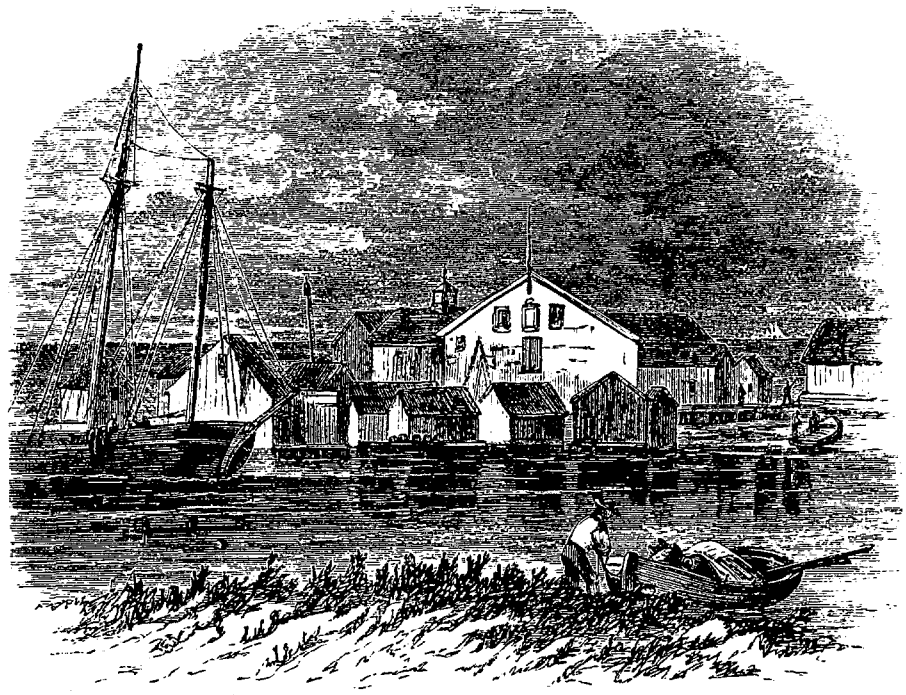
MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM

AND

FINAL ENVIRONMENTAL IMPACT STATEMENT



1978

Michael S. Dukakis, Governor
Evelyn F. Murphy, Secretary
Executive Office of Environmental Affairs
Eric E. Van Loon, Director

U. S. Department of Commerce
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

March 3, 1978

MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM - 1978
Final Environmental Impact Statement

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

Note to the Reader

The Draft Massachusetts Coastal Zone Management Program was originally prepared in two volumes. Volume I contained the CZM Program including coastal policies. Volume II contained an Atlas of Resources of the coastal zone, descriptions of Massachusetts' coastal regions, and applied the CZM Program to site specific opportunity and problem areas along the coast. A separate Draft Environmental Impact Statement (DEIS) summarizing the program was also prepared.

In the DEIS review, many commentators remarked that the various program documents were too long and that it was confusing to determine exactly what constituted the program.

In response to these comments, the material in Volume I of the Draft Program document was substantially edited and has been consolidated with the Draft Environmental Impact Statement to form this final document -- 1978 Massachusetts Coastal Zone Management Program/FEIS. This combined document has been revised to reflect appropriate comments but otherwise remains unchanged in substance from the previous documents.

Part I and Parts III through VIII of this document, as well as Appendix F, have been prepared by the federal Office of Coastal Zone Management. Part II and the other appendices comprise the state program and were prepared by the Commonwealth of Massachusetts. The federal Office of Coastal Zone Management has reviewed Part II and relies upon it for the description of the proposed action required as a part of the impact statement.

Volume II, the Coastal Atlas, will still be available for reference purposes while the draft Program document and DEIS serve only as background material. In addition, the Summary Map which accompanied Volume I is available at the CZM office.

Note new CZM telephone number: 727-9530

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THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133

MICHAEL S. DUKAKIS
GOVERNOR

February 7, 1978

The Honorable Juanita Kreps
Secretary of Commerce
Washington, D.C. 20230

Dear Secretary Kreps:

I am pleased to submit for your review and approval the Commonwealth's Coastal Zone Management Program.

I have examined the program, and as Governor, approve it. The Public and officials from all levels of government have had an opportunity to review and comment on two drafts of the coastal Program. In addition, a joint National Environmental Policy Act-Massachusetts Environmental Policy Act Draft Environmental Impact Statement on the coastal Program has been reviewed, and revisions have been made in the Program in response to comments offered by the public and governmental agencies in the course of this review.

The program represents state policy as it applies to the coastal zone, and, as Governor, I further certify that:

(a) The Secretary of Environmental Affairs is designated to receive and administer grants authorized by the Coastal Zone Management Act, including those for implementing the Coastal Zone Management Program;

(b) The Executive Office of Environmental Affairs, of which the Secretary of Environmental Affairs is the chief executive officer, is the lead agency for implementation of the Massachusetts Coastal Zone Management Program; and

(c) The Commonwealth has the authorities required under the Coastal Zone Management Act and has the organizational structure to implement the Coastal Zone Management Program.

Sincerely,

Michael S. Dukakis
Governor

EVELYN F. MURPHY
SECRETARY

The Commonwealth of Massachusetts

Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

February 7, 1978

Dear Reader,

I am pleased to present you with the final Massachusetts Coastal Zone Management Program/Final Environmental Impact Statement.

This program reflects the tireless efforts of many members of the legislature, local, regional and state officials, and hundreds of interested citizens from throughout the Commonwealth. I salute the participation of members of the General Court, the Governor's Task Force on Coastal Resources, regional CZM Citizen Advisory Committee Members, and the many citizens who attended general public meetings and smaller issue oriented meetings, who assisted in CZM Program development. The sharing of ideas, information and experience at these many working sessions helped to produce a balanced and wise coastal management program. CZM has been a model example of successful participatory democracy.

Coastal Zone Management represents a program for today and a program for the future. CZM seeks the wise allocation of coastal resources. It encourages economic development, and port and harbor revitalization. It will help to maximize past public investments in coastal areas, and insures the wise allocation of public funds in the future. CZM implementation will insure the protection of important ecological resources. The CZM Program guarantees better management and administration on the part of state government. And, CZM requires no new laws to bring such important change to coastal resource management.

Two draft CZM Programs and a Draft Environmental Impact Statement preceded this Final Environmental Impact Statement. Comments from government agencies, officials and citizens have been incorporated into this final program. The CZM Program has balanced the many competing interests and needs in our coastal areas.

Through this Coastal Zone Management Program, we have an opportunity to bring a more reasoned perspective to decision making about future uses and activities along our fragile coastline. By continuing the citizen-community-government partnership of the past three years in the years to come, together we can insure the viability of our coastal resources economically and environmentally for this and succeeding generations.

Sincerely,

Evelyn F. Murphy
Secretary

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Science and Technology
Washington, D.C. 20230
(202) 377-3111

March 3, 1978

In accordance with the provisions of Section 102(2)(c) of the National Environmental Policy Act of 1969, we are enclosing for your review and consideration the final environmental impact statement prepared by the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce, on the proposed Massachusetts Coastal Zone Management Program.

If you have any questions about the enclosed statement, please feel free to contact:

Kathryn Cousins or
Richard O'Connor
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235
Telephone: 202/634-4235

Thank you for your cooperation in this matter.

Sincerely,

Sidney R. Galler
Deputy Assistant Secretary
for Environmental Affairs

Enclosure

MEPA/NEPA SUMMARY

( ) Draft Environmental Impact Statement

(X) Final Environmental Impact Statement

Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management. For additional information about this proposed action or this statement, please contact:

Ms. Kathryn Cousins, Regional Manager, North Atlantic Region or
Mr. Richard O'Connor, Assistant Manager, North Atlantic Region
Office of Coastal Zone Management, NOAA
3300 Whitehave Street, N.W., Washington, D.C. 20235
Phone: (202) 634-4235

1. Type of Action

Proposed Federal approval of Massachusetts Coastal Zone Management Program

(X) Administrative ( ) Legislative

2. Brief Description of Action

It is proposed that the Associate Administrator approve the Coastal Zone Management Program of the State of Massachusetts pursuant to P.L. 92-583. Approval would permit implementation grants to be awarded to the state, and require that federal actions be consistent with the program.

3. Summary of Environmental Impacts and Adverse Environmental Effects

Approval and implementation of the program will allow the state to better coordinate and more effectively implement existing state authorities for management of its coastal zone. The state will condition, restrict, or prohibit land and water uses in some parts of the Massachusetts coast, while encouraging development in other parts. Each coastal municipality will retain primary responsibility for managing land use along its coast. The impacts of the Massachusetts Coastal Zone Management Program will be general beneficial, although there may be some adverse, short-term economic impacts on coastal users, and the program will entail irreversible commitment of some coastal resources. The Massachusetts Coastal Zone Management Program will produce positive and negative impacts.

4. Alternatives Considered

A. Federal Alternatives

The DEIS outlined the four most significant reasons why the Associate Administer might deny approval of the Program. The comments received on the DEIS indicated these four alternatives remain the most appropriate. He could deny approval if:

1. the Program is not adequately comprehensive to achieve the goals and objectives of the Coastal Zone Management Act.

2. the Program does not have the authorities necessary to implement the Program.

3. the national interest in the siting of facilities in the coastal zone was not adequately considered.

4. the Program does not meet all the specific requirements of the Coastal Zone Management Act.

B. State Alternatives - The state could:

5. revise the Program policies.

6. seek additional legislation.

7. restrict under existing authorities all of the state's unrestricted significant resource areas prior to Program approval.

8. promulgate all regulations prior to Program approval.

9. revise the landward coastal boundary.

10. withdraw the approval application and continue program development, or attempt to use other sources of funding to meet the objectives of the proposed coastal management program.

5. List of all Federal, State and Local Agencies and Other Parties from which Written Comments were Received

Over 157 written comments were received on the DEIS. They are listed in Appendix F.

6. This FEIS was submitted to CEQ on March 3.

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Part I:

Overview
Chapter 1

PART I

1.1 OVERVIEW

THE MASSACHUSETTS COAST

The Massachusetts coast winds and meanders over an incredible 1,200 miles of rocky shore, sand beach, productive estuaries, fragile salt marshes, massive urban harbors, smaller town harbors and marinas, wide open spaces, tidal flats, and dozens of islands.

For over 350 years, the Massachusetts coast has offered protective shelter, natural ports, and a means of commercial livelihood for generations of Americans new and old. Much of the history and evolution of the United States emanates from Massachusetts' ports of call -- Newburyport, Ipswich, Salem, Boston, Plymouth, Provincetown, New Bedford, Fairhaven, Fall River, Edgartown, and Nantucket. Today, many Americans come to the Massachusetts coast to relive a part of U.S. history by visiting sites such as Old Ironsides at the Charlestown Navy Yard in Boston; Plymouth Rock in Plymouth, Massachusetts, the site of the Pilgrim's first landing in America; or the historical site and museum celebrating the Boston Tea Party. Other Americans are touched by the Massachusetts coastal experience through the writings of Hawthorne, Melville and others. To visit or live in Massachusetts is to daily experience the roots of American history, culture and lifestyle.

Massachusetts' coastal traditions and values live on. Many Massachusetts citizens still live by the sea, work by the sea, and recreate by the sea. Some 40% of the state's population lives in Massachusetts coastal communities, an area comprising less than a quarter of the land mass of the Commonwealth. More than half of all current development in the state occurs in the coastal zone. Many suburban and rural coastal communities have experienced two-fold, three-fold, and in some cases four-fold increases in population over the past ten years. This is especially true for the south shore suburban communities and some of the towns on Cape Cod. Simultaneously, the former nerve centers of Massachusetts' life, the urban ports, have experienced declining populations and revenues. Boston, Salem, New Bedford and Fall River fall into this category.

The coast supports facilities and industries important to the economy of the entire state. Three-fourths of all energy supplies enter Massachusetts through an urban port. Eighty percent of all electric power generating plants in the state are located along the coast. Tourism is a $1.2 billion industry in Massachusetts. More than half of this income is generated through tourism in coastal areas. Commercial fishing, including fresh and frozen fish processing, and supporting transportation and marketing services, is a multi-million dollar industry.

Conflicts on the Coast

The natural resources of the Massachusetts coastal zone are among the Commonwealth's most important economic resources. Businessmen, tourists, and residents alike are attracted to the coastal areas of Massachusetts. These areas experience sustained pressures for development. The coastal zone typically supports commerce, industry, transportation, housing, recreation, and aesthetic needs. However, the very resources which attract so many interests to the coastal zone and support myriad activities and uses are endangered. Quite often, differing activities demand the same resources, the same scarce or fragile piece of land and water. But, since the coastal zone is a finite resource, it is impossible to meet the needs of all of the conflicting demands for uses and activities along the coast. Therefore, certain coastal resources, such as marine life and water supply, need to be carefully managed if they are not to become depleted. The policies and proposals in the Massachusetts CZM Program attempt to resolve conflicts where possible and to establish values and priorities for the use of coastal resources to help mitigate conflicts in the future.

Examples of conflicts in the coastal zone are often evidenced in Massachusetts newspaper headlines:

-- In the winter of 1976-77, the oil tankers Argo Merchant, Grand Zenith and Chester Poling, and the oil barge Bouchard 65 sank or ran aground in the waters off Massachusetts. Approximately 16 million gallons of refined oil product were spilled, threatening marine life and beaches and interrupting commercial fishing activities.

-- In 1976-1977 outbreaks of paralytic shellfish poisoning (red tide) forced the closing of shellfish beds along the north shore and in some Cape Cod communities.

-- During the summer of 1977 two and three hour delays were experienced by Boston area residents driving to Cape Cod for weekend recreation activity. Many public beaches on the north shore closed their parking lots to bathers by 11:00 a.m. on hot weekend mornings.

-- The U.S. Department of the Interior continued along its administrative time schedule leading toward a sale of offshore oil and gas development leases. This process has drawn strong statements pro and con from coastal cities and towns.

Each of these subjects suggest problems in comprehensive resource management.

Solutions to issues and problems of erosion, flooding, dredging, sewage treatment, protection of critical environmental areas and resources, transportation, economic development, port redevelopment, harbor management, marine development, air and water quality planning, improved recreation facilities and access and energy facilities siting,

all call for a broader perspective, a regional or state perspective. The Massachusetts Office of Coastal Zone Management in the Executive Office of Environmental Affairs attempts to provide a regional or statewide perspective on issues and problems that transcend town boundaries. Massachusetts CZM will not interfere with traditional decision making important only to a single locale.

Over the long run, the Massachusetts CZM Program will protect the coastline's natural riches and insure for all the residents of the Commonwealth that the environmental and economic value of the Massachusetts coastal zone will be sustained, and even enhanced.

The Management Program

CZM has developed a management program which offers technical assistance to communities, provides for federal consistency with CZM policies, and above all, sets a high priority on placing the state's regulatory and management programs in order and making them work in a more assured, timely and consistent manner. Many of the values, priorities and policies in the CZM Program were developed with the help of hundreds of citizens and officials. In its earliest days, Massachusetts CZM made a commitment to involve as many citizens as possible in the development of the coastal zone management program. An open participatory process was the one way of assuring the development of a management program that would grow from the demands of citizens and communities, and meet the immediate and long term needs of citizens and government. The Governor's Task Force on Coastal Resources, regional CZM Citizen Advisory Committees and frequent public meetings helped CZM to understand the concerns of citizens and officials.

A Management System Built Upon A Sound Existing System

During the 1960's and early 1970's, Massachusetts led much of the rest of the nation in passing environmental legislation. The Commonwealth was first in the nation to pass legislation to protect irreplaceable coastal and inland wetlands. The establishment of local conservation commissions served as a model for the rest of the nation. The state was first in establishing a series of town forests. Legislation protecting and restricting inland and coastal wetlands was improved; the establishment of Scenic Rivers and Highways became possible; and much more. However, the pace with which this legislation was enacted made it practically impossible for the executive branch to keep pace with sound, efficient management of newly enacted programs. Often, appropriations to implement the programs lagged behind the enabling legislation. Management of these programs, up to recent times, was fragmented, uncoordinated, and in some instances, seemingly non-existent.

