

February 13, 2004

Office of Coastal Zone Management
251 Causeway Street
Boston, MA 02114

Attention: Dr. Susan F. Tierney

To Whom It May Concern:

This letter is the formal response to the Draft Recommendations Document of the MA Ocean Management Task Force by the Massachusetts Striped Bass Association. As you know, representatives of the Massachusetts Striped Bass Association (MSBA) have been in attendance at every public meeting of the Task Force since its beginning. When we first heard about the Task Force, we were very optimistic. For years our members have been very concerned about the loss of access to our shores, the loss of estuaries due to development and non point source pollution, and now the impact of windmill farms. Indeed it has been clear to us for some time now that we, as a state, need to re-think the way we manage our coastal waters and we hoped that the Task Force would work in a positive way to that end.

Unfortunately, it became clear to us from the Task Force's very first meeting that its true agenda was and is, in large part, to formulate fisheries policy via bypassing the normal public involvement and scrutiny required with implementing fisheries regulations, specifically arbitrary closed no-fishing zones.

We say this because despite repeated assurances that the Task Force would not be getting involved in fisheries issues, it clearly has (see response to rec #9). Add to this the fact that the Task Force member who has been leading the charge for permanent and arbitrary "no-fishing zones", Priscilla Brooks, is a staff member of the Conservation Law Foundation (CLF) and it is public record that her former superior at CLF was Douglas Foy. When you then consider that Mr. Foy is now the head of the Commonwealth's Office of Environment (under which EOEA falls), we can only conclude that permanent fishing closures to all public users has been a forgone conclusion of the Task Force since its inception.

I assure you that this is not hyperbole or conjecture. If it were then why would Ms. Brooks and Jack Clarke (of Mass Audubon) show up at the state house on November 13th to testify against the Freedom to Fish Act (which requires closures be based on prudent science)? Why would they also testify to the MA Joint Committee on Natural Resources and Agriculture that they were members of the Governor's Ocean Management Task Force and that the committee should wait for the recommendations of the Task Force? The answer is clear. It is because they knew they could get verbiage into the Task Force's recommendations that would be in favor of arbitrary fishing closures – and they have.

This is truly a shame because the efforts of a couple ENGOs that are pushing an extreme anti-fishing agenda has lead to mistrust and has undermined the genuine efforts of other Task Force members who are sincerely working on legitimate goals.

Moving on, we also take exception to the fact that the general fishing public has been largely left out of the whole Task Force process. Granted, the Task Force meetings have been open to the public. However, there has been zero effort to inform the general public of the meetings that have lead to the Task Force's Draft Recommendations Document. We were very surprised to the reaction of other MA fishing clubs when we have brought the Task Force's activities to their attention. They had no clue that the Task Force was ever formed. In fact MSBA only found out about the Task force due to our national affiliation with the Recreational Fishing Alliance and its on going tracking of the national anti-fishing strategy of certain ENGOS.

In fact, the only effort we now see the Task Force making to get everyday citizens involved is with the recent "Outreach" Op-Ed campaign calling for the public to comment on recommendations that have already been formed. Moreover, we find that it is nearly impossible to comment on the recommendations that were posted on the Task Force's website. This is because during the public comment period, the Task Force met on December 19th in Gloucester to review another updated version of these recommendations. Now Recommendation #9 is really Recommendation #7, and several edits have been made to most if not all of the recommendations – ***yet these revised recommendations are not available to the general public via the website which means that the general public is making comment on one document while the Task force is working on another. Obviously, the public will not have the opportunity to comment on the new document in person or in print since it is not available during the public comment period***. We would love to comment on these revisions made at the December 19th meeting, as we feel they are significant. However, just as we witnessed at the Gloucester meeting, we think that it will only make the Task Force members even more confused. As a result, our comments on the Recommendations below pertain only to those that appear on the Task Force's website at the time of this writing, despite the fact that they appear to be already superseded.

In another example of how this Task Force has gone out of its way to stifle public involvement and access, we cannot express how disappointed and frustrated we are that we were repeatedly told we could not record these hearings. Why on earth would a Task Force, supposedly interested in being open to the public, object to having its public meetings and hearings recorded so that there would be an accurate account of what was really said? We have recently learned that it is in fact against the Laws of the Commonwealth for the Task Force to deny us the right to record these hearings and we intend to record future Task Force public meetings. ***(Please include the attached letter to Susan Snow-Cotter as part of our comments)***.

The following description of our organization should once again, be a reminder of the rich diversity of our members and the reason that we have been considered the largest organization representing the Commonwealth's Recreational Fishing Community for over fifty years.

