

## CHAPTER 7

### KEY STATE AGENCIES

The Massachusetts Coastal Zone Management Program is a "networked program". This term means that CZM has entered into Memoranda of Understanding (MOAs) with state agencies, including the Departments of Environmental Protection, Environmental Management, Fisheries and Wildlife, and Food and Agriculture, the Metropolitan District Commission, the Energy Facilities Siting Board, and the Executive Office of Transportation and Construction to ensure that state regulations, permits, and construction projects are consistent with CZM's program policies. In addition, CZM works closely with these agencies to develop state coastal policy and to implement state coastal programs. The following is a description of these agencies and programs.

#### Executive Office of Environmental Affairs (EOEA):

EOEA is a cabinet-level agency within the government of the Commonwealth. Its primary mission is to implement and oversee state policies that preserve, protect, and regulate the natural resources and environmental integrity of Massachusetts. In addition to management of coastal resources, the priorities of the Secretariat are:

**Community Preservation:** The Massachusetts Legislature enacted the Community Preservation Act (CPA) in 2000. Under the CPA, municipalities may elect to pass a surcharge on the local property tax, up to a maximum of 3% of the current tax rate, to fund open space, historic preservation, and affordable housing projects. The state matches a portion of the funds raised by the surcharge. EOEA is providing technical assistance, in the form of buildout maps and analyses, for every Massachusetts municipality.

**Open Space Protection:** Between 1990 and 1998, EOEA protected more than 100,000 acres of open space through direct purchases, grants to cities and towns, and conservation restrictions. The Governor set a new goal to protect an additional 200,000 acres of open space by the year 2010. The state is well on its way to meeting that goal: by summer, 2001, more than 100,000 new acres of land will have been protected since 1998.

**Biodiversity:** In an effort to minimize the effects of development of wildlife habitat, EOEA provides education and information about biodiversity, land protection and restoration, and community preservation. Biodiversity Days, an annual event, was started in 2000 to raise public awareness and documentation of biodiversity in the state.

**Pollution Prevention:** A major focus of EOEAs pollution prevention efforts has been the elimination of mercury releases to the environment. The Massachusetts Zero Mercury Strategy includes education, new statutes and regulations, and cooperative initiatives with industry. In other initiatives, the state is taking steps to reduce power plant emissions and emissions from urban transportation.

**Watershed Initiative:** For several years EOEAs has implemented the Watershed Initiative, providing staffing, funding, and technical expertise to a public/private partnership in each of the states watersheds. A priority identified by the Watershed Initiative is maintenance of a safe and sufficient drinking water supply. EOEAs has developed a number of tools for communities to use for the protection of drinking water and of streamflow.

To implement EOEAs mission there are six offices within the Executive Office:

**Massachusetts Environmental Policy Act (MEPA)Unit:** makes project proposals available for agency and public review to ensure that a project proponent has used all practicable opportunities to avoid, minimize, and mitigate environmental damage.

**Coastal Zone Management:** provides policy and technical assistance on coastal management issues to state and federal environmental agencies, municipalities, and the public.

**MassGIS:** the Commonwealths office for the collection, storage, and dissemination of environmental and geographic information.

**Office of Technical Assistance (OTA):** helps manufacturers and industrial facilities, municipalities, schools and hospitals, households and others reduce or eliminate use of toxins and generation of hazardous byproducts.

**Conservation Services:** provides technical and financial assistance to municipalities, farmers and others for the preservation and management of open space.

**Massachusetts Environmental Trust:** an environmental philanthropy established through the settlement of a federal lawsuit over pollution in Boston Harbor to encourage grassroots and cooperative environmental initiatives.

The five major departments of EOEAs, which are described in more detail below, are:

Department of Environmental Management (DEM).

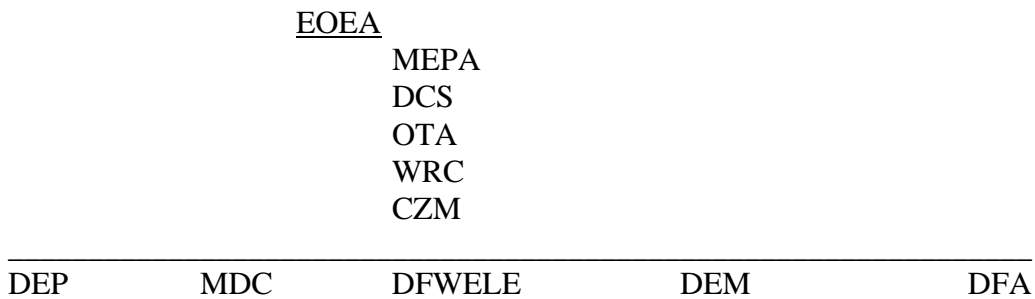
Department of Environmental Protection (DEP).

