Steve Carmel

Remarks on CMSP,

HSRP meeting, 26 Oct, 2011

Good afternoon ladies and gentlemen – thank you for allowing me to present my views on the coastal and marine spatial planning process. As you can tell by the title in the agenda, I have a different view of the CMSP process than many, if not most, of those in the room, so I appreciate your willingness to listen to alternate viewpoints. I should emphasize that these are my own views. My views are informed by our participation in meetings and workshops on CMSP, speaking with others in the industry, and our own contacts in Capital Hill, but I am not representing the views of industry, or even an official position of Maersk Line, Limited. Maersk is a leader in sustainable shipping and takes its commitment to environmental stewardship very seriously. Maersk Line, Limited however does not have an official policy or position on CMSP. I should note that Maersk Line, Limited is the largest shipping company in the US involved in international trade. We operate a variety of ship types, including container, multi-purpose heavy lift, tankers, Ro/Ro, and special purpose ships and call at every major port in the country.

We at MLL have been as involved as we can be, or have been allowed to be, on CMSP, but in truth, that’s not much. There was a National level workshop in June in Washington, at which we were represented on a panel and in working groups, and that is the last we have heard from anyone on CMSP directly. There have been local meetings on things like route access studies, an issue for us I’ll come back to, but essentially information on CMSP has gone quite. But based on my experience so far and synthesizing information we get from a variety of sources, I’ll offer the following observations:

First and foremost – in terms of participation I’ll note that in broad terms there are two types of participation, one is the general workshop and public meeting type of participation and the second is participation in the design and execution of the CMSP process itself. The Washington workshop is an example of the former, and no one believes this represents anything approaching real participation. At best it allows a box to be checked off that there was public participation without actually having to accommodate anything that comes out of the meetings. And since they are broad with a host of interests represented there is actually little useful that could come out of such meetings anyway. There have also been representatives of shipping trade groups that presented to National Ocean Council committees either individually or as part of a panel, but those I have talked to that have done so indicate that again they feel their presence was little more than an effort to check a box and nothing meaningful came from the time and effort it took them to participate. In terms of participation in the design and execution of the CMSP process itself, where meaningful impact could be had, it is interesting to note that industry has advocated for such a role, but environmental NGO’s predictably oppose this. In reviewing the *Framework for Effective Coastal and Marine Spatial Planning* issued by the Interagency Ocean Policy Task Force, for example, it notes that strong partnerships among Federal, State, tribal, and local authorities, and regional governance structures would be essential to a truly forward-looking, comprehensive CMSP effort – industry is not on that list. The nine Regional Planning bodies responsible for developing the regional marine spatial plans has as members Federal, State, and tribal authorities, and indigenous community representatives with jurisdictional responsibilities. Considering it is clear that there is intended to be significant new regulatory development with an enforcement mechanism, in fact some interpret the mandate of the National Ocean Council to be that of an enforcement agency, it would be appropriate that industry by represented at this level, but it is not.

At the Washington meeting we were told that industry is supposed to participate in the Ocean Research and Resources Advisory Panel. This is where our voice is supposed to be heard. There is certainly not any effort to reach out to industry for members and in reviewing a list of members from the Panel’s web site, there are 15 members, all but one representing government or academia in the environmental sciences area. There is one member who is retired from a drilling company. So clearly industry is not represented on the Ocean Research and Resources Advisory Panel, nor is there any recognition that “industry” is fragmented – my equities and issues from a shipping perspective are different than a fishing guy’s which are different than a drilling guy’s which are different than a dredging guy’s. So in reality multiple industry representatives are needed. In addition, reviewing the wiring diagram provided in the *Final Recommendations of the Ocean Policy Task Force* for where the Panel fits in to the National Ocean Council, the Panel is the only entity that is relegated to a communication only role. The others are listed as coordination or reporting relationships. So the general feeling is that the relationship of the Panel to anyone in a decision making role, including the National Ocean Council, is too tenuous and vague to be meaningful representation even if we were there.

Representative, I think, of how industry is viewed in this process is how “stakeholders” are defined in a Jan of 2010 report where a research group hired by NOAA published their *Marine Spatial Planning Stakeholder Analysis*. The purpose was to “assist NOAA in gaining a better understanding of current stakeholder use, level of stakeholder collaboration, and potential future use of marine spatial planning tools” noting that the level of success of an MSP effort will depend largely on the quality of stakeholder engagement. The report states that ERG – the group hired to do the study- conducted research on all stakeholder groups involved in MSP. Appendix A lists resource experts and interviewees contacted to develop the report. Every single one was on the on the environmental side, no one from any business was contacted. So Stakeholders in the MSP process here at least, are defined as environmental interests, we don’t make the list.

