

301 CMR 28.00: OCEAN MANAGEMENT PLAN

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28.01: AUTHORITY AND PURPOSE

(1) 301 CMR 28.00 IS ADOPTED PURSUANT TO M.G.L. C. 21A §4C AND M.G.L. C. 132A, §§ 12A THROUGH 16F (MASSACHUSETTS OCEANS SANCTUARY ACT) AS AMENDED BY ST. 2008, C. 114, § 23 (MASSACHUSETTS OCEANS ACT). 301 CMR 28.00 IMPLEMENT, ADMINISTER, AND ENFORCE M.G.L. C. 21A, § 4C AND THE OCEAN MANAGEMENT PLAN, DEVELOPED AND PROMULGATED IN ACCORDANCE WITH THE MASSACHUSETTS OCEANS ACT. IN ACCORDANCE WITH ST. 2008, C. 114, § 23 AND WITH THE MASSACHUSETTS COASTAL ZONE MANAGEMENT ACT OF 1972 (16 M.S.A. § 23) AND IMPLEMENTING REGULATIONS AT 15 CFR §§ 923 AND 930, ENFORCEABLE STANDARDS OF THE OCEAN MANAGEMENT PLAN UNDER THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM AND SHALL BE INTERPRETED IN A MANNER CONSISTENT WITH 301 CMR 27.00 *Coastal Zone Management Program*.

(2) 301 CMR 28.00 FULFILLS, IN PART, THE STATUTORY RESPONSIBILITY FOR THE OVERSIGHT AND PLANNING FOR OCEAN WATERS AND OCEAN-BASED DEVELOPMENT IN THE COMMONWEALTH. THE MASSACHUSETTS OCEANS ACT REQUIRES THE SECRETARY TO DEVELOP AND IMPLEMENT AN OCEAN MANAGEMENT PLAN FOR A SPECIFIED OCEAN MANAGEMENT PLANNING AREA. THE PURPOSE OF 301 CMR 28.00 IS ALSO TO DEFINE, INTERPRET, AND CLARIFY THE PROCEDURES AND RULES NECESSARY TO CARRY OUT RESPONSIBILITIES UNDER THE MASSACHUSETTS OCEANS ACT, M.G.L. C. 21A, §§ 12A THROUGH 16F. PURSUANT TO STATUTORY DIRECTIVE, THE OCEAN MANAGEMENT PLAN ESTABLISHES MANAGEMENT AREAS AND STANDARDS FOR CERTAIN ACTIVITIES AND DEVELOPMENT UNDER M.G.L. C. 132A, §§ 15 AND 16 AND 301 CMR 27.00 *Ocean Sanctuaries* WITHIN THE OCEAN MANAGEMENT PLANNING AREA. THE ACTIVITIES SUBJECT TO THE OCEAN MANAGEMENT PLAN SHALL BE REGULATED BY SITING AND PERFORMANCE STANDARDS, ASSOCIATED WITH MAPPED RESOURCES AND DEVELOPMENT AWAY FROM AREAS WITH IMPORTANT AND HIGH VALUE RESOURCES AND SENSITIVE USES. 301 CMR 28.00 ESTABLISHES THE PROCEDURES AND REQUIREMENTS NECESSARY TO IMPLEMENT, ADMINISTER, AND ENFORCE M.G.L. C. 21A, § 4C AND THE OCEAN MANAGEMENT PLAN, INCLUDING PROVISIONS TO:

- (A) CODIFY THE JURISDICTION, MANAGEMENT AREAS, AND STANDARDS DEVELOPED UNDER THE OCEAN MANAGEMENT PLAN;
- (B) ESTABLISH PROCEDURES FOR ASSESSING THE OCEAN DEVELOPMENT MITIGATION FEE UNDER M.G.L. C. 132A § 18;
- (C) DEVELOP PROVISIONS FOR THE REVIEW OF THE OCEAN MANAGEMENT PLAN AND THE OCEAN DEVELOPMENT MITIGATION FEE ASSESSMENT AND ENFORCEABLE MEASURES;
- (D) DEFINE THE PROCESS FOR MAKING UPDATES OR AMENDMENTS TO THE OCEAN MANAGEMENT PLAN AND
- (E) ENSURE REGULATORY CONSISTENCY FOR PERTINENT AGENCY DECISIONS RELEVANT TO OCEAN DEVELOPMENT.

(3) NOTHING IN THE OCEAN MANAGEMENT PLAN OR 301 CMR 28.00 SHALL BE CONSTRUED TO SUPERSEDE EXISTING GENERAL OR SPECIAL LAWS, OR TO CONFER RIGHTS AND REMEDIES IN ADDITION TO THOSE PROVIDED BY EXISTING GENERAL OR SPECIAL LAWS.

28.02: DEFINITIONS

ACTIVITIES ACTIVITIES, USES OR FACILITIES ALLOWED UNDER M.G.L. C. 132A §§ 15 AND 16 AND 301 CMR 27.00: *Ocean Sanctuaries*.

28.02: CONTINUED

AGENCY ANY AGENCY, DEPARTMENT, BOARD, COMMISSION, OR AUTHORITY OF THE COMM

CABLES. LINEAR INFRASTRUCTURE FOR THE TRANSMISSION OF TELECOMMUNICATIONS C

COMMERCIAL SCALE WIND ENERGY. WIND ENERGY PROJECTS OF A SCALE DESIGNED FOR OF ENERGY AT COMMERCIAL SCALE; THAT IS, GREATER THAN WIND ENERGY PROJECTS COMMUNITY OR SUBSET THEREOF. COMMERCIAL SCALE WIND ENERGY FACILITIES ARE TH THAN THE COMMUNITY-SCALE ALLOCATIONS CONTAINED IN THE OCEAN MANAGEMENT P

COMMERCIAL SCALE TIDAL ENERGY. TIDAL ENERGY FACILITIES AT SCALE GREATER THAN BY THE FEDERAL ENERGY REGULATORY COMMISSION (FERC) AS A PILOT PROJECT UN HYDROKINETIC PILOT PROJECT LICENSING PROCESS DESCRIBED IN THE APRIL 2008 LICENSIN PILOT PROJECTS WHITE PAPER.

