

HOUSE No. 883

By Mr. Turkington of Falmouth, petition of Eric Turkington and Mary E. Grant relative to the protection of the coastal waters and the ocean environment in the Commonwealth. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO OCEAN PROTECTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. General Provisions.
- 2 The General Court finds and declares all of the following:
- 3 (a) Coastal population growth and rapid advances in technology
- 4 and commerce have led to a significant increase in the demands on
- 5 the commonwealth's ocean resources.
- 6 (b) The Massachusetts Ocean Management Task Force (2004) and
- 7 United States Commission on Ocean Policy (2004) have docu-
- 8 mented the degraded state of ocean resources and made recommen-
- 9 dations for improved stewardship of state and federal ocean
- 10 resources.
- 11 (c) Current policies and programs of the commonwealth per-
- 12 taining to ocean protection and management must be broadened and
- 13 amended to account for evolving understanding and knowledge of
- 14 ocean ecosystems, changing needs and values, and emerging tech-
- 15 nologies.
- 16 (d) The commonwealth recognizes that commercial and recre-
- 17 ational fisheries are an integral and historic part of our culture and
- 18 contribute substantial benefits to our citizens and communities.
- 19 (e) In fulfillment of the commonwealth's public trust responsibili-
- 20 ties, it shall be the policy of the commonwealth that stewardship of
- 21 the commonwealth's ocean resources be carried out through a coordi-
- 22 nated and comprehensive planning process incorporating the prin-
- 23 ciples of ecosystem based management. The ultimate goals of this
- 24 process shall be to protect, maintain, and restore the common-

25 wealth's ocean resources for their intrinsic value and the benefit of
26 current and future generations.

27 (f) For purposes of this act ecosystem-based management is
28 defined as an integrated approach to management that considers the
29 entire ecosystem, including humans. The goal of ecosystem-based
30 management is to maintain an ecosystem in a healthy, productive
31 and resilient condition so that it can provide the services humans
32 want and need. Ecosystem-based management differs from current
33 approaches that usually focus on a single species, sector, activity or
34 concern; it considers the cumulative impacts of different sectors.¹

1 SECTION 2. Management Goals and Objectives.

2 (a) Decisions affecting coastal waters and the ocean environment
3 shall be designed and implemented to conserve the health and diver-
4 sity of ocean life and ecosystems, allow and encourage those activi-
5 ties and uses that are sustainable, and recognize the importance of
6 aesthetic, educational, and recreational uses.

7 (b) Whenever conflicts arise between and among competing
8 ocean uses, the commonwealth shall give highest priority to
9 improving the quality of coastal waters and the health of marine and
10 avian life.

11 (c) A goal of the commonwealth shall be to improve monitoring
12 and data gathering in an effort to advance scientific understanding of
13 ocean resources.

1 SECTION 3. Massachusetts Ocean Resources Commission.

2 (a) The protection and management of the ocean waters of the
3 commonwealth, within the geographic areas subject to ocean man-
4 agement plans described in Section 6, shall be under the oversight,
5 coordination, and planning authority of the Ocean Resources Com-
6 mission.

7 (b) The Ocean Resources Commission shall of 17 members: the
8 Secretary of Energy and Environmental Affairs who shall serve as
9 chair; 2 members of the Senate, 1 to be appointed by the President of
10 the Senate and 1 appointed by the Minority Leader of the Senate; 2
11 members of the House of Representatives, 1 appointed by the
12 Speaker of the House and 1 appointed by the Minority Leader of the
13 House of Representatives; the directors of the Office of Coastal
14 Zone Management and the Division of Marine Fisheries, or their

¹The definition contained herein is the consensus statement of more than 200 academic scientists published by the Communications Partnership for Science and the Sea. It is compatible with the working definitions of the Pew Oceans Commission and U.S. Commission on Ocean Policy.

15 designees; and the following representatives, to be appointed by the
16 Governor: 1 representative of a commercial fishing organization; 1
17 representative of a recreational fishing organization; 2 representa-
18 tives of environmental organizations; 1 representative of a non-
19 fishing ocean-dependent industry; 3 majors or members of a city
20 council or board of selectmen of coastal municipalities; and 2 direc-
21 tors of regional planning agencies. As the term of a member
22 expires, his successor shall be appointed for a term of 3 years, except
23 that, initially, 6 members shall be appointed for terms of 2 years and
24 3 members shall be appointed for terms of 1 year. The Governor
25 may also fill any vacancy in an unexpired term. The members of the
26 Ocean Resources Commission shall be selected with due regard to
27 coastal geographic distribution.

28 (b) The Office of Coastal Zone Management and Division of
29 Marine Fisheries shall provide technical staff support to the commis-
30 sion.

31 (c) The commission's meetings shall be open to the public.

