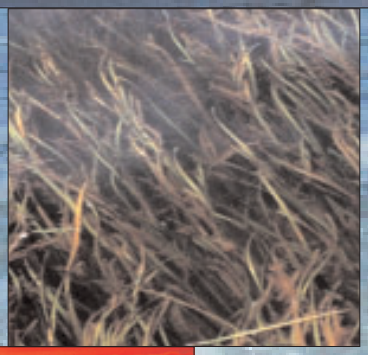
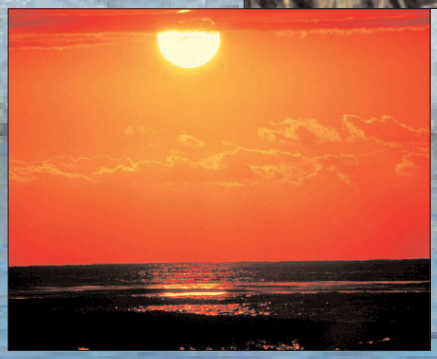
WAVES OF CHANGE





THE MASSACHUSETTS OCEAN MANAGEMENT TASK FORCE REPORT AND RECOMMENDATIONS

March, 2004

MASSACHUSETTS OCEAN MANAGEMENT TASK FORCE - MEMBERS

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Jim Hunt, Director, MEPA
David O'Connor, Commissioner, Division of Energy Resources
Robbin Peach, Executive Director, Massachusetts Environmental Trust
Tom Skinner, Director, Office of Coastal Zone Management

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Priscilla Brooks, Conservation Law Foundation; Gulf of Maine Council Member
Jack Clarke, Director of Advocacy, Massachusetts Audubon Society
Tom Cox, President, Mass Marine Trades Association; co-owner, Constitution Marina
C. M. "Rip" Cunningham, Jr., Saltwater Sportsman Magazine; Marine Fisheries Advisory Board
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Hon. John F. Tierney, U.S. House of Representatives

MASSACHUSETTS OCEAN MANAGEMENT TASK FORCE
REPORT AND RECOMMENDATIONS

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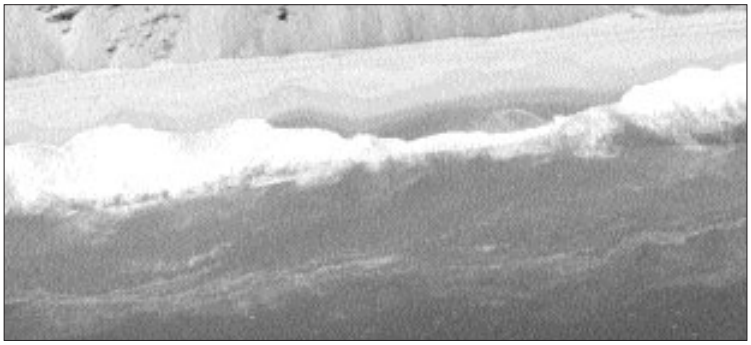
Working Groups of the Ocean Management Task Force

ACKNOWLEDGEMENTS

The Task Force's report is the result of significant effort on the part of many people during a relatively short period of time, given the complexity and importance of the assignment. The Task Force has been able to accomplish its work under a challenging time frame due, in part, to the commitment and support of Task Force members, agency staff, and volunteers. Several Task Force members in particular, along with state agency staff and private sector consultants, provided significant assistance in researching and drafting sections of this report and its companion Technical Report. These individuals are: Bill Adler (Massachusetts Lobstermen's Association), Mike Armstrong (Massachusetts Division of Marine Fisheries (DMF)), Deerin Babb-Brott (Massachusetts Coastal Zone Management (CZM), Jay Baker (CZM), Priscilla Brooks (Conservation Law Foundation), Todd Callaghan (CZM), Dennis Ducsik (CZM), John Duff (U-Mass/Boston), Mike Egan (Carruth Capital), Bruce Estrella (DMF), Tom Hoopes (DMF), Jim Hunt (Massachusetts Environmental Policy Act (MEPA) office), Sarah Joor (CZM), Kate Killerlain (CZM), Judy McDowell (Woods Hole Oceanographic Institution), Vin Malkoski (DMF), Joe Pelczarski (CZM), Ann Pembroke (Normandeau Associates), Arthur Pugsley (MEPA), Tom Skinner (CZM), Susan Snow-Cotter (CZM), Megan Tyrrell (CZM), Sue Tierney (The Analysis Group, Inc.), Greg Watson (Massachusetts Technology Collaborative), Alex White (CZM), and Tony Wilbur (CZM).

The Task Force also appreciates the leadership and hard work provided by Task Force Working Group Chairs including: Sue Tierney (Frameworks Working Group), Jim Hunt (Policy Working Group), Tom Skinner (Use Characterization Working Group), Judy McDowell (Data Trends and Needs Working Group), David O'Connor (Principles Working Group) and Robbin Peach (Outreach Working Group).

Behind many task forces is a hard-working and dedicated staff. Ours was particularly well supported by Susan Snow-Cotter (CZM) and Sarah Joor (CZM), who provided lead policy and logistics assistance to the Task Force and its many working groups.



The Task Force would also like to acknowledge the generous financial assistance for the Ocean Management Initiative provided by the Massachusetts Environmental Trust and by the National Oceanic and Atmospheric Administration. Without this support, this work would not have been possible.

Photos
All photographs courtesy of NOAA photo library, CZM archives, or CZM staff unless otherwise noted.

Cover Photos
Background waves - Jennifer MacLean; all others NOAA

Design/Layout
Arden Miller, CZM

Map of Ocean Jurisdiction
Diane Carle, CZM

MARCH 2004

To: Ellen Roy Herzfelder, Secretary of Environmental Affairs

From: Susan Tierney, Chair, Massachusetts Ocean Management Task Force

Re: Task Force Final Report, Principles and Recommendations

On behalf of the Massachusetts Ocean Management Task Force, I am pleased to present our Final Report, Principles, and Recommendations for managing the Commonwealth's ocean resources.

Ever since you established the Task Force in June 2003, the public officials and private citizens who are Task Force members have taken seriously the charges that you assigned to us. This Final Report reflects our collective efforts to respond to your request that we:

- Define guiding principles for the use of state waters and ocean resources;
- Examine Massachusetts coastal policies and the adequacy of the legal framework;
- Determine data requirements for managing state waters; and
- Examine the organization of governance over state waters to ensure that statewide interests are met.

In addressing these issues, the Task Force members have endeavored to understand the rich and diverse features of the Commonwealth's ocean resources, the character of these "public trust" resources which are held and managed on behalf of Massachusetts citizens, the existing set of governmental statutes, regulations, and processes that affect the protection and use of these ocean resources, and possible ways to enhance the management and, in some cases, uses of these resources for the benefit of the citizens of the Commonwealth at present and for the future.

We have also been particularly mindful of current uses and natural resource qualities of the state's oceans, and of our state's rich cultural, social, and economic heritage that has been tied so closely to the ocean and our varied interactions to it. We took as our point of departure the current state of resources and uses, growing tensions between existing and proposed uses and resource needs, and the current set of laws and regulations affecting them, in order to consider what legal authorities and action might be needed to assure that the Bay State's public trust ocean resources are adequately protected while also fostering sustainable uses of them. We noted the tensions that are growing with respect to competing uses of the state's ocean resources and the relationship between oceans under state versus federal versus regional jurisdiction.

