

28th International Submerged Lands Management Conference Webinar Series

Session: The Questionable Future of Water-dependency

October 22, 2009, 3:00-4:30 PM EST

3:00-3:25: Introduction -- The Functional Application and Devolution of Water-dependency

Most submerged lands and coastal management programs within and outside the United States have historically attempted to promote "water-dependent" uses within marine and coastal environments. These same programs have also attempted to dissuade "non-water-dependent" uses. In application, however, these efforts have often been undermined by an unwillingness to deny authorizations of non-water-dependent uses, inability to appropriately define geographic-dependent and public recreational uses, and difficulties in determining when a traditional water-dependent use is no longer water-dependent. In addition, new "uses" such as ecosystem services, biodiversity conservation, aesthetic/cultural/spiritual appreciation, and viewsheds are struggling for legitimacy and fair treatment. Local communities are also undertaking urban shoreline revitalization planning which focus on new residential and commercial developments as opposed to traditional maritime trades and businesses. This presentation will address the evolving nature of submerged land "uses", demonstrate why "water-dependency" is not useful, and propose that criteria-based decisions be used instead of out-dated terms and definitions to help plan for and authorize appropriate activities within marine and coastal environments.

- Speaker: Jay Udelhoven, [The Nature Conservancy](#)

Jay Udelhoven is a Senior Policy Advisor with The Nature Conservancy's Global Marine Team. Jay works within and outside the United States to assess and develop opportunities for private organizations to acquire or direct rights and interests in ocean and coastal waters through Marine Conservation Agreements (MCAs). MCAs include any formal or informal understanding between two or more parties in which the parties obligate themselves, for an exchange of benefits, to take certain actions, refrain from certain actions, or transfer certain rights and responsibilities to achieve agreed upon ocean or coastal conservation goals. Jay came to the Conservancy in 2005 with experience in natural resource management, planning, protection, and research at the state, federal, and international levels throughout the United States and parts of Africa. Jay has a Master of Environmental Policy from the University of Denver, Colorado and a Bachelor Science in Natural Resources from the University of Wisconsin - Madison.

3:25-3:50: Water-Dependent Use Definitions: A Tool to Protect and Preserve Recreational and Commercial Working Waterfronts

Clear and reasoned definitions regarding water dependency form important tools for preservation of recreational and commercial working waterfronts. Many communities, however, still lack a definition that leads to definitive results in reviews of proposed land uses. This policy tool sets out the importance of water dependency definitions, explains the reasoning behind definitions of water dependency, recommends terminology, and gives specific examples that will help communities tailor definitions and applications of water dependency to their specific visions for their waterfronts. The phrase "water-dependent use" was first suggested in the Coastal Zone Management Act (CZMA). While the Act does not use the phrase specifically, it does seek to ensure that continued development on or adjacent to the water requires location on or adjacent to water. Many states participating in the federal government's CZMA program have established state-level definitions of "water-dependent use" in part to comply with CZMA requirements. Often a regulatory or zoning system that includes a definition of water-dependent use may also incorporate levels of associated need for waters: these are collectively referred to as water dependency requirements.

For many local jurisdictions, water dependency definitions have been incorporated into zoning regulations. In Florida, the Local Government Comprehensive Planning and Land Development Regulation Act requires coastal communities to address coastal issues. Numerous Florida communities possess historical working waterfronts and maintenance of the traditions and character of the community are often key concerns of its inhabitants. The interests of historical working waterfronts may conflict with water-enhanced businesses such as waterfront hotels or restaurants. Local governments can fall on either side, wishing to further the expressed interests of the preservation-minded or arguing that the dollars brought to the community by water-enhanced uses outweigh the economic value of a working waterfront. Water dependency definitions play a key role in implementing the results of this debate.

- Speaker: Thomas Ruppert, [Levin College of Law's Conservation Clinic](#), University of Florida

Thomas Ruppert is a staff attorney at the UF Levin College of Law's Conservation Clinic where he also works with the extension arm of UF's Institute of Food and Agricultural Sciences as part of a multidisciplinary approach to issues important to both institutions. Mr. Ruppert has worked with diverse conservation and environmental issues including the Clean Water Act's total maximum daily load program, conservation easements, takings law, boating law in Florida, legal strategies to implement low impact development, land use, and growth management. Mr. Ruppert has background working with IFAS and IFAS extension agents in the waterfronts context through work with Florida Sea Grant. Mr. Ruppert has expanded his work with IFAS to include comprehensive planning and research into legal issues surrounding low-impact development strategies. Mr. Ruppert speaks fluent Spanish and assists with the UF Conservation Clinic's Costa Rica summer program in San José where he has worked on human rights, water, and property issues.

3:50-4:15: Massachusetts Ocean Management Planning

There is growing recognition around the world, nationally and in the Commonwealth of Massachusetts that intensifying commercial, industrial, recreational and other demands on our ocean ecosystems require a new comprehensive approach to ocean resource management that supports ecosystem health and economic vitality, balances current ocean uses, and considers future needs. Fragmented, sector-by-sector management approaches are not working. Integrated multi-use ocean management addresses a full range of human uses across sectors, is supported by credible science, incorporates public and user-group input, is adaptable to changing needs, and ultimately, supports sustainable marine industries and resilient ecosystems. Massachusetts is poised to launch the first statewide, comprehensive ocean-use management plan in the nation by 12/31/2009 – in fulfillment of requirements of the Massachusetts Oceans Act. All ocean uses will potentially be affected by the final ocean-management plan. The ultimate purpose of the planning process is to determine where specific ocean uses will be permitted (utilizing public comment, stakeholder input and credible scientific information). Some uses can overlap and potentially be accommodated in the same geographic area (for example: recreational fishing, marine transportation and commercial fishing can potentially occur in the same area) while other uses may require exclusive access to certain locations at specific times of the year (for example: endangered right whale foraging habitat).

- Speaker: John Duff, Environmental, Earth and Ocean Sciences Dept., UMass/Boston; Senior Research associate, [Urban Harbors Institute](#).

John Duff received his J.D. from Suffolk University Law School in Boston and his LL.M. from the Law and Marine Affairs Program at the University of Washington. He also holds degrees in business (B.S.B.A.) from the University of Lowell and Journalism (M.A.) from the University of Mississippi. Over the course of the last twenty years he has worked as a newspaper reporter; an attorney in private practice; served as general counsel to a nonprofit organization focusing on marine habitat protection issues; and has directed the marine law research programs at the law schools of the universities of Mississippi and Maine. For the past five years, Prof. Duff has served as a faculty member in the Environmental, Earth and Ocean Sciences

Department at the University of Massachusetts/Boston where he teaches courses on environmental policy, ocean and coastal law and land use. Prof. Duff is currently working on research related to ecosystem-informed management, ocean planning and the increasing privatization of offshore public resources. Prof. Duff's research has been published in a variety of journals and professional reports. He is a co-author of the book INTERNATIONAL OCEAN LAW; he serves on the editorial board of OCEAN DEVELOPMENT AND INTERNATIONAL LAW; and he is a past president of The Coastal Society. He is a member of the City of Boston Waterways Board. He has also served as a consultant to the Massachusetts Ocean Management Task Force and the Commonwealth's Coastal Hazards Commission. Most recently, John has led a team funded by the Massachusetts Ocean Partnership to research alternative governance and technical approaches to managing ocean uses and resources and to provide technical assistance to the Massachusetts Executive Office of Energy and Environmental Affairs as it develops the Commonwealth's ocean management plan.