

Public Comments on the U.S. Commission on Ocean Policy's Preliminary Report

Topic Area: Offshore Development/Energy

Comments Submitted by:

- Ioan Richard, Swansea, Wales United Kingdom
- Todd Adelman, Newton, Massachusetts
- Mary Ellen Miller, Battle Ground, Washington
- John D. Harris, Sandwich, Massachusetts
- Bonnie Brady
- Kenneth J. Pina Jr, Bass River, Massachusetts
- Cindy Zipf, Clean Ocean Action
- Patricia Dineen, West Springfield, Massachusetts
- David Robinson, North Andover, Massachusetts
- Warren Finley, Wader LLC
- Gordian Raacke, Citizens Advisory Panel
- Molly Herod, The Alliance to Protect Nantucket Sound
- Carolyn Elefant, Law Offices of Carolyn Elefant
- Gordian Raacke, Renewable Energy Long Island Sound
- Nancy Weeks, E. Falmouth, Massachusetts
- John Binienda, Joint Committee on Energy Regulations, and Daniel Bosley, Joint Committee on Government
- Neal B. Costello, Competitive Power Coalition of New England, Inc.
- Tracy Gibbons, Mountain View, California and Chilmark, Massachusetts
- Joanne Warren, Mattapoisett, Massachusetts
- Susan Nickerson, Alliance to Protect Nantucket Sound
- Ron Goodale, Centerville, Massachusetts
- James P McMullen III
- Richard F. Mullin, Dennis, Massachusetts
- Doug Yearley, Osterville, Massachusetts
- Bob DiBenedetto, EarthSave Long Island
- Julius Marcus, Stamford, Connecticut
- Steve Hirsch, Salem, Massachusetts
- Kristen E. Eastman, Mattapoisett, Massachusetts
- Tracy and Lance Isham, Citizens
- Bill Cantor, Mattapoisett, Massachusetts
- Fred Luconi, Mashpee, Massachusetts
- Kathryn Muir, Citizen
- Kenneth Magowan, Osterville, Massachusetts
- B. Hempel, Dennis, Massachusetts
- Margaret E. and C. Victor Mankiewicz, West Barnstable, Massachusetts
- Donna Schulze
- Michael Finkel, Hyannis, Massachusetts

- Phyllis Campobello, Osterville, Massachusetts
- Barbara Wilson
- Hilary Johnson, Cherry Hills Village, Colorado
- Robert and Deborah Faulconer, Hopkinton, Massachusetts
- John Leary, Harwichport, Massachusetts
- Paul McGinn, Delmar, New York
- David Mahan, West Harwich, Massachusetts
- Gail Cooper, Falmouth, Massachusetts
- JS Loyd, Contuit, Massachusetts
- Dan Wareham
- Alton B. Sherman, Jr.
- Geraldine M. Pizzuto, Dennisport, Massachusetts
- Cathryn F. Brower, Fairhaven, Connecticut
- Jody Howard, Health Link
- Fred Zalcman, Pace Energy Project
- Anthony T. Jones, San Francisco, California
- Jeremy Gregory
- Susan and Jonah Liebes, Fallbrook, California
- Paul Doherty, Mashpee, Massachusetts
- Daniel J. McCullough
- Tom Neuhaus
- Charley Wilder, Southwick, Massachusetts
- John Hingtgen, Wisconsin
- Alfred Padula, Green Campus Consortium of Maine
- Pamela C. Fields, Chaska, Minnesota
- Ben Somberg, Cambridge, Massachusetts
- Catherine Miller, Pioneer Valley Planning Commission
- Richard Small, Edgartown, Massachusetts
- Ken Bates, Mashpee, Massachusetts
- George McConochie, Sustainable Energy Developments, Inc.
- Shannon Cox, Guilford, Maine
- Stephen Knowlton, Fair Haven, New Jersey
- David Hill, Wayland, Massachusetts
- Jeffrey Luce
- Lois Grossman, Medford, Massachusetts
- John A. Duggan, N. Chelmsford, Massachusetts
- Mary Jane Curran, Cape Cod Community College
- Milton Schwartz, Sandwich, Massachusetts
- Andrew Heafitz, Cambridge, Massachusetts
- Carlos J. Zalduondo, Hull, Massachusetts
- Steven Thomas Oney
- Christopher Schaffner, Acton, Massachusetts
- David Goldstein, Jamaica Plains, Massachusetts
- Holly D. Fletcher, Gloucester, Massachusetts
- Werner Grundl and Julie O'Neil, Citizens
- Ronald LaCoss, Hollis, New Hampshire
- John Hofmann, Brewster, Massachusetts
- Chris Ellis, Brewster, Massachusetts

- Dinda Evans
- Jessica Miller, Haverhill, Massachusetts
- John LaVigne
- Inge Perreault
- Douglas Bashaw, Orleans, Massachusetts
- Eleanor Manire-Gatti, Hampshire Interfaith Council
- Hansjoerg Stern, Brewster, Massachusetts
- Steve Scannell, Citizen
- Mary L. Cole, Norwell, Massachusetts
- Laura Martin and Jim Gordon, CapeWind Associates
- David Marcus, West Newton, Massachusetts
- Bruce M. Hampton, Allston, Massachusetts
- Simon C. Bunyard, Boxborough, Massachusetts
- Russel Roberson
- Robert Joyal, Salem, Massachusetts
- Charles Richardson, Massachusetts
- Max Ledbetter, Kitchener, Ontario Canada
- Jeanmarie Drucker
- Gary Schuetz, Rocky Flats Closure Project
- Francis C. Lowell, Jr., Falmouth, Massachusetts
- Donald H. Foley, Edgartown, Massachusetts
- Paul Cain
- Phyllis and Bill Walsh, Cotuit, Massachusetts
- Donald E. Schwinn, Cotuit, Massachusetts
- Cynthia Eaton, Cotuit, Massachusetts
- Timothy Burke
- David Robinson, Haverhill, Massachusetts
- Lois I. Wrightson
- Carol Luiken
- Derry Fredericks, Yarmouth Point, Massachusetts
- Brian Zugel, Cape Cod, Massachusetts
- Bruce Christopher, Cape Cod, Massachusetts
- Bruce Reid, Marstons Mills, Massachusetts
- Robert Bloch, S. Yarmouth, Massachusetts
- Mary Lambert, Pilgrim Security Watch; Jed Thorp, Clean Water Action; and Sandra Gavutis, C-10 Research and Education Foundation, Inc.
- Tom Carey, Lafayette, Louisiana
- Maureen Dolan, Citizens Campaign for the Environment
- William L. Pardee, Commonwealth of Massachusetts
- Dennis J. Duffy, Cape Wind

Comment Submitted by Ioan Richard, Swansea, Wales United Kingdom

Subject: Wind Turbines Offshore generally and Nantucket Sound specifically

Importance: High

Wind Turbines only serve one purpose - to enrich their developers from publicly funded subsidies. Offshore Wind Turbines are a hazard to shipping. Here in the United Kingdom the Royal Naval Admiralty has come out AGAINST Wind Turbines as a sea hazard to shipping. With Wind Turbines off the US coast the US Navy will no longer be invincible. Wind Turbines only produce trickles of intermittent electricity.

City & County Councillor

Ioan Richard

Craigcefnparc, Swansea, Wales, United Kingdom

(Note - Swansea is a proud maritime UK city)

Comment Submitted by Todd Adelman, Newton, Massachusetts

To Whom It May Concern,

Although I am an advocate of renewable energy sources, I believe we should suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place. The oceans should be properly zoned in a way that protects traditional water-dependent uses that serve the public interest. We need to establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project. Without structure around this process - a disproportionate few will capitalize and we will all ultimately squander essential natural resources for a sustainable future.

Thank you for considering my opinion.

Sincerely,

Todd Adelman

Newton, Massachusetts

Comment Submitted by Mary Ellen Miller, Battle Ground, Washington

To : The Commission on Ocean Policy
From : Mary Ellen Miller

RE : Proposed Nantucket Sound wind farm

I am writing in opposition to this proposal. I do not feel that the impact of this project has been researched enough to formulate an approval. Energy generation is but a minor factor in this project. Nantucket Sound is a rich resource for birds and fisheries. It is a major source of year round tourist revenue for the residents of Cape Cod. This pristine view from the shore is a source of peace and solace for many resident and non-resident citizens in two major metropolitan areas (Boston and Providence, R. I.). The towers will be unsightly and a danger to the commercial traffic in the shipping lanes to the islands. They will be a hazard to the migratory birds and the spawning grounds for the fish. The lights and noise from fog horns will be a constant psychological weight upon the citizens who will have to live with the incessant visual and auditory distraction. The commission needs to weigh all views not just the one with the most money making potential in safeguarding the inherent beauty and peace that our ocean provides for the citizens of Cape Cod. My family has spent the summer on Cape Cod for generations.

I am currently a homeowner on Cape Cod and am deeply concerned that any project currently proposed that affects the shoreline could set a negative precedent for future projects lining our coastlines. I have donated money to the effort to Save Nantucket Sound from exploitation for the monetary gain of a few people. Please deny this project and begin this process of establishing reasonable guidelines for shoreline use of our oceans.

Mary Ellen Miller
Battle Ground, Washington

Comments Submitted by John D. Harris, Sandwich, Massachusetts

Ladies and Gentlemen of The U.S. Commission on Ocean Policy.

CC: The Honorable Mitt Romney, Governor, Commonwealth of Massachusetts

Your policy report indicates that offshore development of renewable energy should not proceed without a federal plan that protects the public interest. In the context of the public interest, you are respectfully requested that any and all activity in the course of this policy implementation, include but not be limited to irrevocable postponement(s) to:

1. Suspend all offshore renewable energy projects in process until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers and materially evaluate the economic and environmental costs and benefits of a proposed project.
4. Ensure process visibility that's material to the public interest and same subject to binding majority referendum.
5. Exempt the Nantucket Sound and the Cape Cod environs from this experiment until a similar southeast coast USA project has been implemented, is fully operation and materially deemed to be successful for no less than fifteen years. Such exemption shall be revocable only by public referendum with two-third majority.

Thank you for your understanding,

John D. Harris
Sandwich, Massachusetts

Comment Submitted by Bonnie Brady, Citizen

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest, such as commercial fishing; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project along with the proposed economic

Comment Submitted by Kenneth J. Pina Jr., Bass River, Massachusetts

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest, such as commercial fishing; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project along with the proposed economic

Kenneth J. Pina Jr.
Bass River, Massachusetts

Comment Submitted by Cindy Zipf, Clean Ocean Action



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Clean Ocean Action

www.CleanOceanAction.org

June 4, 2004
(Via Email)

June 4, 2004

VIA FACSIMILE and E-MAIL

Public Comment on Preliminary Report
US Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, D.C. 20036

To Whom It May Concern:

Clean Ocean Action (COA) is a broad-based coalition of 160 organizations that work to improve and protect the waters off the New Jersey and New York coasts. In general, COA applauds and commends the US Commission on Ocean Policy's (USCOP's) Preliminary Report, as it is a comprehensive astute account of the condition of ocean and coastal habitats. Descriptions of problems facing the coast and the mismanagement of the resources are articulate, especially regarding the need to enforce and implement existing laws and the essential need of substantial funds to properly support ocean and coastal ecological improvement and protection. Indeed, it is an inspiration and a tribute to nature that despite this scandalous lack of governance, enforcement, program, and funding the marine ecosystem survives and, if given a chance, even restores itself.

Clean Ocean Action looks forward to the forthcoming dialog and debate as the Commission finalizes its report and congressional and regulatory actions ensue. The USCOP's Preliminary Report exposes various needs for improvement in ocean governance issues, pollution prevention actions, and infrastructure system upgrades. COA agrees with many of these needs and will work to find responsible solutions. The review and call for expansion of education and scientific research efforts are also particularly welcome. COA has a strong history of ocean advocacy that combines environmental progress while sustaining and enhancing economic growth. COA's look forward to and will embrace the opportunities and challenges to improve and protect our ocean. To that end, these comments are general and simply register our commitment and support to ensure progress on ocean protection.

However, there is a major issue of concern regarding a fundamental recommendation in the text that requires specific comment at this time, which is the funding source for the Ocean Policy Trust Fund. The USCOP Preliminary Report recommends that the fund "would be composed of outer Continental Shelf (OCS) oil and gas bonuses and royalties not otherwise allocated, and other revenues from new and emerging uses in offshore waters." This funding strategy is shortsighted and unacceptable. Industrial uses of the ocean have already led to ecological harm that undermines and in some cases destroys the very value of the coast and ocean resources-- the lifeblood of the economies of coastal states. To quote a sage axiom, "do not bite the hand that feeds you." Alternatively, the vast financial revenues derived from a healthy marine ecosystem indicate that these natural resources more than deserve to be funded from general revenues. Indeed, the enhancement and improvement of marine ecosystems will further increase these *healthy ocean revenues* resulting in even greater economic good while improving the environment.

In closing, we look forward to the future discussions and debates to ensure the health of our marine ecosystems.

Ever Onward for the ocean,



Cindy Zipf
Executive Director
cc: open letter

Comment Submitted by Patricia Dineen, West Springfield, Massachusetts

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Thank you,
Patricia Dineen
West Springfield, Massachusetts

Comment Submitted by David Robinson, North Andover, Massachusetts

My family and I have been on the cape for over 50 years and we are very disturbed by the prospect of a few greedy developers destroying a national treasure that should be enjoyed by future generations.

Furthermore, we agree and support the following points;

Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

David Robinson
N. Andover, Massachusetts

Comment Submitted by Warren Finley, Wader LLC

These comments are addressed to the sub section of the report entitled:
"Developing Offshore Renewable Energy Resources" found on pages 298 through 301.

The listing of renewable energy resources omits the resource with the largest potential. This unmentioned resource is the energy that can be derived from the Salinity Gradient. It has been estimated that the "osmotic" (a.k.a. "hydrocratic") pressure difference between fresh water and seawater is equivalent to 240m of hydraulic head. For additional background of the potential energy of salinity gradients, see Isaacs, JD, and Schmidt, WR (1980) "Ocean Energy: Forms and Prospects," Science, Vol. 207, pp. 265-273.

WADER, LLC has obtained patents on a device named the Hydrocratic Generator . This device captures the free energy of mixing between two bodies of water having different salinity concentrations. The technology does not require the use of any type of membrane and can be used to recover energy from a wide variety of environments. For example, the effluent from Sanitation Plants will be a source of the "fresh" water in the coastal areas of the United States.

The Hydrocratic Generator will be tested and its capabilities determined on May 20, 2004 on the USN research ship FLIP. The testing will be performed 8 miles offshore from La Jolla, California and representatives from the Office of Naval Research, sanitation districts and Scripps Oceanographic Institute will be on board.

Information on FLIP can be obtained at <http://www-pl.ucsd.edu/resources/flip.intro.html>

Additional information on the Hydrocratic Engine and on WADER, LLC can be obtained at waderllc.com

Permission is hereby requested to supplement this public comment with the results of the May 20, 2004 test and demonstration.

Yours Truly,
Warren Finley (sg.)

Comment Submitted by Gordian Raacke, Citizens Advisory Panel



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Anne F. Mead, Esq. - *Chair*

Gordian Raacke - *Executive Director*

June 4, 2004

U.S. Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, DC 20036
Via e-mail comments@oceancommission.gov and fax 202 418-3475

Re: Public Comment on Preliminary Report

Dear Members of the Commission:

We are writing to express our concerns on efforts to impose a moratorium on offshore wind energy development as part of the proposed national energy bill. The contribution of renewable energy sources as mitigating and desirable solutions to air pollution, global warming and climate change impacts, energy security and reduction of dependence on fossil fuels is undeniable and warrants that we make the development of such energy sources a national priority.

Consistent with your recommendations from Chapter 24 “Managing Offshore Energy and Other Mineral Resources” of the U.S. Commission on Ocean Policy’s Preliminary Report, we support the following:

- 1) Investment of federal revenues received from oil and gas leasing activities to sustainable development of renewable ocean and coastal resources through grants to all coastal states (*page 294, Recommendation 24-1*); and
- 2) Legislation for the comprehensive management of offshore renewable energy development which streamlines the process for licensing, leasing and permitting renewable energy facilities in U.S. waters’ (*page 301, Recommendation 24-5*).

We, along with numerous environmental and consumer advocacy groups, believe that a moratorium is unnecessary, inappropriate and potentially devastating to the substantial national benefits of developing offshore wind energy projects.

We believe that current federal and state laws are sufficient to ensure rigorous project and siting review of proposed offshore wind projects such as the Long Island Offshore Wind Initiative. We urge the Commission to work towards a sensible offshore energy policy that does not unduly delay, disrupt or terminate offshore wind projects already under development.

Thank you for the opportunity to provide these comments.


Gordian Raacke
Executive Director

Comment Submitted by Molly Herod, The Alliance to Protect Nantucket Sound

To Whom It May Concern:

I am writing to the US Oceans Commission to voice my opinion on offshore wind development projects, including the one being proposed for Horseshoe Shoal in Nantucket Sound by Cape Wind. I propose the following:

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water- dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Thank you for considering these suggestions.

Sincerely,
Molly Herod, Member of the Alliance to Protect Nantucket Sound
Richardson, Texas

Comment Submitted by Carolyn Elefant, Law Offices of Carolyn Elefant

To the Ocean Commission:

My name is Carolyn Elefant and I am an attorney with my own practice in Washington D.C. and serve as "of counsel" to the Law Offices of Scott Hempling. For the past decade, I have counseled various ocean energy developers, both in the United States and abroad, on regulatory requirements related to siting projects and selling project power. I have also advised these clients more generally on deregulation of the electric utility industry, financing, tax and renewable energy policies which help bring about commercialization of ocean energy technologies.

My primary interest in providing comment on the Preliminary Report is to address ways to stimulate and enhance development of ocean energy in the United. The views expressed in these comments are my own and do not necessarily represent the position of my present or former clients.

I reviewed the section of the Preliminary Report dealing with offshore renewables. I believe that the Report appropriately diagnoses at least one of the obstacles to development of offshore wind and wave energy in the United States: the absence of clarity on both the appropriate licensing agency and applicable regulations. However, the Report does not fully recognize the litany of other problems that hamper renewable development, such as the application to pilot ocean energy projects of onerous and duplicative laws and regulations designed for much larger, more well-funded and environmentally harmful projects. Using these laws to license ocean energy projects is akin to use of a sledgehammer to kill a fly (or in this season, a cicada). The numerous laws burden new projects with additional costs and kill many of them before they can even be implemented.

I do not suggest that we dispense with regulation of ocean development. However, the Report should recognize permitting exemptions for either smaller sized ocean projects or for new pilot projects (which would also likely be under 5 MW). The exemption could remain in place for a short time - e.g., 5 years, after which developers could remove the projects or undertake a full blown licensing process. Relieving developers of this regulation will enable them to get prototypes into the ocean more quickly to test the concept and gather data on environmental impacts. An exemption system would not compromise environmental concerns because many of the ocean energy systems are small, modular in nature and do not utilize lubricants or emit other harmful chemicals. Moreover, the systems may have positive impacts such as serving as artificial reefs for marine life or as barriers to prevent shoreline erosion. These benefits also remain unknown and untested where developers are so plagued by regulation that they cannot get their projects into the water.

Second, the report recognizes that currently, there is no mechanism to securing sufficient property interests to develop projects - or at least to give developers assurance of sufficient security to invest. Whatever regulatory regime is eventually developed should take this factor into account and somehow incorporate some protection for "fair use" if not exclusive use of a site.

Finally, the Report recommends a lofty long term goal of cataloguing offshore renewable resources. In the long run, this project (along with a concomitant discussion of jurisdictional issues) will serve the public well. However, there are developers who are ready to implement projects now - and who will lose interest in the United States and look abroad for opportunities if there is not at least some interim system in place to allow these projects to go forward. An exemption process would serve well as an interim measure (since the projects being proposed at this phase are primarily in prototype or initial commercialization phase). Thus, projects could operate on a pilot basis for a 1-3 year period after which time, a more comprehensive system might be in place.

A comprehensive or programmatic approach to identifying offshore renewable uses is positive, but only to the extent that it is not used to delay development presently available. In addition, any programmatic approach must be viewed as an open process, with data made available to the public and to developers. The process should also be open-ended since ocean energy technology is continuously evolving (as is offshore wind). Today, there may not be a viable ocean or offshore wind device to take advantage of certain resources (e.g., ocean technology may not have developed to capture more minimal wave levels or withstand high waves near-shore or may be too costly to put wind turbines too far offshore). However, as technology advances, so too does our ability to take advantage of additional resources. In identifying resources, a comprehensive plan should not put a "cap" on uses - for instance, block off areas and identify them as a "optimal resources" which can be developed while identifying others as "non-economic" and foreclosing development at those sites. To be sure, there may be other non-energy reasons for limiting development at some sites - e.g., to protect important habitat. But the plan should not foreclose development at sites where there is no present resource capable of capture because that may change.

I would be willing to expand upon these comments in the event that additional testimony is taken by the Commission. Or you can contact me at 202-297-6100 with additional questions. My website, <http://www.his.com/israel/loce> also offers many links to statutes and articles dealing with offshore renewable development.

Thank you for the opportunity to submit these comments.

Sincerely,

Carolyn Elefant
Law Offices of Carolyn Elefant

Comment Submitted by Gordian Raacke, Renewable Energy Long Island Sound



**Renewable Energy
Long Island**

Clean Energy · Safe Environment · Healthy Planet

June 4, 2004

U.S. Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
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Via e-mail comments@oceancommission.gov and fax 202 418-3475

Re: Public Comment on Preliminary Report

Dear Members of the Commission:

We are writing to express our concerns on efforts to impose a moratorium on offshore wind energy development as part of the proposed national energy bill. The contribution of renewable energy sources as mitigating and desirable solutions to air pollution, global warming and climate change impacts, energy security and reduction of dependence on fossil fuels is undeniable and warrants that we make the development of such energy sources a national priority.

