

DRAFT NERACOOS Board of Directors Meeting Minutes

August 12-13, 2008

University of Rhode Island – Narragansett Campus
Coastal Institute Building, South Ferry Road

PRESENT

NERACOOS Board Members Elect

Janet Campbell, University of New Hampshire
Bruce Carlisle, Massachusetts Coastal Zone Management (first day only)
John Conway, Sikorsky Aircraft Corporation
David Farmer, University of Rhode Island (first day only)
Pete Jumars, University of Maine (second day only)
Larry Madin, Woods Hole Oceanographic Institute
Linda Mercer, Maine Department of Marine Resources
Chris Nash, New Hampshire Department of Environmental Resources
Kevin O'Brien, Connecticut Department of Environmental Protection
Jim O'Donnell, University of Connecticut
Jack Ringelberg, JMS Naval Architects
Peter Smith, Bedford Institute of Oceanography
Malcolm Spalding, University of Rhode Island
Bonnie Spinazzola, Atlantic Offshore Lobstermen's Association
Michael Szemerda, Cooke Aquaculture Inc.
Christine Tilburg, Gulf of Maine Council on the Marine Environment
Cheryl Zimmerman, Marine and Oceanographic Technology Network

Staff and Guests

Wendell Brown, University of Massachusetts Dartmouth
Al Hanson, University of Rhode Island
David Keeley, Facilitator
Jen Levin, NERACOOS Staff (based at GoMOOS)
Betsy Nicholson, NOAA Coastal Services Center (first day only)
Josie Quintrell, National Federation of Regional Associations (first day only)
Evan Richert, University of Southern Maine (PI on planning grant)
John Trowbridge, Woods Hole Oceanographic Institute (first day only)
Dick West, Consortium for Oceanographic Research and Education formerly (first day only)
Zdenka Willis, NOAA IOOS (first day only)

DAY ONE

Welcome by Evan Richert
Campus Orientation by Al Hanson
Review of the meeting's goals and the agenda by David Keeley
Roundtable of Introductions

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► Presentations on Ocean Observing Globally, Nationally, and Regionally

- A primer on Ocean Observing by Evan Richert (See PPT*)
- Global and National Perspective of IOOS by Zdenka Willis (See PPT*)
- National Federation of Regional Associations by Josie Quintrell (See PPT*)
- Funding available to NERACOOS for the ocean observing system and for the regional association by John Trowbridge (See PPT*)
- Review of coordinating bodies in the region that NERACOOS might partner with by Evan Richert (See PPT*)
 - Jim O'Donnel adds to the list EPA's Long Island Sound Estuary Program, which monitors water quality and upgrades water treatment programs to meet federal requirements. In addition, a potential partner is the Mid Atlantic Coastal Ocean Observing Regional Association (MACOORA), which has similar interests and is a partnering organizing body inclusive of Southern New England.

Q&A on Presentations

- Just heard today that ASA is engaged with the national coast guard in operating the HF radar system. Is this now a major tool?
 - NOAA, under Zdenka's office, is leading a plan to develop a national HF Radar plan. Jim O'Donnell and Neal Pettigrew are representatives in developing this national system.
 - HF radar is a means to gather surface current data, which is a predictor of many things.
 - NOAA IOOS is working on a national system that has QA/QC and has the funding needed to maintain the systems. The development of new programs is an easier funding sell than the O&M. That we are taking this on together with the Coast Guard is a success story.
- Would love to hear some other challenges from Josie from what other RAs have done.
 - There has been an evolution in RA development. A few are going through the process of getting incorporated. A huge thing is that it provides liability coverage. Each RA is governed by a set of by-laws. In multiple RAs, incorporation is very important. The others are also dealing with multiple user groups.
- One of the key items of the bylaws is how you set up the committees. Right now, there are several committees outlined. Interested to know whether that's consistent across the regions and where the differences are. The Board needs to decide whether that system is really appropriate.
 - Most RAs have some sort of stakeholder's council. The idea of a science team seems pretty common.
- You can incorporate in any state, but you're also governed by the labor laws in the state where your office is. Biggest thing I learned is don't lock yourselves into something in the bylaws if you can do it administratively.
- I can understand the need for the science and products teams. We want to be sure that the user and scientist get a chance to interact directly. The glue that holds a lot of these things together is the data management and communication teams. What do the other RAs do, with respect to committees?

