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Deerin Babb-Brott, Director
Massachusetts Office of Coastal Zone Management
Re: Draft Ocean Management Plan
251 Causeway Street, Suite 800
Boston, MA 02114

September 16, 2009

Dear Mr. Babb-Brott:

On behalf of the Association to Preserve Cape Cod (APCC), the region's leading environmental advocacy organization representing more than 5,000 Cape Cod families, I am pleased to submit comments on the draft Massachusetts Ocean Management Plan (MOMP).

APCC congratulates the Executive Office of Environmental Affairs and the many agencies, organizations and individuals whose committed and diligent efforts have resulted in this draft ocean management plan. For the first time, detailed information about our numerous ocean resources and the human uses of those resources has been compiled and mapped for the benefit of all. This accomplishment alone is worthy of great appreciation. APCC also recognizes that this significant body of work was undertaken and completed in a very short period of time.

APCC believes that the draft plan represents a very important step toward protecting our ocean resources. This testimony, comprising our initial comments on the draft plan, poses several questions or concerns that APCC hopes will be resolved in the final plan. These include:

1. how the maps and management options can be responsive to the need to restore resources and climate change;
2. whether the proposed management plan for the Multi-Use Area establishes a higher level of protection;
3. how plan implementation will use the compatibility assessment and the Ecological Valuation Index and address data gaps;
4. how decisions about the siting and scale of renewable energy facilities were determined; and
5. how the plan will be integrated with other regulatory jurisdictions.

Restoration of Resources and Climate Change

The first stated goal of the MOMP is to "Balance and protect the natural, social, cultural, historic, and economic interests of the marine ecosystem through integrated management." It is our understanding that the data used

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to create the maps of resources included in the plan are based on the current status of those resources. Yet, many of our valuable marine habitats have been degraded and no longer support important species. Loss of eelgrass and shellfish beds come readily to mind. It would seem wise to include the historic record, where available, of these resources in the MOMP.

This problem of lost resources raises the larger issue of how future maps will reflect future changes to the location and value of resources. For example, if additional eelgrass beds are lost from an area, will that area be removed from the eelgrass habitat map? Or, will the ocean plan include methods to restore that resource.

It is expected that climate change will alter the distribution of many species. As with the historic loss of resources, the MOMP will need to have the flexibility to address effects of climate change on species abundance and distribution.

Level of Protection for Special, Sensitive or Unique Resources in the Multi-Use Area

The MOMP states that a higher level of protection was established by modifying the MEPA standard “to avoid, minimize or mitigate damage to the environment” to “include a specific siting standard to “avoid” or demonstrate there is no practicable alternative...” APCC is very concerned that the above modification may well result in a lower level of protection. Instead of the recommendation that certain areas be avoided, the MOMP leaves open the potential for degradation of resources if it is determined that there is no practicable alternative.

How will the determination be made that there is no practicable alternative? Who will undertake the analysis? What is the definition of “practicable alternative?” Will there be a cost-benefit analysis?

Resource Protection through Plan Implementation

APCC has several questions concerning plan implementation as proposals undergo regulatory review. These range from how plan components (such as the compatibility assessment) should be used to how the siting and performance standards will be implemented, to how the inevitable lack of adequate data for some resources and uses will be addressed.

The MOMP document includes numerous statements that suggest the plan implementation will result in protection of critical areas by siting development in other areas. For example:

- Page v: “direct development away from high value resources and concentrations of water dependent uses;
- Page vi: a pipeline project “would be required to identify a route that does not impact” resources;
- Page 3-3: ”identify appropriate and inappropriate locations for specific activities and uses;
- Page 3-6: “minimize conflict with recreational fishing by development outside areas of concentrated recreational fishing activity.

