



#### Progress Report

Stopping Stormwater Pollution



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#### Around CLF

# CONSERVATION MATTERS

THE JOURNAL OF THE CONSERVATION LAW FOUNDATION | [www.clf.org](http://www.clf.org)

#### COVER STORY

## OCEAN WEALTH VS. OCEAN HEALTH

PLANNING A SUSTAINABLE FUTURE  
FOR NEW ENGLAND'S OCEAN WATERS

No 2  
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# OCEAN WEALTH VS. OCEAN HEALTH

With Proper Planning and Collaboration, We Can Have Both

**“Ocean use planning is just as vital as land use planning to ensure a sustainable future for our natural resources. We need a cohesive, coordinated approach that both advances the ocean’s economic potential, such as offshore wind development, and protects ocean life and habitat.”**

— Priscilla Brooks, Ph.D., CLF director of ocean conservation

**I**t’s another busy summer day in Massachusetts Bay. Twenty miles off the coast of Boston, commercial and recreational fishing boats are returning to shore to unload the day’s catch. Whale-watching boats ferry thousands of tourists to see humpback and rare North Atlantic right whales visiting their favorite feeding grounds. Meanwhile, enormous tankers make their way through whale hotspots to and from the natural gas terminals just outside of state water lines and container ships steam down the shipping lanes on their way into the Port of Boston. Beneath the surface, trawling gear drags the ocean floor above a maze of fiber optic cables and gas pipelines that lie buried under the seafloor.

As developers clamor for a piece of New England’s ocean waters to build businesses from aquaculture to sand and gravel mining to wind energy, the pressure on one of our most precious natural resources has never been greater. Complicating matters, our oceans are governed by dozens of agencies and more than one hundred laws, resulting in confusion and conflicts that threaten both ecosystem protection and economic development efforts.

“In the face of this unprecedented economic interest in our oceans, it has never been more crucial to protect important fishing grounds and unique marine habitats, particularly for endangered species



Sea anemones and other encrusting animals share this deep boulder reef on the ocean floor off the Massachusetts coast. *Photo credit: Dann Blackwood and Page Valentine, U.S. Geological Survey*

like the North Atlantic right whale,” says Priscilla Brooks, Ph.D., CLF’s director of ocean conservation.

Fortunately, a movement is afoot to ensure that irreplaceable ocean resources are not sacrificed to unplanned development. Ocean use planning is a way to capitalize on all that the ocean can provide by way of jobs, food, recreation, transportation and clean, renewable energy without compromising the ecosystem that we all depend upon. Combining the latest science with extensive public and stakeholder input, ocean use planning helps to determine

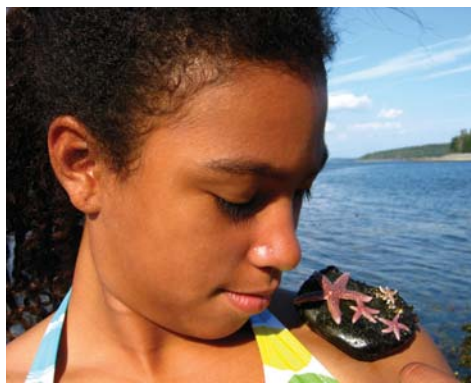
which areas of the ocean are most suitable for industrial development and which must be protected.

“Ocean use planning is just as vital as land use planning to ensure a sustainable future for our natural resources,” says Brooks. “We need a cohesive, coordinated approach that both advances the ocean’s economic potential, such as offshore wind development, and protects ocean life and habitat.”



## NEW ENGLAND AT THE FOREFRONT

CLF is at the vanguard of ocean use planning, innovating in New England what has become a national policy initiative intended to balance the protection of vulnerable marine wildlife and habitats with responsible ocean uses. The first major step in better planning occurred in January 2010, when Massachusetts became the first state in the country to implement a comprehensive ocean management plan for state waters, which extend from the coast to three miles offshore. The development of the Mass Ocean Plan, mandated by the Massachusetts Oceans Act of 2008, was a collaborative effort among state legislators, state agencies, environmental groups, fishing organizations, energy and utility interests and other ocean users in which CLF played a key role. Already, the Mass Ocean Plan has improved the management of some activities to better coexist with marine life. Developers siting a fiber optic cable crossing Buzzards Bay and Vineyard Sound, for example, set the path of the cable to avoid increasingly rare eelgrass beds and “cobble bottom” sections of the ocean floor that are known to be rich in biodiversity and important habitat for a variety of fish and other ocean life.



A young ocean enthusiast befriends the unique creatures that live along the Maine coastline.

