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A NATIONAL FRAMEWORK FOR COASTAL AND MARINE SPATIAL PLANNING

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, WASHINGTON D.C.

JANUARY 26, 2010

SEMINAR SUMMARY

The Environmental Law Institute brought together a panel of experts from the federal government, environmental NGO community, and private sector to discuss marine spatial planning. The speakers provided an overview of the *Interim Framework for Coastal and Marine Spatial Planning* recently issued by the President's Interagency Ocean Policy Task Force and the role of federal agencies in the development and implementation of coastal and marine spatial planning. They also discussed how this approach could affect future management of ocean resources, and what next steps are needed to achieve an effective marine spatial planning framework.

Speakers

- Michael Weiss, Deputy Associate Director for Ocean and Coastal Policy, Council on Environmental Quality
- Terry Holman, Ocean and Coastal Activities Coordinator, Department of the Interior
- Paul Sandifer, Senior Scientist for Coastal Ecology, National Oceanic and Atmospheric Administration
- Sandra Thornton Whitehouse, Senior Advisor, Ocean Conservancy
- Karen Hansen, Principal, Beveridge & Diamond LLP

Moderator

- Jordan Diamond, Assistant Director, Ocean Program, Environmental Law Institute

The Big Picture

Ms. Jordan Diamond began by introducing the seminar topic and panelists. She noted the chronology of events that had led to the panel, beginning with the Presidential memorandum establishing the Interagency Ocean Policy Task Force on June 12, 2009. The Task Force was directed to develop recommendations for a national policy for our ocean, coasts, and the Great

Lakes, and a recommended framework for marine spatial planning. In July 2009, ELI hosted a seminar on marine spatial planning. Recognizing that successful marine spatial planning depends on extensive geospatial data and the coordination of the dozens of laws (and score of agencies) that govern the ocean, the 2009 seminar explored the rationale for marine spatial planning and science, law, and policy efforts to support it. In December 2009, the Task Force issued its *Interim Framework for Effective Coastal and Marine Spatial Planning*, which is open for comment through February 12, 2010. ELI designed this second seminar to bring together panelists from the federal government, nongovernmental community, and private sector to discuss the Interim Framework, what it could mean for agencies with authority over ocean uses and resources, and what more is needed.

Mr. Michael Weiss explained that the Presidential memorandum called for a comprehensive, ecosystem-based framework that addresses conservation, economic activity, user conflict, and sustainable use. In response, the Task Force developed its proposed framework for coastal and marine spatial planning (CMSP). Mr. Weiss described the Task Force's participatory process that included expert consultations and six regional stakeholder meetings.

Mr. Weiss summarized the substantive foundation of the Task Force's primary recommendations. He noted that marine spatial planning is increasingly recognized as a key pathway for transitioning from a sector-based to an integrated ecosystem-based approach to managing marine resources; it is a way to manage existing and growing ocean uses and activities and address increased demands on ocean resources. Mr. Weiss described the framework as a regionally-based, flexible, and transparent process for developing CMSP in the United States. It articulates national goals and guiding principles for CMSP development in the nine major regions identified.

The framework, Mr. Weiss explained, utilizes existing federal authorities for implementation; and state, tribal, and local authorities are considered partners in regional planning and implementation. Each of the regional bodies will create a list of marine objectives and complete a regional assessment of ecological conditions and socio-economic ocean and coastal uses. In turn, the National Ocean Council will oversee the process and ensure that each regional plan includes the essential elements identified in the framework. Mr. Weiss explained that CMSP is envisioned as an incentive-based program, with parties developing regional agreements expressing their commitment to adhere to the plan within the limitations of existing law and authority. He noted that one near-term goal is to review existing laws of regional authorities in order to understand gaps that may hinder CMSP.

Mr. Weiss described the implementation process. It will be phased to provide flexibility to the regional bodies, which have varying capacities and resources to support the process. The goal is to have functioning CMSP in place in each region by 2015. Mr. Weiss emphasized that the process must learn from itself—CMSP has not been implemented at this scale before, and the process depends on ongoing monitoring, evaluation, and adaptation, allowing for new technology, new science, and lessons learned.

