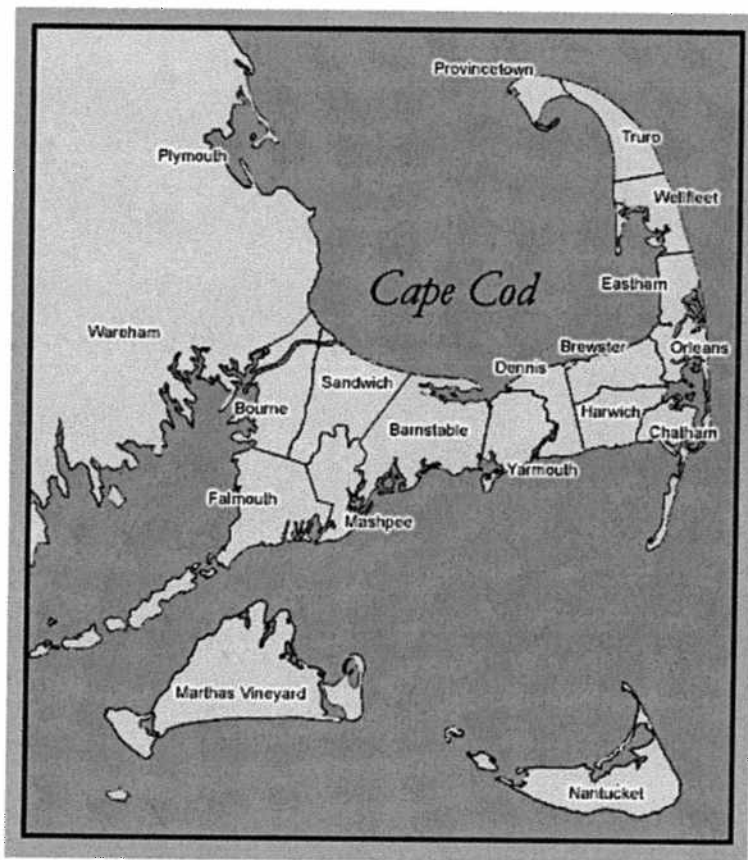


Appendix B

“State Fights for Control of Nantucket” Source: Cape Cod Times



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"STAR FIGHTS FOR

control of Nantucket Sound

As stakes in sanctuary bid

By MARK H. ROBINSON
Special Writer



Nantucket Sound as a
...re. Some fishermen
(photo by Milton Moore)

They don't show up in photographs from even the most sophisticated satellites, but there are many lines in the sea. Shipping lanes, fishing "windows," international borders and offshore drilling tracts are all neatly plotted on crisp paper charts. There is considerable controversy over the drawing of these lines, which, in effect, parcel out of the ocean.

Nantucket Sound is one such battlefield with invisible lines. After four years of legal disputes, the Commonwealth of Massachusetts now has federal backing to create a special status for Nantucket Sound that would give the state increased clout in controlling the use of its coastal waters.

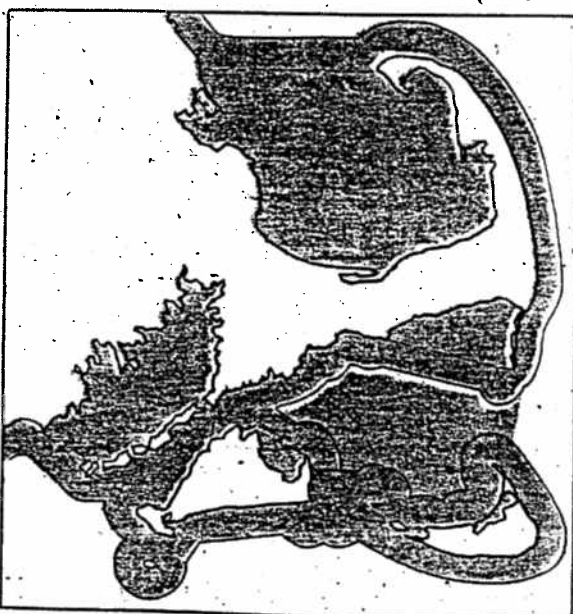
If the state gets its way, Nantucket Sound will be designated as a marine sanctuary. Commercial fishing and oil and gas development are the highest stakes in this tug-of-war. If the Sound is declared a marine sanctuary, the state would take control of fishing regulations there, and all companies would be prohibited from laying undersea gas pipelines on the Sound floor.

The move to eliminate the Sound as a pocket of federal control surrounded by state waters began in 1977 when state Attorney General Francis X. Bellotti sued the federal government for state ownership of Nantucket Sound and other coastal waters, including Cape Cod Bay.

