

## **Ocean Advisory Commission**

Third Meeting

March 4, 2009

University of Massachusetts Boston

### **In attendance from the Oceans Advisory Commission:**

Senator Robert O'Leary

Senator Bruce Tarr

Representative Frank Smizik

Gary Anderson, staff, Senator Anthony Petrucci

Deerin Babb-Brott, Assistant Secretary for Oceans and Coastal Zone  
Management, EEA

John Bullard, Exec. Dir. Sea Education Association; Southeastern Regional  
Planning and Economic Development District

Jack Clarke, Mass. Audubon (environmental member)

Paul Diodati, Director, Division of Marine Fisheries

Stacey Justus, Coastal Planner, Cape Cod Commission

Carolyn Kirk, Mayor, City of Gloucester; Metropolitan Area Planning Council

Alan Macintosh, Assistant Director; Merrimack Valley Planning Commission

Philip Weinberg, Department of Environmental Protection

John Pappalardo, New England Marine Fisheries Council

## **Meeting Summary**

### **1. Introduction**

Commission Chair John Bullard opened the meeting at 1:00 PM and welcomed the Members of the Commission in attendance. He explained that he had been asked to Chair the meeting by Secretary Bowles in the absence of Chair Sue Tierney.

Chair Bullard made some introductory remarks about the status of the plan development. He explained that EEA is working hard to integrate input from the public as well as the science sector. Chair Bullard thanked the Massachusetts Ocean Partnership (MOP) for their valuable assistance in reaching out to stakeholders. Chair Bullard stated that the goal is to have an ocean management plan with "lines on a map" by June 30<sup>th</sup> that will meet the 15 principles laid out in the legislation; once the Plan and accompanying maps are out for public comment, the work of the Commission will intensify in order to gain public support during the six month public input period. Hence, greater involvement and communication by the Commission will ultimately lead to a greater opportunity for public support. He explained that a draft plan with "lines on a map" will be presented to the Commission for comments and feedback in May.

### **2. Plan Update**

Assistant Secretary Babb-Brott updated the Commission on the following:

- Two stakeholder meetings were held in February in Boston and on Cape Cod during which the work group reports and preliminary findings were presented. Comments at the workshop helped identify additional sources of data and information.
- The first steps in responding to the Act to protect biodiversity and manage marine resources have resulted in the development of an Ecological Valuation Index which is aimed at representing the state's first steps toward ecosystem-based management, recognizing the existing data constraints and that it will be a first version document. This was presented for peer review and is currently being reviewed by the SAC.
- The process of data gathering has generated more information that will help the planning team move forward with management decisions and "lines on a map"

He then explained that the purpose of the meeting was to present and receive comment on the governance framework for the ocean plan as well as the proposed goals, strategies and outcomes for the plan.

Members of the Commission congratulated EEA on their openness and transparency, and emphasized the importance of the deliberative process for the strategies, outcomes, and criteria, etc, which is important to have as the base upon which future plan decisions.

### **3. Ocean Planning Framework and Needs Assessment**

Jack Wiggin of the UMass-Boston Urban Harbors Institute briefly listed the five main tasks that his group has completed for consideration of the planning framework:

1. *Inventory planning frameworks from around the world*  
The approach taken in 18 national and regional, terrestrial and marine frameworks was examined for their relevance to Massachusetts.
2. *Explore human use and ocean resources compatibility analyses*  
A compatibility assessment is being carried out to identify and address use-environment (e.g. loss of habitat from human impacts), and use-use conflicting issues (e.g. shipping and offshore wind).
3. *Marine Spatial Planning (MSP)*  
In brief, this concept has various forms and uses and its main goal is to avoid conflicts, promote sustainable uses and enhance ecosystem function. For example, the MSP was applied to the Belgian Part of the North Sea for the management of large marine areas subjected to lots of uses (e.g. offshore fishing, sand/gravel mining, pipelines).

