

SENATE NO. 529

AN ACT RELATIVE TO OCEANS

*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. The general court finds and declares that:

2 (a) Coastal population growth and rapid advances in technology and commerce have led to a
3 significant increase in demands on the ocean resources of Massachusetts;

4 (b) Governance structures for ocean resources management have historically been focused on single
5 resources or activities, and public decisions about whether to allow certain activities in the
6 commonwealth's ocean waters have occurred through a reactive and fragmented approach;

7 (c) Massachusetts' ocean management policy must be adjusted to meet evolving human needs and
8 values, emerging technologies, and evolving understanding and knowledge of ocean ecosystems in
9 order to fulfill the Bay State's public trust responsibilities;

10 (d) It shall be the policy of the commonwealth that stewardship of the commonwealth's ocean
11 waters shall be carried out through an ocean management plan that protects, maintains, and restores
12 the abundance and diversity of native species and habitats and the health and productivity of coastal
13 and marine ecosystems in order to fulfill the ecological, economic, educational, social, cultural,
14 nutritional, recreational, and other requirements of present and future generations in a sustainable
15 manner.

16 (e) The Massachusetts Ocean Management Task Force has studied and made recommendations, based
17 upon a public participation process, for improved stewardship of the commonwealth's ocean
18 resources.

19 SECTION 2. Section 4A of chapter 21A of the General Laws, as appearing in the 2004 Official
20 Edition, is hereby amended by inserting before the word "federal" in line 15 the words: -
21 Massachusetts Oceans Act, section 4C, and of the.

22 SECTION 3. Chapter 21A is hereby further amended by inserting after section 4B the following
23 section: —
24 Section 4C.

25 (a) The ocean resources of the commonwealth, within the ocean management planning area described
26 in this section, shall be under the oversight, coordination and planning authority of the secretary of
27 environmental affairs, in regular consultation with the members of the ocean management advisory
28 board and all other relevant agencies, on behalf of the people of the commonwealth pursuant to the
29 policy, planning and coordination authority vested in the secretary by sections 1 through 6 of this
30 chapter. Such oversight, coordination and planning authority shall be exercised through the
31 promulgation of an ocean management plan, which shall be defined as a document including maps,
32 illustrations and other media of communication setting forth, among other things, the commonwealth's
33 goals, policies and standards to ensure effective state stewardship of the living and non-living marine
34 resources held in trust for the benefit of the public. Such stewardship of the commonwealth's ocean
35 resources shall be carried out in accordance with sound management practices that protect the public
36 trust, value biodiversity, protect special, sensitive or unique estuarine and marine life and habitats,

37 respect the interdependence of ecosystems, coordinate uses that cross international, federal, state and
38 local jurisdictions, foster sustainable uses that capitalize on economic opportunity without significant
39 detriment to the ecology or natural beauty of the ocean, use best available information and expertise,
40 encourage public participation in decision-making and adapt to our evolving knowledge and
41 understanding of the ocean environment.

42 (b) The geographic area subject to an ocean management plan may include any waters and associated
43 submerged lands of the ocean, including the seabed and subsoil, lying between the low water mark and
44 the seaward boundary of the commonwealth. An ocean management plan also may address activities
45 in adjacent waters and, to the maximum extent consistent with federal law, shall apply to activities
46 occurring in adjacent federal waters that are functionally connected or otherwise related to the
47 management of resources within the ocean management planning area.

48 (c) (1) The secretary shall develop, adopt, and implement an ocean management plan. An ocean
49 management plan shall include maps, illustrations and other media of communication setting forth,
50 among other things, the commonwealth's goals, policies and standards to ensure effective state
51 stewardship of the living and non-living marine resources held in trust for the benefit of the public.

52 (2) In preparing an ocean management plan, the secretary shall take into account the existing natural,
53 social, cultural, historic and economic characteristics of the planning area, together with the interests
54 of the commonwealth in: protecting marine resources and their associated habitats; preserving and
55 enhancing public access; protecting biodiversity and ecosystem health; addressing climate change and
56 sea-level rise; supporting the needed infrastructure for the economy and quality of life for the citizens
57 of the Commonwealth; and fostering sustainable uses that capitalize on economic opportunity without
58 significant detriment to the ecology or natural beauty of the ocean; developing and maintaining sound

59 management practices that coordinate uses that cross international, federal, state and local
60 jurisdictions, encourage public participation in decision-making, use the best available information and
61 expertise and adapt to our evolving knowledge and understanding of the ocean environment.

