

July 25, 2016

Mr. Richard Getchell
Tribal Co-Lead, NE Regional Planning Body
All Nations Consulting
P.O. Box 326 Mapleton, ME 04757

Mr. Grover Fugate
State Co-Lead, NE Regional Planning Body
Executive Director
Coastal Resources Management Council
Oliver H. Steadman Government Center
4808 Tower Hill Toad
Wakefield, Rhode Island 02879-1900

Mrs. Betsy Nicholson
Federal Co-Lead, NE Regional Planning Body
Northeast Regional Coordinator
NOAA Coastal Service Center
35 Colovos Road, Suite 148
Durham, NH 03824

Submitted electronically via comment@neoceanplanning.org

RE: Recommendations for the Draft Northeast Ocean Plan

Dear Mr. Getchell, Mr. Fugate and Mrs. Nicholson:

On behalf of our organizations we are pleased to provide comments to the Northeast Regional Planning Body (RPB) to help inform your work as you finalize the Draft *Northeast Ocean Plan* (Plan).¹

Members of the conservation community in New England and beyond strongly support the development and implementation of the nation's first comprehensive, ecosystem-based, regional ocean plan as one of the primary mechanisms for implementing the goals and priorities of the National Ocean Policy (NOP), as stated in Executive Order 13547² and the *Final Recommendations of the Interagency Ocean Policy Task Force* (Final Recommendations), which are incorporated by reference into the Executive Order.³ We commend the RPB on the progress made and look forward to supporting Plan

¹ Available at <http://neoceanplanning.org/plan/> [hereinafter Plan].

² Executive Order 13547, Stewardship of the Ocean, Our Coasts, and the Great Lakes, available at <https://www.whitehouse.gov/the-press-office/executive-order-stewardship-ocean-our-coasts-and-great-lakes>.

³ White House Council on Environmental Quality, *Final Recommendations of the Interagency Ocean Policy Task Force* (July 19, 2010), available at http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf

implementation. We submit these comments as a community to underscore the broad support for and importance of strengthening certain provisions in the Plan.

1. Significance of the Northeast Ocean Plan

The release of the Plan, the first such regional ocean plan in the nation, is a significant achievement and continues the Northeast's longstanding leadership in ocean planning that began with the groundbreaking efforts of the Massachusetts and Rhode Island ocean plans. The Plan, when finalized and implemented, will bring a suite of new tools and cooperative state, federal and tribal efforts that, with the continued engagement of the public and stakeholders, we hope will lead to a thriving and healthy ocean. The Northeast Ocean Data Portal (Portal), a remarkable achievement of the Plan, brings together in one place a vast array of detailed information about the ocean and how we use it along with associated maps on a publicly accessible web-based platform that will enable more informed decision-makers and stakeholders and better, more informed decisions about how we manage, use and conserve our ocean. Agency commitments to work more effectively together and with New England states and tribes along with much enhanced stakeholder engagement, holds promise to improve ocean management across all sectors. When completed, data products identifying and characterizing important ecological areas (IEAs), commercial and recreational fishing areas, transit routes, non-consumptive recreational use areas and more will be significant contributions to ocean management in the region. An ambitious science and research agenda, if coordinated and adequately funded, will advance our understanding of the ocean and how best to sustainably manage its resources, particularly in the face of climate change and the dramatic impacts that it will continue to bring to ocean life and our communities. Much work is yet to be done to finalize this landmark Plan. Below, please find several important recommendations on important ecological areas, stakeholder engagement, compatibility assessment, climate change, monitoring and evaluation, Plan implementation and funding, and the Portal.

2. Important Ecological Areas

We applaud the RPB for establishing an Ecosystem-Based Management (EBM) Working Group of scientific and technical experts, and for including in the Plan a draft Important Ecological Areas Framework (Framework) that describes five components of IEAs:

- 1) areas of high productivity;
- 2) areas of high biodiversity;
- 3) areas of high species abundance;
- 4) areas of vulnerable marine resources; and
- 5) areas of rare marine resources.⁴

This is an important step in supporting all three of the Plan's goals: healthy ocean and coastal ecosystems, effective decision-making, and compatibility among past, current and future ocean uses. However, the Plan leaves open for speculation most of the next steps that are to follow this initial Framework, and that uncertainty is driving significant concern among several sectors of stakeholders.

