ROBINSON & COLE LLP
Coastal Resources Management Center

eJournal

The CRMC eJournal is a monthly electronic newsletter reporting on coastal law, policy, and management

CRMC eJournal Archives | Sign-up for eJournal | Robinson & Cole Home Page | Disclaimer

Date Issued: 12/28/2002

Welcome to *eJournal*, published by Robinson & Cole's Coastal Resources Management Center. *eJournal* reports on issues concerning coastal and ocean law, coastal development permitting and management, fisheries, and coastal habitat restoration. We've also added a new section to *eJournal* called "Project Focus" which describes coastal projects that members of the center have worked on.

Robinson & Cole's Coastal Resources Management Center handles and coordinates all of the firm's coastal development and permitting matters and assists the firm's coastal clients in obtaining municipal, state, and federal coastal permit approvals for coastal projects and for ongoing coastal business operations. Members of the center also help our coastal clients defend enforcement actions and resolve riparian disputes. The center is an interdisciplinary alliance of attorneys, environmental analysts, and lobbyists from the firm's environmental, land use, real estate, construction, governmental relations, utility, public finance, and corporate law practices.

Go to the "Contact" section of the Coastal Resources Management Center web page or email Keane Callahan, editor of *eJournal* if you have any comments or questions about the center or *eJournal*. Please feel free to forward *eJournal* to your colleagues.

If you do not want to receive *eJournal*, please see below to unsubscribe.

Coastal Resources eFeature Article(s)

Maritime Industry Progressing Toward "Clean Marina" Certification and ISO 14001 Environmental Accreditation
Keane Callahan, Environmental Analyst

ISO 14001 Environmental Accreditation for Marinas: Say What?
In Europe, the British Marine Federation (BMF) and the Shipbuilders & Shiprepairers

Association (SSA) in the United Kingdom are collaborating to obtain ISO 14001 environmental accreditation for members of their organizations which include marinas and boatyards. In the United States, many coastal states have implemented "clean marina" certification programs. Can ISO 14001 environmental accreditation be the next logical step for the marine industry in addressing increasingly rigorous environmental regulatory and protection goals while operating a successful and economically viable maritime business?

ISO 14001 (i.e., International Organization of Standardization) addresses environmental management systems, environmental auditing, environmental labeling, environmental performance evaluation, and life cycle assessment. The development of ISO 14001 environmental management systems and standards was an outgrowth of the June 1992 U.N. Conference on Environmental Development held in Brazil. ISO, at that time, committed to developing standards or systems that support "sustainable business development." ISO members, aware of the strong international desire to improve environmental performance in the business community, recommended the development of such standards in the areas of environmental management systems, environmental auditing, eco-labeling, environmental performance evaluation, life cycle assessment, and environmental management terms and definitions.

The ISO 14001 voluntary environmental management standards are intended to be practical, useful and usable for companies or organizations of all sizes, in both manufacturing and service industries, including maritime businesses. These standards establish a common worldwide approach to management systems that protects global environmental resources while spurring international trade and commerce. ISO 14001 standards also serve as tools to manage a company's environmental programs and provide an internationally recognized framework to measure, evaluate, and audit these programs.

Challenges to ISO 14001 Accreditation for the Marine Industry

Both the SSA and the BMF believe that good environmental practice is an increasingly important part of good business practice. BMF and SSA are developing a marine industry-wide approach and technical solutions to ISO 14001 accreditation for the maritime industry that will be comparatively inexpensive and easy to implement, and applicable to specific maritime groups. However, certain challenges and obstacles must be addressed before ISO 14001 implementation becomes a reality for the maritime industry including (1) the current high cost of implementing ISO 14001 standards, especially for smaller marinas and boatyards where margins are tight, (2) having insufficient time to implement an environmental management system and train employees, (3) the cost of maintaining ISO 14001 standards, and (4) perceived lack of economic or business benefits from ISO 14001 environmental accreditation.

ISO 14001 Accreditation vs. Clean Marina Certification

When Congress passed the Coastal Zone Act Reauthorization Amendments of 1990, it required EPA to prepare measures to control nonpoint water pollution sources from marinas, boatyards and other maritime/recreational boating businesses. In 1993, EPA published a report entitled *Guidance Specifying Management Measures for Sources of Nonpoint*

Pollution in Coastal Waters (which has been recently updated by the 2002 draft report entitled *National Measures to Control Nonpoint Source Pollution from Urban Areas* (See November 14, 2002 eJournal) which outlines nonpoint pollution management measures. Coastal states incorporated these measures into their own nonpoint source pollution control programs. Thus, even though European maritime businesses may be moving toward ISO 14001 environmental accreditation, many U.S. marina and boatyard owners are implementing "clean marina" programs to address coastal water quality and other environmental protection goals.