However, in 1975, the reorganization of the state's environmental programs into the Executive Office of Environmental Affairs became law. Reorganization placed environmental regulatory, funding and other environmental management programs under a single administrative director, the Secretary of Environmental Affairs. (The National Council on State Governments has called the reorganized Massachusetts environmental agency one of the top two environmental agencies in the country.) Reorganization provided the administrative structure to bring coordination and efficiency to environmental programs.

The Secretary of Environmental Affairs was given broad ranging responsibilities for setting environmental policy, and for ensuring consistency with all EOEA departments. The Secretary of Environmental Affairs placed management reform and improvement as the first goal of reorganization. As with any business merger, it takes several years to implement a reorganization completely.

In developing a coastal zone management program, the Secretary had an opportunity to put reorganization to the test. Here was a program that needed to draw upon Environmental Affairs as a reorganized agency with expanded responsibilities, which would utilize and improve the management of new and existing programs, and had the backing of federal financing to help the state overcome its economic-management problems. Through the CZM Program, the Secretary of Environmental Affairs has begun to integrate and coordinate the many areas of statutory responsibility of the agency.

The coastal zone management program represents the next step in the state's evolving effort at instituting better management. The CZM program represents a deliberate systematic effort to bring all state environmental legislative authority to bear on a specific region of the state - the coastal zone. Under coastal zone management, the Commonwealth will assess the impact of proposed activities in the coastal zone, encourage those activities that are consistent with coastal zone policies, and discourage or prohibit those that are inconsistent. The policies presented in the program state publicly the Commonwealth's needs, desires, goals, and priorities for activities and uses in the coastal zone.

Federal CZM funds will be directed to existing agencies with coastal management responsibilities under the CZM program, which are now under-staffed, under-funded or unfunded. The Coastal Wetlands Restriction Program, for example, represents one of the many regulatory and management programs in need of funds or staffing. These CZM-funded personnel, applying CZM policies on a daily basis, will ensure CZM continuity and integration into state government. CZM funding will facilitate better, more comprehensive, and timely decision-making by state government in coastal areas.

A Management System That is Useful and Used

A management system must represent more than details. It must draw upon the strengths of government, the wisdom of the citizenry, and it must use existing legal and institutional tools. Massachusetts has both strong state government and strong local government. Recognizing this fact, and building upon it, is a prerequisite of a useful and used management system.

The Southeast New England (SENE) Study stated, "Municipalities should continue to make the bulk of land use decisions because they are of local significance; for those development decisions which because of their size or effect on certain critical resources will affect more than one community, a regional or state perspective will be needed." CZM agrees with this conclusion.

Recognizing the strength of home rule, CZM will not dictate to communities. Rather, under CZM, the state will play a more effective "resources role" to communities providing information, technical and financial

assistance, and specialized personnel when needed on the local level. The state has a clearer role pertaining to developments of regional benefit, including energy facilities, sewage treatment plants, new transportation systems, and recreational facilities as a result of CZM. With additional funding from CZM, improved administration of existing laws can be expected.

State funded resource personnel will be available upon request to assist local units of government to respond quickly, reasonably, and in a more informed manner to local permit approvals. If desired, CZM will prepare a series of model land use by-laws which communities may choose to adopt to improve conditions in the locale.

Many of these CZM ideas came from Citizen Advisory Committee members and other interested citizens and officials CZM has worked with over the past three years. Similarly, citizens were suspicious of creating a new, potentially cumbersome, expansive bureaucracy at either the state or regional level. There was little public support for regional government. In general, citizens expressed concern about the day-to-day management of existing state programs. "Put your own house in order first," CZM was told, "before you begin looking for new authority." Improvement of the state's managment system became the highest priority of CZM. There would be no new layers of bureaucracy.

Changes have already begun. For example, the Department of Environmental Quality Engineering has undergone an internal reorganization which will help CZM to reach many of its goals. Some regulatory laws will be administered from regional offices, allowing state laws to better meet regional and local needs. A comprehensive permit tracking program will help to keep the state to a known time schedule. A comprehensive permit application form will simplify permit application procedures. Overall, these changes will help to streamline and unify the Commonwealth's environmental regulatory programs, and to reduce the amount of time necessary to receive state environmental decisions on projects. This will all be accomplished without any loss in the depth or quality of state analysis in permit approvals.

Finally, to be a used and useful management system, planning and policy materials like maps, data and guidelines for implementing policy must be widely accessible to officials at all levels of government and to any interested parties. Copies of this document, the CZM Atlas and the March 1977 Draft Program will be in every coastal town hall, every coastal library, and the offices of regional, federal and interstate agencies. These CZM materials were designed to be used and they will provide public accountability to state programs and decisions. Almost a thousand citizen groups - including real estate, commercial and civic interests - have copies as well.

What the Program Is Going to Do That Is New

1) Improved Administration of Existing Laws by EOEA Agencies: A third of CZM's federal grant will be directed to the agencies of Environmental Affairs with specific management authorities in coastal areas. These departments will improve their operations and procedures with CZM funding. CZM funds will allow the Department of Environmental Quality Engineering (DEQE) to implement a computer tracking system for expediting permit decisions. Where necessary, EOEA departments will revise or write new regulations to clarify administrative procedures, establish agency review deadlines, improve criteria for evaluating projects, and improve the predicta-

bility of approval or non-approval of proposed projects. DEQE's Wetlands Protection Program and Waterways Programs, and the Department of Environmental Management's (DEM) Wetlands Restriction Program will be the principal recipients of these funds.

2) Financial Assistance to Coastal Communities: About a third of CZM's federal funds will be made available on an annual basis to communities for waterfront renewal studies, port and harbor development planning, evaluation of dredging and dredged material disposal options, and other studies of a related nature which will further the implementation of the plan.

3) Technical Assistance: A small central CZM staff composed of experts in marine biology, geology, coastal engineering, planning, and legal matters will be available at the request of local officials to assist communities in resolving technical problems (such as erosion control) and in developing zoning by-laws or other controls to improve management of coastal areas at the local level. Combined with the financial assistance, about a half of CZM's federal grant will be directed at local assistance.

a) Wetlands Restriction Program: CZM funds will be used for increased staff to expedite the state program to place deed restrictions on significant salt marshes, shellfish beds, barrier beaches, salt ponds, dunes and beaches throughout the coastal zone.

b) Wetlands Protection Program: CZM funds will be used for increased staff and for revising current regulations. This will enable DEQE to collaborate with local conservation commissions in administering this law more efficiently and consistently. The law regulates dredging, filling and alteration of unrestricted salt marshes, shellfish beds, barrier beaches, salt ponds, dune and beaches and other coastal wetlands.

c) Waterways Program: CZM funds will be used to develop new regulations and increase staff capabilities. The Waterways Program licenses activities which involve the use of public lands seaward of mean low water line -- e.g., bulkheading, piers, groins, and dredging. The new regulations will clarify the objectives of licensing: to protect navigational rights; minimize adverse downcoast effects of erosion control structures; minimize adverse environmental effects of dredging and disposal; and for projects requiring a Waterways permit, to give priority in designated port areas to maritime dependent development.

4) Siting Energy Facilities: The Energy Facilities Siting Council (EFSC) is the existing state agency responsible for approving energy facilities. The EFSC evaluates the need for proposed facilities, environmental impacts and costs to the consumer. Through a memorandum of understanding with CZM, the EFSC has agreed to consider the CZM Program in its deliberations and to require applicants to consider at least one alternative site for each facility proposed for location in the coastal zone.

5) Improved Management and Consistency in the Expending of State and Federal Funds in the Coastal Zone: Based on CZM policies, CZM will work with existing state funding programs such as the Waterways Program and the Division of Conservation Services, to encourage funding for maintenance dredging, for improved facilities to serve the fishing industry, for

acquisition of conservation and recreation land and for funding non-structural solutions to control erosion.

6) Improved Consistency between State and Federal Projects and Activities: The federal Coastal Zone Management Act of 1972 requires all federal funding and permit activities in the coastal zone to conform with the policies of the approved state CZM program to the maximum extent possible. For example, federally funded transportation and sewage treatment projects proposed for the coastal zone must be consistent with relevant CZM policies. For federally funded projects, CZM will certify consistency; for federal permits, the responsibility rests with the applicant.

7) Proposed Areas for Preservation or Restoration (APRs)/Areas of Critical Environmental Concern (ACECs): Coastal citizens and officials working with the CZM staff have proposed nominating certain pristine natural areas for designation as Areas for Preservation or Restoration, which will be accomplished through the process of designation of Areas of Critical Environmental Concern during the first year of program implementation. Once these areas are so designated, following a public hearing process, all activities requiring state permits in the APRs/ACECs will be subject to MEPA review.

8) Improved Fisheries Management and Continuing Outer Continental Shelf Oil and Gas Exploration and Development Review: The CZM staff will work with appropriate federal and state agencies to improve commercial fishing in the Commonwealth. CZM will continue to work with the federal agencies responsible for OCS activities to ensure that conflicts with the commercial fishing industry are minimized and environmentally damaging accidents are prevented. CZM will expand its program of technical assistance to local officials to plan for onshore development and the public service needs associated with OCS activities.

The Massachusetts Coastal Zone Management Program has been developed in an effort to ensure that the environmental and economic value of the Massachusetts coastal zone will be sustained and enhanced. The program was prepared pursuant to the federal Coastal Zone Management Act of 1972 (P.L. 92-583), as amended. The Office of Coastal Zone Management has determined that approval and implementation of the state's coastal program has the potential for causing a significant impact on the environment, and that, therefore, an Environmental Impact Statement (EIS) should be prepared pursuant to the National Environmental Policy Act (NEPA). It was initially determined that the program generally will have beneficial impacts. In addition, the Assistant Administrator, in considering whether the program meets the requirements of the CZMA, circulated a draft and this final environmental impact statement.

1.2 The Federal Coastal Zone Management Act

The Coastal Zone Management Act of 1972 (P.L. 92-583) was passed in recognition of the importance of the coastal zone of the United States and the potentially adverse affects of intense pressures upon this national resource. The Act authorized a voluntary program of financial assistance

to states to manage their coasts and is administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration (NOAA), Office of Coastal Zone Management. The program was substantially modified by Coastal Zone Management Act Amendments of 1976 (P.L. 94-370).

The CZMA opens by stating "there is a national interest in the effective management, beneficial use, protection, and development of the coastal zone." (Section 302(a)). The statement of Congressional findings goes on to describe how competition for the utilization of coastal resources, brought on by the increased demands of population growth and economic expansion, has led to the degradation of the coastal environment, including the "loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion." The CZMA then states, "the key to more effective protection and use of the land and water resources of the coastal zone is to encourage states to exercise their full authority over the land and waters in the coastal zone by assisting states... in developing land and water use programs... for dealing with coastal land and water use decisions of more than local significance." (Section 302(h)).

The state level of government has prime responsibility for achieving "effective management, beneficial use, protection, and development of the coastal zone" (Section 302(a)). Under Section 305 of the federal Act, up to four years of grants are available to 34 coastal states and territories (the Great Lakes States are included) to finance up to 80 percent of program development costs. General guidelines for the preparation of management programs are provided in 15 CFR 920.50.

After developing a management program, the state may submit its program to the Assistant Administrator for approval. If a program has deficiencies which can be remedied but prohibit full approval under Section 306, the state is eligible for additional funding under Section 305(d). Funds provided under this Section can be used for initial program implementation and continued program development efforts. (15 CFR 920.61). If approved, the state is then eligible for annual grants under Section 306 to administer its management program.

OCZM has published criteria to be used for approving state coastal management programs and guidelines for program administrative grants (15 CFR Part 923, Federal Register 40 (6): 1683-1695). These criteria and guidelines set forth (a) the standards to be utilized by the Assistant Administrator in reviewing and approving coastal management programs developed and submitted by coastal states for approval, (b) procedures by which coastal states may qualify to receive program administrative grants, and (c) policies for the administration by coastal states of approved coastal management programs. The Assistant Administrator will review the management program in accordance with the following general requirements:

1) That the management program is comprehensive. The Coastal Zone Management Act emphasizes that important ecological, cultural, historic and aesthetic values such as living marine resources, wildlife habitats, open space and nutrient rich areas are being lost or adversely affected by population growth and economic development in the coastal zone.

2) That the policies, standards, objectives and criteria upon which decisions pursuant to the program will be based are articulated clearly and are sufficiently specific to provide (i) a clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and (ii) a clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the management program; and

3) That there are sufficient policies of an enforceable nature to insure the implementation of and adherence to the management program.

As of January 1, 1978, 33 out of 34 eligible coastal states and territories had received program development grants and three states (Washington, Oregon and California) and two segments had received program approval under Section 306. This is one of several programs coming in for approval prior to June 1978.

The 1976 Amendments established a new assistance program consisting of grants, loans, and bond guarantees to states impacted by OCS oil and gas or other forms of energy development. In order to be eligible for assistance, a state must be receiving development (305) or administrative (306) grants, or, in the Assistant Administrator's view, be developing a management program consistent with the policies and objectives contained in Section 303 of the Coastal Zone Management Act. Other sections of the Act provide grants to states to coordinate, study, plan, and implement interstate coastal management programs (Section 309); allow the Assistant Administrator to conduct a program of research, study, and training to support state management programs (Section 310) and provide grants to states to acquire lands for access to beaches and other public coastal areas (Section 315).

Besides the financial assistance incentive for state participation, the Coastal Zone Management Act stipulates that federal activities affecting the coastal zone shall be, to the maximum extent practicable, consistent with approved state management programs, the "federal consistency" requirement, Section 307(c)(1)and (2). The state must concur with any applicant's certification that a federal license or permit affecting land and water uses within the coastal zone is consistent with the state's coastal management program before the federal license or permit can be issued. Section 307 of the Coastal Zone Management Act requires that any outer continental shelf oil and gas activity described in an exploration, development or production plan be certified prior to any approval by the Department of Interior. All direct federal development activities and certain forms of federal assistance to state or local governments must also be consistent with the approved program. Section 307 further provides for mediation by the Secretary of Commerce when serious disagreement arises between a federal agency and a state with respect to the administration of a state's program and shall require public hearings in the concerned locality.

1.3 INDEX TO OCZM REQUIREMENTS

The table below indicates the chapters of this document that describe how the state's program meets the specific requirements of Section 306 of the CZMA. In some cases, additional background materials are also noted in parenthesis.

OCZM Requirements 15 CFR Part 923, Section:		Massachusetts Coastal Zone Management Program
.4(b)	Problems, issues and objectives	Chapters 3,4
.5	Environmental Impact Assessment	This document meets the requirement
.11	Boundaries	Chapter 2, Appendix E
.12	Land and Water Uses to be Managed	Chapters 3-5
.13	Areas of Particular Concern	Chapters 3-5, Definitions, (Coastal Atlas)
.14	Guidelines on Priority Uses	Chapters 4,5
.15	National Interest in the Siting of Facilities	Chapter 9
.16	Area Designation for Preservation and Restoration	Policy 2 of Chapter 4, Section 6.1
.17	Local Regulations and Uses of Regional Benefit	Chapter 9
.18	Shorefront Access Planning	Section 3.5, Policies 21-25 of Chapter 4, Chapter 9, (DEIS Appendix- EOEA Memo August 1977)
.19	Energy Facility Planning	Section 3.6, Policies 8,9 of Chapter 4, Chapter 9, (DEIS Appendix- EOEA Memo August 1977)
.20	Shoreline Erosion	Section 3.2, Policies 1,2,4,15,17 of Chapter 4, Chapter 9, (DEIS Appendix, EOEA Memo August 1977)
.31	Means of Exerting State Control over Land and Water Uses	Chapters 4,6

	OCZM Requirements 15 CFR Part 923, Section:	Massachusetts Coastal Zone Management Program/FEIS
.32	Organizational Structure to Implement the Management	Chapter 6
.33	Designation of Single Agency	Letter from Governor
.34	Authorities to Administer Land and Water Use, Control Development and Resolve Conflicts	Chapters 4, 6
.35	Authorities for Property Acquisition	Policy 24 of Chapter 4; Chapter 6
.36	Techniques for Control of Land and Water Uses	Chapters 3, 6
.41	Full Participation by Relevant Bodies in Adoption of Management Program	Chapter 7, Appendix D
.42	Consultation and Coordination with other Planning	Chapter 7, Appendix C
.51	Public Hearings	Chapter 7
.52	Gubernatorial Review and Approval	Letter from Governor
.54	Applicability of Air and Water Pollution Control Requirements	Policies 3, 10 of Chapter 4

Part II:

The 1978 Massachusetts Coastal Zone Management Program

CHAPTER 2

WHAT IS THE COASTAL ZONE BOUNDARY?

