

## **REDRAFT OF SENATE BILL 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:*

**SECTION 1.** The general court finds and declares that:

- (a) Coastal population growth and rapid advances in technology and commerce have led to a significant increase in the demands on the commonwealth's ocean resources;
- (b) Ocean resources management in the commonwealth has historically been focused on particular resources or activities, and public decisions about whether to allow certain activities in the commonwealth's ocean waters have occurred in a reactive and fragmented manner;
- (c) The commonwealth's ocean management policy must be adjusted to account for evolving needs and values, emerging technologies and evolving understanding and knowledge of ocean ecosystems in order to meet the commonwealth's public trust responsibilities;
- (d) The commonwealth recognizes that commercial and recreational fisheries are an integral and historic part of our culture and contribute substantial economic benefits to our citizens and that regulation and management of these fisheries shall be, exclusively, by the Massachusetts division of marine fisheries and the relevant federal and interstate management agencies and;
- (e) It shall be the policy of the commonwealth that stewardship of the commonwealth's ocean waters shall be carried out through an ocean management plan that protects, maintains and restores the abundance and diversity of native species and habitats and the health and productivity of coastal and marine ecosystems in order to fulfill the ecological, economic, educational, social, cultural, nutritional, recreational and other requirements of present and future generations in a sustainable manner; and
- (f) The Massachusetts ocean management task force has studied and made recommendations, based upon a public participation process, for improved stewardship of the commonwealth's ocean resources.

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

**SECTION 3.** Said chapter 21A is hereby further amended by inserting after section 4B the following section: -

Section 4C. (a) The ocean waters and ocean-based development of the commonwealth, within the ocean management planning area described in this section, shall be under the

oversight, coordination and planning authority of the secretary of energy and environmental affairs, in accordance with the public trust doctrine, as established by common law and codified in the Colonial Ordinances of 1641-47 and subsequent relevant statutes and case, and in regular consultation with the members of the ocean management advisory commission and all other relevant agencies, on behalf of the people of the commonwealth pursuant to the policy, planning and coordination authority vested in the secretary by sections 1 through 6 of this chapter. Such oversight, coordination and planning authority shall be exercised through the promulgation of an ocean management plan, which shall be a document including maps, illustrations and other media, setting forth, among other things, the commonwealth's goals, policies and standards to ensure effective state stewardship of the ocean waters held in trust for the benefit of the public. This stewardship shall be carried out in accordance with sound management practices that: take into account the existing natural, social, cultural, historic and economic characteristics of the planning area; protect the public trust; value biodiversity and ecosystem health; protect special, sensitive or unique estuarine and marine life and habitats; address climate change and sea-level rise; respect the interdependence of ecosystems; coordinate uses that cross international, federal, state and local jurisdictions; foster sustainable uses that capitalize on economic opportunity without significant detriment to the ecology or natural beauty of the ocean; preserve and enhance public access; support the needed infrastructure for the economy and quality of life for the citizens of the commonwealth; use the best available information and expertise; encourage public participation in decision-making; and adapt to our evolving knowledge and understanding of the ocean environment. Nothing in this section shall be construed to alter the jurisdictional authority of the division of marine fisheries.

Ocean-based development, for the purposes of this section, shall be the creation, development or installation of permanent or temporary structures and the mining, removal or other exploitation of marine resource not currently subject to chapter 130 which shall remain in full force and effect.

(b) The geographic area subject to an ocean management plan shall include any waters and associated submerged lands of the ocean, including the seabed and subsoil, lying between the line designated as the "Nearshore Boundary of the Ocean Management Planning Area" depicted on a plan dated January 31, 2006, prepared by the office of coastal zone management and kept on file at the executive office of environmental affairs, and the seaward boundary of the commonwealth. An ocean management plan may also address activities in adjacent seaward waters and, to the maximum extent consistent with federal law, shall apply to activities occurring in adjacent federal waters that are functionally connected or otherwise related to the management of resources within the ocean management planning area. An ocean management plan may take into account the different regional characteristics of the commonwealth's waters.

