

Massachusetts Ocean Partnership

Massachusetts Ocean Partnership Partners' Event Provincetown Center for Coastal Studies July 29th, 2009

Purpose and Overview of the Event

This was a landmark Partners' Event—EEA staff presented and discussed the draft MA ocean management Plan. Staff from the Consensus Building Institute helped MOP to conduct a facilitated discussion of critical Plan elements in order to help Partners prepare for constructive and effective participation during the public/stakeholder comment period and to help shape MOP stakeholder activities going forward.

Event Schedule Event Activities

Event Schedule	Event Activities
10:30-12:00	MOP Governing Board Meeting
11:45-2:00	Meeting convenes with a working luncheon: Briefing and Discussion of Draft Ocean Management Plan with EEA
2:14 –5:00	Breakout Sessions, Facilitated Dialogue, Next Steps, Adjourn
5:00—7:00	Closing Reception (for all attendees) Ross' Grill, 237 Commercial St, Provincetown

Welcome

(Rich Delaney, MOP Governing Board Chair, Director of the Provincetown Center for Coastal Studies).

Introduction

(Stephanie Moura, MOP Executive Director)

Welcome. This is being videoed as an additional component of the Partnership's attempt to document this process.

There are three primary reasons for this meeting of MOP Partners:

- The first is that it is time to slow the pace and have a conversation and exchange about the Draft Plan to better understand it.
- Secondly, in addition to helping the Partners better understand the Draft Plan, we also want to help the EEA planning team have a better sense of what stakeholders' preliminary impressions, questions, and reactions are to the Draft Plan in advance to the public hearings that will be held this fall.
- Finally, this meeting is to help the Partnership listen to the key questions or areas of confusion about the Plan, to help stakeholders meaningfully participate in the comment process, and also to help listen for key issues where the Partnership might be able, in the upcoming months, to help Partners hold those dialogues.

We hope to achieve these goals through today's agenda by having Deerin Babb-Brott and John Weber available to talk about the Draft Plan along with the elements of the Science Plan from Volume II, and also discuss the expectations for the public comment period. Ultimately, we will create topics for the break out group discussions from the questions presented in the first half of the meeting.



Provincetown Center for Coastal Studies,
Provincetown, MA

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MOP Communications

(Howard Krum, MOP Communications & Outreach Manager)

I'd like to bring your attention to our newly revised website and the four primary avenues from which you can access pertinent information including: The MOP Science Program, our Interactive Planning Process Timeline, the Document Library, and Events Calendar.

If you are able, we would like for any questions or suggestions on our Interactive Timeline or our website in general, please contact me via phone or email. We'd greatly appreciate your feedback.

The Draft Ocean Management Plan (*presentation*)

(Deerin Babb-Brott, Assistant Secretary for Ocean and Coastal Zone Management and Director, Massachusetts Office of Coastal Zone Management)

We began with the Oceans Act, particularly the 15 requirements of the Oceans Act. One of the first things that was done was to consider the time available to develop a draft plan. In that period of time we were working with the Act and coming to understand its intent and the interest of individuals involved with ocean planning and trying to decide what we could do that establishes a framework to move forward and was feasible. In thinking about all of those things we considered goals and outcomes. The Act gives us our first goal which was to "balance and protect... [the natural, social, cultural, historic, and economic interest of the marine ecosystem]" and develop an integrated ocean plan. Then, we had the two specific things that the Act required us to do (the second and third goals) which was first to identify and protect marine and estuarine life and habitat, and then to identify appropriate locations and performance measures for uses allowed under the Oceans Sanctuaries Act. And then the fourth goal, which encompasses the first three, we want to establish a dynamic, adaptive framework for moving forward which we are calling the blueprint for Plan 2.0. The Act requires that we reevaluate and modify the Plan with a transparent public process no less frequently than every five years. We are considering a Plan 1.5 in attempt to bring those plan components that are at 80% to 100% and not wait five years to begin that process. Chapter 5 in the Plan shows proposed approaches that we have drafted that would allow us to do three things: first would be the technical modifications to the Plan as we continue to accumulate data; secondly would be a more formal set piece plan amendment process; thirdly the five year formal revision with legislative review, public comment, OAC, etc. Those were the four overarching goals that framed our work going forward.

The process was divided into three phases. The first phase was setting up the work groups, getting information from state and federal agencies, outside experts, NGOs, stakeholders, and starting to make distinctions so we could start working with that on a planning basis. Then we engaged in the compatibility assessment, looking at the functional requirements and siting requirements of individual kinds of uses, what the potential impacts of those were, drawing connections between those and uses and those and other resources, and going through a screening process based around those uses and through the screening process and engaging in a process that looked at different scenarios in terms of what level of review or management structure might be appropriate. All of this went into the plan development process.

We had language in the Act that stated to reflect the importance of the waters of the Commonwealth to citizens that who derive livelihoods from recreational and recreational benefits from fishing. One of our challenges was to take the kind of policy guidance in the Act, which we interpreted overall, essentially to be a contemporary expression of the principles of the Public Trust Doctrine. When it talked about reflecting the importance of the waters of the Commonwealth, that was the policy direction and then we had to find a way to turn that into a planning stipulation or a piece of planning information that we could apply individually and in relation to all of the other things that were being considered. The strategy guidance that we developed was to minimize conflicts by siting incompatible development outside areas of significant commercial effort and value and areas of concentrated recreational fishing activity. We had very valuable data sets developed by DMF and MMTA associated with commercial and recreational fishing. DMF, in particular, was able to give a statistical breakdown of fishing effort by activity and value statewide and that allowed us to identify spatially what those areas would be and that is reflected under data. So we had a data layer then that we could use to specify what the more opaque language in the Act saying 'reflect the importance of', as an example of how we looked at the separate pieces in the Act in terms of how we derived down to the specific things that we ended up mapping and thinking about spatially in relationship to other things.