The organizational structure of the whole CMSP process is oriented around environmental groups so this it is not surprising that environmental groups oppose industry involvement at anything more than a superficial level, ENGO equities being well represented. We note with some concern this effort is being led by the Council on Environmental Quality, a group hostile to industry by its nature. Their focus is that the environment comes first and that all uses of the water will be science based. While economic issues are given mention, the process itself appears to be biased against economic factors being given anywhere approaching equal weight. Indeed in the *Summary of the Regional Workshop on Marine Spatial Planning* held in Halifax this past June for example – a workshop designed to focus on the Canadian Maritimes and US North East Coast MSP issues - One of the discussion highlights in the multiple use discussion group was that “The starting point is ecological, but socio‐economics is an essential consideration”. One recommendation is that there was a need to “Determine methods of analysis for economic impacts within an ecological space”. The good news is that at least there was some recognition that while much effort has been put into the ecological side of this debate, little has been put into the economic side, and the report recognizes the proper research mythology is not even agreed on. The bad news from an industry perspective is that the report clearly places economic interests as subservient to environmental ones. In a report on UK marine spatial planning titled *Potential Benefits of MSP to UK Economic Activity* it was noted that “there is currently very little literature that documents the benefits or potential benefits of marine spatial planning. The evidence that does exist relates mostly to the rational for MSP and the types of benefits that it has the potential to produce”. One of their conclusions was “though the economic significance of the sectors effected is widely documented there is a shortage of quantitative economic data regarding the actual effects of marine spatial planning” This report, by the way, was produced for the Royal Society for the Protection of Birds, hardly a pro business group. The European Commission also recently concluded a study titled *Study on the Economic Effects of Marine Spatial Planning* published earlier this year noting that “Unlike cost benefit analyses, the report is mostly limited to a qualitative assessment of the benefits associated with MSP, although it also includes a methodology which has been applied to provide an indication of the quantitative effects of MSP. These quantitative effects need to be interpreted with great care; they provide insights on a macro-economic level, but are based on assumptions and require additional studies on a case-by-case basis in order to be able to draw more accurate conclusions” and consequently that economic effects need to be considered as potential future benefits. This report also notes that there is actually no way at present to accurately assess the economic impacts of marine spatial planning beyond qualitative analysis and speculation about what the impacts should be. If anyone has a methodologically sound quantitative study on the economic impacts of MSP I would certainly appreciate getting a copy because I can’t find one. So it would appear that industry is systematically excluded from the CMSP planning and implementation process and that no solid quantitative economic analysis is used to estimate economic consequences, only subjective qualitative assumptions about what the benefits should be, and those assumptions are being made by people who could conceivably have a pre-determined outcome they are working to.

There is also risk in the CMSP process that the bias will be to do nothing – make no decisions, until the science is understood; ignoring the reality that science is rarely settled. And sometimes decisions need to be made with incomplete information – something we in business are comfortable with but a science based approach would not seem to accommodate. An example of where time matters is in US arctic drilling. I have no particular direct interest in this – it is not a business we are in, but I follow it because of its implications for related industries, like petroleum trade patterns and tanker markets, tankers being expensive and long lived asset. The Trans-Alaska Pipeline peaked some years ago at a little over 2 million bbls per day in throughput. Volume now is down to around 600k bbls per day, a rate at which maintenance issues for the pipeline are being felt. It is projected that in about 10 years if nothing changes, volumes will be down to the 300k bbl per day limit at which the pipeline needs to be shut down. The pipeline cannot be operated at that level of flow. Shell is about as advanced as anyone in drilling, and expects to sink their first exploratory wells in the Chukchi this spring. Assuming there are no delays, including regulatory or environmental delays, it will take 10 years for production to begin. We are therefore right on the edge. In order for the pipeline to continue operation, significant new volumes need to be on stream before the 300k bbl per day limit is reached, and that limit is right at the edge of where new volumes can be expected. Shutting down the pipeline is a true national security issue, and no one seems to know for sure how much it would cost to restart it, or even if that is possible.