In 1971 federal geographers drew lines all along the U.S. coast, demarcating the three-mile-wide territorial sea. The territorial sea is important for foreign shipping and national security because it separates the traditional "freedom of the high seas" from the defensive perimeter of each country.

In the U.S., this three-mile band also divides state ownership of resources, like fish and oil and even sunken treasure, from federal management of the rest of the continental shelf. Drawing a three-mile girdle around Cape Cod, Nantucket and Martha's Vineyard leaves a pocket of high seas whose resources are under federal control in the middle of Nantucket Sound.

Citing historic usage of the Sound as state waters, Bellotti's staff pressed its claim before a special master of the U.S. Supreme Court. It was "such a complex matter," said state Assistant Attorney General Leah S. Crothers, that both federal and state lawyers feared the case might go on indefinitely.



SANCTUARY — The blue area shows waters around the Cape and Islands already under state control. The orange area shows the pocket of federal control that would shift to state jurisdiction if Nantucket Sound is declared a marine sanctuary.

An out-of-court settlement was prepared last July in which the state agreed to drop its claim to the Nantucket Sound pocket, but gained an extra 19-square miles of state waters inside Monomoy Island and off West Chop on Martha's Vineyard. The federal government, meanwhile, agreed to foster the designation of the Nantucket Sound pocket as a federal marine sanctuary. The designation will grant resource ownership to the federal government, but provide Massachusetts with management powers.

Congress passed the Marine Protection, Research and Sanctuaries Act in 1972 to preserve the "ecological, recreational and aesthetic values" of unique coastal waters. To date, six sites have been authorized by former presidents Ford and Carter. They range in size from one

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... Sound

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square mile to 950 square miles and include sites as diverse as a major playground for the rare California gray whale off San Francisco and the watery grave of the Civil War ironclad Monitor off Cape Hatteras, N.C.

Restrictions in each sanctuary differ depending on the features it has been designed to protect. Supporters have hailed the program for establishing "underwater national parks."

Just Christmas 1980, Gov. Edward J. King nominated Nantucket Sound as a marine sanctuary. His petition sets in motion the designation process by the National Oceanic and Atmospheric Administration. The first hurdle is expected to be cleared shortly when NOAA places the Sound on its "List of Recommended Areas." Comments and research will then be collected for NOAA to decide whether to conduct public hearings and prepare a full environmental impact statement. Although the Sound can be dropped from consideration at any time, the farther it moves through the screening process, the greater the momentum builds for its acceptance.

What effect the Sound's sanctuary status would have on sport and commercial fishing is not yet clear. One of the chief aims of the sanctuary is to protect fish stocks and the fishing industry in Nantucket Sound from outside stresses.

The agreement reached between Massachusetts and the federal government clearly states that a sanctuary "will not include any federal regulations pertaining to fishing (including shellfishing) in

addition to presently applicable laws."

"Applicable laws" refers to the Fishery Conservation and Management Act that went into effect in 1977, setting quotas and gear requirements in a 200-mile fisheries zone. Fishermen have gripes with many aspects of the FCMA and are not eager to see its enforcement increased in Nantucket Sound, where they have enjoyed a relative suspension of the rules while this state-federal ownership suit has been waged.

With or without the sanctuary, the full weight of the FMCA will be imposed on the middle of Nantucket Sound. "At least with the sanctuary managed by the state, we will have more influence in the quotas set by the regional council (FCMA governing body)," says Richard Thibedeau of the state Coastal Zone Management program.

But a larger state role in federal fisheries management is not viewed as a plus by everyone.

Jay Lanzillo, who represents the Chatham fish wholesalers says, "Sure, the state may then have more pull, but what if it's only to say there should be more restrictions than those proposed by the regional council? Could some fishing methods, like heavy bottom trawls, be banned under the guise of 'habitat protection?'"

But if fishermen are leery of federal marine sanctuaries, why have so many fishing groups sponsored sanctuary status for Georges Bank? Lanzillo replies, "On Georges, we felt that any extra controls a sanctuary might put on fishing were an acceptable price to pay in order to remove the greater dangers oil drilling posed to us.

"In Nantucket Sound, drill rigs are just not as real a threat."

With a sanctuary in place, the future threat of oil rigs probing Nan-

et Sound will be removed. Lines bringing natural gas from Georges Bank to the Sound have always been a potent concern.

because the enormous cost of laying sub-sea pipes (more than \$1 million per mile) argues for the most available landfall. Some people have said that the state sanctuaries girdling Cape Cod now are a state defense to block such lines.

The federal sanctuary in the Sound's center will complement the "prohibition," CZM's Thibedeau says.

It will raise an additional red flag warning that Nantucket Sound is off limits to major development."

