
Governor Submits Ocean Management Bill to the Massachusetts Legislature to Establish a Comprehensive Management Approach for the Commonwealth's Coastal Waters

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As part of Massachusetts's effort to assert greater control over proposed and existing offshore development projects such as wind farms, gas pipelines and telecommunications cables, the state established an Ocean Management Task Force (OMTF) in June 2003. In its final report in March 2004, the OMTF recommended the development of legislation to comprehensively manage ocean areas within state jurisdiction, replacing the existing perceived "first come, first served" approach. Consistent with the OMTF's recommendation, on March 18, 2005, Governor Mitt Romney filed proposed legislation with the Massachusetts legislature that would enact the Ocean Resources and Conservation Act (ORCA).

ORCA would require the Commonwealth to promulgate an "ocean use management plan" (Ocean Plan) that establishes requirements for any construction or significant alteration within ocean areas and their associated submerged lands. The Ocean Plan would be developed by the Secretary of Environmental Affairs, with input from an advisory board of state resource agency personnel and the public. Municipalities, state agencies and citizen groups would be allowed to formally request that the Secretary reconsider the proposed Ocean Plan. ORCA would also grant these entities standing to request judicial review of the Ocean Plan, consistent with state administrative procedure. However, the right to seek judicial review is generally conditioned on the entity having raised its issue in writing during the public comment period of the Ocean Plan.

The Ocean Plan would cover discrete "ocean planning areas" and activities within state jurisdiction, and may address activities in adjacent marine waters that are functionally connected to or can reasonably be expected to affect the management of resources with an ocean planning area. Within ocean planning areas, ORCA would prohibit or restrict a number of activities, including construction or operation of offshore or floating power plants (other than renewable energy facilities in an area other than the Cape Cod Ocean Sanctuary); extraction of minerals, gas and oil; dumping or discharge into ocean sanctuaries; incineration of waste in vessels at sea; and commercial advertising. Fishing, flood control structures, mariculture and several other exempt activities would

not be subject to the Ocean Plan under ORCA.

ORCA would establish an Ocean Resources Conservation and Waterways Fund (Fund) to be administered by the Secretary of Environmental Affairs. Fees collected under Chapter 91 (which requires a license or permit for structures built in "waterways" and "filled tidelands") would be deposited into the Fund as compensation or mitigation for ocean development projects. The Fund would be used to administer and enforce Chapter 91, and to implement ORCA.

To streamline and eliminate redundancies in the law governing ocean resources, ORCA would delete portions of the Massachusetts Ocean Sanctuaries Act, M.G.L. ch. 132A, § 12A. Existing ocean sanctuaries would remain in place, and ORCA would enumerate the activities permitted and prohibited in ocean sanctuaries.

ORCA likely foreshadows things to come in other offshore areas. The US Commission on Ocean Policy recently called for a new National Ocean Policy Framework to establish a comprehensive offshore management regime to balance competing interests in the development of federal waters. In particular, the US Commission on Ocean Policy stated that authorities governing new ocean uses, such as the placement of wind farms or aquaculture facilities, must be clarified. In addition, other states have begun to take more aggressive roles in ocean resource management. New Jersey, for example, recently imposed a 15-month moratorium on offshore wind project development to allow a recently created blue-ribbon panel to study the economic and environmental costs and benefits associated with that development. The Blue Ribbon Panel on Development of Wind Turbine Facilities in Coastal Waters met for the first time March 7, 2005, and will hold public meetings this year.

ORCA represents a sweeping revision to the Ocean Sanctuaries Act, which already establishes a protective and adequate "zoning" scheme for the coastal waters of the Commonwealth. With this revision, ORCA would eliminate a number of "uses"—such as the laying of cables that have been approved by the Department of Telecommunications and Energy—that were expressly permitted by the legislature in the Ocean Sanctuaries Act, and instead allow the Secretary of Environmental Affairs to determine whether those uses should be permitted under the Ocean Plan. Because the proposed statute would establish comprehensive requirements for the promulgation of the Ocean Plan, with a concomitant expenditure of time, resources and money that is unlikely to be available in light of the Commonwealth's current fiscal status, the status of proposed development projects would remain in limbo. As a result, entities with affected interests should participate in the legislative process on ORCA and any subsequent development of the Ocean Plan.

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