

The Coalition for Buzzards Bay

To: Massachusetts Ocean Management Task Force

From: Mark Rasmussen, Executive Director

Date: February 13, 2004

Re: Ocean Management Task Force's Draft Principles and Preliminary
Recommendations

The Coalition for Buzzards Bay (the "Coalition") has reviewed the Ocean Management Task Force's Draft Principles and Preliminary Recommendations, and offers the following comments.

Background:

The Coalition is a non-profit membership organization dedicated to the restoration, protection, and sustainable use and enjoyment of Buzzards Bay and its watershed. We represent more than 2,400 individuals, families, organizations and businesses in southeastern Massachusetts who are interested in maintaining the health and ecological vitality of Buzzards Bay. Given its broad-based, holistic mission with respect to protecting and ensuring the sustainability of Buzzards Bay and its marine resources, our work allows us to particularly appreciate the comprehensive range of issues – legal, political and scientific – that exist today and pose challenges for effectively managing the Commonwealth's waters.

The Coalition is working to protect Buzzards Bay in the face of myriad current and proposed activities, including dredging and dredge disposal, transportation of oil and other hazardous materials, habitat loss, development of lands in the watershed that contribute nutrient pollution to the Bay, and wastewater discharges. Among its other objectives, the Coalition is dedicated to increasing energy from clean, renewable sources while protecting the unique ecosystem of Buzzards Bay. The immediate prospect of wind energy development in the Commonwealth and its offshore waters obviously bears on this goal.

Through all of this work, and especially in the face of recent proposals for activities in submerged Bay tidelands, the Coalition has come to appreciate the very real need for enhanced regulation of the Commonwealth's waters. It is against this backdrop that we have reviewed the Ocean Management Task Force Draft Principles and Preliminary Recommendations.

FRAMEWORK ISSUES: The Urgent Need for a Comprehensive Massachusetts Ocean Resource Management Act That Includes Ocean Zoning

The Coalition for Buzzards Bay is particularly troubled by the lack of siting requirements for offshore development, including but not limited to wind energy projects. We believe there are significant gaps in state and federal authority to permit offshore uses and lease ocean space, and that there is an immediate need for federal and state government to take public trust responsibilities for the ocean seriously.

We therefore support Task Force Recommendation No. 1, to create a comprehensive Massachusetts Ocean Resource Management Act, and agree that such an Act should include significant mechanisms for public participation, standards for allowable uses, and a system for collecting appropriate user fees. However, Recommendation No. 1 does not go far enough, and may result in a significant lost opportunity. We are troubled to see that, although the Task Force expressly considered ocean zoning as a “Framework” issue, there is no mention of zoning, per se, in Recommendation No. 1. We believe it is critical that any Ocean Resource Management Act include provisions to allow for comprehensive zoning of the Commonwealth’s waters, rather than merely providing for determinations of allowable uses and related regulations for yet-to-be-designated discreet areas of the Commonwealth’s waters. A holistic approach to zoning in the Act not only would improve efficiency and avoid duplicative analysis every time a plan is developed for a discreet designated area or particular project in any area not governed by a management plan, but also has the potential to provide for the very best comprehensive decision-making regarding the appropriate locations for particular activities. For example, in the case of offshore wind development, a comprehensive zoning scheme could delineate the best areas for wind turbine projects as well as those areas that are less acceptable or unacceptable based on the availability of sufficient winds, ecological sensitivity, marine vessel traffic, etc. Such a scheme could allow for better planning, greater efficiency when projects are actually proposed, more notice both to the public and to private development interests, and a greater degree of protection for the most sensitive resources.

The Task Force has heard much testimony on the issue of ocean zoning, including statements in favor as well as challenges based on highlighting particular problems with land-based zoning. We recognize that land-based zoning in the Commonwealth has not been fool-proof, especially in addressing sprawl development. But land-based zoning undoubtedly has helped to reduce the environmental impact of development in Massachusetts, with significant benefits gleaned even by simple concepts such as designating use districts that keep residential development from being intermixed with industrial development. One has only to look at areas without zoning to see how bleak, cluttered and confused our landscape might otherwise appear if we did not have such protections. Moreover, ocean zoning offers opportunities for comprehensive planning to a degree that is not possible with land-based zoning, since land zoning is handled on a distributed basis by municipalities rather than the state. And of course we can learn from the mistakes inherent in our land-based zoning to achieve a better model for our waters.