4. *Use and integration of science tools*

Several decision-support tools and models are being considered that will assess how the ecosystem may change and resulting environmental implications, provide spatial information about human activities affecting a specific area or ecosystem, provide models for key ecosystem processes, simulate the consequences of management actions on natural resources and the economy, and help in economic analysis.

5. *Develop and evaluate planning framework options for Massachusetts*

Various options have been considered; an institutional arrangement can be centralized, decentralized or networked. The last option utilizes existing (and new) authorities who will use the plan to guide their decisions.

Jack concluded that ultimately, integrated multi-use ocean management using an ecosystem-based approach needs to (1) address the full range of cross-sectoral human uses, (2) be science-based, (3) incorporate public and stakeholder input, (4) be adaptable to changing conditions and needs, and (5) support sustainable marine industries and resilient ecosystems.

John Duff, UMass-Boston faculty member and part of the consultant team looking at the planning framework questions, briefly described the management and policy mechanisms that can be applied in the Plan by drawing a parallel with the management of federal public lands whose historical and legal management can be instructive. He explained that resource management can be implemented by designating areas for a use or withdrawing areas from uses. This is especially important since there are still extensive parts of Commonwealth waters and submerged land about which little is known. Hence, in the final maps it is highly likely that large expanses will be left open until more data and information are provided to inform the next plan.

***Discussion***

During the ensuing discussion, Commission members asked the following questions (responses provided in italics).

Question: While compiling the inventory of planning efforts around the world was there an analogy similar to the federal land management plan in ocean management or is this breakthrough to Massachusetts? *Answer: No one was drawing parallels to the federal land policy because a lot of these were Western European nations. What we did see were the parallels to early information oriented withdrawal and designation process, so that even when a line on a map is drawn for a particular planning area, that would lend itself to even finer lined spaces within it. We have examples in the US such as the Florida Keys National Marine Sanctuary where you see areas within areas. In the case of zoning, more information enables management to be more tailored.*

Question: Besides spatial data, were any temporal considerations incorporated in the plans that were examined? Answer: *Temporal aspect is also an important part of marine spatial planning, especially in terms of considering two uses that may conflict or even a resource that might conflict with a particular activity. This is also addressed through a compatibility matrix that is being developed.*

Chair Bullard thanked Jack Wiggin and John Duff for their presentation. He reiterated that no state has ever undertaken the task that Massachusetts has in developing and implementing a management plan for ocean waters, which becomes more complex as one moves from 2D model to 3D and even 4D realities.

#### **4. Goals, strategies, and outcomes**

Assistant Secretary Deerin Babb-Brott provided a brief presentation of the development of goals for the management plan. He explained that three goals were developed based on the requirements of the Oceans 15, review of current state of knowledge of marine resources and uses in Massachusetts, the Commission's input and public and stakeholder comments. The recommended goals are: integrated management, good stewardship, and development of an adaptive framework. Outcomes desired and strategies that enable outcomes to be achieved were also developed for each goal. The integrated management outcome is an integrated management plan, the good stewardship outcome is twofold: identification and protection of SSUs and identification of areas appropriate for the allocation of uses that are allowable in ocean sanctuaries, and for the adaptive framework goal the outcome is the "Plan for the Plan" which is the recognition that there is a tremendous amount of information that we do not have at our disposal right now. The Plan for the plan has three components: a science plan, a public and stakeholder participation plan, and a policy development portion.

Assistant Secretary Babb-Brott explained that these goals reflect the highest priority, basic elements required to build a first generation ocean plan that is responsive to the Act and provides the foundation for ongoing work.

Assistant Secretary Babb-Brott also explained that the strategies were developed to describe the information and process needed in response to each goal in order to attain the desired outcomes. The strategies lay out the process of achieving outcomes such as the "plan for the plan", and some include "decision guidance" that will steer the management/protection measures and planning decisions on the spatial component of the plan according to the requirements of the Act and public and stakeholder input.

