announced USD 9.7 million support for Ecuador, perhaps unsurprisingly: Chinese fishing vessels have been extremely hungry for squid and other marine life near Ecuadorian waters.

Also in Congress, there are efforts ongoing to try to include in the must-pass Farm Bill some important provisions on **food waste** (Sen. Coons, a Democrat from Delaware), coinciding with the targets and the proposal tabled by the Commission in early July.

The White House released its **regulatory agenda** for the remaining of 2023 and 2024, involving rule-making from the Department of the Interior to the EPA and others. At the same time, some of these agencies still struggle to get rid of the Trump administration's toxic legacy (e.g. as regards limitations to the Endangered Species Act).

Finally, the **Supreme Court** delivered a handful of mostly conservative rulings, to the dismay of progressive circles in the U.S. Interestingly, the Court expanded beyond the environmental field the "major questions doctrine" (which in effect restricts the margin of regulatory manoeuvre for the administration). In addition, Justices supported a restrictive interpretation of Native American treaty rights to access the water they were promised in the 19th century.

Senate focus on the ocean

In June, a series of fish- and ocean-related bills were introduced by Sen. Lisa Murkowski (R-Alaska) and colleagues from coastal states.

One of the bills, the [**Wild USA Seafood Act**](#), would set up a new consumer-focused label for wild seafood. “Consumers want to know where their food comes from—and by creating a specific label allowing wild seafood, like Alaskan salmon caught in Bristol Bay, wild kelp harvested in Southeast, or pollock caught in the Bering Sea, the option to be labelled as ‘Wild USA Seafood,’ we’re ensuring consumers know they are purchasing the highest-quality seafood from the best-managed fisheries in the world”, Sen. Murkowski said in a statement.

Another [**bill**](#), the **Coastal Communities Ocean Acidification Act**, would enhance existing ocean acidification research programs by directing the National Oceanic and Atmospheric Administration (NOAA) to collaborate with other programmes. Along with [**NOAA’s acidification program**](#), there is research being conducted through a [**program at the University of Alaska Fairbanks’ College of Fisheries and Ocean Science**](#). The bill would add to those programs by strengthening partnerships with a wide range of local, state and tribal groups. Joint research would focus on vulnerability assessments, among other subjects.

A third (and bipartisan) bill called the [**Ocean Regional Opportunity and Innovation Act**](#), or Ocean ROI Act, would require the Secretary of Commerce to establish a federal strategy for creating “Ocean Innovation Clusters” to [**boost the ocean-based economy**](#). Murkowski, in a brief online news conference earlier this month, said she was introduced to the idea of fishery clusters during a 2011 trip to Iceland.

Also in June, a panel on blue economy held by the Ocean Caucus heard remarks from Congresswoman Chellie Pingree (D-Maine), a promoter of the Ocean ROI Act in the House who briefly met Director-General Vitcheva when she was in the US last year.

Congresswoman Pingree spoke on the importance of the House version of the [**Act**](#). This legislation would [**direct**](#) the Secretary of Commerce to establish ocean clusters to strengthen the coastal communities and blue economy of the US. According to Mrs Pingree, ocean clusters would help businesses, entrepreneurs, and innovators to implement sustainable ocean-based economic activities. Panellists praised the bill and also highlighted the importance of a blue workforce development, youth and ocean literacy for decision-makers.

Congressional plans for environment-related legislation before 2024 elections

In a conversation with the office of Sen. Coons (D-Delaware), I learnt that:

- The Senate's Foreign Relations Committee continues to work on the US Foundation for International Conservation [Act](#). This is a bipartisan work, but the stringent House Republicans fiscal red line, applied across the board, is hampering progress: Freedom Caucus members (hard right within the Republican Party) have the capacity to sack the House Speaker Kevin McCarthy, and they request systematically that any additional budget item must be matched with cuts elsewhere in federal investments.
- The Farm Bill, a big must-pass legislation this year, will likely be introduced in the Senate by the end of August. Some Senators are working on a separate and possibly bipartisan food waste bill that may be released during the month of July. The food waste bill may include collection provisions, awareness-raising, date of use labelling reform, innovation (e.g. on plastic substitutes), public-private partnerships, procurement measures, interagency coordination (beyond the leads EPA and the Department of Agriculture, e.g. engaging more with USAID, the Food and Drugs Administration and the Health and Human Services department). The food waste bill may end up being part of the bigger Farm Bill package, and could also imply the creation in the Department of Agriculture of a Food Waste Office of some sort (currently there are few people scattered in the Department devoted to this).
- Parallel work by some Senators, led by Tom Carper (D-Delaware) on landfill and PFAS might also make it to the Farm Bill.