COMMUNITY SCALE WIND ENERGY. WIND ENERGY PROJECTS OF A SCALE DESIGNED TO PRO AN INDIVIDUAL COMMUNITY OR COMMUNITIES. COMMUNITY SCALE WIND ENERGY FA CONFORM TO THE MAXIMUM ALLOCATION OF TURBINES THAT MAY BE APPROVED WITHI COASTAL REGIONAL PLANNING AGENCIES AS CONTAINED IN THE OCEAN MANAGEMENT P

CONCENTRATIONS OF WATER-DEPENDENT USES MEANS AREAS DESCRIBED AND MAPPE MANAGEMENT PLAN, AS MAY BE UPDATED OR AMENDED, WHERE THE INTENSITY OF COMMERCIAL AND RECREATIONAL FISHING, COMMERCIAL SHIPPING AND NAVIGATION, BOATING USES ARE SIGNIFICANT. MAPS OF THE CONCENTRATIONS OF WATER-DEPENDE METHODS UTILIZED FOR DEVELOPING THEM ARE AVAILABLE ON THE MASSACHUSETTS INFORMATION SYSTEM.

ENVIRONMENTAL IMPACT REPORT. AN ENVIRONMENTAL IMPACT REPORT, OR EIR, AS DEF IN 301 CMR 11.00: *MEPA Regulations*.

Environmental Monitor. THE PUBLICATION, ENTITLED ~~THE~~ *Environmental Monitor*, ISSUED BY THE EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS TO PROVIDE INFORMATION REVIEW BY THE MEPA OFFICE, RECENT MEPA DECISIONS, AND OTHER PUBLIC NOTICES FR THE URL FOR THE ONLINE VERSION ~~OF THE~~ *Environmental Monitor* IS <HTTP://WWW.ENV.STATE.MA.US/MEPA/EMONITOR.ASPX>

ENVIRONMENTAL NOTIFICATION FORM. AN ENVIRONMENTAL NOTIFICATION FORM, OR ENF USED IN 301 CMR 11.00 ~~MEPA~~ *Regulations*.

HOST COMMUNITY. ANY TOWN OR CITY IN WHICH ALL OR PART OF A RENEWABLE ENERGY GENERATING FACILIT, (TURBINES NOT CABLES) ARE LOCATED.

MASSACHUSETTS OCEAN RESOURCES INFORMATION SYSTEM. THE ONLINE GEOGRAPHIC SYSTEM (GIS) DATA BASE AND MAPPING TOOL MANAGED BY THE OFFICE OF COASTAL ZONI ALL OF THE MAPS AND GIS DATA CONTAINED IN THE OCEAN MANAGEMENT PLAN ARE M AVAILABLE IN DIGITAL FORMAT ON THE OCEAN MANAGEMENT PLAN DATA SITE OF THE MA RESOURCES INFORMATION SYSTEM. THE ~~URL FOR IS~~ <HTTP://WWW.MASS.GOV/CZM/MORIS/OCEANPLAN/MEPA>. THE MASSACHUSETTS ENVIRONMENTAL POLICY ACT, M.G.L. C. 30, §§ 61 THROUGH 301 CMR 11.00: *MEPA Regulations*.

OCEAN ADVISORY COMMISSION. THE ADVISORY COMMISSION ESTABLISHED BY THE OCEA PURPOSE OF ASSISTING THE SECRETARY IN THE DEVELOPMENT OF AN OCEAN MANA MEMBERSHIP AND OTHER TERMS ARE DEFINED IN M.G.L. C. 21A, § 4C(C)(I) THROUGH (III).

OCEAN MANAGEMENT PLAN MASSACHUSETTS OCEAN MANAGEMENT PLAN DEVELOPE PROMULGATED PURSUANT TO ST. 2008, C. 114 AND M.G.L. C. 21A, § 4C.

28.02: CONTINUED

OCEAN MANAGEMENT PLANNING AREA. THE WATERS AND ASSOCIATED SUBMERGED LANDS INCLUDING THE SEABED AND THE SOIL, LYING BETWEEN A LINE DESIGNATED AS THE "NEARSHORE BOUNDARY OF THE OCEAN MANAGEMENT PLANNING AREA" AND THE SEAWARD BOUNDARY OF THE COASTAL ZONE AS DEFINED IN 43 U.S.C. § 1312. THE "NEARSHORE BOUNDARY OF THE OCEAN MANAGEMENT PLANNING AREA" IS DEPICTED ON A MAP DATED JANUARY 31, 2006, PREPARED BY THE OFFICE OF COASTAL MANAGEMENT, AND AVAILABLE ON THE MASSACHUSETTS OCEAN RESOURCES INFORMATION SYSTEM. THIS AREA CONSTITUTES THE LANDWARD BOUNDARY OF THE OCEAN MANAGEMENT PLANNING AREA.

OCEAN SCIENCE ADVISORY COUNCIL. THE COUNCIL ESTABLISHED BY THE OCEANS ACT OF 2002 FOR THE PURPOSE OF ASSISTING THE SECRETARY IN CREATING A BASELINE ASSESSMENT AND OBTAINING INFORMATION NECESSARY FOR THE DEVELOPMENT OF THE OCEAN MANAGEMENT PLAN. OTHER TERMS ARE DEFINED IN M.G.L. C. 21A, § 4C(D).

PERSON. ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, TRUST, ASSOCIATION, OR OTHER NONPROFIT ORGANIZATION, OR ANY FEDERAL, MUNICIPAL, OR REGIONAL GOVERNMENTAL AGENCY OR OTHER ENTITY THAT IS NOT AN AGENCY.

PILOT TIDAL AND WAVE ENERGY PROJECT. A TIDAL AND WAVE ENERGY (OR HYDROKINETIC) PROJECT OF COMMERCIAL SCALE THAT COULD BE AUTHORIZED BY THE FEDERAL ENERGY REGULATORY COMMISSION UNDER FERC'S HYDROKINETIC PILOT PROJECT LICENSING PROCESS DESCRIBED IN THE FEDERAL ENERGY REGULATORY COMMISSION LICENSING HYDROKINETIC PILOT PROJECTS WHITE PAPER.

PIPELINE. LINEAR INFRASTRUCTURE FOR THE CONVEYANCE OF SUCH MATERIALS AS NATURAL GAS, OIL, OR OTHER LIQUID OR GASEOUS SUBSTANCES.

