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LEGAL ISSUES AND STATE AUTHORITY RELATED TO TERRITORIAL WATERS

SUMMARY

A state's "territorial waters" generally refers to the waters under its jurisdiction, including both the inland waters and any surrounding sea. There are multiple answers to the question on Florida's territorial water authority. The context in which the question is posed affects the answer. There are a number of variables that come into play, including the applicable law; the nature of the activity being affected by that law; and the relationships among the federal, state, and local practitioners implementing that law.

This report provides an overview of the various legal sources that speak to or affect Florida's territorial water authority, as well as key court cases interpreting those sources. It finds that critical sources of Florida's territorial water authority include the State Constitution; federal and state statutes covering specific topics, such as fisheries management and pollution discharge; and agreements executed by state and federal agencies that govern their day-to-day working relationships.

BACKGROUND

When a 13-year-old passenger vacationing aboard a cruise ship 11.7 miles off the coast of South Florida died after suffering an allergic reaction to food, the youth's family sued the cruise line and the ship's doctor in Florida court. Before the legal system could tackle the issue related to alleged negligence, however, it had to answer the fundamental question of whether the incident occurred in Florida's waters and whether a Florida court could assert jurisdiction.

The court ultimately ruled that the incident did occur in Florida's territorial waters. The court held that Florida's constitution provided Florida's territorial boundary, which included an east coast boundary of

three miles or the edge of the Gulf Stream, whichever is farther.

Experts testified that the edge of the Gulf Stream was 14 miles east of the coastline in question on that particular day, and the ship was 11.7 nautical miles east of Florida's coastline. Thus, the ship was within Florida's territorial waters.¹

The term "territorial waters" generally refers to the "waters under a state's or nation's jurisdiction, including both inland waters and surrounding sea (traditionally within three miles of the coastline)."² The medical malpractice case involving the cruise line illustrates how the confines of a state's territorial waters can affect the ability of a court to assert jurisdiction over parties to civil litigation, as well as over persons accused of committing criminal offenses on those waters.

However, the notion of territorial waters has broader implications than the state's courtrooms. The scope of the state's territorial waters and its powers within those waters can affect a range of state operations and activities – from the enforcement of fishing regulations in partnership with the federal government, to the enforcement of boating safety, to the taxation of activities conducted on vessels leaving from the state, to the development and enforcement of environmental regulations.

For the Legislature, the issue of territorial waters may arise as policymakers develop and debate proposed statutory initiatives. During the 2007 Regular Session, for example, the Senate and the House of Representatives considered measures affecting the conditions under which "Cruises to Nowhere" vessels could release waste into the water. The state and

¹ *Benson v. Norwegian Cruise Line Ltd.*, 859 So. 2d 1213 (Fla. 3d DCA 2003), *cause dismissed by Norwegian Cruise Line v. Benson*, 885 So. 2d 388 (Fla. 2004).
² BLACK'S LAW DICTIONARY (8th ed. 2004).

federal regulatory authority over Florida's territorial waters was one of the issues addressed in the legislation.

House Bill 57 required the gambling vessels to establish procedures for the release of sewage, oily bilge water, untreated or treated graywater, and various other types of wastewater into Florida's coastal waters. In the bill analysis, comments provided by the Florida Fish and Wildlife Conservation Commission (FWCC) stated that state and federal law currently prohibit the discharge of these substances in Florida and federal territorial waters.

For purposes of federal jurisdiction, the FWCC stated it is unlawful for any vessel in U.S. jurisdiction to discharge oil into coastal water that includes the federal Exclusive Economic Zone (an area of 200 nautical miles out to sea). The FWCC also noted that Florida has extraterritorial jurisdiction when the discharge of pollutants affects Florida's land or water.³

Senate Bill 444 proposed that the Department of Environmental Protection conduct a study of the wastewater discharged by gambling vessels to determine the potential for water quality impacts on coastal waters. The bill analysis also referenced the current state and federal authority for regulating wastewater discharge into United States and state waters.⁴

For a state like Florida – a peninsula wrapped by approximately 1,300 miles of coastline – the issue of territorial waters is especially relevant. However, despite the potential for issues related to territorial waters to affect this state, from its long-term policy development to its day-to-day activities, defining the scope of those waters and the state's power within them is not always easy.

