

1 An Act Relative to Oceans

2 **SECTION 1.** Chapter 10 of the General Laws is hereby amended by inserting after section
3 35GG the following section:-

4 Section 35HH. There shall be established and set up on the books of the commonwealth a
5 separate fund to be administered by the secretary of energy and environmental affairs, as trustee,
6 in consultation with the department of environmental protection, to be known as the Ocean
7 Resources and Waterways Trust Fund. There shall be credited to the fund any revenue from
8 appropriations or other monies authorized by the general court and specifically designated to be
9 credited to the fund, any appropriation or grant explicitly made to the fund and any income
10 derived from the investment of amounts credited to the fund and the proceeds from any ocean
11 development mitigation fees established pursuant to section 18 of chapter 132A. The priority for
12 use of funds derived from compensation or mitigation for ocean development projects shall be to
13 restore or enhance marine habitat and resources impacted by the project for which the
14 compensation or mitigation shall have been received. The funds derived from compensation or
15 mitigation related to public navigational impacts shall be dedicated to public navigational
16 improvements; provided, however, that any funds for the enhancement of fisheries resources
17 shall be directed to conduct fisheries restoration and management programs. Any other amounts
18 credited to the fund shall be used, without further appropriation, only for the purposes of
19 environmental enhancement, restoration and management of ocean resources by the secretary
20 pursuant to section 4C of chapter 21A. No expenditure from the fund shall cause the fund to be
21 in deficiency at the close of a fiscal year. Monies deposited in the fund that are unexpended at

22 the end of the fiscal year shall not revert to the General Fund and shall be available for
23 expenditure in the subsequent fiscal year.

24 **SECTION 2.** Chapter 21A of the General Laws is hereby amended by inserting after section 4B
25 the following section:-

26 Section 4C. (a) The ocean waters and ocean-based development of the commonwealth,
27 within the ocean management planning area described in this section, shall be under the
28 oversight, coordination and planning authority of the secretary of energy and environmental
29 affairs, hereinafter referred to as the secretary, in accordance with the public trust doctrine.
30 Notwithstanding any general or special law to the contrary, the secretary, in consultation with the
31 ocean advisory commission established pursuant to subparagraph (c) and the ocean science
32 advisory council established pursuant to subparagraph (d), shall develop an integrated ocean
33 management plan, which may include maps, illustrations and other media. The plan shall: (i) set
34 forth the commonwealth's goals, siting priorities and standards for ensuring effective
35 stewardship of its ocean waters; held in trust for the benefit of the public and shall (ii) adhere to
36 sound management practices, taking into account the existing natural, social, cultural, historic
37 and economic characteristics of the planning areas; (iii) preserve and protect the public trust; (iv)
38 reflect the importance of the waters of the commonwealth to its citizens who derive livelihoods
39 and recreational benefits from fishing; (v) value biodiversity and ecosystem health; (vi) identify
40 and protect special, sensitive or unique estuarine and marine life and habitats; (vii) address
41 climate change and sea-level rise; (viii) respect the interdependence of ecosystems; (ix)
42 coordinate uses that include international, federal, state and local jurisdictions; (x) foster
43 sustainable uses that capitalize on economic opportunity without significant detriment to the

44 ecology or natural beauty of the ocean; (xi) preserve and enhance public access; (xii) support the
45 infrastructure necessary to sustain the economy and quality of life for the citizens of the
46 commonwealth; (xiii) encourage public participation in decision-making; (xiv) and adapt to
47 evolving knowledge and understanding of the ocean environment; and (xv) shall identify
48 appropriate locations and performance standards for activities, uses and facilities allowed under
49 sections 15 and 16 of chapter 132A. Notwithstanding the provisions of this section, the division
50 of marine fisheries, pursuant to chapter 130 and any other applicable general or special law, shall
51 have sole responsibility for developing and implementing any fisheries management plans or
52 fisheries regulations. Marine fisheries shall be managed in compliance with the applicable rules
53 and regulations of the division of marine fisheries and federal or interstate fishery management
54 plans issued pursuant to said chapter 130 or any other applicable general or special law and shall
55 be integrated, to the maximum extent practicable, with an ocean management plan.

