

Cape Cod Bay Council
Provincetown Center for Coastal Studies



September 16, 2009

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

Dear Mr. Babb-Brott:

The Cape Cod Bay Council is pleased to provide its comments to the Executive Office of Energy and Environmental Affairs (EEA) on the draft Massachusetts Ocean Management Plan. The Cape Cod Bay Council (CCBC) is an advisory group to the Provincetown Center for Coastal Studies with representation from the fourteen towns around the Bay. It also includes representatives from federal and state agencies and nonprofits and, together, the CCBC focuses on regionally significant environmental and resource management issues.

The CCBC commends EEA for its tremendous effort in preparing the draft plan within such a compressed timeframe. The plan reflects interagency coordination, as well as collaboration among a variety of stakeholders. The CCBC supports EEA's efforts to develop a comprehensive ocean management plan and, while recognizing the time and area constraints placed on this effort by the Oceans Act of 2008, offer four main recommendations for the final plan. Additional comments on specific aspects of the plan are provided below in seven separate categories.

- 1) The core principles guiding the development and implementation of the ocean management plan are not clearly stated. Is it the Commonwealth's intent to a) maintain the status quo for current resources or b) restore and enhance resources? There are distinct approaches to address each and the draft plan does not include a thorough discussion of restoration and enhancement.
- 2) The final plan would be enhanced by providing more detail about the process of refining and implementing the plan:
 - Outline in parallel what data sets are sufficient for regulatory review and what data are needed
 - Outline the regulatory framework, identifying where there are existing or potential conflicts within the regulatory review process (federal, state, regional and local

jurisdictions) and how these might be resolved as the ocean management plan is implemented

- 3) Acknowledging the limitations of the available data and of the analyses of data used to prepare the resource figures and develop the compatibility assessment and ecological valuation index, the draft plan does not discuss how regulatory agencies and project proponents are to consider these limitations in reviewing a project, particularly in the first few years of implementation.
- 4) Coordination among jurisdictions, in particular with local governments, should be more fully developed in the final plan.

A. Data and analysis of data used to develop the plan

- The public needs to have confidence in the data and information used to develop the figures since they will be relied on in making decisions on whether to allow a project or not.
- This is a constructive effort to develop GIS mapping resources. EEA has developed a first-ever atlas of resources for a majority of the state's ocean waters that we hope will be continually refined and updated. CCBC noted that EEA analyzed data layers for wind areas to a greater degree than it appears was done for other uses and resources
- Quahaugs and sea clams are valuable shellfish resources in Cape Cod Bay. However, these species are not shown in Figure 2-6: Shellfish and Crustacean Resources (Volume I). Please explain their omission. CCBC is concerned because these figures will be used by project proponents as well as regulatory agencies in evaluating appropriate locations and determining if performance standards can be met.
- CCBC review of the discussion of the fisheries data utilized in developing the figures on fisheries areas, as well as in the development of the ecological valuation index, raises the question of whether the fisheries data used and presented is adequate to make appropriate decisions. For example were data on spawning and nursery areas used, especially the areas that are embedded in state fishery regulations?
- It is important to note that the data used to document marine mammals, particularly whales, is not comprehensive. Furthermore, the document correctly indicates that humpback, finback and right whales use Massachusetts Bay but neglects to mention other species of large whales, (e.g. minke whales) dolphins, porpoises and pinnipeds which are also inhabit the area. (Volume I, page 2-10)
- The draft report states: *A large portion of Cape Cod Bay is designated critical habitat for northern right whales, which typically inhabit the waters during winter and early spring, although individual whales may periodically stay on later in the year.* Given the acoustical data indicating right whales are found year-round off the coast of Massachusetts (www.listenforwhales.org), we recommend changing this to read: *A large portion of Cape Cod Bay is designated critical habitat for North Atlantic right whales, and are typically found in large numbers during the winter and spring, although right whales are known to inhabit the waters off Massachusetts year round.* (Volume I, page 2-12)

- Appendix 4 notes that fin and humpback whale data were obtained from the Right Whale Consortium and Manomet Bird Observatory Databases. While we do not dispute the accuracy of either source, we do wish to emphasize that neither database is comprehensive for the species and provide only incidental observations of fin whales during surveys dedicated to other purposes.
- With regard to the ecological valuation index (EVI) shown in Figures 3-2(a), (b) and (c) in Volume I it is unclear to CCBC whether and how one or more of these figures will be used. Is this EVI assessment a functional part of this draft of the ocean management plan?
- The EVI was developed for four species of marine mammals. However, as many as 17 species of mammals have been documented in Massachusetts Bay (<http://stellwagen.noaa.gov/about/faq.html#species>). Furthermore only three species (Humpback, Right Whale, and Finback) are included under marine mammals in Table 3-7 in Volume I.
- CCBC recommends that EEA provide a brief overview of EVI and how it has been used in developing draft plan
- CCBC recommends that EEA show the figures by regions. The ocean sanctuary boundaries seem to be the most appropriate regional delineation with one change: separate Buzzards Bay s from rest of the Cape and Islands Sanctuary area. These regional maps might encourage more sharing of local knowledge.