In addition to Florida's constitutional provision, there are various federal and state statutes that speak to territorial waters and the state's power within them. In light of the potential profound effect that Florida's territorial waters can have, this report analyzes significant developments in the law relating to the state's territorial waters and identifies the parameters of state authority in those waters, in order to give the

Legislature guideposts to govern its options for asserting regulatory or other policy-making jurisdiction.

METHODOLOGY

Committee staff reviewed state and federal statutes and international maritime treaties, case law, and law review articles, as well as consulted with maritime law experts and others with experience in maritime operational or enforcement activities.

FINDINGS

Florida is a peninsula surrounded on three sides by miles of sometimes translucent water. Answering questions about the scope of the state's authority in those waters is sometimes a murky proposition. What are Florida's territorial waters? The context in which the question is posed affects the answer. There are a number of variables that come into play, including the applicable law; the nature of the activity being affected by that law; and the relationships among the federal, state, and local practitioners implementing that law.

Florida's Constitution

The Florida Constitution provides the first significant source of authority for defining the state's territorial waters. Florida's constitution provides the boundaries for Florida's territorial waters in Article II, Section 1. It states that the southern and western boundaries extend three leagues (nine nautical miles) and to the edge of the Gulf Stream or three geographic miles, whichever is greater, for the eastern coastal boundary.⁵

These boundary provisions are a combination of Florida's fourth, fifth, and sixth constitutions. It was not until Florida's fourth constitution of 1868 that the coastal boundaries were described. Article I provided for a coastal boundary of three leagues to the south and west and the edge of the Gulf Stream to the east.⁶

A 1962 revision to Article I changed the eastern coastal boundary to three geographic miles. The last major

³ The Florida House of Representatives, House of Representatives Staff Analysis, House Bill 57 (2007), at <http://www.myfloridahouse.gov>.

⁴ The Florida Senate, Senate Professional Staff Analysis, Senate Bill 444 (2007), at <http://www.flsenate.gov>.

⁵ A nautical mile is approximately 1.15 geographic miles.

⁶ Congress rejected Florida's third constitution for its failure to give equal rights to its black citizens. Robert M. Jarvis, *Territorial Waters: Florida's Eastern Coastal Boundary is the Greater of the Edge of the Gulf Stream or Three Geographic Miles. Benson v. Norwegian Cruise Line Ltd.*, 834 So. 2d 915 (Fla. Dist. Ct. App. 2003), 34 J. MAR. L. & COM. 351, 352 (April 2003).

revision to the Constitution in 1968 extended this boundary to the edge of the Gulf Stream or three geographic miles, whichever was greater. Article I was also renumbered Article II, Section 1, and was divided into two subsections. Subsection 1(a) describes the boundaries, and subsection 1(b) authorizes the Legislature to extend the coastal boundaries to the limits permitted by the United States or international law.⁷

The National Oceanographic Data Center (NODC) reports that the exact position of the Gulf Stream is variable. It is described as an intense current that meanders, loops, and bends, flowing from Florida to North Carolina and veering east into the North Atlantic near Cape Hatteras, North Carolina.⁸

According to one expert, when the Third District Court of Appeal found that, at the time of an alleged medical malpractice aboard a cruise ship, Florida's territorial boundaries extended 14 miles to the edge of the Gulf Stream, it was the first time that the eastern coastal boundary provision of the Florida Constitution had been squarely interpreted.⁹

In that case, *Benson v. Norwegian Cruise Line Ltd.*, the parents of the deceased 13-year-old cruise ship passenger brought a wrongful death action in Florida against Dr. Von Benecke, the cruise ship doctor. During the cruise, the passenger suffered an allergic reaction to shell fish. Dr. Von Benecke was unable to successfully intubate the passenger, and the passenger subsequently died.

Dr. Von Benecke moved to dismiss the wrongful death action for lack of jurisdiction. The doctor made several arguments regarding Florida's territorial boundaries under federal law and state constitutional law.

