

Special House Legislative Commission to Study the Effects and Procedures for the Reorganization of the Rhode Island Coastal Resources Management Council

Tuesday, February 22, 2022

Time: 2:00 PM

Meeting Notes

(Not intended as official meeting minutes)

Commission Members in Attendance: Representative Deborah Ruggiero, Representative Lauren Carson, Kendra Beaver, Jamie Hainsworth, William DePasquale Jr., Stephen Land, Richard Hittinger, Michael McGiveney, Paula Bontempi, Lawrence Taft, Sven Risom, Nancy Letendre

AGENDA

I. Call Meeting to Order

Representative Ruggiero called the meeting to order at 2:00 PM.

II. Opening Comments: Chairwoman Ruggiero

Representative Ruggiero thanked the commission members and introduced Antonio Afonso, Chief of Staff of the office of the Governor. She reminded the commission members that the Governor appoints the council members and there are currently two vacancies.

III. Presentation by Antonio Afonso, Chief of Staff, Office of the Governor: The Administration's Vision for Future of the Coastal Resources Management Commission including the Commissions Strengths and Weaknesses.

Antonio Afonso thanked the commission for the opportunity to testify. He continued that he is not an expert on CRMC but is a member of government who understands the importance of the agency. In establishing CRMC, the General Assembly recognized and declared the coastal resources of Rhode Island are a rich variety of natural, commercial, industrial, recreational and aesthetic assets of value to the present and future of the state. He continued that the General Assembly attempted to address the most efficient and beneficial use of these assets.

The General Assembly created the governance model to provide balance among the various stakeholders affected. Some may claim there should be a bias in favor of the environmental community, while others may support a bias for economic development, some may favor a bias for a particular industry such as fisheries or hospitality, or others. Given the competing interests, the policy goal should be a balanced approach which should take into account conservation of

resources while at the same time allowing for the beneficial use whether economic, recreational or otherwise for the people of the state.

We all have a stake in the outcomes related to coastal resources use. Accordingly the composition of CRMC must include a balance of environmental, business, labor and community interests in order to effectuate fair, reasonable and sustainable uses of coastal resources. Without such a balanced approach, Rhode Island could suffer underutilization of its coastal resources leading to economic stagnation or the alternative, unwisely and imprudently exploiting valuable resources. For Rhode Island to succeed in the future, this crucial balance must be achieved.

The Governor's policy goal is to have a balance struck in terms of how coastal resources are approached, utilized and conserved.

IV. Questions from the Commission

Representative Ruggiero expressed concern that CRMC is understaffed and underfunded. CRMC has only two, soon to be three enforcement officers, yet CRMC is tasked with establishing and maintaining rights of way, overseeing dredging projects, permitting aquaculture projects, and in the next year, three wind projects. They do not have a fulltime staff attorney or a hearing officer. CRMC operates with a five million dollar budget, 2.5M from the state, 2.5M from the federal government. Now the state is getting 1.4 billion federal dollars and there has not been one dollar appropriated for CRMC. The budget has been the same for many years.

Antonio Afonso replied that he did not come here as an expert on CRMC, in terms of budget it is his understanding that they do not have legal counsel on staff but employ outside counsel. He does not have any incite as to why that decision was made.

He continued that he is not conversant in all the details of what might be required in the budget. It is true that CRMC has significant responsibilities under the statute, especially with the increase of offshore wind, special area management plans, and expanded responsibilities. He can't otherwise get into the details of staffing.

Kendra Beaver stated that preservation and restoration of our coastal resources should be the primary guiding principle on which decisions should be made, and that is by law. She asked about the budget article language change from the DEM language in regards to the hearing officers to allow lawyers to serve as hearing officers while engaging in a private practice. That creates real and perceived conflicts of interest. The only limitation is the hearing officer cannot participate in a case by which they are an interested party. This is already against the ethics laws. She asked why the administration removed the protection which promotes transparency and impartiality which guides DEM officers that they don't take part in the outside practice of law.

Antonio Afonso responded that the ethics rules of the Supreme Court of the State of Rhode Island would apply to avoid any conflict of interest. An outside hearing officer, a volunteer or otherwise would be more economical with the current case load at CRMC.

Kendra Beaver agreed that the ethics rules would apply, but unlike DEM where they can't have an outside practice of law, CRMC would allow an outside practice of law. She did not agree that

the state would save money paying a lawyer by the hour. The part-time nature may be because in the past CRMC had no appointed hearing officers so they had hearing officers only preside over enforcement cases and not application cases. That is a curious distinction which is not supported by the statute. It would be smoother to follow the process set up at DEM and perhaps share hearing officers between CRMC and DEM.

Antonio Afonso added that sharing hearing officers could be explored. Based on his understanding of the current workload, it would not make sense to have a full time CRMC hearing officer.

Kendra Beaver followed up that she does not understand how one can say they have a light case load. The Council hears applications every other week and enforcement cases once a month. Is the administration proposing they only hear enforcement cases, and if so why?

Antonio Afonso replied he would not propose that they would hear one type of action or another. He is not an expert on CRMC and certainly not in respect to their staffing.

Representative Ruggiero asked if the administration would support an amendment to the budget article.

Antonio Afonso replied that he is amenable to exploring it but would have to see the details.