Consistent with your recommendations from Chapter 24 “Managing Offshore Energy and Other Mineral Resources” of the U.S. Commission on Ocean Policy’s Preliminary Report, we support the following:

1) Investment of federal revenues received from oil and gas leasing activities to sustainable development of renewable ocean and coastal resources through grants to all coastal states (*page 294, Recommendation 24-1*); and

2) Legislation for the comprehensive management of offshore renewable energy development which streamlines the process for licensing, leasing and permitting renewable energy facilities in U.S. waters' (*page 301, Recommendation 24-5*).

We, along with numerous environmental and consumer advocacy groups, believe that a moratorium is unnecessary, inappropriate and potentially devastating to the substantial national benefits of developing offshore wind energy projects.

We believe that current federal and state laws are sufficient to ensure rigorous project and siting review of proposed offshore wind projects such as the Long Island Offshore Wind Initiative. We urge the Commission to work towards a sensible offshore energy policy that does not unduly delay, disrupt or terminate offshore wind projects already under development.

We appreciate the opportunity to comment on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Gordian Raacke". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Gordian Raacke
Executive Director

Comment Submitted by Nancy Weeks, E. Falmouth, Massachusetts

I support a policy that will:

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Nancy Weeks
E. Falmouth, MA

Comment Submitted by John Binienda, Joint Committee on Energy Regulations, and Daniel Bosley, Joint Committee on Government

June 3, 2004

U.S. Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, D.C. 20036

Re: Comments on the U.S. Commission on Ocean Policy Preliminary Report

Dear Commission Members:

We are writing to comment on the Preliminary Report of the U.S. Commission on Ocean Policy. We would urge the Commission during its deliberations to take no action that would ultimately contravene the gains we have made in the Commonwealth of Massachusetts since 1998 in the development of progressive energy policies. We would be very appreciative if the ultimate recommendations of the Commission do not conflict with important legislative policies in Massachusetts, including those established by Chapter 164 of the Acts of 1997, *An Act Relative to Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein*, which, amongst other things, reformed the state's energy facility siting process and created a renewable energy program.

By 1997, the Massachusetts energy facility siting process had become a failed process. No new facilities had been sited in recent memory, and the state became heavily reliant on older, less efficient generating units. As a consequence the New England region was facing a reliability crisis because of the inability to site and build new generation. The streamlined siting process in the Act now allows industry participants, who are using their own business, engineering, and technical acumen and private capital, to propose new generation projects, which are then subjected to a rigorous review by the Energy Facilities Siting Board and environmental permitting agencies – a review process that is based upon a site-specific, evidentiary record assessing the merits of the project and full consideration of alternative technologies and locations.

The Commission should be aware that this current siting process as memorialized in statute reflects a conscious and carefully considered legislative policy. The Act purposefully and thoughtfully redirected the generation industry away from centralized government planning in order to foster entrepreneurial thinking and innovation. Experience demonstrates that the Commonwealth will best realize the benefits evolving

from new approaches when entrepreneurial proposals are not precluded by bureaucratic predeterminations or presumptions as to what energy facilities will, in the future, be most consistent with the public interest.

We also note that the Restructuring Act now allows the state Siting Board to make the essential public siting decisions in an open process based upon a factual and site-specific record established under the rules of evidence, with assurances of procedural due process. This approach seems far preferable to a “pro-active” bureaucratic predetermination made in the absence of either any concrete proposals or alternatives, or the associated evidentiary record and procedural due process now afforded for each proposal.

We respectfully ask that the Commission remain mindful of another substantive policy provision of the Restructuring Act – the need for new sources of renewable energy. The Legislature in 1997 aggressively committed to the development of renewable energy projects for Massachusetts and continues to do so even in the face of attempts by various parties to diminish that commitment. New England again is facing concerns about adequate generating capacity and fuel diversity. The development of renewable energy projects is critical to ensuring that our future needs in these areas can be met. The Commission must realize that if it were to propose to hinder the development of renewable energy projects in areas where they are economically viable, it would be acting contrary to the existing statutory commitments and requirements of the Commonwealth regarding renewable energy and environmental quality.

These two legislative initiatives have led to the proposed construction of a wind farm in Nantucket Shoals off of Cape Cod. The Cape Wind project is a direct product of the reformed siting law and the state’s commitment to renewable energy projects. Cape Wind has submitted to seventeen state and federal regulatory processes. The fate of the project should be decided on the merits. We appreciate that the Commission has not proposed a moratorium on any current proposals, and we respectfully submit that fairness and equity demand that all recommendations flowing from your efforts be prospective in nature.

As you move forward with your deliberations, we would appreciate your consideration of these innovative legislative policies in Massachusetts that are beginning to deliver substantive benefits to our constituents. Thank you for your attention to this matter.

Sincerely,

John Binienda, Chairman
Joint Committee on Energy
Regulations

Daniel Bosley, Chairman
Joint Committee on Government

Comment Submitted by Neal B. Costello, Competitive Power Coalition of New England, Inc.

**COMPETITIVE POWER COALITION OF NEW ENGLAND, INC.
c/o Rubin and Rudman LLP
50 Rowes Wharf
Boston, Massachusetts 02110**

June 4, 2004

U.S. Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, D.C. 20036

Re: Comments on Preliminary Report of the U.S. Commission on Ocean Policy

Dear Commission Members:

The Competitive Power Coalition of New England, Inc. (“CPC”) respectfully submits its comments on the Preliminary Report of the U.S. Commission on Ocean Policy. CPC applauds the substantive recommendations of the Commission and supports the recommendations as being consistent with certain legislative policies put forth by the Massachusetts General Court, especially those articulated by Chapter 164 of the Acts of 1997, *An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein*, informally known as the Massachusetts Electric Restructuring Act.

By way of introduction, CPC is a professional trade organization of electric generators whose members represent the overwhelming majority of both the installed and proposed generating capacity in New England. Our members include independent power producers, natural gas suppliers, waste-to-energy facilities, co-generators, and power marketers. CPC is acknowledged as the primary representative of the competitive power supply industry in the region and has been a leading advocate throughout New England for electric utility restructuring which has delivered rate relief, technological advancement, and environmental benefits to the region. CPC members’ generation facilities currently reflect a comprehensive fuel diversity that ensures both enhanced environmental quality and increased system reliability. Our member generators have invested billions of dollars, created thousands of jobs, and paid hundreds of millions of dollars in taxes in Massachusetts. CPC members will continue to contribute to substantial improvement to the region’s environment through innovation, progressive leadership, and technological advancement as a restructured electric industry evolves in Massachusetts and New England. We believe the only effective way of achieving those

objectives is through competitive market forces as contemplated by such laws as the Massachusetts Electric Restructuring Act and not through baseless and draconian governmental regulation.

Two key initiatives articulated in the Massachusetts Restructuring Act are the reform and streamlining of the state's energy facility siting process and the creation of a program designed to develop renewable energy projects in Massachusetts and New England. First, the Legislature expressed clearly that the Commonwealth's energy facility siting statute was in grave need of reform. The Commonwealth – indeed, the New England region – was in dire need of more generation capacity in order to meet usage demands and projected future need as populations and economics grew. The Massachusetts siting law prior to 1997 was proficient at discouraging efforts to address these needs. A siting process centered on government inspired central planning guaranteed that any entrepreneurial effort to improve energy capacity was unsuccessful. In response to this situation, the Legislature enacted siting law reforms designed to move our Commonwealth's energy capacity needs forward, not backward, by encouraging innovative clean, efficient, state-of-the-art power plants. All of these units were built with private capital, at no risk to ratepayers, by entrepreneurs with real life expertise. CPC worked closely with legislators, regulators, and other interested parties to help craft a statute that would ensure the Commonwealth did not literally remain in the dark. In fact, the siting reforms were perceived so positively that others in the New England region – namely, Connecticut and Maine – adopted virtually the same statutes soon thereafter. The cornerstone of this reform was a belief that competitive markets were far superior to governmental central planning at meeting the Commonwealth's energy supply needs.

Hand in hand with these reforms, the Restructuring Act made an equally strong commitment to developing renewable energy generation in the Commonwealth. Through the renewable portfolio standard the Legislature sent a clear signal to regulators, developers, and consumers that Massachusetts had a commitment to encourage the development of “green” power. The Legislature went so far as to explicitly enumerate the various renewable power sources, and wind is prominent among them. The unequivocal Legislative intent was to encourage the development of renewable energy resources in the Commonwealth so that Massachusetts citizens might realize both the environmental and economic benefits.

These two legislative initiatives have manifested themselves in the proposed Cape Wind project, which would be the construction of a wind farm in Nantucket Shoals off of the coast of Cape Cod. This project is a direct and intended result of the reformed siting law and the Commonwealth's commitment to developing a base of renewable energy projects to supplement our more traditionally fueled generating units. This project is exactly the type envisioned by the Restructuring Act, as evidenced by the support of the Cape Wind project by the very legislators that actually drafted the legislation.

The Cape Wind project has submitted to almost a score of state and federal regulatory processes. This joint review will result in an Environmental Impact Statement

under the National Environmental Policy Act (the most comprehensive environmental review standard under Federal law) as well as an Environmental Impact Report under the Massachusetts Environmental Policy Act (“MEPA”). Notably in Cape Wind’s ENF Certificate (#12643), the Secretary of Environmental Affairs explained that Cape Wind voluntarily consented to MEPA review of the entire Cape Wind project as well as a greatly extended ENF comment period to allow for maximum public input, with the Secretary of Environmental Affairs concluding that “these commitments ensure that the impacts of the project will receive full disclosure in the state and regional review process...” The current review process, thus, considers all relevant concerns and issues in a seamless manner, with absolutely no “gap” between federal and state review. In fact, to this date, Cape Wind has received tremendously positive reviews from every regulatory agency that has concluded its process.

As the Commission moves forward with its deliberations, we would respectfully request that any action contemplated in its final report not jeopardize the progressive strides the Commonwealth has advanced over the past seven years. We do not see an intent on the Commission’s part in its preliminary report to harm these advancements. Therefore, we support your policies as articulated to date and ask that the Commission not deviate from its current direction.

Thank you for your consideration in this matter.

Sincerely,



Neal B. Costello
General Counsel
Competitive Power Coalition of New England, Inc.

NBC/df

Comment Submitted by Tracy Gibbons, Mountain View, California and Chilmark, Massachusetts

Please be aware that I strongly support a policy that will:

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

As a homeowner on Martha's Vineyard, I am especially concerned that a wind farm not be permitted in Nantucket Sound.

Tracy Gibbons
Mountain View, CA and Chilmark, MA

Comment Submitted by Joanne Warren, Mattapoisett, Massachusetts

PLEASE!!

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

THANK YOU.
Joanne Warren
Mattapoisett, Massachusetts



June 3, 2004

Admiral James D. Watkins
Chairman, U.S. Commission on Ocean Policy

RE: Comments on Final U.S. Commission on Ocean Policy Preliminary Report

Dear Admiral Watkins:

The Alliance to Protect Nantucket Sound fully supports the U.S. Ocean Commission's preliminary report on U.S. Ocean Policy, particularly the section in Chapter 24 entitled "Developing Offshore Renewable Energy Resources". Given the Commission's findings that there is no comprehensive and coordinated federal process for regulating offshore wind energy development or conveying property rights to use the Outer Continental Shelf (OCS), offshore development of renewable energy should not proceed until a federal plan to protect the public interest is established. We ask that the Commission's findings be applied to the proposed wind energy development in Nantucket Sound and that future proposals for offshore wind development are based on a fair siting and review process. While the Alliance to Protect Nantucket Sound maintains that wind energy is a needed solution to the nation's energy use issues, existing off-shore policy is insufficient to protect the traditional uses and unique character of our nation's coastal waters.

The Alliance urges the US Congress to implement:

1. a **moratorium** for all offshore development projects without an existing USACE Section 10 permit until a comprehensive federal program is in place which proscribes the terms under which private use of public trust lands of the OCS will proceed; and
2. a federal management regime for coastal waters that addresses state and local interests as well as protects traditional uses of coastal waters that serve the public interest (e.g., fishing and recreation).

We have collected over 250 signatures that support our position and will provide those to you as well. Thank you for your attention and consideration of these comments.

Sincerely,

Susan L. Nickerson
Executive Director

Comment Submitted by Ron Goodale, Centerville, Massachusetts

Ladies and Gentlemen:

I am a resident of Centerville, MA and a frequent user of Nantucket Sound and the area of Horseshoe Shoal. I am an experienced boater and have been a licensed captain for almost 20 years.

The Nantucket Sound and Horseshoe Shoal area is heavily used by both recreational and commercial boaters during periods of good weather and bad. It is my opinion that allowing a wind farm to be built in this heavily traveled area would be disastrous. I have spent countless hours with new and inexperienced boaters who think nothing of traveling across this area to an island destination on Nantucket or Martha's Vineyard. We are kidding ourselves if we believe that the large group of recreational boaters who frequently use this area all have the knowledge and experience to navigate through a windfarm of 130 turbines in the dark or during the frequent periods of limited visibility (heavy rain and fog). On any given night, year round, large commercial vessels pass through this area on their way to the offshore fishing grounds. This trip is frequently difficult enough without having to avoid a windmill farm. The most experienced boaters, recreational or commercial, have found themselves in unexpected perilous situations in this area.

I am not an opponent of windmills. I have seen the much smaller windmill farms in Europe. I do not believe that the proposed location of this much larger windmill farm is suitable for this project. The personal safety and economic well being of thousands and thousands of people is much too great.

I therefore urge you to do the following:

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place.
2. Zone the ocean in a way that protects traditional water dependant uses that serve the public interest.
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

I have heard and read the editorials and statements by those who favor the proposed wind farm in Nantucket Sound and Horseshoe Shoal. If I did not have the local knowledge and experience with boaters who frequent this area I have to say that I would not have a care one way or the other. I do not believe that "not in my back yard" applies to this proposed wind farm. It is my opinion that this proposal borders on being preposterous when you consider the real magnitude and legitimate impact that this proposed project can create.

I very much appreciate your attention to this matter.

Sincerely,

Ron Goodale

Comment Submitted by James P McMullen III, Citizen

Wayland Massachusetts
June 4, 2004

U.S. Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, D.C. 20036

Dear Commissioners,

I am writing you in response to the Cape Cod Wind Project. **I am totally against this project.** There are numerous reasons I am against this project.

- 1) I am not convinced that we need an alternative supply of energy for Cape Cod. There are two suppliers of electricity for Cape Cod right now, is there need for a third? Who is this 3rd supplier of energy what sources of capital does this company have? How much is this going to cost the taxpayers of the commonwealth of Massachusetts and the rest of the country?
- 2) What is the impact on the environment going to be? How are these windmills going to effect recreational and commercial boating? You know installing man made structures in the ocean greatly effects marine eco system locally. These structures are going to made to with stand some of the most extreme ocean weather conditions in the world. These structures are going to be extremely difficult to install and they will be the same to take out when there shelf life expires.
- 3) Why are we choosing Wind Mill power as alternative for energy? There are newer forms of alternative being developed every day. In long the run ROI is not going to cover the cost the environment impact and the development and implementation of this project. I do not understand that we can't develop oil in Alaska but we can put in Wind Mills in the ocean and both will have great impact on the environment.

Who is going to own this project? Is it privately or federally funded? If federally funded who is going to be liable for any costs associated with damages to personal loss of economic opportunities because the Wind Mill Farm.

Why should we destroy natural marine eco system for a short term source of energy that is not going have great impact on the total supply.

The government should not move forward on this project because of the destruction of the environment associated with it.

Regards,

James P McMullen III

Comment Submitted by Richard F. Mullin, Dennis, Massachusetts

Please consider the following when dealing with the Nantucket Wind Farm proposal on Horseshoe Shoal.

(Percentages may be subject to revision pending experimental tower, on Horseshoe Shoal, data.).

- * The proposed location on Horseshoe Shoal is NOT a prime wind location according to The Wind Atlas of the U S. It is a class 5 out of 7.
- * Due to wind inconsistency, the wind mills can/will only run 50% of the time.
- * With the wind mills down 50% of the time fossil/nuclear power plants will have to supply power 50% of the time.
- * Therefore the conventional power plants must maintain steam pressure, in order to satisfy demand when the wind mills are down.
- * In simple terms the fossil/nuclear power plants will NEVER shut down. Given this condition where's the pollution advantage?
- * Granted less fuel will be used, but not 50% less.
- * Customers (we) will be funding BOTH energy producing plants. Even with some fuel savings I doubt that energy costs can go down.
- * Environmentalist should be outraged at this industrial proposal. Have we forgotten what happened to the rivers, streams, and bays during the last two century's, industrial events? We're still trying to recover from that.
- * Wind mill technology needs further development, and it's happening rapidly, e.g. 170 mills down to 130 in a few months.
- * Every effort should be made to place wind mills in the most productive location, a class 7 area. On land.
- * Maintenance of these wind mills in the Ocean will be very costly, totally dependant on weather conditions, high wind, sea ice etc.

The time has come to make Nantucket Sound a National Marine Sanctuary, please make every effort to achieve that end.

3/11/04

Richard F. Mullin
Dennis, Massachusetts

Comment Submitted by Doug Yearley, Osterville, Massachusetts

To the National Ocean Commission

I have read your report and complement the completeness and rigor with which it has been prepared. My specific issue is the proposed development of a Wind Power Plant in Nantucket Sound. A for profit developer is proposing to build this project without proper Federal Government oversight on where and how to develop the Outer Continental Shelf.

I STRONGLY RECOMMEND THAT THE FINAL REPORT INCLUDE A RECOMMENDATION FOR A MORATORIUM ON ALL OFFSHORE DEVELOPMENT UNTIL A SUITABLE FEDERAL REGULATOR FRAMEWORK IS DEVELOPED TO MANAGE the OCS

Doug Yearley
Osterville, Massachusetts

Comment Submitted by Bob DiBenedetto, EarthSave Long Island

June 4, 2004

Public Comment on Preliminary Report
US Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, DC 20036

To Whom It May Concern:

EarthSave Long Island is a member of the Long Island Offshore Wind Initiative (LIOWI). This is a unique partnership of environmental, civic health and faith-based local and regional organizations working with the Long Island Power Authority (LIPA) in support of the proposed 140 MW offshore wind farm to be built three to 6 miles off Long Island's south shore. Since 2002, the partner groups continue to conduct outreach and education to all Long Island stakeholders in an effort to strengthen public support and participation for this unprecedented project. The Long Island Offshore Wind Initiative is supported by New York Governor George E. Pataki, LIPA Chairman Richard Kessel, numerous elected officials, civic and other organizations.

As a member group of LIOWI, we are writing to express our concerns over ongoing and aggressive measures to impose a moratorium on offshore wind development as part of the proposed national energy bill. The contribution of renewable energy sources as mitigating and desirable solutions to air pollution, global warming and climate change impacts, energy security and reduction of dependence on fossil fuels cannot be overstated; in addition, we believe that the implementation of states' Renewable Portfolio Standards (RPS), including a statewide RPS initiative currently under review by Governor Pataki, compels us to proceed with timely review and development of offshore wind energy resources to comply with these important and necessary standards.

Consistent with your recommendations from Chapter 24 entitled "Managing Offshore Energy and Other Mineral Resources" of the US Commission on Ocean Policy's Preliminary Report, we support the following: 1) Investment of federal revenues received from oil and gas leasing activities to' sustainable development of renewable ocean and coastal resources through grants to all coastal states' (page 294, Recommendation 24-1) and 2) Legislation for the comprehensive management of offshore renewable energy development ... (which) 'streamlines the process for licensing, leasing and permitting renewable energy facilities in US waters' (page 301, Recommendation 24-5).

Our organization concurs with the overwhelming consensus of major environmental and consumer advocacy groups, including Conservation law Foundation, Union of Concerned Scientists, GreenPeace USA, and Natural Resources Defense Council, which rightfully conclude that such a moratorium is unnecessary, inappropriate and potentially devastating to the necessary potential of offshore wind energy as part of our nation's

energy supply. The provisions of current federal and states' laws are presently sufficient to ensure rigorous siting and review of proposed offshore wind projects such as the Long Island Offshore Wind Initiative and will, in turn, lead to the development of a long-term, comprehensive set of national offshore wind policy standards. We urge the Commission to recommend substantive statutory offshore energy policy that does not unduly delay, disrupt or terminate offshore wind projects already under development.

Respectfully Submitted,

Bob DiBenedetto
EarthSave Long Island
Area Director, Healthy School Lunch Program

Comment Submitted by Julius Marcus, Stamford, Connecticut

As a concerned citizen I offer the following comments on the pending US Commission on Ocean Policy.

I support the creation of a careful Ocean Policy.

I support creation of a Permitting Policy that considers economic and environmental costs and benefits of impacted persons and communities of use.

Zone the Oceans to protect traditional public interest affected by water use.

Suspend all offshore renewable energy projects until the creation of such policies.

Thank You for your consideration.

Julius Marcus
Stamford, Connecticut

Comment Submitted by Steve Hirsch, Salem, Massachusetts

I just want to register my opposition to the wind mill farm proposed for Nantucket sound...I am not opposed to renewable energy I just feel this is the wrong location...there should be extensive review and permitting before any location is considered...

Steve Hirsch
Salem, Massachusetts

Comment Submitted by Kristen E. Eastman, Mattapoisett, Massachusetts

Against to the Nantucket sound wind farm:

The wind farm visually and navigationally obstructs the sound and does not benefit the general public but is good only for the financial benefit of it's backers.

The proposal to build a wind farm is a good idea, just NOT in Nantucket Sound. They talk about it being offshore, so make it really off shore, perhaps like 12 miles off.

Kristen E. Eastman
Mattapoisett, Massachusetts

Comment Submitted by Tracy and Lance Isham, Citizens

Before making any decisions that could be an irreversible mistake, suspend all offshore renewable energy projects until a plan is in place. Protect the ocean by zoning that is well thought out and establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.
Thank you, Tracy and Lance Isham

Comment Submitted by Bill Cantor, Mattapoisett, Massachusetts

Opposed to the wind farm:

The proposal to build a wind farm is a good idea, just NOT in Nantucket Sound. They talk about it being offshore, so make it really off shore, perhaps like 12 miles off.