The doctor cited the federal Submerged Lands Act as preventing Florida from claiming an Atlantic territorial sea greater than three miles. The court disagreed, finding that the Submerged Lands Act was adopted to resolve a controversy between the states and the federal government regarding ownership of the ocean bed and natural resources and not, as in this case, conduct

occurring on the ocean's surface.¹⁰

The doctor also argued that it was impermissible to establish the western edge of the Gulf Stream as a territorial sea boundary since the Gulf Stream moves and creates a variable boundary. The court found that there was no ground for this objection since the boundary had already been established in Article II, Section 1 and the wisdom of the decision by the drafters of the Constitution should not be overridden unless it was by federal law or treaty.

The court also disregarded the doctor's argument that the plaintiff's position in this case was inconsistent with the holding in *Darbie v. State*, 711 So. 2d. 1280 (Fla. 3d DCA 1998), which used the territorial boundary found in Article X, Section 16 of the Florida Constitution. The court pointed out that this boundary definition was for purposes of enforcing the ban on marine net fishing and was therefore not applicable to the facts in this case.

The court ultimately held that Florida's constitution provided Florida's territorial boundaries, which included the edge of the Gulf Stream, and thus the trial court had personal jurisdiction over the doctor.¹¹

It is apparent from this decision, however, that the constitutional language is not necessarily dispositive of Florida's territorial boundaries in every situation. Federal law plays a significant role in governing Florida's powers off its own shores, as well as separate state constitutional and statutory law.

Another constitutional provision that defines Florida's territorial boundaries is found in Article X, Section 16 of the Florida Constitution. For purposes of prohibiting gill nets or other entangling nets, Florida's territorial waters are inside a line of three miles seaward of the coastline along the Gulf of Mexico and inside a line one mile seaward of the coastline along the Atlantic Ocean. "Coastline" is used the same way as cited in the Submerged Lands Act, which defines it as the line of ordinary low water along that portion of the coast which is in direct contact with the open sea.¹²

⁷ *Id.* at 353.

⁸ National Oceanographic Data Center, "Where can I get information about the position of the Gulf Stream?" at <http://www.nodc.noaa.gov/General/NODC-oceanfaq.html> (last visited 9/25/07).

⁹ Jarvis, *supra* note 6, at 352.

¹⁰ *Benson v. Norwegian Cruise Line Ltd.*, 859 So. 2d 1213, 1216 (Fla. 3d DCA 2003), *cause dismissed by Norwegian Cruise Line v. Benson*, 885 So. 2d 388 (Fla. 2004).

¹¹ *Id.* at 1218.

¹² *Darbie v. State*, 711 So. 2d 1280, 1283-84 (Fla. 3d DCA 1998).

Federal and State Statutes

The Florida Constitution is not the only source of authority relating to the state's territorial waters. A second category of authority is comprised of relevant federal and state statutes that address issues affecting the state's authority in the waters surrounding it.

Submerged Lands Act

One of the statutory sources affecting state territorial waters is the federal Submerged Lands Act of 1953 (SLA).¹³ The SLA gives states title to the lands beneath navigable waters within the boundaries of the state and to the natural resources within the land and the water. The SLA also gives states the right and power to manage, administer, lease, develop, and use the marine resources off their coasts. The boundaries are those that existed at the time a state became a member of the union or as approved by Congress.¹⁴

The Submerged Lands Act as interpreted by the U.S. Supreme Court gives Florida three leagues¹⁵ (approximately nine miles) off its western coastal boundary¹⁶ and three geographic miles off its eastern coastal boundary.¹⁷

The United States first asserted a three-mile boundary in 1793 when, in a diplomatic exchange, Thomas Jefferson officially claimed a three-mile sea.¹⁸ According to one expert, it was assumed for the next 150 years that states possessed exclusive ownership of the resources under these waters for domestic purposes.¹⁹

Federalist politics of the 1930's and 1940's and a series of Supreme Court cases, one in 1947²⁰ and two in

