



Massachusetts Bays Program

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MEMORANDUM

TO: Ocean Management Task Force

FROM: Jan P. Smith, Executive Director

DATE: December 18, 2003

SUBJECT: Ocean Management Task Force Recommendations

On behalf of the Management Committee and the supporters and constituents of the Massachusetts Bays National Estuary Program (MBP), thank you for this opportunity to provide comments on the Ocean Management Task Force recommendations. Overall, we support the Draft Principles that have been developed, and offer the following as our suggestions to improve, what surely is, a challenging endeavor.

Ocean Resources Management Act

While the goal of developing and passing comprehensive legislation for a new Ocean Resources Management Act is admirable, we are concerned that the political and legislative obstacles to passage may prove to be considerable, resulting in substantial delay. Therefore, we support the Task Force's overall approach of providing alternative recommendations.

Existing legislative/regulatory framework

We are concerned that the Task Force's recommendations give the appearance that existing authorities have been dismissed as being inadequate. Having worked extensively with the Ocean Sanctuaries Act and Chapter 91 and their associated regulations, we believe that they can provide a good framework for the task force goals. We also believe that the Task Force should carefully consider the value of maintaining the diversity of agency involvement for the planning, adoption, and enforcement of ocean management plans. The diversity of interests in ocean resources demands that there be a diversity of agencies representing these interests. The Mass. Bays Program shares the Task Force's belief that there is a need for more discussions among the agencies and more leadership for decision-making, but we are concerned that a single authority would stifle meaningful dialogue. We encourage the Task Force to review the successful inter-agency dialogue and public/private partnerships established by the National Estuary Program and Massachusetts Watershed Initiative – both

models that provide a vibrant role for stakeholders and create a formal venue for collaboration.

In terms of other framework issues identified in the recommendations, we support the important role of a stakeholder advisory committee, but question whether an inter-secretariat council is necessary since, in our view, the Secretary for Environmental Affairs satisfactorily balances economic issues in decision-making.

Policy Issues

We encourage the Task Force to consider bolstering mechanisms currently available through permitting to place on the project proponent the burden of proof for measuring and mitigating use impacts. In term of fees, agencies must still have the capability for evaluating these proposals but it is reasonable to impose a fee structure for proposed uses to support agency review tasks. As for evaluating specific project impacts as well cumulative impacts, we would encourage the Task Force to review an EOEa proposal for the creation of a Science and Technology Center that would provide science advisory and review capability by drawing on the expertise in area universities, as well as to support the development of state expertise. The Science and Technology Center could be funded partly through legislative appropriations but should also be funded, as is done in other states, such as California, by annual user fees¹ assessed on those who use and benefit from the resources.

We believe that the CZM program policies offer a strong existing mechanism that can be used and enhanced for developing ocean resource policies. In addition, we believe that the Ocean Sanctuary Act provides important, but underutilized regulatory teeth, and rather than being superseded, the Ocean Sanctuary Act effort should be adequately staffed to ensure implementation of this carefully crafted legislation. We share the Task Force's conclusion that the Chapter 91 fees are absurdly low for the loss of public rights and encourage an increase that more accurately reflects true costs. We also share the Task Force's belief that improved coordination with federal agency efforts is essential; however, in cases where the federal agencies are lagging for whatever reason, the state should still move forward with policy development and implementation to the extent allowed by the law. We also agree that steps should be taken to make the public notification process more public friendly and more accessible and offer the Mass. Bays Program regional staff to assist in this goal.

In addition, land use issues and watershed impacts from the area draining into coastal waters have significant cumulative impacts to estuarine and ocean health. The Massachusetts Watershed Initiative, eliminated in budget cuts, had been making considerable strides in addressing watershed and land-based issues, and in effectively partnering with the state's two NEPs and CZM to address coastal issues. We believe that the state should evaluate methods to achieve the Initiative's goals and purpose of managing resources in the broad watershed context by institutionalizing inter-agency and public/private collaboration and partnership.

Data Trends

Several efforts led by state agencies and others with state agency participation have worked on the development of a comprehensive monitoring and research plan for coastal waters. Some of them are currently ongoing. For all of these efforts, commitment and support

¹ This mechanism for an annual use fee may require legislation.

throughout the Environmental Secretariat is a requirement for success. Current efforts, coordinated by the Massachusetts Bays Program and the Gulf of Maine Council and with the support of the US EPA, are underway to develop a comprehensive coordinated approach for the Gulf of Maine as a whole and for each of the individual entities (state or province). An upcoming symposium will work to achieve consensus among all the state and provinces in the Northeast US and Maritime Canada on a set of indicators for measuring coastal and ocean condition. If supported by key environmental managers, the outcome of this effort could help to start meeting the recommendations for a monitoring plan. A coordinated regional approach is essential since issues and impacts cross state boundaries. The MBP believes that a science and technology center, as previously conceived and proposed by EOEPA during the development of the Watershed Initiative, would take several great steps towards managing cumulative impacts and managing and disseminating data.

We urge the Task Force to explore requiring more and better environmental monitoring under existing statutes and regulations. Publicly permitted activities, particularly ocean discharges of treated waste, have the potential for considerable impacts. Other regions of the country, southern California, as an example, work with all of the municipal and regional dischargers to monitor and evaluate the condition of coastal and ocean waters. The dischargers contribute to the majority of the costs for this effort. In Massachusetts, environmental monitoring has really only been required for the Massachusetts Water Resources Authority (MWRA) in their ocean outfall discharge permit, resulting in MWRA's clear and well-managed commitment to this task. A commitment by the EPA and the state to add similar environmental monitoring requirements to other dischargers has not been fulfilled, despite the existing precedent. Monitoring for other activities that affect coastal and ocean waters should also be mandated. Fisheries management decisions appear to continue to be dominated by economic factors at the cost of resource protection. As long as decisions are based on short-term interests, it seems doubtful that we will see any substantial fisheries recovery in the near term.

Overall, we appreciate the efforts of the Task Force to develop ocean management principles and recommendations, and encourage the Task Force to make their recommendations as specific as possible to provide a better road map for long-term management. Many of the existing statutes and authorities and many state agency efforts already exist as the building blocks for accomplishing these essential tasks and simply need to be funded, fine-tuned, or updated to reflect current trends. Commitment and support at the highest levels of government are needed to make these necessary changes happen.

Thank you for the opportunity to comment. The Massachusetts Bays Program is ready and willing to work on this important effort in any way necessary.