Assistant Secretary Babb-Brott described how each outcome represents a concrete product and together with the various data and information generated during this process will define the first generation ocean plan and pave the way for the second version. He pointed out that the first three outcomes reflect the requirements of the Act for making and implementing protective and use management measures, while the fourth outcome

recognizes the need for more data and information to address issues identified through the planning process.

Assistant Secretary Babb-Brott described the next steps in the planning process. The first step will be to transition from goals to a baseline map of environmental and use conditions that will depict areas unsuitable for new uses (due to basic conflicts) as well as areas considered for environmental protection (areas of high ecological value). The second step will be to review of potential and/or desired new uses contemplated by the Act and allowable under the Oceans Sanctuaries Act, e.g. deep water aquaculture, renewable energy development, sand mining) in order to evaluate environment-use as well as use-use compatibility. The result of the compatibility analysis will be a generic definition of what uses could be located in which areas with minimum conflict to the environment as well as other uses.

Assistant Secretary Babb-Brott explained that implementation of the strategies and the baseline map will direct the decisions to be made in the identification and management of areas for protection and use. He illustrated how the withdrawal reservation approach can be implemented in environmental characterization using work group findings and a combination of ecological valuation and data confidence level. Using compatibility assessment will result in a designated areas for the protection of marine life and habitat that are particularly sensitive to impacts and is incompatible with certain uses. This is similar to the characterization of use area.

During the ensuing discussion, Commission members asked the following questions (responses provided in italics).

Question: Is it possible to refer to the authors of the Act to answer questions on how the mandates of the Act can be translated into a plan, thereby avoiding misinterpretation and the danger to going astray with a fundamentally flawed interpretation? *Answer: the law seems general enough that you can fit a lot of things into it. It is broad allowing a plan that addresses all aspects of the ocean.*

Assistant Secretary Babb-Brott explained that the planning team created a structure that did not require interpretation of the details of the Act. There are three specific things that the Act requires at this point: identify SSUs, identify use areas, and develop an integrated management plan. He explained that this will become clearer during the discussion on the goals and strategies which integrate how the Oceans 15 will be addressed. He went on to explain that the Plan needs to be defensible and that before it is promulgated, the legislature will be able to review and comment.

Question: The Act addresses aspects of the ocean and how they work together rather broadly. Can wind turbines also be constructed in an area that has not been designated as very high for protection of the ecosystem? *Answer: We do not know yet and scenarios will help us address that. The work groups have been asked to identify areas of high,*

*medium and low. Do we use just high? The drawing of a line will ultimately be a semi-quantitative decision where value judgment will be needed to reach decisions.*

Comment: When the legislation was developed there was much compromise among different interest groups. We wanted to introduce a public agenda ahead of the private agenda so that those with a public role can think about conflicts and other issues. We are setting a process for the public to think and give input and that can be revisited in future years to refine and improve and address where things did not work well.

Comment: The “Waves of Change”/Ocean Management Task Force was a two-year deliberative process with lots of people from around the table whose main recommendation was a comprehensive resource ocean management act that was brought in front of the sponsors of the legislation. The legislation was very consistent with the deliberations and recommendations of the task force.

Comment: This is comparable to surface water quality – There are outstanding resource waters, special resource waters, and high quality waters and for each of these a different performance standard in terms of activity can be correlated in terms of quality to minimize adverse impacts.

Question: Would be interested to learn more about the development of the EVI, especially about the data sets and inputs that go into forming this index. Were the two work groups involved? Will the EVI be vetted and become the basis of the SSUs?  
*Answer: Yes. The data sets have been classified into living and non-living. Living is for the most part species specific and includes various marine mammal species, various fish species. We included species listed in the Endangered Species Lists as well as other species that are an important component of the food chain and from a socioeconomic standpoint. There are going to be 15-20 data sets that are species specific which will be combined with a variety of ways of looking at the on-living, i.e. the habitat aspect, and draw on data from seafloor mapping, and trying to understand water column conditions, etc. The approach is being reviewed by the SAC.*

