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301 CMR: EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

301 CMR 27.00: OCEAN SANCTUARIES

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27.01: Authority

(1) 301 CMR 27.00 is adopted pursuant to the Massachusetts Ocean Sanctuaries Act, M.G.L. c. 132A, §§ 12A through 16K and § 18 as amended by An Act Relative to Oceans (Oceans Act), St. 2008, c. 114 and An Act Improving Drinking Water and Wastewater Infrastructure, St. 2014, c. 259.

27.02: Purpose

(1) The Massachusetts Ocean Sanctuaries Act establishes Ocean Sanctuaries, defines prohibited and allowed Activities in Ocean Sanctuaries, and requires Agencies to protect these Ocean Sanctuaries from exploitation, development, or Activity that would significantly alter or otherwise endanger their ecology or appearance in the issuance of Authorizations for Activities subject to jurisdiction.

(2) 301 CMR 27.00 is promulgated to fulfill, in part, the statutory responsibility of the Office of Coastal Zone Management for the care, oversight, and control of Ocean Sanctuaries.

(3) 301 CMR 27.00 also defines, interprets, and explains provisions of the Ocean Sanctuaries Act, the Oceans Act, and An Act Improving Drinking Water and Wastewater Infrastructure. 301 CMR 27.00 establishes the procedures and requirements necessary for Agencies to carry out responsibilities under these authorities.

(4) Nothing in 301 CMR 27.00 shall be construed to supersede existing general or special laws, or to confer rights and remedies in addition to those conferred by existing general or special laws.

27.03: Definitions

Act means the Massachusetts Ocean Sanctuaries Act, M.G.L. c. 132A, §§ 12A through 16K and § 18.

Activities means activities, uses, or facilities described in M.G.L. c. 132A, §§ 15 and 16, and in 301 CMR 27.06.

Adjudicatory hearing means a hearing conducted pursuant to M.G.L. c. 30A §§ 9, 10, 10A, 11, and 12.

Advanced treatment means enhanced physical, chemical, or biological treatments that are used, in part, to remove nutrients, including nitrogen or phosphorus.

Agency means any agency, department, division, board, commission, or authority of the Commonwealth.

Applicant means any city, town, district, county or authority and has the legal ability to implement any form of wastewater disposal, including land application, and which applies for a new or modified discharge pursuant to the Act.

Authorization means certificates, licenses, permits, and approvals for proposed Activities.

Comprehensive Wastewater Management Plan or CWMP means a municipal or regional study, conducted in accordance with appropriate Department guidance, regulations, and policies, that evaluates alternatives and recommends an appropriate implementation strategy to properly manage wastewater in order to provide protection for the public health and safety of the environment, and is designed to ensure that goals associated with water quality standards set forth at 314 CMR 4.00 and TMDLs, if any TMDLs exist are met.

Department means the Department of Environmental Protection.

Environmental Impact Report means a report prepared pursuant to the Massachusetts Environmental Policy Act, M.G.L. c. 30 §§ 61-62H.

Estuary means a semi-enclosed body of water that has a free connection with the open sea, within which seawater is measurably diluted with fresh water derived from outflowing fresh water rivers and/or groundwater.

Existing discharge means a municipal, commercial, or industrial discharge at the volume and location approved and licensed by the appropriate federal and state agencies on July 15, 1970, in the case of the Cape Cod Ocean Sanctuary; on December 8, 1971, in the case of the Cape Cod Bay and Cape and Islands Ocean Sanctuaries; on June 27, 1972, in the case of the

North Shore Ocean Sanctuary; and on December 30, 1976, in the case of the South Essex Ocean Sanctuary.

Marine boundary map means the marine boundary map of the Commonwealth prepared pursuant to the St. 1970, c. 810 and St. 1971, c. 1035.

Mean low water line means the present mean low tide line, as established by the present arithmetic mean of water heights observed at low tide over a specific 19-year Metonic cycle (the National Tidal Datum Epoch) and shall be determined using the hydrographic data of the National Ocean Survey of the U.S. Department of Commerce.

Miles means nautical miles.

Modified discharge means an increase in volume or change in location of an existing discharge from a publicly owned treatment works.

Municipal means of or pertaining to any subdivision of the Commonwealth, including a city, town, county, region, district, or authority.

New discharge means a discharge from a publicly owned treatment works not approved under the Act prior to February 1, 2014, nor authorized by the appropriate federal and state agencies prior to February 1, 2014.