The Massachusetts Coastal Zone includes the lands and waters within the area defined by:

> The seaward limit of the state's territorial sea (i.e., 3 miles), extending from the Massachusetts-New Hampshire border south to the Massachusetts-Rhode Island border, and landward to 100 feet inland of specified major roads, rail lines, or other visible rights-of-way. The coastal zone includes all of Cape Cod, Martha's Vineyard and Nantucket.

In order to encompass important sensitive resource areas, CZM examined several lines which approximated the boundaries of natural systems: coastal watersheds, coastal floodplains, the 50-foot topographic elevation, coastal ecosystems, and the coastal "viewshed." Although watersheds extended extraordinarily far inland, the other boundaries clustered normally at a distance of approximately 1/2 mile from coastal water or salt marsh. Massachusetts CZM and participating citizens chose an easily recognized road boundary which approximates the inland edge of valuable natural coastal systems and includes other land on which major activities could potentially impact coastal resources. Roads were thus selected to delineate an administrative boundary that encompasses coastal biophysical processes.

The names of the roads from New Hampshire to Rhode Island are listed in Appendix F. The coastal zone includes all islands, transitional and intertidal areas, coastal wetlands and beaches. In isolated instances, where the road boundary might exclude coastal wetlands, these wetlands are included in the coastal zone although the written description follows the road. Tidal rivers and adjacent uplands are included inland, at a minimum, to the extent of vegetation affected by saline water. Anadromous fish runs are included to the fresh water breeding area, if such area is within a coastal town. Land owned or controlled by the federal government is excluded by law from the coastal zone.

The boundary determinations were made with the assistance of Citizen Advisory Committee members, local officials and others. As a result of this public process, some citizens have suggested the need for a review of the boundary after a year of implementation. The Cape Cod Citizen Advisory Committee specifically requested such a review (see Appendix F). In the interest of better resource management, the CZM Program is open to a review of the boundary by Citizen Advisory Committees.

CHAPTER 3: RESOURCE AND USE ISSUES OF THE MASSACHUSETTS COASTAL ZONE

MARINE ENVIRONMENT

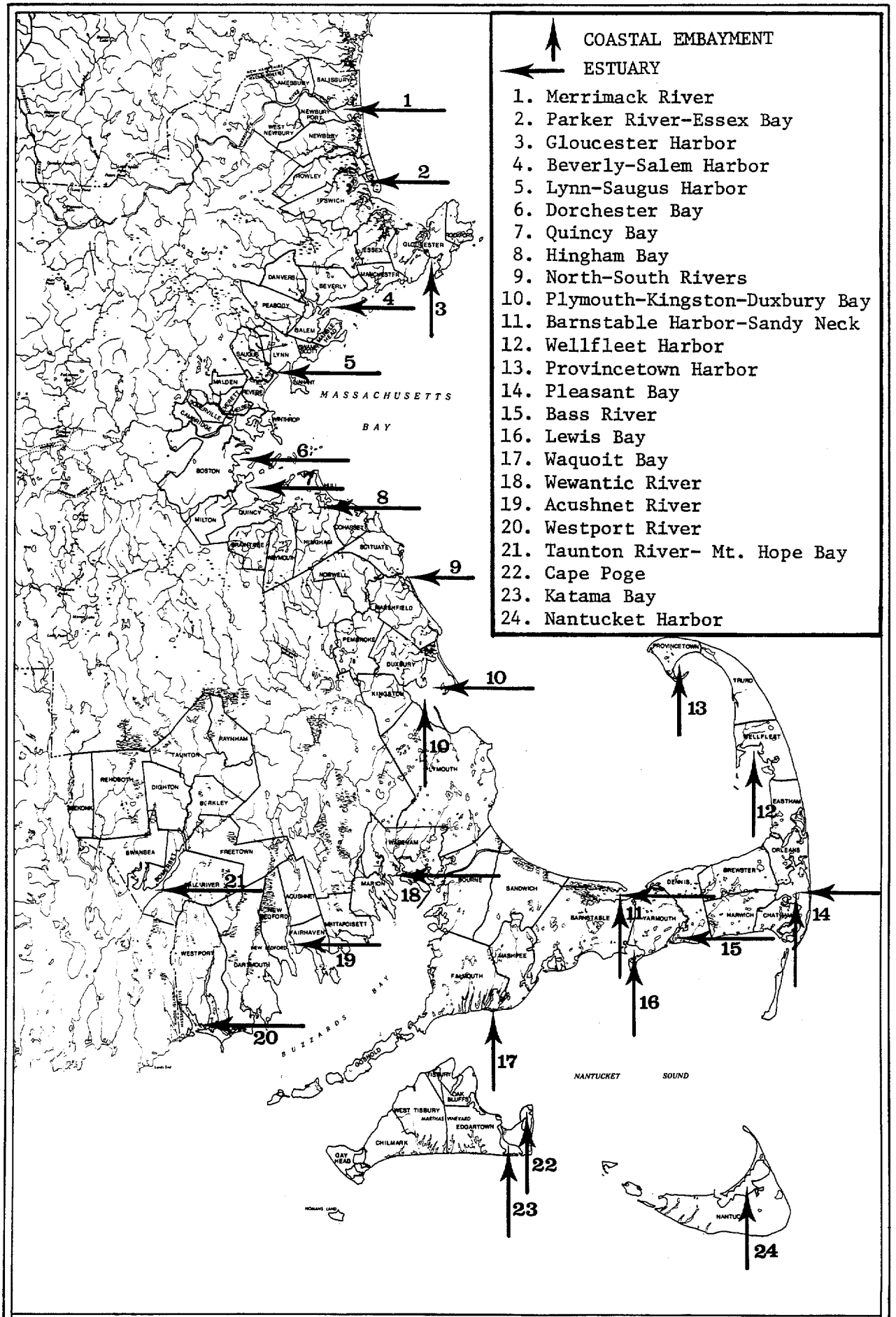
The marine environment is one of the most valuable natural and economic resources in Massachusetts. The salt marsh complexes along the coast provide a nutrient source important to the ocean food chain. Estuaries, salt ponds and shallow coastal embayments also provide nutrients for marine life. These water bodies are areas of high "primary productivity" (the conversion by plants of solar energy to chemical energy) and are valuable as spawning and nursery areas for finfish, shellfish and crustaceans. Migratory birds, particularly waterfowl and shorebirds are also greatly dependent upon the salt marshes, tidal flats and protected waters of Massachusetts for feeding and nesting areas. Major coastal systems are shown on the following map.

Directly and indirectly, the marine environment is important to the economy of the Commonwealth. About 70 percent of the commercially important fish catch spends a part of its life cycle in New England estuarine waters. This fact is significant for places like New Bedford, one of the largest fresh fish ports on the East coast. Commercial fishing adds approximately 500 million dollars annually to the Massachusetts economy. Massachusetts finfish and shellfish are sent to markets around the world. In addition, the coastal waters of the state are heavily utilized for sport fishing, boating, swimming and other recreational pursuits. These activities translate into an important recreation-tourist industry in the Commonwealth.

All of these activities are dependent upon clean and productive waters. Many coastal communities in turn rely on the availability and attractiveness of these resources for income and employment.

Therefore, it is important that the uses of Massachusetts' marine environment be carefully managed to avoid the destruction or degradation of the biological, commercial and recreational qualities which make it such a valuable, renewable resource. Maintenance of fishery resources for the benefit of future generations requires the protection of the coastal systems, e.g. salt marshes and estuaries, upon which both commercial and recreational species depend for primary productivity and spawning habitat. If habitat for waterfowl, shorebirds, and endangered species is to be preserved, restriction of activities in barrier beaches, salt marshes, dunes, and other coastal environments will be necessary. Dredging, filling, and disposal practices will need to be managed in such a way that sufficient access to navigable waters is maintained, while minimizing the adverse effects of such activities on shellfish beds and salt marshes.

Other adverse impacts on marine productivity must also be balanced against the need for development and use of coastal resources: the chronic, sublethal effects upon marine organisms resulting from the discharge of hazardous substances into coastal waters, the stress of overloading semi-enclosed water bodies with nutrients from sewage treatment facilities, and, in estuaries in particular, the disruption of natural cycling and energy transport patterns through physical interference with natural water movements.



EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

COASTAL ZONE MANAGEMENT PROGRAM

Positive steps toward conditioning these activities will also serve to preserve and enhance the quality of our coastal waters upon which so many coastal activities depend.

In addition, positive, more active steps must be taken to enhance the production of finfish, shellfish, crustaceans and algae. Restoration of anadromous fish runs, promotion of extensive and intensive aquaculture, and improved shellfish management can increase the benefits accrued by many from the marine environment. Finally, the state must take an active role in the development and assessment of management plans for fisheries resources within the Commonwealth's three mile territorial limit, and within the recently established 200 mile federal fisheries jurisdiction limit.

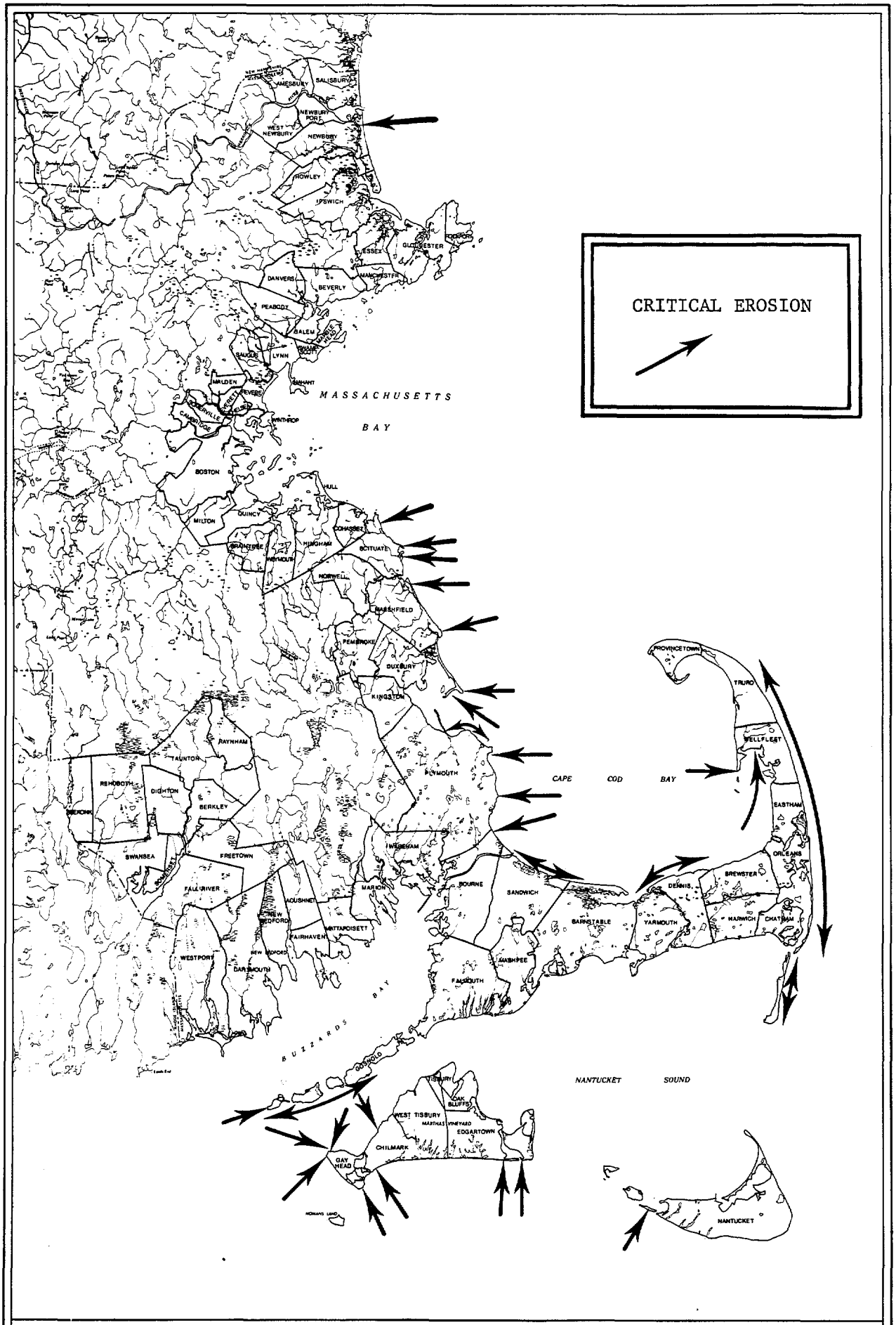
COASTAL HAZARDS

In addition to their value as habitat and sources of primary productivity, natural landforms (barrier beaches, dunes, beaches and salt marshes) in the coastal zone provide significant protection from coastal storms, flooding and erosion. Beaches and marshes dissipate destructive storm waves over their gradual slopes. Dune systems, if stabilized by beach grasses and other binding vegetation, prevent direct wave attack against inland areas. Barrier beaches protect both mainland development and the salt marshes and productive habitat between them and the mainland.

In order to function effectively as natural buffers, however, these landforms and the natural processes which link them together must remain relatively free from alterations which would disturb their state of "dynamic" equilibrium. For example, if natural erosion of one beach is providing sediment material via littoral transport that is eventually deposited on another beach farther downcoast, it will be important to prevent any action to retard erosion of the upcoast beach from impeding the flow of sand to the downcoast beach. As another example, barrier beaches migrate slowly inland and downcoast, but this movement allows them to maintain their elevation and protective capability relative to rising sea level and storm forces.

Pressure for development of sensitive buffer areas for residential, commercial or recreational uses has been significant in the past, resulting in substantial losses in propery damage during major northeast storms and hurricanes, and impairing the ability of these buffers to protect inland development and other unique aspects of the coastal zone. Principal areas subject to severe erosion are shown on the following page.

Development in areas vulnerable to flooding and erosion in turn results in pressure for the construction of protective structures. In some instances, such structures have been effective and are necessary, particularly where natural buffers have been irrevocably lost. However, they are becoming increasingly recognized as expensive short-term solutions which may only exacerbate problems elsewhere along the coast. For example, groins typically cause accretion on their updrift side, but erosion of the shore on their downdrift side. Non-structural solutions on the other hand, more closely simulate natural processes, are likely to be more effective, and avoid the creation of adverse effects on downcoast areas.



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COASTAL ZONE MANAGEMENT PROGRAM

With the implementation of the National Flood Insurance Program and other recent federal programs, the federal government is putting greater emphasis on non-structural measures to prevent unwise development of hazardous areas and preserve and restore the natural protective functions of coastal landforms and processes. CZM concurs with this emphasis and has developed its policies to promote optimal use of remaining undeveloped buffer land along the coast, to restore previously impaired buffer areas through non-structural solutions, to prevent development that would exacerbate existing hazards, and to implement limited structural solutions in situations where the need for structural protection is unquestioned.

VISUAL, CULTURAL AND HISTORIC ENVIRONMENTS

Of the many issues which concern Massachusetts Coastal Zone Management, protection of scenic values and opportunities is perhaps the least tangible. This does not mean, however, that management of visual quality should be ignored, especially since any alteration in the coastal zone will naturally have visual impacts. On the other hand, with the exception of features such as historic sites which are of obvious statewide and national significance, the majority of visual quality issues are issues of local concern that can best be handled through zoning, design review or other local controls.

