Alliance to Protect Nantucket Sound

STATEMENT OF THE ALLIANCE TO PROTECT NANTUCKET SOUND ON RECOMMENDATIONS OF THE OCEAN MANAGEMENT TASK FORCE

December 10, 2003

The Alliance to Protect Nantucket Sound congratulates the Ocean Management Task Force on its insightful and far reaching proposals to establish a sensible framework for state governance of our ocean resources. The current gap in state and federal policies and regulations to manage the offshore environment is inviting the same kind of unplanned and careless development that virtually every city and town in the commonwealth is now trying to rectify. We are standing on the edge of the next frontier, the development of the offshore lands held in public trust, that now beckon private developers with enticing promises of profit, but which first and foremost belong to the residents and taxpayers of the state and the country as a whole. The Alliance is particularly supportive of the recommendation to adopt an Ocean Resource Management Act, and enthusiastically urges the Task Force to stress the importance of this action in its final recommendations to the Governor.

The actions that flow from the recommendations of the Task Force will have a profound impact on the future of our coastal resource areas. They must be developed and implemented in a timely and complete manner since many development proposals that should be captured under new state management initiatives are already in the pipeline. Of particular concern to the Alliance is the CapeWind proposal to develop a sprawling wind energy facility on 24 square miles of public trust land in Nantucket Sound. It has been the continued position of the Alliance that before any permit is considered for this project, a comprehensive plan for offshore wind energy development be prepared and implemented. There is no question that a flood of wind energy permit applications for the Massachusetts coast are sure to follow the CapeWind proposal, and all of them, including CapeWind, must be considered in a logical and comprehensive manner that first and foremost protects and optimizes the public interest.

At this juncture we call upon Governor Romney and the Ocean Management Task Force to request that the Army Corps of Engineers suspend its review of the CapeWind project until an Ocean Resource Management Plan is in place that provides specific guidance to the state's regulatory agencies on the management of ocean resources, and establishes the standards and guidelines by which any development in the offshore environment shall proceed. If the Army Corps review process continues, the die will be cast for extensive and scattershot development of our offshore resources, at great cost to the taxpayers of the Commonwealth and the country.

In terms of the specific Task Force recommendations, we have a letter to submit for the record that outlines the key elements that this organization supports for inclusion in the final submission to the Governor. We are in particular support of Task Force recommendations 1, 4, 6, 7, and 9. However, there is a missing piece. The Task Force effort should include a proposal to the Governor to close the gap in regulatory oversight of Nantucket Sound by clearly affirming state interest in that area. We cannot continue to move forward responsibly under the existing fractured regulatory environment that has created the so-called 'hole in the donut' in Nantucket Sound, i.e. the center of the Cape and Islands ocean sanctuary under federal oversight. This jurisdictional schism causes the state to be hamstrung in any effort to bring an integrated management program to this vital resource area. It is imperative that the Task Force bring forward a recommendation that the state clearly assert its interest in federal waters of the Sound, and describe the rationale and authority to do so. It is apparent that the state has a number of avenues available to it to exert jurisdiction over the resources and uses of Nantucket Sound (such as the existing Ocean Sanctuaries Act and Executive Order 13158). We request the leadership of the Governor in setting this matter straight so that the rules for development and conservation of this area are clear, as are the agencies responsible for implementing them.

Thank you for you attention to the comments of the Alliance to Protect Nantucket Sound. We look forward to the final submission of the Task Force report to the Governor, and pledge the support and involvement of this organization and its members in moving the recommendations to fruition.

Respectfully submitted,

Susan Nickerson
Executive Director

Alliance to Protect Nantucket Sound

December 11, 2003

Ms. Susan Tierney
Chair, MA Ocean Management Task Force
c/o Analysis Group
111 Huntington Ave.
10th Floor
Boston, MA 02199

RE: Alliance to Protect Nantucket Sound's Comments on the Draft Principles and Preliminary Recommendations of the Massachusetts Ocean Management Task Force

Dear Ms. Tierney:

Our coastal resources are in jeopardy. The Commonwealth recognized this when it established the Massachusetts Ocean Management Task Force last spring. The Task Force has now issued its draft principles and preliminary recommendations. In doing so, the Task Force has not only met its challenges in an exemplary fashion, it has set forth the kind of comprehensive approach to ocean management that should be a model for other states and the federal government. Following the kind of approach to ocean governance reflected in the Task Force is long overdue, and the Alliance to Protect Nantucket Sound strongly supports this effort and commends Governor Romney and Secretary Herzfelder for undertaking this far-reaching initiative.