Question: I am trying to figure out the methodology that is going to be used. You establish an EVI and that EVI is vetted through a process that we are working on and are going to agree to, then that becomes the baseline for discussions about what are called SSUs. Do I have the process right?  
*Answer: Correct. The term SSUs refers to special, sensitive and unique and comes directly from the Act.*

Chair Bullard then elaborated that there are general parts of the legislations but the Act also is helpful in providing some specifics such as the fifteen requirements, some of which are more detailed and specific than others. When we have a plan, the 15 requirements of the Act will indicate whether we are fulfilling the mandates of the Act. The current situation is not good enough and the legislation is urging us to modify the plan to become as good as possible. The status quo is hurting the environment so an adaptive plan is needed for us to move from a 25/100 to an 80/100 and more. In the end,

the process involves a quantum leap and developing an adaptive plan that will enable the incorporation of new information that will result in new measures.

Chair Bullard then asked the Commission and attendees to take a few minutes and read through the documents detailing the **Goals, Strategies and Outcomes**, after which a comment and question period would follow.

Assistant Secretary Babb-Brott explained that the requirements of the Act are addressed in the goals and incorporate things that came out of the public comments as well as the work group reports especially regarding current conditions and what information is required. During the ensuing discussion, the following comments were made by Commission members; responses are provided in italics.

Comment: As we are approaching a public comment period, human impacts need to be treated as a priority in the plan. Several questions on vessel traffic and other uses will need to be answered and these need to be anticipated as we are finalizing the plan. How will governance for different uses be implemented and enforced? Zoning and use characterization will generate lots of questions on implementation and permitting and control systems and it is important that these questions are anticipated.

Comment: As we talk about process and theoretical conflict and hierarchy of criteria, there will be a lot of people who will be more interested on how decision and a box on a map will affect their lives rather than the process itself. However, we still need to be able to explain how we arrived at that process.

Question: Are we taking into consideration the changes that are going to result from climate change and global warming where what is in the ocean may be changing? Are we putting that into this Plan or are we putting that in later? Are we preparing for the future here? *Answer: Yes, we are looking into the future. We may not be able to get to a point where we have specific recommendations about actions we can take now as part of the Plan that will be published in December. This may be a key piece in terms of identifying what these are, prioritizing the actions that need to be taken, identifying the steps to take, and who is responsible. Climate change will be a central theme of the Plan for the Plan under the Science Plan.*

Chair Bullard added that there may be two categories of change - one is that there will be more knowledge about something that is not changing, except that it is better understood and the Plan can be modified accordingly. The other is an actual change example sea level rise that may cause a fish population to migrate, thereby causing a shift in critical habitat.

Assistant Secretary Babb-Brott then described the goal relating identification and allocation of use areas. He verified Chair Bullard's statement that the planning team is seeking input from the Commission regarding conflict resolution – how to make decisions among competing and conflicting uses. He compared the conservative

approach being proposed and explained that some areas will be designated for protection, others for certain uses, but the majority will remain subject to the requirements of the Ocean Sanctuaries Act, given the limited information we have now. OSA is a protective standard that underlies both use and SSU and thereby will provide another layer of protection.

Question: The term “conservative approach” may have different interpretations – it could mean that initially most of the area will remain status quo since we do not know enough about societal values, or it could refer to maximizing conservation and hence SSUs will be as large as possible. Both areas will be advocating a conservative approach. *Answer: It’s actually both and there’s a balance that will be displayed when we get to the tree planning guidelines that specifically address renewable energy facilities.*

Assistant Secretary Babb-Brott then described that when it comes to fishing, the Act outlines a performance standard to consider fishing in all aspects of planning. However, the Act also requires that in the case of an unintended impact on the economics of commercial and recreational fishing, consultation with DMF should be carried out and DMF will submit their recommendations to EEA for incorporation into the Plan. The maps prepared by the Fisheries Work Group identified areas of high, medium and low areas of fishing by effort and value in order to help in decision-making. Areas of significant value and effort as identified by DMF need to be avoided and that helps minimize conflict to recreational as well as commercial fishing.