(c)(1) There shall be an ocean management commission to assist the secretary in the development of an ocean management plan. This commission shall consist of 16 members: 2 members of the senate, 1 to be appointed by the president of the senate and 1 appointed by the minority leader of the senate; 2 members of the house of

representatives, 1 to be appointed by the speaker of the house of representatives and 1 appointed by the minority leader of the house of representatives; the directors of the office of coastal zone management and the division of marine fisheries, or their designees; and the following representatives, to be appointed by the governor: 1 representative of a commercial fishing organization; 1 representative of a recreational fishing organization; 2 representatives of environmental organizations; 1 representative of a non-fishing ocean-dependent industry; 3 mayors or members of a city council or board of selectmen of coastal municipalities; and 2 directors of regional planning agencies. As the term of a member expires, his successor shall be appointed for term of 3 years, except that, initially, 6 members shall be appointed for terms of 2 years and 3 members shall be appointed for terms of 1 year. The governor may also fill any vacancy in an unexpired term. The members of the ocean management commission shall be selected with due regard to coastal geographic distribution.

The commission shall annually elect a chairman and clerk, shall keep accurate records of its meeting and hearing and shall meet at least quarterly and at the call of the chairman. A quorum to conduct business shall consist of 8 members. The commission shall hold public meetings relative to matters within the jurisdiction of the ocean management plan and shall make recommendations to the secretary for the proper management and development of the plan. The secretary or his designee shall attend all meeting and hearing of the commission. The secretary shall ensure that the ocean management plan is consistent with the recommendations of the commission.

(2) There shall be an ocean science advisory council to assist the secretary in developing a baseline assessment, subject to clause (1) of the subsection (e), and any other scientific information necessary for the development of an ocean management plan. This council shall consist of 9 members, to be appointed by the secretary: 3 scientists from academic institutions, at least 1 of which shall be from the School of Marine Science and Technology at the University of Massachusetts at Dartmouth; 3 scientists from private nonprofit organizations, including 1 scientist designated by the Massachusetts Fishermen's Partnership; and 3 scientists from government agencies with demonstrated technical training and experience in the field of marine ecology, geology, biology, ichthyology, mammalogy, oceanography or other related ocean science disciplines, at least 1 of which shall be from the Division of Marine Fisheries. The secretary shall serve as coordinator of the council. The council shall meet at such times as the secretary shall set, but no less than once every 3 months to assist the secretary in compiling any scientific information necessary for the development of an ocean management plan.

(d) Upon adoption of an ocean management plan, no structure, use or activities, with the exception of commercial and recreational fishing pursuant to chapter 130, that could significantly alter the ocean resources of the geographic area established in accordance with this section may occur, except as allowed in subsections (i) and (j), and only if that structure, use or activity conforms to all applicable provisions of the ocean management plan. All offices and departments of the executive office of environmental affairs and all other agencies, departments, divisions, units, commissions, boards and authorities of the commonwealth shall enforce laws and regulations within their jurisdiction, conduct

regulatory reviews, administer programs, disburse funds, perform or supervise construction activities and otherwise conduct their activities in a manner that ensures conformance with the applicable provisions of an ocean management plan and this section.

(e) Development, implementation and enforcement of an ocean management plan as coordinated by the secretary, in regular consultation with the ocean management advisory commission, shall include, but not be limited to, the following elements:

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

(2) Establishing an outreach and participation program which shall include: early and continuing interaction with the public, the business sector, other interested groups and local, state, regional and federal officials; an opportunity for notice of the contents, public comments and public meetings at the local and regional levels, in consultation with the Massachusetts association of regional planning agencies, on a proposed ocean management plan, as described in subsection (f); and regular consultation with the ocean management advisory commission, the ocean science advisory council, the department of environmental protection, the department of conservation and recreation, the department of telecommunications and energy, the energy facilities siting board, the executive offices of economic development and public safety, the highway department, the division of energy resources, the department of telecommunications and energy, the port authorities, the department of agricultural resources and other state and federal agencies having jurisdiction over resources or activities within or affecting the ocean management planning area in order to achieve maximum feasible compatibility with the plans, programs or projects for which such departments, divisions, boards and other agencies are responsible. A summary of this participation program shall be included in an ocean management plan;