Corporate Sustainability Due Diligence Directive

There is growing concern in the U.S. over the EU's Corporate Sustainability Due Diligence (CSDD) Directive negotiations. In a June 13 letter to Treasury Secretary Janet Yellen, 28 Republican members of Congress wrote that they "view the extraterritorial application of EU requirements on American businesses as a violation of international norms and an infringement on U.S. Sovereignty."

At a Senate banking committee hearing, Yellen voiced similar concerns and received questions from lawmakers on the CSDD Directive. In mid-June, it was mentioned in a meeting between EEAS Deputy Secretary-General König and Department of State Undersecretary Zeya, as well as discussed between JUST Deputy Director General Behrndt and Treasury Assistant Secretary Neiman. The CSDD Directive was again raised on June 22 in a meeting between President von der Leyen and Secretary Yellen. In addition to extraterritorial effects, U.S. politicians note the

potential negative side effects for asset management and investment companies if financial services are included in the Directive.

In the meantime, businesses across the country and local business groups have argued the anti-ESG bills issued by Republican lawmakers contradict the free-market principles that conservatives themselves have long championed. Overall, out of 165 anti-ESG bills introduced in 37 states this year, 22 measures passed in 14 states. On July 26, at federal level, the House Financial Services Committee plans to vote on various ESG-related bills.

Air pollution breaks records in June

More than 9 million acres have been devastated by wildfires in Canada, representing about 15 times the normal burned area for this point in the year and covering in smoke and haze huge portions of eastern Canada and the United States.

As a result, poor air quality in vast tracts of the U.S. (particularly the East Coast) has broken records during the month of June. On June 7, around 75 million people across the Midwest, Northeast and Southeast parts of the U.S. were under air quality alerts. New York City recorded one of the worst possible air quality index scores at 484 out of 500 leading the city to cancel outdoor events and hand out free high-quality masks. Reports mentioned [more than a third](#) (120 million) of Americans were under air quality alerts for many days in June.



Hazardous particles reached as far as South Carolina and Eastern Pennsylvania. Hints of smoke were even present in the Georgia-Florida border. In the DC region the air quality index bumped into the “hazardous” zone with an Air Quality Index (AQI) above 300, and the Delegation had to resort back to its masks stock to provide for colleagues coming to the office. It is the first time in its history that the District has recorded a code purple or worse for fine particulate matter, the main pollutant in wildfire smoke.

The event is now considered as one of the worst in recent U.S. history, notably in terms of the number of people impacted, and DC residents will have to face crises like this [more regularly](#) because of climate change.

The reaction from U.S. politicians, however, was not too consequential. Senate Majority Leader Chuck Schumer (D-NY) called the Canadian wildfires “truly unprecedented” in floor remarks and warned of the ongoing damage caused by climate change, linking them to human action and urging both parties to take further action beyond the Inflation Reduction Act, without providing specifics.

This is all the more surprising given recent findings that [14 million Americans](#) live within five miles of cancer-causing gas emissions from chemical plants. EPA is currently working on [rules](#) to strengthen standards for around 200 chemical plants.

Ironically, the 4th of July is the most polluted day of the year in many U.S. locations, with the impact of fireworks on air quality rivalling the wildfires. Each year, the \$2 billion worth of explosives set off cause water pollution, spark wildfires and increase fine particulate pollutants by 42 percent.

New York deforestation bill inspired by EU adopted by state legislature

An important deforestation bill, [The New York Tropical Deforestation-Free Procurement Act](#), **was passed by a bipartisan majority** in the New York State Assembly in June and will now head for the signature of Democrat Governor Hochul. Sponsored by state Sen. Liz Krueger and Assembly member Kenneth Zebrowski, the bill ensures that state and local government procurement does not fund tropical forest destruction by ending state funding that can act as driver of tropical primary forest destruction or degradation, and also covers associated abuses of the rights of indigenous peoples and local communities. I published an [op-ed](#) welcoming NY state’s step, as it coincided with the entry into force of the EU’s own deforestation regulation.

Importantly, like the EU’s model, the bill **covers both legal and illegal deforestation**, essentially by requiring companies at every link in the value chain to be able to certify that the land at the smallest administrative unit where materials were produced has not been deforested or degraded after 1st January 2023. There are also requirements that companies adhere to the laws of the country where they operate, as well as demonstrate adherence to international standards around free, prior and informed consent of indigenous peoples and local communities - whether or not this is required under national host country laws.