The wind farm visually and navigationally obstructs the sound and does not benefit the general public but is good only for the financial benefit of it's backers.

Bill Cantor
Mattapoisett, Massachusetts

Comment Submitted by Fred Luconi, Mashpee, Massachusetts

Please add my name to the list of citizens who believe in the development of renewable energy sources, but am absolutely against the exploitation of Nantucket Sound by Cape Wind. It is necessary to develop Federal and State guidelines to control the development of these waters. Although outside the normal distance from shore limits of current zoning, this body of water, and I am sure others like Buzzards Bay for example, form an integral part of Cape Cod. These waters should be under strict development controls.

The Cape Wind project is simply too large, too disruptive, too dangerous to the waters and environment, and will disregard private property owner rights in this area.

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project

Fred Luconi
Mashpee, Massachusetts

Comment Submitted by Kathryn Muir, Citizen

To whom it may concern,

The proposed windmills on the sound are just another attempt of someone's ego to control nature. Windpower in the middle of a MAJOR migration flyway is nothing short of murder. To destroy the horizon with antiquated technology is a waste of time and money. Other countries like Norway have already made the costly mistakes. ALTAMONT PASS INLAND IN CALIFORNIA IS An environmental mess . The state is being SUED for violating the endangered species act by killing thousands of birds a year. Look out Mass. and get ready to pay the same price. This project will not generate revenue. Being subsidized will make it appear that it does make economic sense.

If this project is approved make sure there is ample money in a secured account for the removal of the turbines when they prove problematic. Otherwise the egomaniacs who want to build this will walk away free and leave a once beautiful coastline a disaster. Make them accept total financial responsibility and watch how fast this becomes a trend of the past.

Thanks for your attention,
Kathryn Muir

Comment Submitted by Kenneth Magowan, Osterville, Massachusetts

As a sailboat owner and a retired resident of Cape Cod, I am truly disheartened by the efforts of some wealthy entrepreneurs to turn what is currently one of the top three or four sailing regions in the United States into an industrial zone for the purpose of making money for their financial partners at the expense of those thousands of people who fish and sail these waters with such intensity during our summer season.

At this time of year, thousands of small boats have been polished and had their bottoms painted here on Cape Cod and launched for recreational purposes. Do you think it is realistic to think that in the near future it would be pleasurable for us to sail a few miles off the coast of the Cape and be amongst some 100 plus metal islands standing some 400 feet high. That is not recreational. That is the industrialization of our local area. This is a scenic area. An area in which to relax. We don't need electrical generating stations in the midst of a recreational area.

Please do your job with our citizens in mind. Develop a national plan where generating stations can be placed in the ocean, if this is what that industry would like, but leave the bays and sounds to the general population to be used for fishing and boating and not have tall, noisy, intimidating, monstrous islands built all over the place. Please develop the national plan before allowing anyone to usurp the use of some local body of water for what they feel is right, regardless of what the thousands of current users and enjoyers of that body of water feel is best.

Thank you.

Kenneth Magowan
Osterville, Massachusetts

Comment Submitted by B. Hempel, Dennis, Massachusetts

To the U.S. Commission on Ocean Policy, please:

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Nantucket Sound is not the place for a wind farm.

B. Hempel
Dennis, Massachusetts

Comment Submitted by Margaret E. and C. Victor Mankiewicz, West Barnstable, Massachusetts

PLEASE !

In order to protect our country's waterways in a pristine state, Please vote to...

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Although we are in favor of "harnessing the wind" for energy production, PLEASE do not allow a private company to run roughshod over the people / the government by obtaining the use of our offshore waters to their great monetary advantage, while imposing great cost to the taxpayers in the area!

Margaret E. and C. Victor Mankiewicz,
West Barnstable, Massachusetts

Comment Submitted by Donna Schulze, Citizen

Attn: U.S.Commission on Ocean Policy

Regarding wind generators aka "Windmills" in our ocean. Cape Cod cannot be taken for granted. This area is one of the most pristine and beautiful areas of the Commonwealth. For that matter the world. Why can't alternative energy generators be placed in polluted areas like OTIS or maybe other contaminated sites where no one wants to see or hear them. Put eyesores like this in a "dead zone". Leave our oceans and CLEAN areas alone. Dredging, building and messing around is a danger to the welfare of all of the residents here. Small planes, boats, whales and everything about and around Cape Cod will be affected ... We have already experienced pollution at Otis due to chemicals in the ground water and gross human negligence. Why not back off and re-think this whole process?

I have lived here 24 years and remember when helicopters used to drop chemical sprays on cranberry bogs for bugs and a target ship was actually bombed in Cape Cod Bay. My house used to shake from army maneuvers at Otis. Who the hell thought that was a good idea? Our unpolluted natural resources should not be for sale. Cape Cod has tons of cancer problems. Groundwater issues. Housing issues. Rabies now. Pretty soon everyone is going to move out of here.

How about just concentrating on energy conservation in our area? Let's fund a drive to replace all the old appliances that suck all of our energy up. Old washer & dryers and air conditioners. How about using the money allotted for alternative energy like Windmills in pristine areas to fund replacement of hundreds of light bulbs and old electrical panels. Conservation instead of spending millions of dollars putting up Windmills? What is the profit in conservation?

At this time we can't even get insurance for our homes on Cape Cod! So how and why would the federal government insure a bunch of ugly Windmills? This whole idea is a disaster just waiting to happen. Someone please "Preserve the Trust".

Donna Schulze, Broker/Owner

Comment Submitted by Michael Finkel, Hyannis, Massachusetts

To Whom It May Concern:

Please be advised on my view of the ongoing off shore wind power generation controversy:

- 1) All offshore renewable energy projects in the pipeline should have a high priority process so they can be on line as soon as possible.
- 2) Zone the ocean in a way that gives wind power generation the highest priority to be on line as soon as possible.
- 3) Establish a permitting process for offshore development that is of the fastest track to help us become LESS dependent of foreign fossil fuels.

Thanks You,
Michael Finkel
Hyannis, Massachusetts

Comment Submitted by Phyllis Campobello, Osterville, Massachusetts

Please suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place.

Please zone the ocean in a way that protects traditional water-dependent uses that serve the public interest.

-and please establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Sincerely,
Phyllis Campobello
Osterville, Massachusetts

Comment Submitted by Barbara Wilson, Citizen

As a full-time resident of Cape Cod I would ask the following of your commission:

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Allowing CapeWind to build their wind turbines before a comprehensive plan is in place is not in the best interest of anyone.

Comment Submitted by Hilary Johnson, Cherry Hills Village, Colorado

Just a quick note to ask you not to allow the proposed wind farm in Nantucket Sound in Massachusetts.

Thank you,
Hilary Johnson
Cherry Hills Village, Colorado

Comment Submitted by Robert and Deborah Faulconer, Hopkinton, Massachusetts

To whom it may concern.....

We are writing concerning the off-shore wind farm off the shores of Cape Cod. Please consider the following:

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

PLEASE PROTECT OUR SHORES!!!

Sincerely,

Robert and Deborah Faulconer

Hopkinton, Massachusetts

Comment Submitted by John Learym, Harwichport, Massachusetts

Sirs/Madam.

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Sincerely,

John Leary

Harwichport, MA

Comment Submitted by Paul McGinn, Delmar, New York

To the Commission,

Please accept the following comments:

- I am a staunch supporter of renewable energy. However, to continue with any off-shore renewable energy projects, whether planned or in process, before a comprehensive plan is in place is grossly irresponsible and could very well hurt us (the collective "us" here) in the long run. There is absolutely no valid reason to rush. The ocean isn't going anywhere. Let's take our time with this one and do it right (for us and all those to come after).

Paul McGinn
Delmar, New York

Comment Submitted by David Mahan, West Harwich, Massachusetts

I totally agree that offshore development of renewable energy should not proceed without a federal plan that protects the public interest.

I also believe that; 1) all offshore renewable energy projects in the pipeline should be suspended until a comprehensive plan is in place; 2) the ocean should be zoned in a way that protects traditional water-dependent uses that serve the public interest; and 3) a permitting process for offshore development should be established that fairly considers the economic and environmental costs and benefits of any proposed project.

David Mahan

West Harwich, MA

Comment Submitted by Gail Cooper, Falmouth, Massachusetts

Please develop guidelines for renewable energy BUT let's not destroy our National treasures in the process! Nantucket Sound provides food and recreation to everyone in New England. In addition, birds migrate this route in numbers too great to imagine. Why in the world do we need windmills in Nantucket Sound of all places?! To make matters worse, it sounds like my tax dollars are supposed to support this effort and line the coffers of Cape Wind Assoc? Are you kidding?!

Gail Cooper

Falmouth, MA

Comment Submitted by JS Lloyd, Cotuit, Massachusetts

I have enjoyed the beauty of Cape Cod my whole life(now 46!) and have seen it change from a rural, quaint area to a place teeming with people, malls and crowds. It has, quite frankly, lost some of its simplicity, but the waters still remain a sight to behold when out sailing or watching the sun set.

PLEASE, don't let the waters get polluted. We owe it to the land and our heritage to not allow this to happen in such a populated area. Please allow time to at least investigate the environmental impact

If the decision is to deny this project, then Cape Wind must remove the test tower as by itself it is an eyesore.

JS Lloyd

Cotuit, Massachusetts

Comment Submitted by Dan Wareham, Citizen

Don't industrialize the oceans with wind farms without looking at alternative sites on land that are more accessible, such as Massachusetts Route 6 median, on of the highest points on the cape. State owned and regulated were leases can be sold.

Dan Wareham

Comment Submitted by Alton B. Sherman, Jr., Citizen

Gentlemen:

I, Alton B. Sherman, Jr., as a year around resident of the Village of Centerville (Cape Cod), in Barnstable County, in the Commonwealth of Massachusetts, hereby submit my strong objection to the establishment of any type wind farm in the waters of Nantucket Sound, either as proposed or in future modified submittals. I further submit the following:

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Most sincerely,

Alton Sherman

Comment Submitted by Geraldine M. Pizzuto, Dennisport, Massachusetts

Dear Ocean Commission:

I love my Cape, and treasure it's many unique qualities. I also believe in renewable energy, but not windmills in precious Nantucket Sound.

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest; and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Respectfully yours,

Geraldine M. Pizzuto

Dennisport, Massachusetts

Comment Submitted by Cathryn F. Brower, Fairhaven, Connecticut

To whom it may concern...

I am against placing the windmills in Nantucket Sound for many reasons... danger, ecology, fish & wildlife, natural beauty, navigation hazards (when they deteriorate) and tourism.

There is a place for windmills, on land where they can be serviced and cared for not in the ocean where hurricanes and storms can impact them and cause future problems.

Also, no private sector company should be "given" common property to make a profit from. It should be leased or sold, and only if the abutters are in agreement.

Until you make double hull tankers and levy fines equal to the clean up cost (Bouchard \$90million+) to make it cheaper to do double hulls than keep using single hulls, don't talk to me about messing up Nantucket Sound with wind mills.

Thank you.

Cathryn F. Brower on Buzzards Bay in Fairhaven

Comment Submitted by Jody Howard, Health Link

4 Sewall Street

Fax: 781.639.8667

Core Members:

Marblehead, MA 01945

Phone: 781.639.8636

Burt Apple

www.healthlink.org
healthlink@healthlink.org

Rev. Jeff Barz-Snell

June 3, 2004

Michael Blatty

Jane Bright

US Commission on Ocean Policy
Washington, D.C.

Art Burns

Letter submitted electronically to: comments@oceancommission.gov

Avi Chomsky

RE: HealthLink's Comments on US Commission on Ocean Policy Report

Claudia Chuber

Martha Dansdill

Lori Ehrlich

Lisa Evans

Pat Gozemba

Nancy Hamlin

Alan Hanscom

Jody Howard

Marilyn Humphries

Dolores Jordan

Karen Kahn

Kathleen Klett

Laura Leeson

Eleanor Lynn

Krishna Mallick

Gail McCormick

Lee Mondale

Lynn Nadeau

Jean Oliphant

Julian Pelenur

Rep. Douglas Petersen

Mark Rodgers

Kate Simmons

Brad Simmons

Will Warren

Linda Weltner

Abbie Winston

HealthLink is a 1,500 member citizens action organization based in Massachusetts that is dedicated to educating the public about health and environmental impacts of polluting power plants. HealthLink is taking this opportunity to respond to a recent report issued by the US Commission on Ocean Policy (Commission).

HealthLink commends the Commission for rejecting the calls of offshore wind energy opponents to impose a moratorium on the continued permitting process being used for existing offshore wind applications. HealthLink also strongly agrees with the Commission's recommendation that in the future, the permitting process for offshore renewable energy projects on the outer continental shelf be streamlined to give greater regulatory certainty to the business community to pursue these types of projects.

HealthLink agrees with the Commission that threats to our oceans from pollution and climate change are important priorities and need to be addressed and HealthLink believes that greater use of land based and offshore renewable energy are important tools to help reduce those serious threats. It is hard to imagine a more sustainable commercial use of the oceans than clean energy production and we see it as exemplifying responsible stewardship of our public trust resources.

Sincerely,
Jody Howard
On Behalf of the Board of Director



Our Mission:

*To protect and improve
public health by
reducing and
eliminating pollutants
and toxic substances
from our environment
through research,
education, and
community action.*

Comment Submitted by Fred Zalcman, Pace Energy Project

Fred Zalcman
Executive Director
78 North Broadway
White Plains, NY 10603
Pace Energy Project

Fax: 914-422-4082/4180
e-mail: fzalcman@law.pace.edu

June 3, 2004

Public Comment on Preliminary Report

US Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, DC 20036

To Whom It May Concern:

The Pace Energy Project is an integral part of the Pace University School of Law's top-ranked environmental law program. The Energy Project works at the nexus of environmental law, energy law and economic policy, using research, education and advocacy to promote sustainable energy as a means of reducing the global burden of pollution from electrical energy production.

It is from our perspective as a major public interest leader of energy conservation and renewable energy advocacy that we respond to the US Commission on Ocean Policy's preliminary report, particularly Chapter 24, "Managing Offshore Energy and Other Mineral Resources." The report correctly cites the significant potential offshore areas represent for the development of renewable energy, and we support the Commission's recommendations that 1) federal revenues received from oil and gas leasing activities be invested in sustainable development of renewable ocean and coastal resources through grants to all coastal states (*page 294, Recommendation 24-1*); and 2) that legislation be enacted that streamlines the process for licensing, leasing and permitting renewable energy facilities in US waters (*page 301, Recommendation 24-5*).

We are concerned, however, that the latter suggestion may be used to advance ongoing, aggressive efforts to impose a moratorium on offshore wind development, and we urge the Commission to prevent this from happening. An overwhelming consensus of major environmental and consumer advocacy groups including Conservation Law Foundation, Union of Concerned Scientists, GreenPeace USA, and Natural Resources Defense Council has concluded that such a moratorium is unnecessary and may in fact be devastating to the potential for offshore wind energy development in this country. More immediately, it would halt proposed wind farms off of New York's Long Island (the Long Island Offshore Wind Initiative, or LIOWI) and Massachusetts' Nantucket Island (the Cape Wind project).

As noted in the Commission’s preliminary report, these projects are proceeding under the authority of the US Army Corp of Engineers (ACE), pursuant to Section 10 of the Rivers and Harbors Act. The United States District Court for the District of Massachusetts recently affirmed ACE’s authority over such offshore wind projects in its decision in *Alliance to Protect Nantucket Sound, Inc. v. United States Army Corp of Engineers*. In addition to ACE’s oversight, Cape Wind and LIOWI also are subject to review by numerous federal and state agencies.

While this system does not constitute the “comprehensive and coordinated federal regime...to regulate offshore wind energy development” recommended by the Commission, it does ensure rigorous siting and review of currently proposed offshore wind projects. Indeed, as projects such as Cape Wind and LIOWI progress through the system, they are providing the practical experience necessary for the development of a long-term, comprehensive set of national offshore wind policy standards. Thus, a moratorium on offshore wind development could result in a lost opportunity to achieve one of the Commission’s primary objectives with regard to offshore renewable energy.

Wind energy offers one of the best means available for combating global warming, reducing air pollution, and improving our nation’s energy security. The development of offshore wind energy is consistent with both this Commission’s recommendations regarding the management of atmospheric pollutants (*page 173, Recommendation 14-14*), and with the Administration’s policy of expediting increases in energy transmission in a safe and environmentally sound manner (*Executive Order 13212*). For these reasons, we ask the Commission to recommend substantive statutory offshore energy policy that does not unduly delay, disrupt or terminate offshore wind projects already under development.

Respectfully submitted,

Fred Zalcman, Executive Director

Comment Submitted by Anthony T. Jones, San Francisco, California

Polin Cohanne
Executive Assistant to the Executive Director
U.S. Commission on Ocean Policy

Comments related to Preliminary Report U.S. Commission on Ocean Policy.

Other Energy Resources besides offshore oil and gas.

In Chapter 24 of the Preliminary Report, you have identified several offshore renewable energy resources but have forgotten to mention a significant resource, salinity gradient power. In my recent review of developments in salinity gradient technology that was presented in 2003 at the Marine Technology Society conference, we reference a global resource on the order of 2.6 TW (terawatts). [see Jones, AT and Finley, W (2003) "Recent Developments in Salinity Gradient Power," Proceedings OCEANS 2003 (available at www.waderllc.com/technical.html)]. Additional background on the potential energy of salinity gradients is available in Isaacs, JD, and Schmidt, WR(1980) "Ocean Energy: Forms and Prospects," Science, Vol. 207, pp. 265-273.

A small company, based in California, has an innovative approach to capturing the osmotic pressure difference between freshwater and saltwater. This technology, known as "Hydrocratic Generator" was successfully tested in engineering tests off La Jolla this week aboard the Scripps Research Platform FLIP. The test demonstrated in practice the concept behind the Hydrocratic generator. Upwelling tubes up to 200 ft. in length were deployed and freshwater up to 1000 gallons per minute were introduced into the system. Preliminary results indicate enough entrainment of seawater which could be utilized to generate power.

A proposal to install a pilot plant demonstration have been submitted to a California municipal wastewater authority.

Regards,

Anthony T. Jones, Ph.D.
Oceanographer
San Francisco, California.

Comment Submitted by Jeremy Gregory, Somerville, Massachusetts

Dear US Commission on Ocean Policy,

I am writing to comment on your recent preliminary report. As a citizen of Massachusetts and a supporter of clean, renewable energy, I am particularly interested in the sections of the report that deal with offshore renewable energy.

I would like to thank you for rejecting the call of renewable energy opponents to impose a moratorium on the review of existing offshore renewable energy applications. Such a moratorium would chill development of important renewable energy projects that can help clear our air and reduce our reliance on imported energy.

In addition, I would like to thank you for calling for a streamlined review process for offshore renewable energy projects and for their recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence.

Your recognition of these key concepts will go a long way to increasing the likelihood that offshore renewable energy will soon become a reality in the US.

Thank you.

Sincerely,

Jeremy Gregory
Somerville, Massachusetts

Comment Submitted by Susan and Jonah Liebes, Fallbrook, California

We are writing to express our support for off-shore wind farms. These developments are important to our country's energy independence and a smart way to use our natural resources. Although they do entail some damage during construction, the long-term benefit greatly outweighs any short-term negative impact. We think wind farms look much better than oil rigs and nuclear power plants and cannot wait for the day that America runs on renewable energy alone!

Susan & Jonah Liebes
Fallbrook, California

Comment Submitted by Paul Doherty, Mashpee, Massachusetts

I am a year round cape resident, and I support the wind farm. Please do all you can to help this project happen.

Sincerely,
Paul Doherty
Mashpee, Massachusetts

Comment Submitted by Daniel J. McCullough, Citizen

Hello;

I am a native Cape Codder and supporter of renewable energy. I would like to thank you in the Commission for rejecting the call of renewable energy opponents to impose a moratorium on the review of existing offshore renewable energy applications. Such a moratorium would chill development of important renewable energy projects that can help clear our air and reduce our reliance on imported energy.

I would also like to thank the Commission for calling for a streamlined review process for offshore renewable energy projects and for their recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence.

Thank you very much,

Daniel J. McCullough, Maryland

Comment Submitted by Tom Neuhaus, Citizen

To Whom It May Concern:

I support the establishment of Wind Farms around the U.S., including along the coasts. We must move aggressively to wean ourselves of dependence on foreign oil. As long as the wind farms are not situated in places where they can damage/slay birds and they are not overly obnoxious to the quality of real estate, I see no problem with them.

Tom Neuhaus

Comment Submitted by Charley Wilder, Southwick, Massachusetts

Thank you for opposing a moratorium on offshore renewable energy application reviews. Thank you also for a streamlined review process for offshore energy development. This is one of the strategic keys to energy independence in the USA.

Charley Wilder
Southwick, Maryland

Comment Submitted by John Hingtgen, Wisconsin

I urge you to support offshore wind farms in the USA for a variety of reasons, including building a better energy generation mixture. Please do all in your power to support offshore wind energy.

Thanks.
John Hingtgen
Wisconsin

Comment Submitted by Alfred Padula, Green Campus Consortium of Maine

Dear Ocean Studies Group:

This year Europe will produce 40,000 megawatts of electricity from wind energy. An increasing portion of this is coming from sea-based wind farms. This total, far in advance of the US, brings with it diminished vulnerability of price swings typical of fossil fuels.

In the US wind farms are often far from population centers, meaning that elaborate and expensive and contentious electrical lines must be constructed. For the eastern part of the US, wind maps show that the best sources are on mountain ridges and along the coast. If your office discourages coastal windpower there will be, over time, a certain loss of economic competitiveness in New England.

In recent months, universities in Maine have been making commitments to purchase wind energy, based largely on the prospect of steady fuel prices. Where is it going to come from? In the East coast's heavily populated coastal areas, which need enormous amounts of energy, off shore wind is often the best solution as mountain ridges are often in the "view sheds" of wealthy persons and NIMBY towns.