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- They're finding that committee maintenance takes a lot of staff support. You don't want to put too much in your bylaws if you can develop it administratively. There are typically some standard committees like nominating, finance, executive committees. They will often also have stakeholder councils who might not care about the administrative details but will be interested in the design of the system. Those are the kind of Board structures, but it varies. Typically RAs have a large Board of 25 with sub committees.
- Not sure why we have a conflict of interest committee.
 - MACOORA is also paying close attention to Conflict of Interest. There are people who are writing proposals and doing related activities, and who are also in a decision-making position with respect to how the money gets spent and what the priorities are. That's a conflict of interest. Still, we need to have institutions involved and motivated to be involved. So, we didn't want to write the COI policy in the bylaws, but we did want to make sure that it is dealt with clearly and openly.
- We are supposed to make this system self-sustaining. There is a connection to the local user needs and a federation...NOAA is never going to be able to pay the bill for all of this. The history of self-sustaining has not been pretty. Have you, Josie, seen other regions deal with this well?
 - In many ways, NERACOOS isn't far behind in terms of self-sustaining. Most are dependent on NOAA grants. If all your funding is coming from NOAA you are vulnerable. A lot of other regions are being very savvy about getting other funds from other federal agencies, NGOs, or elsewhere to help sustain and build on efforts. When we've done the numbers, it's clear to diversify funding. California put up a 24 million dollar bond issue. This is capital funds. States fund capital expenses, but then they're looking to NOAA to provide operational funds. It's often easier to get things up and running but then not enough to support the O&M.
 - NOAA IOOS has been doing regional assessments. There is only one RA that is charging dues, which is minimal (SECOORA). It's a start at looking at how to put additional funds in the coffer. This particular issue on sustainability, and how to get additional funding will tend to break a meeting apart. It's a difficult subject. In your meeting here, you have some resources to start with. Keep funding opportunities in mind, but don't make it your primary focus of this first meeting because you do have some resources. MACOORA looks at that structure of non federal funding. Only 21% comes from NOAA in the mid-Atlantic. Just because it doesn't have an IOOS tag to it, it is still ocean observing. The most powerful points are the regional governance structures. That is carrying a lot of weight in DC when it's coming from the governors.
 - One of the exciting developments and the source of funds, is the development of offshore winds and they are putting out offshore stations, so there's going to be a lot of that opportunity possibly going forward. It's an automatic augmentation of existing infrastructure. We just need to integrate them.

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► The Purpose of NERACOOS

The Advisory Committee developed the purpose statements over the past two years' planning discussions.

Referencing the Purpose Table provided in advance of the meeting, Board members discussed whether these statements accurately reflect NERACOOS' role.

Overall, Board members agreed with the intent and meaning of the purpose statements, but preferred to condense them into more succinct statements. Upon further review, on Day Two the Board agreed on the following revised purpose statements for use in the bylaws and in the Articles of Incorporation:

1. To lead the development, implementation, operation, and evaluation of a sustained, regional coastal ocean observing system for the northeast United States and Canadian Maritime provinces, as part of the United States Integrated Ocean Observing System (IOOS).
2. To promote the development and dissemination of data and data products that meet the needs of end users.
3. To advocate for the regional, national, and global ocean observing system through education and outreach.

Summary of Purpose Discussion

The real crux of the first purpose statement (in the table) is to be the sole coordinating body for the region for US IOOS funds. However, we have to know that NOAA is on board with this particular mission. A funding announcement could come out of Washington and allow for multiple entities to compete. That doesn't make for a very well integrated system, but it does allow for some degree of freedom. That's going to be tough. There are some legal limitations that IOOS has regarding competition. The expectation at the IOOS Office is that the RAs will coordinate the development of regional priorities and decide how those IOOS dollars should be spent.

Want to see that there are Outcome Assessments imbedded in the purpose. The *outcome* we're looking for is demonstrated use of those products. Explicit outcomes should be noted in the work plan. Need to differentiate that the outcome is not the prediction, rather the USE of those predictions is the outcome.

The intent is that the Ocean data partnerships will be a very strong ally in the data work. NERACOOS Inc won't be doing the work. Ideally, it will be pulling other entities in to help achieve those things.

This is really about coordinating with the national backbone. It would be helpful to condense this into a mission statement. For example, "Promote, coordinate, and implement the delivery of data based products." However, we need to maintain the specificity provided in the more specific purpose statements to help guide what is appropriate for NERACOOS to pursue.

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NERACOOS must help users figure out what they need and what ocean observing can do to help meet those needs. Unless we can define those needs, products will never go anywhere. This is the most important part of the purpose. Facilitating sharing of the information is the most important and giving people what they need to make decisions. Perhaps that should be the mission statement and the rest can go under it.

One of the missions of NERA should be to promote the need for SUSTAINED SYSTEMS.