⁴ Plan at 188-89.

We urge the RPB in the final Plan to clearly articulate and commit to an open, transparent, and science-based process and timeline for identifying IEAs with the goals of (1) identifying and posting initial data synthesis layers of each IEA component on the Portal by the end of 2016; (2) updating data layers and providing a composite map of IEAs synthesizing all five components as appropriate and posting associated maps and other information on the Portal by the end of 2017 and periodically as new information becomes available; and (3) articulating agency commitments to ensure that ocean management decisions conserve the ecosystem values and functions that the IEAs contain.

As the RPB moves forward on identifying IEAs, it should be noted that calling for the development of IEAs does not automatically generate “no go zones” where all activities are discouraged; we believe that multiple uses may occur within an IEA as long as these uses are compatible with the ecosystem values and function of the IEA. We urge you to clearly articulate this in the Plan to enhance understanding.

a. Identify and periodically update IEAs

The final Plan must commit to developing initial data synthesis layers representing all five IEA components and uploading the associated maps and other information to the Portal by the end of 2016. These initial component maps will provide a sound basis for the further discussions necessary to move forward to establish a composite map of IEAs, including the accuracy and reliability of data for each component, thresholds, and so on.

The RPB should also clearly articulate in the final Plan an open, transparent, and science-based process with a clear timeline, starting with the initial set of IEA component maps, for how it will move forward to identify IEAs. Further detail should be provided in the final Plan regarding how the science community, stakeholders, and the public will be involved in reviewing IEAs, in order to ensure that these entities are clear on the process and how they will be able to engage.

In addition, the RPB should explicitly recognize and plan for periodic updates of IEAs – as well as other stakeholder use data layers – over time as new information becomes available and the human uses and the ocean ecosystem evolves.

b. Develop best management practices and other provisions to ensure that ocean management decisions conserve IEAs and the ecosystem values and functions they contain

RPB member agencies should ensure that management decisions are consistent with the ecosystem values and functions IEAs contain (*e.g.*, productivity and biodiversity). We urge the RPB to clearly articulate the ecosystem values and functions associated with IEAs to ensure both agencies and stakeholders are fully invested in this approach.

The final Plan should include clear agency commitments to developing best management practices and other provisions that provide strong protections for the ecosystem values and functions of the IEAs and that are within the agencies’ existing authorities to implement. As part of these deliberations, agencies will need to tackle challenging questions, such as compatibility analysis, which can be difficult to analyze in the abstract. The Mid-Atlantic RPB’s pilot project approach⁵ may be one useful way for the RPB to

⁵ Draft Mid-Atlantic Ocean Action Plan, p. 38. Available at: <http://www.boem.gov/Ocean-Action-Plan/>.

tackle this issue, and we support the RPB in adopting that approach as it develops best management practices to conserve IEAs.

We view identification of IEAs and actions taken to conserve these special places as critical to achieving the NOP's mandate. The Final Recommendations state that coastal and marine spatial planning "is intended to improve ecosystem health and services by planning human uses in concert with conservation of important ecological areas, such as areas of high productivity and biological diversity, areas and key species that are critical to ecosystem function and resiliency; areas of spawning, breeding and feeding; areas of rare or functionally vulnerable marine resources and migratory corridors."⁶ Further, the Final Recommendations specifically call for assistance from scientific and technical experts to analyze "the ecological condition and relative ecological importance or values of areas within the planning area, including identification of areas of particular ecological importance using regionally-developed evaluation and prioritization schemes."⁷