Ocean Sanctuary means any of the five areas established and defined by the Massachusetts Ocean Sanctuaries Act, M.G.L. c. 132A, § 13. These areas are delineated by boundaries described in the statute, as may be amended. The Office maintains the official maps of the Ocean Sanctuaries which may be updated from time to time.

Office means the Office of Coastal Zone Management.

Ocean Management Plan means the Massachusetts Ocean Management Plan developed and promulgated pursuant to St. 2008, c. 114, and M.G.L. c. 21A, § 4C.

Person means any agency or political subdivision of the federal government or Commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association, or other entity, and any officer, employee, or agent of said person, and any group of said persons.

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging such pollutants into a publicly owned treatment plant.

Proposed discharge means a new or modified discharge.

Public necessity and convenience means necessary to the public interest or in the public interest. Agencies making the public necessity and convenience determination must do so according to 301 C.M.R. 27.05: Consistency of Agency Authorizations.

Publicly Owned Treatment Works or POTW means a sewage or septage treatment plant owned by a public entity.

Refuse means any useless, unwanted, discarded, or environmentally harmful solid waste material, whether combustible or non-combustible, and including, but not limited to, garbage or sludge resulting from any Activity.

Significantly alter means to substantially change or endanger the ecology or appearance of the ocean sanctuaries, including but not limited to: marine life and resources, including mammals, sea turtles, birds, fish, shellfish and other invertebrates, eelgrass, tidal flats, mussel reefs and other biogenic habitats; water quality including salinity, nutrients, pH, temperature; and hydrodynamic conditions including flushing and flow; sediment movement and transport dynamics.

Structure means any man-made object of any kind that is not temporarily fixed to the seabed or not temporarily moored in the waters above, as defined in Chapter 91 Waterways regulations at 310 CMR 9.02.

Total Maximum Daily Load (TMDL) means the sum of a receiving water's individual waste load allocations, load allocations, and natural background, which, together with a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, represents the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards in all seasons.

Wastes means any unwanted, discarded, or environmentally harmful solid, liquid, or gaseous materials resulting from commercial, municipal, domestic, or industrial Activities, including, but not limited to garbage, snow, thermal discharges, saline discharges, and sewage. Waste does not include approved and licensed dredge spoils, approved and licensed stormwater discharges, or snow disposal consistent with Department guidance.

#### 27.04: Jurisdiction

- (1) Activities listed in 301 CMR 27.06 that occur in all or part of an Ocean Sanctuary are subject to jurisdiction.
- (2) Pursuant to the Act, allowed Activities listed in 301 CMR 27.06 and meeting the jurisdictional thresholds of the Ocean Management Plan as defined in 301 CMR 28.03 are subject to the siting and performance standards of the Ocean Management Plan. The Ocean Management Plan identifies key components of Massachusetts estuarine and marine

ecosystems, defined as Special, Sensitive or Unique Resources, and establishes standards to protect them. The Ocean Management Plan also establishes management guidance for balancing potential impacts to areas with Concentrations of Water-dependent Uses with new Activities in the Ocean Management Planning Area. The standards for protected resources and uses are contained in 301 CMR 28.04.

(3) Official maps of the Ocean Sanctuaries are developed and maintained by the Office and available at [www.mass.gov/eea/agencies/czm/program-areas/mapping-and-data-management/moris/](http://www.mass.gov/eea/agencies/czm/program-areas/mapping-and-data-management/moris/) or from the Office. From time to time, the Office may change the landward boundary of an Ocean Sanctuary to extend inward in rivers, bays, harbors, or coves to include environmentally sensitive areas. Procedures for map revisions are contained in 301 CMR 27.08.

#### 27.05: Consistency of Agency Authorizations

(1) It shall be the responsibility of all Agencies to ensure that all authorizations for any proposed Activities in a Ocean Sanctuary are consistent, to the maximum extent practicable, with the provisions of the Act and these regulations.

(2) An agency authorizing an allowed Activity, shall include a determination in its M.G.L. c. 30, § 61, findings pursuant to MEPA, that all feasible measures have been taken such that its approval of the Activity is consistent with the Act and that it has complied with all of the applicable legal performance standards with respect to assuring the no significant alteration standard for the ocean sanctuaries is met. The Agency shall specify any measures required to achieve consistency with the standard, the Person or Agency responsible for funding and implementing such measures, and the anticipated implementation schedule that will ensure that the measures shall be implemented prior to, or when appropriate, in relation to the timing of unavoidable impacts.