In all this senses the bill goes beyond what the federal FOREST Act now stuck in Congress requires. On the other hand, the New York bill **only covers tropical forests** – it does not expand to boreal or temperate forests. The original text did cover those but the government of Canada successfully [fought hard against](#) that larger scope. However, there is a section that establishes

an outright ban on the use of tropical hardwoods by New York state government construction projects.

Once signed, **New York will be the first state in the country** to end tropical forest-destroying procurement, providing momentum for parallel efforts in Congress (the above-mentioned FOREST Act and others) and other states; Colorado, for instance, is working on measures that are more globally-focused and follow even more closely the EU model. Others, including California and Massachusetts, are considering similar proposals as well.

White House releases rulemaking agenda

According to the White House's the [Spring Regulatory Agenda](#) published in June, the first half of 2024 is likely to be one of the busiest regulatory periods of the Biden administration - a significant number of major rulemakings are slated to be finalised by spring 2024.

On **methane**, EPA predicts new emissions requirements for the oil and gas sector by August. The Bureau of Land Management is targeting a September finalisation date for its own separate methane rule applying to public lands.

The Council of Environmental Quality aims to issue a final update to its climate guidance regarding **greenhouse gas analysis under the National Environmental Policy Act** in February.

The Interior Department plans to finish a **rule on leasing federal land for conservation and climate** purposes by December 2023, which I reported about in the last monthly report.

On **air quality**, EPA is optimistic about completing the rulemaking to strengthen the National Ambient Air Quality Standard for particulate matter in October this year. The agency proposed to lower the limit from 12 micrograms per cubic meter to somewhere within a range of 9-10 micrograms. EPA's specific standards on ozone will however be delayed until 2025 at least.

On **water**, after the Supreme Court significantly shrank the reach of federal water jurisdiction for the executive, the EPA has been planning a follow-up rulemaking to address the ruling but it has now been withdrawn. EPA is still on track to propose updates to the lead and copper rules for water by September and to finalise them by October 2024.

On **PFAS**, EPA is optimistic about its timeline to finish the rule on the first federal drinking water standards for PFOA and PFOS (types of PFAS). The law gives EPA until September 2024 to issue the final rule, but the agency is projecting to finish it by January instead.

Administration

- **President Biden announces USD 600 million for climate change adaptation in coastal communities**

During his visit to California, President Biden [announced](#) USD 600 million investments to help coastal communities around the country fight climate change. The investments will be funded by Biden's climate and infrastructure bills and will include a \$575 million project to fight rising sea levels, storm surge and hurricanes. NOAA will be coordinating the delivery of the investment package. The president's trip to California also saw him raise campaign cash from tech and climate donors as he races to raise over a billion dollars for his re-election fight.

- **USAID releases yearly climate action report and announces USD 9.7 million for sustainable fishing in Ecuador**

USAID released its [first annual progress review](#) on the Agency's 2022-2030 Climate Strategy. The progress review boasts that work under their climate strategy prevented the equivalent of 6.5 billion plastic bottles to reach the ocean in 2022 as part of the Agency's Save Our Seas Initiative. The review also mentions the U.S. helped protect an area bigger than California (50 million hectares) in the tropical rainforests of DRC, Brazil and Indonesia, and an additional 60 million hectares elsewhere. USAID also mentions their partnership with NASA to create the TerraOnTrack [app](#) for Brazil, so that community members can monitor and report threats to their land such as illegal mining, logging, and expanding livestock production in real time.

Also in June, USAID announced that it will work with Congress to provide \$9.7 million to address the illegal, unreported, and unregulated (IUU) fishing of sharks and rays in Ecuadorian waters, pending the availability of funds. The dramatic increase in IUU fishing by both international and domestic fishing fleets in Ecuadorian waters, and particularly around the Galapagos Islands, has resulted in a severe decline of shark and ray populations.

- **EPA to review gas power plant pollution rule**

EPA last updated its pollutant emissions rule for new stationary gas turbines in 2006, setting limits for nitrogen oxides and sulphur dioxide. The Clean Air Act requires the agency to review and, if called for, revise such standards every eight years, meaning EPA is now almost a decade overdue. This has prompted environmental NGOs to sue as federal projections indicate as much as 120 megawatts of new gas capacity will be built by 2030. EPA has now until November 7, 2024, to propose either retaining the current limits or setting new ones. The agency would have until November 12, 2025, to finalise that decision.

