

Oceans Public Trust Initiative

A project of the Earth Island Institute Comments on the Ocean Management Task Force Recommendations

January 8, 2004

Last summer, Earth Island Institute approved the creation of a new initiative – the Oceans Public Trust Initiative (OPTI). The primary purpose of OPTI is to safeguard offshore natural resources that are held in the public trust through educational, media and political efforts. OPTI's position is that our oceans are public trust resources that should not be handed over to private developers – whether for wind, aquaculture, oil and gas, or other non-oil and gas uses – without an extensive public process that protects the public's interest in trust resources. After reviewing the recommendations recently released by the Massachusetts Ocean Management Task Force, OPTI is pleased to see that it has much in common with the Task Force.

In its Draft Principles, the Task Force states that "Ocean resources are public in nature and held in trust by the government for the use and enjoyment of its citizens, now and in the future. Management of ocean resources should maximize societal benefits while minimizing harm to the public's right to use and enjoy the ocean." This principle must guide the Commonwealth's hand in developing ocean management legislation. The concept of the public trust requires the Commonwealth to consider the recreational fisherman when it considers the commercial fishing industry, to consider the environmentalist when it considers the oil and gas developer and to consider the visitor who appreciates the beauty of our coastal resources when it considers the offshore energy developer. The public trust mandates the balancing of these interests so that one does not dominate to the exclusion of another.

OPTI believes that the only way public trust resources can be adequately protected is by enacting an overarching framework for coastal management as the Task Force has recommended in Recommendation 1. In fact, our coastal resources require more than that which one state can provide. As noted in the Pew Oceans Commission Report – "America's Living Oceans, Charting a Course for Sea Change" – we, as a nation, need to enact a National Ocean Policy Act" to protect, maintain, and restore the health, integrity, resilience, and productivity of our oceans." While a National Ocean Policy Act is unlikely under the current Administration, the Commonwealth can make an important first step by adopting the Task Force's first recommendation to introduce legislation that establishes a new, comprehensive ocean management act. Such a proactive approach will establish protections that are desperately needed to defend against the current onslaught of proposals being reviewed by the federal government and supported by the Administration. These proposals will irretrievably degrade our coastal ecosystem, and the Commonwealth must act now to protect against unauthorized and insufficiently regulated development. The best way to establish the necessary protections is by completely overhauling state ocean policy in one comprehensive ocean resource management act.

In adopting Recommendation 1, OPTI believes that the preferable organizational approach would be to create a new, appointed Board, chaired by the Secretary of Environmental Affairs, but that would include members appointed to represent various constituencies, with other public officials. It is important that non-traditional groups are represented when devising state policy for our coastal resources because of the wide variety of values that must be considered. For too long, management of coastal resources has been dictated by commercial interests that have depleted or degraded our coastal resources and values.

OPTI agrees with the Task Force that the high value and unique nature of ocean resources, as well as the public trust character of these resources, calls for the development of a comprehensive ocean resource management plan. Shoring up the current ad-hoc collection of single-sector oriented laws and regulations will not provide adequate protection.

In addition to developing a state coastal management plan, the Commonwealth must immediately revisit its coastal zone management policies. Nowhere is the inanity of the three-mile federal/state divide more evident than off the coast of Massachusetts where waters that are almost completely encircled by state land – i.e., Cape Cod, Martha's Vineyard and Nantucket – are "managed" by the federal government. Even Congress recognized the absurdity of divvying up this unique ecosystem between the federal government and the state when it granted authority to the Commonwealth over the fisheries of Nantucket Sound. The three-mile divide is an artificial one that does not account for the nature of ecosystems. The only way that the Commonwealth can protect its interests against federally-driven development is by strengthening its coastal zone management policies now. If the Bush Administration refuses to develop an ecology-based approach to ocean management, the Commonwealth can insist that it do so, at least in the waters directly affecting its interests, through the state coastal zone management policies that must be respected under the Coastal Zone Management Act.

The Task Force has additionally listed a number of recommendations, in lieu of a complete revamping of the state's ocean management laws. Many of these recommendations have tremendous merit, including clarifying the Massachusetts Ocean Sanctuaries Act, increasing fees for the use of valuable coastal resources, developing a system for measuring the aesthetic values of coastal regions, developing a coastal resource informational database, and increasing public participation opportunities in decisionmaking processes. However, these

recommendations, even if each were to be implemented, are not sufficient to meet the threats our coastal resources currently face. Only with a comprehensive ocean resource management act can the Commonwealth protect its coastlines from the federally-driven development currently threatening our shores.

Finally, OPTI notes the extraordinary threat to Massachusetts waters, as well as those of other states and the country, posed by the Bush Administration's willingness to turn section 10 of the Rivers and Harbors Act into a mechanism to allow for private exploitation of the oceans. The excuse for doing so are the numerous wind energy proposals, and nowhere is this more of a problem than Massachusetts where several proposals are pending including the huge Cape Wind project.

OPTI requests that the OMTF take a stand on this problem. It should call upon Massachusetts agencies to oppose the processing of these permits on all fronts. The many meritorious efforts the OMTF has proposed will be for naught if the Corps continues with these reviews. Massachusetts has the ability to bring pressure on the Corps to halt this action, and OPTI encourages such action at this time.

Thank you for considering these comments. Please let me know how OPTI can assist the OMTF in its important and precedent-setting work.

Cindy Lowry, Director
Oceans Public Trust Initiative
233 Water St., #1
Hallowell, ME 04347