Marinas Going "Clean" and "Green"

The U.S. marina industry has begun to embrace the "clean marina" concept. Studies have confirmed that operators of "clean marinas" have financially benefited from their environmental improvements. According to a 2001 EPA report entitled *National Management Guidance Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating*, clean marinas typically employ a range of environmental protection and management approaches to protect coastal water quality from nonpoint source pollution including (1) conducting active solid waste management and public education programs, (2) providing pumpout stations and promoting their use, (3) adopting marina "no discharge zones", (4) providing appropriate shoreline stabilization, storm water runoff control, liquid material management, and petroleum control, (5) improving fuel dock and boat-cleaning practices, and (6) implementing pro-active coastal habitat enhancement projects such as aquaculture or coastal wetlands restoration projects. Studies have demonstrated that once marina owners take the first few steps to protect the environment, they quickly take many other steps toward facility improvement, and the process continues as they strive to become even better after seeing the positive reaction of their customers following environmental progress.

Economic and Environmental Benefits of Clean Marinas

The economic returns that owners of clean marinas and boatyards have realized from their investments have been well documented. According to a EPA report entitled *Clean Marinas Clear Value: Environmental and Business Success Stories,* marina owner investments in clean marina measures have more than paid for themselves and have created positive economic benefits. For example, conveniently located pumpout facilities often attracts new customers, generates additional marina-related business such as fuel sales and other purchases from boaters using the pumpout, lowers municipal sewage system fees, and improves the overall business "image" of the marina. Environmental benefits from pumpouts include reduced sewage discharge from boats into marina/boat basin, reduced impacts on shellfish and other marine life, and improved image of the marina by boaters who believe that the marina water quality is cleaner. Another management measure such as a closed-loop hull-blasting system that reuses plastic pellets as well as dustless sanders, screen tarps to catch debris, and filtered pressure wash water systems have reduced costs for materials, cleanup and disposal, improved customer/client service, and increased worker productivity. Environmental benefits include reduced silica/bottom paint residue and wash water entering coastal waters, elimination of dust thus improving worker safety and health, and cleaner marina grounds. Improvements in solid and liquid waste management such as

recycling and/or reusing trash, washwater, waste oil, and seaweed (as mulch) reduces overall disposal costs. In one instance, a marina owner heated a marina building with recycled waste oil, which created a new opportunity to operate a winter boat repair business. Other clean marina measures include (1) pet waste management to keep the docks and marina grounds cleaner for customers while reducing fecal coliform contamination of the marina basin water, (2) coastal habitat restoration such as hanging shellfish/aquaculture cultivation structures under a marina's floating docks to increase revenue, to create free and positive publicity for the marina and to attracts new visitors while increasing the amount of available habitat for aquatic organisms, and (3) permeable land surface for parking and storage which is less expensive than paved blacktop while reducing stormwater discharges into coastal waters.

Many coastal states including Connecticut, Massachusetts, New York, Maine, Delaware, New Jersey, Maryland, Texas, Florida, Michigan and Virginia have implemented "clean marina certification" programs. For example, the Connecticut Department of Environmental Protection (DEP) adopted a clean marina certification program in 2002. A marina or boatyard owner must meet all legal and regulatory standards required by law and then meet a certain percentage of "best management practices" to become certified as a "Connecticut Clean Marina." Benefits of certification include authorization to fly a "Clean Marina" flag at the marina, promotion by the DEP Clean Marina Program in publications, on the Internet and at public events, a framed certificate and authorization to use Connecticut Clean Marina logo on letterhead and in advertising. The first ever national clean marina workshop was recently held in September 2002 in Mystic, Connecticut where clean marina efforts were discussed. Click here for more information on clean marina certification programs.

Conclusion

Aggressive environmental management and protection measures for marinas and boatyards are here to stay. Obtaining ISO 14001 environmental accreditation or clean marina certification is an important step for marina and boatyard owners to take since these efforts contribute to the overall economic success of a maritime business operation, promotes greater operational productivity, is critical to competing in a global economy, leads to recognition in the community as being an environmental steward, and provides a foundation for regulatory flexibility in the long term.