Since the Task Force was established, it has worked to define the Commonwealth's guiding principles for the use of state waters and ocean resources, to examine the Massachusetts coastal policies and the adequacy of the legal framework, to determine data requirements for managing state waters, and to examine the organization of governance over state waters to ensure that statewide interests are met. Through these efforts, the Task Force has set forth six over-arching principles to guide the management of our coastal resources. Those principles include: protecting the public trust; valuing

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biodiversity; respecting the interdependence of ecosystems; fostering sustainable uses; using the best information available, and encouraging public participation in any decision-making regarding our coastal resources.

Acknowledging that ocean governance is a public trust issue is an immensely important first step. Since its inception, the Alliance to Protect Nantucket Sound has stressed the importance of the public trust in any federal, state or local decisionmaking process that affects our coastal resources. Our coastal resources must be managed in a manner that preserves and enhances our right to use and enjoy them. The Alliance vigorously supports the Task Force's recognition of the public trust as an overarching principle that should guide the development of a framework that will protect our coastal natural resources from degradation.

The Alliance strongly supports adopting the Task Force's Recommendation #1. Today, it is plainly apparent that technology has outpaced the development of laws governing the use of our coastal resources. Nowhere is that fact better illustrated than off the coast of Massachusetts, where multiple offshore wind energy projects are proposed for development. Existing state and federal laws are simply inadequate for dealing with this type of unprecedented, large-scale development, and no amount of tinkering with our existing laws will adequately account for the issues implicated by such development. This is especially true for areas under federal control, where the Commonwealth may not be able to protect its interests fully. This fact is amply illustrated by the fact that massive, privately-owned wind energy facilities are being processed by the U.S. Army Corps of Engineers under mere navigability permits. Nor is proposed development limited to offshore wind energy facilities. Aquaculture, liquid and natural gas development, and offshore entertainment facilities have all been proposed in various coastal areas, either off the coast of Massachusetts or elsewhere. In addition, the energy bill pending in Congress includes provisions that would open up ocean resources to development under inadequate protection for a wide range of activities. These are all developments that conflict with basic principles underlying the Task Force's Recommendation #1, and they point to the need for a strong state role.

It is for these reasons that the Alliance strongly recommends that the Commonwealth adopt the Task Force's first recommendation and develop comprehensive legislation that provides an overarching framework for addressing development of our coastal resources. The creation of an act that would establish basic standards for allowable uses, impact control and resource protection, demand compensation for exclusive private uses of the public trust, and provide us with the unbiased information needed to evaluate the various proposed uses is essential to protecting our coastal resources from ill-considered and damaging development. Without an overarching system, the Commonwealth will have to rely on its existing and inadequate mosaic of state and local laws and hope that they are sufficient to reach and adequately address novel proposed uses of coastal resources. The protection of our ocean and coasts is too important to fall back on hope. The Commonwealth must be aggressive and proactive to meet the challenge of properly managing coastal resources.

In adopting Recommendation 1, the Commonwealth should also update the Massachusetts Ocean Sanctuaries Act. The Commonwealth had made great strides in the past in its efforts to protect our coastal resources by designating certain ecologically important areas as ocean sanctuaries. However, the Ocean Sanctuaries Act is difficult to understand and should be both clarified and strengthened. The Alliance agrees with the Task Force that the preferable way of handling this issue is by enacting a comprehensive ocean resource management act. Strengthening and clarifying the Ocean Sanctuaries Act while developing a comprehensive ocean governance plan would allow the Commonwealth to look at all of its coastal resources at once to determine what activities make sense and where. The Commonwealth also should follow the Task Force's Recommendation #4 and clarify the range of permissible activities in ocean sanctuaries and limit that range to activities that are clearly determined to be water-dependent. Any non-water dependent use of coastal resources, excluding those necessary to accommodate an overriding municipal, regional, state or federal interest, should be flatly prohibited in any designated ocean sanctuary.