During the past months of education, research, analysis, public consultation, and discussion, the Task Force members have developed Principles and Recommendations for managing the Commonwealth's ocean resources. We have written this Report and its accompanying Technical Report to attempt to describe the conditions of our ocean resources and the state of knowledge and policy tools relating to our oceans. These elements have formed the basis for our policy recommendations to you.

Our Principles are a statement of the main beliefs and values that we think are appropriate to guide public policy decisions about the protection and use of the Commonwealth's ocean resources. Our Recommendations reflect our views about the legal, public policy, and information tools the Commonwealth needs to have and exercise to assure appropriate protections of these resources and to allow appropriate uses of them for various public and private purposes today and in the future. The Technical Report provides detailed background information on the state of our oceans, data relating to them, and the policy and management tools the state has to regulate and protect our ocean resources for the benefit of the public.

In preparing these principles, recommendations, and reports, we had lively debates and discussions. The Task Force members came with different points of view, and individual members might have written a different report if they had authored it alone. The Task Force members as a whole, however, have

attempted to provide you with a consensus document. Like any such consensus document among responsible citizens with different perspectives, our report reflects numerous compromises among strongly held positions.

We have attempted to gather public input during the course of our work and have benefited substantially from comments from members of the public, representatives of interested groups, and various experts from relevant fields. We understand that it will be important to continue to seek additional public comment, now that our report and recommendations to you have been finalized. Indeed, we understand that in some respects, the presentation of our findings and recommendations to you is only one step in a much longer process in which you, the Romney Administration, and members of the Massachusetts General Court will make decisions about what, if any, changes to make in the Commonwealth's statutes, regulations, and other governance processes in response to the Task Force's Recommendations. Public input will be a critical part of that larger process, and we welcome it - even when the opinions differ from our own.

We recognize that we offer these recommendations at a time of significant state budgetary constraints, including many years in which state agencies involved with matters relating to the state's oceans have been operated with reduced staffs and budgets. We also recognize that adoption and implementation of many of our recommendations will require additional public resources. We think that the health of our oceans is critical to the health of our state in the future, and we urge you and other state officials to make ocean management a priority in both substantive policy and resource allocation decisions.

Additionally, we know it is timely for the Commonwealth to proceed on these recommendations in light of recent undertakings by various organizations (including several major initiatives at the national level, including the Pew Oceans Commission and the U.S. Commission on Ocean Policy) to make recommendations for management of the federal oceans. Massachusetts is at the forefront of state ocean management and protection and we have an opportunity to work closely with these national efforts to manage our own state's ocean resources in a proactive manner that both protects the underlying marine ecosystem and serves public needs for food and energy production, shipping, recreation, waste disposal, telecommunication, etc.

We wish you success in continuing stewardship of the Massachusetts oceans, and we extend our appreciation of the priority that you have made of this resource that is so important to what has made Massachusetts such a special place to live - in the past and in the future.

EXECUTIVE SUMMARY

Changing Ocean Uses

Coastal and ocean waters have played a significant role in the history of Massachusetts, for fishing, shipbuilding, trade, recreation, and scientific research, among other things. These multiple uses of the ocean are well known and appreciated as part of the fabric of what makes our state so special historically. More recently, we have begun to use our ocean for such activities as aquaculture, laying of fiber optic cables, a gas pipeline, artificial reefs, high-speed ferries and more. Today, there is interest in diversifying our dependence on fossil fuels by producing energy from wind and wave energy off our coast. Other potential emerging uses of the ocean range from the designation of marine protected areas to ensure the conservation of marine ecosystems to the siting of offshore liquid natural gas facilities to the extraction of offshore sand for restoring our recreational beaches.

These evolving uses of the ocean represent both a considerable opportunity and challenge for the Commonwealth. To help feed our densely-packed population, we clearly need protein made available from the fishing and aquaculture industries. To fuel our cars, homes and businesses, we need diverse energy sources, some of which are located in the ocean or are transported through it. The threat of global climate change requires us to use more renewable resources for our electricity supply, and some of the most abundant such resources are located in the ocean. We value the recreation and beauty that the ocean provides. We have also learned the hard way (such as through the collapse of groundfish resources, the pollution of Boston Harbor, shellfish closures, and oil spills) that marine resources are not limitless, can take decades to restore, and require more vigilant protection in the future than in the past. It is clear that ocean space is limited.

Conflicts between different uses within our oceans have historically been few, but as more uses are permitted and proposed, greater conflict is inevitable. With the range of both traditional and emerging uses before us, many questions have been raised. Which uses should be allowed in which areas? Who should decide? How do we ensure that individual and collective uses do not harm the environment? Do we have the right information to make those decisions? Do public agencies that are authorized to make these decisions have the right tools? Given that the ocean is a public trust resource, how should the Commonwealth effectively manage the "assets of the trust" it owns on behalf of the public to best protect and use them for the benefit of citizens today and in the future?

Ocean Management Initiative and Task Force

In recognition of the range of existing and proposed ocean uses in the Commonwealth and the many questions being raised on managing our ocean resources and the uses of them, Governor Mitt Romney and Secretary of Environmental Affairs Ellen Roy Herzfelder announced an Ocean Management Initiative in March of 2003. The first phase of this Initiative was the appointment of an Ocean Management Task Force in June of 2003. Secretary Herzfelder charged the group to examine the current trends and issues, identify data and information gaps, review existing ocean governance mechanisms, and draft recommendations for administrative, regulatory, and statutory changes, if deemed necessary. The Task Force was also asked to develop statewide ocean management principles to guide future ocean management in the Commonwealth.

The Task Force is comprised of 23 private and public sector individuals (listed on inside front cover). The Secretary also asked representatives from the relevant federal agencies, adjacent states, and members of the state and federal congressional delegation to participate as *ex-officio* members. The Task Force was chaired by Dr. Susan Tierney, a former Secretary of Environmental Affairs in Massachusetts, former Assistant Secretary for Policy in the U.S. Department of Energy, and currently a Managing Principal at Analysis Group Inc.

Task Force Process

The Task Force and its Working Groups met over thirty times between June 2003 and March 2004. All meetings were open to the public and all written material was made available on the Task Force website (http://www.state.ma.us/czm/oceanmgtinitiative). To enable the Task Force to explore issues in greater depth, six Working Groups were established: Frameworks; Policy; Use Characterization; Outreach, Principles; and Data Trends and Needs (refer to Appendix for more on the Task Force's Working Groups). In addition to the Task Force and Working Group meetings, the Task Force held six public meetings, the largest in October at the New England Aquarium. Preliminary recommendations were released for public comment in early December. When the public comment period ended on February 13th, 2004, over three hundred comments had been submitted (and are available on the Task Force website).

Geographic Focus of Report

The Ocean Management Task Force focused its work on ocean areas within the Commonwealth's jurisdiction. Generally, this area extends from the low water mark to the seaward boundary of the Commonwealth. Typically, the Commonwealth's marine boundary extends three nautical miles offshore with the exception of areas within Massachusetts Bay, Cape Cod Bay, and Nantucket Sound that extend further due to bay closure lines established by the U.S. Supreme Court.

