Alaska Coastal Management Program

- Created in 1977 by the Alaska Legislature
  - Included Coastal Policy Council
- Revised in 2003
  - eliminated Coastal Policy Council
  - removed Dept. of Environmental Conservation (DEC) permits and approvals from the consistency review process
  - change in statutory authority and DEC carve-out required coastal districts to re-write their coastal management plans
- Updated in 2005, but changes were not substantial
MMS Lease sales in Arctic OCS

- Shell submits OCS Exploration Plan for Beaufort Sea in 2007 to MMS
- ACMP consistency review of OCS exploration plan elevated to DNR Commissioner. Found to be consistent based on the adoption of a number of alternative measures required of Shell
- MMS Exploration Plan approval appealed to 9th Circuit Court of Appeals. Remanded back to MMS to prepare a revised Environmental Assessment (EA) or Environmental Impact Statement (EIS), if necessary
Alaska Coastal Management Program

- Reevaluation of Alaska Coastal Management Plan began in 2008 and continues today
- Department of Interior approves Alaska’s Coastal Impact Assistance Program (CIAP) to provide funding to state agencies, coastal political subdivisions
  - $1.6 million in 2007
  - $1.6 millions in 2008
  - $24 million in 2009
  - $24 million in 2010
Collaboration and coordination with federal agencies has increased in recent years.

EPA/DEC Interagency Group working jointly on renewal of Arctic NPDES General Permits for Beaufort Sea and Chukchi Sea.

State Dept. of Natural Resources, Office of Project Management and Permitting now acting as cooperating agency on federal Environmental Impact Statements (EISs):

- BOEMRE – OCS Five Year Plan 2012-2017 EIS
- Corp of Engineers – Point Thomson EIS
State and federal agencies operate as stovepipe bureaucracies, but that may not be a weakness since each agency has its own expertise the different perspectives serve to offer checks and balances.

Complexity of OCS rules involves Submerged Lands Act (SLA) Outer Continental Shelf Lands Act (OCSLA), Coastal Zone Management Act (CZMA), Clean Water Act (CWA), Clean Air Act, Endangered Species Act (ESA), National Environmental Policy Act (NEPA), Magnuson-Stevens Fishery Conservation and Management Act (essential fish habitat), Oil Pollution Act of 1990 (OPA 90), Marine Mammal Protection Act (MMPA) and the Alaska National Interest Land Claims Act (ANILCA)
Alaska Coastal Management Program

Agency regulations from Dept. of Interior, U.S. Fish and Wildlife Service (USFWS), Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Environmental Protection Agency (EPA), National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS), U.S. Coast Guard (USCG), Alaska Department of Natural Resources (ADNR), Alaska Department of Environmental Conservation (ADEC), Alaska Department of Fish and Game (ADF&G)
The ACMP model already has a built in governing body, public process and legal requirements for collaboration:

**Federal Law Requiring Collaboration**
- OCSLA 43 U.S.C. 1340
- CZMA 16 U.S.C. 1451-65
- CWA 33 U.S.C. 1251 et seq.
- Clean Air Act 42 U.S.C. 7401 -7671
- OPA 90 33 U.S.C. 2701 et seq.
- Executive Order 13158 (Marine Protected Areas)
Federal Laws that Do Not Require Collaboration
- MMPA 50 C.F.R. 216
- NEPA 42 U.S.C. 4321

Federal Policies That Apply in the OCS:
Executive Order 12898 Environmental Justice Responsibility
Workshop Model 2 Co-Management Plus

What Kind of Federalism?

American Federalism

Marble Cake Federalism is based on a pragmatic mixing of authority and programs among the national, state, and local governments.

Layer Cake Federalism is based on a clear delineation of authority and programs among the levels of government.
Alaska Coastal Management Program

- Litigation over OCS activities have been a constant feature in Alaska
Alaska Coastal Management Program

- Litigation (continued)
  - *Tribal Village of Akutan v. Secretary of Interior* (1988) 9th Circuit Court of Appeals
  - *Cowper, Governor of Alaska v. Secretary of the Interior* (1989) Petition to U.S. Supreme Court Denied
  - *Village of Gambell v. Hodel, Secretary of Interior* (1989) 9th Circuit Court of Appeals
  - *Village of Gambell v. Babbit, Secretary of Interior* (1992) 9th Circuit Court of Appeals
  - *Northern Environmental Center v. DNR* (1993) Alaska Supreme Court (State Lease Sale – Beaufort Sea)
• **Litigation (continued)**
  - *Center for Biological Diversity v. Dept of Interior* (2009) D.C. Circuit remanded lease EIS back to the MMS
  - *Native Village of Point Hope v. Salazar* (2010) 9th Circuit upholds MMS NEPA decision
Alaska Coastal Management Program

- **Litigation (continued)**
  - *Cook Inletkeeper v. EPA* (2010) 9th Circuit Court of Appeals
  - *REDOIL v. DNR* (2011) Reversed DNR Commissioner ruling on Beaufort Sea Lease Best Interest Finding
  - Alaska Oil and Gas Association v Dept. of the Interior (polar bear litigation filed Tuesday)

Also appeals before the EPA Environmental Appeals Board (EAB)
With this knowledge cooperative model it does not appear that one agency or organization is taking the lead. This model would address the Shell / North Slope Borough Science Agreement.

Is this a case of dual federalism?

- Federal and state governments are separated into their own spheres of authority?
- Does strengthening the knowledge base solve the challenges that we are presented with?
Model 4: Regional Ocean Roundtable

If the Regional Ocean Roundtable is a venue for updating local coastal plans, is this micro-managing the work of DNR’s Division of Coastal and Ocean Management?

Or does this model fit closer to the Coastal Policy Council policy board proposed in the legislation last session by Representative Joule and Senator Olson?

Where would the Shell / North Slope Borough Science Agreement fit in this model?
Model 5: Coastal Zone Management Plus

Not clear how the Division of Coastal and Ocean Management would be given a new mandate unless legislation changes their statutory authority.

As noted earlier, ecosystem-based management may happen within agencies, but historically has not happened between agencies. Would this model address that challenge?
Northern Waters Task Force

Northern Waters Task Force Duties:

- Assess and facilitate creation of a state and federal commission responsible for overseeing development of state and federal northern ocean waters
- Facilitate regional coordination, cooperation, and outreach regarding the creation of the commission to keep local stakeholders informed and to incorporate their input into the process
- Identify and coordinate efforts of mutual concern for federal, state, and local agencies, as well as international interests in the creation of the commission
- Conduct hearings in the Northern region of the state to fulfill its purpose
- Provide recommendations and reports to the legislature by January 2012 along with legislative proposals for consideration.
Organizational Decision Making is made difficult due to the following constraints:

- Imperfect or incomplete information
- Time available for the decision-making process is limited
- The complexity of the problem can be substantial
- Human information-processing capacity is limited
- Decision makers may have conflicting preferences that favor organizational goals
One action that could improve collaboration would be the development of a **Regulatory Roadmap** similar to the one produced for Oil and Gas Approvals in the Northwest Territories – Inuvialuit Settlement Region.

The U.S. Government Accountability Office has already suggested that BOEMRE develop a NEPA guidance handbook for BOEMRE staff to use. This Regulatory Roadmap could be a complementary document to the BOEMRE efforts.
Polycentricity of Agency Authority

‘Polycentric’ connotes many centers of decision making that are formally independent of each other. They actually function independently, or instead constitute an interdependent system of relations.


Which is why a regulatory roadmap is needed!