The compatibility assessment overviewed in Chapter Three and described more fully in Appendix Two appear to verify the plan's intent to exclude development from certain areas. Appendix Two discusses the allowable uses under the Ocean Act and potential conflicts of those uses with resources that are already protected under existing law. The compatibility assessment introduced the terms "exclusions," "constraints," and "conditionally compatible with" to describe areas that should be avoided for particular uses (exclusions); areas that should be avoided or impacts minimized (constraints), and areas that are conditionally compatible with a particular use.

Further importance is given to the value of the compatibility assessment by the inclusion of Figure 3-1 in the Executive Summary and in Chapter Three. Figure 3-1 identifies the compatibility assessment as the connection between development of plan goals and strategies and development of the plan.

Yet, the results of the compatibility assessment were ultimately used only to exclude commercial scale wind energy projects from all but a very small portion of the planning area. The results were not used to exclude other uses allowable under the Ocean Act, despite the findings in Appendix Two.

Instead the MOMP purports to protect special, sensitive or unique (SSU) life or habitats through a blend of siting standards and performance standards. The siting standard to protect SSUs such as North Atlantic Right Whales, Roseate terns and other terns of Special Concern, eelgrass and intertidal flat habitat, is "avoid or demonstrate that there is no less damaging practicable alternative, or demonstrate that data do not accurately characterize the resource or use." As described earlier in this comment letter, the "practicable alternative" option raises a host of concerns about how well these critical resources will be protected under such a standard. The performance standard, to meet all applicable permits and avoid, minimize or mitigate impacts, also does not guarantee resource protection.

APCC believes that final MOMP should better utilize the results of the compatibility index, the Ecological Valuation Index, and the SSU maps to provide clear protection of these most valued resources. The Multi-Use Planning Area includes many areas that do not overlap SSU areas or commercial and recreational fishing areas. The final MOMP should include mechanisms that unambiguously direct development to those locations.

Development of the MOMP uncovered the existence of numerous gaps in our data concerning important natural resources and the potential impacts of specific uses. The final MOMP should both identify critical data gaps and discuss the kind of studies or surveys that will need to be undertaken to ensure that important resources for which we have little information are protected.

Siting and Scale of Renewable Energy Facilities

APCC has several questions pertaining to wind energy facilities in the planning area. The draft MOMP identifies two exclusive areas as suitable for commercial scale wind energy facilities, and the Multi-Use Area as suitable for community scale wind energy facilities. How was the decision made that an installation of ten turbines or fewer is community scale and that more than ten turbines is a commercial scale utility? Was this decision based on economic factors? If so, what were they? Was it made in conjunction with discussions with community leaders? Are community scale installations envisioned for

municipalities, private developers or both? In addition to the number of turbines, the size and height of individual turbines is also an important siting issue. Some turbine blades can reach a height of 500 feet. One of the “Oceans 15 Plan Principles” is to “Foster sustainable uses that capitalize on economic opportunity without significant detriment to the ecology or natural beauty of the ocean.” APCC also does not understand how the language in the plan concerning appropriate scale translates into useful guidance. The final MOMP should address all of these outstanding issues about size and scale.

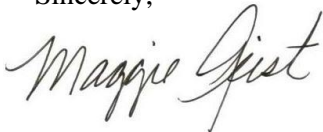
Integration with Local, Regional and Federal Jurisdictions.

The draft MOMP includes background information on pertinent regulations at different government levels. The final MOMP should include a discussion of how implementation of the MOMP will be integrated and coordinated with local, regional, and federal interests.

Our oceans are our most treasured resource, and it is our deepest responsibility to ensure their protection for future generation of all species. APCC believes that development of this draft plan has demonstrated that we have ample and robust data that we can use to implement a map-based management plan that will be truly protective of our resources.

In closing, APCC repeats its admiration and gratitude to all who worked so diligently on this most important and most challenging project. Thank you for the opportunity to comment and we look forward to issuance of the final plan.

Sincerely,

A handwritten signature in cursive script that reads "Maggie Geist". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Maggie Geist
Executive Director