PROPONENT. ANY AGENCY OR PERSON, INCLUDING A DESIGNEE OR SUCCESSOR IN INTEREST, WHO HAS A SIGNIFICANT ROLE IN UNDERTAKING, AN ACTIVITY.

REGIONAL PLANNING AGENCY. FOR THE PURPOSES OF 301 CMR 28.00, ONE OF THE SIX COASTAL REGIONAL PLANNING ORGANIZATIONS ESTABLISHED PURSUANT TO STATEWIDE ENABLING LEGISLATION. THE COASTAL COMMUNITIES PLAN AND IMPLEMENT SHORT- AND LONG-RANGE IMPROVEMENTS FOR ECONOMIC DEVELOPMENT, ENVIRONMENTAL, LAND USE, AND COMMUNITY DEVELOPMENT. THE COASTAL REGIONAL PLANNING ORGANIZATIONS ARE: THE CAPE COD COMMISSION, THE MARSHFIELD COMMISSION, THE MERRIMACK VALLEY PLANNING COMMISSION, THE METROPOLITAN AREA PLANNING COUNCIL, THE NANTUCKET PLANNING AND ECONOMIC DEVELOPMENT COMMISSION, AND THE NANTUCKET REGIONAL PLANNING AND ECONOMIC DEVELOPMENT DISTRICT.

RENEWABLE ENERGY ACTIVITIES. WIND, TIDAL, OR WAVE ENERGY PROJECTS ALLOWED UNDER M.G.L. C. 132A, §§ 15 AND 16 AND INCLUDES COMMERCIAL SCALE WIND ENERGY, COMMERCIAL SCALE TIDAL ENERGY, COMMUNITY SCALE WIND ENERGY, PILOT TIDAL AND WAVE ENERGY, AND DEMONSTRATION-SCALE RENEWABLE ENERGY PROJECTS.

SAND AND GRAVEL EXTRACTION. THE ACTIVITY OF REMOVING SAND OR GRAVEL FROM THE BEACH OR SUBSOIL FOR THE PURPOSE OF BEACH RESTORATION, NOURISHMENT OR SHORE PROTECTION.

SECRETARY. THE SECRETARY OF THE EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS.

SPECIAL, SENSITIVE OR UNIQUE RESOURCES. SPECIAL, SENSITIVE OR UNIQUE ESTUARINE AREAS AND HABITATS, PURSUANT TO ST. 2008, C. 114 AND M.G.L. C. 21A, § 4C. SPECIAL, SENSITIVE OR UNIQUE RESOURCES ARE DESCRIBED AND MAPPED IN THE OCEAN MANAGEMENT PLAN, AS MAY BE AMENDED. MAPS OF THE SPECIAL, SENSITIVE OR UNIQUE RESOURCES AND THE METHODS OF DEVELOPING THEM ARE AVAILABLE ON THE MASSACHUSETTS OCEAN RESOURCES INFORMATION SYSTEM.

TEST OR DEMONSTRATION-SCALE RENEWABLE ENERGY PROJECTS. WIND, TIDAL, OR WAVE ENERGY PROJECTS OF A LIMITED SCALE DESIGNED TO PILOT, TEST, AND DEMONSTRATE RENEWABLE ENERGY PROJECTS.

28.03: JURISDICTION

- (1) AREAS SUBJECT TO JURISDICTION.
  - (A) ACTIVITIES LISTED IN 301 CMR 28.03(2) THAT OCCUR IN ALL OR PART OF THE OCEAN MANAGEMENT PLANNING AREA ARE SUBJECT TO JURISDICTION.

28.03: CONTINUED

(2) ACTIVITIES SUBJECT TO JURISDICTION.

(A) ANY PERSON ENGAGED IN THE FOLLOWING ACTIVITIES SHALL COMPLY WITH THE PERFORMANCE STANDARDS SET FORTH IN 301 CMR 28.04.

(B) WITHIN THE OCEAN MANAGEMENT PLANNING AREA, THE OCEAN MANAGEMENT PLAN SHALL APPLY TO ACTIVITIES THAT ARE REQUIRED TO FILE AN ENVIRONMENTAL IMPACT REPORT.

(C) PROPONENTS OF ACTIVITIES THAT EXCEED ENVIRONMENTAL NOTIFICATION FORM REQUIREMENTS ARE REQUIRED TO DOCUMENT ANY POTENTIAL IMPACTS TO SPECIAL, SENSITIVE AND UNIQUE AREAS OF CONCENTRATIONS OF WATER-DEPENDENT USES.

(D) THE OCEAN MANAGEMENT PLAN MAY BE AMENDED TO INCLUDE OTHER ACTIVITIES AS PROVIDED IN M.G.L. C. 132A, §§ 15 AND 16 PURSUANT TO 301 CMR 28.07.

(E) UPON WRITTEN REQUEST, THE SECRETARY OR HIS OR HER DESIGNEE WILL PROVIDE AN ADVISORY OPINION TO PERSONS, OR AGENCIES WITH A WRITTEN ADVISORY OPINION REGARDING THE APPLICABILITY OF THE OCEAN MANAGEMENT PLAN OR 301 CMR 28.00.

(F) ACTIVITIES THAT ARE ALLOWABLE PURSUANT TO M.G.L. C. 132A, §§ 15 AND 16 AND NOT OTHERWISE REQUIRED TO DEVELOP AN ENVIRONMENTAL IMPACT REPORT ARE PRESUMED TO MEET THE REQUIREMENTS OF 301 CMR 28.04.

(3) PROTECTED RESOURCES AND USES.

(A) THE OCEAN MANAGEMENT PLAN IDENTIFIES KEY COMPONENTS OF MASSACHUSETTS MARINE ECOSYSTEMS, DEFINED AS SPECIAL, SENSITIVE OR UNIQUE RESOURCES, AND ESTABLISHES STANDARDS TO PROTECT THEM. THE OCEAN MANAGEMENT PLAN ALSO ESTABLISHES GUIDANCE FOR BALANCING POTENTIAL IMPACTS TO AREAS WITH CONCENTRATIONS OF SPECIAL USES WITH NEW ACTIVITIES IN THE OCEAN MANAGEMENT PLANNING AREA. THE STANDARDS FOR PROTECTED RESOURCES AND USES ARE CONTAINED IN 301 CMR 28.04.