3. Stakeholder Engagement: Plan Implementation and Decision-Making Processes

a. Develop best practices for robust stakeholder consultation

It is important that stakeholders have a meaningful opportunity to engage in decision-making and have a voice in permitting decisions for ocean use near their areas of activity. Local knowledge is an important source of expertise and can lead to more successful ocean management and enhance the legitimacy of agency decision-making. However, because commitments to improved stakeholder engagement are scattered throughout Chapter 3 and differ across the various subsections within Chapter 3, it is difficult to understand exactly how stakeholder engagement will improve under the Plan.⁸

We urge the RPB to articulate strong, clear best practices for stakeholder consultation that broadly apply to Plan implementation, with a particular focus on improving pre-application consultation regarding newly proposed projects.⁹ Best practices for stakeholder consultation should be summarized and incorporated into Chapter 4 as a parallel to the best practices for intergovernmental coordination. Clearly identifying stakeholder consultation best practices in Chapter 4 will help alert agencies, states, tribal nations, project developers, industries, and other stakeholders to their responsibilities and opportunities for engagement.

The RPB should specify in the Plan that execution of the best practices for stakeholder consultation will be a priority during the first year of Plan implementation.

b. Provide opportunities for stakeholders to advise the RPB on implementation of stakeholder engagement best practices and commitments

⁶ Ibid. p. 44.

⁷ Ibid. p. 57.

⁸ For example, stakeholder identification is listed as an action item in some, but not all, subsections of Chapter 3.

⁹ *Accord SEAPLAN, NORTHEAST REGIONAL OCEAN PLAN: OPTIONS FOR EFFECTIVE DECISION MAKING 13 (2014)* (calling for the Plan to include "[c]ommitment by agencies to standardize the practice of pre-application consultations as a normal course of doing business").

We value the RPB’s commitment to collaborating across agencies and with stakeholders to develop solutions to improve ocean decision-making processes. The stakeholder engagement commitments in the Plan seem purposefully broad, and there are many important details that will need to be developed during implementation. To do this successfully, it is critical that stakeholders themselves – who have a vested interest in the effectiveness of these actions – be able to advise the agencies on the best approaches. The RPB should ensure there are opportunities in place that will allow stakeholders to effectively engage with and advise the RPB member agencies as they move forward implementing the stakeholder engagement commitments in their own regulatory processes.

4. Compatibility Assessment

We encourage the RPB to include in the Plan a discussion, initial framework, and an explicit provision for the development of a robust compatibility assessment among human uses and among human uses and the marine environment. Recommendations on how to incorporate this information into decision-making should also be developed.

The RPB identified “compatibility among past, present and future uses” as one of three goals established for the Northeast regional ocean planning process.¹⁰ Therefore, the Plan must contain a discussion and, at the very least, an initial framework for compatibility assessment. We believe that this should be a fundamental component of the Plan that will ultimately contribute to better and more effective management of the ocean. We recognize that a regional compatibility assessment regarding ocean uses and the marine ecosystem is a significant undertaking and will need more time. We therefore recommend that the Plan contain an explicit provision for the development of a robust assessment of compatibility between human uses and between human uses and the marine ecosystem, as well as recommendations for incorporating this information into decision-making.

5. Building an Information Base to Understand Vulnerability in a Shifting Climate

We encourage the RPB to prioritize research towards understanding the impact of climate change on the ocean and building a comprehensive information base supported by the Plan and Portal. The RPB should host an annual meeting engaging scientists, stakeholders, and resource management communities focused on understanding our region’s vulnerability in a shifting climate.

The Plan can generate broad collaboration across the region to improve our understanding of the impacts of climate change on the ocean ecosystem, gather and make available related scientific data on the Portal, and enable more informed decisions about the management of the ocean in the face of climate change. Virtually every government and academic research institution in the region with an interest in ocean ecosystems has made the impact of climate change on the ocean a major research priority. To that end, we support and are ready to help champion Science and Research Priority No. 5: *Characterize changing conditions and resulting impacts to existing resources and uses.*¹¹

A comprehensive understanding of the vulnerability of our region’s ocean ecosystems to climate change is imperative to successfully meeting the Plan’s goals. Therefore, we recommend that the RPB include in Chapter 5, under Science and Research Priority No. 5, a provision for annual public meetings, hosted by

¹⁰ See Plan at 5.