The state's sanctuaries program has been hailed as "a major step in it," says NOAA's regional director, Richard Podgor. It would be a very arduous process indeed to override its restrictions.

Important effects on boat access are expected with a sanctuary designation. Under Coast Guard authority, Nantucket Sound has always been treated as a unified regulatory body. Until 1977, the entire Sound used Inland Rules of the Road for navigation, lights and rights-of-way. Today, the International Rules apply to the entire Sound.

More stringent vessel inspection requirements and crew requirements for inspected vessels — such as the Coast Guard's "large sportfishing vessels" — which use the same rules as commercial fishing vessels, are less strict than those for commercial vessels. The Coast Guard places Nantucket Sound on its "lakes, bays and sounds" category for these regulations. If it is their administrative jurisdiction, the Coast Guard will continue this whether or not a federal sanctuary is declared.

If a sanctuary designation would mean funds would be available to NOAA to conduct intensive research into the fish stocks of the

Sound. The state Division of Marine Fisheries has conducted trawl surveys to measure the types and abundance of species found in Nantucket Sound, but specific spawning grounds, such as those for scup, and migration patterns are poorly understood.

The thrust of this federal marine sanctuary in the central pocket of Nantucket Sound will coincide with the goals of the Massachusetts Ocean Sanctuaries Program. Enforced by the state Department of Environmental Management, this program was established in the early 1970's to protect the quality of coastal waters throughout the state except in the industrialized Boston area.

Oil rigs, pipelines, sand mining, waste dumping and new sewage outfalls all are prohibited in sanctuary waters.

"A federal sanctuary would give us the same level of protection for the middle of the Sound as we have for the edges," explains Thibedeau of CZM.

"And water quality is important not only for its own sake, but because fishing, boating and swimming are so critically dependent on it as well."

The state, through DEM, will have management powers in the federal sanctuary. "Having the state as a managing partner with us is not a problem," says NOAA's Podgorny. "Two of our (federal) sanctuaries in the Florida Keys are policed by the State of Florida. We do, however, want to be assured that Massachusetts is a good manager of its existing state sanctuaries."

NOAA will watch the developments in Sandwich and Gloucester, towns which might pursue legislative waivers to locate sewage plant outfalls in state sanctuary waters.

"It's surprising," says CZM's

Thibedeau, "but, for a body of water that's been used so much for such a long time, there's still a lot we don't know about the Sound." There has been little research into the rare birds, mammals, and reptiles that call the Sound home. Little is known about the grey seals of Muskeget and the sea turtles.

The sanctuary program is intended to be based strictly on scientific criteria. If an area does not have unique qualifications, such as rare animals or a particularly wide variety or large number of species, or if the proposed boundaries are too limited to manage the area as an entire system, NOAA can reject the site's nomination.

NOAA is sensitive to charges that its sanctuary decisions can be swayed by political considerations. In 1979, U.S. Rep. John Breau (D-Louis.) a congressman influential in maritime affairs, threatened to abolish the program because he felt that the sites proposed for sanctuaries were too numerous and not exclusive enough.

Also in 1979, the nomination of Georges Bank as a marine sanctuary — a last-ditch effort by fishing groups to prevent lease sale Number 42 from being held for the oil companies — was torpedoed by the U.S. Department of Interior, which conducts offshore sales.

NOAA now finds itself in another uneasy position. The agency would like to assess the Nantucket Sound nomination in a detached scientific manner to preserve the integrity of its program. Richard Podgorny of NOAA says, "we will evaluate Nantucket Sound on its own merits. We

believe King has nominated the area based on a positive belief in the natural and recreational significance of the Sound.

"A sanctuary is not meant to be used primarily in a negative sense, such as a tool just to prevent oil drilling in an area."

At the same time, however, NOAA realizes that both the U.S. Justice Department and Massachusetts seek the designation. If the sanctuary fails to go through, the lawsuit will be reactivated, probably to the dismay of both parties. Outside legal experts believe Massachusetts stands to lose the case if brought back to court, but attorney Crothers of Bellotti's office insists, "We must use whatever means available to protect the commonwealth's interests in Nantucket Sound."

If Massachusetts did win the case, Nantucket Sound would belong entirely to the state. The commonwealth could then apply its own sanctuary rules, which are already in place within the three-mile zone, to the entire Sound. If, as is more likely, the U.S. won any eventual court decision, the state would lose all rights to govern the pocket of the Sound. A federal sanctuary is a compromise, giving the state some control over federal waters.

It is a new concept, but the trend is clear: public officials are beginning to recognize the need to cut across political boundaries to manage each natural resource as a whole system.

The full effect of a federal marine sanctuary in Nantucket Sound cannot be measured. The future of the Sound without such a sanctuary is also cloudy.