

# **DEMYSTIFYING THE ZONES ON NOAA'S NAUTICAL CHARTS**

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## **SUMMARY**

Under international law, a nation's authority to regulate shipping and other maritime activities is balanced against the interests of maritime nations, including the freedom of navigation. A nation has full sovereignty in its territorial sea to regulate shipping but must allow for innocent passage. Consistent with international law, the President has proclaimed a 12 nm territorial sea, a 24 nm contiguous zone and a 200 nm Exclusive Economic Zone (EEZ) for international purposes. However, Congress has yet to amend many domestic laws to fully utilize such authority over foreign flagged vessels and nationals. This panel will discuss the rights and authorities under the Law of the Sea (LOS) and the issues arising under their implementation in U.S. domestic law, such as a no-entry rule in the territorial sea around Midway Island National Wildlife Refuge and the zones in the Florida Key National Marine Sanctuary prohibiting anchoring or certain vessels. The issues of which U.S. laws apply in which zones will be discussed, including issues arising from NOAA's charting of the Three Nautical Mile (3 nm) Line. This 3 nm line depicts the limit territorial sea before it was extended to 12 nm and is frequently mistaken as the depiction of the federal and state boundary. This has resulted in some confusion about the location of the federal –state boundary in the context of fisheries enforcement in Chandeleur Sound, Louisiana. The issue of where the federal – state boundary is will also be discussed in the context of the Cape Wind energy development project in Nantucket Sound, Massachusetts. Finally, there will be a discussion on how to improve the public availability of this information through the development of digital data for Internet download and for publication within NOAA's Electronic Navigational Charts (ENCs). In our emerging world of E-government, the use of digital maritime limits is expected to be a valuable tool for federal and state resource management and enforcement.

## **NOAA'S NAUTICAL CHART: OFFICIAL DEPICTION OF MARITIME ZONES**

NOAA's Office of Coast Survey (OCS) is responsible for depicting on its nautical charts the limits of the U.S. 12 nautical mile Territorial Sea, 24 nautical mile Contiguous Zone, and 200 nautical mile Exclusive Economic Zone (EEZ). NOAA charts thus provide notice to the international community of the U.S. maritime zones which are important for the control of the U.S. coastal land and waters and the regulation of foreign vessels.

## **HISTORY OF MARITIME ZONES: CANON SHOT RULE TO UNCLOS**

## **LAW OF THE SEA: SOVEREIGNTY VS FREE SHIPPING**

The practice of nations in maritime activities has resulted in a body of customary international law known as the Law of the Sea (LOS) that has been codified most recently in the 1982 United Nations Law of the Sea Convention (UNCLOS). The LOS is a carefully balanced compromise between a nation's interest in maritime shipping (flag States) and a nation's interest in protecting and managing its coastal waters (coastal States).

## **US SOVEREIGNTY IN 12NM TERRITORIAL SEA & INNOCENT PASSAGE**

The baseline from which the zones are measured is ambulatory by nature, and thus so are all of the limits. This presenter will provide an overview of the substantive international rules that are relied upon to determine the U.S. jurisdiction over foreign flagged vessels and national in the various zones. There will also be an explanation of the process the Baseline Committee process that culminates in the depiction of limits on NOAA Charts.

## **CONTIGUOUS ZONE: SECURITY BUFFER 12-24 NM**

In this zone contiguous to the territorial sea, the coastal state may exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulation of territorial sea. In addition, a nation may regulate the removal of cultural heritage, including foreign flagged vessels and nationals. In 1999, the U.S. Contiguous Zone was extended to twenty-four nautical miles by Presidential Proclamation.

