

Center for Regulatory Effectiveness

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January 7, 2013

Nancy Helen Sutley
Co-Chair, National Ocean Council
736 Jackson Place NW
Washington, DC 20503

Re: White Paper Evaluating Massachusetts Ocean Management Plan

Dear Ms. Sutley:

The Center for Regulatory Effectiveness (CRE) has been monitoring developments with Coastal and Marine Spatial Planning (CMSP). Because there has been very little experience with CMSP, the CRE has prepared a white paper evaluating the Massachusetts Ocean Management Plan. In doing so, the CRE analyzed the results of the Massachusetts Ocean Management Plan and how those lessons can be applied to the National Ocean Council's implementation of CMSP.

On July 19, 2010, through an executive order, President Obama created the National Ocean Council and established a policy mandate "for the development of coastal and marine spatial plans [CMSP]." ¹ CMSP is the "comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas." ² CMSP seeks to identify "areas most suitable for various types or classes of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystem services to meet economic, environmental, security, and social objectives. In practical terms, coastal and marine spatial planning provides a public policy process for society to better determine how the ocean, our coasts, and Great Lakes are sustainably used and protected -- now and for future generations." ³ As these definitions indicate, from the start, CMSP has been a very generalized concept on how to zone the ocean for competing uses, with sustainability as the core tenet.

Despite becoming "one of the most widely endorsed tools for integrated management of coastal and marine environments," ⁴ there is very little empirical evidence supporting the claims that

¹ Exec. Order No. 13547, 76 Fed. Reg. 43023 (July 22, 2010) available at <http://www.whitehouse.gov/files/documents/2010stewardship-eo.pdf>

² *Id.*

³ *Id.*

⁴ Goncalo Carneiro, *Evaluation of Marine Spatial Planning*, p 1, Marine Policy (2012).

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CMSP is beneficial from a policy standpoint. Thus, the purpose of the enclosed white paper is to evaluate one of the earliest coastal and marine spatial plans, the Massachusetts Ocean Management Plan.

The Massachusetts Ocean Management Plan is the first comprehensive marine spatial plan in the United States. Despite the huge undertaking, the Massachusetts Ocean Management Plan was completed in a very short time period, which likely led to some of its shortcomings outlined in the white paper. Notwithstanding, the CRE has identified both the strengths and weaknesses of the Massachusetts Plan. The benefit of this analysis is not necessarily for the revision or modification of the Massachusetts Plan, but rather to foster a comprehensive discussion for stakeholders and policymakers on CMSP more generally. Accordingly, Massachusetts' experience with the Ocean Management Plan provides some important lessons for the United States as it implements its nationwide ocean planning system through CMSP.

CRE is pleased to submit the enclosed report for your comments, *An Evaluation of the Massachusetts Ocean Plan and its Implications for Coastal and Marine Spatial Planning in the United States*. CRE will continue to monitor developments on its Ocean Zoning Interactive Public Docket, which is available at <http://www.thecre.com/creipd/>. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Tozzi". The signature is stylized with a large, sweeping initial "J" and "T".

Jim Tozzi
Member, Board of Advisors
Center for Regulatory Effectiveness

**AN EVALUATION OF THE MASSACHUSETTS OCEAN PLAN AND ITS IMPLICATIONS
FOR COASTAL AND MARINE SPATIAL PLANNING IN THE UNITED STATES**

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**AN EVALUATION OF THE MASSACHUSETTS OCEAN PLAN AND ITS IMPLICATIONS
FOR COASTAL AND MARINE SPATIAL PLANNING IN THE UNITED STATES**

I. INTRODUCTION AND OVERVIEW ON COASTAL AND MARINE SPATIAL PLANNING

On July 19, 2010, through an executive order, President Obama created the National Ocean Council and established a policy mandate “for the development of coastal and marine spatial plans.”¹ Accordingly, one of the nine priority objectives of the National Ocean Policy is to implement Coastal and Marine Spatial Planning (CMSP).² CMSP is the “comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas.”³ CMSP seeks to identify “areas most suitable for various types or classes of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystem services to meet economic, environmental, security, and social objectives. In practical terms, coastal and marine spatial planning provides a public policy process for society to better determine how the ocean, our coasts, and Great Lakes are sustainably used and protected -- now and for future generations.”⁴ As these definitions indicate, from the start, CMSP has been a very generalized concept on how to zone the ocean for competing uses, with sustainability as the core tenet. Recognizing the lack of detail, one scholar commented, “The federal initiative for MSP is specific in scale, but vague in scope.”⁵

Nevertheless, the National Ocean Council has pressed forward with the National Ocean Policy and implementation of CMSP, thus adding some details to what exactly CMSP will be. On January 18, 2012, the National Ocean Council published the Draft National Ocean Council