(B) MAPS DEVELOPED IN THE OCEAN MANAGEMENT PLAN AND MAINTAINED IN THE MASSACHUSETTS OCEAN RESOURCES INFORMATION SYSTEM DELINEATE THE AREAS OF DEFINED SPECIAL, SENSITIVE OR UNIQUE RESOURCES AND CONCENTRATIONS OF WATER-DEPENDENT USES. THESE MAPS SHALL BE USED TO ENSURE THAT THE STANDARDS IN 301 CMR 28.04 ARE MET. ADDITIONAL INFORMATION FOR MORE ACCURATE CHARACTERIZATION OR DELINEATION OF SPECIAL, SENSITIVE OR UNIQUE RESOURCES AND CONCENTRATIONS OF WATER-DEPENDENT USES, MAY BE REQUIRED PURSUANT TO A SPECIAL USE CERTIFICATE. THIS ADDITIONAL INFORMATION AND OTHER INFORMATION MADE AVAILABLE TO THE PUBLIC IN REVIEW WILL BE UTILIZED IN THE REVIEW AND AUTHORIZATION OF PROPOSED ACTIVITIES.

(4) ACTIVITIES AND RESOURCES NOT SUBJECT TO OCEAN MANAGEMENT PLAN JURISDICTION.

(A) PURSUANT TO M.G.L. C. 130 AND ANY OTHER APPLICABLE GENERAL OR SPECIAL LAW, THE STATE OF MARINE FISHERIES SHALL HAVE SOLE RESPONSIBILITY FOR DEVELOPING AND IMPLEMENTING MARINE FISHERIES MANAGEMENT PLANS OR FISHERIES REGULATIONS. MARINE FISHERIES SHALL BE IN COMPLIANCE WITH THE APPLICABLE RULES AND REGULATIONS OF THE DIVISION OF MARINE FISHERIES, FEDERAL OR INTERSTATE FISHERY MANAGEMENT PLANS ISSUED PURSUANT TO M.G.L. C. 130 AND ANY OTHER APPLICABLE GENERAL OR SPECIAL LAW AND SHALL BE INTEGRATED, TO THE MAXIMUM EXTENT POSSIBLE, WITH THE OCEAN MANAGEMENT PLAN.

(B) MAPS AND INFORMATION CONTAINED IN THE OCEAN MANAGEMENT PLAN WILL ASSIST IN THE REVIEW OF MARINE FISHERIES IN THE REVIEW OF PROPOSED AQUACULTURE FACILITIES PURSUANT TO 301 CMR 15.00: *Management of Marine Aquaculture.*

28.04: MANAGEMENT AREAS AND STANDARDS

(1) MANAGEMENT AREAS. WITHIN THE OCEAN MANAGEMENT PLANNING AREA, THE OCEAN MANAGEMENT AREAS ARE DEFINED IN THE OCEAN MANAGEMENT PLAN:

(A) PROHIBITED AREAS. AREAS WHERE ACTIVITIES ARE EXPRESSLY PROHIBITED BY EITHER THE OCEAN SANCTUARIES ACT OR OCEAN MANAGEMENT PLAN.

(B) WIND ENERGY AREAS. AREAS SUITABLE AND PRESUMPTIVELY ALLOWED FOR CONSTRUCTION OF WIND ENERGY FACILITIES AND OTHER RENEWABLE ENERGY ACTIVITIES SUBJECT TO THE CONDITIONS CONTAINED IN THE OCEAN MANAGEMENT PLAN AND 301 CMR 28.00.

(C) MULTI-USE AREAS. AREAS, INCLUDING PORTIONS OF STATE WATERS NOT IDENTIFIED AS OCEAN SANCTUARIES PURSUANT TO THE M.G.L. C. 132A § 13(A), WHERE ACTIVITIES ALLOWED BY THE OCEAN SANCTUARIES ACT AND 301 CMR 27.00 ARE SUBJECT TO THE STANDARDS AND CONDITIONS CONTAINED IN THE OCEAN MANAGEMENT PLAN AND 301 CMR 28.00.

28.04: CONTINUED

(2) MANAGEMENT STANDARDS FOR SPECIAL, SENSITIVE OR UNIQUE RESOURCES. THE STANDARDS APPLY ONLY TO THOSE ACTIVITIES THAT ARE REQUIRED TO FILE AN ENVIRONMENTAL IMPACT STATEMENT PURSUANT TO MEPA:

(A) ACTIVITIES PROPOSED IN THE OCEAN MANAGEMENT PLANNING AREA ARE PRESENTLY EXCLUDED FROM THE SPECIAL, SENSITIVE OR UNIQUE RESOURCE AREAS DELINEATED ON MAPS DEVELOPED IN THE OCEAN MANAGEMENT PLAN AND MAINTAINED IN THE MASSACHUSETTS OCEAN RESOURCES INFORMATION SYSTEM.

(B) THIS PRESUMPTION MAY BE OVERCOME BY DEMONSTRATING TO THE SECRETARY THAT:

1. THE MAPS DELINEATING THE SPECIAL, SENSITIVE OR UNIQUE RESOURCES DO NOT ACCURATELY CHARACTERIZE THE RESOURCE BASED ON SUBSTANTIAL SITE-SPECIFIC INFORMATION AVAILABLE IN ACCORDANCE WITH DATA STANDARDS AND PROCESSES CONTAINED IN 301 CMR 28.04(2)(B); AND

2. NO LESS ENVIRONMENTALLY DAMAGING PRACTICABLE ALTERNATIVE EXISTS. IN COMPLIANCE WITH THIS STANDARD, AN ALTERNATIVE IS PRACTICABLE IF IT IS AVAILABLE AND CAPABLE OF BEING IMPLEMENTED AFTER TAKING INTO CONSIDERATION COST, EXISTING TECHNOLOGY, AND LOGISTICS NECESSARY TO ACHIEVE THE PURPOSE OF THE ACTIVITY; AND

3. THE PROPONENT HAS TAKEN ALL PRACTICABLE MEASURES TO AVOID DAMAGE TO SPECIAL, SENSITIVE OR UNIQUE RESOURCES, AND THE ACTIVITY WILL CAUSE NO SIGNIFICANT IMPACT TO SPECIAL, SENSITIVE, OR UNIQUE RESOURCES. DEMONSTRATING COMPLIANCE WITH THIS STANDARD MAY INCLUDE THE INCORPORATION OF MEASURES TO AVOID RESOURCES AND IMPACTS, SUCH AS YEAR CONTROLS SUCH THAT THE CONSTRUCTION, OPERATION, OR REMOVAL OF THE ACTIVITY WILL NOT OCCUR WHEN THE SPECIAL, SENSITIVE OR UNIQUE RESOURCE IS PRESENT OR MAY BE PRESENT; AND

4. THE PUBLIC BENEFITS ASSOCIATED WITH THE PROPOSED ACTIVITY OUTWEIGH THE DETRIMENTS TO THE SPECIAL, SENSITIVE OR UNIQUE RESOURCE.