On the state level, two basic concerns of Coastal Zone Management will be to increase visual access opportunities for the general public, especially in the more developed and urbanized areas, and to improve the visual compatibility of publicly-funded facilities which are sited within the coastal zone with natural coastal characteristics and features of historical or cultural importance.

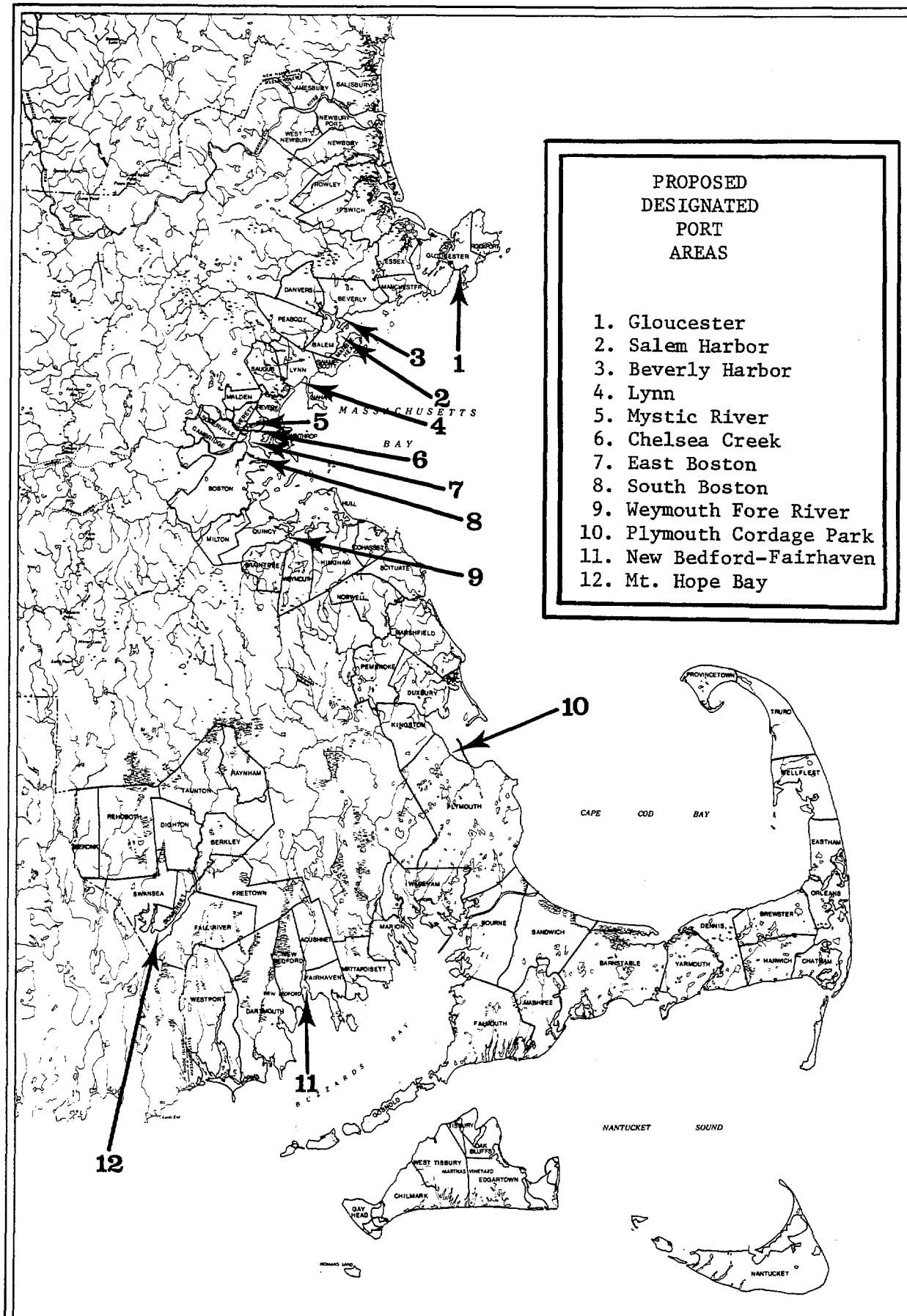
Visual impacts of uses such as housing, for example, can best be regulated through community zoning. "Townscape" qualities and significant historical or cultural assets can be protected through designation of historic districts and sites or by other means of local control.

While natural features and man-made features of historical, archeological, architectural or cultural significance provide the coast with its greatest visual assets, coastal dependent activities, such as commercial shipping and fishing are also important integral elements of the visual environment of the coastal zone. Their facilities and operations need not always be viewed as eyesores. If access to them is carefully designed, they can provide interesting visual and educational opportunities. Further, views of urban harbor areas can be increased if physical access to waterfront areas is provided around facility perimeters.

PORTS AND HARBORS

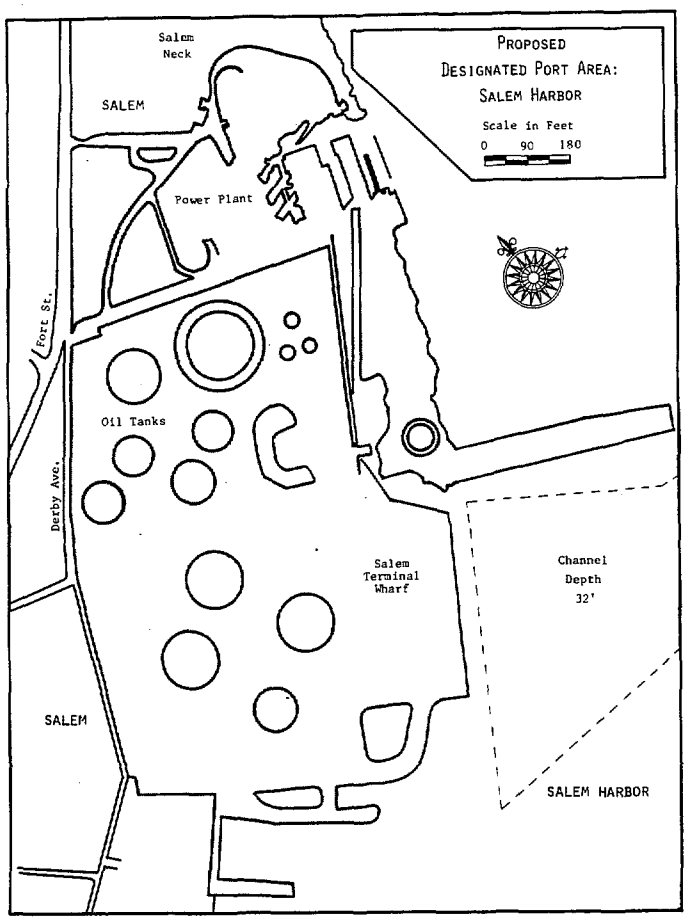
Protected bays and river mouths have special value to Massachusetts. Such coastal features have traditionally provided stable waterfront for piers, wharves, warehouses, and other facilities. Hence, these areas have developed into our major ports of water related industry and trade.

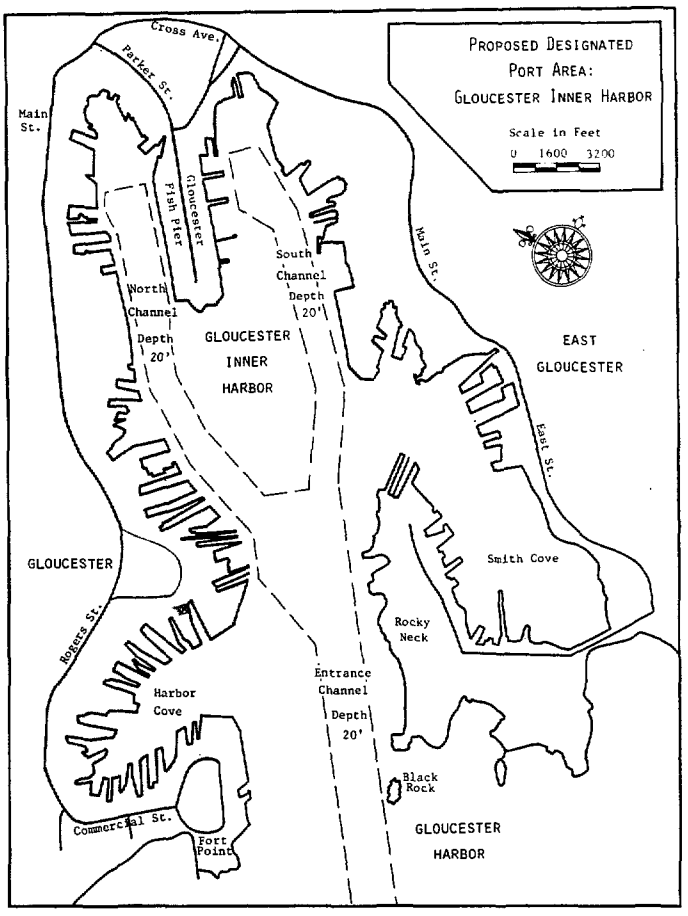
The contribution of ports to the Massachusetts economy is not merely a phenomenon of times past. Various maritime related industries now operating

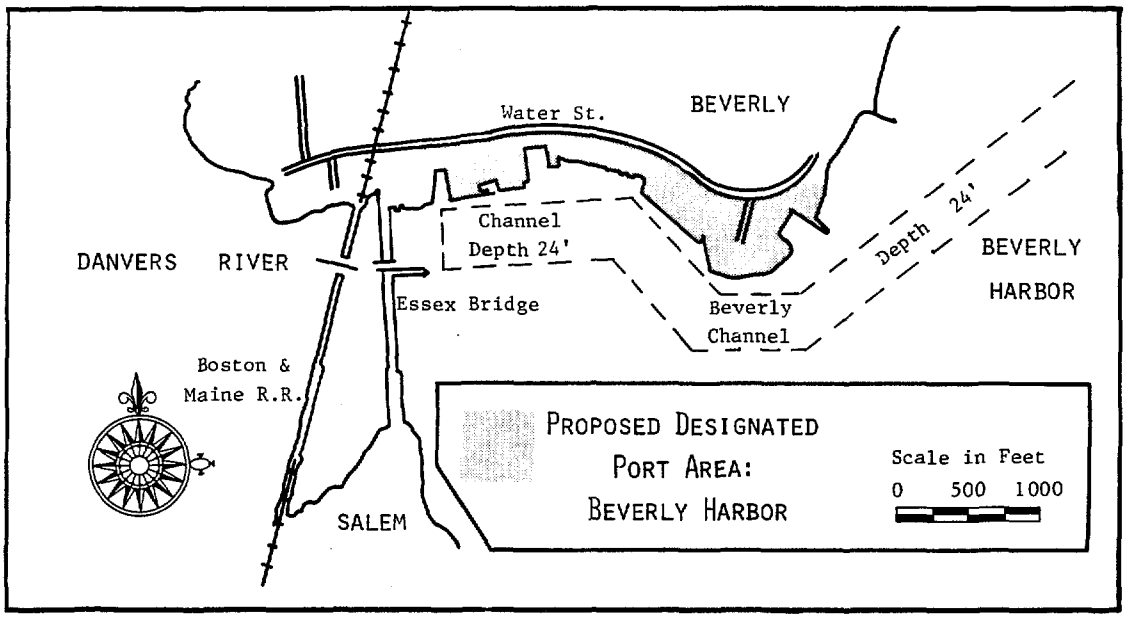


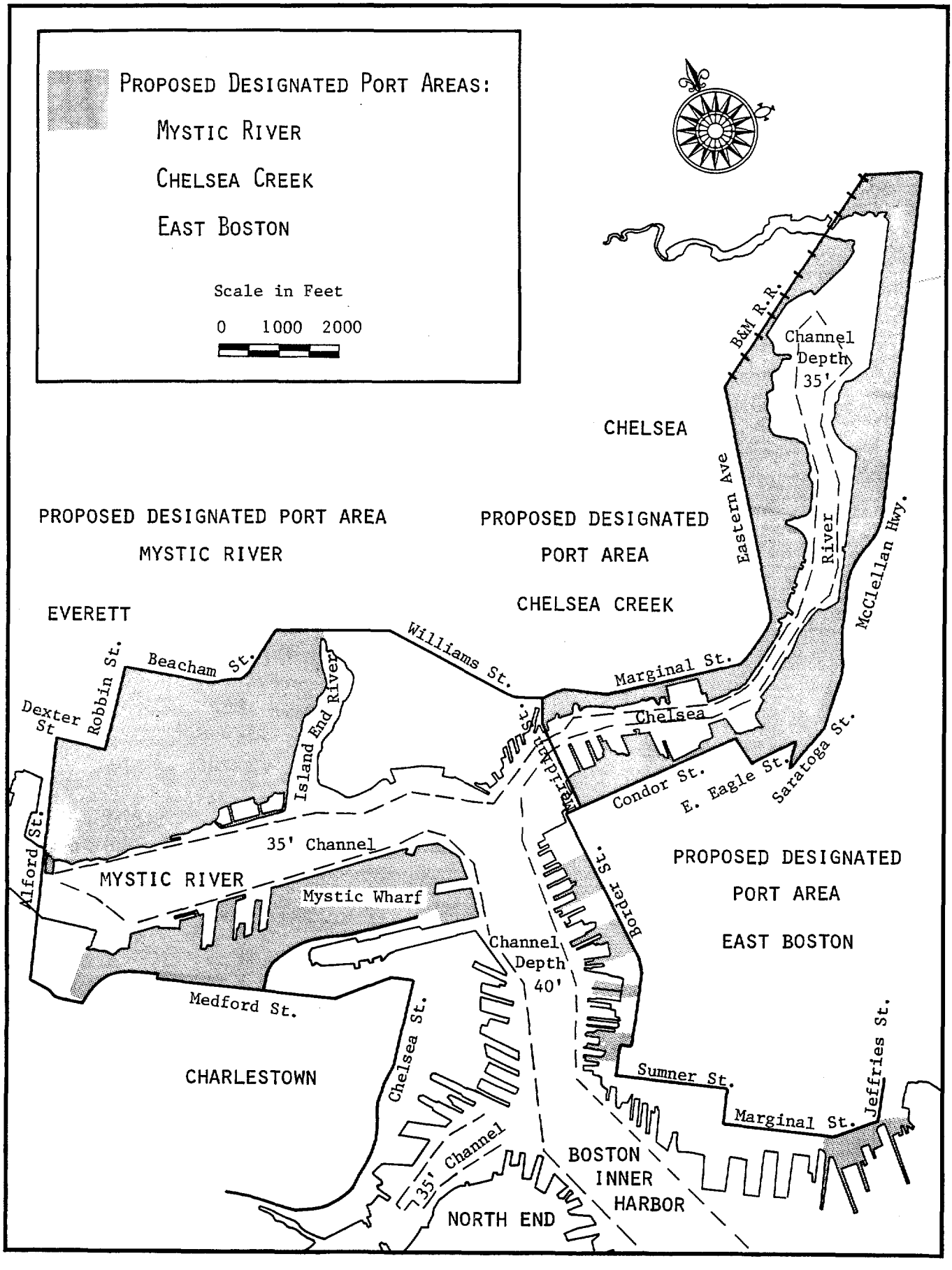
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