1950,²¹ changed that assumption. In all three cases the Supreme Court found the federal government possessed paramount rights over the three-mile sea. At issue in all three cases was the states' claim to the petroleum rights.²²

With the election of Dwight D. Eisenhower in 1952 came renewed interest in returning ownership and control of the submerged lands within three miles to the states. The Submerged Lands Act passed in 1953 but not as originally written. The U.S. Senate eliminated language in the bill that granted the federal government ownership of the continental shelf outside the three-mile limit. The provision would pass in a separate bill titled the Outer Continental Shelf Lands Act.²³

Magnuson Fishery Conservation and Management Act

The Magnuson Fishery Conservation and Management Act is a comprehensive management system for fishing in federal waters.²⁴ These waters extend from the states' boundaries to 200 miles off their coasts.²⁵ (Florida's constitutional boundaries are considered the applicable boundaries.²⁶) Florida has authority to regulate fishing vessels outside its territorial boundaries if the fishing vessel is registered with the state and there is no fishery management plan or other federal regulation for the fishery the vessel is operating in, or the state's laws and regulations are consistent with the management plan and federal regulations.²⁷

Through a fishery management plan enacted by area councils and other agencies under the U.S. Secretary of Commerce, the act provides a comprehensive system of controls.²⁸ Certain provisions are required in the fishery management plans. Some of these provisions include measures necessary for the conservation and management of the fishery.²⁹

¹³ 43 U.S.C. ss. 1301-1315.

¹⁴ *Id.*

¹⁵ A marine league is defined as a unit of 3 nautical miles or 5.6 kilometers. Dictionary.com Unabridged.

¹⁶ *United States v. States of Louisiana, Texas, Mississippi, Alabama and Florida*, 363 U.S. 1 (1960).

¹⁷ *United States v. Florida*, 425 U.S. 791 (1976).

¹⁸ Milner S. Ball, *Good Old American Permits: Madisonian Federalism on the Territorial Sea and Continental Shelf*, 12 ENVTL. L. 623, 624 (Spring 1982).

¹⁹ Robert Jay Wilder, J.D., Ph.D., *The Three-Mile Territorial Sea: Its Origins and Implications for Contemporary Offshore Federalism*, 32 VA. J. INT'L L. 681, 711 (Spring 1992).

²⁰ *United States v. California*, 332 U.S. 19 (1947).

²¹ *United States v. Louisiana*, 339 U.S. 699 (1950), and *United States v. Texas*, 339 U.S. 707 (1950).

²² Wilder, *supra* note 19, at 711.

²³ *Id.* at 737-738.

²⁴ 16 U.S.C. ss 1801-1883.

²⁵ See 16 U.S.C. s. 1856(a)(2)(A).

²⁶ Conversation with Capt. Alan Richard, Office of the General Counsel, Florida Fish and Wildlife Conservation Commission (September 28, 2007).

²⁷ 16 U.S.C. s. 1856(a)(3).

²⁸ 14 A.L.R. Fed. 2d 547.

²⁹ 16 U.S.C. s. 1853.

***Johnson Act and the Gambling Ship Act
(Cruises to Nowhere)***

Florida has some regulatory authority over the “Cruises to Nowhere” ships that depart from Florida ports. Distinguishing what Florida’s territorial waters are for these ships, however, has been up for debate.

“Cruises to Nowhere” are cruise ships that depart from a port and sail into international waters where gambling activities take place, and then return to the same port without stopping at an intervening port. The Gambling Devices Transportation Act (commonly known as the “Johnson Act”) and the Gambling Ship Act are the federal laws that regulate these ships.³⁰ The Johnson Act provides for a gambling exemption to these ships outside a three-mile limit, meaning that gambling activities can take place once the cruise ship is passed the three-mile boundary.³¹

The Gambling Ship Act exempts these cruises from criminal liability when patrons are engaged in gambling activities on the cruises beyond the territorial waters of the United States.³² The act cross-references the Internal Revenue Code, which defines territorial waters as “those waters within the international boundary line between the United States and any contiguous foreign country or within 3 nautical miles (3.45 statute miles) from low tide on the coastline.”³³