(3) In accordance with M.G.L. c. 132A, § 16, in the determination of a project's public necessity and convenience, this standard shall be administered by the Department in its Chapter 91 licensing under 310 CMR 9.00 and by the Office in its federal consistency determination under 301 CMR 21.00, as applicable, and subject to the general oversight function of the Office. In applying this standard in the review of an applicant's license or consistency certification, the agencies shall consider the following factors:

- (a) the project's purpose, need, and the public it serves;
- (b) the benefits and detriments to the public and public interest, including effects on the environment; on public health, safety and wellbeing; on navigation and commerce, including recreational and commercial fishing, recreation boating, shipping, and transportation; and on recreation and recreational uses;
- (c) the applicant's demonstrated ability to build, maintain, and decommission structures and facilities on public tidelands;

- (d) the extent to which existing uses or facilities will be affected by the proposed facility or use; and
- (e) the project's consistency with the Ocean Management Plan.

27.06: Prohibited and Allowed Activities

(1) Prohibited Activities in ocean sanctuaries. In all five of the ocean sanctuaries, the following Activities are prohibited.

(a) Prohibited unconditionally:

1. Drilling or removal of gases or oils.
2. Commercial advertising, where advertising is the primary intent.
3. Incineration of refuse on, or in, vessels.

(b) Prohibited with exceptions:

1. The dumping or discharge of commercial, municipal, domestic, or industrial wastes except as allowed in 301 CMR 27.06(2).
2. The drilling or removal of minerals except as allowed in 301 CMR 27.06(2)(g).
3. The construction or operation of offshore or floating electric generating stations except as allowed in 301 CMR 27.06(2)(j).
4. The building or laying of structures on the seabed or subsoil except as allowed in 301 CMR 27.06(2).

(2) Allowed Activities in ocean sanctuaries. The following Activities are allowed, provided they receive all required authorizations:

(a) Transient, vessel-based Activities, including but not limited to: commercial and recreational fishing, shipping, fuel transport, passenger transport, recreational boating, wildlife viewing, scientific research, and U.S. Coast Guard and military operations.

(b) The operation and maintenance of approved and licensed discharges from existing municipal, commercial, or industrial facilities but not any change in or extension of associated structures or uses unless permitted by 301 CMR 27.07.

(c) A new or modified discharge of municipal wastewater from a publicly owned treatment works as approved by the Department according to 301 CMR 27.07.

(d) Discharges from facilities designed to abate existing discharges exclusively from combined sewer overflows (CSOs) when such facilities are approved by the Department and when existing discharges from CSOs degrade or threaten to degrade the designated ocean sanctuary.

(e) Discharges from vessels, except sewage, when allowed in accordance with the appropriate state and/or federal approvals and licenses.

(f) Dredging for navigational purposes.

(g) The extraction of sand and gravel solely for beach nourishment and restoration and shore protection or as incidental to other allowed and permitted Activities.

- (h) The harvesting and propagation of fish and shellfish in all forms, so long as the Office and the Department of Fish and Game are satisfied that the Activities are carried on in accordance with sound conservation practices designed to maintain, increase, or restore existing finfish or shellfish stocks by the management of resources.
- (i) Temporary educational and scientific Activities jointly permitted by appropriate state agencies.
- (j) The construction and operation of offshore or floating electric generating facilities only if:
  - 1. Such electric generating facilities are used on an emergency and temporary basis for supply of energy and otherwise consistent with the Ocean Management Plan; or
  - 2. In areas other than the Cape Cod Ocean Sanctuary, such electric generating facilities are appropriately-scaled renewable energy facilities as defined by the Ocean Management Plan, and provided the renewable energy facility is consistent with the Ocean Management Plan and 301 CMR 28.00.
- (k) The building or laying of structures on the seabed or subsoil only if:
  - 1. Such structures are temporary and do not meet the definition of “structure” at 301 CMR 9.02; or
  - 2. Except in the Cape Cod Ocean Sanctuary, such structures are associated with the generation, transmission, and distribution of electric power, including the construction, reconstruction, operation and maintenance of industrial liquid coolant discharge and intake systems, unless such structures are otherwise prohibited by section (1)(b)3, above; or
  - 3. Structures associated with the operation and maintenance of existing municipal, commercial or industrial facilities; or
  - 4. The laying of cables approved by the Department of Public Utilities or the Department of Telecommunications and Cable; or
  - 5. Channel and shore protection projects; or
  - 6. Navigational projects and aids; or
  - 7. Other projects authorized under M.G.L. c. 91 and 310 CMR 9.00 deemed to be of public necessity and convenience, including but not limited to: natural gas lines, water mains, and wastewater and stormwater pipes; or
  - 8. Structures associated with the harvesting and propagation of fish and shellfish in all forms, provided such Activities are consistent with sound conservation practices as determined by the Office and the Department of Fish and Game; or
  - 9. Other improvements not specifically prohibited in 301 C.M.R. 27.06(1) that are consistent with the Act, including maintenance and repair of existing structures but not any change in or extension of such structures.