62 (3) There shall be an ocean management advisory board to assist the secretary in the development of
63 an ocean management plan. Said board shall consist of 19 members: 2 members of the senate to be
64 appointed by the president of the senate; 2 members of the house of representatives to be appointed by
65 the speaker of the house of representatives; the commissioners of the department of fish and game, the
66 department of environmental protection, the department of conservation and recreation, and the
67 department of telecommunications and energy, or their designees; the directors of the office of coastal
68 zone management, and the division of marine fisheries, or their designees; 1 representative of
69 commercial fishing interests, to be appointed by the secretary; 1 representative of recreational fishing
70 interests, to be appointed by the secretary; 2 representatives of environmental organizations, to be
71 appointed by the secretary; 1 representative of an academic institution, to be appointed by the
72 secretary; 1 representative of a non-fishing ocean-dependent industry, to be appointed by the secretary;
73 1 mayor or member of the city council or board of selectmen of a coastal municipality, to be appointed
74 by the secretary; 1 director of a regional planning agency, to be appointed by the secretary; and, 1
75 citizen of Massachusetts, to be appointed by the secretary.

76 (4) There shall be an ocean science advisory council to assist the secretary of environmental affairs in
77 the development of a baseline assessment, subject to the provisions of subsection (e)(1) of this section,
78 and any other scientific information necessary for the development of an ocean management plan.
79 Said council shall consist of 9 members, to be appointed by the secretary, including 3 scientists from
80 academic institutions, 3 scientists from private nonprofit organizations, including 1 scientist

81 designated by the Massachusetts Fishermen's Partnership, and 3 scientists from government agencies
82 with demonstrated technical training and experience that have been drawn from the fields of marine
83 ecology, geology, biology, ichthyology, mammalogy, oceanography and other related ocean science
84 disciplines.

85 (d) Upon adoption of an ocean management plan, no structure, uses or activities that could
86 significantly alter the ocean resources of the geographic area established in accordance with this
87 section may occur unless such activities conform to all applicable provisions of the ocean management
88 plan. All offices and departments of the executive office of environmental affairs and all other
89 agencies, departments, divisions, units, commissions, boards and authorities of the commonwealth
90 shall enforce laws and regulations within their jurisdiction, conduct regulatory reviews, administer
91 programs, disburse funds, perform or supervise construction activities, and otherwise conduct their
92 activities in a manner that ensures conformance with the applicable provisions of an ocean
93 management plan and this section.

94 (e) Development, implementation, and enforcement of an ocean management plan as coordinated by
95 the secretary, shall include, but not be limited to, the following elements:

96 (1) Setting a baseline assessment of the commonwealth's ocean resources and resource use, in
97 consultation with the ocean science advisory council, that incorporates the best available engineering
98 applications and scientific understanding of marine and ocean resources, including the identification of
99 special, sensitive or unique estuarine and marine life and habitats, through research, mapping,
100 monitoring and other data, public and agency input and other relevant natural, infrastructure, social,
101 cultural, historic and economic planning information that will serve as the basis for evaluating
102 alternatives and choosing courses of action;

103 (2) Establishing an outreach and participation program which shall include: early and continuing
104 interaction with the public, the business sector, other interested groups and local, state, regional and
105 federal officials; an opportunity for notice of the contents, public comment and a public meeting or
106 meetings at the local and regional levels, coordinated through the Massachusetts association of
107 regional planning agencies, on a proposed ocean management plan; and regular consultation with the
108 ocean management advisory board, the ocean science advisory council, the energy facilities siting
109 board, the executive office of public safety, the highway department, the division of energy resources,
110 the department of telecommunications and energy, the port authority, the department of agricultural
111 resources, and other state and federal agencies having jurisdiction over resources or activities within or
112 affecting the ocean management planning area, in order to achieve maximum feasible compatibility
113 with the plans, programs or projects for which such departments, divisions, boards and other agencies
114 are responsible. A summary of this participation program shall be included in an ocean management
115 plan;