(3) MANAGEMENT STANDARDS FOR CONCENTRATIONS OF WATER-DEPENDENT USES. THIS STANDARD APPLIES ONLY TO THOSE ACTIVITIES WHICH ARE REQUIRED TO DEVELOP AN ENVIRONMENTAL IMPACT STATEMENT PURSUANT TO MEPA. TO THE MAXIMUM EXTENT PRACTICABLE, PROPONENTS OF ACTIVITIES SHALL AVOID, MINIMIZE, AND MITIGATE IMPACTS TO AREAS OF CONCENTRATIONS OF WATER-DEPENDENT USES DELINEATED ON MAPS DEVELOPED IN THE OCEAN MANAGEMENT PLAN AND MAINTAINED IN THE MASSACHUSETTS OCEAN RESOURCES INFORMATION SYSTEM.

(4) ADDITIONAL MANAGEMENT STANDARDS FOR RENEWABLE ENERGY ACTIVITIES. THE FOLLOWING STANDARDS APPLY TO RENEWABLE ENERGY ACTIVITIES:

(A) PURSUANT TO M.G.L. C. 132A, § 15, A REGIONAL PLANNING AGENCY SHALL DEVELOP AND REVIEW SUITABLE APPROPRIATE SCALE OF OFFSHORE RENEWABLE ENERGY ACTIVITIES AND REVIEW SUITABLE DEVELOPMENTS OF REGIONAL IMPACT IN MUNICIPALITIES WHERE REGIONAL PLANNING AGENCIES HAVE REGULATORY AUTHORITY. A PROPONENT MAY SEEK REVIEW OF THE REGIONAL PLANNING AGENCY'S DEVELOPMENT OF REGIONAL IMPACT DETERMINATION, BUT NOT ITS DETERMINATION OF WHETHER TO PERMIT PURSUANT TO M.G.L. C. 164, §§ 69K THROUGH 69O.

(B) FOR COMMERCIAL SCALE WIND ENERGY ACTIVITIES, THE FOLLOWING STANDARD SHALL APPLY TO ACTIVITIES NOT SUBJECT TO REVIEW BY REGIONAL PLANNING AGENCIES WITH REGULATORY AUTHORITY: DEVELOPMENTS OF REGIONAL IMPACT, APPROPRIATE SCALE SHALL BE DETERMINED BY THE SECRETARY IN CONSULTATION WITH THE HOST COMMUNITY AND SHALL INCLUDE CONSIDERATION OF WHETHER THE HOST COMMUNITY MUST RECEIVE FROM THE COMMERCIAL SCALE WIND ENERGY ACTIVITIES.

(C) FOR COMMUNITY SCALE WIND ENERGY ACTIVITIES, THE FOLLOWING STANDARD SHALL APPLY: THE OCEAN MANAGEMENT PLAN LISTS THE MAXIMUM NUMBER OF TURBINES ALLOWED FOR COMMUNITY-SCALE WIND ENERGY ACTIVITIES WITHIN EACH REGIONAL PLANNING AGENCY'S PLANNING AREA. THE MAXIMUM ALLOCATION MAY BE RAISED BY THE SECRETARY BASED ON A DETERMINATION BY A REGIONAL PLANNING AGENCY THAT THE EXISTING CAP FOR A COMMUNITY-SCALE WIND ENERGY ACTIVITY IS NOT ECONOMICALLY VIABLE OR THAT RAISING THE ALLOCATION WILL CAUSE NO SIGNIFICANT IMPACT TO APPROPRIATE SCALE INTERESTS.

(D) FOR COMMUNITY-SCALE WIND AND PILOT WAVE OR TIDAL ACTIVITIES, THE STANDARDS IN 301 CMR 28.04(4)(D)1. THROUGH 3. APPLY:

1. FOR ACTIVITIES NOT SUBJECT TO REVIEW BY REGIONAL PLANNING AGENCIES WITH REGULATORY AUTHORITY AS DEVELOPMENTS OF REGIONAL IMPACT, APPROPRIATE SCALE SHALL BE DETERMINED BY THE SECRETARY IN CONSULTATION WITH THE HOST COMMUNITY.

2. PROPONENTS OF ACTIVITIES MUST DEMONSTRATE THAT THE HOST COMMUNITY SUPPORTS THE PROJECT. SUCH SUPPORT MAY BE DEMONSTRATED BY A LETTER FROM THE BOARD OF SELECTMAN, OR THE CITY'S MAYOR OR CITY COUNCIL; AND