¹¹ See Plan at 171.

the RPB, to convene research, stakeholder, and resource-management communities to discuss new data on the impacts of climate change in the Northeast regional ocean planning area.

We further recommend that the RPB explicitly state in Chapter 5 the need to engage ocean user stakeholders for their on-the-water knowledge and observations in building understanding about climate change impacts. Such consultation could be accomplished initially by including dedicated sessions on stakeholder observations and data collection during the annual meeting recommended above, as well as through ongoing engagement with stakeholders during Plan implementation.

6. Monitoring and Evaluation (M&E)

a. Develop indicators to evaluate and track Plan implementation and performance by spring of 2017.

In order to ensure efficient monitoring and evaluation of the Plan and its performance, we urge the RPB to identify by spring of 2017 a set of indicators for tracking Plan implementation and performance and describe in the Plan how these indicators will be tracked, evaluated, and published. This includes identifying indicators for each action item listed in Chapter 3. We also ask that the RPB elaborate upon how indicators for ocean health will be identified and used in the Plan.

The Plan states that the RPB will form an M&E Work Group in late 2016 to develop and implement Plan performance M&E.¹² We support the formation of an M&E Work Group, and urge the RPB to provide additional details to guide its work. Given the critical importance of M&E to Plan success, the RPB, in coordination with the M&E Work Group and the EBM Work Group, should commit in the Plan to finalizing the following by the spring of 2017: 1) a set of indicators for tracking Plan implementation and performance, 2) a M&E plan that describes how indicators will be systematically tracked, evaluated, and published, and 3) protocol for using the indicators to adapt the Plan. For each action item listed in Chapter 3 and intergovernmental coordination best practice included in Chapter 4, the M&E plan should identify:

- corresponding measurable indicator(s);
- a timeline for accomplishing each action item; and
- the entity or individual(s) responsible for accomplishing the action item.

The identification of such indicators and timelines will aid the RPB and stakeholders in attributing management successes to the RPB's concerted efforts, and if necessary, hold agencies accountable to their commitments to improved management of our ocean resources. The RPB should explicitly confirm in the Plan that stakeholders will have opportunities to provide meaningful input on the selection of indicators and the content of the M&E plan. Additionally, the Plan should identify funding and other committed resources to support Plan M&E going forward.

In terms of monitoring ocean ecosystem health more broadly, we support the RPB's commitment to identify a set of indicators for ocean health. Overall, the RPB should more specifically describe stakeholders' role in refining and implementing the ocean health approach, mechanisms by which agencies will commit to supporting and using ocean health indicators, and how preliminary results of ocean health implementation will be incorporated into Plan M&E and Plan updates.

¹² *Id.* at 159.

b. The RPB should create a mechanism for stakeholder requests to consider issues as part of its performance monitoring and evaluation of the Plan.

The RPB provides a unique forum of state, tribes and federal agencies to satisfy their missions and relevant statutory obligations, and to improve collaboration and inclusion of stakeholders. Given this forum, a specific mechanism should be established that allows stakeholders to petition the RPB to take up specific ocean management issues as they arise. While the Plan makes some initial commitments to improve the decision-making process, these approaches will likely need revision over time as the RPB and ocean users learn lessons through Plan implementation. Issues or new ocean uses may also potentially arise that the RPB has yet to address. Providing a specific mechanism for stakeholders to formally request the RPB to address a management issue would enhance Plan performance and improve future iterations of the Plan. We understand that the RPB needs flexibility in how this mechanism would occur; however, a general framework could include: 1) a stakeholder submitting a formal comment to the RPB, 2) RPB Co-Leads deciding to take up the issue or dismissing, and, 3) if the issue is prioritized for discussion, an RPB forum is held to discuss improvements to the Plan with federal agencies, states, tribes, and stakeholders. We suggest adding this mechanism as part of the M&E section.