The draft language intends to embrace the Gulf of Maine Ocean Data Partnership (GoMODP) and to ensure that they are integral to the RA. This is a way of communicating that they will be inside this organization, rather than outside. Regarding DMAC, the real purpose is to get everyone on the same page nationally, not only regionally. We want to all be able to use the same protocols so that all things integrate together.

This list of purposes is influenced by what we envision the RCOOS doing. The primary idea is that it's a user driven system. But the RA is different from the RCOOS, in that it is more about planning, coordination, interface, etc. The RA "providing data products..." seems to conflict with the idea that the RA is not going to do the work.

► Lesley Squillante presents on Board Roles and Responsibilities (See PPT*)

► Board Member Proxy Discussion

Review of the BoardSource commentary, which states:

"Proxy voting is quite common during membership meetings where members are numerous and spread all over the country. It may be difficult for everybody to attend annual meetings in person. By providing a fellow member with a power of attorney to vote in his or her place, a member is able to voice an opinion. For board meetings, however, voting by proxy is less desirable. Before voting, board members need to discuss the issue, share opinions, debate, and even argue in order to reach the most carefully considered decision possible.

It is difficult to reach a fully informed decision without benefiting from the wisdom of fellow board members. Also, voting by proxy can have a negative effect on meeting attendance. Some states regulate voting methods for boards of directors, so it is wise to check the laws with your attorney general or secretary of state."

David Farmer proposes that Board members be allowed to appoint an alternate. Both the Board member and alternate would be on all the mailing lists, and receive all the information. If one could not go to meetings, the other could. In some cases, both could go. Both would be very familiar with all the issues. David believes this would form a much more robust Board with stronger representation. It would also be more robust in terms of representation. Want NERACOOS to be very much supported by the various institutions. It wouldn't be a random act of people simply coming to a meeting in lieu of another.

* Additional material can be found at www.neracoos.org/meetings/neracoos-board-of-directors-meetings/august-12-13-2008-neracoos-board-meeting-1.

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The idea of institution building is good. The idea of an alternate is good... There would be a *designated* alternate, rather than a random alternate.

If you have been appointed by NROC, where would your alternate come from? Perhaps you would simply send a message to the governor or appointing body saying that you need an alternate and make a recommendation. Also, not every Board member has to have an alternate.

If there is any legal action of any kind against the Board, are both responsible? There is a big difference between advisory committees and Boards with legal and financial authority. If the alternate was there and voted in a way that was somehow unsatisfactory, then who is ultimately responsible?

This discussion was one that the Executive Committee had, not so much the idea of an alternate. The thought was that when we want to recruit a Board, we want someone at a fairly high level of an organization. The Executive Committee chose not to include the option of a proxy because you don't want to end up with a situation where you have a director always sending his/her proxy.

► **Meeting adjourned at 5pm**

DAY TWO

► **Incorporation**

Regarding the state of incorporation, no real advantage from one state to the other was revealed through previous research. Jen has been working with a lawyer who specializes in non-profit law in the state of Maine who would charge a flat fee of about \$3,000 to file the articles of incorporation, by-laws, conflict of interest policy, and IRS application and other assorted bits and pieces. We've been advised to seek legal counsel from the state we incorporate in, so the advantage to incorporating in Maine is that we already have that relationship established. Incorporation in Maine takes just a couple of weeks.

Some questions:

- Does Maine have provision to have a certain number of Board members be from the state of Maine? *Answer: No.*
- If there is a filing or suit against NERACOOS, what state ruler will prevail – where it is incorporated or where the office and employees are located? *Answer: It depends on the nature of the suit. For example, if it were related to an employee relation, then the state where the office is located would prevail.*
- Do the incorporators have to be from Maine? *Answer: No, the requirement is for just one incorporator, who may be from anywhere.*



Janet Campbell moves to incorporate in Maine; Bonnie Spinazzola seconds. Unanimous.

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► Bylaws Discussion

The draft bylaws have been reviewed by the National Sea Grant Law Center and by Atty Rob Levin. WHOI's attorneys also reviewed the bylaws.

Article II: Section 1

Last sentence of b seems to be a repeat of a. This might be standard language, but we should review this with legal to see if we can revise.

NERACOOS may use a certain percentage of non-federal funds for the purpose of lobbying Congress. Also, NFRA will be the primary lead on those activities.

- Suggest adding “outreach” to *Scientific and Education* purposes.

Article III

The annual meeting in June is a good time because it gives the Board a chance to adopt a budget on a timeline that is consistent with the federal fiscal year. Do we have to specify a month? Don't want to lock us in June. The important thing is to have at least 30 days notice.

- Change to “In June of each year, or as fixed by resolution.”