28.04: CONTINUED

3. PROPONENTS OF ACTIVITIES OTHER THAN TEST OR DEMONSTRATION-SCALE REPROJECTS MUST PROVIDE AN ECONOMIC BENEFIT TO THE HOST COMMUNITY.
- (E) FOR PILOT WAVE OR TIDAL ACTIVITIES, THE FOLLOWING STANDARDS APPLY: IF SU REVIEW THROUGH THE PREPARATION OF AN EIR, THE SECRETARY WILL DETERMINE TH AND CONCENTRATIONS OF WATER-DEPENDENT USES THAT APPLY IN THE MEPA SCOPE.
- (5) ADDITIONAL MANAGEMENT STANDARDS FOR SAND AND GRAVEL EXTRACTION A FOLLOWING STANDARDS APPLY TO SAND AND GRAVEL EXTRACTION ACTIVITIES:
- (A) PUBLIC BENEFITS ASSOCIATED WITH THE PROPOSED PROJECT MUST OUTWEIGH PUE SUCH THAT:
1. THE PROPONENT SHALL DEMONSTRATE THAT SAND RESOURCES FROM PUBLIC T UTILIZED FOR A PROPERLY DESIGNED AND CONSTRUCTED NOURISHMENT PROJ DOCUMENTED CRITICAL EROSION PROBLEM AND WILL PROTECT PUBLIC INFRAST RESOURCES, AND OTHER PUBLIC INTEREST FACTORS, SUCH AS INCREASED ACCESS A
  2. ALTERNATIVE, COMPATIBLE SAND SOURCES FROM BENEFICIAL RE-USE ASS NAVIGATIONAL OR OTHER DREDGING PROJECTS OR FROM UPLAND SOURCES AR PRACTICABLE, TAKING INTO CONSIDERATION COST, GEOGRAPHIC PROXIMITY, TIMIN OTHER REASONABLE FACTORS.
- (B) PROJECT PROPONENTS MUST DEVELOP AND IMPLEMENT A BIOLOGICAL AND PHYSI PLAN FOR THE SAND SOURCE AREA AND BEACH NOURISHMENT SITE, IN CONSULTATION AND SUBJECT TO THE SECRETARY'S APPROVAL.
- (6) ADDITIONAL MANAGEMENT STANDARDS FOR CABLE ACTIVITIES. THE FOLLOWING STA CABLE ACTIVITIES:
- (A) CABLE ACTIVITIES PROPOSED IN THE PRELIMINARY AREAS FOR OFFSHORE WIND TRA AS SHOWN IN THE OCEAN MANAGEMENT PLAN ARE IN PRESUMPTIVE COMPLIANCE W STANDARDS IN THE OCEAN MANAGEMENT PLAN AND IN 301 CMR 28.04(2), PROVIDED TH
1. INVESTIGATIONS AND SURVEY CONFIRM THE PREDOMINANCE OF ~~THE~~ ~~SOME~~ ~~BOTTOM~~ ~~SUB~~ GENERAL ABSENCE OF HARD-BOTTOM SUBSTRATE) WITHIN THE PRELIMINARY AREA. TRANSMISSION CABLES SUCH THAT SUFFICIENT BURIAL DEPTHS FOR CABLES CA EXPECTED. THE PRESENCE OF RELATIVELY SMALL AREAS OF HARD-BOTTOM SUBSTI CABLE ROUTE CANNOT BE PRACTICABLY LOCATED WITHOUT GOING THROUGH HARD-BOTTOM SUBSTRATE, WITHIN ACCEPTABLE LIMITS, IS PERMISSIBLE, BASED DETERMINATION BY THE SECRETARY IN CONSULTATION WITH EEA AGENCIES.
  2. TIME OF YEAR CONTROLS ARE IN PLACE SUCH THAT OPERATIONS AND DREDG DAMAGE AND CAUSE NO SIGNIFICANT ALTERATION TO THE FOLLOWING SPECIAL, SE RESOURCES: NORTH ATLANTIC RIGHT WHALE CORE HABITAT, HUMPBACK WHALE C FIN WHALE CORE HABITAT.
- (B) PROJECT PROPONENTS MUST DEVELOP AND IMPLEMENT A BIOLOGICAL AND PHYSI PLAN FOR THE SAND SOURCE AREA AND BEACH NOURISHMENT SITE, IN CONSULTATION AND SUBJECT TO THE SECRETARY'S APPROVAL.

28.05: CONSISTENCY OF AGENCY AUTHORIZATIONS

- (1) IT SHALL BE THE RESPONSIBILITY OF ALL AGENCIES TO ENSURE THAT ALL CERTIFICAT AND APPROVALS FOR ANY PROPOSED ACTIVITIES IN THE OCEAN MANAGEMENT PLANNING TO THE JURISDICTION OF THE OCEAN MANAGEMENT PLAN, AS CONTAINED IN 301 CMR CONSISTENT, TO THE MAXIMUM EXTENT PRACTICABLE, WITH THE PROVISIONS OF SAID PL
- (2) IN ISSUING LICENSES, PERMITS AND APPROVALS FOR THE ACTIVITY, AGENCIES SHALL TO THE MAXIMUM EXTENT PRACTICABLE, WITH THE SECRETARY'S FINDINGS AND DETERM IN A MEPA CERTIFICATE, INCLUDING AS THEY MAY APPLY TO THE ACTIVITY'S COMPLI MANAGEMENT STANDARDS CONTAINED IN 301 CMR 28.04(2). AN AGENCY MAY ALSO RELY FINDINGS AND DETERMINATIONS OF THE SECRETARY WHEN REVIEWING AND TAKING ACTIO OR REQUEST BY A PROPONENT FOR A LICENSE, PERMIT OR APPROVAL FROM THE AGENCY I

28.05: CONTINUED

(3) AN AGENCY SHALL INCLUDE A DETERMINATION IN ITS M.G.L. C. 30, § 61 FINDINGS PU MEPA, THAT ALL FEASIBLE MEASURES HAVE BEEN TAKEN SUCH THAT ITS APPROVAL O CONSISTENT WITH THE OCEAN MANAGEMENT PLAN AND 301 CMR 28.00. THE AGENCY SHALL MEASURES REQUIRED TO ACHIEVE CONSISTENCY, THE PERSON OR AGENCY RESPONSIBLE IMPLEMENTING SUCH MEASURES, AND THE ANTICIPATED IMPLEMENTATION SCHEDULE TH THE MEASURES SHALL BE IMPLEMENTED PRIOR TO, OR WHEN APPROPRIATE, IN RELAT UNAVOIDABLE IMPACTS.

28.06: OCEAN DEVELOPMENT MITIGATION FEE

(1) ANY ACTIVITY SUBJECT TO THE JURISDICTION OF THE OCEAN MANAGEMENT PL REGULATIONS AND REQUIRING A PERMIT OR LICENSE ISSUED BY A DEPARTMENT, DIVISION UNIT OF THE EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS AND OTHER OR DEPARTMENTS OF THE COMMONWEALTH SHALL BE SUBJECT TO AN OCEAN DEVELOPMI AS ESTABLISHED BY THE SECRETARY. THE PURPOSE OF THE FEE IS TO COMPENSATE THE CO UNAVOIDABLE IMPACTS OF OCEAN DEVELOPMENT ACTIVITIES ON THE BROAD PUBLIC INTE THE LANDS, WATERS, AND RESOURCES OF THE OCEAN PLANNING AREA AND TO SUPPO MANAGEMENT, RESTORATION, OR ENHANCEMENT OF MARINE HABITAT, RESOURCES, AND MASSACHUSETTS OCEANS ACT. NO PORTION OF THE FEE ASSESSED BY THE SECRETARY SHA ACTIVITY REQUIRING A COMMERCIAL OR RECREATIONAL FISHING PERMIT OR LICENSE.