116 (3) Identifying management measures, including but not limited to, setting performance standards,
117 mitigation requirements and use limitations, as may be applicable to specific geographic areas, to be
118 developed in a manner consistent with applicable state statutes and regulations that control or
119 otherwise affect development or other ocean use in the planning area. These management measures
120 shall be compatible, to the maximum extent feasible, with all applicable plans, programs and projects
121 for which the respective state agencies are responsible. The division of marine fisheries, pursuant to
122 chapter 130 or any other general or special law, shall have sole responsibility for developing and
123 implementing any fisheries management plans and fisheries regulations that are determined to be
124 necessary by said division based on the best available scientific information. Management of marine
125 fisheries shall comply with all rules and regulations of the division of marine fisheries or federal or

126 interstate fishery management plans, issued pursuant to chapter 130 or any other general or special
127 law, and shall be integrated, to the maximum extent possible, with an ocean management plan.
128 Management of waterfowl hunting shall comply with the rules and regulations of the division of
129 fisheries and wildlife, issued pursuant to chapter 131 or any other general or special law, and shall be
130 integrated, to the maximum extent possible, with an ocean management plan. Nothing contained in
131 this section shall be construed to prohibit the transiting of recreational boats in Massachusetts ocean
132 waters;

133 (4) Implementing a specific strategy to ensure effective application of the identified management
134 measures within the planning area in question. Implementation arrangements may include, as
135 appropriate, memoranda of understanding or other instruments of agreement to ensure coordination
136 between the secretary and all relevant state agencies;

137 (5) Establishing a time period during which an ocean management plan is to remain effective and a
138 proposed date, not to exceed 5 years from the date of plan adoption, on which re-evaluation of the plan
139 will commence for purposes of renewal and amendment. The reevaluation process shall include, but
140 not be limited to, an opportunity for public comment and a public meeting or meetings. An ocean
141 management plan shall remain in effect until a renewed or amended ocean management plan is
142 adopted; and

143 (6) Creating other such elements as may be considered appropriate by the secretary of environmental
144 affairs to serve the purposes of this section.

145 (f) The secretary shall give notice of, and provide interested parties with the opportunity to present
146 data, views or arguments for a period of at least 60 days in regard to a proposed ocean management

147 plan or any proposed amendment thereto or renewal thereof in writing in accordance with section 3 of
148 chapter 30A, and shall make such proposed amendments or plans available for a public review and
149 comment period through notice in the Environmental Monitor. At the conclusion of such public
150 process, which shall include one or more public meetings at the local or regional levels, and after
151 consideration of public comments received during the public comment period, the secretary of
152 environmental affairs may adopt an ocean management plan or any amendments thereto, and notice
153 thereof shall be published in the next available edition of the Environmental Monitor and the
154 Massachusetts Register.

155 (g) The secretary of environmental affairs shall reconsider the decision to adopt an ocean management
156 plan, any portion thereof or any amendment thereto only if information which has been overlooked or
157 misapprehended requiring such reconsideration is presented in a written petition submitted within 21
158 days of the secretary's decision by the planning representative of a local government, any state agency
159 or 10 or more citizens of the commonwealth. Such petition for reconsideration must include a clear
160 and concise statement of the specific objections to the secretary's decision and the relief sought,
161 including any specific changes that are proposed for consideration. The secretary shall respond in
162 writing to such petition within 21 days of the close of the petition period and shall set forth the basis
163 for such response including the reasons for any modification of the decision. The secretary's decision
164 shall be final 21 days after it is issued should there be no requests for reconsideration timely filed.
165 Decisions subject to request for reconsideration shall be final upon a date specified by the secretary in
166 the response to the request for reconsideration, and in any case not longer than 21 days after the
167 response. When the secretary's decision is final, notice thereof shall be published in the next available
168 edition of the Environmental Monitor and the Massachusetts Register.

169 (h) Judicial review of the secretary's approval of an ocean management plan or any amendment
170 thereto shall be as provided in section 7 of chapter 30A. Any such action must be commenced within
171 30 days of the publication in the Massachusetts Register of notice of the ocean plan, or if a request for
172 reconsideration is filed, within 30 days of publication of notice of the secretary's decision on the
173 request for reconsideration. No such action may be commenced unless the matter complained of was
174 raised by that party in writing in the public comment period on the ocean plan; provided, however, that
175 a matter may be raised upon a showing that it is material and that it was not reasonably possible with
176 due diligence to have raised it during the public comment period.