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Q (Jamy Madeja, MMTA): Congratulations, you did a fantastic job of creating an elastic, dignified Plan. You just mentioned the data layers, and could you speak about how right now you are planning on correcting technical errors in the data that you have digitized and provided? We have met once and you have appreciated the data that the MMTA has provided and I believe recognized that there are substantial parts that have yet to be digitized and that it was an inadvertent error, but it may matter to some individuals that there is more data to be digitized than is currently in the Draft Plan.

R (Deerin Babb-Brott): *One of the important pieces going forward is to formalize the process of local knowledge capture, whether it is from commercial fishermen, MMTA, recreational boaters, or other kinds of community based or regional input from individuals. What we did when we started was speak with any individuals or groups that were interested in engaging in a discussion but we did not have formal terms or procedures for what defines the rules for data quality and the process by which it is going to be gathered which is a process that most understands that governs or at least informs how we propose to use that information. So we have two things occurring, one of which is that we recognize that there is a lot of information out there at a scale that is very important to capture that we don't have right now. Second, we made a significant effort to speak to as many individuals as possible and it became more than we could handle to systematically go through each constituency and we recognize that we were introducing challenges into the process. Going forward that is an important set piece for us and one of the things that will be seen in the Final Plan will be at least process guidelines on that. That is something we would like to work with MOP on as well. One of the significant benefits that MOP was able to provide for us was that we would be able to go out into the public and attain the information and MOP's resources, which in this case was ASA, was able to digitize the information and get it into the database for access. An important component about that is that the discretion about how that data gets used, while those terms need to be clear up front, how that data gets used is with the discretion of the Secretary. I'm sure that there are technical inaccuracies and we will do everything possible to correct those. In terms of information provided, the determination internally as to what their utility is and what their appropriateness is as a planning layer, it is my thought that if a group or a person has contributed information that needs to be recorded and become part of the record, then I think it is the planning team's responsibility to make the decision on how to use that in terms of the decision making that is reflected on the version of the Plan being worked on. The counter point to that is that where there is a decision of some significance in terms of information that did or did not get used, we need to be able to explain why or why not and allow individuals to have that conversation. Local knowledge capture is key—it gets the information out there and ties individuals to the process. We need to be able to attain it, formalize it, record it, have it available, and then have the transparent discussion regarding whether or not we used it and why.*



Richard Delaney, Executive Director of the Provincetown Center for Coastal Studies



Kelvy Bird, Graphic Recorder

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Draft Ocean Management Plan (cont.)

(Deerin Babb-Brott, John Weber, EEA Ocean Services Manager)

The Ocean Plan establishes three areas, the Prohibited Area (13%) which is recognized as the Cape Cod Ocean Sanctuary, the Renewable Energy Area (2%), and the Multi-use Area (85%).

Q (Jack Clarke): Are the provisional areas considered in the 2% for Renewable Energy?

R (Deerin Babb-Brott): *They are not.*

As part of setting those four goals, we made an explicit determination early that we were going to be conservative in our designation in our proscriptive management areas whether they were for development or for protection. We wanted to leave a fairly large canvas that next generations of the Plan could work with, reflecting other things like changing technology, evolving or changing values, new decisions that come to be made. It is in that Multi-use area where the most significant provision of the modification of MEPA regulations and that is where we will be imposing the new avoid standard for incompatible uses.

C/Q (Stephanie Moura): I want to interject a topical set of questions that have been coming out. We had put out a brief survey to Partners to attempt to get some preliminary questions about the Plan and several of the resultant questions have to do with the MEPA performance standards approach in the Multi-use Areas and I would like to note that. Maybe after this as an overview we can discuss it in further detail?

R (Deerin Babb-Brott): *Yes.*

Ecological Valuation Index (EVI)

(John Weber)

What was being referred to was the Act's requirements that we identify and protect those special, sensitive, or unique areas of marine or estuarine life habitats. A couple of different things occurred, first of which was the Habitats and Fisheries Work Groups that in the course of them gathering and analyzing their data it was obvious that there was overlap between those two groups but once they finished their work there was a realization that we needed to start looking at the information that they had compiled together. That along with an SAC meeting where the Work Group reports was being reviewed, the question of how SSUs would be identified led to us trying to develop and figure out how we would do just that. Our first step was to do a literature review to see how other places have approached this in a marine environment. We found a couple of approaches that had been developed in Nova Scotia by the Canadian Department of Fisheries and Oceans and Belgium's approach to their North Sea Planning and they had basically taken a multi-species valuation approach and a number of species of importance are ranked by a certain number of criteria and from that you can start developing an overall view on an ecosystem type basis as to where are the important areas. We used that and it led to about three months of very intense work, three or four meetings with the SAC, and a lot of inter agency work to develop the Ecological Valuation Index (EVI). The EVI attempts to take 44 different individual species data layers and attempts to rank each one of those individual specific species data layers because for all of those species we have statewide coverage. They are ranked based on four criteria which includes are the species rare (occurring 10% or less of state waters), are the species globally and/or regionally important, and the final criteria used was positive fitness consequences which asked if—for that specific species—is there something in the planning area which provides critical and important to the life history or the lives of those species whereas if that was not present it would have a significant impact on that species as a whole. We graded each one of the 44 data layers according to these and then, when the individual scores were combined for the 44, it can start to be observed if there are particular areas that consistently present as important areas. There was a lot of discussion with the SAC regarding this. There were some issues and some questions that kept cropping up regarding EVI which included the manner in which individual species were selected to be evaluated in the EVI was a bit circular. There were also questions about data because some of the resolution of the data that we had available to us did not lend itself to the scale of types of management decisions that we were pursuing. Finally, there were many species and/or components of their habitats for which we do not have sufficient data available to us in the time frame that we were using. A lot of the work on the EVI helped create the foundation for the science framework component of this which is summarized in Chapter 5 of the Plan. This outlines the particular science and research

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needs that we would like to pursue in the upcoming years. The process of the EVI was very valuable for this due to the fact that it helped to prioritize what some science program needs—ultimately, there is additional work that needs to be done to use the EVI approach.