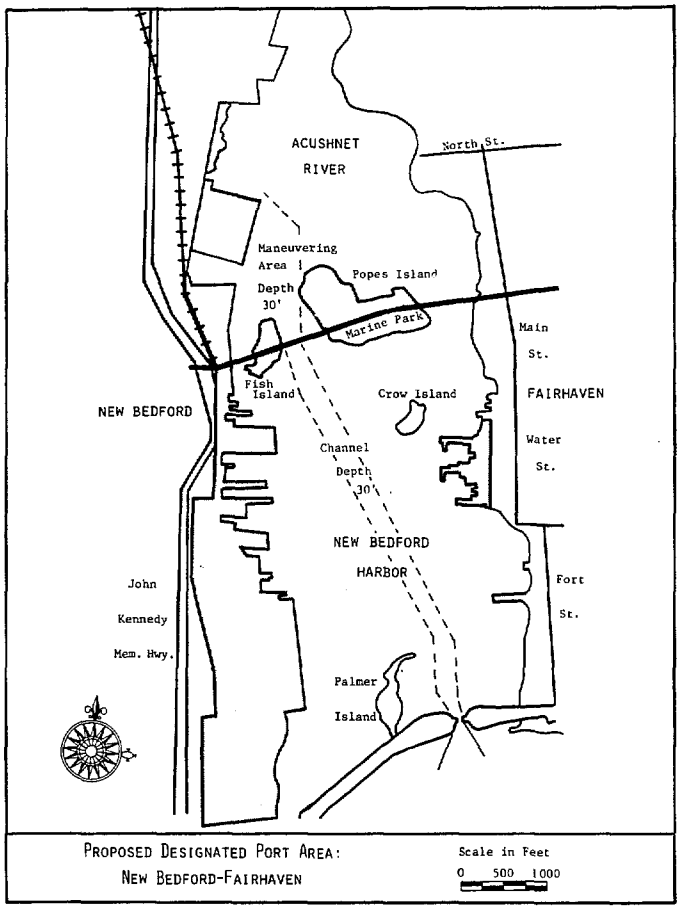
COASTAL ZONE MANAGEMENT PROGRAM

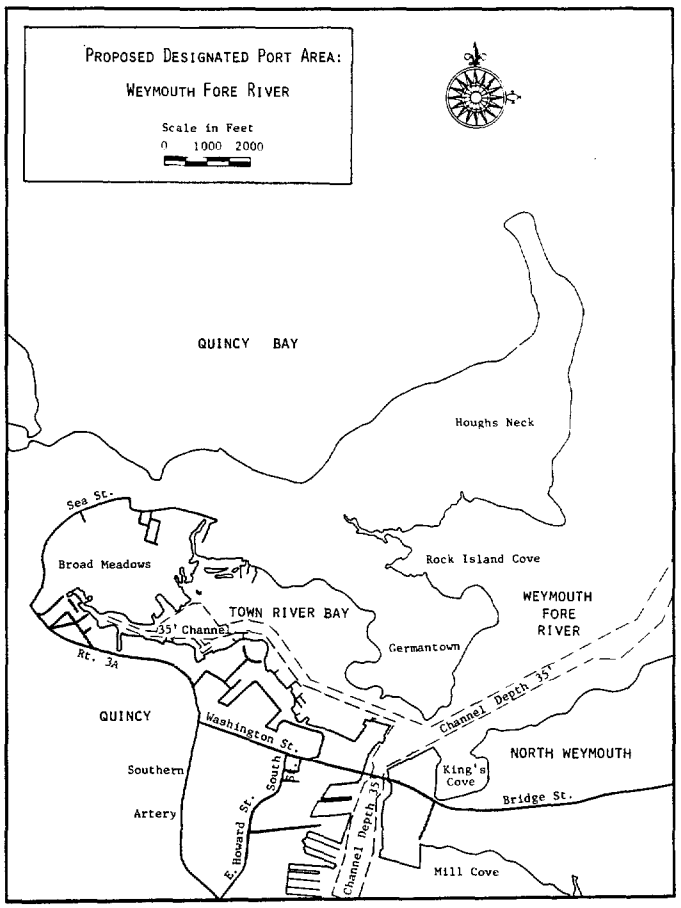

PROPOSED
DESIGNATED PORT AREA:
SALEM HARBOR
Scale in Feet
0 90 180
Salem
Neck
SALEM
Power Plant
Fort St.
Oil Tanks
Derby Ave.
Salem
Terminal
Wharf
Channel
Depth
32'
SALEM
SALEM HARBOR

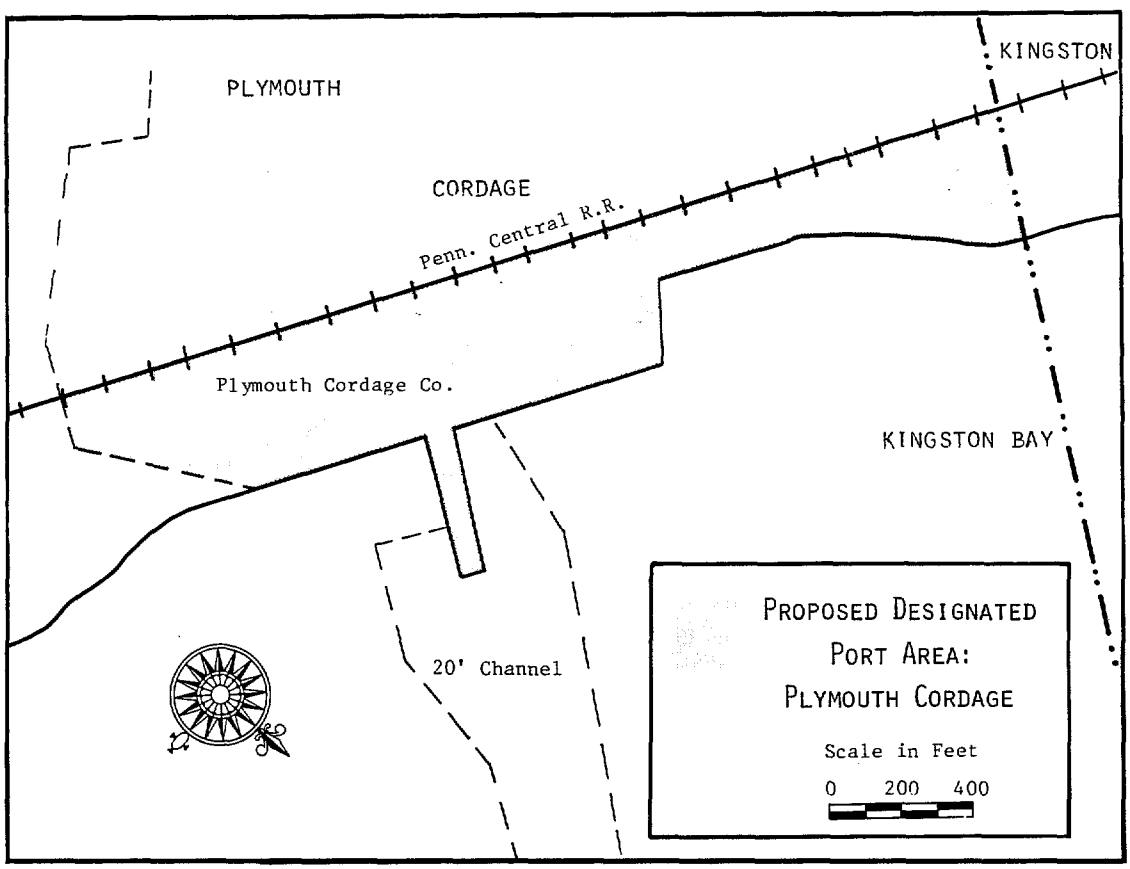

PROPOSED DESIGNATED
PORT AREA:
GLOUCESTER INNER HARBOR
Scale in Feet
0 1600 3200
Cross Ave.
Parker St.
Main
St.
Gloucester
Fish Pier
North
Channel
Depth
20'
South
Channel
Depth
20'
GLOUCESTER
INNER
HARBOR
Main St.
EAST
GLOUCESTER
East St.
GLOUCESTER
Smith Cove
Rocky
Neck
Rogers St.
Harbor
Cove
Entrance
Channel
Depth
20'
Black
Rock
Commercial St.
Fort
Point
GLOUCESTER
HARBOR

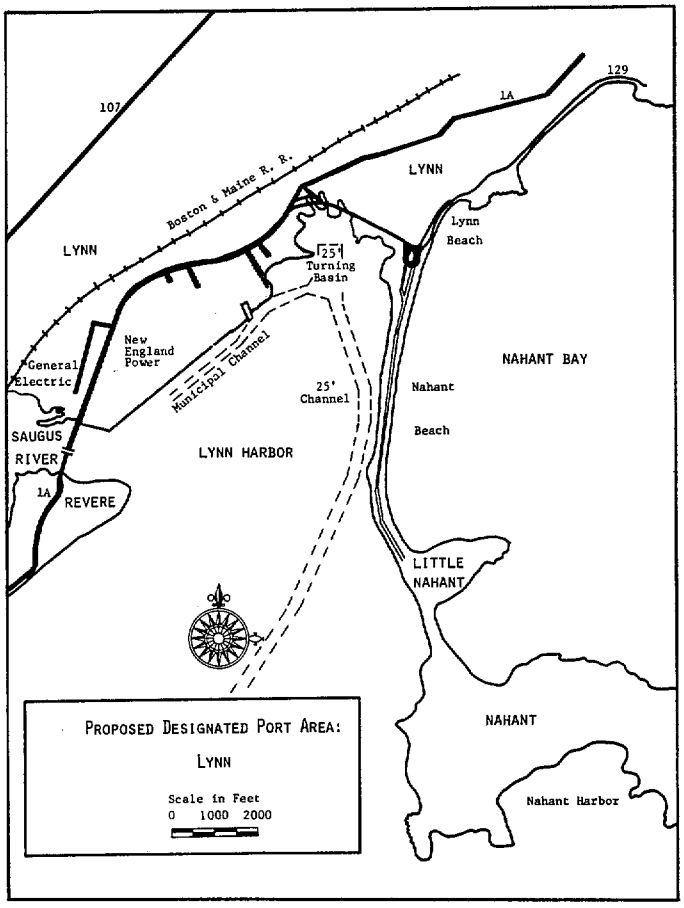

Water St.
BEVERLY
Channel
Depth 24'
DANVERS RIVER
Essex Bridge
Beverly
Channel
Depth 24'
BEVERLY
HARBOR
Boston &
Maine R.R.
SALEM
PROPOSED DESIGNATED
PORT AREA:
BEVERLY HARBOR
Scale in Feet
0 500 1000

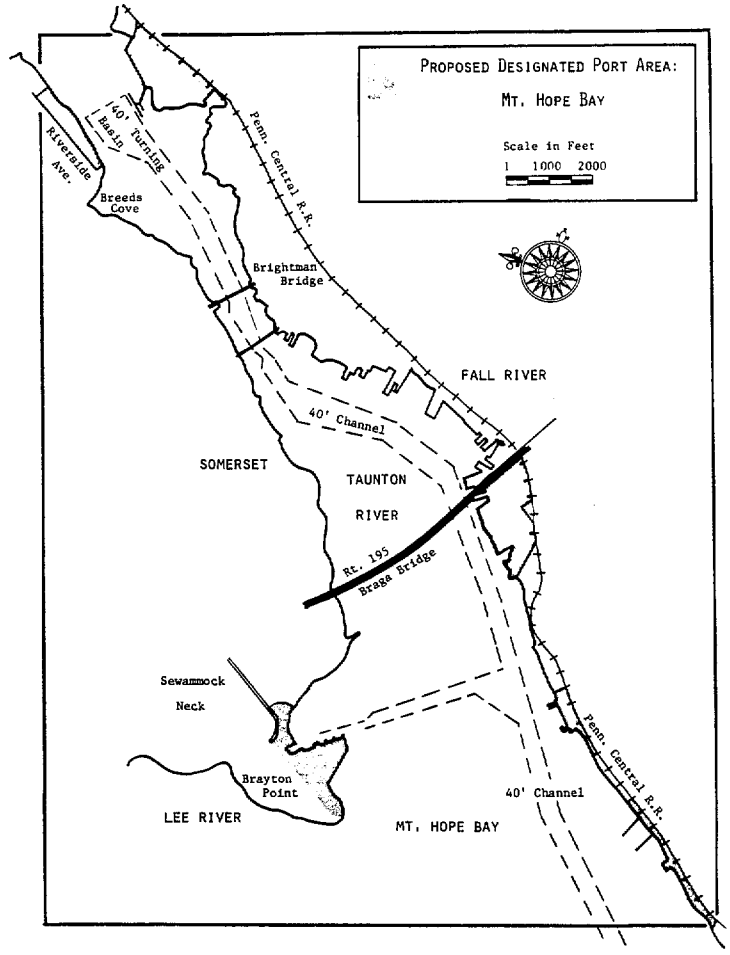

PROPOSED DESIGNATED PORT AREAS:
MYSTIC RIVER
CHELSEA CREEK
EAST BOSTON
Scale in Feet
0 1000 2000
B&M R.R.
Channel Depth 35'
CHELSEA
Eastern Ave
River
McClellan Hwy.
PROPOSED DESIGNATED PORT AREA
MYSTIC RIVER
PROPOSED DESIGNATED PORT AREA
CHELSEA CREEK
EVERETT
Williams St.
Beacham St.
Robbin St.
Dexter St
Island End River
Marginal St.
Chelsea St.
Chelsea
Condor St.
E. Eagle St.
Saratoga St.
Alford St.
35' Channel
MYSTIC RIVER
Mystic Wharf
Border St.
PROPOSED DESIGNATED PORT AREA
EAST BOSTON
Channel Depth 40'
Medford St.
CHARLESTOWN
Chelsea St.
Sumner St.
Marginal St.
Jeffries St.
35' Channel
BOSTON INNER HARBOR
NORTH END

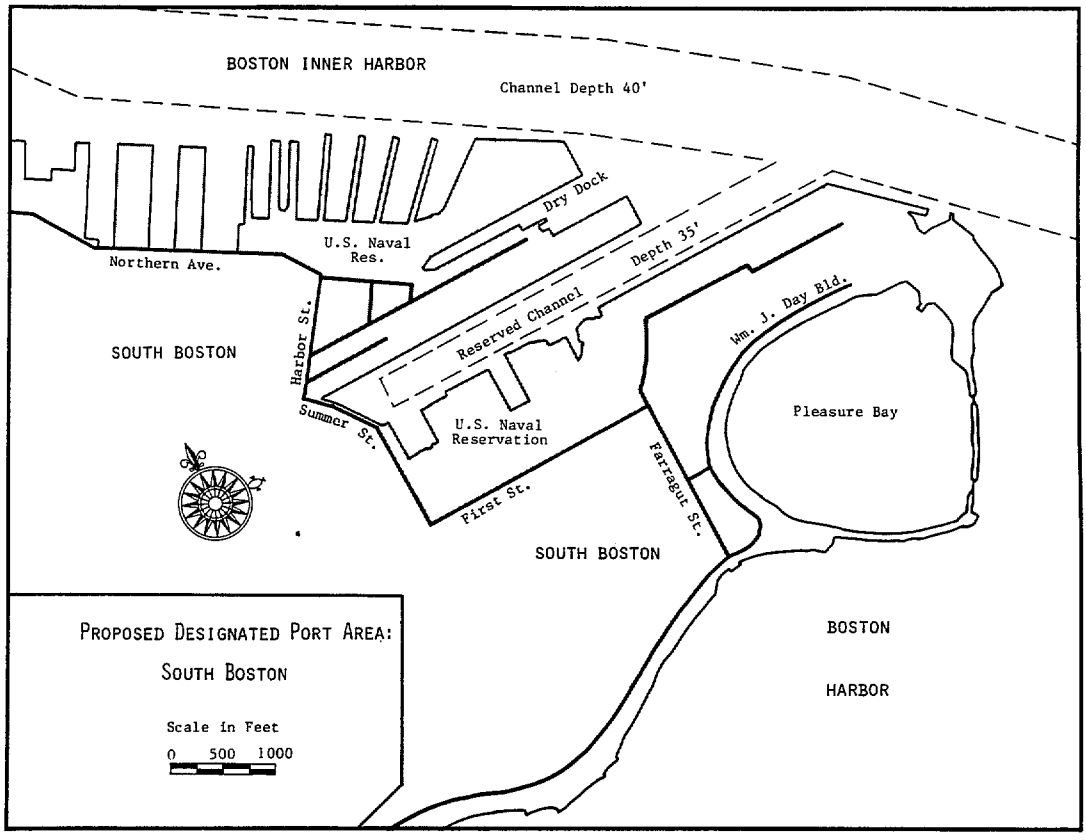

ACUSHNET
RIVER
North St.
Maneuvering
Area
Depth
30'
Popes Island
Marine Park
Main
St.
Fish
Island
Crow Island
FAIRHAVEN
NEW BEDFORD
Water
St.
Channel
Depth
30'
NEW BEDFORD
HARBOR
John
Kennedy
Mem. Hwy.
Fort
St.
Palmer
Island
PROPOSED DESIGNATED PORT AREA:
NEW BEDFORD-FAIRHAVEN
Scale in Feet
0 500 1000


PROPOSED DESIGNATED PORT AREA:
WEYMOUTH FORE RIVER
Scale in Feet
0 1000 2000
QUINCY BAY
Houghs Neck
Sea St.
Broad Meadows
Rock Island Cove
WEYMOUTH
FORE
RIVER
TOWN RIVER BAY
35' Channel
Germantown
Rt. 3A
Channel Depth 35'
QUINCY
Washington St.
NORTH WEYMOUTH
Southern
Artery
E. Howard St.
South
King's
Cove
Bridge St.
Channel Depth 35'
Mill Cove


PLYMOUTH
KINGSTON
CORDAGE
Penn. Central R.R.
Plymouth Cordage Co.
KINGSTON BAY
20' Channel
PROPOSED DESIGNATED
PORT AREA:
PLYMOUTH CORDAGE
Scale in Feet
0 200 400


107
1A
129
Boston & Maine R. R.
LYNN
LYNN
Lynn Beach
25' Turning Basin
New England Power
General Electric
Municipal Channel
25' Channel
NAHANT BAY
Nahant Beach
SAUGUS RIVER
LYNN HARBOR
1A
REVERE
LITTLE NAHANT
NAHANT
Nahant Harbor
PROPOSED DESIGNATED PORT AREA:
LYNN
Scale in Feet
0 1000 2000


PROPOSED DESIGNATED PORT AREA:
MT. HOPE BAY
Scale in Feet
1 1000 2000
Penn. Central R.R.
40' Turning Basin
Riverside Ave.
Breeds Cove
Brightman Bridge
FALL RIVER
40' Channel
SOMERSET
TAUNTON RIVER
Rt. 195
Braga Bridge
Sewammock Neck
Brayton Point
LEE RIVER
MT. HOPE BAY
40' Channel
Penn. Central R.R.