If you crimp CapeWind and Jones Beach, you are going to discourage wind investors and projects on the whole east coast. Business follows easy and sure access to energy as we have noted in Maine with the clustering of new businesses around natural gas pipelines coming down from Canada. How long will these fossil fuels last? 10 years? 20? These are the guesstimates of the moment in New England.

The national security and economic viability of the US east coast requires off shore wind power. We know it works---unlike the more speculative hydrogen networks of the future.

Sincerely,

Alfred Padula
President, Green Campus Consortium of Maine

Comment Submitted by Pamela C. Fields, Chaska, Minnesota

I wish to comment on the proposed moratorium on off-shore windpower being limited off the Cape Cod coast. First, and foremost, windpower is the cleanest renewable energy source we have. To be able to meet the growing demands on energy, but yet—saving our globe from the devastation of fossil fuel energy, and depletion of our resources (such as water) – we must look hard at windpower as a viable source of furnishing the demanding needs of energy, while providing a safe, clean, environment, and no impact on global warming to give us this wonderful resource. I urge you to look hard at this, as it is the answer that can cross over political boundaries, and into the world of sense-making. Thank you.

Pamela C. Fields
Chaska, Minnesota

Comment Submitted by Ben Somberg, Cambridge, Massachusetts

My public comment:

I thank the commission for rejecting the idea of a moratorium on off-shore windwarm projects, and for encouraging a streamlined review process for approval of such projects. These projects will decrease the need to burn fossil fuels, and thus make the whole world -- including the oceans -- cleaner.

Thank you.

Ben Somberg
Cambridge, Massachusetts

Comment Submitted by Catherine Miller, Pioneer Valley Planning Commission

I am writing to support the proposed Cape Wind project in Massachusetts. Our state, the nation, indeed the whole world must look beyond fossil fuels for our ongoing energy provision. The war in Iraq, and the deaths of so many young Americans, says more than any data can ever say. We need to be independent of foreign oil, and the only way we will ever be so is if we explore other sources of energy. Cape Wind will provide significant quantities of information about the utility of off-shore wind projects in the United States. PLEASE allow it to go forward. We need to explore wind power and Cape Wind is our best prospect. Thank you.

Catherine Miller
Pioneer Valley Planning Commission

Comment Submitted by Richard Small, Edgartown, Massachusetts

Gentlemen -

I strongly support the building of the Cape Cod Wind Farm.

We need to explore new methods of generating electricity and at the same time decrease our dependence on foreign energy sources. Enough of the selfish NIMB whiners. I would enjoy looking out over the waters of Martha's Vineyard Sound and knowing that the turbines that I am looking at are patriotically contributing to a cleaner, safer America.

Thank you,

Richard Small
Edgartown, Massachusetts

Comment Submitted by Ken Bates, Mashpee, Massachusetts

Gentlemen;

Please suspend all offshore renewable energy projects no matter what their present status is until your comprehensive offshore development plan has been adopted and is in place as a governing document.

If ocean zoning is established as a part of the plan please be very careful to protect the long standing water dependent uses that truly serve the public interest - note that these interests might vary from area to area and will require your most sensitive review.

Establish in the plan a permitting process that fairly considers the economical and environmental costs and benefits to Federal, State and local interests of the area in which a project is proposed.

In my opinion it would be fool-hearty to allow any projects to proceed that are not in compliance with your new comprehensive plan/guidelines. Why take the time and expense to develop a comprehensive plan that is not comprehensive? Do we call it the non-comprehensive plan? Stop all projects, review their direction, adopt and discard parts of those projects if they can add benefit to your plan.

Ken Bates
Mashpee, Massachusetts

Comment Submitted by George McConochie, Sustainable Energy Developments, Inc.

I believe it is very important for the United States to fully and openly explore the possibilities of offshore renewable energy facilities.

Whether wind turbines or the coming technologies of wave/tidal turbines, these technologies offer a viable path towards sustainability.

Additionally, these renewable technologies are a marked improvement over the massively polluting offshore oil and gas platforms that currently make up our nation's current offshore energy policy. Wind turbines are a viable alternative to fossil fuels that cannot pollute our nation's waters and are a long-term solution to the US's energy demands. I would hope that if this commission deems offshore wind energy technologies to be detrimental to our ocean's health the same would be determined of offshore oil and gas drilling operations and oil tankers.

Please consider the long-term effects of wind energy technology versus those of fossil fuel extraction facilities in making this decision and not the status quo economic benefits of the latter. The US has a tremendous and largely untapped wind resource that could provide a substantial portion of our energy demands. This is home grown energy that will not rely on volatile international markets, our army's blood or our citizen's tax dollars to secure in foreign lands. Placing a moratorium on offshore wind energy facilities would be a tremendous blow to the United States' security and long-term prosperity. I urge you to consider the greater good of the country and not just the screeching voices of the economically influential minority. I would suggest that regulatory efforts should be made to create national guidelines for properly locating wind farms based on the knowledge of industry experts (just as every other energy industry self-regulates) while incorporating the legitimate concerns of communities. With proper government oversight and encouragement, the US wind industry (and renewable energy industries) will blossom.

George McConochie
Project Manager
Sustainable Energy Developments, Inc.
Delanson, New York

Comment Submitted by Shannon Cox, Guilford, Maine

To Whom it May Concern,

I am a resident of New England and a huge supporter of the Cape Wind project. I am writing to express my concern regarding the proposed moratorium on all offshore renewable energy projects, which will surely delay and potentially kill the prospects for a 420 MW project off the coast of Cape Cod. The U.S. is severely lagging behind its European counterparts in the development of renewable energy projects. As an American I believe it is our duty to move beyond the political rhetoric claiming renewable energy is not economically feasible and start to take responsibility for the negative and grossly destructive impacts our energy needs are inflicting on the environment. Furthermore, I wholeheartedly support national energy independence and a strategic energy policy which will transition our country away from foreign oil. The Cape Wind project will serve to symbolize the American public's desire for a cleaner environment and peace in the Middle East.

Regards,

Shannon Cox
Guilford, Maine

Comment Submitted by Stephen Knowlton, Fair Haven, New Jersey

Dear Commission:

I support your recommendation:

"The Commission calls for the creation of a coordinated offshore management regime that can encompass existing and emerging uses and address the impacts of multiple activities on a particular location, or on each other. This regime should be able to encourage opportunities, yet avoid and minimize conflicts among users, safeguard human and marine health, and fulfill the federal government's obligation to manage public resources for the maximum long-term benefit of the entire nation."

However, I do think that offshore wind facilities should be a preferred use, when compared to offshore oil and gas extraction. Wind turbines do not pollute and reduce our dependence on non-renewable sources of energy.

I recommend that you add this preference to your recommendations.

Stephen R. Knowlton
Fair Haven, New Jersey

Comment Submitted by David Hill, Wayland, Massachusetts

We are asking supporters of renewable energy to please send an email message to the US Commission on Ocean Policy as they are finalizing that may impact Cape Wind. The Commission recently released their 500 page report based on their three year review of US Oceans Policy and it contains a section on.

As you finalize your policy recommendations to Congress, I would like to thank the Commission for that section of your recently released report that pertains to your offshore renewable energy policy. In particular thank you for:

- 1) rejecting the call of renewable energy opponents to impose a moratorium on the review of existing offshore renewable energy applications as such a moratorium would chill development of important renewable energy projects that can help clear our air and reduce our reliance on imported energy and;
- 2) For calling for a streamlined review process for offshore renewable energy projects and for their recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence.

The testing and ultimate installation of off-shore wind farms to harvest the wind energy, is imperative to the future of Massachusetts and our country. The installation of coastal wind farms, a proven alternative, environmentally safe energy source is a logical way for Massachusetts to make its contribution towards energy independence.

Thank you.

David

David M Hill
Wayland, Massachusetts

Comment Submitted by Jeffrey Luce, Citizen

Dear Sirs & Ladies

It would seem that there are a number of individuals that would rather pollute what is left of the atmosphere than take a daring step forward in the generation of energy for those that will follow us---I urge you to consider the sustainability of the planet before you summarily dismiss wind power as an alternative to fossil fuel—

Tired of dirty air,

Jeffrey Luce

Comment Submitted by Lois Grossman, Medford, Massachusetts

I want to thank the Commission for steps already taken to prevent important environmental legislation from being blocked. I am a strong supporter of wind energy and any other form of renewable energy. The Cape Wind Project is one of the most exciting ventures I know of. I hope Massachusetts will be a leader in the field of renewable energy. Please help make that wish a reality.

Thank you.

Lois Grossman
Medford, Massachusetts
Member: Brooks Estate Preservation Association, Medford Climate Action Network, Medford Renewable Energy Committee.

Comment Submitted by John A. Duggan, N. Chelmsford, Massachusetts

Gas prices getting too high? I think this wind idea is a step in the direction of less foreign oil dependence. Let's get moving on it.

John A. Duggan, OD
N. Chelmsford Massachusetts

Comment Submitted by Mary Jane Curran, Cape Cod Community College

I coordinate the Environmental Technology Program at Cape Cod Community College. We recently received a \$350,000 grant from the National Science Foundation to collaborate with local technical high schools and four year institutions to develop a curriculum for a renewable energy certificate and provide training for trades people in southeastern Massachusetts. This will be a three year project. We are vitally interested in the future of offshore renewable energy applications. These projects represent future jobs for our graduates. We know that wind energy is the fastest growing segment of the industry.

I would like to thank the Commission for rejecting the call for a moratorium on the review of existing offshore projects. It is time to move forward and encourage such projects to reduce our reliance on fossil fuel. The air on Cape Cod is the worst in New England. We want clear air for future generations. We are confident that you will streamline the review process for such projects. We cannot wait another five to ten years to stop climate change and reduce our dependence on fossil fuel.

Mary Jane Curran

Comment Submitted by Milton Schwartz, Sandwich, Massachusetts

It is extremely important and urgent that we take all steps to reduce and in time eliminate our dependence on fossil fuels. The deterioration of our environment calls for every effort to promote and develop renewable energy from non-fossil fuel sources. Certainly the wind farm concept is the least objectionable sources of much needed energy and should be heartily encouraged.

Milton Schwartz
Sandwich, Massachusetts

Comment Submitted by Andrew Heafitz, Cambridge, Massachusetts

Thank you for rejecting the call of renewable energy opponents to impose a moratorium on the review of existing offshore renewable energy applications. Such a moratorium would chill development of important renewable energy projects that can help clear our air and reduce our reliance on imported energy.

I would also like to thank the Commission for calling for a streamlined review process for offshore renewable energy projects and for their recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence.

Andrew Heafitz
Cambridge, Massachusetts.

Comment Submitted by Carlos J. Zaldoundo, Hull, Massachusetts

I just wanted to extend my thanks to the commission for rejecting the call for a moratorium on offshore renewable energy applications. With gas prices as high as they are and all the turmoil caused by our addiction to foreign oil, it is imperative that all alternative sources of energy be explored. As a resident of the town of Hull Massachusetts I have the fortune of living close to a wind turbine. The benefits for the town are in the tens of thousands of dollars not to mention the environmental benefits.

I urge you to move forward in your work and to keep calling for a streamlined review process for offshore renewable energy projects. The time is now!

Thank you very much

Carlos J Zaldoundo
Hull, Massachusetts
Occupation: Math and Science Teacher

Comment Submitted by Steven Thomas Oney, Citizen

Dear Commission Members:

I am a former Regional Director of the Nature Conservancy and a 27 year resident of Cape Cod. I have followed with interest the proposal to place a wind farm in Nantucket Sound and consider the idea meretricious on many levels (practical, scientific, economic, social, environmental and even aesthetic grounds), but also particularly on a symbolic level which would be advantageous not only to this state from a forward-looking standpoint, but helpful and healing to our country as well to counterbalance some of the sordid and negative impressions currently circulating about our great republic. I am keen to see it go forward and therefore would like to thank the Commission for your willingness to streamline the overview process and not involve a needless moratorium.

Sincerely,

Steven Thomas Oney

Comment Submitted by Christopher Schaffner, Acton, Massachusetts

Please support the Cape Wind Project. We have three choices on Cape Cod:

1. Use of renewable energy sources like wind power.
2. Continued environmental damage, similar to last year's oil spill, from fossil fuel based electricity production.
3. Deep reductions in the use of electricity in the area.

While I am wary whenever someone proposes to use public assets for private gain, I believe the Cape Wind project, as proposed will provide real benefits to everyone, not just the developer.

Christopher Schaffner

Acton, Massachusetts

Comment Submitted by Daniel Goldstein, Jamaica Plains, Massachusetts

Daniel Goldstein
Jamaica Plain, Massachusetts

To the Commission on Oceanic Policy. comments@oceancommission.gov

First I would like to thank the Commission for continuing the review of offshore renewable energy projects and also thank you for calling for a streamlined review process. Wind energy and offshore wind initiatives are important projects and reflect my ideology on our energy policy and strategy for environmental protection. The notion that the commission would agree to a moratorium on all offshore renewable energy projects seems irresponsible and ultimately, given both the environmental state of the world and the geo-political circumstance, not wise.

Vox Popoli. Don't agree to a moratorium.

Comment Submitted by Holly D. Fletcher, Gloucester, Massachusetts

Dear Sirs/Madams:

Without a plan to provide renewal energy, the USA will continue to be dependent on foreign oil and gas. I urge you to weigh carefully the issues at hand and vote **for** the Cape Wind Project.

Holly D. Fletcher
Gloucester, Massachusetts

Comment Submitted by Werner Grundl and Julie O'Neil, Citizens

I have studied and video taped installations and people working with them and need to say, that all negative comments about off shore wind are unjustified and wind energy should be used where ever it is available. We need, like Europe, show a united front to combat global climate change. Government has failed to lead and it is up to the people to demand action. Cape wind is only a small example. There is no noise, there is no visual impairment. People that want to believe otherwise have never studied the facts.

Werner Grundl
Julie O'Neil

Comment Submitted by Ronald LaCoss, Hollis, New Hampshire

Dear Commissioners,

First, I would like to thank you for your common sense in rejecting a moratorium on renewable energy. The only people that I can think of that would not support renewable energy would be poverty stricken people who worry about food and shelter or the privileged who are blind to the economic and environmental needs of those less fortunate.

I would also like to thank you for calling for the streamlining of the review process. Haven't we learned anything from this past year with power shortages? Powerplants are getting older and more power is needed every year. Renewable energy can ease the burden of energy needs without the environmental impact of fuel powered plants.

I live in New Hampshire and work all around New England and the US in the marine construction and industrial maintenance industry as a commercial diver. I have seen the inside of a hydro electric facility, the bottom of a ruptured oil tanker, the wastewater systems from sewer pipes to treatment facilities, to discharge and I am concerned about the quality of the water on our planet and the air I breath (maybe a little more than the average person) . Saving our planet has started like a baby, rolling over and seeing things from a different perspective, strengthening and trying to start crawling. Let us not delay the development. Renewable energy is the next step.

Sincerely,
Ronald LaCoss
Hollis, New Hampshire

Comment Submitted by John Hoffman, Brewster, Massachusetts

Dear Sirs:

The USA needs renewable sources of energy. Wind is a valuable resource and should be tapped wherever it is available at reasonable cost. Nantucket Sound appears to be a viable option that requires thorough evaluation. I encourage the completion of the environmental and economic feasibility studies.

John Hofmann
Brewster, Massachusetts

Comment Submitted by Chris Ellis, Brewster, Massachusetts

Dear sir / madam,

I would like to personally thank you for doing the right thing about a future energy resource that will help free us from oil dependency. I spent 4 years taking wind surveys and running the Brewster Wind Power Committee, a town committee (now disbanded) that attempted and succeeded to procure state grants for a wind power facility in Brewster. We got the money, but no one wanted responsibility for the project and it never happened.

The Cape Wind project has great potential and the objections to it are largely selfish in my view: visual or competitive.

Please continue to do the right thing and help propel our country into a new era.

Chris Ellis
Brewster, Massachusetts

Comment Submitted by Dinda Evans, Citizen

I would like to:

- 1) Thank the Commission for rejecting the call of renewable energy opponents to impose a moratorium on the review of existing offshore renewable energy applications. Such a moratorium would chill development of important renewable energy projects that can help clear our air and reduce our reliance on imported energy.
- 2) Thank the Commission for calling for a streamlined review process for offshore renewable energy projects and for their recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence

Comment Submitted by Jessica Miller, Haverhill, Massachusetts

To the US Commission on Ocean Policy regarding the recently released report based on the review of US Oceans Policy specifically the comments on offshore renewable energy policy:

Thank you for rejecting the call of renewable energy opponents to impose a moratorium on the review of existing offshore renewable energy applications. Such a moratorium would chill development of important renewable energy projects that can help clear our air and reduce our reliance on imported energy.

Thank you for calling for a streamlined review process for offshore renewable energy projects and for your recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence.

A concerned citizen for the future of renewable energy,

Jessica Miller
Haverhill, Massachusetts

Comment Submitted by John Lavigne, Citizen

Dear officials,

I would just like to thank you for rejecting the call of the renewable energy opponents to impose a moratorium on off shore development of future energy conservation projects. Thank you also for calling for a streamlined review process for offshore renewable energy projects and for their recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence. My name is John Lavigne. Thank you once again.

Comment Submitted by Inge Perreault, Citizen

Dear Members of the Commission,

As a resident of the area that will be significantly impacted by the effects of a wind farm in Nantucket Sound due to the highly improved quality of air we all breathe and less polluted ocean that surrounds us, let me begin by thanking you for rejecting the demands of the opposition to this worthy project and streamlining the application process. Renewable clean energy sources MUST be encouraged and further developed at all cost as our dependence on oil, a finite resource, will greatly damage not only our environment and health but the entire future of this planet. Europe is undergoing a tremendous transformation and there is no reason for the US to "play second fiddle" in this process, held back by people whose interests are anything BUT directed towards a better environment and healthier living, though they may disguise their claims as representing these issues. Last year the residents of Buzzards Bay where I live were hit with a major oil spill that left us devastated and with disastrous consequences. The time for action towards clean renewable energy sources is NOW, not until our economy is forced to its knees and our planet destroyed beyond repair. The experience I had personally being a victim of "big oil" taught me a good lesson, a lesson I have know for a long time as my family designed and built a passive solar, partially earth-sheltered home in N.J. where we lived for 21 years in great comfort, until we retired to this area. I would like my grandchildren to be proud of us, not curse us for leaving them with conditions that render their lives miserable, cause more wars and continue to pollute our precious earth. This is more important then exploring Mars! Let us spend our taxpayer dollars wisely and in such a fashion that as we enter this, the 21st century, new technologies can flourish and wind farms become as natural to us as gasoline stations or fossil-fueled power plants are now. I would rather see quietly turning wind turbines 6 miles or further off-shore than a leaking single-hulled barge 3 miles off shore depositing its toxic load on our beaches. I trust your judgments will be made wisely.

Inge Perreault

Comment Submitted by Douglas Bashaw, Orleans, Massachusetts

Dear Sirs:

The economic effect of rising petroleum prices should make it abundantly clear that renewable energy is essential to the continuation of our standard of living, and with Cape Cod providing one of the best areas for wind power in North America, the Nantucket Sound wind farm should be approved (with further development encouraged).

I have been a sailor and navigator for 40 years and strenuously object to the baseless assertion that the proposed wind farm would pose a hazard to navigation, whether it is commercial or recreational.

As a long time resident and property owner on Cape Cod, I welcome any harnessing of one of our greatest resources. Please do not let those who only have selfish short term concern for the property value of their beach front property sabotage a project which will benefit our environment, self reliance, and even our national security.

Warmest regards:

Douglas Bashaw
Orleans, Massachusetts

Comment Submitted by Eleanor Manore-Gatti, Citizen

Dear Commission,

I believe that there should not be a moratorium on the development of reliable alternative, renewable energy. Wind energy is a reliable nonpolluting energy source. Scientists know that global warming is happening due to greenhouse gases. We know that asthma, cancers, and learning problems are all increasing. Mercury vapor is poisoning fish that many people depend upon. Mercury vaporizes when coal is burned. Mercury accumulates in the fish we eat. Mercury is a neuro-toxin and one out of every twelve women in this country have enough mercury to cause their infants to have an abnormal nervous system. The people of the United States are vulnerable as we rely on foreign oil. The indigenous peoples of the world that have oil as a natural resource are being treated badly by U.S. oil companies and their governments. All these reasons call for investing in alternative energy. Some people might find wind mills located offshore unsightly, but breathing is more important than having a good view. Besides being an environmentalist and nurse, I am in seminary. I appreciate that you take time to consider my e-mail.

Sincerely,

Eleanor (Ellie) Manire-Gatti

Amherst, Massachusetts

Steering Committee of the Environmental Task Force of the Hampshire Interfaith Council

Comment Submitted by Hansjoerg Stern, Brewster, Massachusetts

Dear Sirs:

I want to commend the Commission for its timely inclusion of recommendations for the development of renewable energy sources in its report. Specifically I want to

1) Thank the Commission for rejecting the call of renewable energy opponents to impose a moratorium on the review of existing offshore renewable energy applications. Such a moratorium would chill development of important renewable energy projects that can help clear our air and reduce our reliance on imported energy.

2) Thank the Commission for calling for a streamlined review process for offshore renewable energy projects and for their recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence.

Yours sincerely,

Hansjoerg Stern, PE

Brewster, Massachusetts

Comment Submitted by Steve Scannell, Citizen

Hello, my name is Steve Scannell the designer of the Love Power Grid Consortium (a Nantucket DBA). Representative Delahunt has some documentation on hand via my request for a consortium to base the future of renewables offshore and perhaps on land too. I believe that putting up windmills is highly capially intensive. Doing so requires 1. base systems for the stick to fit into. 2. an electric or compressed air grid system to deliver the power, and third the mill and its generators.