SSUs

(Deerin Babb-Brott)

We went to the 11 core SSU layers that roughly breakdown between marine mammals, fish, crustaceans, and sea floor habitats and those areas were then plotted and were given the new regulatory siting standard under MEPA of avoid. The baseline under MEPA as it stands now is avoid, minimize and mitigate similar to MEPA. It is a proponent-driven exercise where the proponent will identify a preferred alternative and then go through the alternatives analysis required in the scope issued by the Secretary to compare, contrast, and identify other locations which may have less significant environmental impacts. This allows for a proponent with a use that is potentially incompatible and has the potential to have significant impacts to one of the 11 resources that their first obligation is to avoid or to demonstrate no less environmentally damaging alternative or demonstrate the data inaccurately characterizes the resource.

Q (Jack Clarke): If someone was to propose a pipeline in one of these SSUs, they would look at the Plan, look at the map, look at the proposal, and then go to the newly revised MEPA regulations which would indicate to the project proponent that they should avoid that area. If they were unable to avoid that area they would then be required to go through the traditional sequencing to minimize or mitigate any impacts?

R (Deerin Babb-Brott): Correct.

Q (Pat Hughes): Whether or not a project requires an EIR under MEPA, would any project that requires a state permit trigger these MEPA standards? Is this an application of an aerial requirement or is it still tied to projects that trigger the MEPA review?

R (Deerin Babb-Brott): *The big projects that are going to have the significant impacts are going to be captured by MEPA either through mandatory thresholds or through the ability of the Secretary to require discretionary EIR based on an ENF filing. We went through with DEP their Chapter 91 license files and in the last 5 years no project has filed a water dependent license application that did not also require an EIR. That was an indication that decisions have been made about the MEPA thresholds and the kinds of projects that there is general consensus on that will have significant impacts and that require this type of overview. The last piece is the discretionary EIR, or the capacity to require the discretionary EIR, gave us a margin of error on this so that although these apply formally under regulations the actual threshold for analysis that everyone gets to participate in and make a decision is the ENF threshold which allows for everyone to have a transparent participatory way of participating in the decision making about whether or not something about a particular project is causing enough concern to have the Secretary issue a scope for an EIR.*

Q (Priscilla Brooks): So the relevance of the of SSUs will be brought to bear when projects trigger a MEPA threshold or unless the Secretary at his discretion decides to require an EIR on a project?

R (Deerin Babb-Brott): *Correct. We made a policy decision that if you have a project that falls below low ENF thresholds your impacts can be dealt with at the local level or at the local level with a state license associated with that.*

Q (Priscilla Brooks): How do the new MEPA thresholds and in particular the alternatives analysis that will be required differ from what is required now?

R (Deerin Babb-Brott): *It establishes a presumptive exclusion and that now you have to start with your project outside of these identified areas and it establishes a high threshold to be met. It changes how one initiates and participates in MEPA.*

Q (Stephanie Moura): If a project is either, for example, a wind turbine or a pipeline, prior to proposing that project the appropriate maps need to be looked at and then it needs to be demonstrated in the application that the presumptive exclusion areas have been looked at prior to putting in the proposal?

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R (Deerin Babb-Brott): Yes.

Q (Robbin Peach): What actually triggers the ENF threshold? Do you envision that with those activities that fall below that threshold that there will be problems with cumulative impacts?

R (Deerin Babb-Brott): *There is no cumulative threshold impact that would be triggered absent a proximate project filing. The planning team felt that this was something that should be deferred until Plan 2.0 because there was not high demand awaiting the release of this Plan and also because that there is not the kind of information available yet. It is something that we would like to spend more time and consider more, further down the road.*

R (John Weber): *I would argue that the Plan does address cumulative impacts— when we developed the 2% Renewable Energy portion, we looked at a variety of data and things that would be fundamentally incompatible. Looking at the Renewable Energy maps, there are areas of white that we have not been identified as renewable energy areas and part of our thinking on that was that there are some areas that individually looking at one piece of data it is not an exclusionary area but however if you think about everything that we know about what is occurring in that area from a cumulative sense it does not make sense to put something there, so from a small sense we have looked at cumulative effects. Also, we did work with Ben Halpern and identified the beginnings of some information that can be used to pursue cumulative impacts with his work as a baseline moving into the future because what his work does is attempt to assess the cumulative effects of a multiple different stressors on particular habitats.*

Q (Robbin Peach): What are the kinds of things that will not trigger an ENF? Is there potential for cumulative impacts from those things?

R (John Weber): *One of the thresholds for Chapter 91 purposes, if you have a water dependent use that occupies less than an 1000 square feet, that does not necessarily by itself trigger an ENF.*

R (Deerin Babb-Brott): *If you don't require an ENF, it doesn't mean that you won't be thinking about cumulative impacts [people administering local permits consider cumulative impacts/effects of uses].*

Q (Greg McGregor): In addition to cumulative impacts which are reached or not reached depending on how small are those objective thresholds are written into the regulations, I would like to ask a question about onshore and near shore impacts affecting your success with this Ocean Plan. I am aware of your limit with your jurisdiction and I am aware of your networking and building some new regulations into the networked programs that are already on the books and I ask how confident are we that the networked programs themselves adequately regulate the shore based and the near shore impacts that they were suppose to since the original coastal zone planning in Massachusetts?

R (Deerin Babb-Brott): *I think that they do a credible job and from the perspective of CZMA and the Coastal Zone Management program which is a program that has been around since 1978 and we have been adapting through time and we rely on the expertise and coordinated work of our sister agencies and I think we do that pretty well. I don't think we need a new CZMA but we do need to refocus on based on our better understanding of what the kind of impacts coming out of the cumulative sides. But I think we do ok.*

Q (Deb Hadden): What about the uses that weren't specifically laid out in the Plan, in particular dredging? I was surprised to not see a separate sheet showing how that would play out.

