

The Next Big Step in
Coastal Zone Management

Zoning the Oceans

JOHN M. BOEHNERT



AMERICAN BAR ASSOCIATION
Section of State and
Local Government Law

Contents

About the Author xiii

Acknowledgments xv

Introduction xvii

PART 1. An Overview of Coastal Zone Management	1
1 The Early Years: The Public Trust Doctrine and State and Local Regulation	5
Introduction	5
The Public Trust Doctrine	6
Early Representative Coastal Zone Policies Under the Public Trust Doctrine	13
2 Charting the Course: Navigating Federal and State Rights in Offshore Waters	21
Introduction	21
From Consensus to Conflict	23
Conclusion	32
3 The Modern Era: Federal Guidance and State Regulation Under the Coastal Zone Management Act	35
Introduction	35
The Coastal Zone Management Act of 1972	38
The CZMA's Federal Consistency Program	40
Growing Pains	46
Evaluation and Criticism	50
Extending the Federal-State Partnership?	53

PART 2. Overview of Ocean Zoning	59
4 Ocean Zoning: Ecosystem-Based Management and Marine Spatial Planning	61
Introduction	61
Ecosystem-Based Management	63
Marine Spatial Planning	63
Ocean Zoning	66
Ocean Zoning Versus Land-Based Zoning	68
The Antecedents to Ocean Zoning	71
Marine Spatial Planning in Other States	73
Summary of State MSP Efforts	81
Marine Spatial Planning in Other Countries	83
Summary of MSP Efforts in Other Countries	89
5 A National Ocean Zoning Policy: Ocean Zoning and the Interagency Ocean Policy Task Force	103
Introduction	103
Marine Spatial Planning	106
Ocean Zoning and the National Ocean Council	107
Examples of Potential State Conflicts	113
Authority for Ocean Zoning	114
Opposition to Ocean Zoning Under a National Ocean Policy	116
6 Ocean Zoning Models: From National to State, Cooperative to Regulatory	121
Introduction	121
National Versus State Approach	122
State and Interstate Models	123
Other Models	127
Other Issues	129

PART 3. Rhode Island's Ocean Special Area Management Plan	133
7 Introduction and Overview: Ocean Zoning for Alternative Energy Development	135
Introduction	135
Origins of the Ocean Special Area Management Plan	137
Rhode Island Coastal Resources Management Council	140
Special Area Management Plans	142
Goals and Policies	145
The Team	145
8 Detailed Studies and Information Gathering: Building a Database for Future Permitting	151
Introduction	151
Elements of the SAMP	153
Ecology (Chapter 2)	154
Global Climate Change (Chapter 3)	154
Cultural and Historic Resources (Chapter 4)	156
Commercial and Recreational Fisheries (Chapter 5)	157
Recreation and Tourism (Chapter 6)	158
Marine Transportation, Navigation, and Infrastructure (Chapter 7)	158
Renewable Energy and Other Offshore Development (Chapter 8)	158
Other Future Uses (Chapter 9)	159
Appendix A	162
Appendix B	172
Appendix C	173
Appendix D	174
Appendix E	175
Appendix F	176
Appendix G	177
Appendix H	178

9	Regulating Uses: An Open-Ended Model for Continued Future Regulation	185
	Introduction	185
	General Policies	186
	Ecology	186
	Global Climate Change	187
	Cultural and Historic Resources	187
	Commercial and Recreational Fisheries	188
	Recreation and Tourism	189
	Marine Transportation, Navigation, and Infrastructure	189
	Offshore Renewable Energy and Other Offshore Development	190
	Regulatory Standards	191
	Ecology	191
	Global Climate Change	192
	Cultural and Historic Resources	192
	Commercial and Recreational Fisheries	193
	Recreation and Tourism	194
	Marine Transportation, Navigation, and Infrastructure	194
	Renewable Energy and Other Offshore Development	194
	Areas of Particular Concern	196
	Areas Designated for Preservation	196
	Certified Verification Agent	197
	Implementation and Decision Making	
	Under the Ocean SAMP	198
	The "Other" Ocean Zoning Plan: Massachusetts's Ocean Plan	200
	PART 4. A Possible Blueprint for Other Jurisdictions	207
10	The Process: Open, Cooperative, and Consensual	211
	Importance of the Process	211
	Implementation Process and Schedule	212

Organizational Activities	213
Transparency	215
Stakeholder Process	221
Communication and Coordination with Federal Officials	228
Availability of Expertise	229
A Preferred Developer Approach	230
Summary	235
11 The Benefits: Protecting the Ecosystem, Reducing User Conflicts, and Shortening Permitting Time	239
The Nature of the Inquiry	239
Marine Spatial Planning	241
Protecting the Ecosystem and Its Resources	242
Reducing User Conflicts	243
Shortening Permitting Time	245
Summary	250
12 Jurisdictional Significance: A "States' Rights" Model for Coastal Zone Management	255
Introduction	255
The Ocean SAMP and Federal Consistency Program Questions	258
A States' Rights Model	267
Appendix	275

Table of Authorities 279

Index 285