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# Land Use Control Principles Applied to Offshore Coastal Waters\*\*

ORLANDO E. DELOGU\*

## INTRODUCTION

It is clear that both coastal land areas and immediate offshore water areas are being subjected to increasingly intensive use by (1) persons seeking permanent homes and the attendant benefits which a coastal environment provides; (2) recreation interests seeking to satiate the demands of an affluent and leisure-oriented society; and (3) industry which seeks not only an attractive setting but which requires water either for its basic resource value, for transportation purposes, or for waste disposal.<sup>1</sup>

Actual and would-be users of coastal lands and waters have demonstrated a capacity for getting in each other's way—often for destroying the usability of an area for all but one of the many competing (but not inherently incompatible) interests. Absent governmental intervention, the obvious winner in such an all or nothing competition must inevitably be the largest economic interest or the most environmentally destructive of the competing interests.<sup>2</sup> The one will simply buy the area for its use—the other obtains its use by default as those interests which cannot tolerate environmental deterioration are forced elsewhere. This is a wasteful and socially questionable technique for allocating the right to use coastal land and water areas, but has nonetheless been the accepted technique for several hundred years at least. As long as

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<sup>1</sup> See PRESIDENT'S COUNCIL ON RECREATION AND NATURAL BEAUTY, *FROM SEA TO SHINING SEA—A REPORT ON THE AMERICAN ENVIRONMENT 153-80* (1968); U.S. WATER RESOURCES COUNCIL, *THE NATION'S WATER RESOURCES* (1968); DEPARTMENT OF AGRICULTURAL BUSINESS AND ECONOMICS, UNIVERSITY OF MAINE, *OUTDOOR RECREATION IN MAINE—A STUDY OF THE SUPPLY OF AND THE DEMAND FOR OUTDOOR RECREATION* (Delphendahl ed. 1965).

<sup>2</sup> N. PADELFOLD, *PUBLIC POLICY AND THE USE OF THE SEAS* (Sea Grant Project GH-1, 1968); Note, *Legislative Discouragement of Maine's Marine Industrial Growth*, 22 MAINE L. REV. 265, 278 & n. 43 (1970).

the demand for such areas was limited and the supply seemed infinite the arbitrariness and undesirability of allocating coastal land and water use rights in this manner went unnoticed (or if not unnoticed at least unchanged). But today, demand is burgeoning, supply is recognized as finite, and concepts of public interest, multiple use of land and water, and governmental intervention via the police power have come very much into vogue.<sup>3</sup>

It is the purpose of this article to focus on this use of police power and to suggest the application of some traditional land use control principles to offshore water areas. The article seeks to develop a conceptual approach which will allow coastal water areas to be preserved and protected where, and to the extent, necessary and which, where appropriate, will allow competing users of water areas to harmonize their interests on some basis other than default or economic muscle. At the same time more widespread use of land use controls in coastal land areas is discussed, as well as the coordination of water use and coastal land use control mechanisms.

The fact that land use controls have not to date solved all of our land use problems should not deter us. It is not a failure of the principles of land use control but a failure to adopt and effectively implement these principles<sup>4</sup> that is producing the unsightliness and shoddy development so common in the society.<sup>5</sup> The principles sought to be applied to water areas are many of those common in land use control, *e.g.*, zoning, building and

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<sup>3</sup> See, *e.g.*, An Act Relating to Coastal Conveyance of Petroleum, ch. 572, [1970] Me. Laws 35. The expressed legislative findings are of particular interest: The Legislature finds and declares that the highest and best uses of the seacoast of the State are as a source of public and private recreation and solace from the pressures of an industrialized society, and as a source of public use and private commerce in fishing, lobstering and gathering other marine life use and useful in food production and other commercial activities.

The Legislature further finds and declares that the preservation of these uses is a matter of the highest urgency and priority and that such uses can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches and public lands adjoining the seacoast in as close to a pristine condition as possible taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests with the least possible conflicts in such diverse uses.

*Id.* § 541.

<sup>4</sup> See Delogu, *Beyond Enabling Legislation*, 20 MAINE L. REV. 1-3 & n. 7 (1968).

<sup>5</sup> BOWDOIN COLLEGE MUSEUM OF ART, AS MAINE GOES (1966); CENTER FOR RESOURCE STUDIES, BOWDOIN COLLEGE, THE MAINE COAST: PROSPECTS AND PERSPECTIVES (1967).

safety codes, licensing.<sup>6</sup> However, as is the case with land use controls, success will depend on developing the political will to adopt and implement these control mechanisms. If the nation's offshore water areas are to continue to serve us as they have and to be available to a greater number of the numerous and diverse interests seeking to use them, this ability to implement planning goals and control mechanisms must be sharply increased in the immediate future.

Regardless of whether a state's ownership or control of coastal waters and underlying bed areas extends three miles or to some other outer limit (twelve miles or the continental shelf),<sup>7</sup> the suggestions posed in this article should be undertaken jointly and in a comprehensive manner by federal, state, and, to the extent made possible by state enabling legislation, by local units of government. Resolving a state's territorial claim, though important for jurisdictional reasons, only determines the level of government which would have primary responsibility with respect to a particular area to implement the suggestions made in this article.

#### DIVIDING OFFSHORE WATER AREAS

For purposes of discussion and analysis, it is possible to divide coastal water areas into four categories which each give rise to separate and in many ways quite distinct use opportunities and which are each capable of being subjected to separate, though necessarily related, regulatory schemes.<sup>8</sup> Some water-related activities, though focused principally on or in one of these four water area categories, will of necessity touch or concern two or more of these water area divisions. In such situations, control mechanisms if they are to be successful must demonstrate imaginativeness and flexibility. Though the four categories must

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<sup>6</sup> See O. DELOGU AND D. GREGORY, *POWERS AND DEVICES FOR CONTROLLING LAND USE* (Univ. of Maine, Agricultural Experiment Station, Planning and Law in Maine, Part 2, 1967).

<sup>7</sup> See 2 H. HENRY & D. HALPERIN, *MAINE LAW AFFECTING MARINE RESOURCES* 161-64 & n. 1-11 (1970); A. SEALOWITZ, *SHORE AND SEA BOUNDARIES* (1962); Kent, *The Historical Origin of the Three Mile Limit*, 48 AM. J. INT'L L. 537 (1954).