## **US SOVEREIGN RIGHTS IN 200 NM EEZ**

The Exclusive Economic Zone, according to UNCLOS, extends to 200 nautical miles from the baseline from which the territorial sea is measured. This zone gives a coastal nation *“sovereign rights for the purpose of exploring and exploiting, conserving and managing, the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, current and winds.”*

## **LOS RULES FOR DELIMITING MARITIME ZONES FROM A BASELINE**

The authority of a nation to control its coastal waters has been recognized as a matter of customary law since the dawn of ship borne trade. The old 3 nm territorial sea was a development of customary international law. The extent to which a nation could control its coastal waters was largely based on how far a cannon ball could be shot from the shore, i.e., the cannon shot rule. The U.S. claim to a 3nm territorial sea can be dated back to a diplomatic note sent in 1793 from Thomas Jefferson Diplomatic to France and Britain 1793. The 3nm territorial sea under customary international law was subsequently codified in a 1958 Convention just as the extension to a 12 nm territorial sea that became customary law was later codified in the 1982 LOSC. There will also be a discussion of the LOS rules used to determine the baseline from which the territorial sea and other maritime zones are measured and the issues that arise. [ambulatory]

## **COASTLINE OF SLA FOLLOWS SAME LOS BASELINE RULES**

## **NOAA CHARTING OF NATURAL RESOURCE BOUNDARY: SLA?**

### **HISTORY OF SLA**

[US V CALIF] [

### **HISTORY SLA 3 VS 9**

#### **SLA EXCEPTIONS TO LOS RULES: FIXED VS AMBULATORY, WAIVERS**

U.S. v. California prompted Congress to grant coastal states' a 3-mile (in most cases) maritime belt in the Submerged Lands Act (SLA) in 1953. The presenter will describe the subsequent process of defining the exact grant made by the SLA. Pursuant to Supreme Court cases, the rules used in determining the coastline and seaward boundary of states under the SLA are generally the same as those used in determining the baseline and territorial sea under the 1958 Convention. Thus, in many cases, the depiction of the old 3 nm territorial sea was likely to also depict the seaward boundary of states. There are, however, exceptions. As indicated above, the baseline and thus all the limits of the maritime zones are ambulatory. Thus, the coastline and seaward limit of the states are generally ambulatory. However, there is a procedure whereby the boundary between the SLA and OCLSA can be fixed. In those cases, there is likely to be a difference in the seaward limit of states and the 3 nm line on NOAA charts.

#### **FIXING OF SEAWARD LIMIT OF STATES: IMPACTS ON OTHER LAWS**

#### **OLD TERRITORIAL SEA VERSUS SEAWARD LIMIT UNDER SLA**

The presenter will explain Note X and the 3 nm line on NOAA charts and how this line actually depicts the old 3 nm territorial sea. As indicated above, this line is assumed by most to be the federal state boundary line.

#### **FEDERAL-STATE BOUNDARY ISSUES & ENERGY DEVELOPMENT**

The presenter will go over how the assumption about the 3 nm line being the seaward limit of the state is resulting in issues for a proposed wind energy project. This situation also highlights the differing rules and policies at NOAA and MMS regarding the potential use of asterisk rocks as low-tide elevations and the application of NOAA survey standards.

#### **FEDERAL-STATE BOUNDARY ISSUES FOR FISHERIES JURISDICTION**

The presenter will go over a good case example of where the difference in the 3 nm line and the seaward limit of the state outside of this sound is causing unusual problems for federal and state fisheries enforcement.

#### **SOLUTION: USE OF DIGITAL BOUNDARIES, ZONES AND BASELINES**

With the advent of Electronic Navigational Charts and Geographic Information Systems, NOAA has started a project to create digital maritime limits and National Baseline. For the project, NOAA digitizes the low water line from a tile of largest scale nautical charts.

After collecting the largest scale, most recent edition low water line from the nautical charts, NOAA reviews additional features for their possible inclusion or exclusion in the baseline under the LOS Convention. These features might be low-tide elevations marked as asterisks on the nautical charts, permanent harborworks such as groins and breakwaters, and bay, river, or harbor closing lines. After all features have been examined, NOAA seeks a review from the MMS and develops recommended baseline points and corresponding limits of the maritime zones for consideration by the U.S. Baseline Committee.