¹ Exec. Order No. 13547, 76 Fed. Reg. 43023 (July 22, 2010) available at <http://www.whitehouse.gov/files/documents/2010stewardship-eo.pdf>

² White House Council on Environmental Quality, *Final Recommendations of the Interagency Ocean Policy Task Force*, at 6 (July 19, 2010) available at http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf

³ Exec. Order No. 13547, 76 Fed. Reg. 43023 (July 22, 2010) available at <http://www.whitehouse.gov/files/documents/2010stewardship-eo.pdf>

⁴ *Id.*

⁵ Michelle E. Portman, *Marine Spatial Planning: Achieving And Evaluating Integration*

Implementation Plan (“Draft Implementation Plan”).⁶ In the Draft Implementation Plan, the stated justifications for CMSP are to “preserve and enhance opportunities for sustainable ocean use through the promotion of regulatory efficiency, consistency, and transparency, as well improved coordination across federal agencies,” and “reduce cumulative impacts on environmentally sensitive resources and habitats in ocean, coastal and Great Lakes Waters.”⁷ Yet, there is little detail on how the CMSP will be established aside from the prospective nine regional planning bodies or how it will achieve these objectives. Specifically, the Draft Implementation Plan outlines only five actions for the next five years that will establish CMSP in the United States.⁸ The National Ocean Council plans to have Coastal and Marine Spatial plans completed and submitted to the Council for certification by 2019.⁹

Despite becoming “one of the most widely endorsed tools for integrated management of coastal and marine environments,”¹⁰ there is very little actual experience supporting the claims that CMSP is beneficial from a policy standpoint. Thus, the purpose of this paper is to evaluate one of the earliest coastal and marine spatial plans, the Massachusetts Ocean Management Plan. The paper will do so by employing established evaluation criteria specific to CMSP and apply it to the experience with the Massachusetts Ocean Management Plan. Accordingly, section II provides an overview of the Massachusetts Ocean Management Plan and describes how it was developed. Section III evaluates the Massachusetts Ocean Management Plan by evaluating it through four criteria: (1) the plan-making process; (2) the plan content; (3) the plan

⁶ 77 Fed. Reg 2514 (Jan. 18, 2012); Draft National Ocean Council Implementation Plan available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf

⁷ *Id.* at 87-88.

⁸ National Ocean Council, *Draft National Ocean Council Implementation Plan*, p. 89-92, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf (The five actions include: (1) distribute a *Handbook for Regional Coastal and Marine Spatial Planning* (2012 target); (2) convene regional workshops and CMSP exercises (2014 target); (3) all of the applicable non-confidential and other non-classified Federal data identified for inclusion will be incorporated into a National Information Management System and Data Portal (ocean.data.gov) (2015 target), (4) establish Regional Planning Bodies (2015 target); (5) within to 3 to 5 years of their establishment, nine regional planning bodies will have developed Council-certified regional CMS Plans for the sustainable use and long-term protection of the ocean, our coasts, and the Great Lakes (2019 target)).

⁹ *Id.* at 92.

¹⁰ Goncalo Carneiro, *Evaluation of Marine Spatial Planning*, p 1, Marine Policy (2012).

implementation; and (4) the plan outcome. Section IV concludes this paper by drawing upon the lessons from Massachusetts' experience with marine spatial planning and applying these lessons to the National Ocean Council's efforts to deploy CMSP.

II. BACKGROUND ON MASSACHUSETTS OCEAN MANAGEMENT PLAN

Massachusetts led the way in ocean zoning in 2003 when then Governor Mitt Romney established the Ocean Management Initiative.¹¹ As a result of the Ocean Management Initiative, the Massachusetts Ocean Management Task (Massachusetts Ocean Task Force) was established shortly thereafter.¹² "The Task Force met over thirty times over a period of ten months, held six public meetings and reviewed over 300 public comments."¹³ However, even after its extensive research and findings, the Massachusetts Ocean Management Task Force still had difficulty resolving the inherent conflict of trying to plan for competing ocean uses. The Task Force found, "Comprehensive approaches to ocean management are difficult to develop, based on the large number of resources involved, their often migratory and multi-dimensional characteristics, and the tensions created by the vast economic potential of these resources."¹⁴

The significant and lasting contribution from the Massachusetts Ocean Task Force came in March 2004 when it published its findings in *Waves of Change: The Massachusetts Ocean Management Task Force Report and Recommendations*.¹⁵ The Massachusetts Ocean Management Task Force concluded in the 2004 report that the "use of the state's public ocean resources have historically been determined on a 'first come, first served' basis, but that dictum no longer satisfies multiple competing uses and access to the ocean resources of the

¹¹ Kate T. Killerlain and Susan Snow-Cotter, *Toward Comprehensive, Statewide Ocean Planning in Massachusetts: Implementing The Ocean Management Task Force Recommendations*, Proceedings of the 14th Biennial Coastal Zone Conference, available at http://www.csc.noaa.gov/cz/CZ05_Proceedings/pdf%20files/Killerlain.pdf.

