Expanding Anchoring Away

- Vessel taxonomy & territorial waters
- Maritime and admiralty law distinguished
  - The “right” to navigate
- Federal navigational servitude as applied
- CZMA, reverse federalism & Florida law
  - Nav rules & federal preemption
- Public nav rights, and private submerged lands
  - Anchoring regulation back in the spotlight
- Regional approaches & future projects
A Taxonomy of Vessels

- Vessels
- Cruising Vessels (vessels in navigation)
-Stored Vessels
- Live-aboard Vessels
- Derelict vessels
- Floating Structures (non-vessels)
  - *Lozeman v. City of Riviera Beach, Fla.*

(Sea Grant Stock Photo)

(wtsp.com)
Territorial Waters:

- Law is inherently geospatial
- International/Federal/State/Local
- Florida Boundaries (the ambulatory Atlantic)
  - Benson v. Norwegian Atlantic Cruise Lines
- Local Boundaries
  - Vary dramatically
The Right to Navigate

- Magna Carta – Article 42
  “Henceforth any person...may go out of our realm and return to it, safely and securely, by land and by water

- Federal Constitution
  - Fundamental right? – not likely, but...

- Federal statutes
  - Submerged lands act – laizzie faire approach

- Florida Constitution
  - Public trust doctrine
    - Fishing, swimming & navigation
Federal Navigational Servitude

- Federal “reserved right”
Federal Coastal Zone Management Act “Reverse Federalism”

Florida’s Coastal Management Program/Plan

- 24 state statutes
  - DEP and partner agencies

- Irony - does not include Florida’s primary boating laws - Chapter 327 & 328

- Thus no state consistency review for federal action

(Florida’s Coastal Management Program Guide)
Federal Regulations and USCG

- Authority to Regulate
- Aids to Navigation
- Regulated Navigation Areas
- Safety and Security Zones
- Anchorages
- Rulemaking Process
- Inland Navigation Rules

(U.S. Coast Guard)
Navigation Rules

• International (“Colregs”) & Inland
  • Minor differences (e.g. anchor lights)

• Federal Preemption
  • 2009 Obama exec order

• Inland Navigation Rules
  • U.S. Code → C.F.R.
  • Florida incorporation

NOAA Chart 11465
Special Anchor Area Consideration

There is potential value in identifying special anchorage areas . . .

designation at the federal level suggests an area presumptively preserved for navigation (anchoring) that help to protect the site from incompatible uses

NOAA Chart 11472
Federal Channels: Maintained and Marked

- Deep Draft Channels
- Shallow Draft Channels/Inlets
- Inland Channels
- Intracoastal Waterway

(U.S. Coast Guard Photo)

(Sea Grant Stock Photo)
Privately Owned Submerged Lands

- Does the right to navigate (and anchor) survive the transfer of title?
  - Removing the right to exclude from the bundle of sticks

- Silver Springs Paradise Co. v. Ray (5th Cir. 1931)
Pilot Program – Anchoring & Mooring

- 2009 ~ Legislature
- “Anchoring and Mooring Pilot Program” until 2014
- Legislature extended the Program until 2017

(marinajacks.com)
2014 - 2015 ~ Legislative Proposal

- Anchoring and Mooring of Vessels Outside Mooring Fields
- Proposal included restricting anchoring overnight within 200 ft of developed waterfronts
- May be revisited in 2016

(Sea Grant Image)
The Boater’s Approach: Transaction Based Notice to Riparian Property Owners

• Model: disclosure regarding coastal hazards

• New disclosure regarding public rights to riparian waters?
General Permit Mooring Fields

• Site, Design, Operational Criteria
• Mooring Field Management Plan
  • At most 100 vessels
• Land based accommodations

(ci.marathon.fl.us)
Derelict Vessels

- Classification
  - At-Risk
  - Abandoned
  - Derelict

- FWC Database

- Legislative Proposal

- FWC Outreach

(news.wfsu.org)

(monroecounty-fl.gov)
Regional Waterway Management

• West Coast Inland Navigation District

• Finance Channel Maintenance
  • Advance identification of mitigation

• General Permit – WCIND
Getting skinny: sea level rise, infrastructure and navigation

- Bridge Concerns
  - Vertical Clearance
  - Future Permitting

- Corps/Coast Guard Guidance

(U.S. Coast Guard)
Please feel free to take a copy of the new publication!

Or find it online at: http://www.floridawateraccess.org/