R (Deerin Babb-Brott): *Dredging would be covered by sand mining. Most of the dredging that we were able to identify was outside the Planning Area. If there was an area of dredging inside the Planning Area subject to those then that is probably something that needs to be spent time on between now and promulgation. Another one that we did spend time thinking about was the LNG terminals and the way that we thought about [this type of use] was that they are essentially the sum of their constituent parts of which we have captured here, so we had pipeline work and impacts to navigation work. We did focus a lot on the conventional allowed uses under the Ocean Sanctuaries Act and probably do need to broaden that perspective to capture the kind of question on the issues that we are going back and forth on.*

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C (Deb Hadden): I think for dredging it is probably not an issue for Boston Harbor because of where the line is but for some of the other ports it may be and I was wondering if it was under sand and gravel but I think it should be looked at to see if everything there applies or maybe it needs another category. Maybe there is some provision in the Draft Plan if it's a use that's not one of them and I was thinking of the off shore terminals too.

Q (Kate Morrison): If you are a project proponent and you are able to supply different or improved data from your perspective in an area that supports the fact that your project might be compatible in an SSU area, how is that going to work in the MEPA process [will it be evaluated by best professional judgment or is there another process]?

R (Deerin Babb-Brott): *The short answer is yes, professional judgment will be utilized. There is a lot of professional judgment is use now and will be required in the future. What this [the ocean plan] does differently now is that it formalizes the process. A proponent would make that argument in the MEPA filing which is then held up as the MEPA process allows for discussion from all participants.*

Q (Kate Morrison): So it is possible as a project proponent to overcome the presumptive exclusion if you have data that in the MEPA process is determined to be of equal or better value from what is in the Ocean Plan.

R (Deerin Babb-Brott): *Yes and the theory behind that is that if you are not having an impact, why prohibit the activity.*

Q (Steven Barrett): If you notice, Nantucket (referring to the map) is completely surrounded by an SSU resource which is the long tailed duck. I would like to know some more information for the source of that data since it affects the ability of Nantucket to do things in its own waters.

R (Deerin Babb-Brott): *The meta data is available in the Habitat WorkGroup report. One of the things that the siting standard of "no feasible alternative" gets to is that if a municipality is proposing a project in its waters for its purposes, then the state's interpretation is going to be that a feasible alternative does not exist outside the area subject to municipal jurisdiction, therefore there is an overlay. In practice, what it is going to mean is that the municipality needs to evaluate the SSU tradeoffs and then making the case that this is the municipality's project and the source of energy cannot be found elsewhere. If there is a way that we need to or can refine this argument and the discussion in Ocean Plan then that is the sort of thing that we will looking at people to talk to us about.*

SSUs (cont.)

(Deerin Babb-Brott)

Each kind of general food group use [ocean use] under the Oceans Sanctuaries Act gets its own specific map based on the compatibility assessment. Their [the map's] level of sophistication or rigor is directly proportional to the potential significance of their impacts and to the number of kinds of things that the activity could impact. The designated wind areas, as the Plan talks about we have not undertaken feasibility analysis of these either on the state or federal side but we will be looking to do that.

Provisional areas were areas, those were areas that we have done the exclusionary criteria but there are still lots of white areas (referring to the map) and we looked at all of the white areas that were left and based on our knowledge of the area and had learned from the Plan in its totality was how we decided if it did or didn't make sense to think about placing something like commercial wind in the area. Areas that were on the cusp became provisional areas. Technically these passed the environmental screening criteria and for a number of reasons they do not make a lot of sense for us to pursue. These are areas that passed exclusionary screening criteria and we do not think that they are areas that we want to pursue further. If a third party wanted to come in [and propose a project in a provisional area] they would have to go through a plan amendment process and gather a lot of data and substantiate the acceptability of potential impact of those areas. We do not expect those areas to be developed in the future but it is a theoretical possibility.

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Science Framework for the Draft MA Ocean Management Plan

(John Weber)

There are four or five main categories of types of work or scientific research that we see needing in the years to come. In the general category of monitoring and characterization, general mapping, continuing the work that we have been doing with USGS on sea floor mapping and coupling that with some essentially ground truthing and/or benthos surveys to get a better idea of the structure of the biotic life that is down on the bottom. Then combining that with longer term observations and/or modeling such as been developed at places such as WHOI or UMASS Dartmouth. Longer term water quality data could also feed well into this. So this is some of the basic science that we need to do to in order to map and ultimately start thinking about classification of habit types on the bottom floor for management purposes. There are also several areas in terms of looking at human uses or activities where we would like to go out and get some additional data or more refined data, building on some of the MMTA and DMF work on recreational fishing and boating as an example of that. DMF took a look a commercial fishing very generally and we would like to look at that more and also look at and identify commercial fishing and spatial manner by gear type because that matters depending on if you are thinking about placing a permanent structure in the water (also to get at more seasonal patterns of activity).

In the realm of Ecosystem models we would like to continue to pursue the EVI. An important subject is quantifying ecosystem services and how it is done. We would like to pursue that further.

Under the category of applied research, taking the geological mapping that USGS and PCCS did with near shore mapping and taking that to the next step by bringing in the biology and bringing in the ecology. In terms of climate change, we are looking for the thresholds or tipping points and what can we do, if anything how do we prepare for individual impacts to species, e.g. the lobster die off in Long Island Sound. Also, is there some way that we can think about potentially reducing impacts or incompatibilities and newer emerging uses and existing uses in the ocean, e.g., fixed structures and fishing methods.