¹² *Id.*

¹³ *Id.*

¹⁴ The Massachusetts Ocean Management Task Force, *Waves of Change: The Massachusetts Ocean Management Task Force Report and Recommendations*, p 28 (March 2004) available at http://www.mass.gov/czm/oceanmanagement/waves_of_change/pdf/wavesofchange.pdf

¹⁵ The Massachusetts Ocean Management Task Force, *Waves of Change: The Massachusetts Ocean Management Task Force Report and Recommendations*, (March 2004) available at http://www.mass.gov/czm/oceanmanagement/waves_of_change/pdf/wavesofchange.pdf (The Federal equivalent to this report is the *Final Recommendations Of The Interagency Ocean Policy Task Force*, July 19, 2010)

Massachusetts coast.”¹⁶ Ultimately, the Report offered 16 recommendations to encourage the establishment of a more proactive process for managing state ocean resources, of which the most important recommendation was for the “Secretary of Environmental Affairs to introduce legislation for a new, comprehensive Ocean Resource Management Act.”¹⁷

Heeding the call of the Massachusetts Ocean Task Force, in May of 2008, Governor Deval Patrick signed the Massachusetts Ocean Management Act into law. Governor Patrick announced the law as making "Massachusetts the first state in the nation to create a comprehensive plan for the management of its ocean waters. This law will help protect our vital natural resources and balance traditional with new ones, such as renewable energy, that are also important to our future."¹⁸

The law required that the ocean management plan integrate 15 principles, some of which include: an ecosystem-based planning approach; coordinating, international, federal, state, and local uses; public engagement in the decision-making process; adhere to sound management practices, taking into account the existing natural, social, cultural, historic and economic characteristics of the planning areas; and fostering sustainable uses that capitalize on economic opportunity without significant detriment to the ecology or natural beauty of the ocean.”¹⁹ At the core of the Act was the statutory mandate that “the secretary of energy and environmental affairs shall promulgate a final ocean management plan by December 31, 2009.”²⁰

The Massachusetts Ocean Plan, which will be discussed in much greater detail below, is divided into two volumes: *Volume 1: Management and Administration* and *Volume 2: Baseline*

¹⁶ The Massachusetts Ocean Management Task Force, *Waves of Change: The Massachusetts Ocean Management Task Force Report and Recommendations*, p 28 (March 2004) available at http://www.mass.gov/czm/oceanmanagement/waves_of_change/pdf/wavesofchange.pdf

¹⁷ The Massachusetts Ocean Management Task Force, *Waves of Change: The Massachusetts Ocean Management Task Force Report and Recommendations*, p29 (March 2004) available at http://www.mass.gov/czm/oceanmanagement/waves_of_change/pdf/wavesofchange.pdf

¹⁸ Governor Deval Patrick, *Governor Patrick Signs Law Creating First-in-the-Nation Oceans Management Plan Balancing Preservation, Uses*, Press Release (May 28, 2008), available at <http://www.mass.gov/governor/pressoffice/pressreleases/2008/oceans-bill-signing.html>

¹⁹ Massachusetts Ocean Management Act, §2, available at <http://www.malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter114>

²⁰ Massachusetts Ocean Management Act, §23, available at <http://www.malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter114>

*Assessment and Science Framework.*²¹ Notably, the ocean management plan established three categories of management areas: Prohibited Areas, Renewable Energy Areas, and Multi-Use Areas.

An important backdrop for the creation of the Massachusetts Ocean Management Plan is the Cape Wind project that had been plagued with regulatory red tape for nearly the entire previous decade, which is likely the reason that renewable energy was such an important facet of the management plan. Commenting on the unbalanced emphasis on renewable energy, Sally Yozell, director of East Coast marine conservation for the Nature Conservancy, stated, “All eyes are on Massachusetts to lead the nation in ocean planning. It’s a great energy plan for the next century, but when it comes to an ocean plan it falls back to the previous century.”²²

Remarkably, though it has come to serve as the foundation for the entire nation’s CMSP, the Massachusetts Ocean Management Plan was hastily completed in only one and half years and weighted towards renewable energy uses. Accordingly, the subsequent section assesses how well Massachusetts was able to develop a plan that distributed ocean resources among the various users in a fair and sustainable fashion.