BOSTON INNER HARBOR
Channel Depth 40'
Dry Dock
U.S. Naval Res.
Northern Ave.
Depth 35'
Reserved Channel
Wm. J. Day Blvd.
Harbor St.
SOUTH BOSTON
Summer St.
U.S. Naval Reservation
Pleasure Bay
First St.
Farragut St.
SOUTH BOSTON
BOSTON HARBOR
PROPOSED DESIGNATED PORT AREA:
SOUTH BOSTON
Scale in Feet
0 500 1000

in the major port directly employ approximately 50,000 persons. Some waterfront uses are expected to experience limited growth; these include general cargo not shipped by container and dry bulk cargo. Others, including container shipping, ferry services, marine industry and recreational boating, exhibit a potential for development and a growing need for harborfront space. With the enactment of the federal 200-mile fishery conservation zone, Massachusetts looks toward a significant revival in its fishing industry. And, if substantial quantities of oil and natural gas are discovered on the Georges Bank, we expect to accommodate this trade in our ports also.

Yet the traditional maritime related industries of our ports are not homogeneous. Fishing, maritime shipping of goods and people, other marine industry and services such as ships and boat yards and recreational boating are all vital port activities. All accrue economic benefits to the citizens of the state. In some instances, however, these activities may compete for waterfront space and, at times, one use is not compatible with another.

The severest competition for harborfront space occurs in ports having navigable channels of 20 foot depth or more and a developed transportation system. These ports are most suitable for maritime shipping and marine industry. However, many of these areas are major fishing industry ports, and, as urban centers, face pressure for neighborhood and urban waterfront renewal. In addition, while the lack of deeper channels makes the siting of a marine terminal impossible in shallow harbors, no such constraint exists for recreational boating traffic or other uses requiring shallow drafts in deeper waters. Hence, such ports face competition from the whole range of waterfront uses which may or may not have other siting options. (See maps for proposed port area designations.)

The cost of establishing other deepwater channels, with adequate support services like sewers, water and transportation links and available sites abutting the channels is prohibitively high. Existing deepwater channels are ideally suited for accommodating uses which are of state or national importance because they provide protein (fisheries), are key parts of the transportation network (maritime shipping) or support maritime shipping (tugboat services, ship repair yards) and energy exploration, development and delivery (OCS support bases, etc.). Hence, the navigable channels of 20 foot depth or more, together with their abutting lands and inland transportation access routes, should be treated as important state resources.

In smaller harbors, lacking both the channel depth and the transportation and utility systems to support major maritime shipping, marine industry, and the fishing industry, assistance is needed to help develop facilities for recreational boating, ferry services, and small-scale fishery operations. The mixture of recreational crafts, fishing vessels, and ferry services lends an image of bustling harbor activity which makes views of the harbor attractive. Thus, these kinds of waterfront dependent activities can enhance the character of waterfronts and can complement urban waterfront renewal.

The dredging of relatively pristine coastal areas and the alteration of shorelines through filling and bulkheading can have long lasting and severe adverse effects on marine productivity. The need for dredging and other alterations can be minimized, however, by maximizing the use of existing ports and harbors and their associated facilities. In addition, benefits from prior

public expenditures will be maximized and future public costs minimized. The creation of new ports and harbors should thus be discouraged unless the use to be accommodated cannot be met in existing port and harbor areas, or unless the project presents lower risks of environmental damage. First priority should be placed on maintaining existing channel depths and mooring and turnaround basins. Deepening of channels and expansion of mooring and turnaround basins should proceed only when essential to waterfront dependent uses of particular economic importance to the state or nation - fisheries, maritime shipping, and marine industry. In addition, both maintenance and deepening operations will necessitate provision of environmentally acceptable dredge disposal solutions.

RECREATION

Recreation in its many forms attracts more people to the Massachusetts coast than any other use. The Commonwealth's coastal recreational resources support a billion dollar plus recreation-tourist industry and add measurably to the quality of life for coastal residents and visitors alike. Problems occur, however, because the growth in demand for water related recreation in Massachusetts is outstripping the growth in population. Options for improving the quality and the quantity of recreational facilities is limited. If available, land for recreation expansion is expensive. Increasing recreational activities places greater strains on already inadequate transportation facilities. Different coastal regions have different problems, needs and opportunities. Acquisition and development of new facilities must be sensitive to environmental constraints and the scale of adjacent communities. CZM's recreation policies address these limitations and concerns.

Meeting recreation demands is more difficult in coastal areas than in any other part of Massachusetts because of the limited availability of undeveloped shorefront land. The 1975 New England River Basins' SENE Study estimated that approximately 130,000 additional acres are needed in coastal counties to completely meet future recreation demands. However, the amount of coastal town acreage developed for non-recreation uses has increased by up to 500% over the last twenty-five years. Some coastal towns, previously considered rural, currently have little undeveloped coastal land remaining. Urban areas, chronically deficient in coastal recreational facilities, have few sites left, and when available, they are often small and expensive, and have poor water quality.

The magnitude of need for different types of new recreation facilities or sites varies from region to region. According to the State Comprehensive Outer Recreation Plan (SCORP), eastern Massachusetts (Boston Harbor, North and South Shores) needs more opportunities for all recreation activities; southeastern Massachusetts needs more public beaches for swimming; Cape Cod needs more facilities for boating and camping, but provides ample swimming opportunities, particularly on the National Seashore; and Martha's Vineyard and Nantucket are deficient in all recreational activities. The map on the following page illustrates these varying regional needs.

Suitable new sites for recreation are not available in all regions. Options for redistributing recreation opportunities are limited. Opportunities in eastern Massachusetts are the most limited, particularly for large sites

such as state beaches and campgrounds. Acquisition of a few large military sites however, could alleviate some of the shortages in this region. Buzzards Bay, Cape Cod and the Islands offer a great number of opportunities for developing large recreation sites. However, these sites are distant from major population centers and serious transportation problems are caused by large numbers of people driving to and from recreation sites. Additional recreational development in sites far from population centers will place increased demands on transportation networks and other municipal services.

One way to minimize congestion and other transportation related problems is to improve non-automobile public transportation as a critical first step in providing or expanding recreational opportunities. Transportation improvements should foster greater use of underutilized or new recreational sites, should reduce the volume of the current transportation impacts of congestion and noise, and should be compatible with the capacity of recreational sites to accommodate visitors. Appropriate to the scale of these sites, jitneys, boat service, and bicycle and hiking trails should be developed and expanded. Such low intensity transportation can provide access without causing traffic impacts.

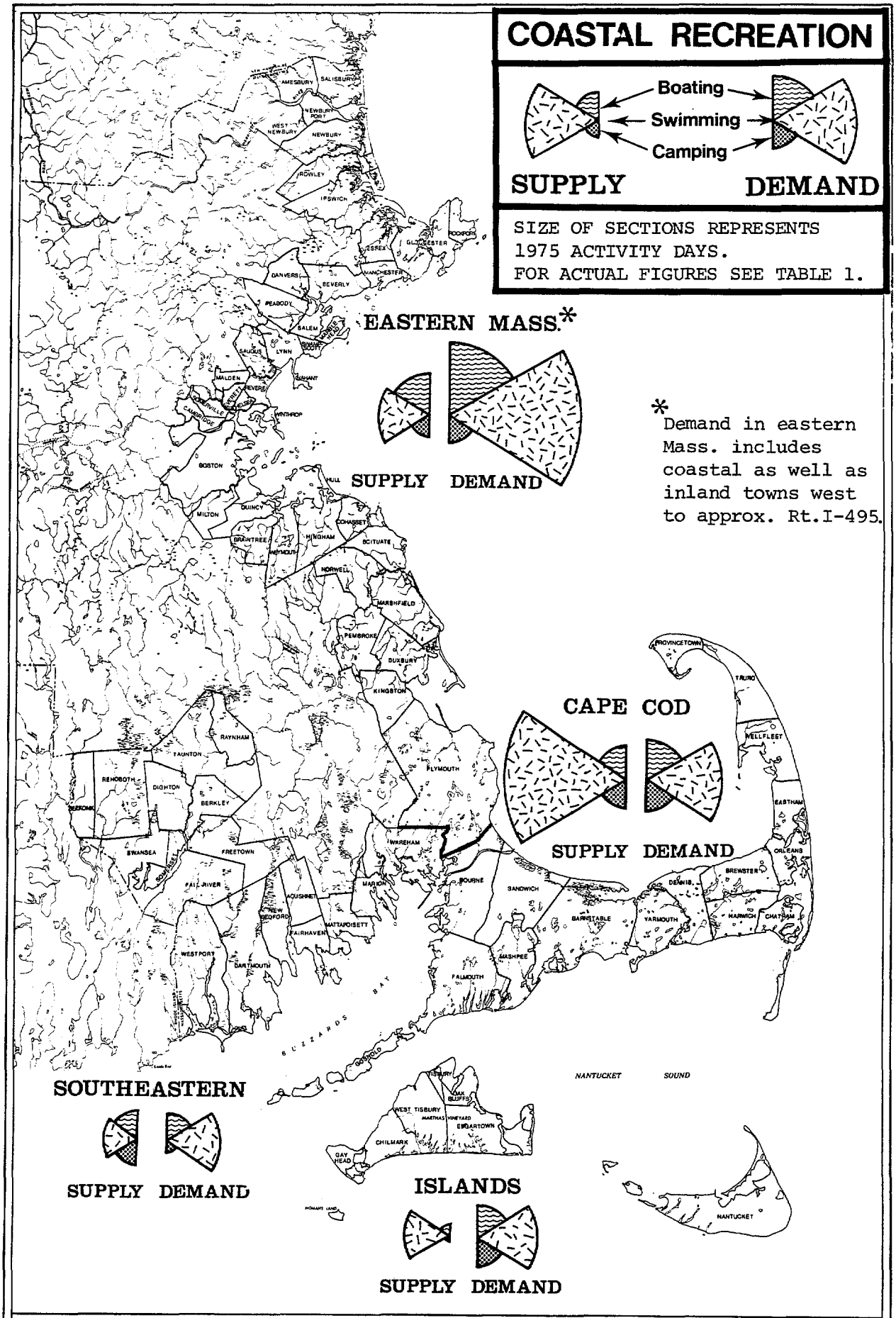
Small scale improvements at existing facilities can also add to recreational opportunities while minimizing environmental and social impacts. Such improvements include expansion, provisions for multiple use, and improved maintenance. This strategy is particularly appropriate to eastern Massachusetts and other urbanized areas where there is little undeveloped land and use of existing facilities is intense.

The high cost of land along the coast is a serious impediment to filling recreation needs. Traditionally, beaches have been purchased by the public sector since private enterprise has been unable to make a reasonable profit on beach recreation given the limited seasons, high acquisition and operating costs and low revenues. With escalating land values, this trend continues. The cost of maintenance and operation of recreation facilities can quickly approach the cost of acquisition, adding yet one more problem of providing additional recreational opportunities.

In the private sector, marina operators say they are having greater difficulties establishing and expanding their businesses. Lack of, or the high cost of waterfront land are cited as the primary inhibitors. Marinas, boatyards, boat and motor sales have enjoyed high profits compared to other marine industries during the past few years, and wish to expand.

Acquisition and development of new facilities must be sensitive to environmental constraints and the scale of adjacent facilities and communities. Over-utilization and conflicting uses can degrade the quality of recreational experiences as well as the surrounding natural and man-made environment. For these reasons, CZM policies generally place acquisition of small, dispersed sites above acquisition of very large sites.

Coastal recreation benefits should not be narrowly construed. Public and private recreation sites and activities serve as "gateways enterprises", attracting visitors who spend money on food, lodging and tourist facilities. Recreation can spur development and impart high values to existing housing stock as well as to remaining open lands.



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COASTAL ZONE MANAGEMENT PROGRAM

The recreation dilemma is critical. Solutions must be provided within the next decade or most remaining opportunities will be lost.

CZM recreation policies will complement other CZM policies in this plan. Under improved management, recreation policies can help conserve marine ecosystems, prevent property losses in flood damage areas and provide additional coastal recreational opportunities.

Coastal Zone Management's primary objective is to increase and enhance public use of the Massachusetts shoreline while improving existing facilities and minimizing future conflicts, over-utilization and environmental impacts. The recreation related policies are thus designed to improve transportation and access; to acquire new sites in recreation deficient areas; to expand suitable existing sites through small acquisition or encourage multiple uses; and to improve maintenance.