Report Structure

The Ocean Management Task Force Report is broken up into two volumes: this Task Force Report and Recommendations, and the companion Technical Report. The Task Force Report and Recommendations contains an introduction, descriptions of the theme areas (e.g., governance, management tools, scientific understanding, and public outreach) that the Task Force has addressed, six Principles for ocean management, fifteen Recommendations with justifications and implementation plans, and a conclusion. The Technical Report contains a wealth of information provided by Task Force members and staff to support the recommendations provided herein. The Technical Report includes chapters on the public trust doctrine in Massachusetts, a descriptive overview of traditional and emerging ocean uses, an overview of data trends and needs, a summary of state and federal regulatory authorities relating to ocean resources, and several appendices.

Conclusions and Recommendations

After lengthy consideration of the issues relating to ocean use, protection, and management, the Task Force found that the Commonwealth agencies have done a commendable job managing the state's ocean resources. That being said, the times are changing and the tools that the agencies have to do their jobs are not keeping pace with the increasing complexity and challenges of the management issues before them.

The oceans and its resources are held in trust by the state for the benefit of the public. The Task Force believes that the oceans are too valuable a resource to continue to manage in an ad hoc and reactive manner. Below are six basic principles of ocean resource management, as well as fifteen recommendations aimed at improving the comprehensive management of ocean resources.

Underlying our principles of ocean resource management is our belief that our oceans embody extraordinarily dynamic and complex environments that are influenced by a combination of natural forces and human activities. Healthy ocean ecosystems are vital to human health and welfare. Human activities above, below and on the ocean surface, as well as on land, can and should be managed to allow both use and protection of ocean resources. Principles for managing those activities should embody an ethic of ocean stewardship that: (1) protects the public trust; (2) values biodiversity; (3) respects the interdependence of ecosystems; (4) fosters sustainable uses; (5) makes use of the best available information; and (6) encourages public participation in decision-making.

Our fifteen policy recommendations are grouped by the themes of governance, management tools, scientific understanding and outreach.

LIST OF RECOMMENDATIONS

Theme	Recommendation	Description	Page
Governance	Comprehensive Ocean Resources Management Act (CORMA)	The Secretary of Environmental Affairs should develop legislation for a new, comprehensive Ocean Resource Management Act.	29
Governance	Ocean Management Coordination	The Commonwealth should actively promote federal/regional/state cooperative ecosystem management.	32
Governance	Climate Change Plans	The Commonwealth's Climate Change Action Plan should include actions relating to effects of climate change on our coasts and oceans.	33
Governance	Ocean Sanctuaries Act Revisions	The regulations implementing the Ocean Sanctuaries Act (OSA) (302 CMR 5.00) should be updated.	35
Management Tools	Fee Structures and Levels	Current Chapter 91 license fees in offshore waters should be examined and adjusted (i.e., increased or decreased) where appropriate.	39
Management Tools	Marine Protected Areas (MPAs)	The Secretary of Environmental Affairs should convene a working group to develop recommendations regarding the designation of Marine Protected Areas.	40
Management Tools	Coordination of Mitigation	Interagency coordination of project mitigation should be improved.	43
Management Tools	Enforcement	Enforcement of existing environmental laws should be a high priority.	44
Management Tools	Visual, Cultural, and Aesthetic Impacts	Methodologies and standards for the analysis of visual, cultural, and aesthetic impacts of proposed projects in state waters should be developed.	45
Management Tools	Use Characterization	Inventories of the uses and resources of the state's marine waters should be developed.	46
Scientific Understanding	Marine and Ocean Resource Trends Advisory Group	An advisory group of marine and fishery scientists should be appointed to advise the state.	52
Scientific Understanding	Ocean Monitoring and Research	A comprehensive ocean resources monitoring and research plan should be developed.	54
Scientific Understanding	Seafloor Mapping	The Commonwealth should acquire seafloor maps.	56
Scientific Understanding	Standardized Protocols for Data Collection	Standards should be developed for monitoring data submitted by project proponents.	57
Outreach	Ocean Literacy and Stewardship	The Secretary should commit to developing a new ocean literacy and stewardship ethic among all citizens of Massachusetts.	60
Outreach	Dissemination of Ocean Resource Data	Public dissemination of certain data collected on the Commonwealth's resources should be increased.	62

Where do we go from here?

The recommendations in this report are prospective in nature and will not impact projects or proposals already under regulatory review. We believe that sound public policy requires that any new laws, regulations, or policies adopted in line with our recommendations be applied prospectively with respect to projects filed after the adoption of these new policies. We neither recommend a moratorium on development and permitting activities, nor want our proposals and uncertainty about policy to have the effect of chilling development. While in this report we offer recommendations to change the existing permit process, no changes in process will occur by virtue of this report alone, since the Task Force alone has no legal authority. Our recommendations are offered to the Secretary of Environmental Affairs, who has stated that she will hold public hearings on the report prior to submitting her recommendations to the Governor. Any statutory or regulatory changes that the Secretary decides to advance based on this report will be subject to public notice requirements, and will undergo policy debate and discussion in the legislative, regulatory, and political forums that take up these matters for consideration and decision.

In the course of its deliberations, the Task Force became very much aware of the extraordinary extent to which state agencies are stretched in managing coastal resources: from the review of ocean-based projects to assessing fisheries stocks or habitat, from planning activities in ocean sanctuaries to seafloor mapping, and from permitting to enforcement of resource protection laws, many environmental agencies have lost significant staff in recent years. These staff reductions lessen the state's ability to adequately manage ocean resources at precisely the time when it is needed most. The Task Force recognizes the need to assess current staff levels and program needs and supports investments in personnel, research, and equipment for Massachusetts' coastal and ocean resource management and planning programs.

In reaching these recommendations, the Task Force has already benefited substantially from comments from members of the public, representatives of interested groups, and various experts from relevant fields. We understand that it will be important to continue to seek additional public comment, now that our report and recommendations have been finalized. Indeed, in some respects, the presentation of our findings and recommendations is only one step in a much longer process in which the Romney Administration and members of the Massachusetts General Court make decisions about what, if any, changes to make in the Commonwealth's statutes, regulations and other governance processes in response to the Task Force's recommendations.

In pursuing its work, the Task Force has in many ways been on the leading edge of state ocean management. Few areas of the world have experience in trying to plan ahead for how we want to use and protect our ocean resources. We encourage the Commonwealth to take these bold steps to help assure that our ocean resources, which have been so important to Massachusetts's rich history and which are held in trust for the benefit of the public, will continue to be part of our state's healthy, productive economy and environment in the future, as well.

SUMMARY OF TASK FORCE RECOMMENDATIONS
(THIS SUMMARY WAS EXCERPTED FROM THE REPORT)

Governance Recommendation #1: Comprehensive Ocean Resources Management Act

Recommendation

The Ocean Management Task Force recommends that the Secretary of Environmental Affairs develop legislation for a new, comprehensive Ocean Resource Management Act, whose centerpiece would be the creation of new Ocean Resource Management Plans that set forth management objectives and strategies for various discrete ocean planning areas and activities within the state waters of the Commonwealth.