III. EVALUATION OF THE MASSACHUSETTS OCEAN MANAGEMENT PLAN

As previously mentioned, there has been little scholarship evaluating existing marine spatial plans. It is important to evaluate existing marine spatial plans, because it will shed light on whether marine spatial planning has provided the results that it promises to deliver. The analysis below will examine Massachusetts’ experience with marine spatial planning by evaluating its (1) plan-making process, (2) plan content, (3) the plan implementation, (4) the plan outcomes. The criteria employed come from the research of Goncalo Carneiro,²³ and Matthew Carmona and Louie Sieh.²⁴ The entire evaluation scheme is outlined below:

²¹ *Massachusetts Ocean Management Plan*, available at <http://www.mass.gov/eea/ocean-coastal-management/mass-ocean-plan/final-massachusetts-ocean-management-plan.html>

²² Beth Daley, *State Draws Zones For Coast Wind Farms*, July 1, 2007, available at http://www.boston.com/news/local/massachusetts/articles/2009/07/01/state_plan_could_bring_wind_farms_near_coast/?page=full

²³ Goncalo Carneiro, *Evaluation of Marine Spatial Planning*, p 1, Marine Policy (2012).

²⁴ Matthew Carmona and Louie Sieh, *Performance Measurement in Planning—Towards a Holistic View*, Environment and Planning C: Government and Policy 26(2) 428 – 454.

1. Evaluation of Plan-Making Process	<i>1.1 Stakeholder Participation</i>
	<i>1.2 Validity of Data and Analyses</i>
	<i>1.3 Consideration of Alternatives</i>
	<i>1.4 Prospective Impact Assessment</i>
	<i>1.5 Adequacy of Resources</i>
2. Evaluation of Plan Contents	<i>2.1 Internal Coherence</i>
	<i>2.2 Relevance of Plan for the Region or Country</i>
	<i>2.3 Conformance with Planning System</i>
	<i>2.4 External Coherence</i>
	<i>2.5 Guidance for Implementation</i>
	<i>2.6 Approach, Data, Methodology</i>
	<i>2.7 Quality of Communication</i>
	<i>2.8 Plan Format</i>
3. Evaluation of Plan Implementation	<i>3.1 Prescribed Steps and Outputs</i>
	<i>3.2 Adequacy of Resources (for implementation)</i>
	<i>3.3 Utilization</i>
	<i>3.4 Evaluation of Plan Outcomes and Impacts</i>
4. Evaluation of Plan Outcome	

A. Evaluation of Plan-Making Process

The first aspect of the Massachusetts Ocean Management Plan that will be assessed is the plan-making process. Some of the factors that need to be considered to evaluate the plan-making

process include: stakeholder participation,²⁵ validity of data and analyses, consideration of alternatives, prospective impact assessment, and adequacy of resources.

Public participation in plan-making involves three levels of assessment: the promotion of public participation, the effective public participation, and the influence of public participation on the plan.²⁶ The Oceans Act established from the beginning the important role public participation would contribute to developing the Ocean Management Plan by requiring that the Ocean Plan be implemented in a way that “encourage[d] public participation in decision-making.” The Massachusetts Ocean Management Plan was quite effective at engaging stakeholders during the plan-making process. There were numerous opportunities over a 12-month period from June 2008 through May 2009 in which public could provide input. The following are examples of how stakeholders were engaged:

1. An Ocean Advisory Commission (OAC) comprised of seventeen organizations, agencies and specific interests specified by the 2008 Ocean Act legislation (the Oceans Act) (the OAC met six times in total);
2. Eighteen public listening sessions around the state in fall 2008, (generating participation from approximately 300 individuals);
3. Sixty-six interviews with stakeholder groups during fall and winter of 2008 (reaching over 110 representatives);
4. Open meetings of the Science Advisory Council (SAC), also established by the Oceans Act;
5. An OAC/SAC Ocean Management Planning Principles Workshop in November 2008, (with participation from 30 stakeholder representatives);
6. Two stakeholder workshops in February 2009 to explore data available for planning, (involving 110 participants);
7. Two OAC meetings in May 2009 to examine distilled ocean use data and initial use compatibility assessment options, and to allow initial stakeholder comment, (over 130 stakeholder representatives attended these sessions);
8. A Massachusetts Executive Office of Energy and Environmental Affairs (EEA) Public Input Portal (providing 24/7 online access to technical materials and allowing for comment submission);

²⁵ See Morgan Gopnik, et al. *Coming to the Table: Early Stakeholder Engagement in Marine Spatial Planning*, Marine Policy, Volume 36, Issue 5 (Sept 2012); Vitor Olivereia & Paulo Pinho, *Measuring Success in Planning: Developing and Testing a Methodology for Planning Evaluation*, Town Planning Review, Vol. 81, Issue 3 (2010).

²⁶ Vitor Olivera & Pualo Pinho, *Measuring Success in Planning: Developing and Testing a Methodology for Planning Evaluation*, Town Planning Review, Vol. 81, Issue 3 (2010).