<sup>8</sup> This approach is not new. The common law and modern water law doctrines speak in terms of rights to use water as distinguished from rights in the bed of a lake or stream. See, e.g., *Opinion of the Justices*, 118 Me. 503, 106 A. 865 (1919); *Muench v. Public Service Commission*, 261 Wis. 492, 53 N.W.2d 514 (1952), *aff'd on rehearing*, 55 N.W.2d 40 (1952).

obviously blend into one another at some point, and though they may be viewed as no more than a vertical labeling of the total water area, the division focuses our attention on some of the real differences in competing water-related activities.<sup>9</sup> Hopefully it will enable necessary and refined regulatory approaches to be developed. The four categories are: (1) surface water areas, (2) areas between the surface and the bed, (3) bed areas, (4) areas below the bed.

Commercial navigation, sailing, water skiing, and swimming are some of the activities limited almost exclusively to the surface or to the surface plus a shallow area in depth below the surface of the water. Scuba diving, sport and commercial fishing, and seaweed harvesting, though often undertaken in connection with a surface vessel, essentially focus on materials located between the surface and the bed. Shellfish harvesting including the trapping of lobster and dredging for sand and gravel, though again often connected with surface vessels and using equipment which may more or less permanently intrude into the area between the water surface and the ocean bed, are principally bed oriented undertakings. Examples of sub-bed activities include oil and gas exploration and drilling. These sub-bed activities because of their complexity and scope will almost always extend into each of the other water area divisions.

A regulatory scheme which seeks to maximize the number of competing water related activities in any one offshore area<sup>10</sup> and at the same time minimize the harmful conflicts which occur when some of the above enumerated activities are carried out carelessly, or in too close proximity to land areas, or to one another, must focus on the specific water needs which given activities require.

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<sup>9</sup> Something akin to this vertical dichotomy of a water area is embodied in Florida's recently enacted Submerged Lands Act, FLA. STAT. ANN. § 253.67(2) (Supp. 1970). See also ALASKA STAT. § 38.05.082(e) (1968).

<sup>10</sup> THE REPORT OF THE COMMISSION ON MARINE SCIENCE, ENGINEERING AND RESOURCES, OUR NATIONAL AND THE SEA, A PLAN FOR NATIONAL ACTION (1969) [hereinafter cited as OUR NATION AND THE SEA, A PLAN FOR NATIONAL ACTION], recognized these very points on pages 52-58 when it describes the proliferation of and the need to accommodate a widening range of coastal water users. The Commission recommends that state coastal zone authorities be created to manage and give policy direction to these critical water areas and their adjacent land areas. "The guiding principles for the authorities should include the concept of fostering the widest possible variety of beneficial uses so as to maximize net social return. When necessary, public hearings should be held to allow all interested parties to express views before actions are taken or decisions are made. . . ." *Id.* at 57-58.

It is obvious, for example, that where sand and gravel dredging is permitted, shellfish harvesting will be almost impossible. To fail to regulate (which in this case means to allocate certain bed areas wherein each activity will be permitted to the exclusion of the other) the dredging activity will expose those engaged in shellfish harvesting to justifiable fears which will usually lead them to totally oppose all dredging activities. And their reaction is not unique. Oil exploration interests vie with fishing and lobstering interests. The seaweed gathering industry is at odds with the shellfish industry. Commercial shippers and transshippers are in conflict with conservationists and recreational boat interests. When there is an absence of reliable regulatory controls and when real or imagined incompatibilities exist between any two or more water using activities which normally see themselves as being in competition with one another for the right to use a water area, anxiety will be felt by those engaged in the most vulnerable activity. This will usually lead to legislative effort to totally prohibit the activity which gives rise to the threat.

The key, as already suggested, is allocation of suitable water areas to each incompatible competing interest. Thus you avoid or at least minimize conflict arising out of the incompatible nature of their respective activities. Another complicating factor, however, is the unfortunate historical view of many of these water using activities that the entire ocean is open to them—theirs to use as a matter of right.<sup>11</sup> In this context they are not unlike landowners who feel that the entire range of land use alternatives ought always to be open to them. But just as landowners have come to accept the legitimacy and value of allocating land use activities to those areas best suited to the carrying out of a particular activity, competing water use activities must come to view offshore water areas in terms of allocation—an allocation with both vertical and horizontal dimensions.<sup>12</sup> This view alone

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<sup>11</sup> A partial explanation for this view may be found in the common law doctrine that held all riparians to the status of co-sharers. Originally the sea and subsequently navigable inland waters were thought to be incapable of exclusive ownership, thus a system of use rights in the undivided whole emerged.

<sup>12</sup> See, e.g., FLA. STAT. ANN. § 253.68 (Supp. 1970). "To the extent that it is not contrary to the public interest, and subject to limitations contained in §§ 253.67—253.75, the board of trustees may lease submerged lands to which it has title for the conduct of aquaculture activities and grant *exclusive* use of the bottom and the water column to the extent required by such activities." (emphasis

(Continued on next page)

can both remove conflict and preserve the long run existence and viability of each of these respective activities.

It should also be noted that many water use activities, because of their nature and because they take place almost exclusively in only one of the water areas described, are highly compatible with and pose little or no threat to one another. Many surface activities, for example, will not be greatly affected by a wide range of sub-surface activities. Thus, though it may be necessary to allocate specific and different surface water areas to competing surface users such as commercial navigators, recreational sailors, water skiers, and swimmers, sub-surface activities such as seaweed harvesting, fishing, including shellfish gathering, even mineral exploration, may take place below surface water areas without significantly impairing surface activities.<sup>13</sup>

Another means of dividing the total coastal water area which may be used instead of or in conjunction with the vertical differentiation already focused on is one which is based on a horizontal division of water areas<sup>14</sup>—the sort of division most closely analogous to land use zones and alluded to in the previous paragraph as a means of separating water skiers from swimmers and the two of them from commercial navigation or sailboating. A horizontal division of offshore water areas may well be predicated on a type of concentric ring approach which allocates immediately offshore water space to those activities which of necessity or for safety reasons must be performed in close proximity to shore

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added); ALASKA STAT. § 38.05 (1967) contemplates a wide range of exclusive leasing arrangements for the carrying out of what would otherwise be competing development activities. The legislation covers land and coastal waters and is clearly premised on the concept of allocating areas in order to maximize both public and private advantage.

<sup>13</sup> However, according to comments by Dorian Cowan, Research Associate, Univ. of Miami Law School, Dec., 1969, Florida's experience of exclusively leasing a bed area for a particular type of aquaculture but at the same time allowing boating, bathing, and other theoretically compatible activities to continue on the surface or in close proximity to the exclusively leased area has produced some troublesome results. Though seemingly compatible they often get in each other's way and the lessee for value is displeased when his commercial activities are damaged or hampered. Greater exclusivity or at least closer examination of what constitutes compatibility seems called for.