In 2003, the First District Court of Appeal, in *Dream Boat, Inc. v. Department of Revenue*, looked at whether a corporation (Dream Boat) operating cruises to nowhere vessels out of the ports of Florida qualified for a proration of taxes under s. 212.08, F.S.³⁴ The Department of Revenue sought to tax the gambling equipment aboard the vessel during the time it was in Florida under s. 212.08(8), F.S. (1999). This provision provided for a proration of taxes on the sale or use of vessels and vessel parts used to transport persons or property in interstate or foreign commerce.³⁵

The court found that the Dream Boat could not show that the vessels were engaged in interstate or foreign commerce and therefore found it unnecessary to decide

if they would qualify for the partial tax exemption under s. 212.08(8), F.S.

Since the vessels never enter any other state’s waters, and Dream Boat conceded in oral argument that it did not engage in interstate commerce, the court was left to address the question of whether Dream Boat was engaged in foreign commerce. The court found that foreign commerce has been established as commerce which concerns more than one nation. The court found that the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), which extended the U.S. territorial sea 12 nautical miles, did not alter the three-mile rule for gambling cruises under the Gambling Ship Act and thus Dream Boat could not be considered to be engaged in foreign commerce.

The court did state in a footnote that though it was unnecessary to determine the boundaries of Florida’s territorial waters, Article. II, Section 1 of the Florida Constitution provided the authority for those boundaries.

In a subsequent case, involving the Department of Revenue’s (DOR) ability to tax gambling equipment on a cruise to nowhere vessel on a prorated basis, the Florida Supreme Court disapproved the decision in *Dream Boat, Inc. v. Department of Revenue*.

In this case, *Florida Department of Revenue v. New Sea Escape Cruises, Ltd.*, the cruise to nowhere corporation (New Sea Escape) argued that no tax, not even a pro rata tax, should be assessed against the gambling equipment since the vessel sailed outside Florida’s territorial water before the equipment was used. The Fourth District Court rejected this argument, and the Supreme Court agreed.³⁶

The Court did agree with the definitions of interstate commerce and foreign commerce used in *Dream Boat* and agreed with that court’s application of the definitions to conclude that cruises to nowhere do not enter the territorial waters of another state. The Court did not agree, however, that cruises to nowhere do not leave the country’s territorial waters and thus do not engage in foreign commerce.

The Court disagreed with *Dream Boat’s* use of the AEDPA to define the U.S. territorial waters at 12 miles, citing that AEDPA was for purposes of federal

³⁰ 15 U.S.C. ss. 1171-1177 and 18 U.S.C. ss. 1081-1084.

³¹ 15 U.S.C. s. 1175(c).

³² 18 U.S.C. ss. 1081-1082.

³³ 18 U.S.C. s. 1081; 26 C.F.R. s. 43.4472-1(e).

³⁴ *Dream Boat, Inc. v. Department of Revenue*, 921 So. 2d 1 (Fla. 1st DCA 2003).

³⁵ *Id.* at 2.

³⁶ *Florida Department of Revenue v. New Sea Escape Cruises, Ltd.*, 894 So. 2d 954 (Fla. 2005).

criminal jurisdiction only.³⁷ The Court also cites 33 C.F.R. ss. 2.20, 2.30, and 2.32 (2004), which describe when the United States boundary is defined as 12 miles.

It concluded, however, that “there is no overarching, binding authority for the proposition that the United States’s seaward boundary is twelve miles for the purpose of determining that a vessel sailing greater than three but not more than twelve miles offshore is not engaged in foreign commerce, and thus ineligible for the partial tax exemption.”³⁸

The Court also addressed, but did not consider in its holding, the Florida Constitution’s definition of territorial waters. The Court’s cites to *Benson* and notes that neither party offered any evidence that the Gulf Stream was at a greater distance than three miles off the Atlantic Coast.³⁹

The Court’s footnote in this case, however, may be an indication of sorts that an argument might be made that Florida’s territorial waters could have extended in excess of the U.S. territorial boundary of 12 miles.