27.07: New or Modified Discharge

(1) General

(a) M.G.L. c. 132A, §§ 16G - 16K allow for a new or modified discharge from a POTW to an ocean sanctuary if approved by the Department pursuant to the Act and these regulations.

(b) The applicant for a new or modified discharge is also required to obtain all other applicable federal, state and local authorizations, including a surface water discharge permit in accordance with 314 CMR 3.00.

(2) Application Requirements

(a) Applicants may request a pre-application conference with the Department to help clarify application submission requirements, but such a pre-application conference is not required. If a pre-application conference is held, the Office shall be included, and the Department may invite other state agencies as applicable.

(b) An application for a new or modified discharge must include the following:

1. The Department's application form for a new or modified discharge to an ocean sanctuary.
2. A description, coordinates, and maps of the proposed modified or new discharge, including location(s), average daily flow, proposed level of treatment, design capacity, existing and proposed outfall locations and alignment of discharge pipes and other related structures, a summary of any proposed changes to existing discharge conditions, effluent quality or characteristics. Maps shall show the boundaries of the affected ocean sanctuary and demarcate the following: Areas of Critical Environmental Concern; Special, Sensitive or Unique Resources from the Ocean Management Plan; marine life and natural resources, including but not limited to wetland resource areas, shellfish beds, eelgrass beds, habitats of endangered and threatened species, species of special concern; fisheries resources, including but not limited to commercial and recreational fishing areas, spawning sites, nursery and forage areas, and migratory pathways or areas necessary for other functions or critical stages in the life cycle of economically or recreationally important species; Concentrations of Water-dependent Uses from the Ocean Management Plan; recreational resources including, but not limited to, bathing beaches, boating areas and scenic areas; and water quality classification(s) of affected waters.
3. A final CWMP, targeted watershed management plan, or other appropriate substitute as may be required, and has been approved by the department.
4. A final environmental impact report and certificate with the Secretary's findings and determinations.
5. A detailed evaluation of the receiving water body, including the data, information, results and conclusions from the following surveys and investigations establishing, at a minimum, a two year baseline:

- (a) water quality monitoring, including nutrients, temperature, pH, dissolved oxygen, water clarity;
- (b) fisheries survey, including finfish and shellfish;
- (c) benthic sediments and infauna; and
- (d) fisheries habitat including eelgrass.

6. Data, information, results and conclusions from the development of a site-specific hydrodynamic model illustrating tides, bathymetry, mixing zones and seasonal variations that estimate dilution and dispersion of nutrients, pathogens, and other relevant contaminants within the wastewater discharge.

7. A hydrologic evaluation of any affected aquifer(s), including evaluation of the effects of the new or modified discharge, and any planned and potential sewerage, on the recharge of the affected aquifer, and how those changes may affect drinking water supplies or natural resources.

8. An evaluation of the commercial and recreational fisheries at the project site, in the embayment and estuary, and in the affected ocean sanctuary, including the specific existing and potential fisheries, and the value of the fisheries. The evaluation must include an analysis of potential closures due to public health requirements including the potential extent of the mandatory shellfish bed closures to meet prescribed standards in the U.S. Food and Drug Administration's National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish. The evaluation shall also include potential impacts from the proposed outfall structure on normal operation of fishing vessels or equipment.

9. A proposed long-term monitoring plan to document that any new or modified discharge would continue to meet the intent of the Act, the standards of 301 CMR 27.07(3), and other applicable laws and regulations.

10. Documentation, detailed analysis, and supporting evidence demonstrating how the new or modified discharge meets the requirements and standards in 301 CMR 27.07(3).