I believe it would be in the publics best interest if a consortium handled the first two large capital outlays for base systems (and the rental of public real estate) and the grid, in what ever form. I am good at systems design like this, and have done a fisheries system, a recycle system, a voting system, and a transportation system. The gist of the windmill thing is this. You have to be really big to ante up with funds to do grids and bases for the mill itself. You have to get permission to be on public land. This leads me to think that a consortium of interests both private and public should be created for the task. Then this will allow for small mill operators to get into business, and to create innovation. That is a key to the consortium. U.S.A. can lead with this structure, and it could become an international project. Existing old out dated infrastructure could be absorbed by the new.

As I am now designing a complex societal services system which takes lots of time, I have this system flavored with the "love" adjective. I want a gross 2% fee to come off the top of renewables energy. If you understand my logic it is not entirely nutty or counter intuitive. The Love Power Grid Consortium would have massive subsidy going in and would be able to carry financial loads down the road.

I believe we need to leap frog the current state of the art mill and go to a larger georges bank mill of twenty times the proposed size. The bank is an ideal site. And marine protected areas can be installed with each mill, thus creating a second income from the installation.

Thanks,
Steve Scannell

Comment Submitted by Mary L. Cole, Norwell, Massachusetts

Dear Sirs,

I live in the South Shore area of Massachusetts. And I am very concerned that our country is becoming increasingly dependent upon oil from unfriendly nations. It is my considered opinion that we should be exploring wind, thermal and ocean power as alternatives to at least producing electricity. (I also believe we should be encouraging approaches to hydrogen fuel powered cars that do not depend upon gasoline, but that is not directly related to your report.) Europe has had wind power on land and off shore for many years. I have seen it. I have talked to Europeans whose attitudes toward wind power range from positive to indifferent. This is only a matter of argument in our country where small numbers of wealthy individuals are trying to avoid having wind power "in their backyard." Please consider that most people in the United States support wind power as an alternative to coal or oil. Wind power does not pollute our shores. Wind power does not waste limited natural resources. Wind power is clean and renewable. This should be a no-brainer for the US government to support. I vote and I cannot see myself voting for anyone who will not support renewable energy. That message has to be transmitted to our elected officials. I hope this helps.

Sincerely,

Mary L. Cole

Norwell, Massachusetts

Comment Submitted by Laura Martin and Jim Gordon, Cape Wind Associates

Via Laura Martin

	<i>A Clean Start to Our Energy Future</i>
home page project at a glance faq take action!	
Opponents of Cape Wind are urging the US Commission on Ocean Policy to impose a moratorium on all offshore renewable energy projects so it is very important that the Commission also hears from you!	
<p>We are asking supporters of renewable energy to please send an email message to the US Commission on Ocean Policy as they are finalizing policy recommendations to Congress that may impact Cape Wind. The Commission recently released their 500 page report based on their three year review of US Oceans Policy and it contains a section on offshore renewable energy policy.</p>	
<p>Of greatest importance:</p>	
<p>1) Thank the Commission for rejecting the call of renewable energy opponents to impose a moratorium on the review of existing offshore renewable energy applications. Such a moratorium would chill development of important renewable energy projects that can help clear our air and reduce our reliance on imported energy.</p>	
<p>2) Thank the Commission for calling for a streamlined review process for offshore renewable energy projects and for their recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence.</p>	
<p>The deadline for you to submit comments is May 21. You can find all of the instructions for submitting comments at: http://oceancommission.gov/publiccomment/welcome.html</p>	
<p>Also, if you are a Massachusetts resident, please share your comments to the US Commission on Ocean Policy with Governor Romney, at: http://www.mass.gov/Agovwebmail/WebMailPageControl.ser?level=101</p>	
<p>Thank you very much!</p>	
<p>Jim Gordon President Cape Wind Associates www.capewind.org</p>	
<p>Boston office Cape Wind Associates, LLC 75 Arlington Street; Suite 704 Boston, MA 02116 phone: 617-904-3100 fax: 617-904-3109</p>	<p>Cape Cod office Cape Wind Associates, LLC 923 Route 6A; Suite G2 Yarmouth Port, MA 02675 phone: 508-375-9495 fax: 508-375-0787</p>

Comment Submitted by David Marcus, West Newton, Massachusetts

Offshore wind should be a crucial part of our energy mix. It probably has the lowest environmental impact per kwh of any energy source in this country, it enhances our national security by reducing dependence on foreign energy sources, and it makes the planet a better place for future generations. These structures are beautiful pieces of kinetic art. They are closer to a lighthouse than a smokestack. If they are visible from shore, it is only because the air will be so much cleaner from burning fewer fossil fuels that we can see them. This is not a Catch 22, but its in the same family.

Offshore wind is a terrific resource. It combines high wind speeds, low turbulence, proximity to load centers, low visibility from people's homes, no pollution, enhanced sport fishing through the creation of artificial reef, sale of electricity into constrained, high priced markets, construction of generating plants near densely populated areas, the creation of jobs, and the recycling of energy dollars back into the American economy, and lowers the need to protect foreign oil with American dollars and lives. What more could anybody ask?

Thank you for rejecting the call of renewable energy opponents to impose a moratorium on the review of existing offshore renewable energy applications. Such a moratorium would chill development of important renewable energy projects that can help clear our air and reduce our reliance on imported energy.

Also, thank you for calling for a streamlined review process for offshore renewable energy projects and for your recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence.

David Marcus, President
West Newton, Massachusetts

Comment Submitted by Bruce M. Hampton, Allston, Massachusetts

I'd like to thank the commission for rejecting the moratorium on the review of offshore renewable energy applications and for streamlining the review process.

I work in the sustainable design field and appreciate the need for renewable energy sources. I've visited many wind farms around the world and find them exceptionally dramatic and beautiful in the landscape.

We need this and other renewable sources of energy and must quit our reliance on fossil fuels.

Bruce M. Hampton, AIA, LEED
Allston, Massachusetts

Comment Submitted by Simon C. Bunyard, Boxborough, Massachusetts

To: U.S. Commission on Ocean Policy

Dear Commissioners:

I want to thank you for rejecting the call of renewable energy opponents to impose a moratorium on the review of existing offshore renewable energy applications. Such a moratorium would chill development of important renewable energy projects that can help clear our air and reduce our reliance on imported energy.

Thank you, also, for calling for a streamlined review process for offshore renewable energy projects and for their recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence.

Constructing offshore facilities for renewable energy, like wind power, can't possibly be any more harmful than offshore drilling for gas and oil. However, it is very likely far less harmful when considering the complete lack of a product that is harmful to the marine environment. Renewable energy has none of the potential for devastating environmental impacts resulting from accidents and natural disasters associated with an oil or gas drilling rig.

It is important to me and my community that you explore all possible means to encourage and promote renewable energy production, and I implore you to act proactively and enthusiastically in this effort.

Simon C. Bunyard
Boxborough, Massachusetts

Comment Submitted by Russell Roberson, Citizen

Dear Commission on Ocean Policy:

Thank you for rejecting the call of renewable energy opponents to impose a moratorium on the review of existing offshore renewable energy applications. Such a moratorium would chill development of important renewable energy projects that can help clear our air and reduce our reliance on imported energy.

Also thanks for calling for a streamlined review process for offshore renewable energy projects and for their recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence.

Sincerely,

Russell Roberson

Comment Submitted by Robert Joyal, Salem, Massachusetts

Wind energy is vital to making our economy healthy and sustainable. Other first world nations have realized the importance of wind technology and have made great strides toward reducing their dependence on fossil fuels.

Thank you for rejecting the call for a moratorium on the review of existing offshore renewable energy applications made by those who wish to halt progress towards making wind energy a viable resource in the United States. Such a moratorium would chill development of important renewable energy projects that can help clear our air and reduce our reliance on imported energy.

Thank you for calling for a streamlined review process for offshore renewable energy projects and for their recognition that these projects can help reduce ocean pollution, mitigate climate change and increase our energy independence.

Robert Joyal
Salem, Massachusetts

Comment Submitted by Charles Richardson, Massachusetts

To Whom It May Concern;

With regards to the wind project on Nantucket Sound as it may fall under the following, please suspend **all** offshore renewable energy projects under consideration until a comprehensive plan is in place. Please “zone” our oceans in a way that protects traditional water-dependent uses that serve the public interest. And, establish a permitting process for offshore development that considers, in a deliberate and fair manner the economic and environmental costs and benefits of any proposed project. Thank You.

Charles Richardson
Lifelong Massachusetts resident

Comment Submitted by Jeanmarie Drucker, Citizen

I write this letter as a forty-seven year old who has summered on Nantucket since the age of eleven years. I lived year round there in my late twenties and have witnessed major changes. Some have been beneficial while others harmful, depending on your island development perspective, but Nantucket seems to plod along. Nantucket seems to hold the many facets which make it so special to so many people. Regardless of the economy, whether it be good times or bad, Nantucket continues to hold onto its eccentricities and historical relevance and perspectives that make it unique while also special.

This letter hopes to thwart the construction of the Cape Wind Project. Its prevention is paramount in sustaining what makes Nantucket, Marthas Vineyard, and Cape Cod the historically significant environments they happen to be. Excluding the summertime vacation value, this area holds the relevant role of being the whaling capital of the world in the eighteenth century. To place wind farms in the beautiful water is an affront to finding sustainable renewable energy resources in an area less offensive to the general public.

It is apparent that the suspension of off shore renewable energy projects in the pipeline should be stopped until a comprehensive plan is in place. The ocean should be zoned in environmentally friendly ways that protect traditional environment. Finally, a permitting process should be established which objectively quantifies the economic and environmental costs of this proposed project.

In conclusion, it cannot be reiterated enough that the Cape Wind Project is looking to ultimately enhance its own economic ends. Please confirm the significance to the natives and those who live on Nantucket, Martha's Vineyard, and the Cape how the Cape Winds project will enhance their lives. Perhaps construction of a wind farm far out in Nantucket Sound would be less objectionable. Cape Wind Farms could be overseen by individuals similar to the old light house keepers. Now, they could all be computer literate and able to oversee the Cape Wind Project. We shall see what becomes of the Cape Wind Project. Hopefully, it will be nothing.

Comment Submitted by Gary Schuetz, Rocky Flats Closure Project

Public Comment on the Preliminary Report - U.S. Commission on Ocean Policy

Comment for California Governor Schwarzenegger's consideration:

California has a desperate need for three key utility products. These products are potable water, electricity and ultimately hydrogen. Current proposals being considered by local and State government rely heavily on scarce energy resources that are either expensive or release undesirable emissions. Desalination, being promoted by the electric companies, consumes large amounts of power which California can't afford. California has alternative and renewable energy development programs in place but those programs do not consider the power of ocean waves or wave energy conversion systems (WECS). A decade or so ago, WECS were evaluated and determined to be ineffective and not worthy of serious consideration and as a result, no further attention was placed on those technologies. However, since that time, there have been several revolutionary designs that deserve consideration and have suffered from lack of public / government support. Efforts by one particular startup company, Ocean Motion International (OMI) have not been successful because of the company's inability to attract attention to support a pilot system that would demonstrate its extraordinary capability. The OMI Combined Energy System produces all three of the key utility products without consuming any fuel or releasing any emissions. Its innovative seawater hydrostatic wave-pump is designed for high durability, low maintenance and high output. Production costs are incredibly low resulting in large revenues for the public agency owner after investors have been rewarded. The Department of Energy has little interest in WECS in it's renewable energy programs in spite of the potential benefits to coastal communities with large population densities. The Bureau of Reclamation (Denver Office) and the California Desalination Task Force have had presentations and both appeared to have interest but have no programmatic focus on WECS. Therefore there has not been any follow through from those groups. The key step that is needed is an alternative / renewable energy program assessment, recommendation and pilot demonstration project, all of which depend on supporting WECS. Recommendation to consider: Task a California Agency such as the Energy Commission, Coastal Commission or Department of Water Resources to re-evaluate WECS in order to determine if current technologies should be considered to tap the power of ocean waves in order to provide a renewable resource of power and potable water for coastal communities.

Comment: Part VI, Chapter 24, Section - Developing Offshore Renewable Energy Resources, Sub-section Wave Energy Conversion - Current and Tidal; Please consider adding to Recommendation 24-1 the following in the "Specifically,.....should:" section: establish a focus on Wave Energy Conversion Systems (WECS) for development and deployment of systems that can produce renewable resources from the ocean.

Background: Ocean Motion International (OMI) has been striving to be recognized as a startup company with an innovative patented seawater wave-pump that is engineered for the harsh environment. OMI has spent a significant amount of it's own (family) money to develop a scale working model pump that demonstrates its simplicity and effectiveness.

OMI (as a company in its infancy) lacks the resources to deploy a pilot system that would produce RO filtered water, electricity and hydrogen without consuming any fuel or releasing any emissions. While trying to get support in California for water and in the Department of Energy for hydrogen, OMI learned that there are NO public support programs to support WECS. Consequently, even private financiers are reluctant to fund a relatively expensive pilot system because of the lack of public program support for fear of running into bureaucratic barriers. WECS (and OMI specifically) need government resources and support to compete against petroleum and utility companies who promote processes like steam reforming for hydrogen and desalination systems that rely on electric power plants.

Thank you for your consideration.

Gary Schuetz, US DOE - EM
Rocky Flats Closure Project, Golden, Colorado

Comment Submitted by Francis C. Lowell, Falmouth, Massachusetts

Dear Sirs,

As a 35 year resident of Cape Cod, and an owner of property in Falmouth and Barnstable, I encourage you to do the following regarding the proposed wind "farm" in Nantucket Sound.

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest: and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Thank You,

Francis C. Lowell, Jr.
Falmouth, Massachusetts

Comment Submitted by Donald H. Foley, Edgartown, Massachusetts

Dear Commissioners

I am a resident of Martha's Vineyard. Our Sounds are both beautiful and precious.

Please suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place.

Please zone the ocean in a way that protects traditional water-dependent uses that serve the public interest.

Please establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of any proposed project.

Sincerely,

Donald H Foley
Edgartown, Massachusetts

Comment Submitted by Paul Cain, Citizen

Dear Commissioners,

The federal waters belong to the people of the United States. You have no right or reason to give them away to private enterprise.

Nantucket Sound should not be commercialized. It should be an ocean sanctuary.

This includes kicking out the commercial draggers ruining the natural ocean bottom. Thank you for your attention.

Paul Cain

Comment Submitted by Phyllis and Bill Walsh, Cotuit, Massachusetts

Dear US Commission on Ocean Policy:

We support the following in relation to development off Nantucket Sound and other offshore development projects.

1. Suspension of all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zoning the ocean in a way that protects traditional water-dependent uses that serve the public interest and
3. Establishing a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

My husband and I are familiar with the federal regulations for oil drilling off shore and believe a similar program should be in place for renewable energy. Right now we have Cape Wind and others with their proposals, financial backing and government incentives and no government regulations in place to which they must adhere.

Let's slow the process and get it right for our generation and future generations.

Phyllis and Bill Walsh
Cotuit, Massachusetts

Comment Submitted by Donald E. Schwinn, Cotuit, Massachusetts

To the Commission on Ocean Policy:

This is to support your recommendation for a comprehensive Ocean use Policy.

For more than 60 years I have been a fisherman, boater, and bather of the waters surrounding Cape Cod. Just to sit on a dune and watch the uninterrupted view of sunrises and sunsets was a great pleasure. Now the developers of windfarms under the pretense of protecting the environment are proposing to usurp public lands in the ocean around Cape Cod to reap the economic profits from federal subsidies while they deface an irreplaceable marine resource.

Regulation is urgently needed to control or prevent such projects that would forever replace a national oceanic treasure with an industrial power plant.

Whether it's wind turbines, oil drilling rigs, or other industrial installations, the oceans need to remain the way they are

Donald E. Schwinn
Cotuit, Massachusetts

Comment Submitted by Cynthia Eaton, Cotuit, Massachusetts

I feel strongly that: 1. Off-shore areas should be zoned in much the same way that land areas are zoned to protect our natural resources, e.g. putting windmills in the middle of Nantucket Sound is a travesty. This area is as much a national treasure to be enjoyed by all who visit it as any other park, etc. 2. currently proposed off-shore energy projects should be suspended until a zoning process and a comprehensive plan is in place.

Cynthia Eaton
Cotuit, Massachusetts

Comment Submitted by Timothy Burke, Citizen

To: US Oceans Commission

I am writing to you to voice my strong objection to the 24 square-mile power plant proposed for the public waters of Nantucket Sound. This largely unregulated and poorly-sited industrial facility poses a serious and imminent threat to commercial and recreational shipping, boating and fishing and raises numerous maritime safety issues.

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place.
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest: and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

The federal government must first establish guidelines for the review of proposals such as Cape Wind's before any more development takes place. We must develop sensible standards that enable the appropriate federal agency to weigh the benefits of a proposed project against its costs, which potentially include harmful environmental impacts, negative effects on the affected region's economy and degradation of an area's aesthetic values.

These public resources belong to all of us, and it is imperative that sensible laws be passed before any projects are approved. Wealthy private developers should not determine how or where the outer continental shelf will be developed. Without an established process by which the Army Corps of Engineers, or any other federal agency, can objectively and competently review these proposals, any consideration of Cape Wind's proposed wind plant should cease.

Though developers insist this massive project will have little effect on the traditional maritime uses of the sound, not a single local or national commercial or recreational fishing or boating organization supports the installation of this project. And with good reason. The installation of 130 huge power generators will close off 24 square miles of navigable waters to safe travel and rescue. During times of fog or storms - which occur regularly in the Sound - the power plant may well prove deadly if boats enter the area and ran into trouble. Additionally, helicopter rescue would be impeded by the spinning turbines and Coast Guard boats would have extreme difficulty distinguishing on radar an imperiled vessel from 130 enormous moving objects.

No sitting standards

Developers want to take over a public resource that has **no** sitting standards for offshore wind facilities. Though the wind industry depends on government subsidies, offshore wind power plants have no regulations governing placement. Before our nation's coastal areas are given away to private companies, specific sitting criteria and bidding procedures must be established.

Environmental consequences

Wind towers are widely known to kill birds. Nantucket Sound is central to the Atlantic Flyway, a migratory route for hundreds of thousands of shorebirds, including endangered and protected species. The bird issue is just one of the reasons many environmental organizations are calling for much more rigorous and lengthy studies than developers are willing to undertake. Among these groups:

The location relative to shipping lanes is also of grave concern. A fuel barge visits Nantucket regularly. It passes down the main channel directly abutting the southern end of the array. If the barge were to run into trouble and drift into the turbines with the prevailing southwest winds the result could be disastrous.

The towers will be very visible

Anyone who has been to Horseshoe shoals knows that various landmarks such as water and aerial towers, each significantly smaller than the proposed turbines, are easily visible from sea. A 417' structure is visible over 20 miles. The turbines - with over 500 flashing lights will be visible from Falmouth to Chatham, and on Nantucket and Martha's Vineyard.

130 navigation hazards

"Searches for small vessels or people in the water (PIW) and smaller search objects will be particularly affected due to the higher helicopter and fixed wing search altitudes required. The probability of detecting these targets will be decreased due to the presence of the wind farm. Additionally, the presence of the towers and their rotating blades will significantly diminish the ability to hoist victims by helicopter in the area of the wind farm." - United State Coast Guard

Benefits?

Ten thousand windmills in the Sound will not change the fact that America's prevailing west-to-east wind stream carries pollutants eastward from the country's urban areas. Cape Wind developers vaguely insist that we will all benefit from cleaner air and water, but we will more specifically benefit from having airborne pollution addressed 'upstream.'

PLEASE DON'T LET THIS RUIN A BEAUTIFUL AREA THAT MANY FAMILIES HAVE ENJOYED FOR SO MANY YEARS. IT'S A SPECIAL PLACE THAT MY FATHER TAUGHT ME TO FISH, AND I HAVE PASSED ALONG TO MY KIDS. IT'S A ONE OF A KIND AREA THAT WOULD BE A HUGE LOSS TO SO MANY. AND ALL IT WILL DO IS LINE THE POCKETS OF THE DEVELOPERS AND INVESTORS, BECAUSE IF YOU ADD IN THE TAX BENEFITS, IT'S A MUCH MORE COSTLY POWER SOURCE THAN OTHER ALTERNATIVES. IT WILL ONLY BENEFIT VERY A FEW PEOPLE.

Thank you for your consideration of this issue.

Sincerely,
Timothy Burke

Comment Submitted by David Robinson, Haverhill, Massachusetts

Dear Ocean Commission,

I am writing you this letter out of concern for the future health of our oceans. Please take the steps today necessary to save our oceans from exploitation and forever changing our environment. The same government regulations that apply to our lands and protect both the environment and the population should also apply to our oceans.

I agree and support the following SOS recommendations.

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest: and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

David Robinson
Haverhill, Massachusetts

Comment Submitted by Lois I. Wrightson, Citizen

We need a plan to preserve our waters. So many of our bodies of water are considered to be like a natural National park for all to use and appreciate.

We suggest that the ocean commission:

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest: and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Lois I. Wrightson

Comment Submitted by Carol Luiken, Citizen

Affiliation: Concerned Citizen

Please suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place. This should be a full federal plan that protects the public interest in the matter. Zone the ocean in such a way as to protect water-dependent uses that are commercial, recreational, and environmental. Establish a permit process for offshore development that considers the economic and environmental consequences of such action, and do so before any development proceeds. It is too late when the damage is done -- there are no new oceans being built.

Comment Submitted by Derry Fredericks, Yarmouth Port, Massachusetts

I have been a boater in Nantucket Sound for the past 40 years. Please preserve this beautiful area.

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place:
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest: and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Derry Fredericks
Yarmouth Port, Massachusetts

Comment Submitted by Brian Zugel, Cape Cod, Massachusetts

To whom it may concern,

As a Cape Cod resident, I am appalled that the Cape Wind project is still alive, and being considered. A Wind Farm in Nantucket Sound makes no logical sense. We would rather see these wind turbines in the medians of our local highways, or located in the Massachusetts Military Reservation, instead of offshore along our coastlines.

