Please note: *The following copies of the regulations are provided for informational purposes only. The* ***official version*** *of the Code of Massachusetts Regulations (CMR) is available in print form at the State Bookstore at http://www.sec.state.ma.us/spr/sprcat/catidx.htm. If you have any questions or concerns, please contact the Massachusetts Office of Coastal Zone Management (CZM) at czm@state.ma.us or (617) 626-1200.*

301 CMR 20.00: COASTAL ZONE MANAGEMENT PROGRAM

Section

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20.01: Authority and Purpose

(1) Authority. 301 CMR 20.00 is promulgated by the Secretary of the Executive Office of Energy and Environmental Affairs under the authority of M.G.L. c. 21A, §§ 2 and 4A and St. 1983, c. 589, § 30 and pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) and implementing regulations at 15 CFR §§ 923 and 930.

(2) Purpose. 301 CMR 20.00 is promulgated to carry out the responsibility of the Office of Coastal Zone Management under M.G.L. c. 21A, § 4A to secure for the inhabitants of the Commonwealth the objectives and benefits of the federal Coastal Zone Management Act 16 U.S.C. 1451 *et seq*. The general purposes of 301 CMR 20.00 are to:

(a) establish the Massachusetts Coastal Program Policies as official statements of state environmental policy governing coastal resources and uses as part of the Massachusetts Coastal Zone Management Program;

(b) ensure that implementation of the Massachusetts Coastal Zone Management Program by the Executive Office of Energy and Environmental Affairs, its Office of Coastal Zone Management, and its departments and divisions are conducted and coordinated in accordance with M.G.L. c. 21A, §§ 2(29) and 4A; and

(c) allow for analysis and evaluation of projects in the Coastal Zone for which consistency review with Coastal Program Policies is authorized.

20.02: Definitions

Coastal Atlas means Volume II (Chapter 5) of the 1977 Massachusetts Coastal Zone Management Program and Draft Environmental Impact Statement.

Coastal Effects means any reasonably foreseeable effects on any land or water use or natural resource of the Coastal Zone resulting from a Federal Action, and as further defined in the Federal Consistency Regulations, 15 CFR 930, Subparts A through I. Coastal Effects is synonymous with "effects on any coastal use or resource".

Coastal Program Policies means the written descriptions of policy, including both summary statements and expanded policy context and elements, as set forth in the latest edition of the CZM Policy Guide, together with the substantive content of all statutes, regulations, and other legal authorities serving as the basis for such policy descriptions and as identified in the CZM Policy Guide. Coastal Program Policies is synonymous with CZM policies.

Coastal Zone means the coastal zone of Massachusetts established pursuant to the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*). The coastal zone is that area of waters and adjacent shorelands bounded by the outer seaward limit of the Commonwealth's title and ownership under M.G.L. c. 1, § 3; the northern boundary between the Commonwealth and New Hampshire and the southern boundary between the Commonwealth and Rhode Island, as established by interstate compact, agreement, judicial decision, or as otherwise provided by law; and the inland line described and delineated in the CZM Policy Guide and the Coastal Atlas, as may be amended. The coastal zone includes all of Barnstable County and all islands contained within the delineated area, including specifically Martha's Vineyard, Nantucket, and the Elizabeth Islands. It excludes lands subject solely to the discretion of or which is held in trust by the federal government, its officers or agents.

Coastal Zone Management Act (CZMA) means the Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*).

20.02: continued

Coastal Zone Management Program means the comprehensive documentation that sets forth the objectives, policies, standards, guidelines, designations, rules, regulations, executive orders, interagency agreements, procedures, and other instruments of law and administration serving to guide public and private uses of lands and waters in or affecting the Coastal Zone, and which has obtained written approval from the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration, United States Department of Commerce. Such documentation includes, but is not limited to, the latest edition of the CZM Policy Guide, the Coastal Atlas, and the 1978 Final Environmental Impact Statement, except for any content that has been superseded by program implementation documentation approved subsequently by OCRM. Coastal Zone Management Program is synonymous with CZM Program and the state Coastal Management Program as defined by the federal Coastal Zone Management Act.

CZM Office (also CZM) means the Massachusetts Office of Coastal Zone Management (CZM), established pursuant to M.G.L. c. 21A, § 4A.

CZM Policy Guide, or the Massachusetts Office of Coastal Zone Management Policy Guide means the official document, containing the official policies of the Commonwealth's Coastal Management Program and explaining the federal consistency review process in Massachusetts as published by the CZM Office and approved by OCRM.

EEA means the Massachusetts Executive Office of Energy and Environmental Affairs, established pursuant to M.G.L. c. 21A.