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

information. Management of marine fisheries shall comply with all applicable rules and regulations of the division of marine fisheries and federal or interstate fishery management plans, issued pursuant to chapter 130 or any other applicable general or special law, and shall be integrated, to the maximum extent practicable, with an ocean management plan. The integration of fisheries management plans with an ocean management plan shall be designed to enhance the ability of the division of marine fisheries to fulfill its responsibilities and to avoid any alterations of the jurisdictional authority of the division of marine fisheries. Management of waterfowl hunting shall comply with the rules and regulations of the division of fisheries and wildlife, issued pursuant to chapter 131 or any other general or special law, and shall be integrated, to the maximum extent practicable, with an ocean management plan. Nothing contained in this section shall prohibit the transiting of commercial fishing and recreational boats in Massachusetts ocean waters;

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

(5) Establishing a time period during which an ocean management plan is to remain effective and a proposed date, not to exceed 5 years from the date of plan adoption, on which re-evaluation of the plan will commence for purposes of renewal and amendment. The re-evaluation process shall include, but not be limited to, an opportunity for public comments, informational meetings and public meetings, as described in subsection (f). An ocean management plan shall remain in effect until a renewed or amended ocean management plan is adopted; and

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

(f) The secretary shall give notice of, and provide interested parties with the opportunity to present data, views or arguments for a period of at least 60 days in regard to, a proposed ocean management plan or any proposed amendment thereto or renewal thereof in writing, in accordance with section 3 of chapter 30A, and shall make such proposed amendments or plans available for a public review and comment period through notice in the Environmental Monitor and at least 1 newspaper of general circulation in each of the 5 administrative regions defined in the Massachusetts coastal zone management plan, commonly known as the North Shore, South Shore, South Coast, metropolitan Boston and Cape Cod and the Islands regions. For a proposed ocean management plan, the secretary shall conduct at least 1 public meeting, in consultation with the Massachusetts association of regional planning agencies, in each of the 5 administrative regions defined in the Massachusetts coastal zone management plan. For a proposed amendment to an ocean management plan, the secretary shall conduct at least 1 public meeting, in consultation with the Massachusetts association of regional planning agencies, in each of the administrative regions that would be directly affected by the proposed amendment.

At the conclusion of such public process, and after consideration of public comments received during the public comment period, the secretary may adopt an ocean management plan or any amendments thereto, and notice thereof shall be published in the next available edition of the Environmental Monitor and the Massachusetts Register. The secretary shall file a copy of the ocean management plan or any amendments thereto with the clerks of the house of representatives and the senate, the house and senate committees on ways and means and the joint committee on the environment, natural resources and agriculture at least 90 days before the ocean management plan or any amendments thereto are to take effect.

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

(h) Judicial review of the secretary's approval of an ocean management plan or any amendment thereto shall be as provided in section 7 of chapter 30A. Such action shall be commenced within 30 days of the publication in the Massachusetts Register of notice of the ocean plan or amendment, or, if a request for reconsideration is filed, within 30 days of publication of notice of the secretary's decision on the request for reconsideration. No such action may be commenced unless the issue complained of was raised by that person in writing during the public comment period on the ocean plan or amendment. An issue may be raised for judicial review upon a showing that it is material and that it was not reasonably possible with due diligence to have raised it during the public comment period.

(i) Notwithstanding any other provisions of this section, the following activities are prohibited between the mean low water mark and the seaward boundary of the commonwealth:

(1) constructing or operating offshore or floating electric generating stations in areas designated as an ocean sanctuary by section 13 of chapter 132A, except:

- (i) on an emergency and temporary basis for the supply of energy when such electric generating station is otherwise consistent with an ocean management plan; or
- (ii) for small-scale renewable energy systems, as defined by the ocean management plan, in areas other than the Cape Cod ocean sanctuary, established by section 13 of chapter 132A, when the small-scale renewable energy system is otherwise consistent with an ocean management plan;

(1) Ocean management plans shall include standards and criteria for siting small scale offshore renewable energy facilities, including but not limited to: compatibility with existing uses, appropriateness of technology and scale, environmental protection, public safety and community benefit.

(2) In regions where regional planning agencies are provided regulatory authority, those regional planning agencies shall review all small scale offshore renewable energy projects as developments of regional impact based on the standards and criteria as set forth in their regional policy plans.

