



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF COASTAL ZONE MANAGEMENT
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MEMORANDUM

FROM: Leslie-Ann McGee, Director of CZM *L.A. McGee*

DATE: December 1, 2008

SUBJECT: Transfer of Ocean Sanctuaries Program to CZM

This memorandum is an administrative response to recent changes to the Massachusetts Ocean Sanctuaries Act ("MOSA") made by the Legislature through Chapter 114 of the Acts of 2008 ("Oceans Act"). Specifically, the Oceans Act amended M.G.L. c. 132A, sections 12B, 12C, and 14 to place all ocean sanctuaries under the care, oversight, and control of the Office of Coastal Zone Management ("CZM"), previously the responsibility of the Department of Conservation and Recreation ("DCR"). In conjunction with this programmatic transfer, CZM now has the authority to promulgate regulations deemed necessary for the implementation, administration, and enforcement of MOSA, with the exception of sections 16A through 16F (for which responsibility was transferred to the Department of Environmental Protection).

In order to ensure continuity of administration of the Ocean Sanctuaries Program, relevant portions of the current implementing regulations of DCR (at 302 CMR 5.01 through 5.09) will be repealed and simultaneously reinstated within the body of CZM regulations under a different title. At that time the regulations will be amended as necessary to reflect not only the new organizational arrangements but also to achieve greater conformance with the current statutory language of MOSA, with which certain provisions of the current regulations are inconsistent (not having been amended since 1993). In addition, CZM is likely to revisit the regulations to address recommendations made in the ocean management plan issued pursuant to the Oceans Act. This regulatory review process is anticipated to occur during calendar year 2009.

Until the new CZM regulations are promulgated, applicants for state permits and other proponents of activities located in an ocean sanctuary should continue to refer to 302 CMR 5.01 through 5.09, which will guide CZM project review in every respect except in the event of conflict with MOSA (as amended by the Oceans Act) or other applicable provisions of law, in which case the superseding law will govern. In particular, three substantive provisions of the current DCR regulations contain elements that have been superseded, as follows:



- 302 CMR 5.04, in which the phrase “seriously alter” was changed to “significantly alter” by Chapter 728, sec. 2 of the Acts of 1989;
- 302 CMR 5.05, which contains an outdated listing of CZM Policies, the current version of which is found in the CZM Regulations at 301 CMR 21.98 and in the *Massachusetts Coastal Zone Management Plan* (March, 2002); and
- 302 CMR 5.07(1), subsections (b) – (f), which contains a listing of prohibited activities that is not reflective of the modifications made by Chapter 114 of the Acts of 2008. Pursuant to the Oceans Act, for example, appropriate-scale renewable energy facilities now may be located in ocean sanctuaries (other than the Cape Cod Ocean Sanctuary) under certain circumstances.

Apart from these now-defunct elements and a variety of organizational references changed by the Oceans Act of 2008, the ocean sanctuaries regulations have not been affected by subsequent legal enactments. Accordingly, it seems appropriate for the remainder of the regulations to serve as the interim basis for CZM implementation of its new responsibility for the Ocean Sanctuaries Program.

For further information please contact Bob Boeri, CZM Project Review Coordinator, at 617-626-1050 or Robert.Boeri@state.ma.us.