9. Several Massachusetts Ocean Partnership (MOP) events with EEA participation, (each attracting approximately 30-50 stakeholder representatives); and
10. MOP website which supplemented EEA's web presence with additional communication tools (event webcasting video feeds, summary reports, etc.).²⁷

Overall, stakeholder involvement was adequate, but still had some deficiencies. Specifically, the OAC played a very important role during the planning process but was not fully representative of all the stakeholders.²⁸ In addition, the public listening sessions had very low attendance, suggesting that the promotion of public participation was inadequate.

It seems there was sufficient data²⁹ in place that could be employed in developing the plan and incorporated into its Ocean Data Inventory Metadata Portal.³⁰ The data was obtained mostly through *The Massachusetts Ocean Management Task Force Technical Report*.³¹ The data also was derived from “new information produced by the six ocean management plan work groups that were formed to help inventory and synthesize available data for the development of the ocean management plan (i.e., the habitat; fisheries; renewable energy; transportation, navigation, and infrastructure; regional sediment resource management; and ocean recreational and cultural services work groups).”³² Surprisingly, the Plan itself concedes that there are substantial data gaps and also that “data variability is a readily apparent issue.”³³

Despite effectively engaging the public, the remainder of the planning process was performed hastily. The entire planning process was completed in a mere 19 months. And the period between the draft and the final Ocean Management Plan was only 6 months, hardly enough time to fully consider the public comments and modify the final plan to reflect the

²⁷ The Consensus Building Institute and the Massachusetts Ocean Partnership, *Stakeholder Participation in Massachusetts Ocean Management Planning: Observations on the Plan Development Stage*, page 1 (June 2009), available at http://www.env.state.ma.us/eea/mop/tech_reports/stakeholder_report.pdf

²⁸ *Id.* at 2.

²⁹ *Massachusetts Ocean Management Plan*, Volume II, available at <http://www.mass.gov/eea/ocean-coastal-management/mass-ocean-plan/final-massachusetts-ocean-management-plan.html>

³⁰ Available at <http://gcmd.nasa.gov/KeywordSearch/Home.do?Portal=mop&MetadataType=0>

³¹ *Massachusetts Ocean Management Plan*, Volume II, page BA-1, available at <http://www.mass.gov/eea/ocean-coastal-management/mass-ocean-plan/final-massachusetts-ocean-management-plan.html>

³² *Id.*

³³ *Id.* at BA-1 – BA-2.

public's concerns. It seems there was sufficient data³⁴ in place that could be employed in developing the plan and incorporated into its Ocean Data Inventory Metadata Portal.³⁵ However, the remainder of the planning seemed to incorporate limited prospective impact assessment and consideration of alternatives. One area where alternatives were considered was how the State should coordinate the Plan. It considered running the Plan through the CZM (as it did), develop a Special Area Management Plan (as Rhode Island has recently done), or develop a programmatic general permit program that would be issued by the Army Corps of Engineers.³⁶ However, there was no analysis or explanation as to why decision was to run the Plan through CZM.

B. Evaluation of Plan Contents

This step analyzes the contents of the plan document by looking at the feasibility of the plan implemented and its ability to effectuate change.³⁷ While analyzing the plan it is important to look at the following characteristics: (1) internal coherence, (2) relevance of plan for the region or country, (3) conformance with planning systems, (4) external coherence, (5) guidance for implementation; (6) approach and methodology; and (7) plan format.³⁸

In the Massachusetts Ocean Management Plan, there is little issue with the internal coherence, relevance of the plan for the region or country, and conformance with planning systems. The first major issue that arises is external coherence. External coherence is defined as the “coherence between the plan and the main policies, plans (with a difference scope or scale) or programmes developed for the same territory.”³⁹ The issue with the Massachusetts Ocean Management Plan came shortly after the Plan was developed. Specifically, in February 2012 the Bureau of Ocean Energy Management (BOEM) finalized the Wind Energy Area (WEA) for

³⁴ *Massachusetts Ocean Management Plan*, Volume II, available at <http://www.mass.gov/eea/ocean-coastal-management/mass-ocean-plan/final-massachusetts-ocean-management-plan.html>

³⁵ Available at <http://gcmd.nasa.gov/KeywordSearch/Home.do?Portal=mop&MetadataType=0>

³⁶ *Draft Massachusetts Ocean Management Plan*, page 3-1 – 3-2, available at <http://www.env.state.ma.us/eea/mop/draft-v1/draft-v1-chap3.pdf>

³⁷ Goncalo Carneiro, *Evaluation of Marine Spatial Planning*, p 13, Marine Policy (2012).

³⁸ William C. Baer, *General Plan Evaluation Criteria: An Approach to Making Better Plans*, Journal of the American Planning Association, vol 63, issue 3 (1997).