Assistant Secretary Babb-Brott explained the need to develop a methodology that identifies the impact to fisheries from development, and he elaborated on the associated challenges of categorizing impact.

Question: on the part regarding minimizing impact to commercial fishing by citing development areas outside of areas of significant fishing effort and value, might it not be possible to have a development areas that is inside an areas that is commercially fished and the impact is minimal? *Answer: Yes, absolutely.*

Question: So the “avoid” is not strict, there may be cases where the particular human use has minimal or no impact on fisheries. *Answer: Yes.*

Question: Fisheries have been divided into commercial and recreational. They can also be categorized by mobile and fixed gears because there are conflicts between these techniques used both by commercial and recreational fishermen. Is differentiating between commercial and recreational uses the best way? *Answer: This was done in response to the language of the Act. At the workshop in February, Cliff Gouty from MIT encouraged the consideration of combined uses in terms of aquaculture and other facilities so that is going to be an emphasis of this. Impacts from different gear etc will be addressed through the compatibility analysis in coordination with DMF who have the required expertise.*

Question: It is not clear why you refer to commercial fisheries when you talk about siting development but refer to siting incompatibility uses with respect to recreational fisheries.

*Answer: There seems to be a distinction between gear used by recreational fishermen versus gear used by recreational fishermen and compatibility with other uses, both in type and amount. This needs to be further discussed with DMF.*

Question: Does aquaculture come under commercial fishing? *Answer: It does not.*

Paul Diodati, Director Division of Marine Fisheries, clarified that current aquaculture application are all outside the planning area for the Oceans Act. Assistant Secretary Babb-Brott elaborated that around Provincetown, submarine geology extends in a way that makes it possible for aquaculture to be within the planning area and this will require further discussion of the alternatives that may be applied in terms of legislation.

Assistant Secretary Babb-Brott reiterated that the Act allowing fishing to occur everywhere and emphasizing the need to “minimize impact”. He explained that the Act mandates minimizing impact to fishing - “avoid” siting use areas in locations where these may have significant impacts on fisheries. The fisheries work group had developed maps identifying high-medium-low areas by effort and value and the Division of Marine Fisheries (DMF) is conducting a statistical exercise to identify concentrations of effort. DMF will be asked to develop recommendations and mitigation measures to address impacts that may occur to fisheries.

Assistant Secretary Babb-Brott explained in more detail that the compatibility assessment will highlight conflicts and help develop performance standards to be applied to proposed projects. Minimizing impacts and conflicts applies to direct use as well as related issues, for example, stakeholders commented to establish fixed routes for vessel traffic that will make it less time consuming for fishermen.

Assistant Secretary Babb-Brott described the need to develop a mitigation framework especially with respect to fisheries to be applied through MEPA. He stressed the need to identify fisheries that may be affected by subsequent projects placed in the use areas since to date there is no transparent consistent acceptable approach to characterize the impact and help articulate the rules that will address future impacts, mainly through mitigation. Recent projects such as the LNG projects have not been transparent enough and above all not project-specific. A fee that will go towards the trust fund may need to be imposed

The ensuing discussion initially focused on distinguishing between fisheries. Members of the Commission mentioned that in the past NOAA supported aquaculture projects that suffered damage from fishing gear which shows that there may be impacts between different fisheries practices. The plan will need to address such issues and create the potential for benefits to industries in different sectors. Categorizing fisheries as one group may not be beneficial.

Assistant Secretary Babb-Brott introduced the proposed concept of a “floating zone” which is defined as a set of performance standards for such projects as deepwater aquaculture, cables and pipelines, whose specific location cannot be predetermined. Due to the uncertainty of requirements and technology of such projects, no specific sites can be forecasted. These performance standards are project-specific and based on compatibility analysis.