(2) ALL FEES ASSESSED BY THE SECRETARY SHALL BE DEPOSITED IN THE OCEAN RESOURCE TRUST PURSUANT TO M.G.L. C. 10, § 35HH AND SHALL BE ADMINISTERED IN ACCORDAN PURPOSES OF THE FUND AND GUIDELINES ESTABLISHED BY THE SECRETARY.

(3) THE FEE STRUCTURE FOR OCEAN DEVELOPMENT ACTIVITIES SUBJECT TO THE OCEAN M AND 301 CMR 28.00 SHALL BE CONTAINED AND PROMULGATED IN THE OCEAN MANAGEMEN

(4) THE OCEAN DEVELOPMENT MITIGATION FEE AS DETERMINED BY 301 CMR 28.06(3) WILL I IN THE FINAL MEPA CERTIFICATE.

(5) NOTHING IN 301 CMR 28.06 SHALL MODIFY OR OTHERWISE AFFECT AN AGENCY'S INI AUTHORITY TO REQUIRE THE PROPONENT TO PROVIDE MITIGATION ~~OR COMPENSATION~~ IN AS A CONDITION OF A PERMIT OR LICENSE ISSUED BY THE AGENCY FOR THE ACTIVITY.

28.07: STANDARDS FOR PLAN REVIEW, AMENDMENTS, AND UPDATES

(1) CONSISTENT WITH M.G.L. C. 21A, § 4C, THE DEVELOPMENT AND REVISION OF THE MANAGEMENT PLAN IS THE AUTHORITY AND RESPONSIBILITY OF THE SECRETARY. THE ZONE MANAGEMENT WILL SUPPORT THE SECRETARY, AND ACT ON HIS OR HER BEHALF A ADMINISTRATION, IMPLEMENTATION, AND OVERSIGHT OF THE OCEAN MANAGEMENT PLA 28.00.

(2) THE SECRETARY SHALL ENSURE THAT THE OCEAN MANAGEMENT PLAN, ITS BASELINE THE ENFORCEABLE PROVISIONS OF RELEVANT STATUTES AND REGULATIONS ARE REVIEW FIVE YEARS.

(3) THE SCOPE OF SUCH REVIEW WILL BE DETERMINED BY THE SECRETARY IN CONSUL OCEAN ADVISORY COMMISSION AND THE OCEAN SCIENCE ADVISORY COUNCIL.

(4) THE FOLLOWING CHANGES TO THE OCEAN MANAGEMENT PLAN SHALL BE MADE ON AMENDMENT:

- (A) THE REVISION OF EXISTING OR THE CREATION OF NEW MANAGEMENT AREA BOUNDARIES, EXCEPTING MINOR ADJUSTMENTS;
- (B) THE SUBSTANTIAL REVISION OF EXISTING OR THE CREATION OF NEW MANAGEMEN
- (C) THE IDENTIFICATION OF NEW OR REMOVAL OF CURRENT PROTECTED SPECIAL, SENS RESOURCES;
- (D) THE IDENTIFICATION OF NEW OR REMOVAL OF CURRENT PROTECTED AREAS OF C WATER-DEPENDENT USES; OR,
- (E) OTHER CHANGES THAT WOULD RESULT IN SIGNIFICANT ALTERATION TO THE MANA OR GEOGRAPHIC EXTENT OF THE PLAN.

28.07: CONTINUED

(5) THE SECRETARY WILL CONDUCT THE REVIEW AND AMENDMENT PROCESS IN ACCORDANCE WITH THE FOLLOWING GUIDELINES:

- (A) THE PLAN AMENDMENT PROCESS WILL BE INITIATED WITH ~~AN~~ PUBLIC NOTICE IN THE *Monitor* ANNOUNCING THE INTENT TO REVIEW AND AMEND THE CURRENT OCEAN MANAGEMENT PLAN.
- (B) PUBLIC HEARINGS WILL BE HELD TO RECEIVE INPUT ON THE CONTENT AND IMPLEMENTATION OF THE CURRENT OCEAN MANAGEMENT PLAN. GENERALLY, A HEARING WILL BE HELD IN THE FOLLOWING REGIONS: NORTH SHORE, METRO BOSTON, SOUTH SHORE, CAPE AND ISLANDS, AND COASTAL.
- (C) THE SECRETARY WILL CONSULT WITH THE OCEAN ADVISORY COMMITTEE IN DETERMINING THE SCOPE OF THE PLAN AMENDMENT AND IN THE DEVELOPMENT OF AMENDMENTS PURSUANT TO THE PLAN.
- (D) THE SECRETARY WILL CONSULT WITH THE OCEAN SCIENCE ADVISORY COUNCIL IN DETERMINING THE SCOPE OF THE UPDATED BASELINE ASSESSMENT SCOPE AND IN THE REVIEW OF SCIENCE AND DATA FOR THE PLAN AMENDMENT SCOPE.
- (E) THE SECRETARY WILL MAKE A DRAFT OF THE PLAN AMENDMENT AVAILABLE IN BOTH PRINTED AND ELECTRONIC COPY FORM FOR PUBLIC COMMENT. PUBLIC HEARINGS WILL BE HELD ON THE PLAN. THE PUBLIC COMMENT PERIOD WILL REMAIN OPEN FOR A MINIMUM OF 60 DAYS BEFORE A HEARING.
- (F) AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD, THE SECRETARY WILL PROMULGATE AN AMENDED OCEAN MANAGEMENT PLAN AND WILL FILE THE PLAN WITH THE HOUSE OF REPRESENTATIVES AND SENATE CLERKS.
- (G) 301 CMR 28.00 WILL BE REVISED AS NECESSARY TO IMPLEMENT, ADMINISTER AND ENFORCE M.G.L. C. 21A, § 4C AND THE OCEAN MANAGEMENT PLAN.