Incorporated in 1950, MSBA has been representing the recreational salt-water fishing community for more than fifty-three years. Currently, our membership consists of over 600 direct paid members. These members are spread out amongst the Commonwealth and include at a minimum, 8 Bait & Tackle Shop Owners, over 25 Commercial Fishermen, over 15 independent Charter Boat Operators, 2 Marine Boat Dealers, and a great number of every day

fishermen and their families from all districts of the Commonwealth. This constituency is made up of fishers that fish anytime from one weekend a month all the way up to members like myself that strive to fish just about every day. Each and every one of these members counts on MSBA to represent them in the issues we are bringing up in this document. I urge you to give my words to their numbers, as most of them can not afford to take a day off work in order to fight for their Freedom to Fish.

We will present our comments in the order and format used in the Original Draft Recommendations Document itself.

Recommendation #1:

On the whole recommendation #1 appears to be nothing more than an attempt to circumvent the current fishery management and habitat protections currently in existence that mandate the proper stewardship of marine resources. Recommendation #1 does have merit in that there may be a need to address existing gaps in the commonwealth's authority to regulate some activities such as windmills and mining operations.

MSBA believes that there should be greater interagency cooperation regarding the permitting of various uses and some process and structure in necessary to achieve this outcome. What is not needed is another layer of bureaucracy and its related cost to achieve this goal.

Recommendation # 2:

Streamlining government is in fact a good thing. Streamlining, however, is often a tool used to make an end around a process that one user group has a problem with. We support the idea that State Agencies should not have overlapping duties and there is definitely room for improvement in this area. We do, however, want to caution that many of these agencies have specific duties and more importantly, specific perspectives that must be included in any re-formulated process. Placing one agency ahead of another could set up a system where one mindset always will prevail over another and that is just plain harmful and can not be productive with regard for the ultimate goal, a system where our waters are managed in a responsible and productive, yet timely manner.

Recommendation #3:

We do not have sufficient information to comment on the role of CZM policies and the integration of federal policies. We do believe that it is not realistic that federal law and policy will substantially change based on the political desires (if such desires such as the establishment of no-fishing zones were to come to fruition) of a single state.

Recommendation #4:

Given the fact that Recreational Fishing is by far, the largest generator of income with regard to the use of the Commonwealth's oceans, we must insist that the Division of Marine Fisheries be included in the group of agencies that this recommendation is attempting to round into one smooth process. Before any proposed activity is permitted, the effect on the act of Recreational and Commercial Fishing must be taken into account. We are particularly concerned with the effects of proposed or soon to be proposed Wind Farms, Sand Mines, and Pipelines to traditional and productive fishing areas. To leave the DMF

out of this process would be to leave out the effects on the largest user group, fishermen. This is not acceptable.

Recommendation #5:

We have continuously brought up the fact that one might read into this Recommendation that the Task Force is opening up the possibility of a fee for recreational fishing. It is part of the record that the Task Force is not suggesting a recreational fishing license in any way under any recommendation. Our comment on this matter is simple. We urge you to include under this Recommendation a sentence stating this position. Not doing so will prompt unnecessary public debate that will inevitably take the focus off the actual Recommendations.

This being said, when and only when a proposed project is permitted, the charges must include the proper amount of monies to study the impact of the project on fishing.

Recommendation #6:

Part of the Recreational experience that draws countless numbers of tourists to the Commonwealth's waters is visual. Though the effort to quantify and compare this value against that of other impacts will be difficult, we feel that this effort, no matter what the cost, is worth it. We feel that the reviews called for in this recommendation should consider the shoreline and open waters equally.

Recommendation #7:

We Support this Recommendation as written and wish to add that our organization's experience is with the MA DMF and our experience and observations show that the MA DMF has been operating in the manner described in this Recommendation for some time now.

Recommendation # 8:

We support this Recommendation as written.

Recommendation #9:

We begin our comment on Recommendation #9 with the following statement. Over one year before the Task Force was formed, there was an ongoing National and State by State effort by radical environmental organizations to establish arbitrary "no fishing zones" in both Federal and State waters. When the Task Force was formed, it became obvious to our organization that this would be the next place this debate would be held. We were concerned that the Task Force would be used by some ENGO's in order to establish these arbitrary no fishing zones. We were relieved, but questioned the statement made at the stakeholder meeting by Sue Tierney when she announced that the Task Force would not be getting into fisheries management issues. We questioned this statement because in theory, it is absolutely appropriate for the Task Force to have addressed fisheries management issues. We could not see how an overall management plan for the waters of the Commonwealth would be created without addressing this most important resource. At the time, our objections to the Task Force addressing fisheries management were based the lack of representation from the area of recreational fishing.

Upon reading the language of this recommendation, it became obvious that we were mislead and the Task Force did take up fisheries issues, though not at any of the public meetings. As expected, the few statements contained in the justification of recommendation #9 are inaccurate to say the least.