³⁹ Vitor Olivera & Pualo Pinho, *Measuring Success in Planning: Developing and Testing a Methodology for Planning Evaluation*, Town Planning Review, Vol. 81, Issue 3 (2010).

Massachusetts and Rhode Island. The WEA is derived from different data and has different objectives than the Ocean Management Plan, yet has overlapping territory. Thus, there are inherent conflicts between the WEA and the Ocean Management Plan.

The Ocean Management Plan does provide some guidance on the plan implementation, but not in great detail. Specifically, the Plan references general provisions in the Ocean Management Act that grants the Secretary of the EEA authority for oversight and coordination, while also requiring that all state agency actions be consistent with the Plan. Further, the implementation of the Plan was tasked to the interagency EEA Ocean Team, which is chaired by the Office of Coastal Zone Management (CZM) and comprised of personnel from CZM, the Department of Environmental Protection Wetland and Waterways programs, and various other related agencies.⁴⁰ However, the implementation guidance in the Plan does little more than task the Ocean Team with responsibility to develop, within 1 year, implementation guidance for standards for existing water-dependent uses, requirements for developing and submitting data during project review, appropriate criteria to assist with siting decisions for proposed wind projects, and protocols for the development of appropriate mitigation measures.⁴¹ Rather than creating a comprehensive framework for the planning and implementation of the Ocean Management Plan, the Ocean Management Plan delegated further plan-making to the newly formed Ocean Team. It is likely that the statutory deadline to develop the Plan by December 31, 2009 resulted in an incomplete plan marked by “a kick the can down the road” approach to some of the important Ocean Plan decisions.

Furthermore, a fundamental flaw of the Ocean Management Plan is that fisheries are excluded from the Plan’s jurisdiction.⁴² The failure to include fisheries neglects a significant ocean use, and therefore, makes the Plan incomplete.

The methodology and approach employed in the Ocean Management Plan seems inherently flawed. The ocean management plan established three categories of management

⁴⁰ *Massachusetts Ocean Management Plan*, page 3-1, available at <http://www.mass.gov/eea/ocean-coastal-management/mass-ocean-plan/final-massachusetts-ocean-management-plan.html>

⁴¹ *Massachusetts Ocean Management Plan*, page 3-1, available at <http://www.mass.gov/eea/ocean-coastal-management/mass-ocean-plan/final-massachusetts-ocean-management-plan.html>

⁴² Massachusetts Ocean Management Act, §2, available at <http://www.malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter114>

areas: Prohibited, Renewable Energy, and Multi-Use. This trichotomy seems to heavily favor conservation and renewable energy uses of the ocean, by restricting certain areas of ocean to those specific uses. This contradicts the comprehensive, multi-use approach that defines marine spatial planning. As the Federal Government understands it, marine spatial planning is intended to be a comprehensive and integrated approach to manage compatible uses of ocean, coastal, and Great Lakes resources in a sustainable nature, and “is not a map drawing exercises and not contain a zoning plan or establish any restrictions on activities, nor does it restrict access.”⁴³ It seems that Massachusetts has adopted an approach that is more in line with ocean zoning rather than marine spatial planning.

The Plan itself is not very extensive.⁴⁴ It is divided into two volumes: *Volume 1: Management and Administration* and *Volume 2: Baseline Assessment and Science Framework*.⁴⁵ The plan is structure nicely and easy to digest. While accessibility may be a strength of the Plan, its clear weakness is that it is not comprehensive and the substance is quite general, which makes the implementation difficult.

C. Evaluation of Plan Implementation

This criteria checks whether the prescribed steps and products of implementation are being, or have been followed and produced.⁴⁶ Because marine spatial plans serve to offer a comprehensive, integrative approach to ocean uses, it is also essential to evaluate here whether the marine spatial plan has been utilized by decision makers in other policy-making processes.

The Massachusetts Ocean Management Plan is largely implemented through the CZM. CZM has begun the initial stages of implementing the Plan. In September 2011, NOAA approved the updated Massachusetts Coastal Management Program which officially incorporated

⁴³ National Ocean Council, *Final Recommendations of the Interagency Ocean Policy Task Force - Frequently Asked Questions*, available at <http://www.whitehouse.gov/administration/eop/oceans/faq>.

⁴⁴ Volume 1 only has 54 pages of actual text.

