

Great Lakes Submerged Lands Policy and Management

A Comparative Analysis of Eight States'
Coastal and Submerged Lands Laws,
Regulations, and Policies

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Great Lakes Coastal Management

- Coastal Zone Management Act 1972
 - Provides funding/technical support to states with CZMPs
 - 7 Great Lakes states have approved CZMP
 - Landward boundary defined by each state
 - Seaward boundary defined by Submerged Lands Act

 - Submerged Lands Act 1953
 - Grants states rights to lands under navigable waters within their boundaries
 - Seaward boundary extends to international boundary
 - Landward boundary set at the OHWM
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Great Lakes Coastal Management

- Public Trust Doctrine
 - Ancient law of nature dictates certain things are common to all mankind
 - Air
 - Running water
 - Sea
 - Shores of the sea
 - No one can be forbidden access to the seashore or the Great Lakes shoreline
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Recent Challenges to Great Lakes Coastal Management

- Public access to shoreline
 - Michigan beach-walking case
 - Supreme Court applied public trust doctrine
 - Public right to walk along the shore between OHWM and water's edge

 - State management of submerged lands
 - Lakefront property owners challenge leasing requirements for lands below OHWM
 - Lawsuit still pending
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Great Lakes Submerged Lands Management Surveys

- Great Lakes Commission survey (2002)
 - Response to ODNR request
 - 3 sections
 - Setbacks
 - Boundaries of state bottomlands
 - Submerged lands leasing
 - Objectives
 - Compare Great Lakes states policies and practices
 - Set precedent to develop leasing program
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Great Lakes Submerged Lands Management Surveys

- ODNR Questionnaire (2005)
 - Developed for Great Lakes Regional Meeting of Coastal Program Managers in September 2005
 - 2 sections
 - General descriptive information about state CZMPs
 - Submerged lands regulations & enforcement

 - Survey results compiled and integrated with 2002 survey results
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Results: Great Lakes Coastal Zone

- All 8 Great Lakes states maintain direct control or authority over development of shoreline and state-owned submerged lands



Results: Submerged Lands Leases

<u>State</u>	<u>Lease Required?</u>
Illinois	No
Indiana	No
Michigan	Yes
Minnesota	No
New York	No
Ohio	Yes
Pennsylvania	Yes
Wisconsin	Yes

Results: Submerged Lands Leases

- For the states that do require leases
 - Lease rates: \$1 - \$16,000 per year
 - Wisconsin charges a nominal fee for municipalities
 - Michigan has the highest annual lease rates
 - Lease terms: 1 – 50 years
 - Pennsylvania allows annual renewals with valid permit
 - Michigan, Ohio and Wisconsin have the longest lease terms
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Results: Setbacks

<u>State</u>	<u>Setback Required?</u>
Illinois	No
Indian	No
Michigan	Yes
Minnesota	Yes
New York	Yes
Ohio	No
Pennsylvania	Yes
Wisconsin	Yes

Boundary of State Bottomlands

- State definitions of Ordinary High Water Mark
 - MN:
 - Elevation delineated the highest water level
 - Maintained long enough to leave evidence on the landscape
 - Point where natural vegetation changes from aquatic to terrestrial
 - IL: where the waters normally lie while in a quiescent state
 - OH: the natural shoreline
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Boundary of State Bottomlands

- USACE definition of OHWM
 - Line on shore coincident with elevation contour
 - Representing the approximate location of line established by fluctuations of water
 - Indicated by physical signs
 - Shelving
 - Destruction of vegetation
 - Litter or debris
 - Changes in soil
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USACE Definitions

<u>State</u>	<u>Use OHWM?</u>	<u>Use LWD?</u>
Illinois	Yes	No
Indian	Yes	No
Michigan	No	No
Minnesota	No	No
New York	Yes	No
Ohio	Yes	No
Pennsylvania	Yes	Yes
Wisconsin	No	No

Management Implications

- Variation in contiguous states' statutes, regulations, policies creates confusion in coastal and submerged lands management
 - Should states lease or permit use of submerged lands?
 - What should be terms/conditions of leases or permits?
 - Where can you walk along the Great Lakes shoreline?
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Management Implications

- Reducing confusion/ambiguity in Great Lakes coastal management
 - Consistency in management standards, policies and procedures for a single resource
 - Coordination in development of coastal management policies and regulations
 - Cooperation in overall Great Lakes coastal management regime
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Regional Opportunities

- Information sharing
 - Enhanced regional perspective and approach
 - More consistency within region
 - More protection for state programs
 - Federal incentives can help
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Questions??