The Act that we envision would retain and strengthen existing environmental protections associated with the ocean as a public trust resource while streamlining the array of existing statutes governing the use and protection of the Commonwealth's oceans. State laws and regulations that would likely be affected under the Act to improve coordination and strengthen resource protection include the Chapter 91 program at the Department of Environmental Protection (DEP), the program to implement the Ocean Sanctuaries Act at the Department of Conservation and Recreation (DCR), and the state's Coastal Zone Management (CZM) program. In addition, under the new legislation that we are recommending, the Division of Marine Fisheries (DMF) would be involved (along with other agencies) in the development of comprehensive ocean management plans and would retain jurisdiction of day-to-day fisheries management activities.

If an Ocean Resource Management Act were adopted, it would supercede several of the policy-related recommendations that appear later in this report that are designed to improve the existing mechanisms for managing the state's ocean resources in the absence of a new law.

Governance Recommendation #2: Ocean Management Coordination

Recommendation

Massachusetts should pursue ecosystem management of offshore waters through federal, regional, and state coordination and cooperation. The Task Force recommends that the Commonwealth:

1. develop cooperative ocean management plans with federal agencies for offshore waters, for example in portions of the Gulf of Maine or Nantucket Sound;

2. review and revise the state's enforceable coastal policies, based on the passage of the proposed Comprehensive Ocean Resources Management Act or other state legislation, existing statutes, and formal approval by the National Oceanic and Atmospheric Administration (NOAA);

3. continue to apply enforceable coastal policies through federal consistency to activities in state waters, coastal watersheds, and adjacent federal waters;

4. expand cooperative frameworks for project review, such as the U.S. Army Corps of Engineers' Joint Processing meetings;

5. support regional and international ocean management councils, such as the Gulf of Maine Council on the Marine Environment; and

6. develop and/or expand existing cooperative agreements with adjacent states.

Governance Recommendation #3: Climate Change Plans

Recommendation

Given the important interactions between global climate change and the conditions of our ocean resources, the Task Force recommends that the state include in its Climate Change Action Plan various elements relating to effects of climate change on our coasts and oceans, measures to mitigate effects on such things as coastal flooding and sea level rise, and policies to reduce greenhouse gas emissions. The Task Force supports the state's efforts in this regard and recommends the collection of information about trends relating to climate change impacts in Massachusetts (e.g., sea level rise, ocean and coastal storm frequency, ocean salinity, inventories of certain species within state waters, coastal flooding, and inventory and location of wind and tidal resources). Furthermore, any Ocean Resource Management Plans developed under new statutory authority (described in Governance Recommendation #1) should be developed in coordination with and in consideration of the state's Climate Change Action Plan. The Task Force further supports policies that decrease the Commonwealth's reliance on energy resources that emit greenhouse gasses.

Governance Recommendation #4: Ocean Sanctuaries Act Revisions

Recommendation

The regulations implementing the Ocean Sanctuaries Act (OSA) (302 CMR 5.00) should be updated unless or until a new Ocean Resource Management Act is enacted and implemented - at which time, the more comprehensive Ocean Resource Management Act could be written specifically to replace the OSA, since the purposes of a new Ocean Resources Management Act as we envision it would encompass those of the original OSA. The OSA regulations should be updated to clarify for the regulated community, the public, and the agencies the range of permitted and prohibited activities and the environmental performance standards that guide project review in Ocean Sanctuaries. We also recommend that the Massachusetts Board of Underwater Archaeological Resources (BUAR), DEP, DCR, DMF, Energy Facilities Siting Board (EFSB), and the Massachusetts Environmental Policy Act (MEPA) office develop a Memorandum of Understanding (MOU) governing protocols for interagency coordination on project reviews involving projects in Ocean Sanctuary areas.

Management Tools Recommendation #1: Fee Structures

Recommendation

Current Chapter 91 program fees—such as “tidewater displacement” and “tidelands occupation” fees—should be examined and adjusted as appropriate (i.e., increased or decreased). This recommendation applies only to such fees for proposed structures and non-fishing activities in state offshore waters, consistent with the Task Force scope of work based on its charge from the Secretary, under which we limited our consideration of issues to those relating to the ocean (as opposed to on-shore areas). In the event a separate fee structure is deemed appropriate for these offshore waters, the geographic area subject to any adjusted fees should be defined and mapped. This change should occur even if a new Ocean Resource Management Act is not enacted and implemented, and should be dovetailed with that Act's implementation if it is. Out of respect for the public trust nature of the state's ocean resources, we recommend that consideration be given to defining a rate schedule for occupation fees based on valuation concepts more typical of submerged lands leasing in other states,

as an alternative to the concept of simple "rental." At the same time, the revised fee structure and levels of fees should not serve to discourage preferred water-dependent uses and other activities that significantly advance the ocean management and other policy goals of the Commonwealth. We assume fees will be levied only on projects that otherwise comply with all applicable standards for approval.

We strongly recommend that, as part of this overall ocean resource management initiative, the Legislature establish a dedicated account where revenues generated from all Chapter 91 program fees can be retained to help defray Chapter 91 program administrative costs and to advance coastal and ocean management objectives, including but not limited to: increasing public access to the ocean; maintaining coastal open spaces and port infrastructure; conducting scientific research, monitoring, and data collection; enforcing compliance with ocean-related regulatory requirements; and other ocean-related policy and planning activities (such as developing, implementing and enforcing Ocean Resource Management plans, if the Ocean Resource Management Act is adopted along the lines proposed in Governance Recommendation #1).

Management Tools Recommendation #2: Marine Protected Areas

Recommendation

The Secretary of Environmental Affairs should convene a working group, with the express purpose of developing recommendations to the Secretary regarding a formal process, criteria and information standards for designating Marine Protected Areas (MPAs) in the state's ocean. For the purpose of this working group's assignment, MPAs could include areas for the protection of special, sensitive, and/or unique estuarine and marine habitat and/or life (such as marine mammals, birds, reptiles, soft corals, and other bottom dwelling plants and animals), physical or submerged cultural resources, the protection of important fisheries and fishing activities from other uses, and/or the protection and study of marine biodiversity and ecosystems. The working group should consider ways to ensure a clear and inclusive public process, with appropriate role(s) for key state agencies (e.g., DMF and CZM), in coordination with federal agencies and in consideration of other existing use restrictions. The working group should also address management planning, monitoring and research requirements, and enforcement measures to ensure that the objectives of their designation are being accomplished. The working group should also consider whether legislation is needed to accomplish the recommended process for designation of MPAs, particularly in conjunction with the enactment of a new comprehensive ocean resources management act. (The Ocean Management Task Force considered this MPA issue in some detail, but were unable to reach consensus on the matter within the time frame for presenting this entire package of recommendations to the Secretary.)