The Role of Federal Agencies

Ms. Terry Holman described the role of the Department of the Interior (DOI) in CMSP. DOI protects and manages the nation's natural resources and cultural heritage. The agency considers CMSP an essential tool for managing the vast area over which it has authority. Ms. Holman explained how DOI's primary ocean responsibilities are linked with the potential

implementation of the CMSP framework. She asserted that they have a diverse portfolio of interests and assets, which necessitate their engagement with CMSP.

Ms. Holman explained DOI's role in the development of CMSP. First, she noted that the Minerals Management Service regulates oil and gas, mineral, and renewable energy leases on the outer continental shelf and already uses a process that includes some of the essential elements of the CMSP framework. Second, CMSP implementation requires substantial information about the marine environment and tools for data integration, modeling, and visualization. Ms. Holman described the role that the US Geological Survey (USGS) plays in collecting geospatial, hydrologic, geologic, and biologic information, and how the USGS will ensure existing information is integrated into an appropriate information system for CMSP. Seafloor maps are especially important, as they provide characterization of marine habitats and ecosystems, which can be applied to safe navigation, hazard assessments, and evaluation for offshore infrastructure. Third, Ms. Holman explained how the US Fish and Wildlife Service routinely maps trust species' distribution ranges, catalogues habitats, and tracks invasive species. Fourth, the National Park Service regulates coastal Marine Protected Areas, which can be a building block for ecosystem-based management and spatial planning.

Ms. Holman noted two partnerships that support CMSP development. DOI and NOAA have developed a Multipurpose Marine Cadastre, pursuant to a directive in the 2005 Energy Policy Act. The Cadastre is an integrated marine information system that provides legal, physical, and ecological information critical for CMSP. Separately, the USGS is involved in creating a comprehensive map for all California state waters through the California Seafloor Mapping Program. The multilayer strip maps show seafloor and coastal geology in unprecedented detail. Ms. Holman shared this effort as one example of federal and state collaboration.

Dr. Paul Sandifer first emphasized that NOAA has been consistently engaging in marine spatial planning, though not yet on the scale presented by the national framework nor at a holistic ecosystem-based level. Dr. Sandifer stressed the importance of an ecosystem-based approach to national CMSP, and described how NOAA can assist with CMSP development through its observation and monitoring programs. NOAA actively works to integrate its data with that of NGOs, members of the private sector, and other scientists and academics in order to develop a new and better understanding of the marine environment. The agency strives to make the best available science accessible to communities.

Dr. Sandifer noted that new information will be critical to the success of this bottom-up (regionally driven) yet top-down (nationally consistent) CMSP effort. He stated that regionally based CMSP will build upon existing regional ocean governance efforts to form a flexible body that can sync with efforts in other large marine ecosystems. He pointed out that the Task Force recognized that regional entities know their jurisdictional areas better than the federal government, which is why all members agreed to the regionally grounded system.

Dr. Sandifer expanded upon Ms. Holman's description of the Multipurpose Marine Cadastre. The numerous data layers are combined in an effort to find new and better ways to represent biological and biodiversity data and information about ecosystem functioning. Individuals can use the information in planning, and can understand potential tradeoffs, benefits, and impacts to ecosystem process and functioning. For example, NOAA worked with a variety of agencies to use the data to reroute a shipping lane that would reduce strikes of endangered right whales by almost 60 percent. Dr. Sandifer also described the Ocean Uses Atlas, a mapping effort in Southern California that maps human uses to enable better management. Dr. Sandifer

concluded by noting that NOAA is preparing to do more to support CMSP, including organizing and training staff and conducting outreach.

Nonfederal Perspectives

Dr. Sandra Thornton Whitehouse provided feedback on the Interim Framework as a member of an environmental NGO working group focused on national implementation of CMSP. She highlighted the positive elements within the framework that several NGOs deem essential to CMSP: An ecosystem-based management approach will help ocean governance move beyond sector-by-sector or species-by-species management. CMSP will enable coordination between the various agencies with authority over ocean uses, activities, and resources. Science-based decision-making is critical, and although agencies can provide a lot of data, additional resources will be needed to continue to develop the science and expertise. Dr. Whitehouse noted that it was important that the framework goals include facilitating economic growth and improving ecosystem health and services. The latter includes maintaining and restoring native species and habitat diversity; carefully monitoring “Important Ecological Areas” (IEAs) and representative habitats; and protecting key species (including keystone species, foundation species, and top predators) and interacting food webs.