Question: Therefore there would not be a “line on a map” for cable and deep water aquaculture until it is proposed and it is determined that it is compatible with the OSA and all of the other standards we have, correct? *Answer: Yes.*

Question: Would a line around it be drawn to depict the use of this space as subject to management measures, so there would not be an incompatible use proposed next to or near enough to adversely impact that use within a floating zone? *Answer: That’s partly so, but this is where plan and map updates come into play. There may also be occasion to allocate traditional uses in a particular area.*

A discussion on the pros and cons of floating zones versus designated areas or “lines on a map” as well as potential needs for criteria followed. Some members of the Commission felt that “floating zones” will detract from the chance to manage uses in a way that will minimize impacts and performance standards cannot be applied successfully. Moreover, predetermining sites for certain uses will encourage proponents to locate their project in that area, and given the issues of “privatization of the ocean” which is a public resource, predetermined areas are more likely to receive public support.

On the other hand, it was felt by certain members of the Commission that “floating zones” will give the flexibility needed for innovations in technology of certain uses such as aquaculture and experimental renewable energy projects (tidal/wave energy) and address potential conflicts; “lines on a map” are difficult to change due to vested interest. Members of the Commission expressed the need to develop performance criteria that will minimize impacts on the environment from activities relegated to “floating zones” and provide the opportunity to maximize resource use in a sustainable manner are needed, e.g. renewable energy that generates 50MW rather than 1MW.

Another argument for the use of criteria was that this may serve to address the issue of migratory patterns for fish that may be impeded by aquaculture and “fencing”. One of the criteria that would be in the floating zone is the extent to which potential for conflict exists. Using those criteria information from DMF on migratory patterns exist would allow two things: certain areas that would be excluded by some of the other lines that are drawn on the map and then after you have excluded those things the rest of the area is open but you would overlay criteria by which to evaluate potential aquaculture projects.

Comment: There is one very important threshold that a land based applicant might pass over and that is that they have to purchase that land and the ocean does not have that threshold and it attracts a different type of competition because of that. I am not opposed

to having many layers of permitting, streamline yes, but there is a reason for having that layer of permitting. Those are important decisions.

Comment: If at the end of this Plan we end up with a situation where the rules are not easily understood we will have failed. Once you put a line on a map it then becomes very difficult to change due to vested interests. Areas can be defined by exclusion as amenable to deep water aquaculture but then there needs to be a set of performance criteria that it needs to meet. It may not be desirable to cite anything with regard to aquaculture because it may be a transitional thing.

Comment: An overlay piece can be quite sophisticated and maybe is that five year threshold. Also to accept projects through the floating overlay may not be the best strategy as land side interest can take over. It would be a good idea to exercise caution and be more conservative and that would be my advice to the agency in regards to that particular topic.

The Commission also stressed that the issue of privatization of the ocean is very significant and is not addressed that much in this legislation. I think that you can have designated areas and still apply criteria to the process but if the state is putting itself in the position where it is just responding to private initiative, then the way that you negotiate the price that the public gets is a negotiation between the state and one proponent. If areas for certain uses are established there will be the ability to have an open negotiation with many people that will want to compete for that. The public's interest will be at a more advantageous position than if just one single proponent. It was suggested that this may be addressed by having agencies within state government with authority to designate some parcels that they want to pursue. Performance criteria are needed to get to that point. Certain areas may be excluded while open areas will be subject to criteria and performance standards. Performance criteria that will maximize resource use in a sustainable manner are needed, e.g. renewable energy that generates 50MW rather than 1MW.

Assistant Secretary Babb-Brott then stressed the need to maintain flexibility for new ocean opportunities for renewable energy by identifying appropriate test and pilot areas for renewable energy development as part of use areas or the floating zone approach. He explained that the aim was to focus on areas identified by MREC energy development. During the public participation, stakeholders such as National Grid and NSTAR pointed out that certain industries need flexibility e.g. where to lay a cable for renewable energy – a fixed corridor may not be viable for projects in the years ahead.

Question: Outside of the particular process in this room, I think we also need to hear from industry as to what they are interested in offshore and is that compatible with our thinking and how do we bring the two together. How do we bring in the industry interest in this particular issue and put it within the context of our Plan? It is certainly something that the calls for promoting. *Answer: It does that. One of the initial things that we talked about is that the strategies are built from a combination of all of the things that we have*

*heard which include public and stakeholder comment, information, data. A fair number of those eighty stakeholder meetings where we spent time with individual folks have been with individuals representing different interests.*

Question: And you feel you have an adequate amount of information from industry?