On the overall structure, I have heard many comments on the fact that this is being done on Executive Order alone. As one participant in the Washington workshop put it “The President is ordering the federal agencies, states, local communities, and tribal groups to reorganize and reprioritize their use of their waters without legislative authority or appropriations”. One representative of an industry trade group told me a little bit ago that a request for congressional investigation into the whole National Ocean Policy has been made to Congress, and as we saw this morning, the House National Resources Committee is indeed holding such hearings. There is even an industry group - The National Ocean Policy Coalition - in place to coordinate industry response to National Ocean Policy activities, including CMSP. At present the ocean shipping segment is probably the least affected of the member groups, our issues currently being related primarily to proper and safe access to ports. But based on what we have been presented with as potential wind farm lease areas, there are significant concerns because some, such as that proposed here off Hampton Roads, directly impact approaches to the harbor. While we have participated in public hearings and information sessions, we have little faith that our concerns have been heard, let alone addressed. The President of one industry trade group told me bluntly just Monday that BOEM will make these decisions without regard to either the CMSP process or sympathy for shipping industry concerns. As far as the CMSP process goes, we tend to view the proposed lease areas as direct evidence that the process will not work, or at least will not solve our problems and may in fact create them. On a broader scale, there is always the concern that these types of programs can creep as well. The right whale protection program has turned into an enormous administrative burden for us. Although we have no visibility in to how it actually works, what appears to us to have happened is that a contract was let to a consultant, SeaJay Consultants, to analyze AIS data and generate violation reports for speed over the ground in right whale seasonal management areas. We are sent the reports and then it is incumbent upon us to collect all the information from the ship to demonstrate that we either had a pilot exemption due to safety of navigation, or that we dispute the finding altogether. Since we routinely have to go faster in terms of speed over the ground in order to maintain proper relative speed through the water in many areas for proper ship control, this ends up being a rather large administrative burden. It is interesting to note in looking at SeaJays website and the bio’s of their personnel, none, or at least none listed on the web site, has any expertise in marine navigation or shipping operations. There is clearly a conflict of interest in my opinion when you have a contractor hired to generate violation reports that can become fines. Certainly the cynical view, and in the absence of any transparency on the part of the government it is view that holds sway, is that the contractor needs to generate at least enough in fines to cover the cost of his contract. Which leads to another broader concern – this whole process is set up on an EO without appropriations to cover costs. At some point, especially given the current budget climate, there is the possibility that some sort of funding vehicle will be required, and it is industry that will be asked to pay. Indeed in the *Summary of the Regional Workshop on Marine Spatial Planning* held in Halifax I mentioned earlier, one finding was “The U.S. executive order provides authority but no money. In Canada there is funding but no mandate for others to listen to DFO. Both funding and a mandate are required for an effective MSP”

Overall the process is very government focused, as my remarks on membership on the various planning bodies and advisory groups demonstrate. The underlying philosophy appears to be that government, at various levels, is the key to marine planning – a solution in search of problems, although from my perspective it is not at all clear how CMSP will solve our problems or anyone else’s. How for instance will CMSP deal with the proliferation of ballast water mandates from individual states and the federal government or any of the other competing and overlapping State and Federal regulatory issues? In the ballast water case there is a legislative solution under consideration (HR 2840) – so how does this relate to the CMSP process? There is some feeling that CMSP will not address these types of issues, and could potentially make it worse by systemizing a process for a regional approach to regulatory activity rather than one national level set of rules consistently applied everywhere we go meaning we will need to rely even more on Congress for protection and relief. Ballast water management is good example where we need to keep track of multiple state mandates that differ from the federal mandate and where we needed to go to Congress for help. In the case of NY the mandate is so stringent that even the state recognizes that no current technology exists that would allow compliance. But rather than rescind or delay implementation, the law stands and we are required to request an exemption from complying. If there was ever a “gotch-ya” system, this is it, and we fear an ever expanding mass of similarly inconsistent rules that require a large amount of effort to keep track of and which offer no benefit at all to the environment.

So, in summary, it appears to me that there is a systemic effort to exclude industry from any focused and meaningful participation. The economic advantages to CMSP are not clear, and at best are qualitative in nature, which makes the exclusion of industry all the more alarming since those qualitative benefits, what the benefits should be, are being articulated by participants that are not actually in industry themselves. The effort is billed as being transparent, but I personally find it anything but and it appears to be a very government focused process with the potential to create a large and confusing regulatory burden with a new enforcement mechanism. Merely reading the *Framework for Effective Coastal and Marine Spatial Planning* is enough to induce outright panic at what appears to be a potentially large and cumbersome bureaucracy. There has been little effort to explain all this to industry or articulate why this will solve our problems. As I noted there is already an industry group formed to push back on National Ocean Policy issues and the first requests for relief to congress pressed. As this process continues and unless there are substantial changes in how the process works going forward, my expectation is that mistrust on the part of industry will grow as will outright opposition. Thank you