

Ocean Jurisdiction

Considerations for marine area planning and governance

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Land/Ocean Use Puzzle

Regulating

- ◆ Who/How will the site (activity) be regulated?

Zoning

- ◆ Where can you put/allow an activity?

Siting

- ◆ Where should you put/allow an activity?

Leasing/Permitting

- ◆ Where will you put /allow an activity?

Regulatory Jurisdiction

Q Who regulates activity in the ocean?

A It depends on:

- 👉 Location
- 👉 History
- 👉 Activity

Location: Federal/State Waters

General Rule (location-based):

“State Waters” = 3 n. miles

“Federal Waters” > 3 n. miles

see Submerged Lands Act of 1953, 43 U.S.C. 1301 *et seq.*

History: Nantucket Sound

In some cases, states have been granted title/authority beyond 3 miles.

Massachusetts made a claim to Nantucket Sound under the doctrine of “ancient title.” The US Supreme Court rejected that claim in 1986.

See U.S. v. Maine, 475 U.S. 89 (1986).

Activity-based jurisdiction

Once you've determined where an activity will be (federal vs. state waters), consider what type of activity is being proposed to determine who has a say in regulating that activity.

Navigation obstructions

ACoE

OCS oil and gas development

DoI/MMS

Fishing

NMFS

Activity and Impact – based Laws

Now determine what type of impact an activity may have to figure out which laws apply

Navigation obstructions

R&HA

OCS oil and gas development

OCSLA

Fishing

Magnuson/ESA/MMA

For any federal activity that will significantly affect the environment, also consider NEPA, ESA, MMPA

Activity and Impact implications

In some cases,

the feds have a say over activity and impacts in state waters

and

the states may have a say in certain activities in federal waters.

Federal-State Interaction

US federal government maintains certain paramount rights re: activities in all waters (navigation, commerce, security) which may pre-empt state laws

States have some say in activities in federal waters per Coastal Zone Management Act “consistency” determination.

Zoning 101

Reasons for zoning:

Protect human health and environment;
Lend stability to ownership expectations;
Reduce nuisance claims; and,
Plan infrastructure

**We zone much of the land
but very little of the ocean**

What's the Difference?

Q What's the difference between the ocean and the land?

A Property interests!

Zoning is used to plan/regulate private activity on private property.

Looking to the Land

Ocean areas are public property and accommodate a wide range of public and some private uses.

Before considering zoning then, consider non-zoning public land management models.

Land models

Twenty-nine percent of the land mass of the US is owned by the federal government

Public Land Management

In the US, federal public land use is designated through a **withdrawal** and/or **reservation** **process**.

Private Interests / Public Land

Some public land is used for private purposes:

- Timber harvesting
- Oil/gas development
- gold mining

Zoning 101

Zone / v. Divide into areas subject to particular planning restrictions; designate a specific area for use or development in this area.

Also *US* (foll. by *out*), forbid (the siting of an enterprise) in a given area.

The New Shorter Oxford English Dictionary
(Vol. 2, N-Z) (Clarendon Press, Oxford 1993).

Ocean Zones

Jurisdictional zones:

Coastal zones (vary by state)

Internal Waters

Territorial Sea

Contiguous Zone

Exclusive Economic Zone

Private Interests / Public Oceans

Some public ocean space is used for private purposes:

- Oil/gas development
- sand/gravel/mineral mining

Exclusive Use of Ocean Space

Transit use

Commercial shipping

Recreational boating

Fishing

Swimming

Short term temp

Lobster Pots

Fishing gear

Anchorage

Long term temp

Aquaculture

Moorings

Casinos

Permanent

Wharves

Navigation Aids

MPAs

Marinas