I have mentioned indicators and expect that we will be working with the SAC on developing indicators. Finally, all of the data that is shown on the maps and the plans is on the Morris System which is CZM's ocean resource information system and we would like to expand on that. Communication and data management we know the Partnership is very interested in that and we would like to keep that going. When we begin working at various scales (e.g., bringing in local knowledge), we would like to bring that into the system at a transparent scale and is also usable and user friendly.

Q (Louis Elisa): To the extent that I have to deal with my clientele when all this is done and everything is in place, what does this mean to them? What does this means to the cities and towns that believe that dredging is important in order for them to have the near shore and upland issues addressed for economic development? What does this mean to them in terms of planning and regulatory process if they have to give or get a permit? Is there something that tells them or that they will be able to take from this process something that they can begin planning, creating exclusionary zones in terms of sea level rise and where they should not permit things to take place in the near future? How do they apply this in terms of their planning for coastal development at the waters edged?

R (Deerin Babb-Brott): *In regards to dredging, 95% of municipal dredging projects and probably 80% of federal projects are going to be outside the planning area so they are not going to be covered by the Plan, so it is not going to affect municipal dredging projects.*

In terms of municipal responses to sea level rises and climate change, this is not going to affect municipal approaches to that. It is really not designed and is not going to be able to provide tools that will be helpful at least from CZM's side of things we work with communities on a different kind of track for those sorts of things. Technical services are available to communities but the Ocean Plan is not going to speak to that per se.

If the communities want to use the Plan on their own in terms of local initiatives, I don't think that that would be incompatible in that regard either. We identify from a state wide perspective what the SSU resources of concern and the siting standards that are derived from them and those will apply in municipal waters or outside municipal waters.

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Q (Andrew Vorce): On page 223 of the Draft, regarding the regional planning agencies, I know you know that we have been a part of this but Nantucket has been left out of this. Could you please correct that?

R (John Weber): Yes.

C (Greg McGregor): I want to compliment Deerin, John, the rest of the CZM staff, and state officials who did a good job of putting together a great Plan that sells the science core that will make this very easy to explain to those who are subject to it or will enjoy the benefits of it or with clarity will know that they are not subject at all to these laws. This is an excellent Plan and it is clear on what is and is not. Your legal jurisdiction and your planning jurisdiction does not start until 1500 feet offshore and that answers a lot of the questions in advance. This may also make the critical audience smaller and the interested audience larger. Secondly, this doesn't propose any amendments to existing state statutes. Massachusetts is the first state in the nation to propose in 1978 what was coined networking that is no new state statute. Governor Dukakis did not wish to go to the legislature proposing a new statute, so the natural resources defense council urged as part of its program back then to use maximum state legal authority and it sought to have all of the New England states do that and NRDC had to threaten suit to challenge the inadequacy of the Massachusetts program until there was a commitment to have five new sets of regulations and to commit in writing to promulgate them by a deadline. When Governor King came into office and he inquired how to get rid of some of those regulations he was told that he couldn't do it and so we have one of the best CZM programs on the books and it is fair different from the other states. It has on the other hand the limitations of those existing five and now additional four laws that you are going to invoke. For instance, MEPA only applies to state permits and other approvals, projects of the state or contracts to do state projects, or various kinds of financial assistance. Massachusetts is one of two dozen states in the nation with an EIR type law and fortunately we are the first one to have a single executive official in charge with the power to promulgate rules and regulations. On the other hand, pure state projects and pure county projects and other things that do not trigger a state connection are not subject to it-- they are in many other states. Secondly I noticed on the map of town boundaries, the boundaries don't go into the water. Perhaps there is a finer resolution map that shows where some of our municipal boundaries and thus their police power does go into the water. Unlike other state land use laws in the nation, we have no necessary legal relationship with local zoning, local subdivision control, and local home rule of power, that is, the legislature does not interfere either way with zoning, subdivision, and home rule authority of cities and towns. That is another limitation I am simply pointing out. We are not involving local authority as local authority. We are leaving a whole body of police power unused in service of this Ocean Plan.

Q (Stephanie Moura): These are questions that we heard via the survey. One question is that we know that fish as animals are not being subject to the jurisdiction of this Ocean Management Plan but fish as part of the ecosystem are being considered as a resource. How will DMF review this Draft Ocean Management Plan? Do they have some elevated status in terms of reviewing and commenting as a state resource agency held somewhat apart from the others? Secondly, has DMF made any indication with EEA as to what the process is for ensuring that state fisheries management plans are integrated to the greatest extent practicable with the Plan going forward?

R (Deerin Babb-Brott): *DMF is obligated by the Act to evaluate planning designation that we have made in draft now and to comment on the potential economic impact of planning decisions on commercial and recreational fisheries. One of the things that we try to do is to provide them with information that would help them in that analysis through a couple of projects that the Partnership funding one of which was the IEC report which got into the details of analysis of municipal and regional reporting. So IEC is familiar with the economic side of the DMF data. They have done some work which DMF sat in on drafting the scope and that will go back to DMF.*

We have integrated fisheries management in the Draft Plan through the process. We brought everyone around the table and DMF has been part of the discussion to date and their data has been integrated completely in this. To the extent of having the two missions and interests working together and we have at least been doing that and I would say that is reflected and can be called an integrated approach. I think because of the basis in the relationship between the fishing sectors and conservation organizations, we felt more comfortable allowing that relationship and the synergy between those two interests to develop and emerge through the process of working with information going forward.

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C (Mel Cote, Jr): I know that you have talked about indicators and I know that I have spoken with several of the staff independently and encouraged you to rely upon the work that has already been done by the Gulf of Maine Council, Mass Bay Estuaries Programs, I'm sure you are aware of that but just for the record. From a federal agency's perspective, and I do not want to speak for NOAA, but from EPA's perspective we are trying to sort out between our office of environmental review, our wetlands program, and our ocean coastal programs to try and get towards an answer or at least some consistent policy so that this planning effort and similar efforts in Rhode Island and other states will meet some of the requirements under those various statutes in terms of the alternatives analysis and just to acknowledge that we are working on that and have already been in discussions with you and that I just want to make sure you are aware that we are concentrating on that.



