

# Alliance to Protect Nantucket Sound

396 Main St., Suite 2 Hyannis, MA 02601 508-775-9767  
www.saveoursound.org

January 29, 2003

The Honorable Barbara Cubin  
Chairwoman  
Subcommittee on Energy and Mineral  
Resources  
U.S. House of Representatives  
1626 Longworth House Office Building  
Washington, DC 20515

The Honorable Nick Rahall, II  
Ranking Member  
Subcommittee on Energy and Mineral  
Resources  
U.S. House of Representatives  
2307 Rayburn House Office Building  
Washington, DC 20515

Lieutenant General Robert B. Flowers  
Chief of Engineers & Commander  
U.S. Army Corps of Engineers  
441 G Street, NW  
Washington, DC 20314-1000

The Honorable Thomas L. Sansonetti  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The Honorable Gale Norton  
Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

**Re: Offshore Wind Energy Projects**

Dear Chairwoman Cubin, General Flowers, Secretary Norton, Ranking Member Rahall, and Assistant Attorney General Sansonetti:

On behalf of the Alliance to Protect Nantucket Sound, we are writing to support the position asserted by Massachusetts Attorney General Reilly in his letters to you of October 17, 2002 regarding offshore wind energy development. In those letters, the Attorney General expressed the view that there does not exist authority under current law to approve applications to develop wind energy in federal offshore lands and waters. We are also responding in this letter to several issues raised by the Conservation Law Foundation and other organizations (collectively, "CLF") in their letter to you of November 7, 2002, arguing that adequate authority can be found in existing law for such projects.

The Honorable Barbara Cubin  
Lieutenant General Robert B. Flowers  
The Honorable Gale Norton  
The Honorable Nick Rahall, II  
The Honorable Thomas L. Sansonetti  
January 29, 2003  
Page 2

The establishment of credible authority and balanced regulation of offshore wind energy development is of tremendous national importance, and its absence will continue to result in conflict, litigation, and adverse effects to the public interest. The lack of authority and absence of standards already has placed at risk one of the most valuable and pristine marine ecosystems in the United States, Nantucket Sound, as a result of the proposal to develop the massive and environmentally destructive Cape Wind Project. Other areas have now been proposed for development. It is therefore important for the Alliance, a broad-based organization composed of business, environmental, fisheries, local government, and private property interests, to provide you with its views on the questions presented by the Attorney General Reilly and CLF letters.

The Alliance's perspective on this matter is drawn from its opposition to the proposed Cape Wind Project. This wind energy project has been proposed for Horseshoe Shoals in Nantucket Sound by Cape Wind Associates (CWA), a small group of entrepreneurs formed exclusively for the purpose of this venture. The Cape Wind proposal is unprecedented in size and scope, and relies upon unproven technology. There has never been an offshore wind energy facility developed anywhere in the United States, and the CWA proposal calls for the largest project anywhere in the world. It would occupy an astonishing 24 square miles of pristine Nantucket Sound lands and waters and consist of up to 130 wind generators, each well over 400 feet tall. The project would not only despoil the extraordinary scenic and historic preservation values of the Sound and its surrounding region, it also would pose a major threat to migratory birds and other wildlife, diminish commercial and sport fisheries, cause a decline in the recreational values for which this region is known, and adversely affect the economies of local communities and property values of private citizens. All of these impacts would occur to enrich the CWA developers for an inconsequential gain in energy production with no return to the federal government.

The Cape Wind project proposal is more than a significant threat to Nantucket Sound. It also has ushered in a rush of private wind energy proposals for coastal and offshore lands and waters. Since CWA submitted its proposal, about two dozen additional wind energy sites have been identified by private developers off the New England and Mid-Atlantic coasts. For each of these proposals, the project proponents are seeking to obtain permits from the U.S. Army Corps of Engineers under section 10 of the Rivers and Harbors Act. On

The Honorable Barbara Cubin  
Lieutenant General Robert B. Flowers  
The Honorable Gale Norton  
The Honorable Nick Rahall, II  
The Honorable Thomas L. Sansonetti  
January 29, 2003  
Page 3

the basis of these permits alone, the wind energy developers apparently intend to use and occupy federal lands and waters held in the public trust for their private project development purposes. They argue that these federal lands are open to private use and occupancy and that the federal government cannot prevent such development. They seek to do so without obtaining any property right or paying any return to the United States and its taxpayers.