Management Tools Recommendation #3: Coordination of Mitigation

Recommendation

In their reviews of proposals to construct and/or carry out certain regulated activities within the state's ocean resources, the state permitting agencies should continue to prioritize avoidance and minimization of environmental impacts prior to development of mitigation for impacts. Nonetheless, in some situations, unavoidable impacts will occur as a result of proposed projects. With or without a new Ocean Resource Management Act, the Commonwealth should seek to enhance the role of the EOEA Secretary in development of environmental mitigation, and enhance the coordination among permitting and resource management agencies with respect to development of mitigation for unavoidable environmental impacts. The Commonwealth should use its existing authority under MEPA to strengthen coordination of the activities of state permitting and resource management agencies.

The Commonwealth should use MEPA (particularly the Section 61 process) to clarify distinctions between compensation to the Commonwealth (as trustee of the public trust) for occupation or use of public trust resources, and mitigation for environmental impacts associated with such use or occupation. The Commonwealth should ensure that the MEPA process is used to fully engage all permitting and resource management agencies on questions of mitigation from the earliest possible stages of the environmental review process, and that this enhanced coordination is reflected in any Proposed Section 61 Findings presented in Environmental Impact Reports (EIRs). This enhanced coordination is especially important for large infrastructure projects that involve multiple agencies and raise important policy issues regarding use of public trust resources. However, such enhanced coordination could benefit the permitting of smaller projects as well, even those that do not require EIRs under MEPA.

The Commonwealth should develop a priority list of marine restoration and remediation projects. The Commonwealth should consider implementation of projects on this list as potentially appropriate mitigation in situations where a project may have impacts that are difficult to otherwise mitigate, provided that the restoration project is reasonably related to the environmental impact in need of mitigation.

Management Tools Recommendation #4: Enforcement

Recommendation

Enforcement of Coastal laws and regulations should be a high priority of the Commonwealth. EOEA should ensure that sufficient enforcement personnel are provided to resource management and law enforcment agencies. Where appropriate, the Commonwealth should require implementation of supplemental environmental projects in lieu of monetary penalties assessed for environmental violations. EOEA and its agencies should create a priority list of marine restoration and remediation projects that could be implemented through compliance and enforcement violations.

Management Tools Recommendation #5: Visual, Cultural, and Aesthetic Impacts

Recommendation

Those Commonwealth agencies with potential jurisdiction over visual impacts of projects in state waters (specifically, the MEPA Office, DEP, the Energy Facilities Siting Board, and the Massachusetts Historical Commission) should develop and implement common methodologies and standards for the analysis of visual, cultural, and aesthetic impacts of proposed projects in state waters. Where possible, the agencies should develop common standards and criteria for mitigation of said impacts. The methodologies and standards should ensure that the visual, cultural, and aesthetic impacts of projects in state waters are fully understood and that a uniform set of methods and standards exists for presentation of data on visual, cultural, and aesthetic impacts. Such agency coordination should occur whether or not the proposed Comprehensive Ocean Resource Management Act (CORMA) is enacted and implemented. If this Act is adopted and implemented, the analysis of visual, cultural, and aesthetic impacts should be a consideration in development of Ocean Resource Management Plans.

Management Tools Recommendation #6: Use Characterization

Recommendation

To support fully informed and inclusive decision-making, ocean management planning should be supported by the development and maintenance of inventories of the uses and resources of the state's marine waters. Such inventories should be kept up-to-date to indicate not only existing uses of the state's oceans, but also emerging trends in new or changing types and patterns of use. This data should be GIS-based and organized on maps and databases to illustrate uses and resources on the seafloor, in the water column, and/or at the ocean surface, as well as uses in the airspace over these areas, and when activities (human and natural) occur in time. Additionally, to the extent feasible, they should include upstream and coastal areas that affect the ocean resources. Such inventories would be useful for ocean resource management, even in the absence of more comprehensive ocean resource planning authorized by a new state statute.

To support baseline use characterizations and resource management decisions that rely upon these use characterizations, baseline mapping for all state waters should be organized around themes useful for ocean resource management, with the possibility of reliance on the following main geographic and socio-economic themes:

- point locations of infrastructure located in ocean resources (physical structures or jurisdictional lines);
- patterns of industrial, commercial, and recreational transit over the surface;
- natural macro-features, including bathymetry, surficial geology, habitat, circulation, wind, and tidal currents;
- location and seasonal distribution of fisheries and fisheries resources, as well as other marine flora and fauna;
- location of other natural resources, such as wind or tidal areas, and areas of tidal upwelling;
- socio-economic trends, such as commercial, industrial, recreational, cultural, military, homeland security, and others; and
- utilization types and trends, such as extractive, transient, stationary, resource-dependent, and others.

Mapping should clearly represent the ubiquity of recreational and commercial boating, while identifying areas where these uses are geographically and/or seasonally concentrated. Mapping should also clearly represent the relationship between boating and transient fish resources. Decisions regarding use characterizations must be coordinated closely with decisions regarding data acquisition and management.

Scientific Understanding Recommendation #1: Marine and Ocean Resource Trends Advisory Group

Recommendation

An advisory group of state, federal, academic and other marine and fishery scientists and other experts should be appointed to evaluate and estimate baseline marine species population levels, habitat conditions, and contaminant levels to evaluate changes in ocean resources through time, identify emerging threats to ocean resources, and determine appropriate management goals. Conditions relating to the effects of global climate change, including sea-level rise and salinity of the ocean, could be included in these data collection efforts. The group should compile historic data and periodically study trends in these resources relative to the estimated historic conditions to assess improvements or degradation in the character of the resources.

The goal of this recommendation is not to set conservation or restoration goals to achieve minimally disturbed environmental conditions, but rather to fully leverage existing historic data to contribute to our understanding of estuarine and marine ecosystems, thereby leading to improved resource management. The estimation of minimally-disturbed population levels and habitat conditions can also assist in the assessment of cumulative impacts and contribute to the recommended comprehensive ocean resources monitoring and research plan. This advisory group should advise state officials responsible for stewardship and management of the state's ocean resources.

Scientific Understanding Recommendation #2: Ocean Monitoring and Research

Recommendation

As a basis for sound management of ocean resources - with or without new state authorities to develop comprehensive ocean resource management plans - a comprehensive ocean resources monitoring and research plan should be developed. This monitoring and research plan should encompass living and non-living estuarine and marine resources, as well as studies of the economic and other uses of these resources. The plan could serve as an important "roadmap" for work to be carried out by state resource agencies and others (e.g., academic institutions, permit applicants, public agencies), and should be periodically reviewed and adjusted to reflect improved understanding of resources and their patterns of use, integrate new management approaches and incorporate innovative survey techniques. The plan should provide guidelines on standardized protocols for conducting surveys to enhance data consistency.

The monitoring and research plan should be ecologically driven and cover both environmental features of the ocean (living marine resources, such as commercial, recreational and non-target species; benthic communities; invasive species; estuarine and marine habitat; water and sediment quality; and physical oceanographic, wind, and weather patterns), as well as social and economic uses and characteristics of these ocean resources (including uses of the water column, the lands under the water, and the water sheet). The plan should lay out a complete scope to evaluate cumulative impacts from activities such as coastal alteration projects, fisheries, and implications of resource management approaches (e.g., fishery and watershed planning), while distinguishing changes due to natural processes.

