

CBA Workgroup

Meeting Notes – 03/05/25

Process Updates

- Future Plan for Roundtable Process:
 - No Roundtable meeting on the 31st
 - But DLCD will still be in Brookings to meet with local officials and conduct a public meeting
- Next Roadmap meeting – Mid April, then May 15
- Trying to get to draft Roadmap by June

Proposed Agenda

- Review the attached one-pager together and provide clarifications
- Look at how some other states have incorporated requirements for CBAs and other agreements into state policies
- Discuss what we mean by “Other Enforceable Agreements”, and specifically the types of enforcement to consider
- Discuss next steps

One-Pager Review

- Reviewed Summary
- Not captured or other comments:
 - Get legal experts to share what makes agreements effective and durable
 - Examine underlying philosophies – from different interests/lenses/perspectives
 - Consider details about what goes into the agreements – contract language
 - Consider when to bring groups/communities together – when to have separate agreements
 - What are the legal levers
 - Need to learn from failures too – not just successes
 - Where have CBA’s gone wrong
 - Has there been contact with/info shared from Nantucket and their failed CBA effort
 - Fishing industry is not interested in getting impacts “bought out”
 - Not just about compensation

- East Coast compensation agreements
 - Remedy/mitigation has to be wanted
- Important to get beyond BOEM's definitions - i.e., not just compensation
 - Will need to dive into this issue
 - How you name the agreement is important – response to “CBA” different from other protective measures and commitments
 - CBAs viewed as compensation/pay-offs
- Adaptive Management – community benefit includes adaptive management
 - need to engage all community members – tribes included
 - must have an active and ongoing ability to enforce – not just one and done agreements –
 - we should not be limited by BOEM's definitions
 - We can already require AM plans under existing authority
- We can also require other sorts of mitigation – but there are examples of what other states have done that goes beyond
 - Include capacity building and workforce development
- CBAs as a “book of bargains”
 - which communities/interests need a chapter
- When are benefit agreements not enough to overcome negative impacts
- What are tipping points for different Oregonians (e.g., fisher community vs Portlanders vs others)

Withdrawn Consent and Accountability

- Consent includes ability to say no – down the road – withdraw consent upon further information –
 - adaptive management is the key to this
 - insurance/surety can be hedge to make this more acceptable
- Allow community members should be able to enforce agreements
- Some things cannot be fixed with compensation – e.g., tribal cultural resources
- Tribes have sovereign rights that persist in addition to any agreements
- How do we structure accountability – some impacts have to be avoided – cannot address with adaptive management
 - CZMA has limitations
 - Other mechanisms may be helpful in securing accountability
- Coast will look different over time – adds complexity to planning
 - Turbines may affect this – and be impacted as well

- Tipping points may be reached by cumulative impacts of multiple projects/phases
 - Scotland reached a tipping point on fisheries – and there is no way to address it
 - Need to be sure we avoid this sort of situation

Other Examples

- In some states – power lies with state as purchaser of power – can add requirements to that contract
 - See slides
 - Requirements for project labor agreements and CBAs
 - Not just money exchange
 - Requirement for cost benefit assessment
 - Broad policy statement – no adverse impact to NR or human uses
- Other methods – e.g., tax incentives, require a bond, other levers for getting CBAs
- Benefits uncertain – given that already coast gets renewable hydropower energy
 - See link in chat re: sources of energy for regional of Oregon
 - Do we (OR) need this (OSW) to meet carbon/climate goals – or resiliency goals – not clear
 - Answer is complex and nuanced
- BSEE – fed agency responsible to ensuring safety and environmental response

Other Enforceable Agreements

- Semantics and concerns about BOEM led to inclusion of “other enforceable agreements”
 - Oversight, delivery, for different constituencies – make beneficiaries more inclusive – e.g., labor agreements, etc.
 - Bolstering ability to enforce associated agreements – e.g., lease agreements
 - Providing public agency role in enforcement (because individual communities may not have the capacity to enforce)

Where Do We Go From Here

- Looking eventually for recommendations to the Roundtable for Roadmap – but are we there yet – what is missing?
 - Need to bring in some expertise to inform
 - Need information on failures – lessons learned

- Need information on accountability measures and protective measures in community agreements
- Yes – some more work to do (legal expertise) – but group and Jeff has done a lot to articulate some ideas about agreements
 - E.g., Mechanisms for community accountability over time
- Communicate what has worked and what has not
- Who convenes the CBA template building process (OS?)
 - let state be an arbiter
- Early vs later for CBA development?
 - For fishing communities - maybe no upside to early development if takes a lot of effort and the lease issuance is uncertain (have had time wasted in previous instances)
 - But also ant to avoid divide and conquer strategies
 - Fishing community is very cautious
- Labor and community agreements are very different from what is needed by fishing communities
 - Are there any examples of fishing community agreements that were not regretted? – that provided real benefits?
 - Maybe in other contexts – Heather will look into it

Next Meeting of this Workgroup

- Next meeting not scheduled
- May need to schedule to accommodate expert participation