56 (b) An ocean management plan shall include any waters and associated submerged lands
57 of the ocean, including the seabed and subsoil, lying between the line designated as the
58 “Nearshore Boundary of the Ocean Management Planning Area”, which is depicted on a plan
59 dated January 31, 2006, prepared by the office of coastal zone management and maintained at
60 the executive office of energy and environmental affairs and with the clerks of the house and the
61 senate, and the seaward boundary of the commonwealth, as defined in 43 U.S.C. § 1312. An
62 ocean management plan may take into account the different regional characteristics of the
63 commonwealth’s waters. A plan shall address existing municipal, state and federal boundaries
64 and may include recommendations for clarifying those boundaries.

65 (c)(i) There shall be an ocean advisory commission to assist the secretary in developing
66 the ocean management plan. The commission shall consist of 3 members of the senate, 1 of
67 whom shall be appointed by the minority leader of the senate; 3 members of the house of
68 representatives, 1 of whom shall be appointed by the minority leader of the house of
69 representatives; the director of coastal zone management or his designee; the director of marine
70 fisheries or his designee; the commissioner of environmental protection or his designee; and 8
71 members to be appointed by the governor, 1 of whom shall be a representative of a commercial
72 fishing organization, 1 of whom shall be representative of an environmental organization, 1 of
73 whom shall have expertise in the development of offshore renewable energy, 1 of whom shall be
74 a representative of the Cape Cod commission, 1 of whom shall be a representative of the
75 Martha's Vineyard Commission, 1 of whom shall be a representative of the Merrimack Valley
76 Planning Commission, 1 of whom shall be a representative of the metropolitan area planning
77 council and 1 of whom shall be a representative of the Southeastern Regional Planning and
78 Economic Development District. Members shall be appointed for terms of 3 years, except that,
79 initially, 4 members appointed by the governor shall be appointed for terms of 2 years and 3
80 members appointed by the governor shall be appointed for terms of 1 year. The appointing
81 authority may fill any vacancy that occurs in an unexpired term. The members of the
82 commission shall be selected with due regard to coastal geographic distribution.

83 (ii) The commission shall meet at least quarterly and at the discretion of the secretary.
84 The commission shall hold public meetings relative to matters within the jurisdiction of the
85 ocean management plan and shall make recommendations to the secretary for the proper
86 management and development of the plan. The secretary shall consider the recommendations of
87 the commission.

88 (iii) The office of coastal zone management and division of marine fisheries shall
89 provide technical support to the commission.

90 (d) There shall be an ocean science advisory council to assist the secretary in creating a
91 baseline assessment and obtaining any other scientific information necessary for the
92 development of an ocean management plan. The council shall consist of 9 members to be
93 appointed by the secretary, 3 of whom shall be scientists from academic institutions, at least 1 of
94 whom shall be from the School for Marine Science and Technology at the University of
95 Massachusetts at Dartmouth and at least 1 of whom shall be from the Department of
96 Environmental, Earth and Ocean Sciences at the University of Massachusetts at Boston; 3 of
97 whom shall be scientists from private, nonprofit organizations, at least 1 of whom shall be a
98 scientist designated by the Massachusetts Fishermen's Partnership; and 3 of whom shall be
99 scientists from government agencies with demonstrated technical training and experience in the
100 fields of marine ecology, geology, biology, ichthyology, mammalogy, oceanography or other
101 related ocean science disciplines, at least 1 of whom shall be from the division of marine
102 fisheries. The secretary shall serve as coordinator of the council. The council shall meet at least
103 quarterly and at any other time that the secretary shall deem necessary to assist him in compiling
104 the scientific information necessary for the development of an ocean management plan.

105 (e) Upon the secretary's adoption of an ocean management plan, all certificates, licenses,
106 permits and approvals for any proposed structures, uses or activities in areas subject to the ocean
107 management plan shall be consistent, to the maximum extent practicable, with the plan.