National and regional efforts to develop monitoring and research plans have recently garnered support, and Massachusetts is an active participant. One such effort is the Gulf of Maine Ocean Observing System (GoMOOS) with its array of oceanographic buoys collecting realtime data in the Gulf of Maine, including in Massachusetts Bay. These larger efforts should guide specific monitoring and research needed to improve the understanding and management of the Commonwealth's ocean resources. The comprehensive plan for Massachusetts should be developed by Massachusetts resource agencies, but rely on an integrated approach that includes municipalities, neighboring states, federal agencies, collaborative efforts between fishermen and government agencies, and provide flexibility for innovative approaches and the identification of research needs.

Scientific Understanding Recommendation #3: Seafloor Mapping

Recommendation

In support of comprehensive management and monitoring of ocean resources, the Commonwealth should acquire high-resolution seafloor habitat maps. Existing and emerging technology, such as aerial photography and multibeam sonar, collects spatially explicit information on vegetation characteristics, topography, and surficial geology of the seafloor and provides the foundation for seafloor habitat mapping. Habitat is a term that encompasses physical, chemical, and biological attributes, and the creation of seafloor habitat maps, showing the distribution and abundance of seafloor habitats, requires the collection and interpretation of a variety of environmental data to delineate and describe characteristics of the seafloor environment. Seafloor mapping should be done in coordination with the Natural Heritage Program's terrestrial Biomapping Project and the Gulf of Maine Data Partnership Program, which is facilitating data sharing among regional groups.

Scientific Understanding Recommendation #4: Standardized Protocols for Data Collection

Recommendation

As a corollary to our recommendations relating to Ocean Monitoring and Research and the Dissemination of Ocean Resource Data, we also recommend that when state permits require that environmental monitoring be carried out by the project applicant as part of publicly permitted activities, such monitoring should use more standardized protocols for data collection. The standardized monitoring protocols should be designed to aid managers in assessing environmental suitability and impacts of proposed and permitted activities and gain understanding of individual and cumulative impact of projects and uses. These standards should be flexible to allow project proponents achieve specific goals and evaluate effectiveness of new technologies designed to assess resources and, wherever possible, be consistent with federal data standards.

Outreach Recommendation #1: Ocean Literacy and Stewardship

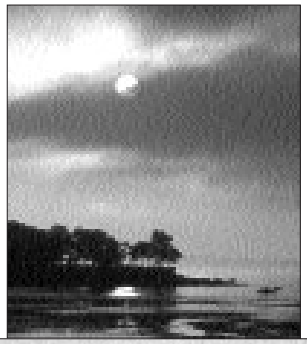
Recommendation

The Task Force recommends that the Secretary make a formal commitment to developing a new ocean literacy and stewardship ethic among all citizens of Massachusetts. The initiative should target a multigenerational audience, and include the private and public sectors, academic institutions, politicians, advocates, the media, and the general public. It should include a K-12 Ocean Education project, as well as a broader public education strategy.

Outreach Recommendation #2: Dissemination of Ocean Resource Data

Recommendation

We recommend increased public dissemination of data collected on the Commonwealth's resources, whether part of today's existing permitting and resource management programs or as part of a new, more comprehensive ocean resource management framework, as we have proposed in Governance Recommendation #1. Such information might include: an index of all state-funded ocean resource and use data; data collected in support of permit applications or as part of permit requirements; and data collected with state-issued scientific permits. Such data should be made available to interested parties for a nominal fee, accompanied by documentation to set the context for their proper use. The index should include geographically referenced long-term and short-term data sets and project specific resource surveys, and have links to the actual data and reports. To the extent feasible, all data producers should be responsible for making their data available to the public according to protocols established by the state, and via web sites, web-mapping tools, or through existing publicly available databases (such as MassGIS). Data providers should be responsible for assuring that any data they provide is quality assured and represents sound science.



INTRODUCTION

Background

The ocean waters that surround the Commonwealth of Massachusetts support a large human population, a growing marine economy, and a diverse marine resource base. Given the geography of our state, 1500 miles of shoreline, the dense population, and past and present marine industries, it is not surprising that the management of our ocean waters is a priority.

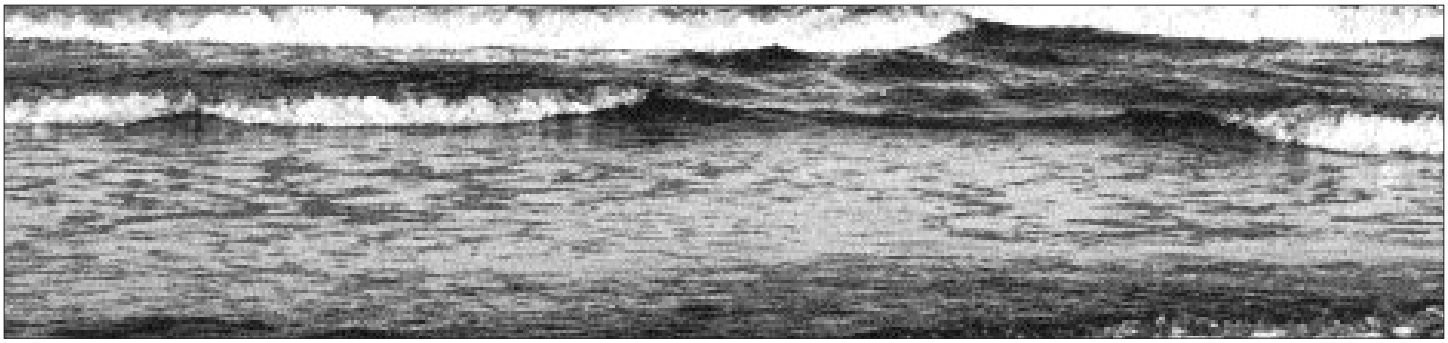
Coastal and ocean waters have played a significant role in the history of Massachusetts, for fishing, shipbuilding, trade, recreation, and scientific research, among other things. These multiple uses of the ocean are well known and appreciated as part of the fabric of what makes our state so special. Appropriately, the state's ocean is subject to a high degree of legal protection under what is known as the Public Trust Doctrine. As discussed more fully in the Technical Report accompanying this Task Force Report, this doctrine provides that all Massachusetts' tidewaters, the submerged lands beneath them (i.e., seaward of the low tide line), and the living resources inhabiting such waters and lands (e.g., fish, other marine animals, aquatic plants) are held by the state in trust for the benefit of all the people. As a general rule, the public has broad rights under the trust to use and enjoy these ocean resources for any lawful purpose, including but not limited to fishing, navigation, and recreation, subject to certain limitations established in statutory and case law. The Commonwealth has the responsibility to effectively manage all trust resources it owns on behalf of the public, a process that requires a careful balancing of conservation and beneficial use, within parameters set by the legislature and the courts.

Efforts to protect and manage our ocean resources are not new and began with the need to regulate fishing activities and designate shipping lanes. In the twentieth century, mooring fields, special use areas, pollution reduction and ocean clean-up activities, and other types of ocean management approaches became more common, as local, state, and federal government agencies sought to manage ever-increasing fishing, development, environmental and navigational demands on the oceans of the Commonwealth. Until recently, relatively informal approaches to managing the state's ocean resources have been the norm, in response to changing needs. Advances in science and technology, increased dependence on fossil fuels, and limited undeveloped land have brought a host of changes to Massachusetts waters in recent years. The following chart provides some further information on a subset of ocean projects that have been proposed over the past few years that indicates the changing nature of the projects.