The Alliance also believes that the Commonwealth should follow the Task Force's Recommendation #6. Our coastal resources have fundamentally shaped the character of

the Commonwealth. Today, our coastal areas are as important to us for the visual reprieve they provide and the aesthetic values they possess as they have always been for fishing and commerce. The Cape Wind proposal has clearly illustrated the difficulty in quantifying these values; indeed, those that wish to industrialize our coastal resources suggest that because aesthetic values are subjective, perhaps they should not be valued at all. Yet aesthetic resources remain one of the central reasons why the public values coastal areas, why residents and non-residents alike flock to the ocean – and the Nantucket Sound region in particular – every year, decade after decade. Simply because weighing the aesthetic value of a resource is difficult does not mean that the Commonwealth should abandon the task. The Alliance strongly supports the Task Force's sixth recommendation for the Commonwealth to develop and implement methodologies, standards and mitigation for the visual, cultural, and aesthetic impacts associated with development. Without developing the means for assessing such impacts, this important aspect of the public trust will be overlooked.

The Alliance believes that it also is imperative that the Commonwealth follows the Task Force's Recommendations #7 and #9. The Commonwealth must improve its coordination with federal, state and local agencies in reviewing proposals, since each governmental entity brings with it a different perspective on the public trust issues. To protect the Commonwealth's interests, it must be an active and vocal participant in federal and local reviews. To do so, coordination must be improved. It is particularly important that the Commonwealth ensures that state environmental agencies have the power to designate and protect areas that have special and/or sensitive estuarine and marine habitat and life, as such designations are necessary to protect special areas such as Nantucket Sound from exploitation. In addition, steps should be taken to either expand the Commonwealth's jurisdiction directly, especially over Nantucket Sound, or to achieve an understanding from federal agencies that common stewardship zones are established where federal actions that affect state interests will not be approved without the Commonwealth's consent.

Although the Alliance strongly supports the development of a comprehensive new ocean governance law, we believe that the Commonwealth must act now to protect our coastal

resources. The state's coastal resources are under siege, and if new comprehensive legislation is to have any meaning, the Commonwealth must avoid irreparable harm in the meantime. No threat is greater in this regard than the pending proposals for offshore wind energy plants in general, and the Cape Wind proposal in particular. If developed, these projects will dramatically alter our coastal and ocean areas and preclude the development of comprehensive approaches that focus on all resource values and user needs.

To avoid this result, the Commonwealth should ask the Army Corps of Engineers to suspend review of any offshore wind energy project, until the Commonwealth has had adequate time to address such development through comprehensive legislation. The fundamental objectives of the Task Force will be completely undermined if, in the midst of the effort to establish a comprehensive system of ocean governance, the federal government proceeds to review projects, like the Cape Wind proposal, that so seriously impact our coastal and ocean landscape that much of the Task Force's effort will be rendered irrelevant. Under the U.S. Army Corps of Engineers' own regulations, deference is due to affected states. The Alliance therefore considers it essential that the Executive Office of Environmental Affairs direct the involved state agencies to ensure that the Army Corps of Engineers suspends permit reviews that conflict with the Task Force's mission. Our state may only have one chance to get ocean governance right, and we should not lose that opportunity because of insistent private developers or the actions of a disconnected federal agency that ignore the comprehensive, step-by-step approach Massachusetts is taking to ensure that the marine environment off of our shores is not subjected to undesirable, ill-conceived development through ad hoc decision making.

In addition, the Commonwealth itself already has the tools to stop offshore development. Because offshore development must connect to land, the state has jurisdiction over certain aspects of any offshore wind project. In addition, the Commonwealth has the power and duty to protect fisheries and the fishing industry. And because private offshore wind projects are not necessary to an overriding municipal, regional, state or federal interest, the Commonwealth has the power and the responsibility to flatly reject any proposed non-water dependent use of state waters. Furthermore, the Corps

regulations require deference to a state's decisions. The Commonwealth must assume an assertive stance in this effort to ensure that it has the opportunity to protect its coastal resources before irreparable harm is done.

In conclusion, the Ocean Management Task Force has taken an admirable and exemplary first step to put into place the kind of ocean governance system that is urgently needed not only in Massachusetts, but throughout the nation. The Alliance looks forward to working with the Task Force, Massachusetts agencies, and our state legislature to make these recommendations a reality.

Thank you for your attention to these comments.

Sincerely,

Susan L. Nickerson
Executive Director