

## ***Marine Zoning***

Maine Coastal Program  
Maine State Planning Office  
39 State House Station  
Augusta, Maine 04333

Principal Authors:  
Josie Quintrell, Maine State Planning Office  
Gro Flatebo, Ash Cove Consulting, Yarmouth

## MARINE ZONING

As the pressures to use our marine resources grow, conflicts in our marine areas will grow. One mechanism to reduce these conflicts is through marine zoning. Zoning marine areas can address cultural, economic and environmental issues and reduce conflicts, provide resource users with predictability and reduce regulatory workload. It can funnel heavy use into areas that can absorb it, while protecting sensitive areas. Marine zoning can help minimize marine resource conflicts by identifying designated or priority uses as well as incompatible uses for an area. Zoning can be done in very limited areas of particular importance or coastwide.

Marine zoning differs from land-use zoning in that marine waters are a public resource to be managed for the public trust. There is no takings issue with marine zoning. However, any discussion of marine zoning must include the impacts on and needs of traditional user groups that have always had access to these resources.

### **I. Current Forms of Marine Zoning in Maine**

Maine does have discrete, albeit disjunct forms of marine zoning now. These forms usually cover only one activity and are usually very local. For example:

- \* Marine water quality is classified SA, SB, or SC according to its quality and various restrictions are placed on discharges according to their impacts. Waters with outstanding natural resources are classified as SA, with no direct discharges allowed. SB waters are unimpaired and discharges are allowed that do not cause adverse impacts to estuarine and marine life. Discharges are allowed into SC waters as long as the structure and function of the resident biological community is maintained.
- \* Shipping lanes and harbor approaches are designated for commercial vessel traffic. Anchorage areas and places where oil-carrying vessels can transfer, or lighter, their cargo, also are designated in Maine's major harbors.
- \* Marine resource conflicts are prevented by statutory prohibitions for certain activities around aquaculture leases and permitted fish weirs. For example, 12 MRSA §6957 limits dragging or trawling within 500 feet of an aquaculture lease with floating aquaculture equipment. Lobster traps are prohibited within 300 feet of the mouth of a permitted fish weir by 12 MRSA §6435, while 12 MRSA §6525-A prohibits setting nets within 2000 feet of a fish weir.
- \* Harbors are managed by many municipalities to reduce conflicts between boaters. Harbor management plans may include travel lanes and designated mooring areas for specific users.

## II. Marine Zoning in Other States

Several states already use marine zoning. This section contrasts examples from Rhode Island and Oregon. Rhode Island zoned their entire coast according to how it is currently used. Oregon, on the hand, zoned only their estuaries, based on the habitat types found within.

### A. Rhode Island

Rhode Island has zoned its 420 mile coastline and near-shore waters based on the current use of those zones. The six zones used in waterfront and near-shore area zoning include:

1. **Natural Shoreline** – Includes conservation areas, undisturbed scenic areas, and areas unsuitable for building. Recreational boating facilities, point source discharges, filling, and any industrial or commercial structures (except related to fishing and aquaculture) are prohibited. Dredging is not permitted nor are moored houseboats or businesses.
2. **Residential** – Areas with high scenic value that support low intensity recreational and residential uses. Small scale alterations consistent with residential waterfronts are allowed. New boat launches are allowed.
3. **Commercial Facilities** – Densely developed recreational boating facilities. Include recreational support facilities and water dependent uses. Recreational boating uses are considered the highest and best use.
4. **Open waters of the Bay or Sound** – Waters that support or could support a variety of commercial and recreational activities. A balance of water dependent uses is encouraged.
5. **Commercial or Recreational Harbors** – Waterfront areas that support a variety of tourist, recreational and commercial activities. Water dependent uses are the highest priority use for these waters.
6. **Water Dependent Commercial and Industrial Zones** – Extensively altered water areas for commercial and industrial water-dependent activities. These areas are managed to support commercial activity related to shipping and commercial fisheries.

Seventy percent of Rhode Island's shoreline is included in zones 1 and 2. Apparently, these designations have been very political. Despite problems, zoning has been effective in managing uses. Rhode Island's major marine-related land-use problems are finding mooring space for recreational boats and utilizing extensive defense facilities that are no longer in use by the Federal Government.

Zoning according to current use works well in a small state with a heavily-used shoreline. This management scheme is also complimented by special area management plans for significant ecological areas, primarily salt ponds.

## **B. Oregon**

Oregon has chosen a different approach for avoiding conflicts through marine zoning. They have a "bold" coast, a straight shoreline with few coves and harbors. Beaches along the coast are publicly owned. Estuaries are the focus of recreational, fishing and industrial activity. Their program encompasses 17 estuaries, recognizing that these areas are vital environmental resources as well as recreational, industrial and commercial resources. Estuaries are classified into the following zones according to the habitats and characteristics within them:

1. **Natural Areas** – Important natural areas without jetties or channels with resources that are managed for protection. Uses allowed in these areas are limited.
2. **Conservation Areas** – Significant habitat adjacent to development or significant habitat that is of a smaller scale than in category.
3. **Development Management Units** – Areas of minimal biological significance. These areas are managed to provide for navigation, public or industrial water-dependent uses. Areas are further broken down into deep water draft areas and shallow water draft areas.