⁴⁵ *Massachusetts Ocean Management Plan*, available at <http://www.mass.gov/eea/ocean-coastal-management/mass-ocean-plan/final-massachusetts-ocean-management-plan.html>

⁴⁶ Goncalo Carneiro, *Evaluation of Marine Spatial Planning*, p 13, Marine Policy (2012).

the Ocean Management Plan into Massachusetts CZM program. CZM has reviewed projects that were submitted to the Massachusetts Environmental Policy Act (MEPA) for consistency with the Plan, as well coordinate with federal and state administrative agencies. Through the MEPA process, the Ocean Team has assisted in the “coordinated review of projects requiring the preparation of an Environmental Impact Report (EIR), including those that exceed mandatory review thresholds and those that are scoped for an EIR due to the nature of scope and intensity of potential impacts. The EEA Secretary’s final MEPA Certificate contains a determination as to the project’s conformity with the applicable siting provisions of the Massachusetts Ocean Management Plan.”⁴⁷ CZM has described additional components of the implementation:

In August, an advisory group consisting of a broad cross-section of stakeholders and interests was convened to review and provide feedback on a working-draft set of regulations to administer and implement the plan. The advisory group, chaired by CZM Director Carlisle on behalf of Executive Office of Energy and Environmental Affairs (EEA) Secretary Richard K. Sullivan Jr., met for a series of seven meetings to provide EEA with input and feedback on draft regulations. With the final meeting at the end of December, the group's work has concluded. The next steps for the draft rules include a presentation to and review by the Ocean Advisory Commission, followed by draft rulemaking with a public comment and public hearing process. Along with these efforts on plan administration, CZM has continued implementing the priorities of the plan's Science Framework, including development of [new spatial and economic data on recreational boating](#), further characterization of marine habitat with the ground truthing of seafloor maps, and incorporation of data from complex oceanographic models.⁴⁸

The Ocean Management Plan implementation is still in its early stages, but the Plan has been in the process of being implemented by CZM.

D. Evaluation of Plan Outcomes and Impacts

Typically, this is the final stage of the analysis for evaluating a marine spatial plan. It is necessary to assess how the outcome and impacts measure up against the initial objectives and broader societal aspirations. Because the Massachusetts Ocean Management Plan is still in its infancy, it is premature at this time to provide an accurate assessment of the outcomes and

⁴⁷ Massachusetts Office of Coastal Zone Management, *CZM Policy Guidance 2011*, available at http://www.mass.gov/czm/plan/docs/czm_policy_guide_october2011.pdf.

⁴⁸ Massachusetts Coastal Zone Management, *CZ Year in Review 2011*, available at http://www.mass.gov/czm/czmail/2012/year_in_review_2011.htm

impacts of the plan. Massachusetts has, however, demonstrated a propensity to update its Ocean Management Plan to reflect new data and reports.⁴⁹

IV. REPORT CARD ON THE MASSACHUSETTS OCEAN MANAGEMENT PLAN

A. Report Card for Evaluation of Plan Making Process

Criteria Considered	Comments	Grade
Stakeholder Participation	Stakeholder participation was very strong. The weaknesses were, however, that although the OAC was effective, it was underrepresented by all of the stakeholders. Further, participation in the public listening sessions was low suggesting that promotion of public participation was inadequate.	B
Validity of Data and Analyses	There was a uniform approach to data collection by the Task Force and the work groups. But there still remained gaps in data and also data variability.	C
Consideration of Alternatives	The only initial consideration of alternatives in the Draft Plan included how the Plan should be administered (CZM vs. SAMP vs. Army Corps of Engineers' permit program). There is additional required consideration of alternatives that requires MEPA review to determine the least environmentally damaging practicable alternative.	C
Prospective Impact Assessment	The impact assessment were conducted by the six ocean management plan work groups that were formed to help inventory and synthesize available data for the development of the ocean management plan (i.e., the habitat; fisheries; renewable energy; transportation, navigation, and infrastructure; regional sediment resource management; and ocean recreational and cultural services work groups). The impact	B

⁴⁹ See e.g., Executive Office of Energy and Environmental Affairs Office of Coastal Zone Management, *Notice of Public Comment on Pending Update to Massachusetts Ocean Management Plan: Areas of Concentrated Recreational Boating Activity*, (July 11, 2012) available at <http://www.env.state.ma.us/mepa/mepadocs/2012/071112em/pn/4.pdf>

	assessments were thorough.	
Adequacy of Resources	Inadequate resources does not seem to have impeded the development of the Ocean Management Plan.	B
Overall Grade for Evaluation of Plan Making Process		B -