Department of Fisheries, Wildlife and Environmental Law Enforcement (DFWELE).

Department of Food and Agriculture (DFA).

Metropolitan District Commission (MDC).

The organization of EOEA and its departments is depicted below:



An important role of EOEA, and particularly of the Office of Coastal Zone Management, is one of coordinating the implementation of the state's coastal program with the various departments and divisions within EOEA, the Energy Facility Siting Board and the Executive Office of Transportation and Construction. The basic coordination mechanisms are summarized below:

**The Secretary's Regulations:** pursuant to Chapter 21A (found at Appendix B) the Secretary has promulgated regulations adopting the CZM program as state environmental policy in the coastal zone (Appendix C: 301 CMR 20.00: Coastal Zone Management Program). The Commissioners of the five departments within EOEA have recognized this authority in their memoranda of understanding with the Secretary (see Appendix E: Memoranda of Understanding). This regulation binds all EOEA agencies (not all state agencies) to carry out the CZM plan in full, in granting permits, in disbursing funds, or in conducting any other kind of activity in the coastal zone.

**Memoranda of Understanding with environmental and other agencies:** the regulations operate to make the program legally binding upon the five departments within EOEA. The memoranda of understanding, however, ensure that the Secretary is not exceeding his/her authority under Section 21A by recognizing the program as a statement of state environmental policy and requesting the Secretary to jointly implement the program. Furthermore, the memoranda spell out additional steps, particularly the incorporation of rules and

regulations promulgated by the Secretary, and other regulatory measures that they will take to implement the program.

**Conflict resolution:** the Secretary of EOEA has the authority to resolve administrative or jurisdictional conflicts between EOEA agencies (not all state agencies). Any time a conflict arises, including a permit decision by personnel of EOEA, a statement of issues may be prepared, a public notice issued and formal proceedings held. The conflict resolution mechanism will be employed, for example, where actions by one agency impinge upon the statutory responsibilities of another, or where there are issues concerning how to fund or enforce certain programs. This provision is rarely relied on due to the cooperative relationship between agencies.

Massachusetts Environmental Policy Act (MEPA) Unit: The Massachusetts Environmental Policy Act (M.G.L. c 30, §§61-62H and 301 CMR 11.00) was enacted in 1977. The statute requires that all agencies of the commonwealth determine the impact on the natural environment of all works, projects, or activities that they conduct, permit, fund, or transfer land to, and that all practicable means and measures be taken to avoid or minimize the potential environmental harms that have been identified. The Secretary of Environmental Affairs oversees this process. The MEPA review provides an opportunity for public review and comment, and allows regulatory agencies to gather the environmental information that they will need to permit the proposed activity.

CZM provides comments on projects in or affecting the coastal zone. CZM recommends project changes, which may minimize impacts or improve the benefits of a proposed activity, and it notifies applicants if the proposed project may be inconsistent with CZM's program policies.

Massachusetts Department of Environmental Management (DEM): DEM is the Commonwealth's primary land management and natural resource planning agency. As steward of the state's vast forest and park system, DEM works to balance its dual objectives of protecting irreplaceable natural resources and providing public recreation. Many DEM properties, including state piers, several Beach Reservations and Heritage State Parks, and some of the Boston Harbor Islands, are located in the Massachusetts coastal zone.

DEM provides resource management services within the Massachusetts coastal zone, through the following programs:

- **Areas of Critical Environmental Concern (ACECs) (M.G.L. c. 21A, § 2(7) and 301 CMR 12.00):** ACECs are areas that contain natural and cultural resources of state-wide significance and are therefore subject to higher standards of environmental protection than other areas. There are 14 coastal ACECs in the

state. Any activities proposed in an ACEC that must have a state license or permit must file with MEPA. A list of coastal ACECs is found at Appendix G.

- **Ocean Sanctuaries Act (M.G.L. c. 132A, §§ 12A-16F, 18 and 302 CMR 5.00):** The coast of Massachusetts is divided into five ocean sanctuaries that extend from the shore to the limit of state waters, generally 3 miles from shore. Only the waters between Nahant and Marshfield are excluded from the Massachusetts ocean sanctuary system. Under this program, certain activities that may affect the ocean, seabed, or subsoil of the seabed are prohibited. Examples of prohibited activities include mining or drilling for minerals, oil or gas; placement of most structures on or under the seabed; and the discharge of commercial waste. Ocean sanctuary designation generally does not, however, place restrictions on projects under DEP Waterways (Chapter 91) jurisdiction.