32 (d) The commission may sponsor conferences, symposia, and
33 other public forums, to seek a broad range of public advice, when
34 establishing priorities for ocean resource protection and manage-
35 ment.

1 SECTION 4. Ocean Science Advisory Council.

2 (a) There shall be an ocean science advisory council, hereinafter
3 referred to as the council, to assist the commission in developing sci-
4 entific information necessary for the development of ocean manage-
5 ment plans. The council shall consist of nine members to be
6 appointed by the Secretary of Energy and Environmental Affairs.

7 (b) The council shall be guided by the findings and recommenda-
8 tions of the Massachusetts Ocean Management Task Force (2004)
9 relative to scientific understanding of ocean resources.

10 (c) The commission shall take into account research findings and
11 recommendations of the council in the preparation and adoption of
12 ocean management plans provided for in Section 6 herein.

1 SECTION 5. Administration of Ocean Sanctuaries.

2 (a) The Ocean Sanctuaries Act (MGL 132A, Section 113, 302
3 CMR 500) is amended to reassign program administration from the

4 Department of Conservation and Recreation to the Office of Coastal
5 Zone Management.

6 (b) The Ocean Sanctuaries Act is further amended to subdivide
7 the Cape and Islands Ocean Sanctuary into the Buzzards Bay Ocean
8 Sanctuary and the Nantucket Sound Ocean Sanctuary. The Buzzards
9 Bay Ocean Sanctuary shall be comprised of all the waters of Buz-
10 zards Bay bordered by the mainland of the commonwealth on the
11 west, Cape Cod and the Elizabeth Islands on the east and the Massa-
12 chusetts and Rhode Island ocean boundary on the south. The Nan-
13 tucket Sound Ocean Sanctuary shall be comprised of all the state
14 waters of Nantucket Sound and Vineyard Sound, bordered on the
15 west by the Elizabeth Islands, on the North by Cape Cod, on the east
16 by Monomoy Island, and on the south by Nantucket Island and
17 Martha's Vineyard Island.

1 SECTION 6. Ocean Management Plans.

2 (a) The commission's oversight, coordination, and planning
3 authority shall be exercised through the promulgation of regional
4 ocean management plans, which shall consist of zoning maps, illus-
5 trations, and other media, setting forth, among other things, the com-
6 monwealth's goals, policies, and standards to ensure effective state
7 stewardship of the living and non-living marine resources held in
8 trust for the benefit of the public.

9 (b) The geographic areas subject to individual ocean manage-
10 ment plans shall include those areas designated as the North Shore
11 Ocean Sanctuary, Essex Ocean Sanctuary, Cape Cod Bay Ocean
12 Sanctuary, and Cape Cod Ocean Sanctuary, as described in the
13 Ocean Sanctuaries Act (Section 13, Chapter 132A); as well as the
14 Buzzards Bay Ocean Sanctuary and Nantucket Sound Ocean Sanc-
15 tuary, as defined in Section 5 (b) of this act. Within six months of
16 the passage of this act, the commission at its sole discretion shall
17 determine the boundaries of the remaining geographic areas in
18 Massachusetts Bay subject to ocean management plans.

19 (c) Ocean management plans may also address activities in adja-
20 cent waters and, to the maximum extent consistent with federal law,
21 shall apply to activities occurring in adjacent federal waters that
22 directly affect the protection and management of resources within
23 state waters.

24 (d) Ocean management plans for the geographic areas described
25 in Subsection (b) shall be consistent with the provisions of the
26 Ocean Sanctuaries Act.

27 (e) Within six months of the passage of this act, the commission
28 in consultation with regional planning agencies shall appoint
29 working groups comprised of members of the general public, the
30 business sector, local, state, regional, and federal officials and other
31 interested groups for each of the geographic areas described in Sub-
32 section (b) to advise the commission on ocean protection and man-
33 agement goals and objectives and strategies.

34 (f) The commission shall ensure that ocean management plans are
35 consistent with local and regional objectives, policies, and plans for
36 the geographic areas covered by said plans.

37 (f) After consulting with the ocean science advisory council and
38 regional working groups and within twenty-four months of the pas-
39 sage of this act, the commission shall prepare draft ocean manage-
40 ment plans for each geographic area.

41 (g) Each ocean management plan shall:

42 1) Take into account the existing natural, social, economic, cul-
43 tural, and historic characteristics of each planning area;

44 2) Protect the public trust;

45 3) Value biodiversity and ecosystem health;

46 4) Identify and describe strategies for protecting special, sensi-
47 tive, or unique estuarine and marine areas;

48 5) Address climate change and sea-level rise;

49 6) Respect the interdependence of ecosystems;

50 7) Coordinate uses that cross international, federal, state and
51 local jurisdictions;

52 8) Foster sustainable uses that capitalize on economic opportu-
53 nity without significant detriment of the ecology or natural beauty of
54 the ocean;

55 9) Encourage and facilitate the development of renewable energy
56 in a manner that is compatible with all other provisions of this act;

57 10) Preserve and enhance public access;

58 11) Support the needed infrastructure for the economy and
59 quality of life for the citizens of the commonwealth, and;

60 12) Encourage public participation in decision-making.