Keane Callahan is an environmental analyst with the firm's LandLaw Section and a member of the Coastal Resources Management Center. He is also the editor of eJournal. Please email him if you have any questions about this article.

Off-shore Wind Farms on the Horizon

Jonathan E. Blaine, Esq.

Growth of Wind Energy Industry

By now, many people have heard at least a sound-bite about a number of proposals to construct large, modern "wind farms" in U.S. coastal waters including coastal waters of the

Northeast. The proliferation of such proposals is not really surprising, given the rapid growth in the wind energy industry, both domestically and internationally. For instance, in 2001 alone, the American Wind Energy Association reports that a total of 1,695 megawatts (MW) of wind energy electric generation was installed in the U.S. alone. Given that the average wind energy turbine supplies roughly 1.5 MW, this means in 2001, more than 1,000 300-foot tall modern, high tech wind turbines were erected around the U.S.

Notwithstanding the rapid growth of the wind energy industry, only recently have private power developers begun to look to the U.S coastlines as potential sites for new wind farms. Of course, it was only a matter of time, since off-shore wind energy facilities have been constructed and are currently operating in several European nations (see following article). Further, the coastline is a natural choice for someone who is interested in deriving power from the wind…that is where the wind tends to blow the strongest and most consistently.

Cape Wind Associates: First Out of the Box

Cape Wind Associates is proposing a wind farm in the shallow waters around Horseshoe Shoal in Nantucket Sound, approximately three miles off of Cape Cod and covering a 5 mile by 5 mile grid. The project includes 170 turbines extending 426 feet into the air potentially generating up to 420 MW of "clean" electricity for residents of Cape Cod, Martha's Vineyard, Nantucket Island and Rhode Island.

The Cape Wind project is subject to a variety of federal, state and municipal coastal permitting and environmental impact assessment requirements. For example, since it is located entirely in federal jurisdicational coastal waters, coastal permitting approval for the wind farm itself will be required from the U.S. Army Corps of Engineers (Corps). The proposed underwater cable bringing the power generated by the wind turbines to the mainland is in state coastal waters and falls under the jurisdiction of the Commomwealth of Massachusetts. Furthermore, the onshore electricity transmission and distribution facilities related to the project fall within the jurisdiction of municipal planning and zoning boards and conservation commissions on Cape Cod. In short, the Cape Wind project will ultimately have to satisfy the coastal permitting and environmental impact assessment requirements of a variety of state and federal agencies including the Corps, EPA, FAA, FERC, DOE, USFWS, the Coast Guard, Massachusetts CZM, Massachusetts Historic Commission, the Cape Cod Commission, and the Towns of Barnstable and Falmouth, Massachusetts.

Over the summer, the Corps, despite organized opposition, issued a permit to Cape Wind Associates to construct the first phase of the project, a 170-foot tall research tower designed to collect meteorological data needed to support the permitting of phase two, the actual wind farm itself. Cape Wind's project is now going through an environmental impact analysis, which includes a joint Environmental Impact Statement (subject to federal review) and an Environmental Impact Report (subject to State review). Drafts are expected to become available for review and comment in early 2003.

Though the Cape Wind project is universally lauded by environmental groups as a step in the right direction where the development of clean and renewable energy is concerned, not

all groups, environmental and otherwise, support the project. The Cape Cod Commission, a regional planning and environmental permitting agency located in Barnstable, Massachusetts, for instance, opposes the project because of concerns about visual impacts and their claim that there will be little benefit, economic or otherwise, from the electricity that the project would generate. In fact, from the Commission's perspective, electric generation is not a regional priority.

Others have different concerns. According to Barnstable Municipal Airport officials, pilots in bad weather or at nightime could be in jeopardy by the flashing warning lights from the tops of the turbines. Boating safety is an issue with recreational boaters similar to the concerns raised by the European Boaters Association, who have opposed off-shore wind farms in Europe (see following article). Other issues concern the impact of the wind farm on coastal, pelagic and migratory birds.

