Complex and Murky Spatial Planning

Josh Eagle
University of South Carolina - Columbia, eaglej@law.sc.edu

Follow this and additional works at: https://scholarcommons.sc.edu/law_facpub
Part of the Environmental Law Commons, and the Land Use Law Commons

Recommended Citation

This Article is brought to you by the Law School at Scholar Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Scholar Commons. For more information, please contact dillarda@mailbox.sc.edu.
COMPLEX AND MURKY SPATIAL PLANNING

JOSH EAGLE*

I. INTRODUCTION ............................................................................................................. 35

II. THE FUNCTION AND PURPOSES OF THE PLACE-BASED APPROACH TO OCEAN GOVERNANCE ................................................... 41
   A. How Place-Based Systems Work ............................................................................ 41
   B. Why Place-Based Systems Work ........................................................................ 44
      1. Benefits for Interest Groups ............................................................................. 44
      2. Public Benefits ..................................................................................................... 46
      3. Incentives to Participate ...................................................................................... 47

III. THE MECHANICS OF THE EXECUTIVE ORDER 13,547 APPROACH ............................................. 48
   A. The Simple Model .................................................................................................... 48
   B. The Executive Order Model .................................................................................. 49
      1. Framing .................................................................................................................. 49
      2. Planning ................................................................................................................ 51
      3. Plan Adoption ....................................................................................................... 51
      4. Enforcement .......................................................................................................... 51
      5. Alteration .............................................................................................................. 52

IV. CLARITY AND DURABILITY OR COMPLEXITY AND MURKINESS .................................................. 52
   A. Will the CMSP Initiative Produce Dominant-Use Rules? ............................... 52
   B. Will the CMSP Initiative Produce Durable Rules? ......................................... 57

V. CONCLUSION .............................................................................................................. 58

I. INTRODUCTION

On July 19, 2010, President Obama issued Executive Order 13,547,1 which creates a process for developing and implementing

* Visiting Professor, University of North Carolina School of Law and Distinguished Professor, University of South Carolina School of Law. All of the ideas in this paper are direct or indirect products of a decade-long collaboration with Steve Palumbi, Jim Sanchirico, and Buzz Thompson. I would like to thank the Florida State University College of Law for inviting me to participate in the 25th Anniversary Symposium for the Journal of Land Use and Environmental Law’s Distinguished Lecture Series, the students of the Journal for organizing and hosting an outstanding event, and my co-panelists, especially Donna Christie, John Echeverria, Alison Rieser, and Bill Rodgers, for their friendship and guidance over the years.

1. Exec. Order No. 13,547, 75 Fed. Reg. 43,023 (July 22, 2010). Based on a review of past executive orders, Executive Order 13,547 appears to be rare or unique insofar as it incorporates a lengthy (77 pages, excluding appendices) external document, the Final Recommendations of the Interagency Ocean Policy Task Force. WHITE HOUSE COUNCIL ON ENVTL. QUALITY, FINAL RECOMMENDATIONS OF THE INTERAGENCY OCEAN POLICY TASK FORCE (2010) [hereinafter TASK FORCE REPORT], Executive Order 13,547 “adopts the recommendations of the [task force], except where otherwise provided in this order.” Exec. Order No.