Dr. Whitehouse supported Dr. Sandifer’s assertion that CMSP needs to take an ecosystem-based, holistic approach that considers the connectivity between ecosystem components—such as the relationship between breeding grounds, feeding grounds, migratory routes, and source areas. She noted that the concepts of resilience and resistance are becoming increasingly important to maintaining ecosystem health in the face of climate change and are part of the framework. She pointed out that the framework recognized the need to consider cumulative impacts.

Dr. Whitehouse provided recommendations for strengthening and clarifying the Interim Framework. She highlighted the potential for abusing the precautionary approach. There is not yet enough substantial information on some issues to make sound management decisions. The NGO community is recommending a “time out” while some information, such as Arctic data, is collected. Dr. Whitehouse stressed the importance of ecosystem health as the priority goal, since ecosystem health is the foundation of our economy and quality of life. Environmental criteria should be established to guide plan certification through the utilization of measurable data—in order to evaluate the performance of plans, one needs measurable data. She asserted that IEAs must be preserved.

Dr. Whitehouse stated that plans must be multi-objective, to guarantee the regional bodies do not focus on merely a few of the objectives. Dr. Whitehouse also proposed that the regional CMSP agreements should be binding, to ensure agencies will be fully engaged in the process and provide appropriate incentives for stakeholders, the general public, and states to meaningfully participate. She encouraged the Task Force to clarify that the National Environmental Policy Act will continue to apply, and there should be greater emphasis on ensuring stakeholder and public participation. Specifically, Dr. Whitehouse suggested the establishment of regional Public Advisory Councils. Finally, Dr. Whitehouse stated her support for an Executive Order to move the CMSP development process forward and also highlighted the benefits, such as durability and funding, of federal legislation.

Ms. Karen Hansen discussed how CMSP may legally affect private industry and identified potential areas for collaboration or disagreement. She noted that the Interim Framework builds on existing legal authorities rather than creating an organic statute. The challenge of this, she

described, is that many environmental statutes are decades old and may not comprehensively address present needs. Ms. Hansen emphasized the importance of analyzing how the reliance on existing legal authority will work in practice—agencies need to assess the extent of their authority, noting that conflicts may arise.

Ms. Hansen described the tension between ecosystem-based management, which makes sense conceptually, and the current sector-based legal structure. She stated that the overarching governance structure is a critical topic for industry and investors, who want certainty in the regulatory process before they invest in projects such as renewable energy. Ms. Hansen noted that the private sector wants to know the legal requirements, the decision-making standards, agency leads, and the length of the regulatory process. For traditional ocean uses, such as fishing or oil and gas development, the regulatory structure is well-developed. However, many people are concerned about the development of renewable energy and the potential for regulatory delays to derail the industry.

Ms. Hansen explained that there is concern that CMSP will be an equivalent to land-based zoning. She highlighted one of the challenges with the CMSP concept: people cannot easily see what occurs in the oceans and lack substantial information about vast stretches of the marine environment. Therefore, the value of the ocean and its resources is not readily understood by the general public.

Ms. Hansen stated that another challenge in developing CMSP is how to develop and use the ocean in a way that is both economically productive and ecologically sustainable. She pointed out that if quality scientific information is lacking, or there are laws that conflict with one another or that leave management gaps, it will be difficult to strike a balance that does not generate conflict. Different sectors of the regulatory community have different stakes in the CMSP process, and a more transparent legal framework that coordinates the relevant agencies will facilitate the creation of common ground between them. Ms. Hansen concluded by noting that the dialogue about CMSP will be more engaging next year, when there will be more specifics to discuss.