Table 1

Proposed Infrastructure and Other Projects in or near Massachusetts' Oceans

Project (Proponent)	Location	Primary Project Purpose	Status
Hubline Gas Pipeline (Maritimes and Northeast)	Traversing Massachusetts Bay (from Beverly to Weymouth)	Expansion of the natural gas delivery system within Eastern Massachusetts, to help transport natural gas from sources in Eastern Canada to consumers in New England.	Approved and constructed; in operation.
Fiber Optic Cables (various project owners for different projects)	Multiple corridors and routes in Boston Harbor and Massachusetts Bay	Telecommunications infrastructure for Eastern Massachusetts.	Permitted and constructed; in operation.
Offshore Sand Mining	9 miles offshore (within bay closure line) from Hull	Extraction of sand from ocean floor for beach nourishment.	Department of Conservation and Recreation is preparing a Draft EIR
Nantucket Sound Wind Farm (Cape Wind)	Horseshoe Shoals, Nantucket Sound (located in federal waters, except for the power cable to interconnect the wind farm to the on-shore electric grid)	Construction and operation of wind generation facilities in off-shore waters with plentiful wind resources.	U.S. Army Corps of Engineers and the Massachusetts Environmental Policy Act Office are preparing a Draft Environmental Impact Statement/Report to be released in the summer of 2004. CZM will review project for consistency with state coastal policies
Off-shore Wind Farms (Winergy Wind Farms)	Nantucket Shoals and Davis Bank (located in federal waters); Falmouth, Truro and Gloucester in state waters	Construction and operation of wind generation facilities in off-shore waters with plentiful wind resources.	Proposals have been withdrawn.
Hull Light Wind Turbine	Hardings Ledge, Hull	Construction and operation of wind generation facilities in off-shore waters with plentiful wind resources.	Preapplication Phase



Many of these projects are important to Massachusetts, for one reason or another, and many have received approvals from state and local agencies. They reflect important, changing features of our complex economy, and represent the kinds of infrastructure proposals that we expect to see in the future, as well.

With the recent growth in these types of offshore development, together with a variety of other ocean-use technologies known to be on the drawing boards, the "first come, first serve" approach that characterized ocean use in the twentieth century has increased tensions and in some cases created conflicts among these activities and other, more traditional types of ocean uses and resource protection goals. For example, the Hubline project listed above gave rise to violations to "time-of-year" fishery restrictions, and the Hull Wind Turbine may pose conflicts with the lobster industry. Further, the proposed sand and gravel mining project has raised questions about habitat and other ecosystem impacts that cannot be answered satisfactorily due to the absence of sufficient baseline data. These threats of environmental damage are particularly worrisome because Massachusetts has already experienced widespread impact to marine ecosystems and their dependent species from human uses including coastal wetland loss, eelgrass loss, invasive species proliferation, fish abundance declines, water quality degradation from point and non-point pollution sources, periodic oil spills, etc.

The changing nature and increase in uses of ocean areas have raised numerous legal, technical, policy, and governance issues among local, state, and federal agencies, as well as with the general public. Although state ocean waters, generally extending to three miles offshore, are owned by the state, managed in part by municipalities, and held in trust for the public, historically little state or local planning has taken place, so that the public regulatory processes for reviewing proposals has tended to default to a reactive process. Public decisions about whether to allow certain development activities often occur on a piecemeal basis, typically based on incomplete information and done in reaction to private project proposals as opposed to through a process that considers in advance the trade-offs among potential uses and the various public goals for ocean resource management. Traditional ocean users often feel threatened by potential new uses of this common area, and potential new users sometimes feel frustrated because they feel just as strongly about their rights to use the resource, especially in the absence of any advance notice that such developments are prohibited.

Moreover, regulatory agencies often must operate within outdated or vague policy frameworks in which to determine what uses are appropriate in specific locations. For example, state regulations generally exclude non-water-dependent development from open waters, but water-dependent projects are eligible for approval without further differentiation on the basis of type, size, location, environmental impacts, or other relevant parameters; and even prohibited non-water-dependent projects can seek a variance if necessary to accommodate an "overriding municipal, regional, state, or federal interest." In certain areas designated as Ocean Sanctuaries, the bar for allowable uses is set a bit higher, in that a (very) short list of activities is categorically prohibited by the Ocean Sanctuaries Act. Beyond this, however, virtually everything is allowable subject to a demonstration of "public convenience and necessity" - a test that has yet to be defined with respect to projects proposed for the oceans in anything other than vague and tautological terms and, as a consequence, has seldom operated as an effective use-screening device.

We believe that Massachusetts' ocean resources are too valuable and important for their fate to be left to such a reactive and fragmented policy approach. Massachusetts should reexamine its public trust responsibilities for the ocean. The assets of any trust - whether a land trust, or natural resource trust, or financial trust, or a public ocean trust as is here the case - must be managed for the benefit of its beneficiaries, and sound management requires a thoughtful and strategic plan to guide the allocation and preservation of its capital. This concept is particularly true for the Commonwealth's oceans, whose resources are so important to our common heritage, livelihood, enjoyment and long-term sustainable prosperity. We believe that the health

and welfare of our state is tied to the status of our oceans, and we think that more careful planning for the use and protection of our ocean resources is critical to our long-term interests. Healthy oceans are critically important to our well-being in Massachusetts. Our oceans embody extraordinarily dynamic and complex environments that are influenced by a combination of natural forces and human activities. Human activities above, below, and on the ocean surface, as well as on land, can and should be managed to allow both use and protection of ocean resources. Principles for managing those activities should embody an ethic of ocean stewardship that protects the public trust, values biodiversity, respects the interdependence of ecosystems, fosters sustainable uses, makes use of the best available information, and encourages public participation in decision-making.

Subject Matter and Geographic Focus of Report

The Ocean Management Task Force focused its work on ocean areas within the Commonwealth's jurisdiction. Generally this area extends from the low water mark to the seaward marine boundary of the Commonwealth. Typically, the Commonwealth's marine boundary extends three nautical miles offshore, with the exception of areas within Massachusetts Bay, Cape Cod Bay, and Nantucket Sound that extend further due to bay closure lines established by the U.S. Supreme Court (Figure 1 on Page 22).

While our focus was on the Commonwealth's ocean areas, the Task Force was mindful of the significant consequences that land-based activities have on our oceans. Water quality issues are a high priority for both Massachusetts and federally-based management programs. From the point of view of the scope of our report, however, we opted not to directly address water quality issues since most pollution occurs on land or water bodies upstream of the oceans, and because there is an existing body of federal, state, and local water quality authorities addressing these issues. Similarly, the Task Force was cognizant of the potential impacts from activities occurring in federal waters, but recognizes the long-standing body of law and policy that generally prohibits state action over matters under federal jurisdiction. We have therefore limited our focus to policies that affect the state's oceans, as well as state actions to coordinate and otherwise interact with other jurisdictions. Additionally, the Task Force is aware that climatic changes resulting from human activities on the land affect the oceans in numerous ways, and we have addressed these issues from that perspective.