Enforceable Policies means the Coastal Program Policies or portions thereof that are enforceable for federal consistency purposes. Pursuant to the CZMA and Federal Consistency Regulations, 15 CFR 930, Subparts A through I, such Enforceable Policies are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions that have been incorporated into the federally-approved Coastal Zone Management Program and by which the Commonwealth of Massachusetts exerts control over private and public land and water uses and natural resources in its Coastal Zone. Enforceable Policies also may be based on Gubernatorial Executive Orders, which remain in full force and effect except upon formal rescission by the Governor, and on any provisions of federal law under which the Commonwealth exercises delegated authority to control land and water uses in state or federal waters. The Enforceable Policies are identified as such in the CZM Policy Guide. Enforceable Policies rely solely on existing legal authorities and shall not be construed as an expansion of state authority beyond existing law.

Environmental Monitor means the semi-monthly publication of proposed actions and projects that require filings with the Secretary pursuant to M.G.L. c. 30, §§ 61 through 62H and 301 CMR 11.00: *MEPA Regulations*.

Federal Action means a federal action subject to the federal consistency requirement of 16 U.S.C. 1451 *et seq.* and as further defined in the Federal Consistency Regulations, 15 CFR 930, Subparts A through I. Such actions include Federal Development Projects and other Federal Agency Activities; Federal License or Permit Activities; Outer Continental Shelf Exploration, Development, and Production Activities; and Federal Assistance to State and Local Governments.

Federal Consistency Regulations means the regulations of the National Oceanic and Atmospheric Administration (NOAA) entitled Federal Consistency With Approved Coastal Management Programs, 15 CFR 930, Subparts A through I.

MEPA means the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62H and implementing regulations at 310 CMR 11.00: *MEPA Regulations*

Network Agency means any office, department, division, or other unit of EEA that carries out projects in the Coastal Zone, has legal authority and/or programmatic responsibility for implementation of any Coastal Program Policies, or is otherwise identified in the federally-approved CZM Program.

20.02: continued

OCRM means the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

OCS Plan means a plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. § 1331 *et seq.*) and regulations, which is submitted to the Secretary of the Interior or its designee and which describes in detail federal license or permit activities.

Secretary means the Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs or his or her designee.

20.03: Implementation of the Coastal Zone Management Program

(1) State Coastal Policy. In accordance with M.G.L. c. 21A, § 2, the Coastal Program Policies shall serve as state environmental policy governing coastal resources and uses. Recognition of these Policies as the official coastal policy of the Commonwealth is contained in Memoranda of Understanding between the CZM Office and other state agencies as part of the state's federally-approved Coastal Zone Management Program.

(2) Role of the CZM Office. The CZM Office is the lead for administration of the Massachusetts Coastal Zone Management Program and shall enforce the Coastal Program Policies and other elements of the Coastal Zone Management Program in cooperation with other parties in accordance with 301 CMR 20.03(3) and (4). The CZM Office shall carry out reviews of projects in or affecting the coastal zone for which consistency with Coastal Program Policies is authorized and may recommend alternatives or changes to such projects in order to achieve consistency with any Coastal Program Policy.

(3) Role of Network Agencies. In accordance with M.G.L. c. 21A, § 2(29), Network Agencies shall implement the Coastal Zone Management Program consistent with their statutory responsibilities. In particular, all regulations, standards and criteria, administrative procedures, and other activities shall be developed and applied in a manner that is consistent to the greatest extent possible with the Coastal Zone Management Program and Coastal Program Policies, in consultation with the CZM Office and in accordance with 301 CMR 20.03(3)(a) through (d):

(a) Any Network Agency may enter into a Memorandum of Understanding (MOU) with the CZM Office and/or the Secretary and any other such Agency in order to jointly implement the Coastal Zone Management Program. If expressly provided in any such MOU, the Network Agency shall provide the CZM Office, upon its written request, with legal standing in any agency proceedings affecting implementation of the Coastal Zone Management Program or the Coastal Program Policies.

(b) Network Agencies whose statutes and regulations are identified in the CZM Policy Guide as the legal authority underlying one or more Enforceable Policies, as defined in 301 CMR 20.02, shall coordinate with the CZM Office to ensure early and effective interagency cooperation, including, but not limited to, the opportunity for the CZM Office to participate in public hearings and meetings or deliberations with project proponents and to participate in a timely manner in the development of draft decisions.

(c) All Network Agencies shall periodically review and, if necessary, promulgate amendments to regulations, administrative procedures, standards and criteria incorporating the Coastal Program Policies and other relevant elements of the Coastal Zone Management Program, to the extent permissible by law.

(d) In the event interagency consultation fails to resolve disagreements that may arise between two or more EEA agencies regarding implementation of the Coastal Zone Management Program, such agencies shall seek the assistance and direction of the Secretary in accordance with the provisions of M.G.L. c. 21A, § 4 governing mediation of administrative and jurisdictional conflicts within EEA.