The language contained in this recommendation speaks to ***"areas that require particular protection of important fisheries and fishing activities."*** Isn't this getting involved in Fisheries Management? Of course it is. We make this statement so that the smoke in the air around this issue is clear. The Task Force has made recommendations that are aimed at fisheries management. To not be honest about the whole process from the beginning just confirms our position that a select few members decided the recommendations and there was no true investigation or debate on these issues. This is a major failure of the Task Force.

This being said, let's look at Recommendation #9.

The first statement in the recommendations says ***"the Commonwealth should ensure that the environmental agencies have the statutory authority to designate and protect areas that have special, sensitive and/or unique estuarine and marine habitat and life, with decisions to exercise that authority based on sound scientific information and clear procedural steps"***

We first want to see as a part of the recommendation that the MA DMF is at least one of the "Environmental Agencies" referred to in this statement. Beyond that, this statement starts with a presumption that the state does not already have the authority to take such actions as it relates to regulating fishing and the impact of fishing on the marine environment. This is simply not the case.

The choice of words here also appears to be intentionally ambiguous yet the goal appears to be clear.

The Task Force, if it chooses to retain this language needs to be perfectly clear with the public that the true intent of this language is to forward a recommendation to the legislature for a law that mandates the establishment of no-fishing zones rather than evaluating whether the establishment of no-fishing zones is truly necessary. The only authority that the state lacks currently is a clear process to assure that such zones are based on biological necessity and taking into account social and economic factors rather than who can generate enough political muscle to force such closures.

As most informed in the questions around closed areas are aware, there are many different definitions and uses for this desperate, but sometimes valuable tool. The recommendation speaks of protection, but protection from what is the question? MSBA is strongly against arbitrary closures of any kind. We have no problem with a closed area being used when there is a definable problem. We also are concerned about the scientific basis for determination of problems. We could go on with the debate, however this document would be over one hundred pages. Our input comes down to the following. Before the time comes to create a closure, definitions, guidelines and limitations must be in place. The Recreational Fishing Community has introduced a Bill into the Legislature of the Commonwealth known as the MA Freedom to Fish Act(MA-S.2043). This bill establishes criteria for closure of an area of the ocean for the purposes of protection only after more traditional and conventional measures have failed to correct a specific problem. The bill goes on to require ongoing monitoring of the problem until the problem is corrected, thus reopening the closed area. Amended wording approved by both recreational and commercial fishing leaders is soon to be introduced. At this time we want to formally request that the Task Force make the formal language of the Freedom to Fish Act (MA-S.2043) part of Recommendation #9. Adopting this language should both protect Recreational and Commercial fishers from radical closures and preserve the rights of the “Environmental Agencies” (including the DMF) to close areas for the purposes of protection.

Moving on we want to offer some comment on the “Justification for Recommendation #9. Let’s start with the opening sentence, which reads, “In certain circumstances, existing state authorities do not adequately protect marine species and habitats.”

As a whole, this is a truly outrageous statement. It appears that the authors of this section are resorting to demagoguery to further their desires. Existing state and federal law mandates the protection of marine species and habitats. The only gap that appears to exist is a clear and comprehensive process for permitting the extraction of non-renewable resources and the placement of structures and the impacts they may have on the marine environment.

The Task Force should limit its recommendations to greater funding for existing authorities to increase the collection of data and the continuing development of sound management and protection practices which includes taking into consideration the impact of mining activities and the placement of structures.

DATA TRENDS AND NEEDS

Recommendation #10:

The one thing that all perspectives represented on the Task Force seem to agree upon is that there is a need for more and better data. Though we respect the work of the Data Trends and Needs Working Group, we are confident that there already exists at least two plans to collect and analyze the vast amounts of data referred to in this recommendation. We suggest that a new plan is not needed. In fact, we are sure that these plans already exist within the Office of Coastal Zone Management and the Division of Marine Fisheries. Both severely undermanned and under funded Agencies need more money, not a new level of

bureaucracy screaming for another share of the little amount of money available. Rather than support this rewrite of the need for more and better data, we urge the Task force to put more time into figuring out how to fund the data collection and then let CZM & DMF do their jobs. With regard to data the story is always the same. We need money not plans - especially plans that cost money.

Recommendation #11:

We agree that there should be some sort of data collection location where all data generated by and accepted as valid by the Commonwealth be available for use by other state agencies or appropriate users. Some fees might even be generated by use of this service/idea.

Recommendation #12:

We are in total agreement with Recommendation #12. We are very concerned with the same old situation where “my study” backs my opinion and “your study” backs yours. The more standardized the protocols, the better chance managers have at making management decisions based on true or equal facts, rather than biased data. Our only suggestion is that the new standards be formed by an independent or unbiased and expert entity.