7. Maintaining the Northeast Ocean Data Portal

Agencies should commit to maintaining and updating the Portal as new data products become available, as well as commit to long-term funding of the portal. We urge the RPB to commit to maintaining, updating, and expanding the Portal as a means to ensure that agency decision-making is a result of use of “the best available data.” Furthermore, language must be included in the Plan that outlines and delineates specific data priorities, responsible agencies, and a timeline for maintenance of the Portal. Our organizations assert that maintaining “best available data” can be achieved by the following steps:

- Determine and undergo steps to maintain the website’s overall design and written content and to ensure continued functionality of operational components and data development;
- Target stakeholders and embrace a robust engagement process to both educate the public on the Portal’s purpose and utility and to also fill data gaps;
- Generate a long-term plan that identifies data gaps, identifies entities to fill those gaps, and determines the timeline through which the Portal will be expanded and improved;
- Create a plan to achieve long-term funding sources for the maintenance, update, and expansion of the Portal.

8. Plan Implementation and Funding

We strongly concur with the RPB’s discussion at their November 2015 meeting that the planning work should continue post-2016 in order to implement, monitor, and adaptively manage the Plan. We strongly support the continuation of science and monitoring, periodic review of and amendments to the Plan, as well as ongoing stakeholder engagement after its final approval by the National Ocean Council in 2016.

Securing the necessary resources to support this critical ongoing work is essential to the ultimate success of the Plan, particularly for the ongoing maintenance and updating of the Portal. The unique data tools provided by the Plan contribute to the ability of state, tribes and federal agencies to satisfy their missions and relevant statutory obligations, and to improve collaboration and inclusion of stakeholders. Therefore, we urge RPB member agencies to make commitments within the Plan and

assume responsibility for Portal updates, maintenance, and development, Plan monitoring, further research and data integration outlined within the science and research priorities of the Plan, and stakeholder engagement. We also strongly urge the RPB to articulate this responsibility in the Plan. We recommend that the following language be incorporated into the Plan in Chapter 4.2:

“RPB member agencies believe that the Northeast Ocean Data Portal is fundamental to the successful implementation of the regional ocean plan and will contribute to the agencies’ ability to satisfy their missions and statutory mandates. Accordingly, the RPB member agencies commit to working together to provide the financial, staff and/or other resources necessary to ensure the ongoing maintenance and update of the Northeast Ocean Data Portal.”

Our groups thank the RPB for the opportunity to provide comments at this critical juncture in the Northeast regional ocean planning process. Our organizations stand ready to assist in this important undertaking, and we look forward to the RPB’s great accomplishments through 2016 and beyond.

Sincerely,

Priscilla M. Brooks, PhD
Vice President and Director of Ocean Conservation
Conservation Law Foundation

Alison Chase
Senior Policy Analyst
Natural Resources Defense Council

Melissa Gates
Northeast Regional Manager
Surfrider Foundation

Merry Camhi, PhD
Director, New York Seascape
Wildlife Conservation Society

Curt Johnson
Executive Director of Save the Sound
Save the Sound/Connecticut Fund for the Environment

Wendy Lull
President
Seacoast Science Center

Jack Clarke
Director of Public Policy
Mass Audubon

Bill Mott
Director
The Ocean Project

Pam Lyons Gromen
Executive Director
Wild Oceans

Dorie Stolley
Program Manager
Goldenrod Foundation

Sarah Winter Whelan
Ocean Policy Program Director
American Littoral Society

Richard C. Nelson
Captain F/V Pescadero
Commercial Lobsterman

Rob Huber
Executive Director
Friends of Penobscot Bay

Garrison Beck
Watershed Protection Specialist
Midcoast Conservancy

Vicki Nichols Goldstein
Executive Director
Colorado Ocean Coalition

Mary Ann Horrigan
NESS Program Director
New England Science & Sailing Foundation

Bruce A. Montville
President & CEO
LifeWise Community Projects, Inc.

Dennis J. Finn
Executive Director
Saco River Corridor Commission