DEM jointly administers the Waquoit Bay National Estuarine Research Reserve (WBNERR) with the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management. The Reserve, which entered the federal Estuarine Reserve system in 1988, is located on south coastal Cape Cod in an area that is representative of the Northern Virginian biogeographic region. WBNERR encompasses 2,500 acres of open water, barrier beaches, marshland, and upland, all of which provide opportunities for scientific study of diverse marine ecosystems. A multi-year Land Margin Ecosystem Research study will look at the effects of varying levels of development on sections of the Reserve.

Massachusetts Department of Environmental Protection (DEP): The DEP is responsible for protecting human health and the environment through the administration of the state's environmental regulatory programs for the protection of water, air, and land resources. Programs have been instituted to prevent waste, protect wetlands and coastal resources, and clean up hazardous spills and contamination.

Among DEP's programs and laws of significance to the state's coastal program are:

- **Wetlands Protection Act (M.G.L. c. 131, § 40 and 310 CMR 10.00):** Under the Wetlands Protection Program, local Conservation Commissions regulate and permit developments that may alter wetlands. DEP 1) reviews project proposals that have been appealed and issues Superceding Orders of Condition; 2) reviews requests for Variances under the WPA, and 3) issues 401 Water Quality Certifications for projects requiring a federal permit or that dredge more than 100 cubic yards of material.
- **Waterways Regulation Program (M.G.L. c. 91 and 310 CMR 9.00, and 314 CMR 9.00):** The Waterways Program administers the Public Waterfront Act, better known as Chapter 91, which provides protection to tidelands, rivers, and

great ponds, and helps to assure both reasonable public access to, and water dependent uses of public trust lands. To implement this authority, the Waterways Program 1) reviews projects proposed in Designated Port Areas to ensure that projects are water dependent maritime industrial uses or supporting uses; 2) licenses projects proposed in public trust lands that are primarily filled or flowed tidelands, great ponds, and rivers and streams; 3) permits dredging of over 100 cubic yards of material.

Other DEP statutes and regulations of significance to the Massachusetts coastal program include:

**Massachusetts Clean Waters Act (M.G.L. c. 21, §§ 26-53 and 314 CMR 3.00-7.00, 15.00):** Surface and Groundwater Quality Standards, 401 Water Quality Certification Program.

**State Environmental Code (M.G.L. c. 21A, § 13 and 310 CMR 11.00, 15.000):** Title 5 Septic System Regulations.

**Massachusetts Contingency Plan (M.G.L. 21E, c. 111, § 160 and 310 CMR 40.0000):** The Bureau of Waste Site Cleanup is responsible for the Commonwealth's Emergency Response Program, that provides assistance in the event of any oil or hazardous material spill, and for all waste site assessment and cleanup programs.

**Hazardous Waste Management Act (M.G.L. c. 21C, §§ 4, 6, c. 21E, § 6 and 310 CMR 30.00):** Administered by the DEP Division of Hazardous Waste, the program develops and enforces regulations for the safe management, recycling and disposal of hazardous waste, including waste oil.

**Massachusetts Clean Air Act (M.G.L. c. 111, §§ 142A-142N and 310 CMR 7.00):** The DEP Division of Air Quality Control implements programs and enforces regulations to prevent and abate air pollution. The division regulates contaminants that contribute to six principal air pollutants, including ground level ozone, particulate matter, carbon monoxide, nitrogen dioxide, lead, and sulfur dioxide.

Before completing its federal consistency review, CZM works with DEP permitting staff to ensure that any of the licenses and permits issued under the programs listed above are consistent with state coastal policies.

Massachusetts Department of Fisheries, Wildlife and Environmental Law Enforcement (DFWELE): DFWELE is responsible, through its four divisions, for the management and conservation of the state's fresh and saltwater fisheries and its wildlife including rare and

endangered species. In addition to enforcing wildlife laws and regulations, the Department's Riverways Program works to involve citizens in river protection efforts.

DFWELE programs that are important to the management of the coastal zone include:

- **Marine Fisheries (M.G.L. c. 130, §§ 1-104 and 322 CMR 3.00-12.00, 14.00):** The Division of Marine Fisheries (DMF) manages the fish and shellfish resources of the Commonwealth. DMF reviews projects in the coastal zone and recommends measures to reduce, minimize, and/or mitigate impacts to fisheries resources. When appropriate, DMF imposes a project window during which work in the water cannot be performed to allow for fish migration, fish spawning, and shellfish spawning. DMF may also require mitigation for adverse impacts to fisheries, for example, seeding unproductive shellfish beds to compensate for project-caused damage to productive shellfish beds. In addition to its regulatory responsibilities, DMF conducts research on matters that affect sustainability of fisheries at two laboratories in Gloucester and Sandwich and at the lobster hatchery on Martha's Vineyard.
- **Massachusetts Endangered Species Act (M.G.L. c. 131A and 321 CMR 8.00, 10.00):** The Natural Heritage Program maintains an inventory of state-listed rare and endangered species and an atlas of known rare and endangered species habitats in the Commonwealth, and establishes rules and prohibitions regarding activities which take rare or endangered species and/or alter their habitat. Coastal project proponents must examine the atlas to determine whether or not the proposed activity has the potential to affect rare and endangered species or habitat, and take appropriate action to protect the resources from endangerment. Copies of the habitat atlas can be obtained from the Natural Heritage Program or from the State House Book Store in Boston.
- **Public Access Board (M.G.L. c. 21, § 17A):** this Board is charged with acquiring and developing public access points to state waters at great ponds, rivers, and coastal waters. The Board constructs trails and paths for hiking, parking, and docks and ramps to facilitate recreational activities. The Board's acquisition, construction and maintenance program is funded by the gasoline fee on watercraft and registration fees from recreational vehicles.
- **Clean Vessel Act (33 U.S.C. §§ 1322 *et seq.*):** this federally funded, state-administered program provides grants to municipalities and organizations to develop viable alternatives to the overboard disposal of recreational boat sewage. In Massachusetts, the grants have been used primarily to fund pumpout boats to remove sewage from boat holding tanks and disposal of the waste material in the municipal sewer system.

Metropolitan District Commission (MDC): The MDC maintains portions of the Metropolitan Boston infrastructure, including water supply, parkways and bridges, parks and other recreational facilities, and flood control systems. The MDC's Division of Recreational Facilities and Programs and the City of Boston are engaged in "Back to the Beaches", a program to restore century-old recreational beaches along the Boston shoreline. In addition, the MDC maintains popular beaches and public boat landings from Nahant south to Hull. The Commission's Division of Watershed Management operates MDC watersheds and reservoirs at Quabbin and Wachusett, supplying drinking water to the entire metropolitan Boston region. Its Division of Central Services operate and maintain dams and fish ladders within their system.

CZM staff members have provided technical assistance to the MDC on a number of projects, for example CZM's coastal geologists have helped design coastal engineering structures to protect MDC's many properties; the Boston Harbor Regional Coordinator assisted with planning and permitting of the "Back to the Beaches" program; and CZM's North Shore regional staff have helped to develop a management plan for the Rumney Marshes ACEC, much of which is located on MDC property.

Massachusetts Department of Food and Agriculture (DFA): DFA is responsible for the supporting the long-term viability of Massachusetts agriculture, with the goal of making the state's agricultural businesses economically viable and environmentally sound. The Department and the Coastal Zone Management Program work together primarily in:

- **Aquaculture:** DFA, through its Aquaculture Coordinator's Office, promotes the implementation of aquaculture by implementing the *Massachusetts White Paper and Strategic Plan*, permit and technical assistance, aquaculture information services, coordination of the Massachusetts regional aquaculture centers, aquaculture industry promotion and marketing, and administration of the Massachusetts Aquaculture Grants Program.
- **Nonpoint Source Pollution Control:** CZM and DFA are jointly administering a program of grants to farmers to develop and implement non-point source controls on agricultural land.

Massachusetts Division of Energy Resources (DOER): The Energy Facilities Siting Board (EFSB) has jurisdiction over the siting of electric generating, gas, and oil facilities. The Council is composed of the heads of four state cabinet level departments (Consumer Affairs, Environmental Affairs, Administration and Finance, and Manpower Affairs), and five other individuals appointed by the Governor.

Executive Office of Transportation and Construction (EOTC): The Executive Office of Transportation and Construction develops, implements, and coordinates transportation policies

and projects statewide. EOTC oversees and supervises planning, design, construction and maintenance of public transit services, general aviation programs, and the state and local highway network within its jurisdiction. EOTC are the Massachusetts Highway Department, the Massachusetts Bay Transportation Authority, the Massachusetts Port Authority, the Massachusetts Turnpike Authority, and the Regional Transit Authorities. Within the coastal zone, the Secretariat is responsible for ensuring that its transportation programs are coordinated and conducted consistently with the CZM Program.

CZM provides technical assistance to EOTC staff in selecting sites for its grant program to promote water-based transportation. CZM's wetlands staff assisted the Massachusetts Highway Department with the preparation of the *Facility Environmental Handbook*, which identifies best environmental management practices for highway construction and maintenance. The stormwater management program outlined in this handbook is an integral part of CZM's Nonpoint Source Pollution Control Program.