108 (f) The secretary shall develop and implement a public outreach and information program
109 to provide information to the public regarding the ocean management planning process.

110 (g) The secretary shall, at least 6 months before establishing an ocean management plan
111 pursuant to this section, provide for public access to the draft plan in electronic and printed copy
112 form and shall provide for a public comment period, which shall include at least 4 public
113 hearings in at least 4 different coastal regions. The secretary shall publish notice of the hearings
114 in the Environmental Monitor within 30 days of the date of the hearing. A notice of the public
115 hearing shall also be placed, at least once each week for the 4 consecutive weeks preceding the
116 hearing, in newspapers with sufficient circulation to notify the residents of the coastal region
117 where the hearing shall be held. The hearing shall be held not sooner than 30 days and not later
118 than 35 days after the notice is published in the Environmental Monitor. The public comment
119 period shall remain open for at least 60 days from the date of the final public hearing. After the
120 close of the public comment period, the secretary shall issue a final ocean management plan and
121 shall file the plan, together with legislation necessary to implement the plan, if any, by filing the
122 same with the clerks of the house of representatives and senate.

123 (h) The secretary shall promulgate regulations to implement, administer and enforce this
124 section and shall interpret this section and any regulations adopted hereunder consistent with his
125 power to enforce the laws. These regulations shall include provisions for the review of the ocean
126 management plan, its baseline assessment and the enforceable provisions of relevant statutes and
127 regulations at least once every 5 years.

128 (i) The joint committee on state administration and regulatory oversight, in this
129 subsection called the committee, may review a proposed ocean management plan or regulations
130 proposed or adopted pursuant to this chapter. The committee shall consult with the joint
131 committee on environment, natural resources and agriculture in performing this review. The

132 committee may hold public hearings concerning a proposed ocean management plan or a
133 proposed or existing regulation and may submit to the secretary comments concerning the merit
134 and appropriateness of the plan or regulations to be promulgated and an opinion on whether the
135 proposed plan or regulations are authorized by, and consistent with, this chapter and existing
136 state laws and regulations. The secretary shall respond in writing within 10 days to the
137 committee's written questions relevant to the committee's review of a proposed plan or proposed
138 or existing regulation. The secretary shall provide to the committee, without charge, copies of all
139 public records in the secretary's custody relating to the proposed plan or regulation or action in
140 question within 10 days of a request by the committee. The committee may issue a report with
141 proposed changes to a proposed plan or proposed or existing regulation and shall transmit this
142 report to the secretary. If the secretary does not adopt the proposed changes contained in the
143 committee's report, the secretary shall notify the committee in writing of the reasons why he did
144 not adopt the changes either at the time he adopts a proposed plan or proposed regulation or
145 within 21 days of receiving the committee's report on an existing regulation.

146 (j) The ocean management plan shall be consistent with this section and all other general
147 and special laws. The ocean management plan shall not be construed to supersede existing
148 general or special laws, or to confer rights and remedies in addition to those conferred by
149 existing general or special laws.

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151 (k)(1) In the geographic area subject to the ocean management plan, as described in
152 paragraph (b), commercial and recreational fishing shall be allowable uses, subject to the
153 exclusive jurisdiction of the division of marine fisheries. Any component of a plan which

154 regulates commercial or recreational fishing shall be developed, promulgated and enforced by
155 the division of marine fisheries pursuant to its authority under chapter 130.

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157 (2) A component of an ocean management plan which does not have as its primary
158 purpose the regulation of commercial or recreational fishing but which has an impact on such
159 fishing shall minimize negative economic impacts on commercial and recreational fishing. Prior
160 to inclusion in an ocean management plan, a component with such a reasonably foreseeable
161 impact shall be referred to the division of marine fisheries, which shall, in writing and in a timely
162 and efficient manner, evaluate the component for its impact on commercial and recreational
163 fishing and, if possible, develop and recommend to the secretary any suggestions or alternatives
164 to mitigate or eliminate any adverse impacts.