We therefore urge the Task Force to strengthen Recommendation No. 1 to call for a comprehensive zoning plan for the Commonwealth's waters.

We also believe that a comprehensive Ocean Resource Management Act should include (1) specific requirements for inter-agency collaboration so that issues such as beneficial re-use of dredge spoils can best be addressed; and (2) data collection and distribution that includes qualified data from non-governmental organizations. Each of these issues is discussed below.

POLICY ISSUES: Recommendation No. 7 and the Need for Improved Inter-Agency Coordination

Task Force Recommendation No. 7 calls for improved coordination between state agencies and federal, regional and local agencies with respect to ocean management. We cannot emphasize enough the importance of this objective, whether or not a comprehensive Ocean Resources Management Act is adopted. One has only to look at the issue of dredge spoil disposal to find a particularly compelling example of the need for inter-agency coordination on ocean resource management.

The most effective and environmentally beneficial way to meet disposal needs for clean dredge spoils is through beneficial re-use, i.e., meeting existing demands for use of sand/sediment through the use of sediment collected during the process of dredging. Beneficial re-use has been proven to be effective and feasible as a dredge-disposal option, and has significant ecological benefits over open water disposal. It makes little sense to smother and damage bottom habitat (e.g., by dumping in the open-water Buzzards Bay Disposal Site) when clean sand is in demand for use on land, including for landfill capping and beach replenishment. For example, the town of Marion is presently seeking to cap its municipal landfill. Meeting this need through the use of non-contaminated dredge spoils would thus provide multifaceted environmental benefits to Buzzards Bay: by being capped, the landfill can be more effectively contained (thus minimizing toxic leachates reaching the local environment); some necessary Bay dredging can be facilitated because there is an appropriate site available for beneficial reuse; and destructive open-water dumping or less-than-desirable under-water containment can be avoided. Landfill capping is but one means of beneficially re-using dredge spoils. Other alternatives include beach replenishment and restoration of lands impacted by gravel operations.

Unfortunately, one of the biggest apparent obstacles to the promotion of beneficial reuse is the lack of coordination between government agencies. For example, while the Massachusetts Office of Coastal Zone Management and the U.S. Army Corps of Engineers have primary responsibility for overseeing dredging projects, it is other agencies, such as the Massachusetts Department of Environmental Protection, that handle permitting required for such activities as landfill capping. Under the current governmental scheme (or lack thereof), there is no effective way to coordinate the timing of dredging projects so that they coincide with the timing of projects that could beneficially utilize the dredge spoils. The unfortunate result of this lack of coordination

is that many beneficial re-use opportunities are lost, and we are forced to accept the negative environmental impacts of disposing dredge spoils in our open waters, causing unnecessary harm to benthic organisms, spawning fish populations, etc. The Coalition therefore supports a well-planned system of intergovernmental agency coordination with respect to ocean resource management, especially with respect to dredging and dredge spoil disposal.

DATA TRENDS AND NEEDS: Recommendations No. 10-13 and the Importance of Including Qualified Data from Nongovernmental Agencies

The Coalition supports Task Force Recommendations No. 10 to 13 as they pertain to collecting, enhancing, managing and distributing ocean resource data. It is particularly critical that ocean resource planning be based on comprehensive, reliable data. However, we see no reference to including qualified data from non-governmental organizations like the Coalition, and we believe this omission should be corrected. There are many non-governmental organizations in the Commonwealth that engage in regular monitoring and data collection relating to the Commonwealth's ocean resources, and this body of data should not be ignored. The Coalition, for example, has maintained a water quality monitoring program for more than a decade, and has amassed a wealth of data regarding water quality in areas throughout Buzzards Bay. Our monitoring program is performed pursuant to a state-approved Quality Assurance Project Plan (QAPP) and in conjunction with a qualified laboratory. Such reliable data could and should be included to the extent the proposed data collection and management recommendations are implemented.

We thank you for this opportunity to comment on the Task Force's preliminary recommendations.