Recommendation #13:

An advisory group of marine and fishery scientists should be appointed to evaluate etc. etc. How many of us have been involved with a program that was supposed to be lead or advised by a panel of experts? In our experience this always leads to the same old problems. The appointing authority in every case makes appointments that inevitably must be political in nature. It is just the way of the world we live in. This Task Force has frequently expressed pride in thinking outside the box and making suggestions that were truly innovative. Right here and now, with this recommendation we have the opportunity to do just that. This panel could accomplish what the recommendation suggests, however only if the panel is made up having an equal amount of members from all factions that have an interest in the issues. We suggest that this recommendation be reworded to include strong language urging this unbiased or equal representation be a part of the recommendation. The Task Force may even want to rework the recommendation in order to have a set number of seats assigned to leaders qualified in evaluating Science representing various stakeholder groups. Obviously, we feel strongly that however this recommendation ends up being worded, it must include some sort of language that guarantees a panel of experts that can not be influenced by politics or a particular agenda.

Recommendation #14:

Recommendation #14 brings up an interesting thought. Though the Task Force has announced that it would not be getting into the area of fisheries management, as we have stated earlier recommendation #9 does just that. This being said, we feel that there is a whole dimension left out of recommendation #14. Nowhere in this recommendation do we read any wording about an inventory of fish stocks or mention of the inter-relationship between forage and predator species. How could any fishery related actions referred to in Recommendation #9 happen without an inventory of fish stocks. Furthermore, approval of any potential project or new use must consider the effect on fisheries. We see this as the job of the MA DMF, however as we all heard at the last Woods Hole meeting of the Task Force, DMF faces budgetary cutbacks each and every year. For this recommendation to be successful all aspects of the Commonwealth's ocean resources must be included in any inventory and the gathering of the data must be funded.

Recommendation #15:

MSBA is in favor of using the GIS format. Needless to say, any tool used to show use characteristics is only as good as the data entered. Our representatives attended the Stakeholders meeting held at the New England Aquarium. At that meeting it was explained that since fishing occurs in all MA waters to one degree or another, however, the working group was attempting to only identify areas that were especially concentrated with regard to fishing effort. Though we see the value in showing areas of concentrated fishing effort, we strongly disagree that areas of lesser concentration should be left out of the mapping process. Any attempt to discount or display less fishing effort than is truly occurring because some areas are more concentrated than others would be to not accurately show the use characteristics of the stakeholder group. We also noticed that, in our expert opinion, the areas shown at that meeting were not entirely accurate and need improvement. It is widely understood that Recreational Fishers are the largest user group. It is possible that the category, Recreational Fishing, may be too general and thus, too difficult to map out. The task force may want to look at categorizing recreational fishing effort in the same manner it categorizes commercial fishing effort that is, by species and areas of specific effort. Though this may seem to be an extreme amount of work, we suggest that the Commonwealth's Division of Marine fisheries has most of this information readily available. We also can guarantee that if asked, the Recreational community will at no cost to the Commonwealth offer up leaders that can do this work and give the accurate Data.

This concludes the comment from the Massachusetts Striped Bass Association.

Sincerely,

Mike Flaherty
Vice President
Massachusetts Striped Bass Association

Patrick Paquette
Government Affairs Liason
Massachusetts Striped Bass Association

Susan Snow-Cotter
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Boston, MA 02114
Fax: 617-626-1240

Ms. Cotter

When the Ocean Management Task Force (OMTF) met on September 5, 2003 in Essex, I asked your assistant, Sarah Joor, if it was OK if I recorded the meeting. She brought my request to your attention and you told me that it would not be appropriate to record this meeting. I then made the same request to Sarah via phone prior to the OMTF meeting held on October 17, 2003 at the New England Aquarium. Again, Sarah checked with you and again my request was denied.

Having recorded numerous fishery management meetings over the years I always accepted as fact that Massachusetts law allowed the public to record public meetings. I researched Massachusetts law to confirm what I believed to be true.

The Massachusetts Attorney General's open meeting guidelines state:

"Except when a meeting is held in executive session, any person in attendance may record the meeting with a tape recorder or any other method of sonic reproduction, so long as no active interference with the conduct of the meeting arises as a result of the recording. The Law also allows any person attending an open meeting of a municipal or district governmental body to videotape the meeting from one or more fixed locations as determined by the governmental body, so long as there is no active interference with the meeting. G.L. c. 39, '23B, paragraph eight."

I believe that your repeated refusals to allow me to record the meetings is in violation of Massachusetts General Law.

Considering this, I am writing to inform you that I will file a complaint against your office with the Attorney General. Furthermore, myself or representatives of the Massachusetts Striped Bass Association or the Recreational Fishing Alliance intend to record all future meetings of the Ocean Management Task Force.

Sincerely,

Michael S. Flaherty
Vice President
Massachusetts Striped Bass Association

C.C. via fax: Ellen Roy Herzfelder, Secretary / 617-626-1181