Winergy: Taking it to the Next Level

Despite opposition to the Cape Wind project, other firms and companies see an energy future in off-shore wind power. Winergy, a Long Island, New York firm is proposing off-shore wind turbine farms off of Nantucket Island, the northeastern coast of Provincetown, Cape Cod, Gunning Point near Falmouth in Buzzards Bay, Massachusetts, and Ipswich Harbor, northeast of Gloucester, Massachusetts. They have already filed an application for a location in Nantucket Sound.

Winergy's proposals are smaller in scale than Cape Wind Associates, but in terms of energy production, they are equally ambitious. For instance, the three Cape Cod locations discussed above would feature 10 turbines producing 18 MW of electricity, cost up to $25 million each, and occupy slightly more than one square mile in coastal water depths of less than 60 feet. In addition, unlike Cape Wind Associcates, the three sites identified by Winergy are in state-regulated coastal waters. Finally, Winergy has also identified another 17 potential off-shore wind farm sites along the Atlantic Coast as far south as Virginia, the Bahamas and the Great Lakes.

In summary, with the push for clean and renewable energy, off-shore coastal wind farm proposals will likely become standard fare over the next few years as companies compete in the deregulated energy market. In New England and along the Atlantic coastline, where land is at a premium, power producers and companies will be drawn to coastal locations where the wind blows best and competing land uses are minimized.

Jonathan E. Blaine is an attorney with the firm's LandLaw Section. Please email him if you have any questions about this article.

European Dialogue May Signal Concerns For North American Off-Shore Wind Farm Developers

Todd Berman, Environmental Analyst

The European Boating Association (EBA) has called on all European governments to

"protect the value of the sea for recreation and not to exclude smaller vessels from the areas in which wind farms are to be located." As part of this urging, the EBA has requested that regulators set standards to consider, among other things, the location, feasibility and the appropriateness of potential "exclusion zones," appropriate marking, and impacts to fish and other aquatic species. The EBA has called for a 22 meter (72 feet) rotor blade clearance above the sea surface under worse case conditions. In November, the single largest offshore wind farm in the United Kingdom was formerly approved by the UK's Energy Minister. This wind farm will utilize as many as 38 offshore turbines to be placed approximately 2.5 kilometers (1.55 miles) off the UK's east cost. With wind farms presently being contemplated for Nantucket Sound and other off-shore coastal areas along the U.S. Atlantic Coast, these concerns voiced by European boating interests signal the issues to be considered by U.S. wind farm developers.

Todd Berman is an environmental analyst with the firm's LandLaw Section and a member of the Coastal Resources Management Center. Please email him if you have any questions about this article.

Coastal Resources
eNews & Notes

U.S. Commission on Ocean Policy Issues Interim Report on the World's Oceans

The U.S. Commission on Ocean Policy released its "Developing a National Ocean Policy" mid-term report on the quality and condition of the world's oceans. Established by the Oceans Act of 2000 (P.L. 106-256)(signed by President Bill Clinton in August 2000), the Ocean Commission is charged with reviewing federal ocean-related laws and programs and making recommendations to the president and Congress for a "coordinated and comprehensive national ocean policy." During its planned two year mission to detail the problems facing U.S. ocean resources, the Ocean Commission, whose 16 members were appointed last year by President George W. Bush, will examine a variety of issues including (1) responsible stewardship of living and non-living resources, (2) protection of the marine environment and pollution prevention, (3) impact of and protection against natural and man-made hazards, (4) enhancement of marine-related commerce and transportation, (5) the role of oceans in climate change, (6) enhancement of oceanographic science and technologies, and (7) international leadership and cooperation in marine affairs. A final report will be issued to Congress and President George W. Bush in June 2003. The last congressionally authorized commission to review and make recommendations for a national ocean policy was convened under the Marine Resources and Engineering Development Act of 1966. The Stratton Commission issued a far reaching report on January 9, 1969 and prompted the formation of the National Oceanic and Atmospheric Administration in 1970

and the passage of Coastal Zone Management Act in 1972 and the Fishery Conservation and Management Act in 1976.