<sup>14</sup> A somewhat similar approach is taken in OUR NATION AND THE SEA, A PLAN FOR NATIONAL ACTION, *supra* note 10, at 49-51 (1969) and 1 PANEL REPORTS OF THE COMMISSION ON MARINE SCIENCE, ENGINEERING AND RESOURCES, SCIENCE AND ENVIRONMENT, Pt. III, 7-10 (1969). Both speak of dividing the coastal zone in a horizontal manner extending from shoreland to internal waters, territorial seas, contiguous zone waters and then out to the remainder of the continental shelf.

areas, *e.g.*, swimming, clam digging. As mentioned, a further allocation may be necessary to separate these two activities from one another. More distant water areas, the second ring, could be allocated to lobstering, seaweed cutting, sailboating, etc., leaving still more distant offshore areas to commercial fishing and oil and gas exploration. Obviously, through these concentric ring areas, channels for shipping would have to be earmarked and reserved.<sup>15</sup>

In addition, it may be desirable to allow particularly unique water areas, though lying in a larger zone earmarked for a given purpose, to be devoted to the unique activity. For example, if a large area close to shore zoned for swimming or shellfish gathering contained a small area with rich sand and gravel deposits, it would not be inappropriate to allow the mineral deposits to be extracted, with appropriate safeguards, while retaining the range of generally permitted uses in the larger area. In such a situation the charge of spot zoning within a water area ought not to be capable of being raised.<sup>16</sup>

#### THE TOOLS OF CONTROL APPLIED TO OFFSHORE WATER AREAS

Though at the outset it was suggested that implementation of the concepts put forth in this article could be achieved by federal, state, or local governmental action, and though each of these governmental levels has a significant role to play, a too local approach is neither feasible nor desirable if success in preserving offshore water resources and in allocating water use rights between competing interests is to be achieved.<sup>17</sup> Offshore waters

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<sup>15</sup> See Wilkes, *Consideration of Anticipatory Uses in Decisions on Coastal Development*, 6 SAN DIEGO L. REV. 354, 368 (1969); OUR NATION AND THE SEA, A PLAN FOR NATIONAL ACTION (1969):

The great size of merchant vessels, their transport of cargoes which create a hazard to the environment, and the intensified use of the coastal zone combine to present an increasing danger. Proposals have been advanced for traffic control systems analogous to those used in the U.S. airways. In addition, plans are being developed to set aside shipping lanes which will separate inbound and outbound traffic and provide a fairway clear of obstructions to navigation.

*Id.* at 215.

<sup>16</sup> The regulating authority will have to develop a stringent set of criteria and safeguarding conditions which must be met before such changes (analogous to special exceptions or variances in zoning law) would be permissible. See Delogu, *Suggested Revisions in Maine's Planning and Land Use Control Enabling Legislation*, 20 MAINE L. REV. 182, 202-03 (1968); ME. REV. STAT. ANN. tit. 30, § 4954(2)(A) (1964).

<sup>17</sup> See OUR NATION AND THE SEA, A PLAN FOR NATIONAL ACTION (1969): Federal, state, and local governments share the responsibility to develop

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must be thought of and regulated as a connected whole. The realities of geography, marine biology, economics, all demand that this be so. If the state itself does not impose the controls suggested, at the very least it must coordinate whatever local controls it enables to be imposed.<sup>18</sup> No local unit of government ought to be in the position of being able to totally exclude a given water using activity because of local biases. Concepts of exclusion and exclusivity which undermine the credibility and acceptance of zoning and other land use controls must be avoided.<sup>19</sup> Furthermore, local units of government do not often have the scope of jurisdiction or the planning and evaluative resources to adequately and accurately allocate offshore water areas between competing interests.

Lastly, gaps in the control program are undesirable. It would not do to have a portion of a state's coastal waters subject to

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for the coastal zone a plan which reconciles or, if necessary, chooses among competing interests and protects long-term values. . . .

. . . .

After reviewing the various alternatives . . . the Commission finds that the states must be the focus for responsibility and action in the coastal zone. . . .

In varying degrees, the states possess the resources, administrative machinery, enforcement powers, and constitutional authority on which to build. However, they will need Federal assistance and support, and the Federal Government must assure the protection of national interests in the coastal zone.

Id. at 56-57. See also PANEL REPORTS OF THE COMMISSION ON MARINE SCIENCE, ENGINEERING AND RESOURCES, SCIENCE AND ENVIRONMENT, Pt. III, 148-57 (1969).

<sup>18</sup> If a state approach seems too remote or centralized and local units seem too limited in funds, jurisdiction, etc. to cope with comprehensive coastal planning and regulation, a regional or special district approach may be suitable. See I PANEL REPORT OF THE COMMISSION ON MARINE SCIENCE, ENGINEERING AND RESOURCES, SCIENCE AND ENVIRONMENT, Pt. III, 148-59 (1969).

A state's options range from creating a statewide agency to creating a local authority for a particular region.

The latter appears to have certain advantages:

- It may more readily fit in with existing local authorities
- It would be more responsive to the particular problems of a region
- It would permit a state to establish regional authorities on a step-by-step basis according to needs.

Another option in setting up a state coastal management authority is the creation of a special district along the lines of a metropolitan sanitation district or port authority. Such a district could be established easily by state legislatures. The district would cause minimum disturbance to existing units of government. Its concern would not be diluted by that for other regional problems.

<sup>19</sup> See *National Land and Investment Co. v. Kohn*, 419 Pa. 504, 215 A.2d 597 (1965); *Vickers v. Township Com. of Gloucester Township*, 37 N.J. 232, 181 A.2d 129 (1962), (Hall, J., dissenting), *cert. denied*, *appeal dismissed*, 371 U.S. 233 (1963).

meaningful controls while other portions remained uncontrolled. This phenomenon, very much in evidence with respect to land use controls, is increasingly being recognized as an impediment to effective long-run land use control programs.<sup>20</sup> Communities are encouraged to act because by not acting they gain some temporary short-run economic advantage over communities which have imposed controls. The controlled community may then have second thoughts about the wisdom of the restraints it imposed on its residents and may either repeal or worse yet, fail to enforce or otherwise erode away the effects of its ordinance. We do nothing to protect our offshore water resources by allowing this sequence of events to be repeated in this context. Either the state itself must impose the controls or it must require, not merely permit, local governments to act.<sup>21</sup>

### Zoning

Ideally zoning, an exercise of the state's police power, divides an area, traditionally a land area, in a manner which incorporates the widest possible range of use alternatives in appropriate districts. The goal is to insure that development activities will be in harmony with natural conditions and with one another and that they will be orderly and economical, in terms of both public and private investment, and that the public's health, safety, and general welfare will be safeguarded.<sup>22</sup> Nothing prevents the application of zoning techniques, supported by the same rationale

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<sup>20</sup> See I H. HENRY & D. HALPERIN, *supra* note 7.