Article IV

Page 3, line 33, regarding “marine-related industrial, governmental, non-profit organizations and other users of ocean data and data product...” would like to see a minimum requirement for the number of those appointees. And, would like to be sure that there are no fewer than X from marine industry. Also, there is no overall minimum number of Board members. Should include a minimum number of reps in each category.

- Modify the rules so that the Board must elect a minimum of Board members from each section to have a minimum of four. Articles of Incorporation will say 12 Board members minimum.
- Make sure that the overall Board include at least two Canadians.
- Add “cross section” in Section 2 C.

It is the Nominations Committee's job to come up with the slate of nominees working with the other groups named in the region.

One thing that's missing is how many nominees we want for each open position. Do we need to have more than two people running for a position? As written, does it say that the slate is a slate of individuals? Should there be a choice so that you're voting/choosing between the two?

- There should be something in the bylaws requiring that the names be presented to the Board a certain period ahead of time.
- Section 4 on page 5 should be by “majority vote” not by two-thirds.

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- Should add in section 12 on page 6 something about the availability of minutes.
- Last sentence of section 6 on page 5 should reference “section 8”.

Don't want to tie the hands of the Nominations Committee in the bylaws. In the Nominations Committee Terms of Reference, word the bylaws so that there is some flexibility. Perhaps say that they will strive to (not “shall”) have at least two members from Canada and at least four members from each of the three categories.

Regarding proxies, there might be a difference between proxy and alternates. 501(c)3 organization Board members are required to deliberate in fiscal discussions. An alternate might be a different animal.

Will review the alternate suggestion with legal counsel and will include some stipulations:

1. Alternate will be designated by appointing/voting body in the same manner as the director (Nominating Committee would review the request for an alternate).
2. Identical term and no presumption of succession.
3. Director and alternate are equally infused.
4. Only director can serve in an officer position
5. Timing for alternate provision (e.g., perhaps wait until after first year).
6. Select meeting dates well in advance.
7. Alternates are optional.

If the Director misses more than three meetings in a row, the alternate takes that seat officially.

- Insert “Directors may request an alternate, which would be considered/reviewed by the Nominations Committee and voted on by the Board.” Nominations Committee terms of reference should include something about this process.

Regarding openness to the public (Section 18, line 30), WHOI attorneys questioned whether we want to make all actions public documents. Is this a requirement for public funds? The Executive Committee might be dealing with personnel issues.

- Put a period after “actions” deleting “which shall be reported to and open to inspection by the public.”
- Need to add who is responsible for minutes and when will they be made available. Minutes could be posted on a web site, for example.

Regarding Conflict of Interest Management Committee: This was in response to the possible conflicts of interest. The management of conflict of interest is an ongoing thing, and we will need to have a watchful eye on that, especially when Board members might be interested in competing for funds, whether personally or institutionally. It is a good idea that this committee would oversee potential conflicts. Perhaps the Conflict of Interest Management Committee could also review and track the competitive processes.

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- On page 7, line 44 – Strike “annually”
- Strike mention of Strategic Plan in the bylaws (Page 8, Section 22a). NOTE: Strategic Plan is mentioned several times in the bylaws.
- Page 8, Section 22, part d: Delete the last two sentences.
- Part e: change the last sentence to “Directors may not lead or participate in proposals except as permitted by the conflict of interest policy.”

The Business Plan should include guidance on how the Board expects to fund NERACOOS. In that Business Plan, there would be more information on which sources of funds are appropriate for NERACOOS to pursue. How will the Business Plan be developed? Answer: The work of the PRT and SRT would be digested by the Board and implemented into the business plan.

Article V

- Page 9, section 2, change so that the term of officers is a two-year term, which may be renewed.
- Page 9, line 49, delete “first” in front of vice-president.

Need to add in the Secretary terms of reference having responsibility for the minutes.

► **Ad Hod Committee Formation**

Incorporation Group: Jack Conway, Janet Campbell, Malcolm Spalding, Linda Mercer, Christine Tilburg

This group will review the incorporation papers, discuss with Legal, develop a new version of the bylaws, which will be done by the end of Sept, and distributed to the Board in early Oct for review. The document will be distributed with changes tracked in Word.

Committee Formation Group: Larry Madin, Jack Ringleberg, Peter Smith (Note: Bruce Carlisle, who was not present on Day Two, joined this committee after the meeting)

This group will be responsible for reviewing the terms of reference for officers and committees, and for recruiting officers (which develop the exec comm.), and chairs of the standing committees between now and the November meeting. This group will also consider NROC representatives. Jen to get from Josie the TORs for NROC Board members.

► **Meeting Adjourned at 2pm**