*Photo Credit: Parks in Focus*

CLF was also actively engaged in the development of Rhode Island’s Ocean Special Area Management Plan (Ocean SAMP), which was approved in October 2010. The Ocean SAMP provides a comprehensive framework for regulating the state’s ocean waters, which are among the most productive in New England. In particular, the SAMP provides protection for the rocky underwater outcroppings called moraines that contain some of the highest biodiversity found in Rhode Island’s offshore waters.

## A NATIONAL PLAN

The work done by CLF and others to develop the ocean use plans in Massachusetts and Rhode Island helped prompt the Obama Administration to establish by Executive Order the country’s first National Ocean Policy in June 2010. The National Ocean Policy creates a process for agencies, ocean users, industries and coastal communities to work together to develop ocean use plans for each coastal region of the country. These regional plans will guide ocean use in federal waters which extend from three miles out to 200 miles offshore.

With the advent of a National Ocean Policy, at long last, the United States acknowledged that protecting and maintaining healthy oceans and coasts is essential to a sustainable future for coastal communities and our economy.

The pioneering Massachusetts and Rhode Island ocean use plans will serve as the building blocks of New England’s regional ocean plan for federal waters. Work on that plan will begin this summer, and CLF will again be leading the region and the nation with forward-thinking approaches to ensure our oceans continue to thrive.

## OCEAN MANAGEMENT IN ACTION: STELLWAGEN BANK



Commercial shipping lanes run through Stellwagen Bank, home to whales and other marine life. *Photo Credit: Kate Sardi, NOAA Fisheries Permit #981-1707-00*

Located at the mouth of Massachusetts Bay, Stellwagen Bank National Marine Sanctuary is one of New England’s special ocean habitats. Even before the President’s Executive Order established a National Ocean Policy, Stellwagen was doing some ocean use planning of its own. Stellwagen is home to a variety of whale species, including the endangered North Atlantic right whale, of which there are only about 400 left on the planet. It’s also a busy passageway for tankers and other large vessels traveling to and from Boston. Using 25 years’ worth of whale sighting data, officials found that the shipping lanes used by those vessels also contained the highest concentrations of whales, resulting in collisions that often proved fatal to the whales. In 2007, the Sanctuary narrowed and slightly altered the paths of the shipping lanes, reducing boats’ collisions with all whales by 81 percent and with North Atlantic right whales alone by 58 percent.

Stellwagen isn’t the only biodiversity hotspot that needs to be preserved and protected in order to thrive. New England’s other special ocean places include Cashes Ledge, Jeffreys Ledge, the Atlantic Canyons and Jordan Basin.

# STOPPING STORMWATER POLLUTION AT THE SOURCE

## Finally, CLF Gets MassHighway to Clean Up Its Act

Photo credit: istockphoto



**“Polluted stormwater runoff is the number one single cause of degraded rivers and streams in Massachusetts. If we had never brought MassHighway to trial, this pervasive environmental problem would never have been addressed.”**

— Cynthia Liebman, CLF staff attorney

### BACKGROUND

With more than 4,000 miles of roadways across the Commonwealth dumping polluted stormwater into waterways at 18,000 different locations, MassHighway is one of the biggest contributors to water pollution in the state. MassHighway is responsible for properly managing polluted stormwater runoff on all of those roads. If untreated stormwater flows into nearby ponds, lakes, rivers and streams, it causes pollution in those water bodies to skyrocket. It's also against the law.

### THE PROBLEM

MassHighway was using outdated and insufficient systems to manage toxic runoff, or not using them at all. As a result, excessive amounts of metals such as lead, copper and zinc, along with other pollutants, were causing dangerously high pollution levels in waterways throughout the state. This pervasive problem was threatening the health of plants and wildlife in those areas and endangering the safety of residents in nearby communities. What's more, MassHighway hadn't done any system-wide planning to prevent further pollution incidents from happening in the future.

### CLF IN ACTION

CLF set out to prove that MassHighway was failing to properly manage toxic runoff, and that the resulting pollution levels in nearby water bodies exceeded the maximum limits allowable by law. Over a period of five years, CLF held the department's feet to the fire, demonstrating that by not cleaning up existing pollution or producing an adequate plan for managing that pollution in the future, MassHighway had not fulfilled its obligations. But even after U.S. District Court Judge William G. Young ordered MassHighway to take the necessary corrective measures in 2008, the department was slow to make changes.

### PROGRESS!

Come 2010, MassHighway had still not implemented the required stormwater controls, the need for which was growing more dire every day, and Judge Young had had enough. Siding with CLF, he felt that the issue was now severe enough to put pressure on the state to make the change. “To say I’m disappointed is mild,” Judge Young said. “We’re not having another trial. This is where we’re going to start, within three weeks from today.”