Viewed today, it seems apparent that most of Maine's laws dealing with marine resources have been enacted as an ad hoc reaction to a specific problem arising in connection with a specific resource. Faced with such a specific problem, the Legislature formulated a fairly specific solution, and assigned an implementing role to some agency of government. Frequently, because the problem seemed to be new or specialized, it seemed logical to assign implementation to a new and specialized agency. As this process has continued, it has created the profusion of agencies referred to previously. But in addition, since so much legislation has been specific-problem oriented, there are considerable gaps: problem-areas which are not dealt with, agencies whose powers are not sufficient to fulfill their intended responsibilities, and the like. At best, such vacuums create legal uncertainty . . . at worst, it may yield unwitting destruction of irreplaceable resources. . . .

*Id.* at 9.

<sup>21</sup> This approach has been taken by Wisconsin in its shorelands protection legislation, WIS. STAT. ANN. § 59.971 (Supp. 1967); WIS. STAT. ANN. § 144.26 (Supp. 1967); see Delogu, *supra* note 4, at 7-8.

<sup>22</sup> See ALI A MODEL LAND DEVELOPMENT CODE, art. 2 and art. 3, Pt. I (with commentary) (Tent. Draft No. 1, 1968).

and objectives, from being applied to a water area.<sup>23</sup> A slight adaptation making the water area zoning three dimensional would enable the mechanism to incorporate the vertical divisions of the total water area previously set out.<sup>24</sup>

Clearly, whether implemented at state or local levels of government, all of the procedural safeguards (hearings, boards of appeal) and administrative flexibilities (special exceptions, variances) developed with respect to zoning as used in land use control situations could be adapted to the zoning of water areas. In fact, with adequate state control, perhaps in the form of control of variance or appeals machinery,<sup>25</sup> a more uniform and equitable, and thus a more credible and widely accepted, implementation of water area zoning could be achieved than presently exists in most states with respect to land use zoning.

Just as the sensible zoning of land areas must be preceded by intelligent planning process and an evaluation of the goals and directions in which the community is moving, so too the zoning of offshore water and bed areas must be predicated on sound planning and solid empirical data.<sup>26</sup> The earmarking of water and bed areas in a manner that permits some uses here and there and excludes others in a random manner is not enforceable zoning even though legislatively adopted. The lines drawn, and more importantly the uses permitted or excluded in given areas, must bear a reasonable relationship to such things as the biology of the area, the water depth, tide action, water temperature, existing uses being carried on in the water area, and existing uses being made of the adjoining land area. The zoning of offshore areas, if

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<sup>23</sup> This certainly is one of the major theses of Wilkes, *supra* note 15, at 365-69. He poses the possibility of zoning water areas at local, state, regional (interstate), or federal governmental levels and he poses the possibility of private zoning via restrictive covenant.

<sup>24</sup> Even this aspect of the proposed use of zoning is not unique. Some urban zoning ordinances permit the ground floor of buildings in high rise residential zones to be zoned for commercial purposes, thus recognizing a useful vertical differentiation.

<sup>25</sup> See AMERICAN SOCIETY OF PLANNING OFFICIALS, NEW DIRECTIONS IN CONNECTICUT PLANNING LEGISLATION 113-15 (1967) (report offers fourteen substantive recommendations to streamline and obtain uniform procedural fairness and appeals machinery).

<sup>26</sup> Zoning of water areas, however, will require the collection of and must be predicated on data not now readily available, *e.g.*, water depth, temperature, tide and current action, slope and contour of offshore bed areas, quality of bed soils, quality of water, extent of present and anticipated use of the water area, etc. In other words a water area profile analogous to a land use plan, or profile, which underlies traditional zoning must be developed as a basis for sound water area zoning.

based on accurate data regarding some or all of the above factors or other relevant factors not listed, will almost certainly be sustained even though it may be very restrictive.<sup>27</sup> It is not often that a high degree of restriction in and of itself serves to invalidate a zoning or other control ordinance. More frequently when regulatory controls are invalidated it is because of a failure to show the need for the restrictions imposed and their reasonableness in light of real, empirically verifiable factors or dangers. Clearly, if the threat is great, severe restrictions are justified and experience indicates they will be judicially sustained.<sup>28</sup>

State level planning, relying on the data and research findings and capabilities of existing state agencies, federal agencies, universities, and private institutions situated in almost every state, can and should be undertaken to provide the necessary basis for zoning offshore water and bed areas.<sup>29</sup> As needed this planning data should be expanded and certainly it will need to be kept current to be of use in dealing on a continuing basis with the individual marine area planning needs of a particular state. Local

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<sup>27</sup> The landmark case *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) sustained zoning restrictions which reduced the value of land from \$10,000 per acre to \$2,500 per acre. Yet the court was unmoved by this degree of economic loss. It felt the remaining value represented a reasonable return to the landowner and stringent controls may frequently be necessary to protect the public interest. See also *Boston and Me. R.R. v. County Comms.*, 79 Me. 386, 10 A. 113 (1887):

This power of the legislature to impose uncompensated duties and even burdens, upon individuals and corporations for the general safety, is fundamental. It is the "police power." Its proper exercise is the highest duty of government. The state may in some cases forego the right to taxation, but it can never relieve itself of the duty of providing for the safety of its citizens. This duty, and consequent power, override all statute or contract exemptions. The state cannot free any person or corporation from subjection to this power. All personal as well as property rights must be held subject to the police power of the state. This important power must be extensive enough to protect the most retiring citizen in the most obscure walks, and to control the greatest and wealthiest corporations. Its exercise must become wider, more varied and frequent, with the progress of society.

*Id.* at 393, 10 A. at 114.

<sup>28</sup> The requirement after all that an exercise of the police power be in the interest of the public's health, safety, morals, or general welfare is not a mere rubric. Let the regulating body show clearly and unequivocally that the needs of the public in the particular setting justify not only the regulatory control itself but the degree of control contemplated.