Oregon's marine zoning is usually developed on a county level but must be locally-approved. Each zone has designated permissible uses that are reviewed only as to whether they require dredging or filling. "Resource capability uses" are those activities that may or may not be consistent with the zone and require a review of the effects of the proposed activity on other uses, resources of the area, and the management objective for the estuary. The project must also be reviewed for dredging and filling and an overall assessment of impacts. Mitigation must be considered for projects that propose to dredge or fill portions of estuaries.

## **III. Issues for Zoning Marine Areas in Maine**

Marine zoning has many advantages for Maine. Its strength lies in the fact that it can be used as a means to reduce conflicts between various user groups, for example, harbor traffic lanes can be designated to avoid damage to fixed gear set within a harbor. Marine zoning can also protect economically important areas such as intertidal areas important for shellfish harvesting or eel grass beds, suspected nursery areas for important marine species. Shellfish flats within a specific radius of marinas are closed by the U.S. Food and Drug Administration. Marina exclusion zones could be designated around particularly productive shellfish flats.

Marine zoning can promote uses such as aquaculture by identifying preferable areas and simplifying the permitting process. Cumulative impacts can be avoided and sensitive areas

protected by focusing development or impacts into areas that are best suited to absorb them. Finally, marine zoning can identify important areas up front and develop guidelines for their use.

While there are many advantages, there are numerous issues involved with marine zoning in Maine. These include the following:

### **A. Approach to Zoning**

We need to explore the most appropriate zoning scheme given our extensive shoreline. Rhode Island offers a scheme of zoning the entire coast according to current uses. The Oregon approach is based on existing habitat and only zones areas where the potential for conflicts is greatest. Maine's long coast seems best suited for local zoning through a comprehensive planning process, optimally in coordination with other towns, according to state guidelines for important or high use areas. This approach would allow local areas to decide how they want to go about zoning and which uses should be encouraged in each area. Although similar in concept to how Shoreland Zoning is administered in Maine, this program would be more limited in scope and involve different constituencies.

We also need to explore the legal authority for developing any zoning scheme; whether municipal home rule authority extends to submerged lands allowing municipalities to regulate this area. While towns engage in harbor planning through reference to home rule authority, it is unclear whether this authority extends to more comprehensive zoning schemes. The State, as owner of submerged lands, retains ultimate responsibility for public trust lands.

The State Planning Office should work with the Bureau of Public Lands and the Marine Law Institute to determine the legal authority for zoning near shore waters.

### **B. Identification of Marine Resources**

Maine needs to have more information on the types and ranges of habitats that occur beneath our waters. The Maine Natural Areas Program, with funding through the Maine Coastal Program, is developing a classification system for these habitats. This classification system and subsequent management guidelines can help determine:

- \* Habitats that are significant and worthy of protection;
- \* Common habitats that are prevalent throughout the marine environment;
- \* Management restrictions that should be in place to protect ecologically important areas; and
- \* Areas most appropriate for heavy or specialized use.

This information can form the basis for state guidelines for marine areas.

The Maine Natural Areas Program should continue its work on developing the Classification and Management Guidelines to evaluate habitats that are worthy of protection and areas most appropriate for heavy or specialized use.

The next step for implementing marine zoning is for towns to look at their resource and determine the most appropriate areas for a variety of uses. They also should identify areas most vulnerable to disturbance such as eel grass beds.

### **C. Management of Marine Zoning or Schemes**

Any marine zoning scheme needs to be based on goals and objectives, relate to a regional plan for the area and be consistent and coordinated on a regional level. Neighboring towns should have uniform guidelines and designations. The state could prepare guidelines and general recommendations to save each town from researching the best management measures.

### **D. Permitted Uses through Zoning**

Maine could streamline the permitting process for certain uses within marine zones similar to the approach Oregon has taken. There may be an opportunity to improve on Maine's current permit-by-rule system by linking it to certain zones and incorporating performance standards for these zones. For example, building wharves falls under DEP's permit-by-rule requirements. In some areas, these activities pose little threat, while in other areas a proliferation of docks could be detrimental to a productive shellfish area or wildlife concentration area.

The Department of Environmental Protection should explore expanding Maine's current permit-by-rule system to activities in certain marine zones.

## **IV. Summary**

Marine zoning offers a mechanism for Maine municipalities to begin to manage some of the conflicts over marine resources. Two approaches to marine zoning are explored in this paper. Zoning based on habitat types and limited to significant high use areas is most appropriate for a coastline like Maine's. Before we can institute a scheme for marine zoning, a number of issues need to be resolved including, the framework for zoning, legal mechanisms, better information on marine resource types and how zoning would be managed.

## **References**

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