

**Alaska Marine Policy Forum**

Summary of Wednesday, July 27, 2011 call

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***Alaska Marine Policy Forum:******A bimonthly teleconference for Alaskans to network and share information about marine policy, budgets, and legislation at state, national, and international levels, sponsored by Alaska Sea Grant and the Alaska Ocean Observing System.***

**NOTES FROM THE July 27 CALL**

***Bob King, Senator Begich’s Office:***

Bob reported there were 2 hearings this week in the ocean fisheries subcommittee: 1) “Lessons learned from the Gulf of Mexico oil spill” and 2) “Arctic infrastructure needs” with the Coast Guard commandant, Shell Oil, and others. There has been good discussion on the Coast Guard requirements to fulfill its Arctic mission. Among the needs are 6 ice breakers. Right now we just have the Healy.

Earlier on the 27th, a meeting of the Democratic outreach committee discussed the economic importance of the ocean, including the seafood industry. There is a strong push for continued research and enforcement activities, and discussions about shipping and tourism. Some of the Deadliest Catch fishermen were at the hearing.

Legislation is progressing on an oil spill research provision, which is wrapped up in the new Shore Act to address Gulf issues. Markup in August will include Senator Inouye’s marine debris bill.

With respect to the Alaska Coastal Zone Management Program (ACMP), Senator Begich did not want the program to get cut. Alaskans can still comment on federal projects, but the Senator believes that the loss of the “consistency provision” (that federal actions be consistent with state policy) is irreplaceable. Many people have contacted Senator Begich’s office to see if the federal CZMA can be amended to include municipalities and tribes. Bob said this is not an easy or quick fix. Establishing multiple programs to administer in one state jurisdiction creates complications, and makes it hard to enforce consistency provisions. Additionally, nothing is moving quickly through Congress, and Bob sensed very little political support in Congress to change federal law to address a state-specific problem. A shorter term fix would be for supporters in Alaska to talk to their legislators about reestablishing the ACMP. It might take years, but would still be quickest way.

***Ed Fogels, Deputy Commissioner of the AK Dept of Natural Resources (DNR).***

Ed said it’s too early to say what life will be like without the ACMP because only a couple weeks have passed and DNR is still discussing potential courses of action. DNR staff were hopeful until the very end that the Legislature would save the program. They were very sad to lose a lot of really talented professionals. Fortunately, most were placed in good positions within DNR or other state agencies.

The loss of funding will effect coastal districts, and also eliminate some basic functions that will have to be compensated for. AMCP provided a system for local input into permitting, and this system no longer exists. DNR is open to ideas and suggestions for how to compensate for this. Permitting coordination was another big service the ACMP provided. While large project permitting goes through the Large Project Office, small projects in the Coastal Zone went through ACMP. From a practical day to day perspective, DNR is really feeling it since people who want to do projects don’t know where to start in the permitting process. DNR is trying to figure out how to re-create the coordination aspect, and some of their staff might need to do permit coordination. Another big issue is ensuring that federal actions are consistent with state policies, especially with all the interest in oil and gas development. The state is a cooperating agency in the NEPA process for federal actions, so that gives the State of AK another seat at the table for federal actions.

***Bill O’Beirne, Senior Policy Analyst at NOAA Coastal Programs Division***

Bill reflected on the huge void in the US as far as coastline being covered by CZM with the loss of the Alaska program. He said NOAA respects the State of Alaska’s decision since the CZMP is a voluntary program. By cutting the ACMP, Alaska has lost the federal consistency analysis, annual CZMA funding (about $2.5 million), and eligibility for the CZM-related coastal & estuarine land grant program. The state can also no longer be an applicant for funding for deep water ports in federal waters off AK since the state must have an approved program (or be developing an approved program) for those permits to be issued under the Deep Water Port Act.

Withdrawal of the program does NOT give NOAA permission to manage the coastal zone in Alaska. It also does not allow for local, municipal or tribal level CZM programs to be established.

Also, the withdrawal does NOT affect Estuarine Research Reserve money or eligibility grants (Alaska has one reserve: the Kachemak Bay Research Reserve). It also doesn’t affect the participation of the State of Alaska in any future Coastal and Marine Spatial Planning (CMSP).

The State of Alaska can resubmit for a CZM program at any time. NOAA is eager to work with the State in any way when that time comes. The State would have to go through the normal review process (NEPA review and maybe others, ESA, etc.) to reinstate the program. NOAA has estimated this process would take a year and a half at minimum.

**Questions from the Audience:**

Q: Will the loss of the ACMP program have any impacts on ACOE’s reauthorization of their Nationwide Section 404 CWA permits?

A.

Ed Fogels - Nationwide program reauthorizations should not be impacted by AK’s lack of a CZMP, except that Alaska looses its ability to ensure that the NWPs are consistent with state ACMP standards. Ed says DNR has noted this and will look at it.

Bill O’Beirne: With regard to Corps Section 404 NWPs -- yes there is a potential difference between states that have and do not have a CZM program and how the NWPs operate.

The Corps of Engineers reissues and revises the NWPs every five years for activities regarded as having minimal impacts on the aquatic environment. The reissuance of NWPs is subject to federal consistency review by states with approved coastal management programs under the Coastal Zone Management Act (CZMA). The Corps publishes the notice of reissuance of the NWPs in the Federal Register. The notice contains a consistency determination that the reissuance of the NWPs is consistent with the enforceable policies of state coastal programs. State coastal programs review the NWPs and then issue a concurrence, objection or conditional concurrence for the NWPs. Each Corps District develops regional conditions for the NWPs – and can include conditions proposed by states in conditional concurrences. If the District regional conditions do not resolve an objection or satisfy a conditional concurrence, a state's objection stands for that particular NWP. In that case, while the NWP is still available in the state, in order to use the NWP, an applicant must provide a consistency certification to the state. If the state concurs with the applicant’s certification, the applicant can use the NWP. If the state objects, the applicant cannot use the NWP.