61 (h) Development, implementation and enforcement of an ocean
62 management plan as coordinated by the commission, shall include,
63 but not be limited to, the following elements:

64 1) Setting a baseline assessment of the commonwealth's ocean
65 resources and resource use, in consultation with the ocean science
66 advisory council, that incorporates the best available engineering
67 applications and scientific understanding of marine and ocean
68 resources, including the identification of special, sensitive, or unique
69 estuarine and marine life habitats, through research, mapping, moni-
70 toring, public and agency input and other relevant natural, infrastruc-
71 ture, social, cultural, historic and economic planning information
72 that will serve as the basis for evaluating alternatives and choosing
73 courses of action;

74 2) Establishing an outreach and participation program that shall
75 includes: early and continuing interaction with the public, the busi-
76 ness sector, and other interested groups and local, state, regional, and
77 federal officials; an opportunity for notice of the contents, public
78 comments and public meetings at the local and regional levels, in
79 consultation with regional planning agencies, on a proposed ocean
80 management plan;

81 3) Identifying management measures, including but not limited to
82 use zoning, performance standards, and mitigation requirements as
83 may be applicable to specific geographic areas, to be developed in a
84 manner consistent with applicable state statutes and regulations that
85 control or otherwise affect development or other ocean use in the
86 planning area; including, but not limited to fishing and waterfowl
87 hunting.

88 4) Implementing a specific strategy to ensure effective application
89 of the identified management measures within the planning area in
90 question. Implementation arrangements may include, as appropriate,
91 memoranda of understanding or other instruments of agreement to
92 ensure coordination between the secretary and other relevant state
93 agencies;

94 5) Establishing a time period during which ocean management
95 plans are to remain effective and a proposed date, not to exceed 5
96 years from the date of adoption, on which re-evaluation of the plans
97 will commence for purposes of renewal and amendment. The re-
98 evaluation process shall include, but not be limited to, an opportu-
99 nity for public comments, informational meetings and public

100 hearings, as described in subsection (f). An ocean management plan
101 shall remain in effect until a renewed or amended ocean manage-
102 ment plan is adopted; and

103 6) Creating other such elements as may be considered appropriate
104 by the commission to serve the purposes of this section.

105 (k) The following activities are prohibited between the mean low-
106 water mark and the seaward boundary of the commonwealth:

107 (1) Dumping or discharging commercial, municipal, domestic or
108 industrial wastes in areas designated as an ocean sanctuary, except as
109 may be allowed pursuant to sections 16 and 16A to 16F, inclusive, of
110 chapter 132A and their implementing regulations, as may be
111 amended, and except for the discharge of bait and fish offal custom-
112 arily associated with fishing;

113 (2) Incinerating solid waste material or refuse on or in vessels
114 moored or afloat;

115 (3) Extracting stone, sand, gravel or other minerals, gases or oils
116 from the seabed or subsoil, except for dredging for navigation pur-
117 poses, shore protection, beach restoration or for facilities and activi-
118 ties undertaken or required by a public agency for the purposes of
119 decontamination, response actions, capping or disposal of polluted
120 aquatic sediments, if consistent with any applicable provisions of an
121 ocean management plan;

122 (4) Building or long-term mooring of a structure on the seabed or
123 subsoil in the area designated as the Cape Cod ocean sanctuary,
124 except as allowed in clauses (1) and (4) or subsection (k).

125 (k) In all ocean areas, the following activities are allowed, pro-
126 vided that all applicable requirements of other local, state, and fed-
127 eral laws and regulations are consistent with an applicable ocean
128 management plan:

129 (1) Beach nourishment, channel and shore protection structures
130 and dredging for maintenance and navigational purposes;

131 (2) The operation, maintenance, repair or construction of infra-
132 structure facilities in the transmission or distribution of electricity,
133 natural gas, water or telecommunications services, including
134 pipelines, cables, and conduits, except in the area designated as the
135 Cape Cod ocean sanctuary;

136 (3) Industrial liquid coolant discharge and intake systems, except
137 in the area designated as the Cape Cod ocean sanctuary;

138 (4) Facilities for aquaculture;

139 (5) Moorings, floats and rafts held by bottom anchor for the pur-
140 pose of vessel docking or mooring, and ramps attached thereto;

141 (6) Docks, piers, wharves or other filled or pile-supported struc-
142 tures contiguous with the existing landmass;

143 (7) Environmental restoration or mitigation activities required by
144 certificate of the secretary of environmental affairs;

145 (8) Temporary scientific and educational facilities.