Discharge of Pollutants

The Florida Statutes prohibit the discharge of pollutants into or on any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state.⁴⁰ According to Department of Environmental Protection representatives, Florida’s coastal waters are those defined in the Constitution under Article II, Section 1.

Discharge includes “any spilling, leaking, seeping, pouring, emitting, emptying, or dumping.”⁴¹ Pollutants include oil, gasoline, pesticides, ammonia, and chlorine.⁴² Florida also has jurisdiction outside the territorial limits of the state if the discharge “affects lands and waters within the territorial limits of the state.”⁴³

The discharge of untreated sewage on the public or private land or water of the state is prohibited.⁴⁴ If discharged from a commercial vessel, there is a presumption that it was done for a commercial purpose and is a felony of the third degree.⁴⁵

The state also has the ability to prosecute for violations of federal regulations relating to the marine sanitation devices when the discharge is prohibited and occurs in Florida’s territorial waters.⁴⁶

Drilling for Oil

The Outer Continental Shelf Lands Act governs federal jurisdiction over the submerged lands on the Outer Continental Shelf seaward of the state boundaries. The U.S. Secretary of Interior has authority to lease this land to the oil and gas industry for exploration, development, and production of oil and gas.⁴⁷

Since 1990, Florida has statutorily prohibited granting permits to drill in Florida’s territorial waters.⁴⁸ The boundaries as set forth in the Submerged Lands Act are used for the purpose of describing the territorial waters.⁴⁹

The Florida Constitution also establishes a Board of Trustees to hold in trust certain lands of the state, including submerged land, for the use and benefit of the people of the state.⁵⁰ The Florida Statutes expressly prohibit the trustees from granting any oil or natural gas lease on state owned submerged lands off the state’s west coast.

Territorial Waters in Practice

The third large category of source material for answering questions about the state’s territorial waters is comprised of memorandums of agreement and memorandums of understanding. These agreements, along with the practical interactions between state and federal agencies, may have the most direct effect on the day-to-day workings of the state in the area of territorial waters.

³⁷ The Court cites Pub. L. No 104-132, which contains Congress’ declaration regarding territorial seas of the U.S. as defined by Presidential Proclamation 5928 of 1988.

³⁸ *New Sea Escape Cruises*, 894 So. 2d at 965.

³⁹ *Id.* at 962 n. 6.

⁴⁰ Section 376.041, F.S.

⁴¹ Section 376.031(7), F.S.

⁴² Section 376.031(16), F.S.

⁴³ Section 376.031(7), F.S.

⁴⁴ Section 403.413(5), F.S.

⁴⁵ Section 403.413(6)(g), F.S.

⁴⁶ Section 327.53(5), F.S.

⁴⁷ *Offshore Drilling: A Review of the Federal Process*, The Florida Senate Interim Project Report 2007-118, Committee on Environmental Preservation and Conservation, November 2006.

⁴⁸ Section 377.24, F.S.

⁴⁹ *See s. 377.24(9)*, F.S.

⁵⁰ Section 253.001, F.S.

The Florida Fish and Wildlife Conservation Commission (FWCC) is a signatory to many of the agreements. The FWCC has jurisdiction over Florida's territorial waters for purposes of enforcing fishing and hunting regulations, state and federal laws that protect threatened and endangered species, laws dealing with commercial trade of wildlife and wildlife products, and boating safety laws and regulations.⁵¹

Fisheries

The FWCC is authorized and empowered under s. 370.103, F.S., to enter cooperative agreements with the federal government or its agencies for purposes of preserving salt water fisheries within and without state waters and to protect against overfishing, waste, depletion, or any other abuse. As such, the FWCC has a Joint Enforcement Agreement signed in 2007 with the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration, the National Marine Fisheries Service and the Office for Law Enforcement to enforce federal laws and regulations under the Magnuson Fishery Conservation and Management Act, the Endangered Species Act of 1973, and various other conservation acts related to protection of the sea.

Boating Safety

With over one million registered vessels on Florida's waters,⁵² issues related to enforcement of boater safety in the territorial waters are particularly important.