(2) dumping or discharging commercial, municipal, domestic or industrial wastes in areas designated as an ocean sanctuary by section 13 of chapter 132, except as may be allowed pursuant to sections 16 and 16A to 16F, inclusive, of chapter 132A and their implementing regulations, as may be amended, and except for the discharge of bait and fish offal customarily associated with fishing;

(3) incinerating solid waste material or refuse on or in vessels moored or afloat;

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

(5) building or operating commercial advertising in areas designated as an ocean sanctuary by section 13 of chapter 32; and

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

(j) In all areas within the geographic area described in subsection (b), the following activities are allowed, to the extent not prohibited by subsection (i), provided that such projects have met all applicable requirements of other local, state and federal laws and regulations and are consistent with an applicable ocean management plan:

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

- (2) the operation, maintenance, repair or construction of infrastructure facilities used in the transmission or distribution of electricity, natural gas, water or telecommunications services, including pipelines, cables and conduits, except in the area designated as the Cape Cod ocean sanctuary by section 13 of chapter 132A;
- (3) industrial liquid coolant discharge and intake systems, except in the area designated as the Cape Cod ocean sanctuary by section 13 of chapter 132A;
- (4) facilities for aquaculture;
- (5) moorings, floats and rafts held by bottom anchor for the purpose of vessel docking or mooring, and ramps attached thereto;
- (6) docks, piers, wharves or other filled or pile-supported structures contiguous with the existing land mass;
- (7) environmental restoration or mitigation activities required by certificate of the secretary of environmental affairs;
- (8) dumping or discharging commercial, municipal, domestic or industrial wastes, in areas not designated as an ocean sanctuary by section 13 of chapter 132A; and
- (9) temporary scientific and educational facilities.

(k)(1) In all areas within the geographic area described in subsection (b), commercial and recreational fishing are allowable, subject to the exclusive jurisdiction of the division of marine fisheries. Any component of an ocean management plan which regulates commercial or recreational fishing shall be developed, promulgated and enforced by the division of marine fisheries pursuant to its authority under chapter 130.

(2) Any component of an ocean management plan which does not have as its primary purpose the regulation of commercial or recreational fishing but which has an impact on such fishing shall minimize negative economic impacts on commercial and recreational fishing. Prior to inclusion in an ocean management plan, any such component with such a reasonably foreseeable impact shall be referred to the division of marine fisheries, which shall respond to the secretary, pursuant to paragraph (3), in a timely and efficient manner.

(3) The director of the division of marine fisheries shall evaluate any component referred to him under paragraph (2) for its impact on commercial and recreational fishing and, if possible, develop and recommend to the secretary any suggestions or alternatives to mitigate or eliminate any adverse impacts. The response of the director shall be taken into consideration by the secretary and the ocean management advisory commission in determining whether the component shall be included in the ocean management plan. If the secretary does not include a suggestion or recommended alternative, he shall certify in writing the reasons therefore and append this certification to the ocean management plan. If the division does not make a timely response to the secretary, then that failure to timely respond shall be considered a response by the director that the referred component poses no adverse negative economic impact on commercial and recreational fishing.

(4) The director of division of marine fisheries, subject to the approval of the marine fisheries advisory commission, shall have sole authority for the opening and closing of areas within the geographic area described in subsection (b) to the taking of any and all

types of fish, pursuant to section 17A of chapter 130. Nothing in this section shall limit the authority of the director of the division of marine fisheries under section 17 of chapter 130 or any other provision thereto.

(l) Projects that have filed a chapter 91 license application and received a determination of completeness from the department of environmental protection or, if the project is subject to review pursuant to section 61 of chapter 30, has received a certificate of adequacy regarding a draft environmental impact report from the secretary, shall be governed by the ocean management plan in effect at the time of filing.

(m) (1) The executive office of environmental affairs and the department of environmental protection may expend, subject to annual appropriation, from revenue collected through fees and other payments of any type collected pursuant to chapter 91. Notwithstanding any general or special law to the contrary, for the purposes of accommodating timing discrepancies between the receipt of retained revenues and related expenses, the executive office environmental affairs and the department of environmental protection may incur expenses and the comptroller may certify for payment amounts not to exceed the lower of the budget authorization of the most-recent revenue estimate as reported in the state accounting system. Retained revenue collected pursuant to chapter 91 shall be used solely for the purposes of the administration and implementation of permitting and licensing compliance and enforcement of chapter 91 by the department of environmental protection and for the purposes of policy oversight, management planning, environmental enhancement and coordination of ocean resources by the executive office of environmental affairs pursuant to this section.