*Answer: We have enough to start our work here.*

Question: Are you suggesting that the Plan might not have a line on the map for offshore renewable energy purposes? *Answer: The Plan will have lines on the map for offshore renewable energy.*

Question: It seems you are opening things up again or are we setting up a process where we are saying that we want things in particular areas? We need to make sure that “floating zones” will not bring up the process again, as did the clause “public convenience and necessity” in the Oceans Sanctuaries Act. At the backend of that language, when you saw it in practice it opened up the whole thing again. *Answer: You want fixed and you want flexibility. We want fixed areas to bring clarity and that is what the legislature recognized was going to bring the maximum value. We also want to provide flexibility for that limited universe of uses that we are not able to forecast right now but we know that we need. One thing that we are thinking about is that the floating zones do not go into the SSUs. Lines do mean things on the map.*

Question: These proponents will need to know where SSUs are sited, where commercial fishing takes place. So will there be “lines on maps” for renewable energy? *Answer: Yes.*

Question: Does the floating zone fill gaps in the regulations in Chapter 91 or would it make more sense just to revise the regulation to reflect certain criteria that are not currently being picked up? *Answer: The understanding when this Act was put together was that it sets out the standard of consistency which everything else has to meet. By the time lines are drawn, specifically the immovable lines, the rest of the area is what you have to deal with and to be the subject of this kind of regulation and it seems that within that some performance criteria can be applied. We may need a hybridized version of defining everything else that has to be and then create specific areas by which there are criteria to evaluate them.*

Comment: Regulations need to reflect the conclusions of the plan. It is important to take into consideration how the plan will relate to Chapter 91 because “floating zones” will still affect the public trust.

Comment: Standards of consistency need to be developed. “Lines on maps” will be included and transit areas which in themselves are exclusionary zones need to be respected. Also, certain projects such as aquaculture need to consider other criteria such as currents and winds. Fishing is also a public right and hence is an important activity that acts as an overlay.

Assistant Secretary Babb-Brott described the section of strategies regarding renewable energy projects. He explained that use and resource overlays will provide the basis for identifying “appropriate scale” to ensure protection of the public trust, compatibility with existing uses, public safety and protection of the environment. He emphasized that “appropriate scale” will incorporate considerations of climate change and state renewable energy statutory requirements. Performance standards will be developed to address community benefits, appropriateness of technology and scale and proximity to shoreline. As such, an option is to limit certain development to the not less than 1 mile from shore.

Question: Will not the size of the use areas limit the size of the plant? Will there be guidelines for selecting projects? How will this be done? Will it remain on a first-come first-served basis or will there be selection criteria? *Answer: There will be coordination with other agencies as relevant. Interagency discussions have already been initiated.*

Comment: Liked the way “appropriate scale” is addressed. The legislation does not specify what is mean by “appropriate scale” except that it is acceptable. We often think of the height above the water line but it also includes the scale below the water line and then circumference, it is multi dimensional. In the case of renewable energy, size is only one aspect. There are other important issues involved.

Comment: I don’t think that we have reached the point in saying that if someone had a wind turbine proposal that they were excluded from another area. I think the question becomes what are the set of incentives or the set of barriers that you would use.

Comment: I would like to state that I like the way that you have addressed appropriateness, it was a compromise. There wasn’t an idea in the Legislature’s mind on what appropriateness was.