### **LAW OF THE SEA TASK FORCE ZONE DETERMINATIONS**

The limits of the maritime zones and the baseline from which they are drawn are created through a multi-agency effort of which NOAA plays a large role. The Law of the Sea Task Force, also referred to as the ad hoc Committee on the U.S. Baseline, was formed in 1970. See Department of State Coastline Committee Charter published in Appendix F of Mike Reed, Vol. III., Shore and Sea Boundaries (DOC/NOAA/CSC, 2000) [insert website as well] It was initially formed because there had been a number of inquiries from both foreign governments and states within the U.S. for a definitive U.S. position on the exact location and nature of the U.S. coastline [baseline]. The Committee took the position that it would draw the coastline [baseline] under strict accordance with the Geneva Convention on the Territorial Sea and the Contiguous Zone. The committee will review the most recent existing charts with respect to the usability of charted low water feature symbology. The committee will not use those symbols that are questionable as to whether they meet the relevant legal requirements under the Law of the Sea Convention (LOSC). This cautionary approach is taken to help enforcement. [how?]

### **COORDINATION WITH DOI/MMS IN BASELINE APPROVAL PROCESS**

With regard to the interagency approval process, the following is a more general outline of the next set of steps toward the approval of the baseline and limit lines before incorporation into the nautical chart. The process begins with NOAA and its assessment of the available chart data. Once the data has been gathered and run through the preliminary boundary generation process as described previously, we send our files to the Minerals Management Service (MMS) for review. MMS is responsible for determining the coastline points from which the federal/state boundaries are drawn under the Submerged Lands Act. For many years we have been working jointly to define our baselines. Through court actions, MMS may have additional domestic rules that must be applied to their federal/state boundaries; however, in most cases, they follow rules as defined under the Law of the Sea Convention. Once MMS has provided their review and any additional data, NOAA may make changes to the baseline or limits. After receiving MMS' review, we request a meeting through the chairperson of the ad hoc Committee on the U.S. Baseline. This multi-agency committee is chaired by the Department of State and its members were discussed at the start of this presentation. At this meeting, the Baseline Committee reviews the baseline with regard to proper application of the Articles in the Law of the Sea Convention. Once approved, the limits are finalized at NOAA, incorporated into the next edition of the nautical chart, and posted to the Internet.

### **THE FUTURE: DOWNLOAD MARITIME ZONES FROM THE INTERNET**

Utilizing GIS software tools, OCS is providing its cartographers and the public with the latest vector representations of the maritime zones. The limits are posted on the Internet in shapefile format along with FGDC-compliant metadata. The shapefile format can be used in most geographic-based software programs. Since March 2003, we have posted the Three Nautical Mile Limit Line, Territorial Sea, and Contiguous Zone for the Hawaiian Islands, Puerto Rico & U.S. Virgin Islands, the Atlantic Coast, and the Gulf Coast. These maritime zones are available at <http://nauticalcharts.noaa.gov/csdl/mbound.htm>. The EEZ files, which have been on the Internet for several years, will be updated as we move through the process. Currently, updated EEZ files for the Hawaiian Islands and Puerto Rico & U.S. Virgin Islands are available. The EEZ continues to be available for download at <http://nauticalcharts.noaa.gov/csdl/EEZ.htm>. With easy access to digital maritime zones, it is our hope that the awareness, management, and enforcement of our ocean space will be improved.

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**LIMITS OF US JURISDICTION IN MARITIME ZONES**

The U.S. has proclaimed its national jurisdiction over activities in the maritime zones (12 nm territorial sea, 24 nm contiguous zone, and 200 nm EEZ) consistent with customary international law as codified in the LOSC. While the limit of these zones has particular importance under international and domestic law, their exact location is not often known and is subject to change because of the constant accretion and erosion of the baseline.