Since there isn't a comprehensive plan in place by the Federal Government on how best to manage our coastlines for private development, I suggest the following:

- 1 Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place;
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest: and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Brian Zugel

Comment Submitted by Bruce Christopher, Cape Cod, Massachusetts

To whom it may concern,

I am a resident of Cape Cod and enjoy Nantucket Sound as it is: a unique habitat for a wide variety of permanent and seasonal aquatic species. This area where cold water and warm water mix with occasional occurrences of Gulf Stream eddies attracts creatures of all sizes and kinds. The vast underwater plains and plateaus of sand and eel grass support this ever changing environment. It is a breeding ground, nursery, and life support system to our coastal sea creatures of all shapes and sizes.

This area is an underwater sand-dune. It changes daily, and the movement of the sand activates the baitfish that live in it. The baitfish attract the big fish and so on. But I'm sure you know all this.

For this reason, as well as a great number more, please:

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place.
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest: and
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Sincerely,

Bruce Christopher
Cape Cod Resident and Fisherman

Comment Submitted by Bruce Reid, Marstons Mills, Massachusetts

Prior to commercial development of Nantucket Sound PLEASE develop a long range plan that will protect all interests.

As a homeowner I am not allowed on my own property to build within 100 feet of potential wetland nor in some areas of Cape Cod paint my home colors other than those authorized. Those in the area of the National Seashore had their properties given to public good, providing a national treasure that would be protected forever. Commercial development of Nantucket Sound should proceed in an informed manner that will protect similarly as much of the pristine nature of our coast, the interests of aviation, boating, naturists and those who love our Cape Cod.

I believe wind towers might better be sited on firm land in areas such as combinations with cell towers along major highways, possibly including the route 6 on the Cape.

I also believe that the future of alternate energy sources should proceed with the development of solar panels and wind generation that can be sited on individual properties. That would allow those who profit directly from the electricity generated to be the ones who have their property impacted.

Regards,

Dr. Bruce Reid
Marstons Mills, Massachusetts

Comment Submitted by Robert Bloch, S. Yarmouth, Massachusetts

Gentlemen:

As a home owner in South Yarmouth, Ma. I am very concerned with the proposed Wind Farm construction in Nantucket Sound.

I am requesting that Government take the following steps:

1. Suspend all offshore renewable energy projects in the pipeline until a comprehensive plan is in place.
2. Zone the ocean in a way that protects traditional water-dependent uses that serve the public interest.
3. Establish a permitting process for offshore development that fairly considers the economic and environmental costs and benefits of a proposed project.

Yours truly,

Robert Bloch
South Yarmouth, Massachusetts

Comment Submitted by John Donelan, Centerville, Massachusetts

The public, not private developers, should decide the future uses of our oceans. Wind farms are inappropriate in ocean areas such as Nantucket Sound that have been nominated for protection. I strongly believe that zoning for new offshore uses of public waters should take place before predatory and politically opportunistic developers ruin one of our last great treasures - the sea.

John Donelan
Centerville, Massachusetts

Comment Submitted by Mary Lambert, Pilgrim Security Watch; Jed Thorp, Clean Water Action; Sandra Gavutis, C-10 Research and Education Foundation, Inc.

Andrew Rosenberg
UNH
Inst. Study of Earth, Oceans & Space

April 22, 2004

Request to Include Impact Nuclear Reactors on Draft Comment to Report from the U.S. Commission on Ocean Policy

Andrew Rosenberg:

We read your op-ed in the Boston Globe, today; and we understand that you are a member of the US Commission on Ocean Policy. We wish to express our concern about the current state of our oceans; and hope that our concerns will be reflected in your future comments on the draft report from the U.S. Commission on Ocean Policy and shared with members of the committee. The final version of this report will shape a comprehensive policy for restoring the health of our threatened oceans.

Specifically, our comments focus on the impact of nuclear reactors on our oceans and waterways – a neglected subject. Pilgrim and Seabrook Nuclear Power Stations seriously impact our marine environment negatively and this need not be so.

The issue is Once-Through Cooling and pertains, for example, to Pilgrim NPS (located on Cape Cod Bay) and Seabrook (located in NH).

Pilgrim, an example:

Pilgrim like all nuclear reactors generates too much heat. To remove excess heat, Pilgrim draws in 487,840,000 gallons of water a day from Cape Cod Bay. Along with the water, they suck in fish eggs and other microscopic organisms; larger fish and marine mammals get pulled in by the current too and become trapped on intake screens.

The marine life that is drawn in gets pulverized by the reactor condenser system and emerges as sediment that clouds the water around the discharge area, often blocking light from the ocean floor. The sediment cloud results in killing plant and animal life by curtailing the light and oxygen needed to survive.

The water that is drawn in cycles through and is then released at temperatures 30 degrees above Bay temperature (62F to 100F) – disrupting the ecosystem. However, some organisms are attracted to the warmer environment. But when the reactor is abruptly shut down, water temperatures will drop causing cold-stunning, fatal to fish acclimated to warmer waters.

Pilgrim should be required to employ the “best technology available to minimize adverse environmental impact” – just as Brayton Point electric was required to do not long ago in Massachusetts. Instead, they get a free unlimited fishing permit, today.

Indeed, it is possible to minimize adverse environmental impact by re-circulating the water by a closed cooling system - that is cooling towers or some other state-of-the art dry cooling.

Simple mitigating measures to be considered in the interim:

- Pilgrim NPS now runs its water intake pumps continually at 100%. However, it is not necessary to run the pumps all the time; and they can operate variably at 25% to 75%. If the flow is reduced, the number of eggs, larvae and juvenile fish entrained will be reduced; and the number of fish entrapped reduced.
- Pilgrim NPS should target the date of their refueling outages so that it coincides with the period that most fish eggs are in the waters, March.

We are deeply invested in the well-being of our oceans. A healthy marine environment is important to our economy. Please help ensure the Ocean Commission's report protects our state by including the strongest possible protections for our nation's oceans and marine life by including a requirement to switch nuclear reactor cooling systems to the best available technology, dry cooling.

If you are not familiar with the issue of once-through cooling at nuclear reactors, we recommend the following report accessible on the web [Licensed to Kill: How the nuclear power industry destroys endangered marine wildlife and ocean habitat to save money.](http://www.nirs.org/licensedtokill/Licensedtokillintropage.htm)

Thank you and we look forward to your response.

Mary Lampert
Pilgrim Security Watch
Duxbury, Massachusetts

Jed Thorp, Energy Campaign Organizer
Clean Water Action
Boston, Massachusetts

Sandra Gavutis,
Executive Director, C-10 Research and Education Foundation, Inc.
Newburyport, Massachusetts

Comment Submitted by Tom Carey, Lafayette, Louisiana

To Whom It May Concern,

One matter that needs to be brought to the attention of the appropriate interested parties in the Ocean Commission, U.S. Fish and Wildlife Service, and others, is the interruption of migrating species by offshore oil exploration platforms vessels. While employed as a logging geologist on countless vessels operated by multi-national oil companies (ExxonMobil, Shell, BP, Anadarko, Texaco, Chevron, etc.), I witnessed the death of thousands of migrating bird species. These species, migrating across the Gulf of Mexico at night were lured by the very bright lights (halogen lights, sodium vapor lights, neon lights etc.) of the drillships, semisubmersible drill vessels, drilling platforms, production platforms, offshore supply vessels, etc. Essentially, the migrating species were thrown off their flight paths by bright lights at night and never continued on with their voyages. With no food, water, or necessary survival mechanisms, these birds perish by the thousands. On many nights I witnessed literally thousands of dead and dying birds on the decks of these vessels.

Several times, I personally rescued ruby-throated hummingbirds, fed them a sugar water supplement to revive them and gave them to helicopter pilots returning to shore bases, where I was later informed that they had been released. I was the exception. I never heard of any rescue programs or attempts by others to aid these unfortunate species. Indeed, several times I was made fun of when I attempted to rescue birds in the Gulf of Mexico. It was heart-wrenching to witness the mass death of these bird species. These helpless birds do not currently have a chance of surviving encounters with these huge vessels on their migrations.

One merely has to ask any of the thousands of employees in the Gulf of Mexico on these huge vessels if they have ever witnessed mass perishings of migrating bird species in the spring and fall. Perhaps I would feel differently if there were at least an attempt to intervene with some kind of program to assist in the survival of these migrating species. There was no concern what-so-ever by these oil companies to address this horrible situation. Hopefully, this problem can be addressed, and solutions and compromises can be found.

Regards,

Tom Carey
Geologist
Lafayette, Louisiana

Comment Submitted by Maureen Dolan, Citizens Campaign for the Environment

Citizens Campaign for the Environment
225a Main Street
Farmingdale, NY 11735

U.S. Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, D.C. 20036

RE: Public Comment on U.S. Commission on Ocean Policy Preliminary Report

To Whom it May Concern:

Citizens Campaign for the Environment (CCE) is an 80,000 member, not-for-profit, non-partisan advocacy organization working for the protection of public health and the natural environment on behalf of its members in New York and Connecticut. The protection of waterways is of the utmost importance to CCE. CCE has been working to protect water quality across New York State and throughout the Nation since its inception in 1985. Currently, CCE actively works on protecting many of New York's largest and often most impacted waterways including the Hudson River, the Long Island South Shore Estuary Reserve, the Great Lakes, the Finger Lakes, the Peconic River, and Long Island Sound. Additionally, CCE is a member of the Long Island Sound Study Citizens Advisory Committee and a member of the Long Island South Shore Estuary Reserve Citizens Advisory Committee. CCE has also been very active in the Long Island Offshore Wind Initiative.

In that regard, we offer the following comments regarding the U.S. Commission on Ocean Policy.

1. CCE finds the U.S. Commission's recommendations in Chapter 24, "Managing Offshore Energy and Other Mineral Resources" consistent with balancing the need for renewable energy and environmental concerns. CCE urges the Commission to not halt or delay wind projects that are already in the planning stages.

CCE strongly believes the development and use of renewable energy sources is a desirable solution and will aid in mitigating air pollution and global warming. Furthermore, CCE believes that increased reliance on renewable energy improves our national security and independence from fossil fuels. Consistent with the Commission's recommendations from Chapter 24 entitled "Managing Offshore Energy and Other Mineral Resources", CCE specifically support the following:

- A. Investment of federal revenues received from oil and gas leasing activities to “sustainable development of renewable ocean and coastal resources through grants to all coastal states” (page 294, Recommendation 24-1) and
- B. Legislation for the comprehensive management of offshore renewable energy development ... (which) “streamlines the process for licensing, leasing and permitting renewable energy facilities in US waters” (page 301, Recommendation 24-5).

CCE urges the implementation of the Chapter 24 recommendations and strongly believes that these recommendations are consistent with an ecosystem management approach to managing natural resources. Furthermore, these recommendations support comprehensive management of offshore renewable energy development as part of a coordinated offshore management plan. However, this should neither halt nor delay existing projects that are in development and would advance efforts to provide alternative energy supplies like the Long Island Offshore Wind Initiative for New York. CCE urge the Commission to recommend substantive statutory offshore energy policy that does not unduly delay, disrupt or terminate offshore wind projects already under development.

- 2. CCE supports the U.S. Commission’s recommendation for an “ecosystem-based” approach in developing an U.S. Ocean Policy.

CCE believes that it is important to develop an integrative ecosystem-based National Ocean Policy. Failed segmented approaches to resource management has taught us that it is ineffective to base on a single one species of plant, animal, or invertebrate, there are hundreds of species that rely on one another for survival. It is now elementary knowledge that a balance of biotic and abiotic factors must be sustained to maintain a healthy ecosystem. It is this interaction that makes our ecosystems invaluable.

For example, the sand tiger shark is found offshore Long Island in the Atlantic Ocean. The sand tiger shark feeds upon several species of schooling finfish. These finfish feed on smaller fish, mollusks, worms and crustaceans, which in turn feed upon decaying biomass and plankton. A policy that looks at just one of these components fails to protect the integrity of the ecosystem as a whole. The health of the population of the sand tiger shark does not just depend on the health of the finfish population; it depends on the health of the entire ocean ecosystem.

CCE urges the federal government to implement an ocean policy that is consistent with the U.S. Commission’s recommendation for an ecosystem-based management policy. Thank you for the opportunity to comment on this important issue.

Sincerely,
Maureen Dolan,
Program Coordinator



THE COMMONWEALTH OF MASSACHUSETTS
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June 4, 2004

By Electronic Mail

U.S. Commission on Ocean Policy
Public Comments Docket
1120 20th Street, NW
Suite 200 North
Washington, D.C. 20036

Re: Comments on Preliminary Report

To the Docket:

The Massachusetts Attorney General is pleased to submit the attached comments upon the Commission's Preliminary Report.

If you require additional information, please feel free to contact the undersigned by telephone or email at the address below.

Yours truly,

William L. Pardee
Assistant Attorney General
617-727-2200 ext. 2419
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Comments of Attorney General Thomas F. Reilly
June 4, 2004

In the Preliminary Report, the Commission recognized that the existing process for approving and regulating offshore renewable energy resources “lacks the management comprehensiveness that is needed to take into account a broad range of issues, including other ocean uses in the proposed area and the consideration of a coherent policy and process to guide offshore energy development.” Preliminary Report, ch. 24, at 299. We fully agree with the Commission's conclusion on this point. Indeed, we believe that the effort on the part of federal agencies such as the Army Corps of Engineers to improvise a regulatory system is radically inadequate because the agencies necessarily must proceed without legislative guidance on fundamental policy choices.

We write today simply to add that, in our view, allowing private parties to occupy federal seabed is not only bad policy, but illegal as well. As is fully laid out in the attached amicus brief that we submitted in a case pending before the Court of Appeals for the First Circuit, we maintain that because the Constitution vests power to dispose of federal property in Congress, and because Congress has not authorized private structures on the seabed of the Outer Continental Shelf for purposes other than mineral extraction, deepwater ports, and thermal energy development, federal agencies are without authority to allow such activities. Rather, under long settled public trust doctrine, federal agencies are duty bound to prevent the occupation of public lands by such unauthorized projects. Although we recognize that this legal issue will be resolved in the Courts rather than by the Commission, we respectfully request that you note the existence of this legal controversy in your final report.

No. 03-2604

United States Court of Appeals
for the First Circuit

ALLIANCE TO PROTECT NANTUCKET SOUND, ET AL.,
Plaintiffs-Appellants,
v.

U.S. DEPARTMENT OF THE ARMY, ET AL.,
Defendants-Appellees.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

**BRIEF FOR THE COMMONWEALTH OF MASSACHUSETTS
AMICUS CURIAE**

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ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT
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**BRIEF FOR THE COMMONWEALTH OF MASSACHUSETTS
AMICUS CURIAE**

Statement of Interest.

Although Massachusetts does not challenge the specific permit in issue on this appeal, we are deeply concerned by the decision as a portent for the future of the coastal waters off of Massachusetts, particularly Nantucket Sound. The test tower in issue here is designed to gather data to support a much larger, permanent installation already under consideration by the Army Corps of Engineers. That is a proposal to build a “wind farm,” consisting of 170 wind turbines spread over twenty-six square miles of Nantucket Sound.

As benign as the proposal may seem, there is no statutory authority for the use of federal tidal lands for wind power generation. Massachusetts has repeatedly called upon the United States to seek legislative authorization before permitting such uses. The United States, and the Corps in its defense to this complaint, has refused to address this important issue.¹

The Corps has advanced a variety of ill-considered, and inconsistent, positions to excuse its failure to address this issue. The prevailing argument below was that the Corps need not, indeed *cannot*, involve itself in a dispute about whether the project proponent has the requisite property interest to allow the project to be constructed. However, the Corps also argued both: that the United States does not claim title to the seabed in Nantucket Sound (and therefore Cape Wind Associates needs no authorization beyond a Rivers and Harbors Act (RHA) § 10 permit to occupy the seabed);² and that a § 10 permit may constitute sufficient authorization to occupy the seabed within U.S. territorial waters for projects not otherwise authorized by federal law.

¹See Massachusetts Motion for Leave to File Memorandum Amicus Curiae, Attachments (correspondence between Massachusetts and U.S. Department of Justice and Army Corps of Engineers).

²It was this argument that led Massachusetts to file an *amicus curiae* memorandum in the District Court. Although the Corps subsequently retreated from this position, it still does not acknowledge a duty to prevent unauthorized occupation of public lands, including the seabed in Nantucket Sound.

Massachusetts is thus concerned that the Corps' various positions in this case, and the District Court's decision excusing the Corps from considering whether there is authority for building a particular structure on the seabed in Nantucket Sound, may be seen as a green light by promoters of all sorts of unsanctioned offshore projects.

While Massachusetts is interested in any activity on its doorstep, we claim a particular interest in Nantucket Sound. For three centuries the inhabitants of the Cape and Islands have gained their living from the sea, including in particular Nantucket Sound.³ The importance of the Nantucket Sound "commons" for Cape and Island towns has been reflected throughout this period in regulation of the fisheries, particularly shellfishing, as well as other activity on the water. Nineteenth Century charts indicate that jurisdiction over the entire Sound was apportioned among the counties abutting the Sound, extending the protections of county regulation on the water as well as land.

In the last century, the Commonwealth assumed responsibility for fisheries regulation throughout the Sound. In the late 1960's, concern over proposals to begin oil and mineral exploration off the Massachusetts coast and in Nantucket

³Obed Macy, in his history of Nantucket, tells the story of a group of Nantucketers in 1690, watching whales spouting in the Sound, saying, "there . . . is a green pasture where our children's grandchildren will go for their bread." Obed Macy, *The History of Nantucket* 33 (1835).

Sound led the Legislature to reexamine the location of Massachusetts' external boundary along the coast. Following that study, the Legislature expressly declared the Sound to be internal waters of the Commonwealth, and directed charts to be prepared accordingly. And, in 1971, the Legislature declared the Nantucket Sound seabed to be an ocean sanctuary. St. 1971, c. 742, *as amended by* St. 1974, c. 822, codified in G.L. c. 132A, §§ 14-15.

The Supreme Court's judgment, in 1986, that Nantucket Sound is not internal waters of the Commonwealth, foreclosed Massachusetts' proprietary claim to the seabed in the interior part of the Sound beyond the three-mile territorial sea, but by no means ended the Commonwealth's interest or regulatory authority with respect to the area. The Sound remains an important factor in the economy – now as much because of the opportunities it provides for recreation and enjoyment as because of the fisheries, and Massachusetts continues to have and exercise regulatory authority throughout the Sound under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1856(a)(2)(B).

Summary of the Argument.

Arguments by the United States or the Army Corps to the effect that the seabed beyond the State territorial sea may be occupied by private parties without federal statutory authority, that the Corps may not consider the applicant's authority to occupy the seabed, or that a § 10 permit under the Rivers and Harbors Act provides authority for such occupation, conflict with legal principles concerning sovereign rights and duties in submerged lands, and particularly the seabed in Nantucket Sound.

I.

In litigation with Massachusetts, the United States specifically claimed title to the seabed in the central part of Nantucket Sound, beyond State territorial waters, and the Supreme Court specifically decreed that the United States has such title, in the same terms and to the same extent as Massachusetts has title to the seabed within the territorial sea under the Submerged Lands Act, 43 U.S.C. §§ 1311 *et seq.*

II.

Quite apart from its litigation with Massachusetts, at least since the *Submerged Lands Cases* (*United States v. California*, 332 U.S. 19 (1947); *United States v. Louisiana*, 339 U.S. 699 (1950); and *United States v. Texas*, 339 U.S. 707

(1950)), the United States has claimed title to the seabed of the territorial sea. Although the Submerged Lands Act transferred that title to the coastal States, the subsequent extension of the territorial sea in 1988 out to twelve miles established the United States' claim of title to the seabed in the belt between the three-mile State territorial sea and the twelve-mile limit of the United States' territorial sea. This claim is consistent with the United Nations Convention on the Law of the Sea (1982). Since Nantucket Sound is entirely within the extended territorial sea, the United States' general claim of title to the seabed in the territorial sea also establishes its title in Nantucket Sound.

III.

The United States' title to the seabed in Nantucket Sound establishes that the seabed is "property belonging to the United States" within the meaning of Article IV, § 3 of the United States Constitution. Accordingly, the power to dispose of any interest in the seabed is vested in Congress.

Congress has authorized grants of temporary interests in the seabed and subsoil for certain specific purposes, such as the extraction of minerals, petroleum and gas, development of thermal energy resources, and construction of deepwater ports. It has not, however, enacted any general purpose authorization such as the Federal Land Policy Management Act, 43 U.S.C. §§ 1701 *et seq.* for disposition of submerged lands.

Moreover, longstanding principles regarding submerged lands preclude any claim that such authorization can be implied in the Rivers and Harbors Act administered by the Army Corps. This is particularly true given that the Corps' permitting authority on the Outer Continental Shelf is governed by the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331 *et seq.*, which grants dispositional authority to the Secretary of the Interior, or the Secretary of Energy and FERC, rather than the Corps.

Accordingly, the Corps has no authority under the RHA or OCSLA to authorize occupation of the seabed in Nantucket Sound.

The United States' rights in the seabed in Nantucket Sound are impressed with a public trust, and the United States has an affirmative duty to protect and defend public rights from private appropriation. Given the breadth of the Corps' authority under § 10 of the RHA, as described in *United States v. Alaska*, 503 U.S. 569 (1992), there can be no basis for a claim by the Corps that it is not empowered to inquire as to whether a permit applicant is authorized to occupy the seabed in Nantucket Sound.

Argument.

Three arguments advanced below by the United States appear to abjure responsibility for defending public rights in the seabed in Nantucket Sound. Underlying each argument appears to be a misunderstanding as to the status of the Sound and the responsibilities flowing therefrom.