(2) There shall be established and set up on the books of the commonwealth a separate fund to be administered by the secretary, as trustee, in consultation with the department of environmental protection, to be known as the Ocean Resources and Waterways Trust Fund. There shall be credited to such fund: any applicable compensation or mitigation for ocean development to be used for the purposes of ocean resource enhancement or restoration; any income derived from the investment of amounts credited to the fund; and any appropriation grant explicitly made to the fund. The priority for use of funds credited to the trust for compensation or mitigation for ocean development projects shall be the restoration or enhancement of marine habitat and resources related to the impacts of any specific project; provided, that any funds for the enhancement of fisheries resources shall be directed to the Marine Fisheries Trust Fund to conduct the needed fisheries restoration and management programs, and any other amounts credited to the fund shall be used, without further appropriation, solely for the purposes of environmental enhancement, restoration and coordination of ocean resources by the secretary pursuant to this section, including the cost of employees or consultant services necessary to implement these requirements. Money remaining in the fund at the end of each fiscal year shall not revert to the General Fund and shall be available for expenditure in the following fiscal year.

There shall be established and set up on the books of the commonwealth a separate fund to be administered by the director of the division of marine fisheries, as trustee, to be known as the Marine Fisheries Trust Fund. There shall be credited to such fund: any

applicable compensation or mitigation related to fisheries management to be used for the purposes of preserving and enhancing the fishing industry; any income derived from the investment of amounts credited to the fund; and any appropriation, grant explicitly made to the fund. Funds credited to the trust for compensation or mitigation for ocean development projects shall be expended without further appropriation for the restoration or enhancement of marine fisheries. Notwithstanding any general or special law to the contrary, amounts expended from this fund shall be exempt from fringe and indirect cost charges pursuant to chapter 29.

(n) The secretary, in consultation with the department of environmental protection, the department of conservation and recreation and the division of marine fisheries, shall examine the establishment or renegotiation of fees, licenses, permits, rents, leases and the adjustment or development of other revenue sources for the purposes of funding ocean resource enhancement or restoration. Nothing in this section shall provide for a salt-water fishing license or any similar fees or user permits for salt water fishing.

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

**SECTION 4.** Section 12A of chapter 132A of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following sentence:- This section and section 12C, section 14, section 15, section 16 and section 18 shall cease to have any effect upon the adoption of an ocean management plan pursuant to section 4C of chapter 21A. Before that time, in the case of any differences among the requirements of section 15 and 16 of chapter 132A and paragraphs (i) and (j) of section 4C of chapter 21A, the provisions of sections 15 and 16 of chapter 132A shall control.

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

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

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

**SECTION 8.** Any project that, prior to the date of approval of the first ocean management plan as authorized by section 4C of chapter 21A of the General Laws, has: 1) filed a chapter 91 license application and received a written determination of completeness by the department of environmental protection; or 2) if the project is subject to review pursuant to section 61 of chapter 30 of the General Laws, received a certificate of adequacy regarding a final environmental impact report from the secretary; or 3) if the project is subject to jurisdiction of the energy facilities siting board, received both a final decision from the energy facilities siting board and a certificate of adequacy

regarding a draft environmental impact report from the secretary, shall not be subject to the requirements of said section 4C of said chapter 21A. Such projects not subject to said section 4C of said chapter 21A must comply with sections 12A to 16F, inclusive, and section 18 of chapter 132A of the General Laws, as they were in effect immediately prior enactment of said section 4C of said chapter 21A.

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

**SECTION 10.** The secretary of environmental affairs shall develop, adopt and implement an ocean management plan within 24 months of the effective date of section 3. Upon adoption, an ocean management plan shall be formally incorporated into the Massachusetts coastal zone management program, as referenced in section 4A of chapter 21A of the General Laws.

**SECTION 11.** The secretary of environmental affairs shall report to the general court recommendations concerning the establishment of fees, licenses, permits, rents, leases and the adjustment or development of other revenue sources, as authorized by subsection (m) of section 4C of chapter 21A of the General Laws, by submitting a report, including any proposed legislation, to the joint committee on environment, natural resources and agriculture and the house and senate committees on ways and means within 1 year of the effective date of section 3.