- **Department of the Interior to the rescue of Hawaii's forest birds**

Secretary of Interior Deb Haaland announced that her Department has committed nearly \$16 million to prevent the imminent extinction of Hawaiian Forest Birds. The funding will support a new Hawaiian Forest Bird Conservation Keystone Initiative, which was unveiled as part of the Department's [Restoration and Resilience Framework](#). The Framework is guiding \$2 billion in investments from the Bipartisan Infrastructure Law (aka Infrastructure Investment and Jobs Act) and Inflation Reduction Act to restore lands and waters and advance climate resilience.

- **Administration still fighting President Trump's deregulation of wildlife protection**

The Department of the Interior and NOAA will make it easier to protect wildlife from climate disruptions and other threats, restoring protections removed by the Trump administration in the context of the Endangered Species Act (ESA). Three separate regulations proposed by the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration's fisheries service would make it harder to remove a species from the endangered list and restore a provision that strengthens protections for threatened species, the classification one step below endangered. The rules also eliminate a Trump-era policy that would have allowed regulators to factor in economic assessments, like estimates of lost revenue for oil and gas operations, when deciding whether a species warrants protection.

- **Federal energy regulatory clears controversial West Virginia pipeline**

As reported last month in the context of the debt ceiling deal ("Fiscal Responsibility Act"), the compromise included the green light for the pet project of Sen. Joe Manchin (D-West Virginia): the Mountain Valley Pipeline. In June, the Federal Energy Regulatory Commission (FERC), following the Congress mandate, cleared the final hurdles for the project. Construction will be resumed, including through the Jefferson National Forest and all bodies of water and wetlands across the pipeline's path.

- **US Coast Guard stages joint drills in the South China Sea**

U.S., Japanese and Philippine coast guard ships staged law enforcement drills in waters near the disputed South China Sea in June, as Washington presses efforts to reinforce alliances in Asia amid an increasing rivalry with China. Witnessed by journalists on board a Philippine coast guard patrol boat, the drills focused on a scenario involving the interdiction and boarding of a vessel suspected of carrying weapons of mass destruction. This is the first trilateral engagement between the coast guards, destined "to ensure a free and open Indo-Pacific" in the words of a US commanding officer, Capt. Brian Krautler. The Biden administration has been strengthening

an arc of military alliances in the region to better counter China, including in the South China Sea and in any future confrontation over Taiwan.

Congress

- **Bill to make NOAA an independent US agency formally tabled in the House**

As announced in the last monthly report we sent, House Science, Space, and Technology Committee Chairman Frank Lucas (R-Oklahoma) introduced legislation to enshrine the National Oceanic and Atmospheric Administration (NOAA) into law and establish it as a standalone agency within the executive branch – it was created in 1970 by Executive Order of President Nixon. The [National Oceanic and Atmospheric Administration Act of 2023](#) is cosponsored only by Republicans though, and its future is therefore uncertain in a much polarised political context.

Through this bill, NOAA would become an independent agency and leave the Department of Commerce. In addition, the NOAA Organic Act would, according to Republican wishes:

- Promote scientific integrity and critical research within the agency by requiring NOAA's Science Advisory Board to develop a strategic plan for their research and development activities every five years.
- Direct efficient reorganization of the agency, requiring NOAA to submit a reorganization plan that will prioritize how NOAA can best carry out its core mission while promoting collaboration and reducing duplication within the agency.
- Preserve the National Weather Service within the independent NOAA agency and support its critical work providing forecasts, monitoring severe weather, and communicating weather information to local, state, and federal authorities.
- Consolidate the agency's mission by removing Space Commerce. The Office of Space Commerce would be integrated into the Department of Commerce.

- **Senate committee holds hearing on Amazon deforestation, cattle supply chain**

On June 22nd, the U.S. Senate Finance Committee held a hearing on cattle supply chains and deforestation of the Amazon, where corporations such as JBS found themselves under fire. Senator Ron Wyden (D-Oregon) led the committee during a two-year investigation of this issue and the ongoing environmental impact of JBS, particularly in regards to the company's (now unattainable) commitment to eliminate cattle involved in deforestation from its supply chain by 2025.

Rick Jacobsen, manager of commodities policy at the UK NGO Environmental Investigation Agency (EIA), stated that the U.S. should attempt to pass similar legislation to the European Union, which requires traceability and deforestation.

In a display of bipartisanship, Senator Mike Crapo (R-Idaho) weighed in on the subject by affirming that “countless studies, spanning a decade” tie chronic illegal land-grabbing activities of various enterprises as the main accelerators of deforestation”. He added that these studies point to the economic success of such enterprises as empowering various illicit actors to hide within complex supply chains and function with near impunity in regions where accountability is limited such as the Amazon. Crapo highlighted that conservation and progress do not need to be at odds and measures can respect the right of property of owners and balance the needs for conservation and community.