(c) The information required in 301 CMR 27.07(2)(b) should be prepared, to the extent possible, and submitted as part of the required Environmental Impact Report.

### (3) Standards for Approval

(a) In its review of an application pursuant to 301 CMR 27.07(2), the Department shall consider the information provided in the application and supplementary material, including documentation of planned mitigation efforts, requested and provided during the application and review process, correspondence and input from the Office and other affected agencies, and testimony and comments provided during public hearing and comment.

(b) The Department may approve an application for a new or modified discharge only if the applicant has demonstrated that all the following requirements are met:

1. The new or modified discharge shall be consistent with the intent and purpose of the Act.

2. The new or modified discharge shall meet the water quality standards of the receiving water body
3. The new or modified discharge shall protect the appearance, ecology, and marine resources of the ocean sanctuary.
4. The new or modified discharge shall meet the United States Environmental Protection Agency's approved TMDL, if any, on any affected receiving water bodies.
5. The applicant has adopted and implemented a plan, approved by the Department, requiring the pretreatment of all commercial and industrial wastes discharged to the POTW.
6. The applicant has adopted and implemented a program for water conservation according to the guidelines established by the Water Resources Commission.
7. The applicant has adopted and implemented a plan, approved by the Department, to control and minimize inflow and infiltration.
8. The applicant has adopted and implemented a plan, approved by the Department, to control any combined sewer overflows.
9. The new or modified discharge shall not significantly affect the quality or quantity of existing or proposed water supplies by reducing ground or surface water replenishment.
10. The new or modified discharge is consistent with the policies and plans of the Office.
11. The new or modified discharge and treatment plans shall be consistent with all applicable federal, state, and local laws, ordinances, by-laws, rules and regulations protecting the environment, including but not limited to, the requirements of M.G.L. c. 21, c. 91, c. 130 and c. 131.
12. The new or modified discharge, including the outfall structure, shall not adversely impact marine fisheries or interfere with fishing grounds or the normal operation of fishing vessels.
13. For new discharges in the Cape and Islands Ocean Sanctuary, the Cape Cod Ocean Sanctuary and the Cape Cod Bay Ocean Sanctuary, the discharge shall receive advanced treatment, disinfection and such other treatment to remove nutrients, pathogens or other pollutants to avoid degradation of the ecology, appearance and marine resources of the sanctuary and to meet water quality standards and any applicable TMDLs. Chlorinated disinfection shall not occur unless it is followed by dechlorination prior to discharge .
14. In the Cape Cod Bay Ocean Sanctuary, within Plymouth, Kingston, Duxbury Bay, landward of a line between Gurnet Point and Rocky Point, no new or modified discharge shall be authorized in a depth of water that at mean low tide is less than 30 feet.

(4) Review and Decision on Application.

The review and decision on an application made pursuant to 301 CMR 27.07 shall proceed

in accordance with the Department's regulations at 314 CMR 2.00 for an individual surface water discharge permit except as follows:

- (a) The Department's public notice in accordance with 314 CMR 2.06 shall include notice of a public hearing. The Department shall also provide individual notice to all municipalities bordering the affected sanctuary.
- (b) When the Department issues the final permit in accordance with 314 CMR 2.08, it shall also provide individual notice of the final permit to any person commenting on the application and draft permit, and to all municipalities bordering the affected sanctuary.
- (c) The final permit will become effective 30 days after issuance unless any person aggrieved by the decision requests an adjudicatory hearing prior to the expiration of 30 days.
- (d) The final decision of the Department after an adjudicatory hearing, if any, shall take effect within 30 days, unless an appeal is taken under M.G.L. c. 30A, § 14, prior to the expiration of 30 days.

27.08: Procedure for Map Revisions

- (1) The Office may revise the official maps of the Ocean Sanctuaries to change the landward boundary of an Ocean Sanctuary to extend inward in rivers, bays, harbors, or coves to include environmentally sensitive areas or to make corrections or adjustments to address technical discrepancies or errors, or to clarify intent or meaning.
- (2) Any proposed revisions to the maps shall be proposed by the Office and noticed in the *Environmental Monitor* for a 21-day public comment period. The notice shall describe the proposed revision, the rationale for the change and provide maps clearly indicating the change.
- (3) After the close of the public comment period, the Office will make a final decision and issue final versions of the Ocean Sanctuaries maps. This decision will be noticed in the *Environmental Monitor*.

27.99: 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.