Question: It seems that with wind turbines bigger and taller is better and so the compromise will probably be to build many little wind projects or to find an area where you can build one large one. The wind turbine at Mass Maritime is not controversial and it is 100 yards from the water. So if you can build a wind turbine 10 feet from the water as long as it is on land why you couldn’t build a wind turbine into the water? What is the difference? It is the same place. We are not putting buffers in terms of the shore and in terms of visibility. I wonder how you are justifying going out a mile. There are all kinds of environmental impacts but there are probably a lot of wind turbines that would be built right along the shore on land and it seems strange if we allowed that to be on land you could be close to the water’s edge but not in the water and close to the water’s edge. *Answer: One of the reasons that a mile is the measurement is that within a mile there seems to be an area that is very busy that we would like to stay away from. We have started a comparable process of gathering information from the federal side of the line and go through a preliminary screening on the federal side to see where it may be appropriate to put deep water facilities on the federal side. We do not expect the state waters of Massachusetts to solve the regions or the world’s problems. Another thing that*

*we have heard from industry that the real significance generation is going to happen in deeper waters further out in time. This should not be read as if we intend to solve climate change within Massachusetts waters.*

Comment: Part of the problem is that we are facing an environmental crisis and no matter what project is implemented there will still be change in acidity which will affect fisheries and the ocean. It seems that for renewable energy projects, the bigger and the higher, the better as it will generate more power, and that is an “appropriate scale” issue.

Question: How is the 1 mile buffer from shore justified? *Answer: The sea closer to shore is busier. 1 mile or some such distance may create less impingement on other uses as well as decrease the visual impact. We are also in contact with federal agencies to address acceptable siting for renewable energy projects in federal waters since projects limited to state waters will not solve climate change issues.*

Chair Bullard then opened the floor for comments by the public:

## **PUBLIC COMMENTS**

### Steven Wright - Massachusetts Aquaculture Association

Mr. Wright acknowledged that aquaculture is a privilege, and as such, when allowed to occur utilizing public submerged lands and waters it must be practiced responsibly.

The Act establishes a separated fund which directs money derived from mitigation fees into the fund. The uses of such funds are then used only for the restoration and enhancement of marine habitat and resources, enhancement of fisheries, public navigational improvements.

The plan mandates in 4c(a) “fostering sustainable use”. The industry believes that aquaculture (particularly shellfish aquaculture) is a sustainable use. Aquaculture capitalizes on economic opportunity and enhances ecology, and as such, a percentage of monies derived from mitigation fees should be directed to aquaculture research for the exact purpose of “fostering sustainable use”.

Applicable beneficiaries of such mitigation fees for aquaculture research are: State Aquaculture Centers, Massachusetts Aquaculture Association, Sea Grant, Woods Hole Oceanographic Institute, Martha’s Vineyard Shellfish Group, and UMass Dartmouth.

Additionally, if proposed offshore projects take fisheries habitat away, then municipal aquaculture and similar projects may also be the beneficiary of mitigation fees for propagation efforts.

In section 4c. 4c(h), “the secretary shall promulgate regulations to implement, administer and enforce this section”.

Massachusetts Aquaculture Association would appreciate a say in the development of regulations as we are an existing industry and user group in the management area.

Jamy Madeja - Massachusetts Marine Trades Association

- The Act respects public trust rights for navigation according to Chapter 91. Navigation has not been discussed extensively by the Commission. It is important to keep in mind that recreational boating is an environmentally sound use that does not require subsidies, and has low emissions low draft and low impact. Recreational uses such as recreational fishing are being underestimated.
- In implementing mitigation for takings of public trust rights, it needs to be ensured that monetary compensation which should be given to the public is not lost.
- Re “appropriate scale” – in some place, no scale is safe or appropriate for recreation

Ed Barrett - Mobile Gear Representative (Stellwagen Bank National Marine Sanctuary)

Mr Barrett thanked the EEA planning team and the Commission for a very comprehensive plan development process. Main concerns:

- How is everything going to come together within this tight timeline and considering data limitations?
- Re zoning, the interconnectedness of the ocean needs to be considered and impacts can be felt locally and at a distance, spatially and temporally, in the marine environment.
- Once data is generated, who will make the final decisions?
- Need for definitions for “deep water” in the case of aquaculture, “offshore” in the case of renewable energy.
- What are the “appropriate scale” regarding costs?