The decision accepts the Corps' argument that, in reviewing a permit application under § 10 of the Rivers and Harbors Appropriation Act ("RHA"), 33 U.S.C. § 403, the Corps *cannot* inquire into the applicant's claim of a property interest required to conduct the activity. Opinion at 20-21. As sensible as it may seem for the Corps to stay out of private property disputes, the issue looks very different when public rights are at stake.⁴ Here, the consequence of the Corps' "hear no evil, see no evil" approach may well be the privatization of an invaluable public resource without affirmative statutory authority, without compensation for

⁴ Because the applicant's proposal calls for occupation of *public* lands, the District Court's rationale is difficult to square with *United States v. Alaska*, 503 U.S. 569, 581-83 (1992). There, the Court ruled that under § 10 the Corps was not confined to determining whether a project would interfere with navigation, but could deny a permit on the basis of virtually any legitimate public interest, including the United States' interest in maintaining its rights to the seabed beyond State territorial waters. 503 U.S. at 579-80. If the Corps could deny a permit because it would extend Alaska's territorial waters some small distance, surely the Corps has authority to deny a permit for a project that would occupy public lands without statutory authority.

the occupation of public lands, and without challenge by those federal agencies that should be guardians of public rights.

In tandem with the argument accepted by the District Court, and seemingly as a rationalization of it, the Corps initially also argued that the United States does not claim a proprietary interest in Nantucket Sound beyond Massachusetts' territorial waters, so that, allegedly, occupation of the seabed would not derogate from public rights.⁵ Although the Corps subsequently retreated from this position, it remains implicit in the argument accepted by the District Court. Moreover, although the Corps purports to concede the United States' interests in the seabed in Nantucket Sound, it still wholly fails to recognize that because these are public lands, they are subject to a public trust, cannot be disposed of without congressional authorization, and indeed must be affirmatively defended by the United States from attempts to appropriate them for private purposes.

Finally, in its reply memorandum below, the United States asserts that a § 10 permit may be sufficient federal "authorization" for a project such as the wind farm even if it is proposed for public lands.⁶ It is not clear whether the Corps really

⁵This position was also advanced by Cape Wind Associates in its Opposition to Plaintiffs' Motion for Summary Judgment and Memorandum in Support of Cross-Motion for Summary Judgment (Cape Wind Opposition) at 12-14.

⁶The Army Corps argued that the Alliance's "premise" "that Cape Wind did, in fact, need some additional form of federal approval to acquire the 'requisite' property interest to build the Data Tower . . ." was unsupported. Rather, the Corps

intends to reposition its public interest review regulation as a catch-all licensing program for projects not otherwise authorized by law, or instead means only to assert that its decision to take cognizance of public rights, or not, in acting upon a permit is a purely discretionary matter. In either case, the Corps' position overlooks the point that the power to dispose of public lands rests with Congress,⁷ and forgets its own duty to defend public rights and to prevent encroachment on public tidal lands.

Our purpose in submitting this brief is to describe the legal regime that governs Nantucket Sound and to show that the seabed in the Sound beyond Massachusetts territorial waters cannot be occupied without affirmative statutory authority in addition to a permit under § 10 of the RHA. The Court should reject any argument by the Corps that it need not consider whether a proposed occupation of the seabed is authorized by law, or that the Corps itself may authorize such an occupation absent congressional authorization.

argued, “Plaintiffs do not explain why they believe a Corps permit validly issued [under § 10] cannot constitute such an ‘authorization,’ nor do Plaintiffs acknowledge the great deference due the Corps in interpreting its own regulations Plaintiffs have provided no persuasive rationale . . . for their assertion that Cape Wind needed anything more than a Section 10 permit” Reply Memorandum at 11 n.12.

⁷U.S. Const. Art. IV, § 3, cl. 2.

I. THE UNITED STATES' PROPRIETARY RIGHTS IN NANTUCKET SOUND WERE DEFINITELY CONFIRMED IN LITIGATION AGAINST THE COMMONWEALTH.

A. *The First Phase of Litigation and the 1975 Decree.*

In 1969, facing uniform opposition from States along the Atlantic to its plans to lease areas of the Outer Continental Shelf for oil exploration, the United States brought an original “action to quiet title” in the Supreme Court. The United States prayed for a judgment that:

“[T]he United States is now *entitled*, to the exclusion of the defendant State, to exercise sovereign rights over the seabed and subsoil underlying the Atlantic Ocean, lying more than three geographical miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast, extending seaward to the outer edge of the continental shelf”

United States v. Maine, 420 U.S. 515, 517 (1975) (emphasis added). The United States also “demanded an accounting for all sums that the States may have derived from the area in question,” *id.* at 517 n.2. The Court appointed a Special Master and, upon his recommendation, entered a judgment in 1975 decreeing that as between the coastal States and the United States, the United States “is entitled to all the lands, minerals and other natural resources” on the Continental Shelf outside the three mile territorial sea, and that the States are “entitled to all the lands, minerals, and other natural resources” from the coastline out to the edge of the three mile territorial sea. *United States v. Maine*, 423 U.S. 1 (1975) (decree).

The nature of the action brought by the United States against the Atlantic States (a quiet title action), and the relief requested (a decree determining the United States' "entitlement" to lands and minerals, and an accounting for funds realized by the States from exploitation of those lands and minerals), necessarily imply a claim of ownership by the United States to the Continental Shelf beyond the territorial sea. *See United States v. West Virginia*, 295 U.S. 463, 473 (1935) (rival claims of sovereign power, as distinguished from rival claims of title, will not support original action to quiet title); *United States v. Oregon*, 295 U.S. 1, 22 (1935) (United States' claim of title to lake bottom was sufficient to support action to quiet title even if third party's claim might be superior).

The United States prevailed in the litigation. The judgment entered by the Court decrees that

As against the defendant States . . . the United States is *entitled* to all the lands, minerals, and other natural resources underlying the Atlantic Ocean more than three geographic miles seaward from the coastlines of those States and extending seaward to the edge of the Continental Shelf.

423 U.S. 1 (emphasis added). Lest the United States argue that the Court used its terms loosely in framing the decree, the evidence demonstrates otherwise. First, the decree entered by the Court uses identical language in determining the United States' rights in the outer Continental Shelf and Massachusetts' rights in the three

mile territorial sea pursuant to the Submerged Lands Act. Since the Submerged Lands Act grants title to Massachusetts in the territorial seabed, the decree must be understood as equally confirming Massachusetts' proprietary rights in the territorial seabed and the United States' proprietary rights in the seabed of the Outer Continental Shelf. Second, the Court's subsequent decree, in 1996, states, in its first numbered paragraph, that:

For the purposes of the Court's Decree herein dated October 6, 1975, 423 U.S. 1 (*affirming the title of the United States to the seabed more than three geographic miles seaward of the coastline, and of the States to the seabed within the three geographic mile zone*), the coastline of the Commonwealth of Massachusetts shall be determined

United States v. Maine (Massachusetts Boundary Case), 516 U.S. 365 (1996)
(emphasis added).

In sum, contrary to its disclaimer in this action, the United States specifically claimed ownership to the seabed and minerals on the Outer Continental Shelf, and indeed obtained a decree confirming its title, in its litigation with Massachusetts.

B. *The 1996 Supplemental Decree*

The 1975 decree stipulated that “the term ‘coastline’ means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.” Decree ¶ 1, 423 U.S. 1. It did not determine the location of the coastline thus defined, but instead reserved jurisdiction to determine that question in supplemental proceedings, as necessary. Decree ¶ 3. In 1977, Massachusetts and the United States filed a joint motion for supplemental proceedings to determine the location of the Massachusetts coastline in Massachusetts Bay, Nantucket Sound, Vineyard Sound, and Buzzards Bay. The Court appointed District Judge Walter E. Hoffman as Special Master. In 1981, the Court entered a supplemental decree by consent settling the location of the coastline in Massachusetts Bay and Buzzards Bay and recognizing various closing lines enclosing certain bays, including the whole of Buzzards Bay, as internal waters. *United States v. Maine*, 452 U.S. 429 (1981).

With regard to Vineyard Sound and Nantucket Sound, the Special Master held hearings throughout 1982 and 1983, heard argument in June, 1984, and reported his Findings, Conclusion, and Recommendations to the Court. The Court confirmed the Special Master’s report in 1986, holding that Massachusetts had established its claim that Vineyard Sound is internal waters bounded by closing lines from Cuttyhunk to Gay Head and from East Chop on Martha’s Vineyard to a

point on Great Neck, Cape Cod. The Court also confirmed the Special Master's report that Nantucket Sound is a combination of internal waters, territorial sea, and high seas, and is not entirely enclosed as internal waters of Massachusetts. The supplemental decree implementing this judgment was entered by the Court on February 26, 1996. 516 U.S. 365 (1996). The decree stated in part as follows:

IT IS ORDERED, ADJUDGED, AND DECREED as follows:

For the purposes of the Court's Decree herein dated October 6, 1975, 423 U.S. 1 (affirming the title of the United States to the seabed more than three geographic miles seaward of the coastline, and of the States to the seabed within the three geographic mile zone), the coastline of the Commonwealth of Massachusetts shall be determined on the basis that the whole of Vineyard Sound constitutes state inland waters and Nantucket Sound (with the exception of interior indentations which are described in paragraphs 2(c), (d) and (e) below) is made up of territorial seas and high seas.

Decree ¶ 1, 516 U.S. 365 (1996).

As a result of this decree, the central part of Nantucket Sound was specifically determined to be subject to the title of the United States to the seabed and minerals thereunder.

II. THE UNITED STATES' PROPRIETARY RIGHTS IN NANTUCKET SOUND ARE ALSO IMPLIED BY ITS CLAIM TO A TWELVE MILE TERRITORIAL SEA.

Even apart from the United States' litigation against Massachusetts, the *Submerged Lands Cases* effectively settled the United States' proprietary rights in seabed areas such as those in Nantucket Sound. For, whether or not the United States has proprietary rights to the seabed and resources in the Outer Continental Shelf,⁸ it undeniably asserts such rights in the territorial sea, as the cases and the Submerged Lands Act prove. Since, in 1988, the territorial sea was extended to a distance of twelve nautical miles, Nantucket Sound is located entirely within the territorial sea of the United States, and is therefore subject to the regime that applies within the territorial sea, as determined in the *Submerged Lands Cases*, as well as international treaties and conventions.

⁸See *United States v. Ray*, 294 F. Supp. 532, 540-42 (S.D. Fla. 1969) (since United States does not claim title to Outer Continental Shelf, it may not maintain trespass action against defendants occupying a coral reef outside the territorial sea; defendants' proprietary claims fail under OCSLA and the Convention on the Continental Shelf (1958), 499 UNTS 311, under which the United States has exclusive right to explore and exploit the seabed). Insofar as Cape Wind or the United States may intend to argue that the Corps has power to authorize occupation of the seabed beyond the territorial sea because the United States does not claim title to the seabed, it is submitted that the United States' interest in the seabed is of such a character that full or partial disposition of that interest should be held to require congressional authorization pursuant to Article IV, § 3 of the Constitution.

A. *The Submerged Lands Cases Settled the United States' Title to the Seabed and Resources in the Territorial Sea.*

The United States first asserted its title in submerged lands beyond the coastline in the *Submerged Land Cases: United States v. California*, 332 U.S. 19 (1947); *United States v. Louisiana*, 339 U.S. 699 (1950); and *United States v. Texas*, 339 U.S. 707 (1950). At that time, the United States was claiming a territorial sea of only three miles. The complaint in *United States v. California*, alleged:

that the United States “is the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles”

332 U.S. at 22. The Court sustained that claim, denying California’s proprietary claim to the seabed and holding that the United States acquired “dominion” over the three mile territorial sea as a nation after its formation through assertion, acquiescence by other nations, and, eventually, treaty. Although Justice Frankfurter, dissenting, argued that the Court had not determined that the United States is the “owner” of the seabed, as distinguished from political sovereignty, the Court’s subsequent decisions ever more clearly established that the Court did in fact intend to hold that the United States’ interest in the seabed involved both *imperium* (*i.e.*, jurisdiction and political sovereignty) and *dominium* (*i.e.*, ownership or title).

See United States v. Texas, 339 U.S. at 719 (“although *dominium* and *imperium* are normally separable and separate, this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty. . . . Property rights must then be so subordinated to political rights as in substance to coalesce and unite in the national sovereign.”). *See also* M.W. Reed, 3 SHORE & SEA BOUNDARIES 4-13 (2000) (discussing United States’ position in *Submerged Lands Cases* and confusion that arose when Court omitted to decree that United States had “paramount rights of proprietorship” as prayed by the United States).⁹

Any possible doubt as to the purport of the *Submerged Lands Cases* was erased by the Submerged Lands Act, which essentially served as a quitclaim deed to the coastal States of all right and title to submerged lands and resources in the territorial sea. Manifestly, that Act implies that the United States claimed and had full proprietary rights and title in the seabed before it passed them to the States.

⁹Mr. Reed was co-counsel for the United States in the Massachusetts Coastal Boundary Case. Certainly he has no doubt as to the United States’ assertion of ownership of the seabed and subsoil of the Continental Shelf. *See* 3 SHORE & SEA BOUNDARIES 5-6, 9-10 (United States prayed for decree that it has fee simple title to territorial sea in *United States v. California*; Court’s decree establishes proprietary rights in seabed and subsoil but avoids finding fee title due to air and sea navigational rights of international community).

B. *The United States Has Extended the Territorial Sea to Twelve Miles from the Coastline, Including the Entirety of Nantucket Sound.*

In 1982, a U.N. Treaty recognized that countries could claim sovereignty out for twelve miles from their coasts, not merely three. *See*, United Nations Convention on the Law of the Sea (1982). Under this agreement, “[t]he sovereignty of a coastal State extends beyond its land territory and internal waters . . . to an adjacent belt of sea, described as the territorial sea,” which the State may extend up to 12 nautical miles. Within the area of the territorial sea, “sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.” Convention on the Law of the Sea, Article 2. Under the Convention the same legal regime applies throughout the territorial sea.

In 1988, President Ronald Reagan extended the territorial sea to twelve nautical miles from the baseline (*i.e.*, the coastline) “in accordance with international law.” Presidential Proclamation No. 5928, December 27, 1988, 54 Fed. Reg. 777 (1988). While the proclamation specifies that it does not “extend[] or otherwise alter[] existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom,” the proclamation plainly intended to claim on behalf of the United States the rights and powers recognized by international law within the zone of the territorial sea, and the rights and powers confirmed to the United States by the Supreme Court in the *Submerged Lands*

Cases, prior to the enactment of the Submerged Lands Act.¹⁰ In extending the territorial sea out to twelve miles, the United States plainly asserted both *dominium* (in the seabed) and *imperium* to that limit, and therefore throughout Nantucket Sound.

III. THE UNITED STATES, AND THE ARMY CORPS IN PARTICULAR,
HAVE A DUTY TO PREVENT PLACEMENT OF STRUCTURES IN
NANTUCKET SOUND WHICH ARE NOT AUTHORIZED BY STATUTE.
A. *The Constitution Vests Power to Dispose of Public Lands
in the Congress.*

As shown above, the United States' assertion of sovereignty in the territorial sea, first as a three-mile belt, then as a twelve-mile belt, established both political sovereignty and proprietorship to the seabed and subsoil within that area. Because the seabed and subsurface are thus "property belonging to the United States," the power to dispose of the seabed or subsoil in the central portion of Nantucket Sound in particular rests with Congress. U.S. Const. Art. IV, § 3, cl. 2.¹¹ *See, e.g., Morris*

¹⁰What the Proclamation did not do is change the breadth of *State* territorial waters under the Submerged Lands Act, or the applicability of the Outer Continental Shelf Lands Act to the seabed beyond the three mile territorial sea.

¹¹ Article IV, section 3 of the Constitution provides that

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

v. United States, 174 U.S. 196, 242-43 (1899) (Interests in public lands may not be transferred to private parties without congressional authorization); *Shively v. Bowlby*, 152 U.S. 1, 47-50 (1894) (despite doubts expressed in a number of cases, Congress may grant title to submerged lands held by the United States in appropriate cases).

In the Court below, Cape Wind asserted that submerged lands held by the United States are not “public lands,” thereby implying that they may be occupied without statutory authorization. Cape Wind Opposition at 12-14 & n.16, *citing Mann v. Tacoma Land Co.*, 153 U.S. 273, 284 (1894). *Mann*’s point, though, was that a statute authorizing the United States to dispose of “public lands” could not be construed to apply to tidelands, given their unique public trust status. *See also, e.g., Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 283-84 (1997) (referring to longstanding principle that dispositions of submerged lands “are not lightly to be inferred, and should not be regarded as intended unless the intention was definitely declared or otherwise made very plain”). Therefore, a deed purporting to convey tidelands pursuant to a statute authorizing disposition of “public lands” was ineffective as being without authority. That conclusion refutes any suggestion that submerged lands are not “property belonging to the United States” for purposes of Article IV, § 3. In fact, the rule is the opposite of that suggested by Cape Wind:

authority to dispose of submerged lands must be specifically and clearly granted by statute, and cannot be implied.

B. *Congress Has Not Delegated General Authority to Dispose of Public Submerged Lands to the Army Corps.*

Although the Army Corps stated in its brief below that the permit for the test tower “did not grant Cape Wind anything other than Section 10 authorization for the Data Tower project, and it is not . . . some sort of blanket federal authorization for construction of the Data Tower,” Reply Mem. at 10 (emphasis in original), it also suggested that a Section 10 permit may in fact be all that is required to authorize construction. Reply Mem. at 11 n.12.

The Corps’ first point is correct; there is no basis for this latter suggestion.¹² There is nothing in § 10 of the RHA authorizing the Corps to dispose of public property, or establishing criteria, compensation, and the like for projects on public lands. While § 10 may appear to give the Corps “unlimited discretion to grant or deny a permit for construction of a structure” in navigable waters, *United States v. Alaska*, 503 U.S. at 576, the grant of a permit only means that the United States exempts the particular project from § 10’s blanket prohibition of structures in navigable waters. Precisely the same permit must be obtained whether the project is

¹²See footnote 6, *supra*. Once again, the glaring conflict between these contentions suggests that the Corps is still in search of its position on this question, and so should not be given deference.

in State waters or beyond them on the Continental Shelf, and whether authorization to occupy the seabed is obtained from the State (*see* G.L. c. 91, G.L. c. 132A, §§ 12A-16E) or the Federal Government (*e.g.*, pursuant to the Outer Continental Shelf Lands Act [OCSLA], 43 U.S.C. § 1331 *et seq.*).

Under the traditional view, submerged lands have “a unique status in the law and [are] infused with a public trust the State itself is bound to respect.” *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. at 283. While Congress could and did dispose of dry land for various public purposes,¹³ it was long thought beyond Congress’ power to transfer tidelands within federal territory to private interests for any purpose. In *Idaho v. Coeur d’Alene Tribe of Idaho*, the Court said:

Not surprisingly, American law adopted as its own much of the English law respecting navigable waters, including the principle that submerged lands are held for a public purpose. A prominent example is *Illinois Central R. Co. v. Illinois*, 146 U.S. 387 (1892), where the Court held that the Illinois Legislature did not have the authority to vest the State’s right and title to a portion of the navigable waters of Lake Michigan in a private party While *Illinois Central* was “necessarily a statement of Illinois law,” [citation omitted] it invoked the principle in American law recognizing the weighty public interests in submerged lands.

¹³*See generally* Currie, *The Constitution in Congress: The Public Lands, 1829-1861*, 70 U.Chi.L.Rev. 783 (2003) (reviewing development and uses of congressional power to dispose of public lands).

521 U.S. at 284-85. *See also, e.g., Shively v. Bowlby*, 152 U.S. at 48-50, 57-58 (observing that, while Congress may grant title or rights to federal submerged lands for appropriate purposes, it had never done so); *Mann v. Tacoma Land Co.*, 153 U.S. 273, 283-84 (1894) (general legislation in respect to public lands does not extend to tide lands); *Barney v. Keokuk*, 94 U.S. 324, 338 (1876) (“the United States has wisely abstained from extending (if it could extend) its survey and grants beyond the limits of high water”). At the least, “disposals by the United States [of submerged lands] are not lightly to be inferred and should not be regarded as intended unless the intention was definitely declared or otherwise made very plain.” *Idaho v. Coeur d’Alene Tribe*, 521 U.S. at 283-84. While the OCSLA and other laws now authorize the grant of rights for certain purposes, the Army Corps’ claim of an implied general authority to dispose of public submerged lands should be measured against the historical understanding as to the unique status of these lands; and so measured it cannot be sustained.

Moreover, where Congress has authorized the disposition of public lands, it has done so explicitly, and it has usually established an elaborate process for ensuring fairness, protection of the public interest, and fair compensation. The Federal Land Policy Management Act (FLPMA), 43 U.S.C. §§ 1701 *et seq.*, for example, establishes a comprehensive program for inventorying public lands, assessing their noneconomic significance, preserving areas of critical environmental

concern, developing land use plans, and granting temporary rights to use public land areas “under principles of multiple use and sustained yield.” With regard to submerged lands on the Outer Continental Shelf (the area beyond State territorial waters), Congress has established a separate regime under the OCSLA, the Ocean Thermal Energy Conversion Act, 42 U.S.C. §§ 9101-9168, and the Deepwater Port Act, 33 U.S.C. §§ 1501-1524. Although not as elaborate as the FLPMA, these acts all identify the various public interests involved in particular uses, and establish programs to ensure a careful balancing and protection of these interests in connection with the development of mineral resources, the construction of thermal energy facilities, and the construction and operation of deepwater ports.

The very existence of these acts refutes the Army Corps’ suggestion that it has an implied general power to authorize occupation of the seabed in conjunction with its express authority to permit navigational obstructions. Moreover, since the Army Corps’ claim is founded upon § 10 of the RHA, *as extended to the Outer Continental Shelf by OCSLA*, it is important to note that where OCSLA specifically authorizes private occupation of the seabed, it appoints the Secretary of Interior, or the Secretary of Energy and FERC – not the Corps – to fix the terms of the disposition and supervise the activity. The Army Corps’ authority, so far as it is founded upon OCSLA, is provided in § 1333(e), “Authority of Secretary of the Army to prevent obstruction to navigation,” which states only that:

The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to the artificial islands, installations, and other devices referred to in subsection (a) of this section.

Not even the great deference due to the Army Corps in the interpretation of its statutes and regulations can grow this provision into a general purpose authority to dispose of public submerged lands for projects not otherwise authorized by Congress.