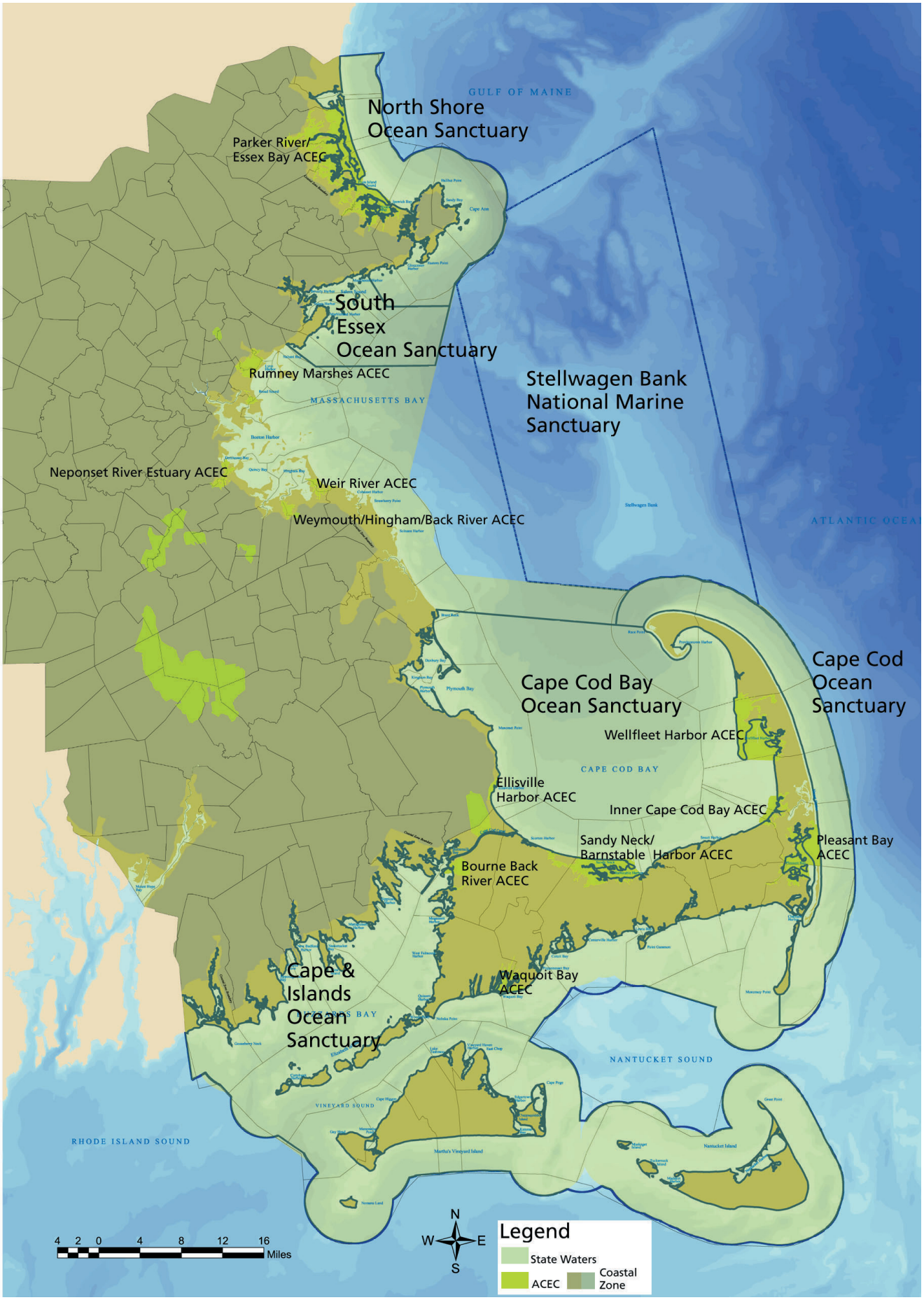
The Commonwealth shares much of its regulatory authority with the 78 cities and towns that border our 1500-mile coastline. The Massachusetts legislature enacted a law that extends the municipal boundaries of coastal communities three miles out to sea (19 Mass. General Laws Ch. 42 Section 1 (1998). Municipal authority does not, however, extend into areas where bay closure lines have extended the state boundary beyond three mile. Additionally, the Task Force recognizes the importance of cooperative planning and management of ocean areas with those federal agencies that are responsible for uses and resources in adjacent federal waters, as well as with our neighboring states of New Hampshire and Rhode Island.

Recognizing the multiple interactions between the state's ocean resources and the impacts of activities occurring on land, in the atmosphere, and in areas of federal jurisdiction, we agreed that our focus was ocean waters - an area where no previous broadly-based resource management or protection efforts have been undertaken on a statewide scale. This area became the centerpiece of our attention. But even so, we recognize that management of ocean resources should be done in concert with other relevant management entities and arenas to ensure that an appropriate ecosystem approach is pursued.

The Task Force's Recommendations in Context

The Task Force acknowledges the serious commitment and technical expertise of the environmental agencies charged with managing our public resources. Nothing in this report should give the impression that we believe that the staff of existing agencies is falling short in its responsibilities in any way. In fact, in our view, due to budget cuts and changing priorities, the agencies have been forced to take on increasing responsibilities and work loads with significantly reduced resources. The recommendations herein are made with the clear understanding that additional resources are required to fulfill the Commonwealth's public trust responsibilities in ways that assure the vitality of these assets for citizens today and in the future.

This report is therefore about planning for our oceans' future. It is not about stopping development or fishing. But it is about charting a course for protection and use of our oceans, rather than simply reacting to trends and developments. While our suggestion for enhanced planning is new, we recognize that Massachusetts has a long history of asserting its position about how offshore resources should be used - whether it be questioning and ultimately halting Georges Bank oil drilling in the 1980s, successfully gaining fishery management jurisdiction for Nantucket Sound, or championing the designation of the Stellwagen Bank National Marine Sanctuary adjacent to state waters in the early 1990s. We have gone to extraordinary lengths in recent years, for example, to reduce and mitigate the impacts on our oceans of our activities on land; the massive, multi-year effort to clean up Boston Harbor is perhaps the best example of this investment in the health of our ocean. Massachusetts has long been culturally, ecologically, and economically invested in the ocean, and our recommendations reflect and honor that tradition.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North Shore
Ocean Sanctuary
Parker River/
Essex Bay ACEC
South
Essex
Ocean Sanctuary
Rumney Marshes ACEC
MASSACHUSETTS BAY
Stellwagen Bank
National Marine
Sanctuary
Neponset River Estuary ACEC
Weir River ACEC
Weymouth/Hingham/Back River ACEC
ATLANTIC OCEAN
Cape Cod Bay
Ocean Sanctuary
Cape Cod
Ocean
Sanctuary
Wellfleet Harbor ACEC
CAPE COD BAY
Ellisville
Harbor ACEC
Inner Cape Cod Bay ACEC
Sandy Neck/
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Pleasant Bay
ACEC
Bourne Back
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Cape &
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