B. Report Card for Evaluation of Plan Contents

Criteria Considered	Comments	Grade
Internal Coherence	The Plan is administered mostly through the EEA via the Massachusetts CZM. As required by the Oceans, the Plan shall be incorporated the Massachusetts CZM. Once the Ocean Management Plan is adopted into the CZM program, EEA will be able to apply the federal consistency provisions of CZM (enabling the ocean management plan provisions to apply to the state’s review of federal actions and permitting decisions). This will enable Massachusetts to effectuate the Plan.	B
Relevance of Plan for the Region or Country	One of the major deficiencies in the Ocean Management Plan is that it excludes fisheries, which is an integral ocean user for the region.	D
Conformance with Planning System	The planning was first initiated by the Task Force, which recommended legislation to mandate marine spatial planning. The legislature responded shortly thereafter with the Oceans Act which incorporated the Task Force’s recommendations and required that the Ocean Management Plan be created by December 31, 2009. The Ocean Management Plan was finalized on schedule in December 2009 and incorporates many of the initial recommendations from the Task Force. However, the Plan suffers by not offering details on the implementation.	B
External Coherence	There has been little external coherence as BOEM developed the Massachusetts WEA	D

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	shortly after the development of the Ocean Management Plan. Thus, there is overlap of zoned ocean territory.	
Guidance for Implementation	The Ocean Management Plan offers a minimal amount of guidance for the Implementation. In fact, the Plan simply tasks the Ocean Team with responsibility to develop, within 1 year, implementation guidance for standards for existing water-dependent uses, requirements for developing and submitting data during project review, appropriate criteria to assist with siting decisions for proposed wind projects, and protocols for the development of appropriate mitigation measures	D
Approach, Data, Methodology	The Plan has gaps in the data and suffers from issues with data variability.	C
Quality of Communication	The Plan is clear, however, lack details on implementation and administration.	C
Plan Format	The Plan is well structured. Volume I address the administration and management of the Plan, while Volume II addresses the more technical aspects of the Plan	B
Overall Grade for Evaluation of Plan Contents		C

C. Report Card for Evaluation of Plan Implementation

Criteria Considered	Comments	Grade
Prescribed Steps and Outputs	The first major prescribed step by the Ocean Management Plan is to develop within one year “implementation guidance to provide clarity and consistency to the assessment of project benefits and impacts.” The OT has not yet produced implementation guidance. Furthermore, the “EEA intends to report	D

	annually to the OAC on the progress made in implementing the ocean management plan.” ⁵⁰ If the EEA has reported to the OAC on the progress of implementation, it has not been made available to the public.	
Adequacy of Resources (for Implementation)	Thus far, inadequate resources have not served as a major impediment to implementation	B
Utilization	n/a	n/a
Overall Grade for Evaluation of Plan Implementation		C

D. Report Card for Evaluation of Plan Outcomes and Impacts

Criteria Considered	Comments	Grade
	<i>Too early to properly assess the outcome of the Plan against its stated objectives.</i>	
Overall Grade for Evaluation of Plan Outcome		n/a

V. CONCLUSION

The Massachusetts Ocean Management Plan is the first marine spatial plan in the United States. As such, it is far from perfect and there are important lessons that can be learned from the Plan. Specifically, despite the huge undertaking, the Massachusetts Ocean Management Plan was completed in a very short time period, which likely led to some of its flaws. In addition, the Massachusetts Ocean Management Plan is heavily biased towards conservation and renewable energy uses by allocating specific managements areas as “Prohibited Areas” and “Renewable

⁵⁰ *Massachusetts Ocean Management Plan*, Volume I, page 3-16, available at <http://www.mass.gov/eea/ocean-coastal-management/mass-ocean-plan/final-massachusetts-ocean-management-plan.html>

Energy Areas,” rather than have a comprehensive strategy that focuses on multiple uses. Furthermore, the Massachusetts Ocean Management Plan was not complete nor thorough enough. In particular, the Plan established an Ocean Team tasked with the responsibility to establish standards for existing water-dependent uses, requirements for developing and submitting data during project review, appropriate criteria to assist with siting decisions for proposed wind projects, and protocols for the development of appropriate mitigation measures.⁵¹ Finally, the economic, ecological, and socioeconomic effects of the Massachusetts Ocean Management Plan remain to be seen, yet the Plan is still in its infancy so it may still be premature to give a final judgment at this time.

As the United States proceeds with CMSP, it is essential that the National Ocean Council does not give preference to any particular use, such as Massachusetts did with conservation and renewable energy. Furthermore, it is important that the United States gives special weight to the economic value of existing ocean uses, such as maritime, fisheries, and energy development. Moreover, the United States must not rush forward with CMSP as Massachusetts did. All of the applicable standards for ocean uses, requirements for siting decisions, and mitigation requirements must be established prior to finalizing CMSP. Finally, CMSP has the potential to be extremely disruptive to current ocean users. Thus, there must be increased emphasis on stakeholder participation and involvement, including the incorporation of private sector studies and data in the plan, as well as transparency.

⁵¹ *Massachusetts Ocean Management Plan*, page 3-1, available at <http://www.mass.gov/eea/ocean-coastal-management/mass-ocean-plan/final-massachusetts-ocean-management-plan.html>