C. *Under the Public Trust Doctrine, the United States Is Obligated to Protect Public Lands from Unauthorized Private Appropriation.*

In *Pollard's Lessee v. Hagan*, 44 U.S. 212, 220-21 (1845), the Court stated that the United States held territorial lands as trustee for the public until the land was disposed of for the public good, or transferred to the newly formed States. *See also Idaho v. Coeur d'Alene Tribe*, 521 U.S. at 284-85; *Shively v. Bowlby*, 152 U.S. at 57-58; *District of Columbia v. Air Florida, Inc.*, 750 F.2d 1077, 1082 (D.C. Cir. 1984) (discussing doctrine but declining to decide whether under it State could recover damages for harm to public trust interests because issue was not timely raised). With regard to the vast areas of public land gained by discovery, purchase or treaty, Congress adopted the policy of conveying land to encourage settlement (*e.g.*, the homestead laws) and economic development (*e.g.*, grants to railways, for

transportation facilities on rivers, and for bridges). By these means the territories were settled and made States, and the value of remaining lands was increased, all in accordance with prevailing ideas as to the public good and the scope of Congress' authority under Article IV, section 3. *See Currie, supra*. Even during this expansionist period, the Court continued to emphasize that, with respect to public lands, the United States is "charged with the duty and clothed with the power to protect it from trespass and unlawful appropriation" *United States v. Beebe*, 127 U.S. 338 (1888). *See also Light v. United States*, 220 U.S. 523, 537 (1911) ("public lands . . . are held in trust for the people of the whole country"); *Utah Power & Light Co. v. United States*, 243 U.S. 389 (1917).

In *Commonwealth v. 1.58 Acres of Land*, 523 F. Supp. 120 (D. Mass. 1981), Massachusetts contested the right of the United States to obtain by eminent domain a fee simple absolute title to certain waterfront property in Boston, because the property included tidelands impressed with a perpetual public trust administered by the Commonwealth. The Court held, however, that the United States could take the property in fee, but nevertheless would hold it subject to the public trust (*jus publicum*). "Neither the federal government nor the state may convey land below the low water mark to private individuals free of the sovereign's *jus publicum*. . . . The trust is of such nature that it can be held only by the sovereign, and can only be destroyed by the destruction of the sovereign." *Id.* at 124. Moreover, "the federal

government is as restricted as the Commonwealth in its ability to abdicate to private individuals its sovereign *jus publicum* in the land.” *Id.* at 125. *Accord, e.g., City of Alameda v. Todd Shipyards Corp.*, 635 F. Supp. 1447, 1449 (N.D. Cal. 1986).

In light of these principles, the Army Corps’ apparent position that it need not concern itself with the fact that the projects now under its review propose to appropriate public lands without authorization, and its alternative position that a § 10 permit under the RHA may itself sufficiently authorize such appropriation, cannot stand. The Corps cannot abdicate the *jus publicum*. Indeed, it is “charged with the duty and clothed with the power to protect it from trespass and unlawful appropriation” *United States v. Beebe*, 127 U.S. 338 (1888). It has ample authority under § 10 of the RHA in particular to carry out that duty. *United States v. Alaska*, 503 U.S. at 576-80.

Conclusion.

For the foregoing reasons, Massachusetts urges the Court to reject any implication in the decision of the District Court that the Corps cannot consider whether a proposed seabed structure is properly authorized by law. The Court should also reject any suggestion by the Corps either that it has no duty to consider and defend public trust rights in the Nantucket Sound seabed or that it has implied

authority under § 10 of the RHA to authorize occupation of the seabed by private parties.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6607 words (less than one-half the length allowed the appellant's principal brief), excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerfect version 9 for Windows in 14 point Times New Roman font.

Attorney for Commonwealth of
Massachusetts, Amicus Curiae

Dated: March 10, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the Brief for the Commonwealth of Massachusetts, Amicus Curiae, by first class mail, postage prepaid, on counsel of record, as follows:

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**Re: Comments on the Preliminary Report of the United States
Commission on Ocean Policy**

Dear Commissioners:

Cape Wind Associates, LLC (“Cape Wind”) hereby submits its comments to the Preliminary Report released in April 2004 by the U.S. Commission on Ocean Policy (“Commission”). Cape Wind filed extensive comments to the Commission on January 14, 2003, which are incorporated herein by reference. Cape Wind commends the Commission for this ambitious undertaking, and offers the constructive suggestions set forth herein. We also look forward to active participation in any future proceeding that may occur as a result of the Report.

I. The Cape Wind Project.

Cape Wind has a particular interest in ocean issues, as it is proposing the nation’s first offshore wind energy project, which would be capable of generating up to 420 MW of clean and renewable energy. The wind farm would be located entirely in federal waters, with only a portion of the submerged transmission cable buried beneath the coastal seabed of Massachusetts. The Cape Wind project has been undertaken in direct response to the policy directive of the Massachusetts Legislature in the Electric Restructuring Act of 1997, which mandates minimum amounts of renewable energy and declares the “public purpose” of “generating the maximum economic and environmental benefits over time from renewable energy to the ratepayers of the Commonwealth....” According to the marginal emissions rates published by ISO-New England, the introduction of Cape Wind’s energy into the NEPOOL system would offset approximately one million tons of CO₂ each year, making Cape Wind the region’s most meaningful proposal to address the issues of greenhouse gas and regional air quality, while fostering an important breakthrough in American energy independence.

Cape Wind is now in the third year of a comprehensive and exhaustive environmental review process conducted jointly by Federal and State regulatory agencies, which includes seventeen participating agencies. This joint review will result in an Environmental Impact Statement under the National Environmental Policy Act (the most comprehensive environmental review standard under Federal law), as well as an Environmental Impact Report under the Massachusetts Environmental Policy Act (“MEPA”). Notably, in Cape Wind’s ENF Certificate (#12643), the Massachusetts Secretary of Environmental Affairs explained that Cape Wind voluntarily consented to MEPA review of the entire Cape Wind project (including the non-jurisdictional portions thereof), as well as a greatly extended ENF comment period to allow for maximum public input, with the Secretary concluding that “these commitments ensure that the impacts of the project will receive full disclosure in the state and regional review process...” Id. at 4. Cape Wind is also undergoing a separate adjudicatory proceeding before the Massachusetts Energy Facilities Siting Board regarding the requisite onshore and offshore transmission facilities that would be located within Massachusetts. The current review process thus considers all relevant concerns and issues in a seamless manner, with absolutely no “gap” between federal and state review.

II. The Report Appropriately Recognizes the Significant Potential of Offshore Renewable Energy Sources.

Cape Wind agrees emphatically with the Report’s conclusions that (i) “environmental, economic and security concerns have heightened interest among many policymakers and the public in renewable sources of energy,” and (ii) the “potential is significant and could include offshore wind turbines” and other types of offshore renewable energy. Further, the Report correctly concludes that the American power industry is now “looking increasingly to the lead of European countries such as Denmark, the United Kingdom, and Germany, where growing numbers of offshore projects are being licensed.” Report at 298 (emphasis added). Thus, while wind energy has emerged to become the world’s fastest-growing source of electrical generation, the European nations have seized the global lead in establishing a robust offshore wind industry, with the associated gains in their technology and manufacturing sectors. Cape Wind feels strongly that the United States must move quickly in order to gain a competitive position in this rapidly developing industry.

III. The Commission Appropriately Recognizes the Need for Greater Support for Offshore Renewable Development.

Cape Wind concurs with the Commission’s conclusion that, in light of the important benefits presented by offshore renewable development, additional project support and funding is consistent with the National interest, as follows:

Specifically, some portion of the revenues received by the federal government annually for the leasing and extraction of non-renewable offshore resources need to be allocated to all coastal states for programs and efforts to enhance the conservation and sustainable development of renewable ocean and coastal resources.

Id. at 293 (emphasis in original). Such rationale is also consistent with the will of Congress in providing market support to renewable energy projects pursuant to the production tax credit in Section 45 of the Internal Revenue Code, as well as the market support structures established under State law, including renewable portfolio standards.

IV. The Report Properly Calls for the Streamlining and Expediting of the Permitting Process for Offshore Renewable Energy Projects.

Cape Wind, which is now in the third year of a comprehensive permitting review, fully concurs with the Commission's conclusion that it is necessary to streamline and expedite the review process for offshore renewable energy projects. More specifically, the Report concludes that, under current law, "the Nation runs the risk of unresolved conflicts, unnecessary delays and uncertain procedures," such that there is a need "to avoid gridlock and allow progress" and to "streamline the process" for offshore serviceable energy facilities. Id. at 38, 300-301. These observations are also entirely consistent with the established Administration policy reflected in Executive Order 13212, "Actions to Expedite Energy-Related Projects," which recognizes the need "to take additional steps to expedite the increased supply and availability to our nation" and thus directs each Federal agency to conduct its statutory review of proposed energy facilities in an expedited manner, as follows:

The increased production and transmission of energy in a safe and environmentally sound manner is essential to the well-being of the American people. In general, it is the policy of this Administration that executive departments and agencies shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy.

* * *

For energy-related projects, agencies shall expedite the review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

If the nation is to gain the potential benefits of offshore renewable energy development, the current permit review process should be streamlined and expedited, and project opponents should not be allowed to use deliberate and undue delay as a means to block viable renewable development.

V. **Offshore Renewable Energy Projects are subject to a Comprehensive Review Process under Current Law.**

Cape Wind respectfully disagrees with the suggestion of the Report that under current law “there is no comprehensive and coordinated federal regime in place” to regulate offshore wind energy projects, and that the current statutory permitting authority of the ACOE under Section 10 of the Rivers and Harbors Act does not allow the agency “to weigh the benefits of the nation’s energy future against the potential adverse affects on other ocean users, marine life, and the ocean’s natural processes...” *Id.* at 298-299. Cape Wind further respectfully contests the statement in the Report that the permitting authority of the ACOE under current law “primarily regulates instructions to navigation.” *Id.* To the contrary, the current law and regulations, including both the Rivers and Harbors Act and the National Environmental Policies Act, provide for the most comprehensive form of Federal regulatory review, which is in no way limited to issues of navigation. Thus, regardless of whether Congress ultimately decides to restructure the existing statutory structure, there should be little question that the current regulatory process is sufficient to evaluate all issues associated with projects now under review.

The regulations of the Corps, long-established regulatory practice and an extensive body of case law all confirm that the Corps’ current jurisdiction over offshore structures is extremely comprehensive and in no sense limited to issues of navigability. Indeed, the Corps’ regulations confirm that its regulatory review under Section 10 involves a comprehensive “public interest” standard, as follows:

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of this general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

33 CFR § 320.4(a)(1) (emphasis added). Further, in United States v. Alaska, 503 U.S. 569, 580-583 (1992), the Supreme Court upheld the foregoing comprehensive environmental review standard and specifically rejected the view that the Corps' review should turn primarily upon navigability issues. Moreover, in the case of Cape Wind, the Corps has determined that an Environmental Impact Statement ("EIS") pursuant to the National Environmental Act ("NEPA") is required, and the comprehensive review of issues required thereunder (specifically including the consideration of alternative technologies and locations and potentially conflicting issues) is now in its third year. Thus, it is incorrect to suggest that the review process under current law is not sufficiently "comprehensive" to properly evaluate and balance all concerns regarding any proposed offshore project, or is focused solely or primarily upon navigational issues.

Such conclusion is shared by the leading environmental advocacy organizations. The Environmental Defense Fund in its comments to the House Subcommittee on Energy & Mineral Resources regarding H.R. 5156 argued that "there is no urgent need, and there is no valid justification" for alteration of the current law regarding the permitting of offshore wind facilities, as follows:

The present jurisdictional authority over project involving ... wind and wave energy has not been shown to be flawed and in need of repair. The Federal government presently has clear authority to review, permit, and provide appropriate regulatory oversight for projects of this kind. There has been no evidence of demonstrable flaws in the current permitting system.

Comments to Subcommittee re. H.R. 5156 (7/24/02, emphasis added.) With specific reference to the Cape Winds project, the Conservation Law Foundation and Union of Concerned Scientists by letter to the Corps dated August 16, 2002, similarly concluded that the Corps' authority under Section 10 is sufficient to conduct a meaningful review of, and to authorize, Cape Wind's pending proposal:

Section 10 of the Rivers and Harbors Act, together with the National Environmental Policy Act, provide clear authority to conduct comprehensive environmental review process and to issue permits for the [Cape Wind's offshore data tower] and ultimately, should it be appropriate, for a wind farm. CLF is the region's advocate for a better-developed resource management and regulatory frame work for the marine environment. At the same time it is the position of the CLF and UCS that the Section 10 and NEPA processes can and should be used to produce good offshore wind energy sitting decision in the near term.

The National Resources Defense Counsel similarly issued a position statement concluding that consideration of Cape Wind's pending application can and should proceed pursuant to the existing avenues for review and participation, as follows:

Meanwhile, projects like Cape Wind must obtain an Army Corps of Engineers permit pursuant to Section 10 of the Federal Rivers and Harbors Act. In addition, the Cape Wind project has voluntarily committed to undergoing an environmental review process in Massachusetts. (NRDC would oppose any proposed project that does not similarly commit or meet all requirements of the relevant state(s') environmental review process.) Pending more comprehensive Federal legislation, the existing combination of Federal and State processes should be used to evaluate the environmental merits of proposed wind power sites and to assure appropriate mitigation for any environmental impacts that might be identified.

NRDC Position Statement on Offshore Wind, October 8, 2002 (emphasis added). Thus, regardless of whether Congress ultimately chooses to restructure the existing statutory scheme, there should be no doubt that the current review process is sufficiently comprehensive to address any and all concerns regarding pending offshore proposals, and is not limited to navigation issues.

VI. Centralized Government Planning May Not Be Appropriate for Certain Offshore Sectors of Deregulated Industries.

While the Report states that the permitting process for offshore renewable facilities under current law “is not based upon a comprehensive and coordinated planning process” (Id. at 299), the Commission should note that centralized planning is not appropriate for all offshore industries. In particular, the newly deregulated electric generation industry has been structured to foster innovative commercial proposals and entrepreneurial initiative, rather than to rely upon centralized governmental planning for proposing new generation projects or sites. For example, the Massachusetts Electrical Restructuring Act of 1997 included an express legislative declaration of “the public purpose of generating the maximum economic environmental benefits of renewable energy” in the competitive energy marketplace, with the Legislature specifically anticipating that these “public purposes” will be fulfilled through the innovation of private industry, including “private sector investment in . . . renewable energy and related enterprises” and “the stimulation of entrepreneurial activities in these and related enterprises,” with the Legislature intending that the shift towards entrepreneurialism would “encourage innovation, efficiency in improved services” and “open markets for new and improved technologies.” M.G.L.c. 164 §§ 4E(c), (d), 1(f), (g). The FERC has similarly restructured the wholesale electrical industry with objective of opening the generation sector to the innovations and efficiencies that result from free enterprise.

The Federal and State governments have thus deliberately left to the innovation of industry the primary role of proposing new generation facilities and their locations, subject to comprehensive public interest review under both Federal and State law. Thus, the suggestion that we should now move away from this new entrepreneurial (i.e., “ad hoc”) development model for electrical generation facilities in this context and shift back towards a centralized

planning model would be contrary to established policy objectives of the newly deregulated electrical generation industry.

VII. The Commission Should Proceed Carefully in Proposing New Provisions for “Property” Interests and Governmental Compensation for Offshore Renewable Energy Projects.

The Report correctly notes that, under current law, offshore renewable energy facilities are authorized by permit, rather than through the granting of “leases” or other “property interests.” Further, Congress has seen fit to provide for the authorization of non-extractive structures on the OCS (including such structures as gas pipelines, extensive electric and telecommunications facilities and cables, radio towers, and ocean thermal energy conversion projects), without generally requiring compensation in the form of rental or other payments. For example, recognition of the special policy benefits and challenges of developing new renewable energy resources, the Ocean Thermal Energy Conversion Act (42 USC 9101) provides for the Federal permitting of non-extractive thermal energy projects on the OCS, but does not require any lease arrangements or royalties to the Federal government. To the contrary, such act makes available special financial assistance for the construction and operation of ocean thermal energy projects. In contrast, the Outer-Continental Shelf’s Lands Act (OCSLA) provides for royalty payments pursuant to “mineral leases” that authorize the extraction, purchase and sale of submerged oil, gas and mineral deposits.

Cape Wind does, however, recognize that the ability to obtain an easement interest (in addition to the current permit authorization under current law) would provide a somewhat more durable and traditional form of interest, which could provide additional certainty to the lending community for renewable and other offshore industry sectors. Nonetheless, in light of the important public interests supporting the development of new renewable resources, it is important that any new and additional expenses to be assessed against such projects not be so large or uncertain as to discourage capital investment in newly developing industries.

VIII. The Federal Government has Recently Addressed Many of The Same Issues in Developing its Interim Policy for Siting Wind Farms on On-Shore Public Lands.

On October 16, 2002, the Bureau of Land Management of the Department of Interior issued its new Interim Wind Energy Development Policy, Inst. Memo No. 2003-020 (the “BLM Policy”), for the siting review and authorization of private wind farm proposals on on-shore public lands, a process that considered many of the same policy concerns now facing the Commission. The BLM Policy found that “the President’s National Energy Policy encourages development of renewable energy resources, including wind energy, as part of any overall strategy to develop a diverse portfolio of domestic energy resources for our future.” Most importantly, the BLM Policy shares many of the key attributes of the review process for offshore wind projects under current law, including primary dependence upon private industry (and not centralized governmental planning) for the identification of proposed sites for commercially

viable wind energy development on public lands. Specific provisions of this BLM Policy include the following:

• **Applicant's Identification of Proposed Sites.** Although the BLM considered authorizing on-shore wind farms pursuant to centralized processes, the BLM Policy decided to rely primarily upon "first come" review of individual applications at proposed sites designated by commercial project proponents. The BLM specifically concluded that such "processing of wind energy right-of-way applications on a first come basis is consistent with the President's National Energy Policy and will encourage the access to public lands for renewable energy resource assessments and development."

• **No Disruption of Pending Applications.** It also determined that, in order to avoid disruption of ongoing project reviews, "pending applications will be processed consistent with the guidance provided by [the BLM Policy] prior to the acceptance of new applications for the same lands."

• **Applicant Capability.** Further, in order to discourage the potential for land speculation, the BLM Policy provides for a review of the applicant's technical and financial capability and further provides for authorizations to lapse if not pursued in a timely manner with due diligence.

• **Expedited Review Process.** The new Policy provides that, in recognition of the pressing need to develop alternative energy sources, wind farm applications will be given a high priority for timely processing and review.

Thus, many of the wind power issues raised before the Commission have recently been reviewed and addressed by the Federal government, and much of the analysis of the BLM Policy, including the move away from centralized planning, would be useful for the Commission's consideration

IX. The Commission Should Include Environmental Justice an Objective for Ocean and Coastal Policy.

The Preliminary Report does not refer to environmental justice as a policy objective. Both the Federal government and many of the States, however, have well-established policies that encourage regulatory agencies to address the disparate impacts of development activities on low-income population area. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," directs Federal agencies to consider environmental justice issues:

Each Federal Agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.

Executive Order 12898, 1994. The Environmental Justice Policy of the Massachusetts Executive Office of Environmental Affairs (“Policy”) similarly provides as follows:

[T]argets EOEA resources to service those high-minority/low-income neighborhoods in Massachusetts where the residents are most at risk of being unaware of or unable to participate in environmental decision-making. Working with these EJ Populations, EOEA will take direct action as part of the implementation of this policy to restore degraded natural resources (21E hazardous waste/brownfield sites), to increase access to open space and parks, and to address environmental and health risks associated with existing and potential new sources of pollution. . . .

Environmental Justice Policy of the Executive Office of Environmental Affairs, at 4. The Task Force should be concerned that the current Draft Principles and Policy Recommendations, by failing to incorporate any reference to environmental justice, may inadvertently drive development activities to locations where there would be disparate impacts on minority and low-income populations. If wealthy and powerful interests use their influence to block necessary activities from areas within sight of their waterfront estates (notwithstanding clearly demonstrated public need and benefit and satisfactory consideration of siting alternatives), those activities will, by default, be driven to other locations, which would more likely include environmental justice populations. Therefore, the Committee should supplement its Preliminary Report to include environmental justice as a management principle for the ocean and coastal zone.

X. The Commission Should Minimize Unnecessary Commercial Disruption.

The Commission should be concerned that, by proposing to comprehensively rework a statutory and regulatory framework that has been established over centuries, it could inadvertently introduce a measure of financial uncertainty that could negatively impact the progress of all commercial activities in or affecting the ocean or coastal zone. In this respect, Cape Wind cites the following cautionary words of Federalist Paper 62:

[G]reat injury results from an unstable government. The want of confidence in the public councils damps every useful undertaking, the success and profit of which may depend on a continuance of existing arrangements. What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance

that his preparatory labors and advances will not render him a victim to an inconstant government? In a word, no great improvement or laudable enterprise can go forward which requires the auspices of a steady system of national policy.

Federalist Paper 62. The Preliminary Report could in this regard adversely affect not just offshore energy projects, but all aspects of coastal and ocean commerce, including the recreational boating industry, aquaculture, commercial fishing, waterfront property ownership, commercial real estate development, and the financial lending community.

Notably, when the Massachusetts Ocean Management Tank Force recently issued its Report and Recommendations in March of 2004, it expressly provided that “the recommendations in this report are prospective in nature and will not impact projects already under regulatory review,” and further stated that “we neither recommend a moratorium on development and permitting activities, nor want our proposals and uncertainty about policies to have the effect of chilling development.” The Commission should similarly avoid an open-ended period of commercial uncertainty by clarifying that its recommendations would be prospective in nature and not disrupt projects already under regulatory review. This seems particularly appropriate in light of the pressing National need for domestic energy resources and the Report’s recognition that a shift towards an “ecosystem management” model is a “long-term” proposition that would, if adopted, be implemented in multiple “phases” over an undetermined period of years.

Very truly yours,



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