Contrary to the argument advanced by these developers, the Cape Wind proposal and the other contemplated projects have widely demonstrated the need for a comprehensive federal program to govern offshore wind energy projects and similar offshore development not now authorized by laws such as the Outer Continental Shelf Lands Act. As Attorney General Reilly has correctly noted, there is no legal authority under which these projects can be authorized or built. Nevertheless, their proponents continue to push them, and the Corps of Engineers is routinely processing these controversial permit applications. In fact, CWA has already received one such permit and, based on that section 10 permit alone, has built the facility on federal offshore lands without land use authorization and without paying rent or fees. There is no apparent reason they would not also attempt to erect the entire project without any right granted to use the land, without payment to the federal government, and based only upon a navigation permit.

Clearly, offshore wind energy deserves serious and prompt consideration. The Alliance supports the development of this alternative form of energy in appropriate locations, under a balanced program, and subject to adequate environmental safeguards. Such projects should not proceed in the absence of the kind of authority and comprehensive regulatory program that already extends to other federal offshore development.

The Alliance believes that while such a program is under development, a moratorium must be imposed on the permitting and construction of the kind of haphazard development now being undertaken. In support of this position, we are submitting for your consideration a detailed analysis of the current state of the law and a statement of principles to guide the development of a comprehensive regulatory program. Attorney General Reilly is correct that adequate authority does not exist under current law to consider proposals to develop offshore wind energy plant development. To provide such authority, existing federal

The Honorable Barbara Cubin  
Lieutenant General Robert B. Flowers  
The Honorable Gale Norton  
The Honorable Nick Rahall, II  
The Honorable Thomas L. Sansonetti  
January 29, 2003  
Page 4

programs such as the Outer Continental Shelf Lands Act, provide sound models, and suggest principles included in virtually all federal land and resources management programs.

In setting forth this analysis, the Alliance expresses its respect and admiration for the past accomplishments and work of CLF and the other organizations which signed on to the November 7 letter to which we are responding. While we disagree with their positions on the legal questions involved, the Alliance shares their desire to promote alternative energy. It is our position, however, that the fight over the Cape Wind project is creating unnecessary conflict and actually slowing down the development of reasonable wind energy proposals. Under no reasonable analysis should Nantucket Sound be sacrificed when other less sensitive sites are available. While there is a real future need for alternative energy, there is no crisis which dictates that such projects on federal lands and water should be excused from the orderly approach applied to other resources. The mere fact that one of the worst possible locations for resource development is being proposed for the first and largest wind energy project in the United States is clear evidence of this fact.

The Alliance invites CLF and the other groups to join us and the numerous other organizations that support a careful, comprehensive and, in the end, more expeditious and non-confrontational approach to the consideration of alternative energy proposals for coastal and marine lands and waters. The course being pursued by CWA and other developers of rushing to stake claims to offshore areas through the ad hoc consideration of individual wind energy projects already has proven to be time-consuming, contentious, divisive and insufficient for the purpose. For those who recall, this was exactly the wrong path taken in overly-aggressive federal efforts to expand OCS oil and gas development, with consequent delays caused by state, local and public objections.

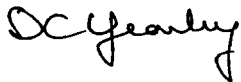
The current approach, ushered by the Corps of Engineers' consideration of the Cape Wind project, is hardly the way to proceed with a long-term alternative program that stands to produce potentially significant benefits. To do so, however, the program must be properly administered and guided by the kind of principles that govern virtually every other form of energy production or development activity occurring on federal lands. The Alliance will continue to devote its efforts toward advancing that goal while at the same time protecting

The Honorable Barbara Cubin  
Lieutenant General Robert B. Flowers  
The Honorable Gale Norton  
The Honorable Nick Rahall, II  
The Honorable Thomas L. Sansonetti  
January 29, 2003  
Page 5

the extraordinary ecological, economic, historical, recreational, and scenic values of Nantucket Sound for future generations.

The Alliance hopes that the enclosed analysis and proposals will be of value to your consideration of this important issue. We recognize that the ideas and concepts set forth in our proposal will benefit from the input of other affected parties, and the Alliance stands ready to assist in any way possible to advance the public interest in alternative energy development and the long-term protection of Nantucket Sound and similar marine ecosystems. Thank you for your consideration of this information, and the attached material. Please contact me if we can be of further assistance.

Sincerely,



Douglas C. Yearley  
President/CEO  
Alliance to Protect Nantucket Sound

**Attachments**

cc: Massachusetts Congressional Delegation  
Minerals Management Service Director  
CLF