Stephanie Moura, Executive Director of The Massachusetts Ocean Partnership

Q (Bill Adler): Regarding DMF and evaluating the projects, they have basically been doing that. Does this give the DMF anymore clout, to use that term, when they make a decision that something shouldn't be? Does this give the DMF anymore authority in what it says as to how a decision is made?

R (Deerin Babb-Brott): Yes, to the extent that DMF's interests are represented in terms of management with the SSUs. I will not speak for Paul Diodati, but I think part of the reason that he embraced the planning process was that he recognized that this was an opportunity to have an expression of EEA policy in regulatory form. Hereto for DMF, they have issued recommendations that don't have the force of regulations and now they have something that controls.

Q (Noah Chesnin): My question was about the Science Plan and it is clear that you have consolidated, reviewed and identified a lot of information to develop this Plan and that there is still a lot yet to bring into the fold but how are you going to prioritize all of those different issues you still need to bring in more information about? And if there is going to be a prioritization when will that happen and what will the process be?

R (John Weber): Yes, we need to produce a lot of that work prior to the final Plan being promulgated so that people have a good idea. We will prioritize by being practical by continuing things that we are already doing as in working with USGS but by also having a conversation with the Massachusetts Ocean Partnership about what will happen after December 31st. I think we are going to identify some very practical things that we can do and accomplish between now and the next year or two years. The specifics on how that will happen will be unfolding and I suspect we will come back to the SAC with some of that additional work as well.

EEA Closing Comments (Deerin Babb)

Public comments are being accepted as of right now. Public comment will be open for sixty days after the last public hearing that the legislature requires us to hold. We have a couple of meetings tentatively scheduled in September and we envision that another two will be in that time frame. The comment period is running from now until the middle of November. Specific directions will be posted on our web page. If you have a hard copy of the Plan there is a sheet inside the Plan which provides an address to which you can mail your comment.

We would like to thank everyone for their help in process and it was great to have been a part of it.



MOP Partners Event, Provincetown, MA

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Break Out Sessions

Suzanne Orenstein

We are going to break into small discussion groups and you will be allowed to self select into those small groups (three groups with one facilitator in each group).

Group One—The first group will consider stakeholder **Reactions to the Plan: What don't you understand, what would you like to see improved** and David O'Connor will be the facilitator for this group.

Group Two— The second group will consider **Ocean Planning Science Going Forward** and Stephanie Moura will facilitate that.

Group Three— This group will discuss **Implementation Challenges and Questions** that your various constituencies might have about this Plan and included in this topic might be such things as assessment of use compatibility, coordination among compatible uses, stakeholder involvement going forward, etc. Ona Ferguson from CBI will be the facilitator.

Your instructions will be to select a recorder/reporter, address the overarching topic and develop a short list of points (~5) to report back to plenary.

Break Out Sessions Reports

Group One—Reactions to the Plan: What don't you understand, what would you like to see Improved?

Deb Hadden (group recorder/reporter)

We had 12 points/issues of that we thought could use additional clarification or that we didn't understand or that we thought were missing (this confusion may just be due to the fact that the document is so lengthy/extensive).

- 1) One was that we could not find the summary map of SSUs and we were wondering where it is since it seems like a really important map, so we would like a clarification on that.
- 2) Right now there are separate charts for separate uses, for example all of the different water dependent uses were on their own map and at some point to use the maps and plan a project you need to be able to overlap all of the data layers and we were not sure how that would happen or how the public was going to use the data. Also if you have a project you obviously need a much better scale (finer resolution) than are on those maps so we wanted feedback on how the public might access that data and will they have the ability to get it and use it how they need to use it. This might be an overwhelming task for some smaller projects and proponents.
- 3) The question was raised as to why the recreational transit routes were not included on the maps of existing water dependent uses.
- 4) We thought that it wasn't clear that if you are in a multi-use area— are there certain areas that are neither an SSU or an existing water dependent use, in other words are there areas that aren't shaded when you overlap those two maps and, if so, what would be the siting standard and performance standard if [your use wasn't covered by either of those]? Does it just default to original plans? We thought that that was unclear and if you have a map that overlaid everything we would be able to answer the question.
- 5) It appears that ocean planning will now be an ongoing activity for the state involving continuous improve-

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ment. We are going to have keep up with a lot of new data and this led to some questions including if this is a correct assumption [information will be continuously evolving]? Is the state going to have a funding source to continue with the process? How will developers be able to get the most current data and is this going to be something where every proponent is going to have catch up with the latest data?

- 6) In general we thought there were only a few uses that there were specific tables for and there could be any other range of uses that could want to be in the ocean area that we can't conceive of now. The Plan needs to deal with other uses whether by general category or thinking it through and coming up with standards for other areas.
- 7) A point of clarification on page Roman numeral V, it says that there can be 166 3.6 megawatt turbines in the 2% area and on page 4-4 it says 150. That is a discrepancy that should be clarified.
- 8) We thought there was a difference between siting standards for areas with SSU resources versus in the existing water dependent use areas and it really isn't as clear as it could be. For example, why isn't [the terminology of] minimize and mitigate used in the siting standard for projects within SSUs? You try to avoid the SSUs if at all possible but if you can't you can do your project but you really then should have to minimize your impact because maybe you can go through less important areas and then eventually mitigate. That came in for the performance standards but it should also have been under the siting and in general the standards sounded very similar, more clarification was needed on that.
- 9) We are little unclear on when the management Plan is activated. We heard Deerin say when you have to file an ENF but in the document it says that when there is an ENF filed you use the document as guidance and [the Plan] only kicks in when an EIR filed. It is something that is a really important distinction. Also an individual project might not trigger an ENF or it might trigger an ENF but not an EIR but if a number of other proponents do similar projects in a similar area where a cumulative impact would have triggered an EIR, you could get projects that are not being covered at all and some significant impacts.
- 10) There was a question regarding the Ocean Resources Trust Fund—the fees and mitigation of payments. If the mitigation was for a loss of public access then the fees were supposed to be used to help restore and improve public access and we were wondering how we can be assured that that will happen.
- 11) We were a little confounded by what the document means in regard to the Division of Marine Fisheries. Are they getting elevated stature in terms of the review or approval process or additional authorities? There were several references to it and we weren't quite sure how their role would be different and we would like that to be clarified. Also, how are fishery management plans going to be integrated into the Plan or as well as sector based fishing?
- 12) If a permit is issued under whatever permitting agency issues the permit after the MEPA ruling has occurred, then who has legal standing to appeal the permit on the basis that it is not in compliance with the Plan?