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166 (3) The director of marine fisheries, subject to the approval of the marine fisheries
167 advisory commission, shall have sole authority for the opening and closing of areas within the
168 geographic area described in subsection (b) for the taking of any and all types of fish, pursuant to
169 section 17A of chapter 130. Nothing in this section shall be construed to limit the powers of the
170 director pursuant section 17 of chapter 130 or any other provision thereto.

171 **SECTION 3.** Section 12B of chapter 132A of the General Laws, as appearing in the 2006
172 Official Edition, is hereby amended by striking out the definitions of “Commissioner” and
173 “Department” and inserting in place thereof the following definition:-

174 “Director”, the director of coastal zone management.

175 **SECTION 4.** Said section 12B of said chapter 132A, as so appearing, is hereby further
176 amended by inserting after the definition of “Facilities plan” the following definition:-

177 `“Office”, office of coastal zone management.

178 **SECTION 5.** Section 12C of said chapter 132A, as so appearing, is hereby amended by striking,
179 in lines 1 and 3, the word “department” and inserting in place thereof, in each instance, the
180 following word:- office.

181 **SECTION 6.** Section 13 of chapter 132A, as so appearing, is hereby amended by striking, in
182 lines 1 and 3, the word “department”, and inserting in place thereof the following word:-

183 “office”.

184 **SECTION 7.** Section 14 of said chapter 132A, as so appearing, is hereby amended by striking
185 out, in line 2, the word “department” and inserting in place thereof the following word:- office.

186 **SECTION 8.** Said chapter 132A, as so appearing, is hereby further amended by striking out
187 section 15 and inserting in place thereof the following section:-

188 Section 15. Except as otherwise provided in this section, the following activities shall be
189 prohibited in an ocean sanctuary:

190 (1) the building of any structure on the seabed or under the subsoil;

191 (2) the construction or operation of offshore or floating electric generating stations,
192 except: (a) on an emergency and temporary basis for the supply of energy when the electric
193 generating station is otherwise consistent with an ocean management plan; or (b) for appropriate-

194 scale renewable energy facilities, as defined by an ocean management plan promulgated pursuant
195 to section 4C of chapter 21A, in areas other than the Cape Cod Ocean Sanctuary; provided,
196 however, that (i) the renewable energy facility is otherwise consistent with an ocean management
197 plan; (ii) siting of all such facilities shall take into account all relevant factors, including but not
198 limited to, protection of the public trust, compatibility with existing uses, proximity to the
199 shoreline, appropriateness of technology and scale, environmental protection, public safety and
200 community benefit; and (iii) in regions where regional planning agencies have regulatory
201 authority, a regional planning agency may review the appropriate-scale offshore renewable
202 energy facilities as developments of regional impact and the applicant may seek review pursuant
203 to the authority of the energy facilities siting board to issue certificates of environmental impact
204 and public interest pursuant to sections 69K through 60O of chapter 164;

205 (3) the drilling or removal of any sand, gravel or other minerals, gases or oils;

206 (4) the dumping or discharge of commercial, municipal, domestic or industrial wastes;

207 (5) commercial advertising;

208 (6) the incineration of solid waste or refuse on, or in, vessels moored or afloat within the
209 boundaries of an ocean sanctuary.

210 **SECTION 9.** Section 16 of said chapter 132A, as so appearing, is hereby amended by striking
211 out, in lines 14 and 15, the words “telecommunications and energy” and inserting in place
212 thereof the following words:- public utilities or the department of telecommunications and cable.

213 **SECTION 10.** Said section 16 of said chapter 132, as so appearing, is hereby further amended
214 by striking out, in lines 20 and 28, the word “department” and inserting in place thereof, in each
215 instance, the word:- office.

216 **SECTION 11.** Said section 16 of said chapter 132, as so appearing, is hereby further amended
217 by striking out, in lines 29 and 30, the words “fisheries, wildlife and environmental law
218 enforcement” and inserting in place thereof the following words:- fish and game.

219 **SECTION 12.** Section 16A of said chapter 132A, as so appearing, is hereby amended by
220 inserting after the word “department”, in line 6, the following words:- of environmental
221 protection.