146 (9) Construction or operation of offshore or floating electric gen-
147 erating stations only if specifically allowed for in an ocean manage-
148 ment plan adopted pursuant to this act; and if within the waters
149 adjacent to any municipality with the assent of said municipality's
150 legislative body.

151 (l) Upon adoption of an ocean management plan, no structure, use
152 or activity that could significantly alter the ocean resources of the
153 geographic area established in accordance with this section may
154 occur, except as allowed in subsection (k), and only if that structure,
155 use or activity conforms to all applicable provisions of the ocean
156 management plan for that geographic area. All offices and depart-
157 ments of the executive office of environmental affairs and all other
158 agencies, departments, divisions, units, commissions, boards and
159 authorities of the commonwealth shall enforce laws and regulations
160 within their jurisdiction, conduct regulatory reviews, administer pro-
161 grams, disburse funds, perform or supervise construction activities
162 and otherwise conduct their activities in a manner that ensures con-
163 formance with the applicable provisions of an ocean management
164 plan and this section.

165 (m) The commission shall give notice of and provide interested
166 parties with the opportunity to present data, views or arguments for a
167 period of at least 60 days in regard to each proposed management
168 plan or any proposed amendment thereto or renewal thereof in
169 writing in accordance with section 3 of chapter 30A and shall make
170 such proposed amendments or plans available for a public review
171 and comment period through notice in the Environmental Monitor
172 and at least 1 newspaper of general circulation in the North Shore,
173 South Shore, South Coast, metropolitan Boston, and Cape Cod and
174 the Islands regions of the commonwealth. For a proposed ocean
175 management plan, the commission in consultation with the Massa-
176 chusetts Association of Regional Planning Agencies shall conduct at
177 least one public meeting within each region that would be directly

178 affected by the proposed amendment. At the conclusion of such
179 public process and after consideration of public comments received
180 during the public comment period, the secretary may adopt an ocean
181 management plan or any amendments thereto, and notice thereof
182 shall be published in the next available edition of the Environmental
183 Monitor and the Massachusetts Register. The commission shall file
184 a copy of the ocean management plan or any amendments thereto
185 with the clerks of the house of representatives and the senate, the
186 house and senate committees on ways and means and the joint com-
187 mittee on the environment, natural resources and agriculture at least
188 30 days before the ocean management plan or any amendments
189 thereto are to take effect.

190 (n) The commission shall develop, adopt, and implement ocean
191 management plans for all the geographic areas of the commonwealth
192 pursuant to this act within 36 months of the effective date of this act.

193 (o) Upon adoption, each ocean management plan shall be incor-
194 porated into the Massachusetts Coastal Zone Management Program
195 (Section 4A of Chapter 21A of the General Laws).

196 (p) The commission shall report annually to the joint committee
197 on environment, natural resources and agriculture identifying man-
198 agement measures established and the progress made in creating the
199 ocean management plans mandated by this act, until such time as all
200 such plans are adopted.

1 SECTION 7. Commercial and Recreational Fishing.

2 Any component of an ocean management plan that regulates com-
3 mercial or recreational fishing shall be developed, promulgated and
4 enforced by the division of marine fisheries pursuant to its authority
5 under chapter 130.

1 SECTION 8. Ocean Resources Trust Fund.

2 There shall be established and set up on the books of the com-
3 monwealth a separate fund to be administered by the Secretary of
4 Energy and Environmental Affairs, as trustee, to be known as the
5 Ocean Resources Trust Fund. There shall be credited to such fund:
6 any applicable compensation or mitigation for ocean development to
7 be used for the purposes of ocean resource enhancement or restora-
8 tion; any income derived from the investment of amounts credited to
9 the fund; and any appropriation grant explicitly made to the fund.

10 The priority for use of funds credited to the trust for compensation
11 or mitigation for ocean development projects shall be the restoration
12 or enhancement of marine habitat and resources related to the
13 impacts of any specific project. Amounts credited to the fund shall
14 be used without further appropriation solely for the purposes of
15 environmental enhancement, restoration, and coordination of ocean
16 resources by the secretary pursuant to this section, including the cost
17 of employees or consultant services necessary to implement these
18 requirements. Money remaining in the fund at the end of each fiscal
19 year shall not revert to the General Fund and shall be available for
20 expenditure in the following fiscal year.

1 SECTION 9. General Fund Needs.

2 Within one year of the effective date of this act, the secretary shall
3 report to the General Court recommendations for the establishment
4 of fees, licenses, permits, leases and the adjustment or development
5 of other revenue sources deemed necessary to carry out the provi-
6 sions of this act.