(6) DISTINCT FROM AN AMENDMENT TO THE OCEAN MANAGEMENT PLAN, UPDATES ARE IMPLEMENTED TO THE PLAN INTENDED FOR PROPOSED CHANGES NECESSARY FOR EFFECTIVE AND EFFICIENT ADMINISTRATION OF THE PLAN AT THE SCOPE OR SCALE OF AN AMENDMENT. THE FOLLOWING CHANGES TO THE OCEAN MANAGEMENT PLAN MAY BE MADE THROUGH AN UPDATE:

- (A) CORRECTIONS TO ADDRESS ERRATA, TECHNICAL DISCREPANCIES OR ERRORS, OR TO CLARIFY MEANING;
- (B) UPDATED DATA AND INFORMATION ON THE SPATIAL EXTENT OR FURTHER CHARACTERIZATION OF SENSITIVE AND UNIQUE RESOURCES OR CONCENTRATIONS OF WATER-DEPENDENT USES;
- (C) MINOR SHIFTS IN EXISTING MANAGEMENT AREA BOUNDARIES; AND
- (D) OTHER ADJUSTMENTS THAT DO NOT RESULT IN SIGNIFICANT CHANGES TO THE MANAGEMENT FRAMEWORK OR GEOGRAPHIC EXTENT OF THE OCEAN MANAGEMENT PLAN.

(7) THE SECRETARY WILL CONDUCT THE UPDATE PROCESS IN ACCORDANCE WITH THE FOLLOWING GUIDELINES:

- (A) REQUESTS FOR AN UPDATE BY AN AGENCY OR PERSON WILL BE SUBMITTED TO THE SECRETARY. PROPOSED UPDATES MUST MEET A CONFIRMED NEED FOR ADJUSTMENTS TO THE PLAN MANAGEMENT OR ADMINISTRATIVE FRAMEWORK OF THE CURRENT AND ANY PROPOSAL FOR AN UPDATE MUST INCLUDE A CLEAR SUMMARY STATEMENT AND RATIONALE FOR THE PURPOSE OF THE UPDATE.
- (B) FOR A PROPOSED UPDATE THAT PERTAINS TO NEW OR UPDATED DATA ON SPECIAL SENSITIVE AND UNIQUE RESOURCES OR CONCENTRATIONS OF WATER-DEPENDENT USES, THE UPDATE MUST COMPLY WITH THE DATA STANDARDS AND PROCESSES CONTAINED IN 301 CMR 28.08.
- (C) THE SECRETARY WILL SEEK INPUT FROM AGENCIES AND WILL CONSULT WITH THE OCEAN ADVISORY COMMITTEE, THE COMMISSION AND THE OCEAN SCIENCE ADVISORY COUNCIL ON THE PROPOSED UPDATE.
- (D) THE SECRETARY WILL PROVIDE FOR PUBLIC NOTICE ~~IN THE~~ *Monitor* OF THE INTENT TO UPDATE THE OCEAN MANAGEMENT PLAN UPON A DETERMINATION THAT THE UPDATE MEETS THE CRITERIA AND WILL FURTHER THE GOALS OF THE OCEAN MANAGEMENT PLAN. THE PUBLIC COMMENT PERIOD WILL BE AT LEAST 30 DAYS. THE SECRETARY MAY HOLD ONE OR MORE PUBLIC HEARINGS ON THE PROPOSED UPDATE.
- (E) AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD, THE SECRETARY WILL ISSUE A DECISION ON THE PROPOSED UPDATE. THIS DECISION WILL ~~BE NOTICED IN THE~~ *Monitor*.

28.08: DATA STANDARDS

(1) FOR PROPONENTS SEEKING TO DEMONSTRATE THAT THE MAPS CONTAINED IN THE OCEAN MANAGEMENT PLAN DO NOT ACCURATELY CHARACTERIZE THE PROTECTED RESOURCE OR USE PURSUANT TO 28.04(2)(A)1., THE STANDARDS IN 301 CMR 28.08(1)(A) AND (B) APPLY:



28.08: CONTINUED

(A) CONSULTATION WITH THE SECRETARY, THE OFFICE OF COASTAL ZONE MANAGEMENT AND OTHER AGENCIES WITH EXPERTISE OR AUTHORITY IS ADVISED IN ORDER TO REVIEW ANY PROPOSED ACTION OR OTHERWISE CHARACTERIZE PROTECTED RESOURCES OR USES.

(B) INFORMATION PRESENTED MUST BE BASED ON SITE-SPECIFIC INVESTIGATION OR DATA THAT CONFORMS WITH CONTEMPORARY AND ACCEPTED STANDARDS.

(2) FOR PROPOSED UPDATES TO OR THE DELINEATION OF NEW AREAS OF MAPPED SPECIAL SENSITIVE AND UNIQUE RESOURCES OR CONCENTRATIONS OF WATER-DEPENDENT USES PURSUANT TO 301 CMR 28.00, THE FOLLOWING STANDARDS APPLY:

(A) PRIOR TO INITIATING A PROPOSED INVESTIGATION OR MAPPING EFFORT, PERSONS OR AGENCIES MUST CONSULT WITH THE SECRETARY, THE OFFICE OF COASTAL ZONE MANAGEMENT AND OTHER AGENCIES WITH EXPERTISE OR AUTHORITY TO DETERMINE STUDY REQUIREMENTS AND DATA PRODUCTS.

(B) ANY NEW OR REVISED DATA SET FOR SPECIAL SENSITIVE AND UNIQUE RESOURCES OR CONCENTRATIONS OF WATER-DEPENDENT USES SHOULD BE BASED ON SITE-SPECIFIC DATA THAT CONFORM WITH CONTEMPORARY AND ACCEPTED STANDARDS, AND ADHERE TO OTHER STANDARDS SUCH AS PEER REVIEW.

(C) ANY FINAL DATA PRODUCT MUST INCLUDE ACCEPTABLE GEOSPATIAL META-DATA, SOURCE IDENTIFICATION AND DESCRIPTION OF ANY DATA MODIFICATION OR TRANSFORMATION OR DATA EXTRACTION.

28.09: SEVERABILITY

IF ANY SECTION OR CLAUSE OF 301 CMR 28.00 IS HELD INVALID OR UNCONSTITUTIONAL BY A COURT OF COMPETENT JURISDICTION, THE REMAINDER SHALL NOT BE AFFECTED THEREBY.

REGULATORY AUTHORITY

301 CMR 28.00: ST. 2008, C. 114, § 23 AND M.G.L. C. 21A, § 4C.