<sup>29</sup> An extensive listing of federal data and research sources is cited in *OUR NATION AND THE SEA, A PLAN FOR NATIONAL ACTION*, *supra* note 10 (1969). See also *COOPERATIVE WATER RESOURCES RESEARCH AND TRAINING*, OFFICE OF WATER RESOURCES RESEARCH (Annual Rep. 1970); *OFFICE OF WATER RESEARCH 6 WATER RESOURCES RESEARCH CATALOG*, (1970).

planning efforts alone do not seem equal to the task and there seems to be no reason why states should encourage or wait for federal planning to facilitate an offshore area control program. If, however, states fail to respond along the lines suggested, the federal government may not only undertake an offshore water resources planning function but may well enact those zoning controls in these critical areas which they feel are appropriate and necessary.<sup>30</sup> At that point there will certainly be less assurance that an individual state's wishes will be acceded to.

### *Leasing*

Either in conjunction with or apart from the zoning of offshore water and bed areas, a state, pursuant to either its sovereign power over, or in its capacity as trustee<sup>31</sup>, owner if you will, of the navigable and offshore water and bed areas, may lease these areas in a manner that is consistent with and protects the public's interest. Such an undertaking clearly could not impede, and must take into account, commercial shipping lanes and federal navigational requirements. With these caveats, however, extensive leasing would have the effect of allocating water and bed areas, as previously suggested, among competing would-be users and insuring to each not only a precise location but a certainty that may well induce extensive capital investment.<sup>32</sup> Such lease arrangements in order both to induce and to allow time for a return of capital investment would probably need to be long-term (five to ten years) with adequate options to renew and, to protect the

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<sup>30</sup> It should not go unnoticed that both the federal Water Quality Act of 1965 and the Air Quality Act of 1967 contain this very (not so veiled) threat—state inaction or meaningless state action will not be tolerated and will in fact give rise to federal action calculated to achieve the desired ends. 33 U.S.C. § 466g(c)(2) (Supp. I, 1965) and 42 U.S.C. § 1857d(c)(2) (Supp. III, 1967).

<sup>31</sup> Reference to a state's status as trustee may be found in Opinion of the Justices, 118 Me. 503, 106 A. 865 (1910):

Whatever doubt might otherwise arise from a critical study of the subject as a matter of legal history, it must now be accepted as the common law doctrine in Maine that the State holds these ponds in trust for the use of the people of the State, together with the right to control and regulate the waters thereof.

*Id.* at 503, 106 A. at 867. See also J. SAX, *WATER LAW PLANNING AND POLICY* 93-94 (1967); Trelease, *Government Ownership and Trusteeship of Water*, 45 CALIF. L. REV. 638 (1957).

<sup>32</sup> A note, *Legislative Discouragement of Maine's Marine Industrial Growth*, 22 MAINE L. REV. 265 (1970) extensively details Maine's historic and present failure to approach the leasing of offshore bed areas in any rational, systematic, or comprehensive fashion.

state's interest, provisions which would allow periodic renegotiation of the lease rental arrangements.<sup>33</sup>

Lease arrangements need not be uniform. On the contrary, they can and should be framed with appropriate conditions predicated on the particular use sought to be made of the water or bed area, the unique characteristics of the leased area, and the legitimate conservation expectations of the state<sup>34</sup> This fixing of the specific terms of a lease can be accomplished within the more-or-less well established legal framework of contract and landlord-tenant law. Thus enforcement of limitations imposed by the public for the protection of the public's interest will be less difficult, certainly easier for example, than enforcement of general pollution control statutes. The terms of the lease should spell out the rights and duties of each party and the remedies available in case of breach. Provisions should also be included allowing enforcement proceedings to be initiated by responsible citizen groups as well as by the legal officers of the state, the lessors in this case.

Some water and bed using activities require the exclusive use of an area. Multiple use is either impractical or impossible. In such situations it is not inconceivable, perhaps it is even desirable, that lease rights within that water or bed area allocated to the particular activity requiring exclusivity be auctioned to the highest bidder as was recently done with oil lands in Alaska. States would first have to allocate all offshore water and bed areas among all of the alternative use possibilities (those not requiring exclusive use as well as high and low value activities requiring exclusive use). This would insure that water or bed using activities that did not require exclusive use of an area and those activities which require exclusive use but have a lower economic value than other would-be exclusive users would nonetheless each have a reasonable number of suitable areas allocated to them. Then, for each exclusive use activity, individual areas suitable for and allocated to that particular activity would be auctioned. For example, if it is determined that there are along the coast of a given state seventeen areas that should be allocated

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<sup>33</sup> This approach is part of the Florida legislation, *supra* note 9, FLA. STAT. ANN. § 253.71(1)(2) (Supp. 1970).

<sup>34</sup> See, e.g., ORE. REV. STAT. § 273.051(2)(b), 274.760, 274.780 (1967).

to, and that are suitable for, sea weed harvesting and twenty-five firms are interested in these sites, an auction would not only be a fair means of allocation as between that twenty-five but would insure maximum revenue return to the state for exploitation of its resources.<sup>35</sup> It goes without saying that restrictions such as the number of leases one firm may hold or the minimum requirements for submitting a bid may be established.

It would also seem useful to allow leases, no matter how acquired from the state, to be transferable.<sup>36</sup> This would allow entrepreneurial ventures to be started by those best suited to these initial phases of a development activity secure in the knowledge that they can recover their capital at whatever price the market will pay in the future. They may wish to cut their losses but not abandon their investment, realize the capital gain their skill has produced, or merely pass the venture on to others better suited to the tasks of managing ongoing operations.

A good deal of emphasis should be placed on the element of certainty to which state leasing would give rise.<sup>37</sup> Seaweed harvesting, oil and gas exploration and drilling, sand and gravel dredging, lobster farming (as opposed to the ruinous and exploitive overcatching of lobster in which we now engage), other forms of aquaculture, and a host of other activities will not be undertaken on a meaningful scale unless and until the entre-

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<sup>35</sup> The important point to re-emphasize is that would-be oil drillers would not be bidding against weed gatherers and the latter would not be bidding against lobstermen, etc. Bidding would take place separately within each category of offshore water or bed use and would allocate water or bed areas suitable for that particular use among whatever number of users (developers, fishermen, etc.) there are. If desired certain preferences to protect existing businesses or resident bidders in each use category could be worked into the bidding process. Limitations or quotas with respect to size, financial capacity, ability to perform, etc. could also be developed; ALASKA STAT. § 38.05.075 (1968); TEX. REV. CIV. STAT. arts. 5331-37, 5353-58 (1962); WASH. REV. CODE §§ 79.01.244 (Supp. 1969), 79.01.252 (1962).