222 **SECTION 13.** Section 16B of said chapter 132A, as so appearing, is hereby amended by
223 striking out, in line 26 and in lines 30 to 31, the words “and the division of water pollution
224 control” and inserting in place thereof the following words:- of environmental protection.

225 **SECTION 14.** Section 16C of said chapter 132A, as so appearing, is hereby amended by
226 inserting after the word “department”, in lines 1 and 5, the following words:- of environmental
227 protection.

228 **SECTION 15.** Section 16E of said chapter 132A, as so appearing, is hereby amended by
229 inserting after the word “department”, in lines 1 to 2 and line 5, the following words:- of
230 environmental protection.

231 **SECTION 16.** Said section 16E of said chapter 132A, as so appearing, is hereby further
232 amended by inserting after the word “commissioner” in lines 13 to 14, the following words:- of
233 environmental protection.

234 **SECTION 17.** Section 16F of said chapter 132A, as so appearing, is hereby amended by
235 inserting after the word “department”, in line 1, the following words:- of environmental
236 protection.

237 **SECTION 18.** Said section 16F of said chapter 132A, as so appearing, is hereby further
238 amended by striking out the last sentence.

239 **SECTION 19.** Section 18 of said chapter 132A, as so appearing, is hereby amended by
240 inserting, after the word “of”, in line 2, the following words:- energy and.

241 **SECTION 20.** Said section 18 of said chapter 132A, as so appearing, is hereby further amended
242 by striking out, in lines 7 to 8 and line 9, the word “department” and inserting in place thereof, in
243 each instance, the following word:- office.

244 **SECTION 21.** Said section 18 of said chapter 132A, as so appearing, is hereby further amended
245 by adding the following paragraph:-

246 Any permit or license issued by a department, division, commission, or unit of the
247 executive office of energy and environmental affairs and other affected agencies or departments
248 of the commonwealth for activities or conduct consistent with this act shall be subject to an
249 ocean development mitigation fee as shall be established by the secretary of the executive office
250 of energy and environmental affairs, provided, however, that no fee shall be assessed on

251 commercial and recreational fishing permits or licenses. All the proceeds of the ocean
252 development mitigation fee shall be deposited in the Ocean Resources and Waterways Trust
253 Fund established pursuant to section 35HH of chapter 10.

254 **SECTION 22.** Nothing in this act shall be construed to alter the jurisdictional authority of the
255 division of marine fisheries. Nothing in this act shall be construed to prohibit the transit of
256 commercial fishing vessels and recreational vessels in state ocean waters.

257 **SECTION 23.** Any project that, before the effective date of this act, has (1) filed a chapter 91
258 license application and received a written determination of completeness from the department of
259 environmental protection; or (2) if subject to section 61 of chapter 30 of the General Laws,
260 received a certificate of adequacy regarding a final environmental impact report; or (3) if the
261 project is subject to the jurisdiction of the energy facilities siting board, received both a final
262 decision from the energy facilities siting board and a certificate of adequacy regarding a draft
263 environmental impact report, shall not be subject to the requirements of said ocean management
264 plan.

265 **SECTION 24.** The secretary of energy and environmental affairs shall promulgate a final ocean
266 management plan by December 31, 2009. Upon adoption, an ocean management plan shall
267 formally be incorporated into the Massachusetts coastal zone management program, as
268 referenced in section 4A of chapter 21A of the General Laws.

269 **SECTION 25.** Section 8 of this act shall take effect upon the adoption of an ocean management
270 plan or by December 31, 2009, whichever occurs first.

271 **SECTION 26.** The secretary of energy and environmental affairs shall convene an advisory
272 committee for the purpose of reviewing section 16 of chapter 132A of the General Laws and
273 regulations promulgated pursuant thereto. The advisory committee shall review the regulatory
274 definitions of “public necessity and convenience” and “significant alteration”. The secretary
275 shall submit a report, together with legislative recommendations, if any, to the joint committee
276 on environment, natural resources and agriculture by December 31, 2009.