Summary of Questions and Answers

To what extent are the Coastal Zone Management Act and state coastal zone management programs defining frameworks for CMSP going forward? As states implement the MPS program, to what extent do you see that authority extending into the coastal zone?

Mr. Weiss explained that the legal analysis supporting the Task Force's work will look into these issues. The Task Force is delving deeper into working with state and local authorities to discover all the tools that can be applied. He noted that the Coastal Zone Management Act will likely be an important component when states begin to plan and implement CMSP.

Underlying the discussion is the issue of momentum. What are the lessons learned from other countries or states who have engaged in similar processes?

Dr. Whitehouse explained that in the state of Rhode Island, the catalyst for marine spatial planning was renewable energy. The most important factor has been the influx of resources—states have been willing to invest in renewable energy and the federal government will have to invest on a much larger scale for such projects to come to fruition. Mr. Weiss noted that internationally, marine spatial planning processes are in their beginning stages, thus there are not many lessons learned yet. The outputs of the project should help to build momentum. Dr. Sandifer mentioned spatial planning in the Great Barrier Reef Authority as a useful example of marine spatial planning efforts outside the US. It is a transparent and adaptive system that includes long-term, continuous stakeholder involvement. Ms. Hansen acknowledged that not only are financial resources essential to the project, but also resources in the form of Congressional and public attention—right now there are other issues higher on the national priority list, but public understanding and engagement is critical to successful CMSP.

Recognizing that the authority will rest in states and tribal nations, what is the willingness of those parties to engage in the process?

Dr. Sandifer noted that the difficult problem facing us is how to get state, tribal, and local authorities to come together. Lack of resources is a crucial issue, especially since many entities are cutting back on expenditures such as travel. Electronic means of communication will become an essential way to bring the groups together. Dr. Whitehouse responded that more states will need to get involved because of the regional planning structure. Explaining to states that it will benefit them to participate in the CMSP process will be a key step.

What do you, the federal representatives, see as the role of the national planning exercises, and how will it play out?

Mr. Weiss reiterated that this process is designed to build momentum. There are incentives for states to join the process, in that it will result in positive outcomes. Mr. Weiss explained that states have expressed positive feedback about the Interim Framework and a desire to engage in the CMSP process, although they are apprehensive about its scope. This process is designed to start seeing small successes and positive outcomes incrementally, which will also help build momentum.

Information, consultation, and pacing are three issues that need to be addressed. A lot has been said about gaps in knowledge and the need for more knowledge, but not much has been said about the quality of knowledge. Regarding consultation, what is the level of stakeholder engagement? Regarding pacing, there was a five-year timeframe identified in the Interim

Framework. Do we really have the resources to pursue that plan? And when you look at the plan it is frontloaded on decisions in the first two years. Will there be enough time when early decisions on practical choices are made for adequate stakeholder engagement, or is it too aggressive on the front side?

Mr. Weiss stated that the document does discuss information quality—a recurring issue that the Task Force faced is that information is very difficult to access, and once you do, it is often in different forms. The proposed framework emphasizes the need to build a portal for all information, from all sources. Regarding pacing, Mr. Weiss noted that the Task Force received drastically varying suggestions for what the best timeframe is, and it adopted the phased implementation approach to recognize the varying resources and capacities of different regions. Mr. Weiss also noted the framework focus on public outreach, and Dr. Whitehouse discussed the tools that can be used to engage the public and stakeholders. She also highlighted the distinction between stakeholders and the general public, and that there needs to be engagement of both to encourage them to work together.

How would the dispute resolution process work?

Mr. Weiss stated that the CMSP process envisions building trust and relationships, but realizes that along the way many disputes will arise. When they do, the first level will be to resolve the dispute within the region. If it cannot be resolved, it will be elevated to the national level. The idea is to have an agreed upon way to communicate and process for working through issues and challenges. Ms. Hansen noted that the framework for CMSP and implementation is intended to build on existing authorities. Dispute resolution for existing laws and regulations comes in the form of legal redress, but for the envisioned framework a separate framework will be needed to react to issues as they arise.

The 2010 Ocean Seminar Series is made possible by generous support from the Naomi and Nehemiah Cohen Foundation.