177 (i) Notwithstanding any other provisions of this section, the following activities are prohibited in the
178 geographic area described in subsection (b):

179 (1) construction or operation of offshore or floating electric generating stations in areas designated as
180 an ocean sanctuary by section 13 of chapter 132A, except

181 i. on an emergency and temporary basis for the supply of energy; or

182 ii. for small scale renewable energy systems, as defined by the ocean management plan, in areas
183 other than the Cape Cod ocean sanctuary, established by section 13 of chapter 132A, provided that the
184 small scale renewable energy system is consistent with an ocean management plan;

185 (2) dumping or discharging commercial, municipal, domestic or industrial wastes, in areas designated
186 as an ocean sanctuary by section 13 of chapter 132, except as may be allowed pursuant to sections 16
187 or 16A through 16F of chapter 132A and its implementing regulations, as may be amended;

188 (3) incineration of solid waste material or refuse on, or in vessels moored or afloat;

189 (4) extraction of any stone, sand, gravel or other minerals, gases or oils from the seabed or subsoil,
190 except for the following: dredging for navigation purposes; shore protection or beach restoration, or
191 for facilities and activities undertaken or required by a public agency for the purposes of dredging,
192 decontamination, response actions, capping or disposal of polluted aquatic sediments, if consistent
193 with any applicable provisions of an ocean management plan;

194 (5) building or operation of commercial advertising; and

195 (6) in the area designated as the Cape Cod ocean sanctuary by section 13 of chapter 132A, the
196 building or long-term mooring of any structure on the seabed or subsoil except as allowed in
197 subsection (j)(1) and (4)-(7).

198 (j) In all areas within the geographic area described in subsection (b), other than the area designated as
199 the Cape Cod ocean sanctuary by section 13 of chapter 132A, projects, not prohibited by subsection
200 4(i) above, are allowable, provided that such projects have met all applicable requirements of other
201 local, state, and federal laws and regulations, and are consistent with an ocean management plan.

202 Those projects include, but are not limited to:

203 (1) beach nourishment, channel and shore protection structures, and maintenance dredging for
204 navigational purposes;

205 (2) the operation, maintenance, repair or construction of infrastructure facilities used in the
206 transmission or distribution of electricity, natural gas, or telecommunications services, including
207 pipelines, cables and conduits, except in the area designated as the Cape Cod ocean sanctuary by
208 section 13 of chapter 132A;

209 (3) industrial liquid coolant discharge and intake systems, except in the area designated as the
210 Cape Cod ocean sanctuary by section 13 of chapter 132A;

211 (4) facilities for molluskan bivalve shellfish propagation or enhancement;

212 (5) moorings, floats and rafts held by bottom anchor for the purpose of vessel docking or
213 mooring, and ramps attached thereto;

214 (6) docks, piers, wharves or other filled or pile-supported structures contiguous with the
215 existing land mass;

216 (7) environmental restoration or mitigation activities required by certificate of the secretary of
217 environmental affairs;

218 (8) dumping or discharging commercial, municipal, domestic or industrial wastes, in areas not
219 designated as an ocean sanctuary by section 13 of chapter 132A.

220 (k) Projects that have filed a chapter 91 license application and received a determination of
221 completeness from the department of environmental protection or, if the project is subject to review
222 pursuant to section 61 of chapter 30, has received a certificate of adequacy regarding a Draft
223 Environmental Impact Report from the Secretary, shall be governed by the ocean management plan in
224 effect at the time of filing.