Representative Carson stated that \$15,000 seems to be woefully insufficient for the tasks assigned to this person, especially an attorney. She would like to see that increased. She asked if the administration has had any discussion about the council itself, the appointment process, terms of office, and the types of skills they bring to the table. She asked if the administration has any recommendations.

Antonio Afonso responded that there should be a balanced approach so that a variety of views are present on the council, as long as they are consistent with the statute. There should not be an over interest of business people or a particular industry. We have not specified what the individual's specific credentials should be.

Sven Risom agreed the CRMC is one of the more important organizations and there should be a balanced approach. He also reiterated the importance of the green economy and green energy along the coastline. He asked how an organization that has had a budget of 20 people for well over 10 years not be expanded given the importance of that effort and maintaining the balance. Especially with three major wind farms coming in the next three years. He asked how such an important organization could not have more resources given more aquaculture, wind farms and marsh restoration.

Antonio Afonso stated the proposed budget has a provision for an additional analyst to work on permitting including offshore wind. This commission is looking at the broader question of how to address the expansion of this work including staffing. The administration does not have any indication that the job is not getting done. To the extent that responsibilities are added, that may have to be revisited.

Sven Risom agreed that the staff has been phenomenal. He stated that it is hard to lead an organization when you are not grounded in the sciences or data. There needs to have grounding in science and there also has to be grounding in business and economic development on the council.

Representative Ruggiero stated that there are vacancies on the council and terms have expired. She asked when the administration will appoint people to the board. Is the administration waiting for recommendations from this commission?

Antonio Afonso responded that they have been watching this commission closely. Names have been before the Senate for advice and consent for reappointment for some time. The administration won't wait interminably and will eventually have to act.

Richard Hittinger added that CRMC has been a national leader in setting some of the groundwork for offshore wind development and now has an exploding number of offshore wind farms to review. These have cables or other projects that are within the Ocean SAMP and are being reviewed by current staff. He asked if there is any momentum to add more staff to review these applications. Each application has 600 page documents prepared by consultants paid millions of dollars and the agency is trying to do the evaluation with existing staff. This workload will continue over the next five to ten years.

Antonio Afonso offered two points, one is there is a provision for an additional analyst in the budget article in recognition of the additional work that will need to be done as the industry develops and future budgets might ask for more. Second point is this whole issue is in its nascent stages and there is a lot to be learned. CRMC could alleviate some staffing issues by creating guidelines for the application, what information and what format. Staff is looking at these issues and there are federal guidelines being developed which might help CRMC. The agency and stakeholders should set reasonable expectations.

Richard Hittinger replied that he agrees on having some consistency on the how the wind farms are permitted. What CRMC has found is that even though they have pushed in the most recent case for them to be more consistent, they have received push back from powerful people at the developer Orsted. They were not able to have consistency. I feel that CRMC was steamrolled by a much more powerful organization.

Representative Ruggiero asked if the analyst proposed in the budget would be housed in CRMC. Antonio Afonso stated that he believed they would.

Paula Bontempi applauded the governor and state legislature for passing the Act on Climate. She asked what role CRMC will play in the implementation of that plan in RI and among the New England partners.

Antonio Afonso answered that CRMC has a very important role to play relative to the act on climate. There are many equities to balance as CRMC reviews applications including but not limited to offshore wind. Commercial and recreational fisheries are a concern, but at the same time the reality is that environmental scientists agree that we cannot get to a 2030 45% reduction unless we have clean energy and that to a large extent will come in the form of offshore wind.

The need for clean energy balances against all the many needs of the offshore resources. However, there has to be a balanced approach and we need a CRMC that can speak to clean energy and offshore wind and also create a balance for fisheries and recreational uses.

Kendra Beaver stated that is her understanding that the terms of all the council members have expired and there are a couple that never went through the process. Members have been there for decades. She asked why the Governor's office has not appointed any new members, and there is talk about striking a balance but there are no environment groups represented on the council. The governor appointed one new member the night before the South Fork hearing and after that there has been no attempt to properly reappoint all council members and do that in accordance of the existing law. The intent of the statute was to have planners and others who have a leadership roles and were elected or appointed by the communities that they represent. Why has the governor not appointed new members?

Antonio Afonso stated that it is true that the governor has appointed one member in the eleven months he has been in office. With respect to other members, under the statute existing members serve until their successors are qualified and appointed. To some extent I would pose that question to the Senate, a number of names have been pending with the Senate. The governor has appointed one and is watching with some interest the work that the commission is doing.

Kendra Beaver asked if it is your understanding that a part time hearing office will adjudicate all cases pending before CRMC both application and enforcement cases.

Antonio Afonso stated that he cannot speak to that because he does not have an understanding of the variety of cases. Representative Ruggiero added that the details are not in the budget article and will be left up to the General Assembly.

V. Discussion of Next Steps: Chairwoman Ruggiero

Representative Ruggiero thanked Antonio Afonso for joining the commission. In the past seven months the commission has developed a much better understanding of the scope of the work that CRMC does. She asked members if there was anyone else that should be invited to speak before the commission. The next step will be to discuss the recommendations. Rep. Carson suggested that the commission reach out the to former council members. Michael McGiveney recommended reaching out to DEM.

VI. Adjournment

The meeting adjourned at 2:45 PM.