In states without a CZM program, the state could comment on the NWP along with the general public, however the Corps need only consider the state and public's comments, and applicants could use any of the NWPs as revised by the Corps.

Q: What coordination services have been lost? The program had $2.5 million in personnel. The assumption is that they were involved in ensuring consistency with federal law. What functional activities are we now lacking?

A: Ed Fogels - Under the ACMP, when someone applied for an activity that had multiple permits, the applicant would be assigned a project coordinator to go through the project questionnaire and identify the other authorizations needed for the proposed activity. This was a valid service provided by the Division of Coastal & Ocean Management, and they would call up agency people working on permits to meet with the applicants. Basically, the staff helped shepherd the process. This was a valuable service that was provided by the state, and DNR is feeling the lack of it right now. The ACMP office also established timelines for permit review. Some permits have timelines, others don’t. The office helped make the timeline reasonably predictable. Now there are no timelines in place. Lastly, local coastal districts had their seat at the table during the process and these are no longer are active. CRSAs (Coastal Resource Service Areas) have gone away.

**Q:** The Governor’s office kept saying this was a valuable program. Why can’t DNR very quickly put together a task force (involving key legislators, CRSAs, and admin) and put something back together? Can we start immediately and try to find something acceptable?

A: Ed Fogels - These discussions are being held right now (at the state level).

Q: What’s the procedure for the general public to comment on permits that had previously been going through the ACMP? What permits will we no longer be able to comment on?

A: Ed Fogels - That’s one of the holes now that we’re faced with. DNR is looking for ways to better coordinate permitting of all projects, and ramp up local involvement processes. For large projects, many of the permits have required public notice. Smaller projects may not need public notice, so they’re not sure how those will be handled. DNR is still trying to figure that out.

Q: What happens to coastal district plans themselves? Do those go away also?

A: Ed Fogels - From DNR’s perspective, they’re still valuable sources of information, and can be used as such. But if there is no CZM program, there are no districts, so there’s no regulatory hook to those plans. The plans are still there – it just remains to be seen where and how to apply them. CRSAs (Coastal Resource Service Areas that are not linked to a municipality or borough) used these plans. A smart applicant usually looks at all resource documents before coming with their request, and tailors it accordingly.

Q: Third party law suits weren’t allowed for consistency review. Are those same stipulations/regs open to challenge by third parties now?

A: Ed Fogels - DNR doesn’t have an answer yet – they need to look into it.

Q: How was our ACMP different from other states?

A: Bill O’Beirne - Operationally, the plans of different states can be very different; conceptually, AK was similar to CA in which it had statewide policies that were implemented at the state and local level. Alaska was also similar to Hawaii in that there’s a state component to the program, and local or county permitting is part of the program. John King (with the NOAA CMP office) often said that Alaska had one of the better coordinated programs (lots of coordinating at state and local level). This goes back to the time when there was a Coastal Policy Council in Alaska. The state really made an effort to coordinate policy at various levels. Alaska was unique, however, because of so many unincorporated boroughs.

Q: Are there any port applications (deep water) that would be affected? What’s the definition of deep water port in federal waters?

A: Bill O’Beirne - No applications for “deep water ports” have been submitted to date. Several ports are being called deep water, but are actually “deep draft” ports in state waters. The Deep Water Ports Act is for very specific situations - outside the 3 mile limit, not a land port. It was written with a Louisiana port in mind where they didn’t want boats going up the Mississippi.

Q: What happens to the $2.5 million in federal funds that were available to AK program?

A: Bill O’Beirne - It will be reallocated to other coastal states: ~$40-90K/state.

Q: With no ACMP, where do we stand for the Arctic Regional Citizens’ Advisory Council (RCAC) that Begich proposed?

A: Mark Robbins (AK Governor’s Office) There is draft language for an Arctic RCAC that Senator Begich wrote, after seeing the successful program in Prince William Sound, and the challenges in the Gulf without public input. Still in draft legislation but not yet introduced. They need time to work with communities to work with communities. An Arctic RCAC wouldn’t be under the CZMA.

Q: Is there a forum for trying to resurrect the ACMP?

A: Bill O’Beirne - NOAA would usually wait for the state to show some interest in generating a process. Once interest is shown, NOAA is ready to assist in whatever way made sense. Because the program would need to be submitted by the Governor’s office, they would need to have an initial request coming out of the governor’s office.

General comment – If there is interest in Alaska Sea Grant hosting a workshop to discuss Alaska’s Coastal Zone Management Program (next steps, etc.) please contact Paula Cullenberg at paula.cullenberg@alaska.edu.

**Upcoming Alaska Marine Policy Forum calls: Sept 21st and Nov 16th.**

**Announcement:**

The next hearing for the Northern Waters Task Force is in Unalaska on Aug 24th. Topic: fishing and shipping with focus on fishing. It will be broadcast live broadcast through [www.alaskalegislaturetv.com](http://www.alaskalegislaturetv.com). Most presentations will be posted beforehand. (100-200 people watched the Kotzebue and Nome meetings.)