225 (l) There shall be established and set up on the books of the commonwealth a separate fund to be
226 administered by the secretary, as trustee, in consultation with the department of environmental
227 protection, to be known as the Ocean Resources and Waterways Trust Fund. There shall be credited to
228 such fund: any fees or other amounts of any type collected pursuant to chapter 91; applicable

229 compensation or mitigation for ocean development to be used for the purposes of ocean resource
230 enhancement or restoration; any income derived from the investment of amounts credited to the fund;
231 and any appropriation, grant, gift or other contribution explicitly made to the fund. Amounts credited
232 to the fund shall be used, without further appropriation, solely for the purposes of the administration
233 and implementation of permitting licensing compliance and enforcement of chapter 91 by the
234 department of environmental protection and for the purposes of policy oversight, management
235 planning, environmental enhancement, restoration and coordination of ocean resources by the
236 secretary pursuant to this section, including the cost of employees or consultant services necessary to
237 implement these requirements. Notwithstanding the provisions of any general or special law to the
238 contrary, amounts expended from the Ocean Resources and Waterways Trust Fund shall be exempt
239 from fringe and indirect cost charges pursuant to chapter 29 of the General Laws.

240 (m) The secretary, in consultation with the department of environmental protection, the department of
241 conservation and recreation, and the division of marine fisheries, is hereby authorized and directed to
242 examine the establishment or renegotiation of fees, licenses, permits, rents, leases and the adjustment
243 or development of other revenue sources for the purposes of funding ocean resource enhancement or
244 restoration through the Ocean Resources and Waterways Trust Fund.

245 (n)The secretary may promulgate such regulations to implement, administer and enforce this section.

246 SECTION 4. Section 12A of chapter 132A of the General Laws, as so appearing is hereby amended
247 by adding the following sentence:- This section and section 12C, section 14, section 15, section 16 and
248 section 18 shall cease to have any effect upon the adoption of an ocean management plan pursuant to
249 section 4C of chapter 21A. In the case of any inconsistencies among the requirements of section 15

250 and 16 of chapter 132A and section 4C(i) and (j) of chapter 21A during the transition period, the
251 provisions of section 4c(i) and (j) of chapter 21A shall control.

252 SECTION 5. Section 12B of said chapter 132A, as so appearing, is hereby amended by striking out,
253 in line 3, the words “‘Act’, the Massachusetts Ocean Sanctuaries Act”.

254 SECTION 6. Said Section 12B of said chapter 132A , as so appearing, is further amended by striking
255 out, in lines 13-14 and 15, the words “environmental management” and inserting in place thereof the
256 following words: — environmental protection.

257 SECTION 7. Section 16A of said chapter 132A, as so appearing, is hereby amended, in lines 1 and 7
258 by striking out the words “section fifteen” and inserting in place thereof the following words: —
259 section 4C(i)(2) of chapter 21A.

260 SECTION 8. Any project that, prior to the date of approval of the first ocean management plan as
261 authorized by section 4C of chapter 21A, has 1) filed a chapter 91 license application and received a
262 written determination of completeness by the department of environmental protection; or 2) if the
263 project is subject to review pursuant to section 61 of chapter 30, received a certificate of adequacy
264 regarding a Final Environmental Impact Report from the Secretary, or 3) if the project is subject to
265 jurisdiction of the energy facilities siting board, received both a final decision from the energy
266 facilities siting board and a certificate of adequacy regarding a Draft Environmental Impact Report
267 from the Secretary, shall not be subject to the requirements of section 4C of chapter 21A. Such
268 projects not subject to section 4C of chapter 21A must comply with sections 12A through 16F and
269 section 18 of chapter 132A as they were in effect immediately prior enactment of section 4C of
270 chapter 21A.

271 SECTION 9. The secretary of environmental affairs shall report annually to the joint committee on
272 environment, natural resources and agriculture identifying management measures established and the
273 progress made in creating an ocean management plan pursuant to section 4C of chapter 21A, until
274 such time as a plan is first adopted.

275 SECTION 10. The secretary of environmental affairs shall develop, adopt, and implement an ocean
276 management plan within 24 months of the effective date of section 4C of chapter 21A. Upon
277 adoption, an ocean management plan shall be formally incorporated into the Massachusetts coastal
278 zone management program as referenced in section 4A of chapter 21A.

279 SECTION 11. The secretary of environmental affairs shall report to the general court
280 recommendations concerning the establishment of fees, licenses, permits, rents, leases and the
281 adjustment or development of other revenue sources, as authorized by subsection (m) of section 4C of
282 chapter 21A, by submitting a report, including any proposed legislation, to the joint committee on
283 environment, natural resources and agriculture and the house and senate committees on ways and
284 means within 1 year of the passage of section 4C of chapter 21A.