ENERGY FACILITIES

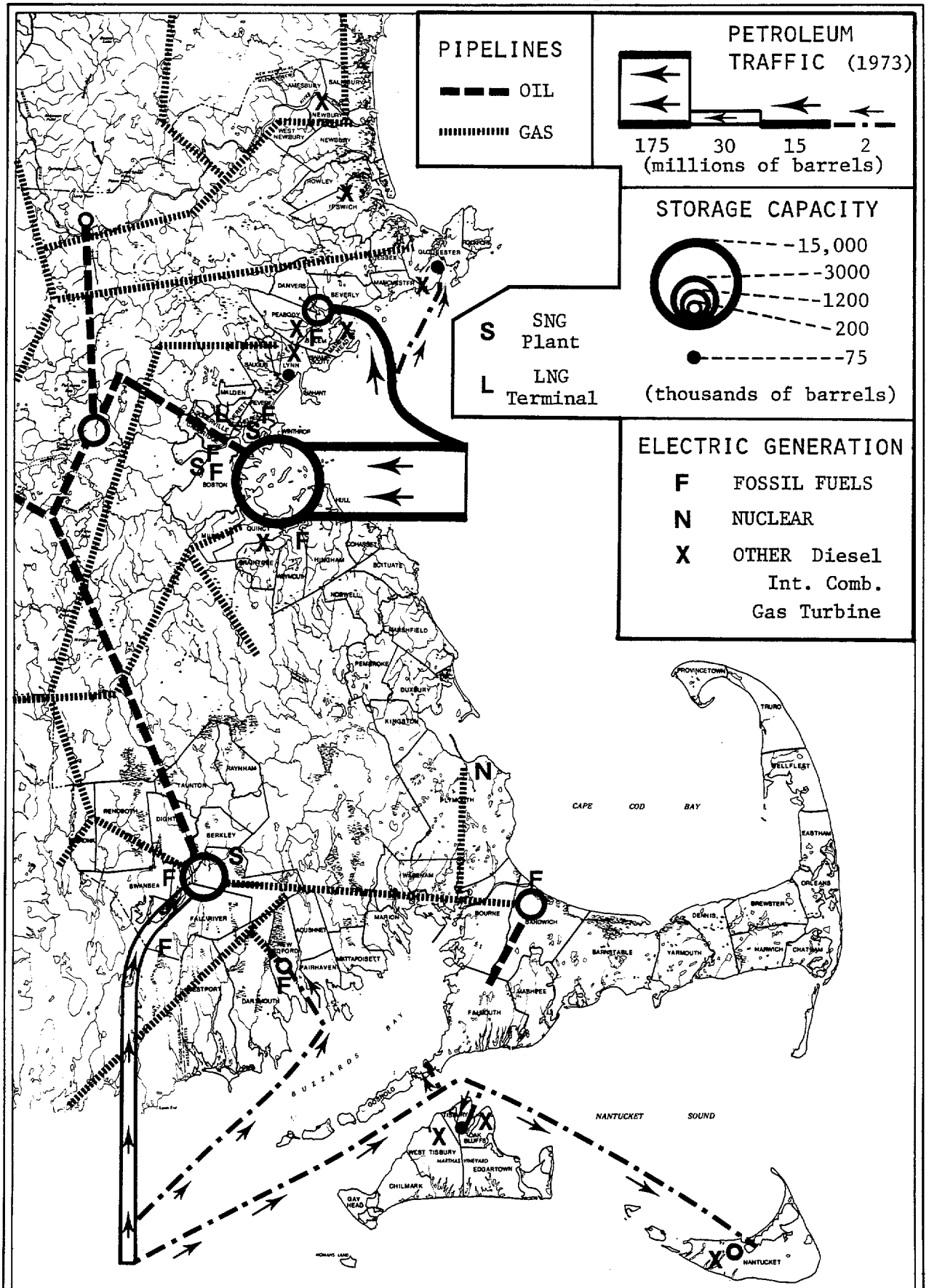
The Massachusetts coastal zone plays a major role in fulfilling the energy requirements of the state - 80% of the Commonwealth's energy facilities are currently located there. The coast accommodates sites for electric generating plants, gas facilities, marine terminals, and tank farms and could, in the future, be called upon to host a refinery, deepwater ports or offshore oil or gas related facilities and services.

Energy facilities are located in the coastal zone for basically three reasons: utilization of abundant water for cooling purposes; proximity to fuel supply; and accessibility to market areas. The chart on the following page shows the locations of major facilities and major fuel delivery and distribution networks. Some of these facilities are by their nature coastally dependent, that is, their successful functioning in some way requires that they be sited on the coast. For others, inland locations may be possible, but may entail increased costs to the industry and consumers and could have associated adverse environmental and social impacts.

Massachusetts is and will most likely remain dependent upon product oil brought in from outside Massachusetts. Roughly half of this oil comes from foreign nations, most of which, as with the majority of domestic oil, is brought into the state via coastal marine terminals. For the foreseeable future, these products will continue to arrive in conventional coastal tankers and be stored in oil tank farms. While Massachusetts most likely has sufficient marine terminal capacity to handle any projected increases in tanker traffic, additional oil storage facilities will in all likelihood be needed. CZM finds that in many instances, ports which now host tank farms will be hard pressed to accommodate additional storage. Tank farms might, however, in certain cases, be economically sited in areas outside the coastal zone.

In addition to oil, natural gas has become a widely used fuel, due to its efficiency and clean burning characteristics. Because of a lack of domestic pipeline gas, the importation of liquefied natural gas (LNG) and feedstock for synthetic natural gas (SNG) through marine terminals has become important in supplying the energy needs of the state. Because of the economics and risks of transporting cryogenic gas, many gas storage and

ENERGY FACILITIES



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processing facilities must be located close to terminals and as such, are more coastally dependent than many other energy facilities.

Currently, two coastal power plants have the capacity to use coal to generate electricity. National energy policy is placing increased emphasis on substituting coal for oil use. In addition, the feasibility of extracting coal from the Narragansett Basin is being examined. These developments may lead to the increased use of coal in Massachusetts and the siting of coal storage and transportation facilities in the coastal zone.

The coast, in addition to providing sites for receiving and processing facilities, also provides sites for 21 electric power plants. Currently, beyond the construction of an additional nuclear power plant in Plymouth, Massachusetts, no new major facilities are being proposed for construction in coastal areas for the foreseeable future. This situation may change, however, due to a variety of factors: including primarily, increased energy demands and slippage in construction of plants planned for other New England areas.

Currently, Massachusetts lacks any refinery capability, and proponents argue that a refinery might benefit the state's economy and stabilize energy supplies. A refinery may well require the construction of a deepwater port, so deep draft vessels could be used to import large quantities of crude oil for refining. Refineries have substantial land and water requirements which may preclude other uses if sited in coastal areas. It is possible to site refineries away from the coast and such locations should be carefully evaluated.

While deepwater ports would tend to reduce congestion and the frequency of tanker spills, the risks of very large spills would be higher. Though commonly associated with the importation of crude oil, a deepwater port could be used to deliver refined petroleum products, thus potentially reducing the need for near-shore, shallow draft tanker terminals.

The siting of energy and energy related facilities in coastal areas may be affected by oil and gas exploration and production on the roughly one million acres of land in the North Atlantic Outer Continental Shelf (OCS) being considered by the Department of Interior for leasing in 1978. If oil or gas is found, the Commonwealth may experience development pressure from OCS related activity. OCS exploitation may result in development of pipeline landfalls, gas processing facilities, tank farms and distribution facilities. Other OCS related activities such as supply bases, pipe coating yards, and platform fabrication yards might also be proposed for the coastal zone.

The construction and operation of each of the above mentioned facilities must be undertaken within the context of the state's energy policy. This policy, established in the law creating the Energy Facilities Siting Council, calls for the provision of a necessary energy supply with a minimum impact on the environment at the lowest possible cost. These three concerns must be weighed in considering whether or not to site additional facilities, be they in the coastal zone or elsewhere. Every facility has associated with it certain positive impacts: the meeting of energy needs, increased employment and a secure source of energy to provide for economic development. On the

other hand, primary environmental impacts include those associated with air and water quality, alteration of coastal ecosystems, and land use conflicts.

In conjunction with energy conservation and efficiency, the promotion of environmentally sound alternative forms of energy is necessary. The implementation of alternatives such as solar, wind and solid waste energy recovery systems would reduce our dependence upon the more traditional fossil fuel and nuclear forms of energy. Such a reduction would result in the need to construct fewer energy facilities as we know them today. It is necessary, of course, to evalute new forms of energy closely as well as to determine that we are not simply substituting one energy source for another with the same potential for environmental and social impacts.

In developing its energy policies, the Massachusetts CZM program has recognized there will be a need for increased amounts of energy and that new facilities to meet these needs may be required. CZM has also recognized that the siting of energy facilities is in the national interest and as such, requires special consideration. The maintenance of utility service is without question in the public interest. Therefore, all policies are designed to allow adequate service to be maintained. In sum, the CZM program recognizes there is a need for a rational allocation of coastal land for the siting and accommodation of energy needs, which minimizes impacts on the environment and is economically feasible.

GENERAL DEVELOPMENT AND PUBLIC INVESTMENT

Most of the policy recommendations of the CZM program deal with the management of human activities immediately on or adjacent to specific types of significant resource areas along the shoreline valued for their ecological importance, or for their value to recreation and marine-related commerce. CZM recognizes that other parts of the coastal zone will continue to be the loci of substantial economic growth and development within Massachusetts. Resource capabilities in some of these other parts of the coastal zone can support, for example, the low density residential development that offers an attractive alternative to urban living. Other areas can support and benefit from more intensive development. In these areas, the state has only limited interests, since many issues related to the form and rate of development in coastal communities are largely matters of local concern. Consistent with citizen concerns expressed through the CZM advisory committees and the local growth policy committees, CZM will not interfere with matters that are not of statewide significance.

Inland of inter-tidal areas along the shoreline, the state Environmental Code and existing laws relating to inland wetlands provide protection to critical areas of hydrological or ecological significance. Existing permit requirements for point source discharges regulate air pollution and pollution of surface waters throughout the coastal zone. CZM considers the impacts regulated by these laws to be of statewide significance. However, administration of these laws and permit processes will continue as in the past with only limited CZM involvement.

Major public service investments, namely transportation projects and sewage treatment and collection facilities, because they can have a significant impact on development patterns and impacts and because they involve the use of federal and state funds, are of statewide and national significance. The

state investment policies will deal only with significant changes to existing transportation systems, new transportation systems and point-source facilities to handle water quality. Non-point source discharge of pollutants into waters will be coordinated through the Section 208 Planning programs within the coastal zone. Non-point sources of air pollution must be consistent with state air implementation plans. CZM has determined that the public interest can best be served by using these investments to provide incentives for new development to locate in existing development centers. This strategy maximizes the efficiency of prior investments and will promote the revitalization of existing urban and community centers, consistent with the state's growth policy. CZM expects to take a very active role in using public investments to support sustained growth in those areas where it would be consistent with stated CZM objectives.

Where requested, CZM will also provide technical assistance to localities to develop zoning and other land use controls which encourage the consolidation of future development in their areas.

CHAPTER 4

COASTAL POLICIES

The policies presented in this chapter constitute the policies of the Massachusetts Coastal Zone Management Plan, and thus supercede the policies presented in Volume I of the March 1977 Program Draft. They will become effective upon promulgation of the regulations pursuant to G.L. c. 21A. They have been developed in response to the resource and use issues summarized in the preceding chapter. In addition, they reflect public input received during the three years of program development and comments received during the DEIS review period.

It is the intent and purpose of the Massachusetts Coastal Zone Management Plan, as approved, to rely solely on existing statutory authority so that none of the policies, memoranda of understanding, and proposed regulations is interpreted to allow an expansion of governmental authority beyond existing law. Where the plan and regulations are inconsistent with, or interpreted to allow an expansion of such authority beyond existing law, that part of the plan or regulation shall be null and void.

"Policy" means a general guideline, a broad purpose. As is the case with all policies and goals, it is not expected that all policies can be met all the time, because they may conflict.

The intent of the coastal zone management plan is to express certain regulatory and non-regulatory policies. Regulatory policies are to form a basis for administrative decisions to approve or disapprove activities only to the extent that such policies are contained in the text of the statutes of the Commonwealth or regulations duly adopted and promulgated pursuant thereto. They are to be applicable to each agency only to the extent each agency has jurisdiction and authority to enforce such statutes. Other policies are non-regulatory. They are included in the coastal zone management plan to help set out priorities in administrative decisions and to inform the public and decision-makers of a coherent state framework, but such policies are not binding on private parties.

The chart below is presented to aid the reader in understanding how the policies presented in the March 1977 Draft Program (Volume I) and the DEIS have been reorganized, combined, and condensed consistent with the above. Policies to which federal consistency applies are asterisked in the chart, and as they appear in the subsequent text.

REGULATORY POLICIES		
Present Policy	Federal Consistency	Draft Policies (March 1977 Submission/DEIS)
1	*	1, 8 (a-c) Protect wetlands and buffers.
2	**	2 Areas for Preservation or Restoration.
3	*	3 Support water quality goals.
4	*	4, 12 (b) Construction in water bodies, erosion control structures.
5	*	5 Dredging and dredged material disposal.
6	*	6 Offshore mining.
7	*	17, 18 Licensing port and harbor development.
8	*	28, 32 Energy facility siting.
9	*	33(a)(c) OCS and alternative source management.
10	*	34 Conformance to existing air and water permit requirements.
11	**	16 Scenic rivers, outdoor advertising.
12	*	14 Impacts on historic districts and sites.
13	*	27 Impacts on public recreation beaches.

NON-REGULATORY POLICIES		
Present Policy	Federal Consistency	Draft Policies (March 1977 Submission/DEIS)
14		7 Promotion of fisheries development.
15	*	9 Funding public works in hazardous areas.
16	*	10, 8(d) Acquire hazard areas, Technical Assistance for hazard zoning.
17	*	11, 12(a) Funding erosion control measures.
18		13, 14 Technical assistance for local visual quality management.
19	*	18 Funding port and harbor dredging.
20		15, 19, 20 Encourage visual access and port, harbor, and waterfront development.
21		21, 22 Improve transportation to recreation sites, link recreation facilities.
22		23 Facilitate multiple use and improve management of existing recreation facilities.
23		24 Technical assistance to recreation developers.
24	*	25, 26 Expand existing recreation facilities and acquire new sites.
25		33(b) Encourage energy conservation and development of alternatives.
26	*	35 Funding of transportation and wastewater projects in developed areas.
27		36, 37, 38 Technical assistance to promote revitalization of development centers.

* Federal Consistency applies
** Federal Consistency will apply after such areas have been officially designated.

REGULATORY POLICIES

Policy 1*

Protect ecologically significant resource areas (salt marshes, shellfish beds, dunes, beaches, barrier beaches, and salt ponds) for their contributions to marine productivity and value as natural habitats and storm buffers.

Salt marshes, shellfish beds, dunes, beaches, barrier beaches and salt ponds provide habitat for marine associated organisms upon which higher level species depend for food, and provide nesting and feeding areas for migratory waterfowl and shorebirds. Salt marshes produce organic matter which is an important source of nutrition for marine life in coastal waters. In addition, dunes, beaches, and barrier beaches, and in some cases salt marshes, serve important functions as natural buffers against flooding, erosion, and storm wave damage, provided they are left relatively unaltered and natural dissipation of wave energy can occur.

These ecologically significant resource areas comprise approximately 70,000 acres, 12 percent of the coastal zone. About 30,000 acres are protected under the Coastal Wetlands Restriction Act which authorizes the placement of restrictive orders on property deeds prescribing permitted and prohibited uses in wetland areas. All 70,000 acres are protected by the Wetlands Protection Act which vests authority to condition or deny construction in such areas to local conservation commissions, under state criteria and guidance.

A. Permitted and Prohibited Uses in Areas Subject to the Wetlands Protection Act

On lands subject to the Wetlands Protection Act, activities will be forbidden or conditioned if they would adversely affect certain vital environmental interests. This means that activities that would remove, fill, dredge, or alter wetland areas will be regulated on a case-by-case basis to protect the interests specified in the Wetlands Protection Act:

- protection of land containing shellfish;
- protection of fisheries;
- prevention of pollution;
- storm damage prevention;
- flood control;
- groundwater supply;
- public or private water supply.

The conservation of these resource areas can also be undermined by activities taking place in adjacent or contiguous uplands. These impacts include the alteration of fresh water inflow which may affect salinity

*Federal consistency applies

regimes and shellfish and fishery habitats, the leaching of pollutants from septic tanks or introduction of contaminants from storm water run-off on paved surfaces impacting the harvestability of shellfish, or increased sedimentation which may impair salt marsh growth, shellfish health or fish spawning grounds. Thus, conservation commissions, acting in accordance with the Wetlands Protection Act, shall review proposed developments on contiguous lands and appropriately condition or deny such developments so as to minimize damage to land containing shellfish, to protect fisheries, to protect public, private and groundwater supply, to prevent pollution and to ensure storm damage prevention and flood control. Regulations for the Act specify that the geographic scope of such review may extend up to 100 feet beyond either the 100-year floodplain or the landward edge of the wetlands defined under the Wetlands Protection Act.

B. Permitted and Prohibited Uses in Areas Subject to the Coastal Wetlands Restriction Act

With the availability of federal funding for implementation of the CZM Program, the Coastal Wetlands Restriction Program will be applied to additional wetland acreage comprised of salt marshes, intertidal shellfish beds, dunes, beaches, barrier beaches and salt ponds that are currently protected solely by the Wetlands Protection Act. In developing site specific restrictive orders for these wetlands, the following set of permitted and prohibited uses shall be used as a model.