- **Hearing on the Council on Environmental Quality (CEQ) 2024 budget**

On June 22, the House Committee on Natural Resources held a [hearing](#) to evaluate the Council on Environmental Quality (CEQ) 2024 budget request. Chairman of the committee Westerman’s (R-Arizona) opening statement focused on the idea that the CEQ has exceeded its initial purpose and is ultimately anti-energy (meaning anti-fossil fuels). Congressman Grijalva’s (R-Arizona) opening statement mentioned how CEQ is currently reviewing and updating the regulations and make sure the US is meeting the administration’s environment and climate change goals. As a witness, CEQ Chair Brenda Mallory’s opening statement mentioned all of the programs that CEQ has implemented through the administration such as the Justice40 Initiative, America the Beautiful, and marine conservation.

During questioning Chairwoman Mallory was asked why the permitting process takes so long under the National Environmental Policy Act (NEPA) and the Chairwoman emphasized that the administration thinks it is essential to ensure the permitting process is as efficient and equitable as possible. Mrs. Mallory also defended environmental justice by stating the administration will ensure every community has access to clean air, water, and environment. Finally, when addressing the changes to NEPA under the Fiscal Responsibility Act (the recent bipartisan deal on debt ceiling), she mentioned that the ultimate agreement is very much in line with measures the CEQ is already working on and they plan to work diligently to make sure changes are integrated into current rulemaking processes.

Courts

- **Supreme Court delivers a string of conservative rulings, including on access to water**

Arguably the biggest political developments in June came from the judicial branch of government. In a series of seminal and, in some cases, highly controversial rulings issued prior to its summer break, the U.S. Supreme Court (a) affirmed the Voting Rights Act, rejecting a theory that would have given state legislatures sweeping authority over elections; (b) cited freedom of religion and speech in the workplace as grounds for upholding a private company's decision to refuse service to LGBTQI+ individuals; (c) curtailed universities' use of race conscious ("affirmative action") admissions policies; (d) ruled unconstitutional President Biden's student loan forgiveness plan; and (e) [ruled against](#) the Navajo Nation in a water rights case, rejecting the tribe's suit against the federal government in a dispute over access to the drought-depleted Colorado River system.

In the latter case, the vote was tight, 5 to 4, with conservative Justice Brett M. Kavanaugh writing for the majority. He said the 1868 peace treaty at the heart of the case did not require the federal government to take "affirmative steps" to secure water for the Navajo. In dissent, also conservative Justice Neil M. Gorsuch, joined by the court's three liberal members, said the tribe's request was more modest than that, adding that the government had violated the plain terms of the treaty.

Interestingly, the student loan forgiveness ruling implicated many of the factors present in recent environmental cases, and cited the decision in [West Virginia vs EPA](#), which last year curbed the environmental agency's regulatory authority over greenhouse gas emissions.

States

- **Alaska to benefit from USD 278 million for water infrastructure**

EPA announced its largest investment of annual water infrastructure funding ever for Tribes and Alaska Native Villages. EPA Assistant Administrator for Water Radhika Fox announced over \$278 million in funding to improve access to safe and reliable drinking water and wastewater services. The funding will provide for better compliance with existing water regulations, identifying and replacing lead service lines, and addressing harmful emerging contaminants in drinking water and wastewater, such as PFAS ("forever chemicals").

- **North Carolina stakeholders to protect salt marshes**

A North Carolina coalition of more than 300 military and government officials, community leaders, conservationists, scientists, fishermen and others released a plan to maintain and enhance the productivity and benefits of a million acres of salt marsh that now stretch from North Carolina to east-central Florida.

The [South Atlantic Salt Marsh Initiative](#)'s plan calls for protecting the coastal saltwater grasslands for their value in reducing flooding and erosion while providing wildlife and fish habitats important for recreational and commercial fishing, hunting, birding, eco-tourism and other activities that support coastal businesses and economies. The coalition was brought together by The Pew Charitable Trusts and the Southeast Regional Partnership for Planning and Sustainability (SERPPAS).

Private sector

- **Report evaluates plastic bag recycling programs at retail locations**

A [study](#) released by ABC News has led to some scepticism around plastic bag recycling programs at retail locations. ABC News collaborated with nine ABC-owned TV stations to place 46 trackers on plastic bag bundles that were deposited at retailers Walmart and Target locations for recycling, in 10 states. The team was to monitor each location many times a day and would ping anytime they were near compatible or digital devices. ABC News reports most trackers ended up in landfills and not recycling centres.