C (Bill Adler): *(In reference to #12, the DMF question)* That was what I asked Deerin earlier because in these other processes they were able to comment and then in most cases they were bypassed in the decision by the other agencies and DMF said that all they could do is put in a letter. I am hoping that maybe they will get a little bit more influence because they have the biological and ecological arguments.

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R (Deb Hadden): The way you described it Bill is how I interpreted the document and some individuals in the group wanted to get in on the record to have the question back to them to get a response.

Group Two— Development of Ocean Planning Science Going Forward

Stephanie Moura (group reporter/facilitator)

We essentially were talking about the state's science priorities moving forward, how the Mass Ocean Partnership's investments relate to those priorities, and an assortment of other topics that arose from this area. I have three key points/issues.

- 1) First, our group discussed the issue of this planning process and the product of the Plan right now being a series of mapped resources and their relative compatibility with uses but that reflects a current reality and ultimately one of the questions in ocean management planning that we have to deal with as a society is what are the ultimate targets that we are trying to achieve in terms of levels of ecosystem health or resiliency and how do those relate to historic and shifting baselines in terms of the marine ecosystem. In my understanding of the Act, I don't believe that any of that is addressed in requiring the state to define specific ecosystem-health goals. **As stakeholders in Massachusetts and in the region, what exercises do we want to undertake to actually look at goal setting in terms of levels of ecosystem health and resiliency?**
- 2) Secondly, we talked about what are the structures and bodies and entities moving forward, now that the Draft Plan is out. **What are the mechanisms for science to be advanced moving forward?** Per John Weber (*summary of his previous statement to the group*) the Work Groups that were convened by the state to develop some of the preliminary data sets and identify the data needs, those are disbanded. Going forward, in the longer term, there will be a few entities that the state has envisioned and they include an ocean team essentially that are government agency scientists that would directly support and advise the Secretary in implementation of the Plan and in development of new science for the Plan. That would essentially be the entry point for something like the Massachusetts Ocean Partnership and other entities that have money to invest in science to connect with and define priorities and figure out where investments would go. The SAC, at least for the foreseeable future, would probably change in its function in order to provide some expert advice and guidance on specific topics as requested by the state. Related to that is that the state does not anticipate any windfall in the near future in terms of actual state budget to invest in science. At least for now, to advance the science that will inform ocean management planning and implementation, we will be looking to direct the Partnership resources wisely and use monies from the trust fund as are appropriate and in line with how it is directed in the Act.
- 3) And finally, we had three points that had to do with some specific topics where individuals agreed were priority areas for additional science attention and/or where science information is needed.
 - 1) The first of those was in developing and then implementing more robust methodologies to actually get human use data that is more suitable to management decision making. This first attempt that got a lot of qualitative data digitized and incorporated and the state was able to use that and stakeholders were able to see it was an excellent first attempt but I think everyone agrees that there needs to be a more robust methodologies for gathering that human use data and rendering it in a way that is more suitable for management decision making.
 - 2) The second item that we discussed was habitat classification. The thought there being that over the course of the next 10 years there will have to be considerable investment in additional sea floor mapping and other kinds of data gathering that is needed in order to classify habitats and to map them to inform decision making. But in the near term what the state and the stakeholders need to agree on and develop is a methodology that is robust and science informed as to exactly how those habitats will be classified.

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- 3) Thirdly, the whole issue of the concept of data sharing, not just for the idea of having more information out there and available and accessible to people, but actually improving data accessibility and interoperability insofar as it informs and supports permitting and management processes. In addition to building a baseline data set that everyone can access, as project proponents conduct studies and assessments for certain areas, those studies should be made available and perhaps used as reference points and metrics so that when similar projects are proposed there is a way to not only allow for more value for those studies by sharing them but also help streamline permitting processes.

C (Maggie Merrill): In preparation for bringing in marine renewable energy developers [there is a need] to figure out a way to create avenues for more data on ocean currents, tides, waves, and winds. More precise [data] for more areas.

Q (Louis Elisa): Did you mean inter or intra governmental and are you excluding thoughts from the outside?

R (Stephanie Moura): *I am not excluding anyone. In the Draft Plan EEA was trying to think through what entities would help develop science going forward and they are envisioning the development of a science ocean team that will directly advise and inform EEA and the Secretary and at the moment and the way that it is currently described is it would be comprised solely of agency scientists (if I understand the Plan correctly). The point behind that is that they are envisioning many different layers to include government, something from outside of governments with academia and other scientists that would feed into that a version of the SAC, and mechanisms by which to periodically inform and convene people and building in communication methods so that as scientific information is updated it is communicated to people.*

Group Three— Implementation Challenges and Questions

Ona Ferguson (group reporter/facilitator)

The question that this group worked on was (representing their constituencies), what challenges are anticipated if this Draft Plan were put into effect “as is.” The discussion followed two tracks:

- 1) The first track was in regards to marketing and outreach in terms of implementation. This had to deal with a need to better explain what makes up this Plan to constituencies [direct communications and outreach to stakeholders].
- 2) The second track dealt with the actual implementation and effect that people anticipate of Plan implementation on/for their constituency. The themes from this track included:
 - a. the need to amend current state regulations that are influenced by the Plan so that there are real links and changes made to get this happening on the ground, Chapter 91, MEPA, etc.
 - b. Also to think about the federal regulations and to think about the impact on local municipalities and regional planning associations and how they are going to work with sometimes new authority or new things they need to be coordinating with; and
 - c. The need to consider long-term cumulative impacts such as how climate change, timescale, and boundaries tie in (land and seaward boundaries).
 - d. There was also a request to think more about likely upcoming key issues (e.g., short sea shipping) and how that will be incorporated going forward.