It was the push that MassHighway needed. Over the next year, the MassHighway, now a division within MassDOT, implemented “green” stormwater solutions at the three sites that needed it most. The department used specially-constructed wetlands and flat-bottomed channels containing plants and grass to collect and absorb runoff, filter out pollutants, and deposit the water back into the ground. The department also developed a revised stormwater management plan to address remaining locations in its highway system. In April 2011, Judge Young announced that he was pleased with the results.

### NEXT STEPS

CLF's advocacy may have changed the way that the state's highway department manages a major source of pollution, but the work's not done. Over the next five years, MassHighway will assess the effects of toxic runoff on over 600 polluted waterways throughout the state and must install new, modern stormwater controls if necessary.

### WHERE CLF STANDS

CLF believes that holding major polluters like MassHighway accountable for managing polluted stormwater runoff effectively is crucial to ensuring that the region's waterways remain safe and healthy. In addition, when possible, toxic runoff should be managed using green infrastructure methods that have additional benefits for the environment.

### [ GLOSSARY ]

**STORMWATER RUNOFF** / rainwater that collects on surfaces such as roads and parking lots, mixes with oil, salt, and other pollutants on the ground and then flows into nearby waterways.

**GREEN INFRASTRUCTURE** / methods to manage stormwater runoff that have environmental benefits, such as green roofs, planter boxes and permeable pavement.

Honor Passow with husband Christian  
and sons Fletcher (left) and Glen.  
*Photo by Evy Huppert*



## WHY I GIVE TO CLF...

"Environmental conservation is a tradition in my family. My parents have worked a lifetime to conserve wild lands in New Hampshire, and I witnessed that effort from a young age. Now, my husband Christian and I are instilling those same values in our two sons. At 14 and 10, our sons have grown up seeing that we do things differently than many families. The kids work with us to reduce our resource consumption and purchase only what we need. Our family's most joyous times are spent in New Hampshire's glorious

wild places, hiking, biking, canoeing and cross-country skiing. Our love of nature is the reality that grounds each new step our family takes to reduce our environmental impact.

When I attended my first meeting at CLF over 20 years ago, I realized that policy strategies for environmental conservation are just as important as technology innovations and personal choices. I knew that our family commitment to environmental conservation had to include

community and policy action. My husband agrees. By contributing to CLF, we can support high-quality work that is outside the range of our skills and available time. Our family sees supporting CLF as one important aspect of acting on our sense of responsibility for our environmental impact."

Honor Passow  
Etna, NH  
Member, CLF Advocates Society

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Contact us today to learn more  
about giving to CLF.

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## { JOIN THE ADVOCATES SOCIETY }

CLF established the Advocates Society to recognize the generous individuals who make the commitment to support CLF's work with a gift of \$1,000 or more each year. As a member of the Advocates Society, you will receive special insider updates on CLF's work directly from your

state's leading advocate. Members also receive special recognition in CLF publications and a subscription to Conservation Matters. Your support gives the environment a voice in the courtroom and in the statehouse. Join the Advocates Society today!



## JANE WEST

Staff Attorney, CLF Maine



Jane's love of the outdoors and penchant for New England's changing seasons and unspoiled landscapes took her from Florida to Maine, where she joined CLF in October 2009. Prior to CLF, Jane was a founding partner of the Florida-based public interest environmental law firm of Collins & West, P.A., where she represented not-for-profit environmental organizations in land use and environmental disputes.

### 1 What drew you to a career in environmental advocacy?

In law school, my mentor gave me free reign to represent a farmer in Central Florida who was trying to stop an 11,000 acre housing development from being built. I tried the case solo and won on appeal. That victory got me hooked.

### 2 Why did you decide to make the move from Florida to New England?

Litigating environmental and land-use cases in Florida, I learned about the sprawl, unchecked growth and irresponsible development in that area. I knew that was something that I would never want my kids to grow up with. When my oldest son was born, my husband and I started the search for a place that would reflect our values and love of the outdoors. I lived in New Hampshire for a year growing up, and I loved the four seasons, I loved skiing. I wanted to return to New England, and Maine seemed like a great fit.

### 3 You have two young boys. How do they impact the way you view your work?

Being a parent is an inherent call to action. You can't divorce yourself from the reality that a lot needs to be done so your children will be able to enjoy what you take for granted. I'm proud that I have the opportunity to preserve our environment for their generation.

### 4 What are the biggest environmental challenges facing Maine right now?

Transportation is a big one. Automotive emissions account for 40 percent of our emissions in Maine, and a lot of that is attributable to single occupancy vehicles and a lack of transit options. The ZOOM bill to expand regional bus service has catapulted transit issues to the forefront of the legislature. Even though they voted against it, the transportation committee recognized that this bill really got the conversation going in terms of awareness at the legislative level about transit needs. We hope to build on that momentum.