<sup>36</sup> See, e.g., ALASKA STAT. §§ 38.05.090, 38.05.095 (1968).

<sup>37</sup> See OUR NATION AND THE SEA, A PLAN FOR NATIONAL ACTION, *supra* note

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Large-scale technological applications simply cannot be undertaken in marine industries if property rights, market access, labor regulation, taxation, and the many other elements of the legal and regulatory environment remain in their present uncertain condition.

....

The Commission recommends that a framework of policies and laws be established that will allow predictability and therefore, increased confidence and investment activity by industry.

*Id.* at 160.

preneur can be assured that he alone will be able to reap the benefit of his time, effort, and investment. Leasing can create such an assurance. It can and should give rise to an exclusive property in a defined portion of the total offshore water or bed area of a given state for a time period long enough to allow all capital and operating costs, including a reasonable profit, to be recovered.

### *Licensing*

Another technique, widely used to control land use activities, which seems adaptable to the regulation and control of offshore water and bed areas is licensing. It too may be used in conjunction with or apart from zoning controls and is also predicated on the state's police power.<sup>38</sup> Licenses unlike leases tend to deal uniformly with all who fall within a class or category being subjected to control. Regulation may be achieved by attaching fees, by limiting the number of licenses which will be made available in a particular area for a particular activity, and by specifying the terms and conditions which must be complied with by licensees.<sup>39</sup> Licenses should be for a limited period (two to four years) and renewable. Such an approach allows the state to review periodically and to adjust the terms and conditions of a license and at the same time gives the licensee assurance that if he has complied with the provisions of his license he will be able to reap the advantage of having it extended for another period.

If the terms or conditions upon which the license is granted

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<sup>38</sup> The term license as used in this text refers to an exercise of police power by a legislative body or its delegated representative in granting a right or permission to a person or corporation seeking to carry on a business or do an act which would otherwise be illegal. It should be distinguished from licenses which arise in the context of real property law and separate the trespasser from one who uses the land of another with the latter's permission. See *Solberg v. Davenport*, 211 Iowa 612, 232 N.W. 477 (1930). The court in *Solberg* quotes approvingly from *BOUVIER'S LAW DICTIONARY* which defines license in the sense in which it is used here as:

. . . authority to do some act or carry on some trade or business in its nature lawful, but prohibited by statute except with permission of the civil authority, but which would otherwise be unlawful.

*Id.* at 480.

<sup>39</sup> A licensed business or privilege is subject to reasonable regulations which may be imposed to protect the public. An applicant for a license, upon his acceptance of the license, is bound to all of the valid conditions and regulations which have been imposed. See *Morley v. Wilson*, 261 Mass. 269, 159 N.E. 41 (1927), *cert. denied*, 276 U.S. 625 (1928) ("The holder of a license cannot complain of limitations attaching to the privilege which, with full knowledge, he sought and accepted." *Id.* at 276-77, 159 N.E. 43).



are breached, the license, if not automatically revoked, should be revocable by action of the licensing agency.<sup>40</sup> No element of fault should have to be proved to revoke a license, merely the fact of violation. The burden should then be upon the licensee to show cause why his license ought not to be revoked, or if already revoked why it should be restored to him. The licensing agency after an appropriate hearing must then balance both the public's interest and the equities of the licensee and either restore the license, perhaps with special conditions, or confirm its revocation. Compliance with the terms or conditions of a license may be made more certain by provisions requiring that suitable bonds be posted in the nature of performance or penalty bonds. These bonds should be automatically forfeited in the event of breach.<sup>41</sup> The proceeds in case of forfeiture could be used to offset any expense or damage incurred by the public or the licensing agency as a result of the breach.

Unlike leases, licenses do not purport to convey an exclusive property (an estate) interest in a unique water or bed area to the licensee. They do, however, grant a non-exclusive privilege, a defined and regulated permission to use a portion of a state's offshore water or bed area.<sup>42</sup> Thought of and used in this manner, licensing can assist in breaking down the previously mentioned harmful view that most users of offshore water have, *i.e.*, that the entire ocean is theirs to use. Licensing is a means of establishing the necessary concept of allocation—an allocation of limited offshore water and bed areas among numerous and competing would-be users of these valuable resource areas.

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<sup>40</sup> See *State v. Pulsifer*, 129 Me. 423, 152 A. 711 (1930) ("The power to grant a license presumes the power to revoke it." *Id.* at 426, 152 A. at 712).

<sup>41</sup> A completely analogous position is taken in the Water Quality Improvement Act of 1970, Pub. L. No. 91-224 § 11(p)(1) 91st Congress, enacted April 3, 1970. This legislation designed to impose liabilities for oil spills to a maximum of fourteen million dollars on vessel owners and eight million dollars on oil facility operators is given teeth by a financial responsibility provision which requires either evidence of insurance, surety bonds, or qualification as a self-insurer.

<sup>42</sup> 53 C.J.S. *Licenses* § 42 (1948):

The effect of a license is to authorize the licensee to exercise a privilege or conduct an occupation or business, covered by the license. . . . It is not property and it does not create a contract or vested right . . . but it may give to its possessor something which is valuable and which has all the qualities of property. . . .

A license . . . does not necessarily give to the licensee exclusive the right . . . .

*Id.* at 641; see, 2 AMERICAN LAW OF PROPERTY (A. J. Casner ed. 1952).

*Building And Safety Codes*

The use of offshore water and bed areas does not entail the use of structures of quite the same type as exist on land and which on land are usually subject to building and safety codes. However, on a more or less permanent basis there do exist in offshore areas houseboats, dock facilities, derricks, drilling platforms, anchored vessels, fishing shacks, and a variety of other structures or craft in varying degrees of newness, dilapidation, and safe condition. This assortment of structures houses persons and property, and in serving as the base of operation for a wide variety of industrial, commercial, and recreational activities contributes to situations involving the health, safety, and welfare of these persons and property.