B. Management of uses and resources

- The performance standard of “*Avoid, or demonstrate that there is no less damaging practicable alternative, or demonstrate that data does not accurately characterize resource or use*” seems to imply additional layers of review; however the draft plan doesn’t provide sufficient detail on how the regulatory agencies will determine if a use should be prohibited.
- With the exception of the Cape Cod Ocean Sanctuary (within which a number of uses, activities and facilities are prohibited by the Ocean Sanctuaries Act), there are no resource sensitive areas identified as prohibited for certain uses. In the next iteration of the plan, CCBC encourages EEA to identify resource sensitive areas and uses that would be prohibited in these areas. The resource-based methodology to assess dock and pier impacts on Pleasant Bay may be a model for identifying resource sensitive areas
- There may be a useful distinction to be made between “necessity” and “convenience”, as required under the Ocean Sanctuaries Act, especially when considering conflicting values
- Is beach nourishment a key part of Massachusetts’ response to sea level rise?
- In general, offshore shellfish aquaculture is not as harmful, both in the short and long term, to the environment as other uses that are discussed in the draft plan, for example sand and gravel extraction.

C. Regulatory Implementation Process

While the tremendous effort of compiling data on and assessing the resources within the boundary of the planning area is evident in the draft plan, a similarly strong effort is not apparent in the implementation process section. The draft plan does not explain the process through which these resource areas will actually be managed.

There is no methodology in the draft plan to determine how an agency would review a project located in a resource-sensitive area and, as noted under B. in these comments, no methodology for first identifying resource-sensitive areas. While we recognize the need for flexibility in the plan, the CCBC also recognizes the need to clearly articulate how public resources will be protected, enhanced and/or restored.

D. Coordination of jurisdiction with local governments and among federal, state, regional and local governments

- We recommend inclusion of an additional strategy: “Coordinate designation of protection and use areas and measures with local governments” to Goal #1: Integrated management
- CCBC is very concerned about intergovernmental coordination in the implementation of the Ocean Management Plan:
 - A project that triggers an EIR will still have to obtain local permit approvals before state permitting. When would coordination with local government take place and, how would the goals and strategies of the ocean plan be considered by local regulatory boards?
 - What will the coordination mechanism be between this plan and what happens on the inland side of the inshore boundary in terms of resource use, impact and legal jurisdiction? The relationships with other areas of the ocean system, particularly the coastal region on the inshore side of the boundary of the ocean management planning area, must be included in the review process.
- Local governments are involved in decisions on licensing aquaculture sites and, while outside of their jurisdiction, what happens in adjacent federal waters is of interest. With the recent announcement that the National Oceanic and Atmospheric Administration plans to develop a comprehensive national policy for sustainable marine aquaculture, providing a framework for addressing aquaculture activity in federal waters, we think it is important to involve local governments in both the state and federal assessment and siting process.

E. Opportunities for Engagement at the Regional Level

There are a number of regionally-focused groups and networks, such as the Cape Cod Bay Council, that have diverse membership and work on a variety of issues. The CCBC encourages EEA to consider engaging these regional groups in discussions on developing a model for local-state coordination on ocean management issues. These groups could make meaningful contributions to identifying ways to implement many of the plan’s strategies identified in Goal #1: Integrated management, for example:

- Accommodate local and regional policies and initiatives that are consistent with the Act and the Commonwealth’s ocean management goals

- Identify measures of success or indicators that can be used to measure performance of management strategies in achieving desired outcomes

F. General Comments

- The final plan should include a glossary of terms and acronyms
- Northern right whales should be changed to North Atlantic right whales
- The inshore boundary around Monomoy appears to be more than 0.3 miles
- The * note under Table 3-5 (page 3-15 in Volume I) should note that these activities are legislatively prohibited in Outer Cape Ocean Sanctuary.
- Figure 2-11- Commercial Fisheries Activity shows a diagonal band of low activity; however the Rock Harbor fishing fleet is active in this area and this figure should show at least medium activity, consistent with neighboring town waters
- Figure 4-14- Intertidal flats is not a very comprehensive mapping of intertidal flats
- Figure 4-13- eelgrass is out-of-date and does not show all eelgrass habitat, i.e. those areas that have supported eelgrass

G. Additional Sources of Data and Information

- Mass. Division of Marine Fisheries Power Plant Investigations Project, multiple year assessment of impacts at Pilgrim and the Cape Cod Canal power plants
- Manomet Center for Conservation Sciences: Shorebird Recovery Project

Link to: Macfarlane, S.L., J. Early, T. Henson, T. Balog and A. McClennen A, 2000. Resource-based Methodology to Assess Dock and Pier Impacts on Pleasant Bay, Massachusetts. *Journal of Shellfish Research* 19 (1) 455- 464. <http://www.biodiversitylibrary.org/pdf2/000954600028581.pdf>