### 5 What have you observed to be the biggest differences in how Mainers and Floridians relate to their environment?

Florida's culture, infrastructure and way of life are very dependent on a man-made appliance—the air conditioner. Over time, the prevailing mindset in Florida has become to keep people indoors and pave over the very landscape that made the state unique. By contrast, the value of Maine's clean environment, both aesthetically and financially, resonates powerfully with lobstermen, hunters and hikers alike. Immersing yourself in the natural environment on a consistent basis is critical to understanding and appreciating it, and Mainers really seem to understand that. It's refreshing.

*Photo credit: Leslie Boudreau*



# AROUND CLF

## MAINE

- As a result of conflict of interest concerns raised by CLF and others, Department of Environmental Protection Commissioner Darryl Brown resigned from the position on April 27.
- CLF Maine welcomes Ruth Tinsley as office manager.

## MASSACHUSETTS

- Dominion confirmed on May 12 that it will shut down Salem Harbor Station power plant in Salem, MA as of June 2014. Two of the plant's smaller coal units will shut down this year.
- On May 11, CLF received an Environmental Merit Award from EPA for reducing discharge of heated water from the GenOn Kendall Cogeneration Plant in Cambridge.
- CLF Ventures has released a resource guide about land-based wind energy in partnership with the Massachusetts Clean Energy Center. The guide aims to help local decision-makers navigate the complex issues involved in siting wind projects.

- CLF Healthy Communities and Environmental Justice Director Melissa Hoffer was elected to represent the Transportation Choices caucus of the Sustainable Communities Consortium led by the Metropolitan Area Planning Council.
- CLF welcomes Dean Harvey as bookkeeper, based in CLF's Boston office.
- CLF and CLF Ventures welcome Liz Carver as director of the Environmental Insurance Agency (EIA).

## NEW HAMPSHIRE

- At CLF's urging, on April 6 EPA issued an administrative order requiring Grimm Industries to clean up toxic stormwater discharges to the Piscataqua River.
- CLF Clean Energy and Climate Change Director N. Jonathan Peress was re-appointed as the chair of the American Bar Association's Air Quality Committee for the 2011-2012 year.
- CLF New Hampshire welcomes Christophe Courchesne as staff attorney.

## RHODE ISLAND

- CLF Rhode Island Staff Attorney Jerry Elmer was appointed to the Senate Study Commission on Sustainable Transportation Funding.

## VERMONT

- On May 20, Governor Shumlin announced that the state will not build the Circ Highway and will focus instead on alternative transportation solutions for Vermont.
- On March 31, CLF Vermont and Clean Water and Healthy Forests Director Chris Kilian received the Anne M. Blackburn Award from the Charles River Watershed Association for his work to improve the Charles and its watershed.

## REGIONAL

- On April 20, CLF and like-minded colleagues launched Talking Fish, a new blog dedicated to sustainable fishing in New England. Check it out at [www.talkingfish.org](http://www.talkingfish.org).

## EARTH DAY CHALLENGE: WE DID IT!

Thanks to your generosity, we're happy to report that we met our \$41,000 Earth Day Challenge goal. Your support will enable us to work twice as hard towards our goal of making New England a better place to

live, work and play. So, thank you, for all that you do to support CLF. Together, we will ensure a thriving New England, for generations to come.

# CONSERVATION MATTERS

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## LETTER FROM THE PRESIDENT



Dear CLF Friends,

Whether you love to boat or fish, bike or hike, summer in New England has something for everyone. In those few precious months when we truly become one with our environment, we can appreciate its tremendous gifts and contemplate its many vulnerabilities. This is especially true of our oceans.

New England's coast is a magnet in summer for millions of people from here and away. From Maine to Rhode Island, our coastal communities come alive, feeding the motels and seafood shacks, ice cream shops and arcades. What would happen to New England if our oceans were compromised?

More than thirty years ago, CLF took on the federal government to block oil and gas drilling off of our shores. Since then, there have been periods of rela-

tive security, but the pressure to drill always looms. Just last month, in the face of escalating gas prices, a bill was introduced to open up vast new tracts of U.S. ocean to oil drilling, including New England's ocean. The bill was defeated, thankfully, but three of our New England senators voted in favor of it. And that's just one of the threats our oceans face. Pollution and climate change top the list. But, our oceans' potential for food, mining, transportation and energy production could also be their peril if we don't apply the discipline of balancing protection with development the way we have done on land for generations. In honor of National Oceans Month, our cover story looks at innovative solutions that are making real strides toward lasting ocean protection. Chances are you will visit the coast at least once this summer; I hope you will take a moment and appreciate one of our region's greatest gifts.

Best,

John Kassel

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