It seems perfectly consistent then to frame suitable codes to be applied to each of these water related types of structures and their accompanying activities to protect not only the public's interest but the health, safety, and welfare of those individuals working, living, or recreating in these contexts.<sup>43</sup> To some extent such codes, clearly analogous to building and safety codes, predicated on the state's police power, already exist. But they are few in number, *e.g.*, boat safety regulations, and beach safety regulations.<sup>44</sup> The suggestion made is to extend these few examples to cover every type of offshore water and bed structure and related activity. To date no such comprehensive effort has been made because it was felt the ocean was not capable of being damaged or because the number of persons involved in water related structures and activities did not warrant this sort of regulatory attention.<sup>45</sup>

Today, however, we know the ecology of the ocean, particularly of sensitive estuarine areas, is very susceptible to per-

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<sup>43</sup> Most states will already have agencies such as Maine's Bureau of Watercraft Registration and Safety, ME. REV. STAT. ANN. tit. 38, §§ 201-85 (Supp. 1970) which could undertake the controls suggested. In some instances it will be necessary to enact amendments to clarify or expand the powers of such agencies to insure their capacity to deal with the widening range of structures being located on or in offshore water areas. Then safety and building code type regulations may be promulgated.

<sup>44</sup> See, *e.g.*, ME. REV. STAT. ANN. tit. 38, § 238 (Supp. 1970); ME. REV. STAT. ANN. tit. 38, §§ 281-83 (1964).

<sup>45</sup> Many of these points are alluded to in OUR NATION AND THE SEA, A PLAN FOR NATIONAL ACTION 214-16, *supra* note 10 (1969).

manent injury. We know that huge bodies, Lake Erie for example, can be permanently damaged;<sup>46</sup> and we are faced with a tremendous increase in the number of offshore structures and persons in need of and demanding this sort of protection. The discharge of pollutant materials from boats in overcrowded harbors or marina areas, the dumping of garbage through the ice in fishing shacks, the potential harm of uncontrolled water skiing in close proximity to beach or bathing areas, the inadequacy of fire protection and other safety and communications equipment (which is common on most offshore structures and vessels)—these are all real conditions which can and should be remedied.

### *Easement*

When regulatory controls alone are insufficient to achieve a desired public end with respect to a given privately owned combination of shoreland and offshore water and bed areas, the public rather than acquiring a fee simple interest in the property involved may desire to acquire a lesser interest. Acquisition of a carefully designed easement interest rather than the fee may not only fulfill the public's objective but may do so at significantly less cost. In addition maintenance costs of an easement interest are usually less than the costs of maintaining the fee and because the major portion of the total property interest remains in private hands, the local property tax base is less affected than it would be by acquisition of the fee.<sup>47</sup>

Easements may be designed to allow the public to undertake to do an act which it would otherwise not have the power to do, e.g., remove earth fill or rock outcropping on private land so that a scenic marsh, cove, or estuary may be better viewed by autos traveling a coast road, pass over private land to obtain access to a beach or water area, dredge a private bed area for recreational or commercial navigation purposes. Alternatively easements may prohibit a private owner from doing an act which he would otherwise have the power to do, such as filling or dredging coastal marsh or tide lands possibly harming fish and wildlife, cutting

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<sup>46</sup> Cf. Reitze, *Wastes, Water, and Wishful Thinking: The Battle of Lake Erie*, 20 CASE W. RES. L. REV. 5 (1968).

<sup>47</sup> W. Whyte, *Open Space Action* (ORRRC Rep. N. 15, 1962); W. WHYTE, SECURING OPEN SPACE FOR URBAN AMERICA: CONSERVATION EASEMENT.

timber or other cover to the detriment of scenic coastal areas, building or otherwise developing on, in, under, or near coastal waters at a time or in a manner inimical to the public's interest.<sup>48</sup>

In short, when regulatory controls cannot achieve public goals, easement offers a compromise—a middle ground between complete public or private ownership control. The private landowner retains a meaningful range of alternative use possibilities and he has been compensated for those which have been taken. At the same time the public acquires at reasonable cost rights in the property which will allow a desired public purpose to be achieved.

### *Other Control Mechanisms*

Though not usually included in listings of land or water use control mechanisms, a number of other governmental powers exist which can and should be utilized in harmony with the previously discussed police power mechanisms to achieve desired public goals with respect to offshore water and bed areas. The power to tax, for example, could be wielded much more effectively than at present to influence alternative offshore water and bed use possibilities in a positive manner.<sup>49</sup> This power includes, of course, the power to defer tax collection, exempt certain categories of water and bed use from taxation, establish the rates

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<sup>48</sup> The ability of municipal governments to negotiate for and enforce the provisions of conservation easements is significantly strengthened by legislation such as ch. 566, [1969] Me. Laws 32.

No conservation restriction as defined in section 667 [easement] held by any governmental body, whose purposes include conservation of land or water areas or a particular such area, shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of the benefit being assignable or being assigned to any other governmental body with like purposes. . . .

Such conservation restrictions [easements] are interests in land and may be acquired by any governmental body which has power to acquire interests in land, in the same manner as it may acquire other interests in land. Such a restriction may be enforced by injunction or proceeding in equity, and shall entitle representatives of the holder of it to enter the land in a reasonable manner and at reasonable times to assure compliance.

*Id.* § 668.

<sup>49</sup> See Delogu, *The Taxing Power as a Land Use Control Device*, 45 DENVER L.J. 279 (1968). A number of states have passed constitutional amendments or legislation allowing differential property taxation for the express purpose of fostering and preserving preferred land and water use activities which would otherwise be forced out of existence if uniformly taxed solely on the basis of market oriented (and often theoretical) concepts of highest and best use. See, e.g., ME. CONST. art. IX, § 8.

of taxation, and redistribute taxes in whatever manner seems appropriate. The latter point suggests that states may wish to foment certain desired offshore development activities, aquaculture for example, by direct expenditures aimed at facilitating and encouraging enterpreneurial entrance into this field of endeavor.

Additionally, state and local governments have the power to increase their proprietary holdings of coastal lands and waters.<sup>50</sup> This increase in the public's ownership control of these limited resources can have a significant impact on the remaining supply of privately held coastal land and water areas. The governmental proprietor will hopefully demonstrate on its land and water holdings the best conservation and development techniques. This will have the effect of not only stabilizing but of increasing adjacent private property values. Furthermore, private development decisions will undoubtedly be drawn in these more desirable directions. The beneficial effect then of increased governmental holdings of an order of magnitude of ten or a hundred fold is readily apparent.

Finally the mere formulation and articulation of governmental (federal, state, or local) policy and goals by persuasive executive, legislative, and administrative leaders will have a shaping effect on private as well as governmental coastal land and water use decisions. Note the dramatic impetus given to all programs dealing with the environment once the issue of the "quality of our environment"<sup>51</sup> was raised by no less a figure than the President of the United States.