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Straddling both tracks (above) it was noted that in contrast to how the Plan now deals some projects (more “no” than “yes”), that the approach for renewable energy projects might be interpreted as a streamlined “yes.”

Finally, a request was made for a consideration of the value of [and communication of] “lessons learned” throughout the MA ocean planning process for the ultimate benefit for other states in managing their oceans.

Closing Comments on Breakout Groups

C (Mel Cote, Jr): We had a very good cross section in our group and there was very little if any redundancy among some challenges that people brought out and we were able to get everyone around the table to be able to say something.

C (Rob Moir): In Mel’s group, as was just mentioned, it was outstanding—we had representatives from NOAA, EPA, local towns, Fisheries, etc.



Breakout Discussion Group 1— Reactions to the Plan: What don’t you understand, What would you like to see Improved?



Breakout Discussion Group 2— Development of Ocean Planning Science Going Forward



Breakout Discussion Group 3— Implementation Challenges and Questions

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Closing Comments/Questions

Q (Jamy Madeja): I am unclear on what is the response to public comments? Is that a wait and see if the document is changed or if there is an interim response that allows for dialogue?

R (Stephanie Moura): *What I believe I heard and understood from this morning's presentation by EEA was that if there are factual errors or comments that come up from stakeholders, where possible, they will be addressed in some fashion. I don't believe that EEA is going to have the time to proactively go out and fill in data gaps, bring in new data sets or new levels of evaluation to the Draft that because there will not be enough time. I think their focus will be getting out and talking to people about the Plan and hearing concerns and that's the goal over the next several months. The question is that if public comment ends at some point in mid-November, will there be enough time to respond? So as comments from your groups appear, get them in as soon as possible so that they might have time to respond. This is my interpretation from what the state said and is not necessarily their exact statements on the matter.*

Q (Mel Cote, Jr): After December there will be a Plan and what will MOP's role being in supporting implementation which is inherently a state function.

R (Stephanie Moura): *What we are going to continue to do over the next six months is to try and serve the Partners to better understand so that they can comment on the Plan from a more informed place and hopefully make that a more constructive process, that is the stakeholder engagement part of it.*

Over the next six months there are a couple of science related projects that we are continuing to work on with the state but I don't believe it will deliver new products that will change the final product [the final MA Ocean Management Plan].

In 2010, which is technically the last year of MOP's existence unless we collectively agree that there is value added by the Partnership going forward and we find a way to do so, we will have several science related activities that we are both collaborating with the state on and initiating ourselves that will help get at some of the issues that are referred to in the Act and were attempted to be reached in this Draft Plan. For example, we will be looking at methodologies to take a more robust look at cumulative impacts and a second example is that we will be considering decision support tools that use data to help managers and others better analyze scenarios and resultant tradeoffs of ecosystem services in a certain area [if you chose to allow one use over another, what ecosystem services are gained and/or lost]. Those are examples of some of the more sophisticated science tools that no one had enough time to get to and we will be working on in 2010.

C (Stormy Mayo): I have to raise the science planning small group's number one, priority issue: I think absent an understanding of what the philosophical strategy is to define the targets of ecosystem health and we have health and growth, since this is in some respects beyond this group a partnership between users and ecosystems. We need to know and know from a philosophical point of view how we are going to deal with the science that is going to be done and this really gets to the question of shifting baselines and which baseline is the baseline that the managers should be dealing with. I hope that there will be some direct discussion of that in the near future so that all users will have an understanding of what they are going to have judged against relative to the future of the coastal ecosystem.

C (Jamy Madeja): We would like MOP's help in advocating accurate inclusion in the Plan of recreational transit data. We provided it, the state is looking at how to include what we say is available to them and not included. You talk with them more often than we can so we would appreciate your advocacy and getting it fully included because otherwise it will go out to the public and the public will see that it is not accurate and it will erode respect for the rest of the Plan.

I would also like MOP to think about what would ordinary people think when they look at this and think about it and help the state with tools to making this more accessible to the general public in going forward.

R (Stephanie Moura): *In response to Mel's comment, there is the obvious stakeholder engagement in things in the formal public comment period but there is only so much that we can do but to the extent that we can help people understand what is in the Plan we will.*

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Howard's team is also trying to translate this into written and graphic products and conversations that can be more broadly understood. Also, can we help our Partners translate things to their constituents? Time and resources permitting we will attempt to do so and we think that is important.

Q (Maggie Merrill): MOP started out with eight million dollars and a five year plan. Where are you in that expenditure and that plan?

R (Stephanie Moura): *The eight million dollars was for a three year grant and we are now half way through that and we have only had enough time to invest about 1.5 million dollars of that eight and that includes everything from staff to contractors. So when we say that we are going to be investing in the following months in science and communications we will be doing just that. That is because we have had numerous conversations that went into developing our Five Year Strategic Plan and subsequent conversations at annual Partners meetings and with our Governing Board, so there are ongoing conversations about the priority investments that need to be made to meet the requirements of our grant and to advance ocean management planning. We will be investing in some significant projects in the next 18 months and hopefully they will produce utility and create a track record to have this effort continue.*

Thank you to everybody for joining us today.

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