

**Comments of the  
ALLIANCE TO PROTECT NANTUCKET SOUND**

**presented by  
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**U.S. Commission on Ocean Policy  
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Mr. Chairman, members of the Commission, thank you for the opportunity to present the comments of the Alliance to Protect Nantucket Sound. My name is Gary Gill-Austern, and I am an attorney representing the Alliance.

The Alliance organized to protect Nantucket Sound from the industrialization assured by the largest wind power plant in the history of the United States coming to the shores of Cape Cod. The Alliance seeks to ensure the long-term protection of Nantucket Sound as a place all can use and enjoy. Alliance members include citizens from Cape Cod, the Islands, and many other states, as well as local towns, commercial fishermen's organizations, environmental groups, and chambers of commerce.

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You have heard repeatedly, beginning yesterday with Secretary Durand, and echoed in the comments of Congressman Delahunt, Colonel Konig, Sharon Young of the Humane Society and Rich Delaney of the Urban Harbors Institute, that no authority exists for the federal government to convey rights to develop certain projects, including the Cape Wind project. One member of the Commission commented yesterday to Secretary Durand that we here in Massachusetts are confronted with a "frontier project with no regulatory basis." A theme picked up this morning by Peter Shelley of the CLF. The Commission has a responsibility to recommend appropriate policy principles in this void.

Over the years, the Outer Continental Shelf Lands Act has established a sound program for conveying limited rights to develop specific resources in fragile offshore areas in a balanced manner. The OCSLA authorizes certain activities, but not at the expense of environmental protection. The OCSLA respects and involves all interests, especially state and local governments and the public. While Congress intended that the OCSLA serve as the basic legal authority for the use of its offshore resources, thus far it has limited the uses authorized to specified activities, what Colonel Konig of the Corps this morning characterized as "extraction" activities.

Using offshore lands and water for energy production may be a valid objective, but only in keeping with OCSLA's framework, when properly analyzed and reviewed and located in appropriate areas, and subjected to rigorous environmental standards. This leads to the conclusion that no individual projects under an "open to entry" approach can or should be considered until authority, consistent with the OCSLA, is enacted. If we seek to amend the OCSLA, we should do so carefully and thoughtfully, extending its existing principles.

Congressman Delahunt and Administrator Kurkul noted this morning the need for Congress to confront the gaps in existing federal laws. We share the Congressman's concerns regarding HR 5156, a just-introduced bill which proposes new measures that would broadly authorize any use of the outer continental shelf not already authorized. He commented that the mere assertion of federal jurisdiction, however, is hollow without clear policy and a commitment to specific protocols. This underscores that we must not abandon the principles of the OCSLA.

There should be a moratorium on new types of development of the outer continental shelf until adequate planning and studies occur. This should be seen as a common-sense response to the issues and chaos that Congress has observed and charged the Commission to comprehensively address. It is long term in vision and impact. In all other contexts involving marine resources, advance study and planning has been shown to be essential to avoid undesirable impacts. Congress should be advised, in the interim, to put on hold all development that, like Cape Wind, is proceeding on an *ad hoc* basis with potentially disastrous long-term consequences.

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Such is the Alliance's advocacy pitch. We know, though, that you are not a court able to fashion a specific remedy – for Nantucket Sound or otherwise. Indeed, your statutory charge precludes you from making recommendations that are specific to the lands and waters within a single state. The Alliance is not seeking "frontier justice." We do believe, however, there is something you can do – and do now.

Before articulating this request, however, I want to impress upon you that until programs are developed to fill these "regulatory gaps" no one is served, including in particular federal, state, regional and local regulators. "Regulatory gap" describes among other things the situations where there is nothing that says to the regulator, "you may not do it." If not specifically prohibited, a permit application makes its way into the system for processing, with the *de facto* assumption that it must be approved.

Secretary Durand yesterday spoke of the expansion in the last 10 years of the types of ocean-based projects that come before his office. This is consistent with our sense of the rapidly increasing speed at which change is occurring in our time – Moore's Law for the oceans, if you will. If this is the case, think of during the pendency of your proceedings how many more new uses will be put front and center. We have here a moving target that the Commission – before harm is done – has the ability to slow down, if not, in the most egregious places, request to halt.

Consider the ubiquitous requests from regulators to the Commission for it to support the need for ocean mapping. It is clear that there is a yearning to know what's there, to get a snapshot of the ocean and its resources. While regulators process permit applications, they want to know what they are regulating so they can act responsibly and fairly.

On the Commission's website, there is a video that provides brief comments from Admiral Watkins regarding the Commission's objective. He speaks of building a national policy by bringing harmony to ocean management at the federal level. We believe that regulators have brought to the Commission – in the appropriate professional and reasoned manner – a plea for guidance, perhaps even for order in the midst of the chaos. The Commission should consider what present action would serve this need.

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We were heartened when we discovered that the Commission, at its meeting in Washington, D.C. on November 24, 2001, unanimously passed a resolution concerning the law of the sea convention. Here, as there, "time is of the essence." Here, as there, "critical national interests are at stake."

You have received volumes of testimony. You have a lot to talk about – necessary research, future plans, future rules – to propose solutions for the problems that have been highlighted for the past two days. I, for one, am in awe of the breadth of your charge and your faithful engagement with it.

But we have a threat – today. A threat that will use public federal land to destroy the peace, the tranquility, the recreational public usage, the natural ecosystems and basic public access to one of the nation's most beloved coastal areas.

You, the members of the U.S. Commission on Ocean Policy, have the single most direct Congressional mandate, the biggest bully pulpit, and the responsibility to say "wait a minute!" Wait until we finish our hearings. Wait until we know how the federal government should decide these basic sea-bottom use decisions; and wait until we can figure out if this is a good proposal for the citizens of the U.S. – on our public land.

In the particular case of the Cape Wind project, the applicant chose federal, not state, waters because the Commonwealth does in fact have rules governing the use of public trust lands under the ocean in state waters. The proposed project is in federal waters because there are no comparable federal rules governing the giving away of public trust lands under federal waters.

And so, Mr. Chairman and members of the Commission, we have a very simple but direct request. Before you go home this evening, please vote a resolution that would speak nationally, while at the same time send to the Corps the message that there should be no action on the Cape Wind project until all responsible federal agencies have the benefit of your deliberations and your recommendations. We urge the Commission to vote a resolution entitled ***Towards Protecting the Federal Public Trust***. Such resolution might read:

The National Commission on Ocean Policy recommends that federal agencies responsible for regulating the outer continental shelf defer decisions concerning the use of the outer continental shelf lands by private parties where there is no present authority for such use until, based on the Commission's report to Congress and the President, programs are developed and implemented for granting such uses.

As former Director Reilly called for yesterday, we need leadership, bold leadership, to save our oceans. We pray and believe this leadership will begin here in Boston today.

Thank you.

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