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<sup>50</sup> See OUR NATION AND THE SEA, A PLAN FOR NATIONAL ACTION *supra* note 10:

The additional land acquisition programs proposed by the Commission are estimated to require some \$110 million of Federal funds over the next 10 years. The estimates are geared to acquisition of 1 million acres of wetlands, about 15 percent of the nation's total, plus selected urban waterfront areas suitable for recreational use.

*Id.* at 80. The Maine State Park and Recreation Commission, ME. REV. STAT. ANN. tit. 12, §§ 601-80 (Supp. 1970), was authorized by the 103rd Legislature to increase the state's holdings of lands and waters to serve as park areas, ch. 167, [1967] Me. Priv. & Spec. Laws 1279 (a four million dollar bond issue was subsequently approved in a referendum held Nov., 1968 to finance this undertaking).

<sup>51</sup> See REPORT OF THE ENVIRONMENTAL POLLUTION PANEL, PRESIDENT'S SCIENCE ADVISORY COMMITTEE, RESTORING THE QUALITY OF OUR ENVIRONMENT (1965). In Maine the REPORT OF THE GOVERNOR'S COMMITTEE ON POLLUTION ABATEMENT, POLLUTION IN MAINE: SUGGESTIONS FOR MORE EFFECTIVE ENVIRONMENTAL PRESERVATION (1969) followed by Governor Curtis' SPECIAL MESSAGE ON CONSERVATION AND ECONOMIC DEVELOPMENT (1969) had much the same effect. A majority of the recommendations embodied in these two documents were subsequently enacted into law by the 104th Legislature.

## COORDINATING WATER AREA CONTROLS WITH LAND USE CONTROLS

Well conceived planning and plan implementing controls of activities and structures in offshore water and bed areas will not be effective unless and until abutting land areas are brought under a similar system of study, planning, and control as is here suggested for offshore waters.<sup>52</sup> Inconsistent patterns of activity between coastal land areas and immediately offshore waters are extremely common—the discharging of industrial, commercial or residential effluent in a manner that destroys clam flats and bathing areas; the poor location of unsightly industrial structures, such as wharves, and dumps with respect to an otherwise scenic coastal area; the blocking off by selfish private landowners of access to coastal waters allocated to and ideally suited for a wide variety of water use activities. The list could be extended but the point is clear—water use and abutting land use are intimately related. The marine biologist would certainly see these seemingly separate areas as a single interdependent life support system. The dredging or filling of marsh areas, the indiscriminate cutting of shore cover, the altering of stream flows, either in terms of location, quality, volume, or temperature, cannot fail to have profound and permanent effects on estuarine<sup>53</sup> and frequently on more distant offshore water areas.<sup>54</sup> Conversely the location of shipping lanes, the location within costal water areas of dredging, drilling, or weed cutting operations, the location of seafood processing establishments may all have tremendously harmful and

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<sup>52</sup> Mandatory planning and land use controls are being discussed more widely. See, e.g., WIS. STAT. ANN. § 59-971 (Supp. 1969); WIS. STAT. ANN. § 144.26 (Supp. 1969); Delogu, *supra* note 4.

<sup>53</sup> See OUR NATION AND THE SEA, A PLAN FOR NATIONAL ACTION *supra* note 10 at 49-81:

Seventy percent of the present U.S. commercial fishing effort takes place in coastal waters. Coastal and estuarine waters and marshlands provide the nutrients, nursing areas, or spawning grounds for two-thirds of the world's entire fisheries harvest. Seven of the ten most valuable species in American commercial fisheries spend all or important periods of their lives in estuarine waters, and at least 80 other commercially important species are dependent upon estuarine areas.

... But the estuaries are in danger. Pollution is an ever increasing threat. Land fillings, dredging, dumping, and marsh draining reduce their areas. ... In the past 20 years, dredging and filling have destroyed seven percent (more than a half million acres) of the nation's important fish and wildlife estuarian habitats.

*Id.* at 53-54.

<sup>54</sup> Hatch, *Ecological Considerations: Sea and Shore*, CENTER FOR RESOURCE STUDIES, BOWDOIN COLLEGE, THE MAINE COAST: PROSPECTS AND PERSPECTIVES 29 (1967).

equally permanent effects on land values and the quality of living along the coast.

The point to be emphasized is that coordinating water use controls with land use controls is not intended to and will not likely result in curtailing or shrinking the range of entrepreneurial activities that can take place in either water or land areas. If anything, the number of potentially competing activities will be increased by having had specific, well-suited land and water areas allocated to them. Financial success is made more certain by a more harmonious blending of activities with one another and with the particular characteristics of a local environment. Certainly the damaging consequences of unplanned growth and exploitation of coastal resources can be avoided.

The scope of the problem can perhaps best be grasped if regarded in terms of the economist's concept of scarcity.<sup>55</sup> Coastal land and water resources, public tax dollars, private capital, and time are all scarce. Valuable and irreplaceable tracts of coastal land and offshore water and bed areas are being developed by public and private action or a combination of the two, and in many instances exploited, wasted, and needlessly destroyed. There is a limit. Bad planning or the absence of planning coupled with an absence of even those few land and water use control devices most necessary to an organized society inevitably raises not only the costs of government but of private development as well. Irretrievable losses occur. Some of the beauties and grandeur of the coastlines of this country are already gone forever. Some coastal cities will never know anything but the chaos brought about by past unplanned development. Some of the delicate balances of nature along the coast have been permanently upset.

No one discipline, group of technicians, citizens group, industrial interest, or political party working alone can deal with the situations described. A coordinated, cooperative, and broad-based approach with state government playing perhaps the leading role is necessary. The economist, biologist, planner, lawyer, political leader, and the general public must unitedly design and opt for sound planning and the imposition of a range of controls which will end the era of exploitation and ad hoc development of our coastal land and water resources. We must find ways to allow

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<sup>55</sup> SAMUELSON, *ECONOMICS—AN INTRODUCTORY ANALYSIS* 17 (5th ed. 1961).

both public and private development to proceed efficiently and economically, but when public and private ends are in conflict, we must not hesitate to use governmental power to strike whatever balance will protect and achieve the public interest in the largest sense of the word.<sup>56</sup>

The power of a government of the people are many and can be marshalled to these ends. The question is—do we have the will?

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<sup>56</sup> An observation of Maine's Supreme Judicial Court with respect to regulations on the cutting of timber is particularly appropriate in this context. Opinion of the Justices, 69 A. 627 (Me. 1908):

. . . [T]he amount of land being incapable of increase, if the owners of large tracts can waste them at will without State restriction, the State and its people may be helplessly impoverished and one great purpose of government defeated.

*Id.* at 629.