The FWCC and the United States Coast Guard have several memorandums of understanding regarding jurisdiction in Florida and U.S. territorial waters. The territorial waters for purposes of policing these waters include navigable waters of Florida and the United States.⁵³ The memorandums are intended to improve the management of existing responsibilities and coordination within and between each agency. For boating safety purposes, the Coast Guard and the state agree to exercise concurrent jurisdiction over state and federal waters, except those matters preempted by federal law.

⁵¹ FLA. CONST. ART. IV, s. 9; ch. 372, F.S.

⁵² 2005 *Boating Accident Statistical Analysis*, Lt. Kent Harvey, Assistant Boating Safety Coordinator, Florida Fish and Wildlife Conservation Commission, at <http://myfwc.com/law/council/presentations/2005BoatingAccidentAnalys.pdf>.

⁵³ Section 327.02(40), F.S.

For law enforcement purposes, the state is given primary law enforcement responsibility over recreational vessels, while the Coast Guard has responsibility over non-recreational vessels. Boating Under the Influence and Accident and Investigative Reports are coordinated between these two agencies with the understanding that each will be notified to discuss enforcement options.

Homeland Security

A memorandum of understanding also exists between the Coast Guard and the FWCC regarding cooperation and assistance on homeland security enforcement. Section 23.1225, F.S., allows Florida to provide voluntary cooperation and assistance of routine law enforcement across jurisdictional lines. The terrorist attacks of September 11, 2001, prompted this agreement. The agreement builds on the existing relationships and agreements on boating safety and fishery enforcement. The agreement outlines the general responsibilities of the parties to enhance law enforcement cooperation and coordination across jurisdictional lines and to improve the planning and management responsibilities over the homeland security resources of both agencies.

Pollution

The Florida Department of Environmental Protection (DEP) has a memorandum of understanding with the Florida Caribbean Cruise Association (FCCA) and the International Council of Cruise Lines (ICCL). In the agreement, the DEP accepts the ICCL Industry Standard for waste management practices and procedures, acknowledges that the FCCA and the ICCL agree to discharge wastewater outside of Florida territorial waters, and acknowledges that these practices and procedures exceed the standards set forth in Florida's laws.

Part of these standards includes a practice to discharge graywater and blackwater only while the cruise ship is four miles from shore and proceeding at a speed of not less than six knots. The blackwater must also be processed through a marine sanitation device prior to discharge.⁵⁴

⁵⁴ "Graywater" refers to wastewater used in the operation of the ship including drainage from dishwasher, shower, laundry, bath and washbasin drains. "Blackwater" refers to waste from toilets, urinals, medical sinks and other similar facilities. *Cruise Industry Waste Management Practices and*

RECOMMENDATIONS

For a state like Florida – surrounded on three sides by water – the topic of territorial waters and the state’s authority within those waters is particularly significant. The Florida Constitution is one key source for defining the state’s territorial waters – using a standard of nine miles on the Gulf of Mexico and three miles on the edge of the Gulf Stream, whichever is farther, for the Atlantic coast.

However, there is little case law interpreting this constitutional standard. At least one appellate court in Florida has relied on the longer Gulf Stream standard to give a state court jurisdiction in a civil negligence action based on a death occurring more than 11 miles off shore. In addition, the Florida Supreme Court, in a tax law case, has acknowledged the longer Gulf Stream standard, raising the possibility that it could be applied in other contexts.

Research for this report found that despite the moving Gulf Stream standard for Florida’s eastern boundary, federal and state agencies of government involved in regulating and enforcing activities in the waters off Florida tend to rely on different boundaries depending on the activity taking place. In doing so, they rely on other key sources for defining the state’s territorial waters, including relevant federal and state law and memorandums of understanding and memorandums of agreement.

For policymakers wishing to assert state authority in the waters off the coast of Florida, it is not known with certainty whether statutes asserting authority beyond three miles in the Atlantic would be upheld under the constitution or invalidated under federal statutes governing the particular policy area. The outcome may depend on what source of authority the parties cite, and what authority the court will consider.