(4) Consultation and Coordination Outside EEA. The CZM Office will consult and coordinate with local governments; inter state, regional, and area-wide agencies; and other non-EEA agencies with jurisdiction over coastal uses or resources to ensure the effective participation of such other units of government in Coastal Zone Management Program implementation.

20.04: Consistency Review of Federal Actions with Coastal Effects

(1) Jurisdiction. The Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*) requires all Federal Actions with reasonably foreseeable effects on any land or water uses or natural resources of a state's coastal zone to be consistent with the enforceable policies of the approved Coastal Zone Management Program for that state. In accordance with applicable provisions of the Federal Consistency Regulations, 15 CFR 930, Subparts A through I, the CZM Office may review such Federal Actions with coastal effects for consistency with the Enforceable Policies, if such actions occur in the Coastal Zone, in Massachusetts coastal watersheds, in lands or waters of adjacent states, or in federal lands or waters. Except as may otherwise be provided in the Federal Consistency Regulations, the CZM Office may carry out such review without further approval from OCRM or other federal agency if the Federal Action has been specifically identified and listed in the CZM Policy Guide as having Coastal Effects.

(2) Conduct of Consistency Reviews. The CZM Office will review Federal Actions subject to the requirement of consistency with Enforceable Policies. Where appropriate, to avoid additional review of actions with negligible environmental impact, informed in part by established environmental review thresholds, such as those under MEPA, the CZM Office will cooperate with federal regulatory agencies to incorporate consistency review into the joint inter-agency review of general permits, provided that the coastal effects of projects (including cumulative effects) eligible for such permits are satisfactorily addressed in conditions stipulated by the federal agency for purposes of a general concurrence. Where individual reviews for consistency are carried out, the CZM Office shall act in accordance with all applicable provisions of the Federal Consistency Regulations, 15 CFR 930, Subparts A through I, and in conjunction with the following supplemental provisions:

(a) The CZM Office shall provide an opportunity for public participation in any federal consistency review it conducts, which will include CZM's notice to the public of commencement of review and opportunity for public comment as provided electronically in the Environmental Monitor and, as defined in the CZM Policy Guide, in appropriate local newspapers. CZM, at its discretion, may hold a public hearing. If a public hearing is conducted in the locality or region likely to be affected by the Federal Action in question, the notice(s) shall announce the time(s) and place(s) that such hearing(s) will be held.

(b) In accordance with St. 1989, c. 716, CZM shall refer all consistency certifications it receives for proposed activities in Barnstable County to the Cape Cod Commission. Such referral will consist of the consistency certification submitted to CZM and the public notice for publication in the *Environmental Monitor*. The referral will be sent to the Cape Cod Commission's Executive Director via electronic mail with delivery confirmation before the commencement of the public comment period. Within the comment period stipulated in the public notice, the Cape Cod Commission will notify CZM in writing of any objections it may have to a consistency certification where the Commission finds inconsistencies between the proposed activities and the Cape Cod Commission's Regional Policy Plan and local comprehensive plans certified by said Commission. CZM shall take into account elements of those objections by the Commission that are directly related to the Enforceable Policies. Any conflict between CZM and the Commission shall be referred to and resolved by the EEA Secretary.

(c) Pursuant to applicable provisions of the Federal Consistency Regulations, 15 CFR 930, Subparts A through I, necessary data and information to be submitted with a consistency certification shall include all of the applicable data and information necessary for the commencement of federal consistency required by 15 CFR 930.58 and as specifically described in the CZM Policy Guide has been received by CZM.

(d) Pursuant to applicable provisions of the Federal Consistency Regulations, 15 CFR 930, Subparts A through I, the CZM Office may object to the consistency certification if any application for a specified state or local permit is denied, or if the applicant has failed to provide copies of final decisions on all applications identified as necessary data and information pursuant to 301 CMR 20.04(2)(d). CZM may stipulate conditions as may be necessary to achieve consistency with Enforceable Policies pursuant to provisions of the Federal Consistency Regulations. In the event an applicable plan, project proposal, or application is not modified accordingly, such conditional concurrence shall be treated as an objection to the Federal Action in question.

20.99: Severability

If any section or clause of 301 CMR 20.00 is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of 301 CMR 20.00 shall not be affected thereby.

REGULATORY AUTHORITY

301 CMR 20.00: M.G.L. c. 21A §§ 2, 4A; St. 1983, c. 589; 16 U.S.C. § 1451 *et seq.*; 15 CFR 923 and 15 CFR 930.

(PAGES 159 THROUGH 174 ARE RESERVED FOR FUTURE USE.)