The Ocean Commission's preliminary recommendations include (1) adopting a comprehensive ocean policy and management strategy that would allow for the management of ocean resources within an integrated framework where marine protection would be balanced with responsible use, (2) implementing alternative governance structures based on ecosystems to better balance competing and often opposing positions while simultaneously assuring the sustainability and viability of ocean resources, encouraging responsible economic development and protecting social and cultural values associated with making a living from the sea, (3) amending and revising existing ocean, coastal and fisheries laws, regulations and policies to ensure sustainable and diverse marine ecosystems capable of supporting multiple and competing uses while addressing the problems of existing environmental threats such overfishing and bycatch, water and air pollution, habitat loss, vessel traffic and marine debris, climate change and invasive species, (4) better disseminating knowledge and information about oceans to students, educators, the public and decision makers to promote and enhance ocean education, both formal and informal and on a national level, (5) allocating more funds to address the significant gaps in our scientific understanding of the quantity, quality and ecological value of marine resources, the nature of marine habitats, and the interactions between land and air-based sources of pollution and their effects on ocean and coastal environments, and the ocean's natural variability or their ability to assimilate environmental impacts, (6) improving the ocean data collection and sharing system to better disseminate oceanographic data on currents, temperatures, salinity, nutrients, algae biomass, fish stock, marine mammals and habitats to the scientific research community and the public as well as linking the work of different disciplines in a manner that offers a more integrated understanding of the marine environment and the processes that control it, and (7) supporting exploration and discovery of the world's oceans.

The recommendations of the U.S. Commission on Ocean Policy have the potential to create important changes in ocean laws and policies and marks the first step toward developing a comprehensive, long range national ocean and coastal policy. One of the Commission's goals over the next year will be to begin to reassess these preliminary recommendations and strategies to help policymakers understand how human actions affect the oceans, and how the oceans may in turn affect human lives. Click here to access the full report.

BoatU.S. Foundation offers 2003 Clean Water Grants United States

The BoatU.S. Foundation for Boating Safety and Clean Water is offering grants of up to $2,000 to nonprofit boating clubs and community groups to fund projects that encourage clean boating practices and pollution prevention. The deadline for groups to submit proposals for 2003 Clean Water Grants is February 1, 2003. According to the BoatU.S. Foundation, Clean Water Grant projects have educated boaters about clean fueling practices, encouraged sustainable fishing techniques, raised awareness about watershed pollution prevention, and reminded waterfront user groups to dispose of trash properly.

Click here for more information.

Congress Passes NOAA and Sea Grant Bills

A bill entitled "The Hydrographic Services Improvement Act Amendments of 2002" (HR 4883) reauthorizing NOAA programs passed both in the House and Senate last month. This bill contains legislation for the following NOAA programs (1) NOAA hydrographic services improvement, (2) NOAA Commissioned Officer Corps, (3) reauthorization and amendment of the Interjurisdictional Fisheries Act of 1986, (4) reauthorization and amendment of the Anadromous Fish Conservation Act Reauthorization of the Atlantic Tunas Convention Act of 1975, (5) reauthorization of the Northwest Atlantic Fisheries Conservation Act of 1995, (6) Chesapeake Bay Office, (7) conveyance of NOAA laboratory in Tiburon, California, and (8) emergency assistance for subsistence whale hunters. Click here here for more information.

P.L. 107-299, the National Sea Grant College Program Act Amendments of 2002 was signed into law on November 26, 2002 by President George W. Bush. Click here for more information.

Coastal Resources
eProject Focus

Bridgeport Port Authority, Bridgeport, Connecticut: Ferry Terminal Expansion

Connecticut's Port of Bridgeport provides a gateway to the entire Northeast and serves as one of the Northeast's major centers for the import of perishable goods as well as providing ferry and other maritime services. More than $1 billion is now being invested to improve the port's commercial and industrial capabilities. For example, Robinson & Cole assisted the Bridgeport Port Authority obtain Connecticut Department of Environmental Protection and U.S. Army Corps of Engineers permits and City of Bridgeport coastal site plan approval to improve and expand its existing ferry terminal, including a new 200 space parking garage adjacent to Bridgeport Harbor. These improvements will allow The Bridgeport-Port Jefferson Steamboat Company provide enhanced pedestrian, car and truck ferry service across Long Island Sound between Bridgeport, Connecticut and Port Jefferson, Long Island, New York. Click here for project plans and photographs. Contact Keane Callahan if you have any questions about this project.

For more information, please contact:

Keane Callahan
kcallahan@rc.com
800-826-3579

Visit our CMRC page by clicking here.

Click here to unsubscribe.

ROBINSON & COLE LLP
Boston - Hartford - New London - Stamford - Greenwich - New York

(c) 2002 Robinson & Cole LLP All rights reserved.