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# Massachusetts enacts historic Ocean Management Act

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On May 28, Gov. Deval L. Patrick signed the first in the nation Ocean Management Act into law. See Chapter 114 of the Acts of 2008. The act became effective on Aug. 26. The legislation requires the development of a comprehensive management plan for roughly all of the state-controlled waters of Massachusetts. The intent of the act is to balance natural resource preservation with traditional and new uses of the ocean, including renewable energy.

The act places the ocean waters and ocean-based development of the commonwealth located within the ocean management planning area, as described in the act, under the authority of the Secretary of Energy and Environmental Affairs.

The act requires the secretary, in conjunction with the Ocean Advisory Commission and the Ocean Science Advisory Council, established pursuant to the act, to develop an integrated Ocean Management Plan by Dec. 31, 2009 and a draft OMP by July 2009. The act provides for significant public input before final adoption of the OMP. Upon the secretary's adoption of an OMP, all certificates, licenses, permits and approvals for any proposed structures, uses or activities in the OMPA shall be consistent, to the maximum extent practicable, with the OMP.

In sum, the OMP is intended to address the following: the commonwealth's goals, siting priorities and standards for use of its ocean waters; (the preservation and protection of traditional uses of the ocean; the identification and protection of special, sensitive or unique estuarine and marine life and habitats; and the identification of appropriate locations and performance standards for new activities, uses and facilities within the OMPA.

One of the most significant impacts of the act is that, upon adopting the OMP, it amends the Ocean Sanctuary Act, G.L.c. 132A, §15, to expressly allow the siting of renewable energy facilities within all ocean sanctuaries except the Cape Cod Sanctuary, provided the facility meets certain criteria. The act also places the ocean sanctuaries described in G.L.c. 132A, §13 under the care, oversight and control of the Office of Coastal Zone Management.

The act is seeking to strike a balance between the competing interests vying to make use of the ocean. The act establishes an Ocean Advisory Commission to be comprised

of 17 members, including state legislators, industry representatives, environmental organizations and governmental planning agency representatives, to advise the secretary on the development of the OMP. It also establishes a nine-member Ocean Science Advisory Council to assist the secretary in creating a baseline assessment of the OMPA and obtaining scientific information necessary for the development of the OMP. The council will be comprised of scientists from academic institutions, private, non-profit organizations (at least one of whom will be designated by the Massachusetts Fishermen's Partnership) and government agencies.

Upon adoption of the OMP, all certificates, licenses, permits and approvals for any proposed structures, uses or activities in the OMPA shall be consistent, to the maximum extent practicable, with the OMP. For example, all new liquefied natural gas terminals, offshore wind and tidal energy facilities, sand and gravel mining operations, desalination plants, and deep-water aquaculture will be reviewed to ensure maximum compliance with the OMP. Projects that have received approval prior to the effective date of the act are not subject to the OMP.

The act expressly states that it does not alter the jurisdictional authority of the Division of Marine Fisheries and it provides limitations on the regulation of commercial and recreational marine uses through the OMP. The act states that it shall not be construed to prohibit the transit of commercial fishing or recreational vessels in state ocean waters and provides that commercial and recreational fishing are allowable uses within the OMPA, subject to the exclusive jurisdiction of the division.

Any component of a plan which regulates commercial and recreational fishing must be developed, promulgated and enforced by the division pursuant to G.L.c. 130; however, the OMP may include provisions that, while they are not primarily directed at the regulation of fishing, may have an impact on commercial and recreational fishing. In such cases, the act requires that these components minimize negative economic impacts on commercial and recreational fishing, and if a component has a reasonably foreseeable impact on fishing, it shall be referred to the division for evaluation.

The division is charged with developing and recommending, if possible, suggestions or alternatives to mitigate or eliminate any adverse impacts an OMP component may have on commercial and recreational fishing. It will be interesting to see how the secretary and the division balance the competing interests and how these provisions of the act are implemented and ultimately interpreted by the courts.

The act also establishes a dedicated fund to be known as the Ocean Resources and Waterways Trust Fund. The fund will be comprised of revenue from legislative appropriations and authorizations, other fund appropriations or grants, income from fund investments and ocean development mitigation fees. The fund will be used primarily to mitigate the impacts of ocean development projects on marine habitat,