Model Order

Permitted Uses:

a. The construction and maintenance of catwalks, wharves, piers, docks, boathouses, boat shelters, shellfish shanties, fish houses, fences, wildlife management shelters, foot bridges, observation decks and shelters; provided that these structures are constructed on pilings to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the area.

b. The cultivation and harvesting of shellfish and worms for bait, and the excavation and construction of areas for the cultivation and harvesting of shellfish and other marine foods. Salt marsh haying, dune or marsh grass planting, and the harvesting of marine algae and Irish moss.

c. Outdoor recreation activities including but not limited to hiking, boating, trapping, hunting, fishing, horseback riding, skeet and trap shooting, and shooting preserves, provided that any structures related thereto do not destroy the beneficial character of the restricted area.

d. The installation of floats, provided they are located below mean low water, and receive the approval of the local Shellfish Department.

e. The construction and maintenance of a driveway or roadway of minimum legal and practical width where reasonable alternative means of access from a public way to unrestricted land of the same owner is unavailable. Such driveway or roadway shall be

constructed in a manner which permits the reasonably unobstructed flow of the tide.

f. The enlargement to minimum legal and practical width and the maintenance of raised roadways which exist on the effective date of the order.

g. The installation, operation, and maintenance of underground and overhead utilities limited to electrical, communication, sewer, potable water and gas lines, provided the surface vegetation is restored substantially to its original condition.

h. Excavation for wildlife management impoundments provided that no fill or other material shall be placed upon the area except as may be necessary to construct the retention structure and provide access thereto, and to provide bank stabilization.

i. Maintenance dredging of existing channels and marine facilities provided that such maintenance dredging shall not increase the scope of the initial dredge project. Expansion dredging of existing channels or marine facilities with approval of the local Shellfish Department, the local Conservation Commission, the Division of Marine Fisheries, the Division of Waterways, and the U.S. Army Corps of Engineers. Said expansion shall be accomplished, wherever practicable and reasonable, without dredging in salt marsh areas or land containing shellfish as identified by the Division of Marine Fisheries.

j. The construction and maintenance of boat launching ramps and beaches, including beach nourishment, except on salt marsh areas and land containing shellfish as identified by the Division of Marine Fisheries; bank and dune stabilization and shoreline protection works as long as such structures will have no adverse effects on adjacent properties or downcoast areas.

k. Dredging and/or construction for a boat channel of a size limited to single family use with the approval of the local Shellfish Department, local Conservation Commission, the Division of Marine Fisheries, the Division of Waterways, and the U.S. Army Corps of Engineers. Said dredging and/or construction shall be accomplished, wherever practicable and reasonable, without dredging in salt marsh areas or land containing shellfish as identified by the Division of Marine Fisheries.

l. The use or improvement of land or water for agricultural purposes provided, however, that any subsequent non-agricultural uses of land which was altered for agricultural purposes may be regulated, restricted or prohibited in accordance with any conditions stated herein.

m. The dredging, expansion, and maintenance of ship channels serving designated port areas (see Policy 7).

n. The installation and maintenance of underground conduits or other facilities associated with intake and outfall structures of a permitted and licensed electric generating facility in beaches, dune, and tidal flats not containing shellfish beds (as identified by the Division of Marine Fisheries), providing the

surface vegetation and the natural contour of the landform are restored substantially to their original condition.

Prohibited Uses:

All activities, except those needed to accomplish the above permitted uses, shall be prohibited, including:

a. No person shall fill, place or dump on said coastal wetlands any soil, loam, peat, sand, gravel, rock or other mineral substance, refuse, trash, rubbish, debris or dredged material.

b. No person shall drain or excavate or dredge said coastal wetlands or remove therefrom loam, peat, sand, soil, or other mineral substance.

c. No person shall discharge hazardous substances, effluent from a sewage treatment facility, and thermal effluent from a power plant or other industrial source.

d. No person shall perform any act or use said coastal wetland in a manner which would destroy the natural vegetation of the coastal wetland, substantially alter the existing patterns of tidal flow, or otherwise alter or permit the alteration of the natural and beneficial character of the coastal wetlands.

(End of Model Order)

IMPLEMENTATION

As noted above, Policy (1) will be implemented primarily through the two wetlands programs, Wetlands Protection and Coastal Restriction. First, CZM funding will be provided to the Department of Environmental Management to apply the Coastal Wetlands Restriction Program to significant salt marshes, dunes, beaches, barrier beaches, shellfish beds, and salt ponds that are as yet unrestricted. First priority will be given to restricting wetland areas in Areas for Preservation or Restoration (see Policy 2), second priority will be given to significant wetlands in urban areas. The Program will not be applied to designated port areas (see Policy 7).

The geographical extent of areas to be restricted shall be delineated as described in the Definitions. Unaltered barrier beaches shall be restricted in total. Restriction of altered barrier beaches will include only those portions which still exhibit characteristics of naturally functioning barrier beaches (see the Definitions) and shall include at a minimum beaches and dunes. Restriction of shellfish beds shall include only their intertidal portion, since submerged land seaward of mean low water is owned by the Commonwealth. Mosquito control and other projects authorized by the State Reclamation Board are, by law, exempted from the provisions of the Coastal Wetlands Restriction Program, as are wetlands under the control of MDC and actions by the DPW. Projects (other than mosquito control) by these agencies are, however, subject to the provisions of the Wetlands Protection Act.

Secondly, wetlands, that are as yet unrestricted shall be managed through the Wetlands Protection Program, administered by DEQE and local

conservation commissions. For this program, CZM funding is to be used to revise the regulations, to expand the staff of the Department's Wetlands Program which oversees the administration of the program, and to provide funding and technical assistance to conservation commissions who administer the program at the local level.

In addition, tidelands licenses issued by DEQE's Waterways Program shall be issued consistently with this policy. The Division of Marine Fisheries will also be cooperating with DEQE in the review of proposed activities insofar as impacts on shellfish areas are involved (see i-k and n above). Provisions of the Ocean Sanctuaries Acts, administered by DEM, may also apply, depending on which Sanctuary is involved and the type of activity proposed.

Applications for federal licenses or permits will be deemed consistent with the CZM Program if, in a wetland restricted by the Coastal Wetlands Restriction Program, they abide by the schedule of permitted and prohibited uses, or if, in an unrestricted wetland, they abide by the order of conditions imposed under the Wetlands Protection Act. In addition, implementation by federal agencies of President Carter's May 24, 1977 Executive Order on Floodplain Management and Protection of Wetlands will reinforce the implementation of Policy (1).

Primary State Authorities +

Coastal Wetlands Restrictions Program (MGLA C. 130, S. 105)
Wetlands Protection Program (MGLA C. 131, S. 40)
Waterways Program (MGLA C. 91, SS. 1-59) (C. 21A, S. 14)
Ocean Sanctuaries Acts (MGLA C. 132A, SS. 13-17)
Division of Marine Fisheries (MGLA Chapter 130)
Energy Facilities Siting Council (MGLA Chapter 164)

Primary Federal Consistency +

Dredge and Fill Permits, Section 404 (PL 92-500, U.S. Army Corps of Engineers)
Obstruction and Alteration Permits Section 10 (Rivers and Harbors Act, 1899, U.S. Army Corps of Engineers)
NPDES Permits, Section 402 (PL 92-500, EPA)

+Note: The lists of state authorities following each policy throughout this Chapter include only the primary authorities implementing the policy and are not intended to include every program which might apply in every instance. Similarly, the lists of federal authorities include only the primary authorities for which federal consistency is required. See the federal consistency chapter, Chapter 9, for a fuller listing of the federal activities subject to federal consistency.

Policy 2**

Protect complexes of marine resource areas of unique productivity (Areas for Preservation or Restoration (APRs)/Areas of Critical Environmental Concern (ACECs); ensure that activities in or impacting such complexes are designed and carried out to minimize adverse effects on marine productivity, habitat values, water quality, and storm buffering of the entire complex.

Along the coast of Massachusetts are found complexes or significant resource areas and other coastal environments which are unique for their contributions to marine productivity as evidenced by:

(a) high natural productivity or potentially high productivity, shown by the presence of:

1) known spawning grounds for fish,
2) shellfish beds,
3) commercially valuable plants,
4) anadromous fish runs, and
5) feeding and breeding areas for waterfowl or birds dependent on coastal resources.

(b) high water quality or potential to meet highest water quality standards.

Marine productivity, together with other factors, such as scenic quality, historic significance, storm buffering capacity, recreation value and the presence of or habitat for rare, threatened or endangered species make such complexes likely candidates for designation as Areas for Preservation or Restoration (APR)/Areas of Critical Environmental Concern (ACEC).

The provisions of Policy (1) will, of course, apply to wetlands within the APRs/ACECs. In addition, activities which will damage the resource should not be introduced into such areas. Activities which will be categorically prohibited below mean high water within the water bodies comprising the APRs/ACECs, include the following:

(1) new industrial discharges and the discharge of hazardous substances (once the water segments are classified anti-degradation),

(2) new dredging except for maintenance of existing channels or for enhancement of shellfish and other marine productivity,

(3) disposal of dredged material, except in instances when the material may be used for beach nourishment, dune stabilization, or marsh creation,

(4) direct discharges from new sewage treatment facilities, (once the water segments are classified anti-degradation).

**Federal Consistency will apply after such areas have been officially designated.

The siting of new municipal sewage treatment plants shall also be prohibited within designated APRs.

If activites are proposed for an area which is related by natural processes (for example, littoral currents. tides) to the APR/ACEC such that the activity would impact the APR/ACEC, applicants for federal or state funds or permits shall be required to demonstrate that the proposed activity will not adversely affect the characteristics cited in the official Secretary of Environmental Affairs designation of the area.

The Energy Facilities Siting Council, in conducting its review of energy facilities proposed for APRs, will give prime consideration to the need to prevent adverse environmental impacts in these areas. (See Policy (2) and the Attorney General's Memorandum Opinion text and footnote 29.)

APR/ACEC designation will also trigger other special protection measures for the area, including:

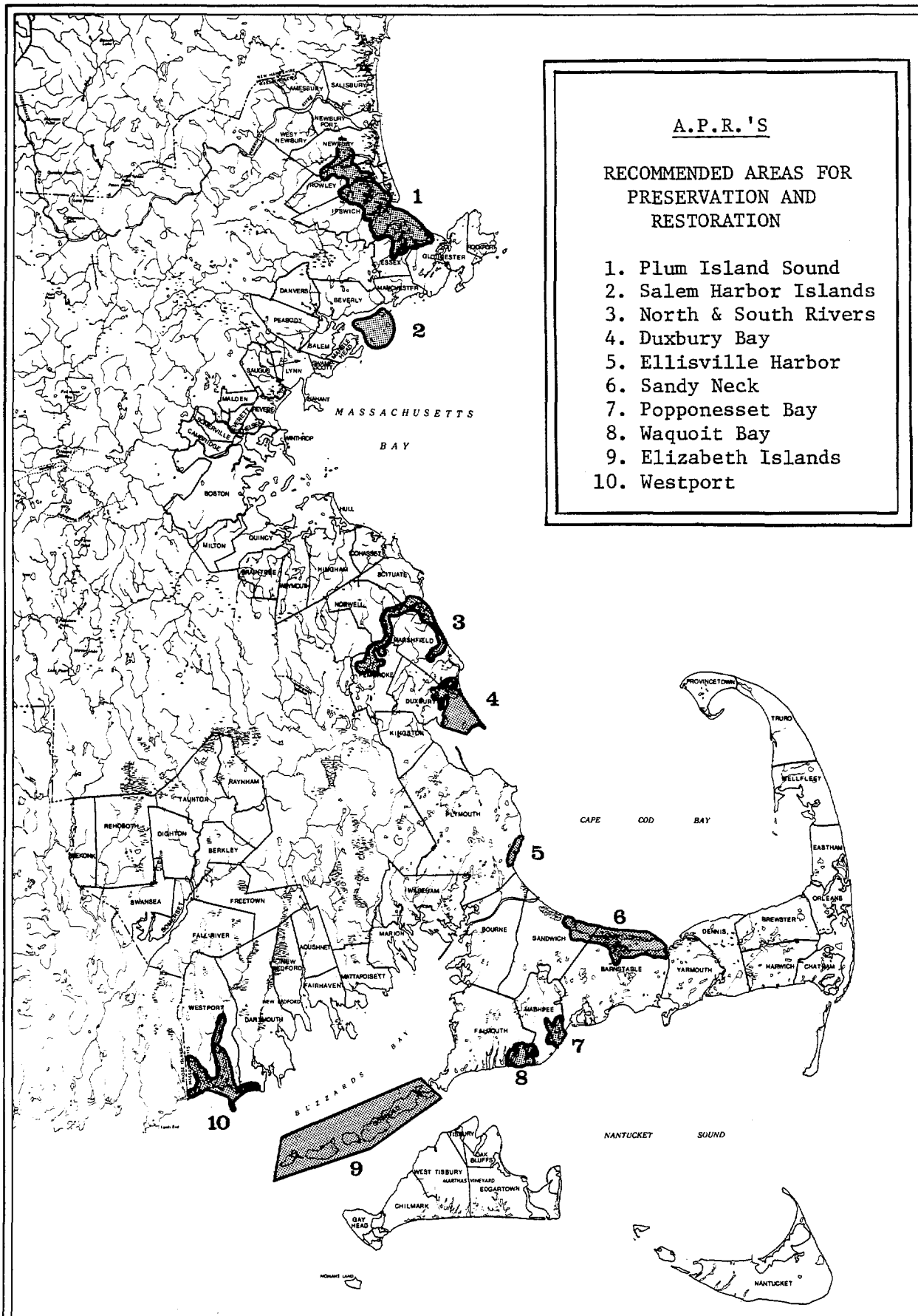
> Priority application of the Coastal Wetlands Restriction Program to the salt marshes, beaches, shellfish beds, dunes, and barrier beaches within the complex, including some restriction of contiguous upland areas where necessary to ensure full protection of the APR.
>
> Application of the Inland Wetlands Restriction Program to protect anadromous fish runs if they exist in the complex.

The designation will also give the area high priority for receipt of open space acquisition funds, Policy (24), and implementation of the Scenic Rivers Act, Policy (11), and for acquisition and management as a wildlife area by the Division of Fisheries and Wildlife. The designation of an area as an APR/ACEC, however, does not prohibit or eliminate existing uses.

IMPLEMENTATION

The authorities to provide protection to wetland resources within APRs are essentially those used to implement Policy (1) with the exception that some contiguous lands within the APR may also be restricted if necessary to provide sufficient protection to the wetlands. Tidelands licensing will be used to prohibit new dredging and disposal as provided in (2) and (3) above. Each APR designation will be formally accomplished through designation of the area as an Area of Critical Environmental Concern (ACEC), pursuant to the Secretary of EOEA powers under MGLA Chapter 21A, (this process is outlined in Section 6.1 and in the 21A regulations). This latter designation essentially means that greater scrutiny will be given to state funded and permitted projects proposed for the area, as the categorical exemptions for smaller projects from the reporting and review requirements of the Massachusetts Environmental Policy Act will be removed.

Such designation will also signify to the Division of Water Pollution Control that CZM recommends classification in Massachusetts Water Quality Standard Regulations of all water basin segments within the complex as SA and anti-degradation waters, if they currently are not so classified, in order to maintain high water quality and implement (1) and (4) on the previous page.



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As shown on the preceding map, ten areas are currently proposed for APR/ACEC designation. Determinations with respect to designations shall be made during the first year of program implementation.

Primary State Authorities

Inland and Coastal Wetlands Restriction Programs (MGLA C. 131, S. 40A and C. 130, S. 105)
Wetlands Protection Program (MGLA C. 131, S. 40)
Waterways Program (MGLA C. 91; C. 21A, S. 14)
Ocean Sanctuaries Act (MGLA C. 132A, SS. 13-17)
Division of Marine Fisheries (MGLA C. 130)
Division of Water Pollution Control (MGLA C. 11, SS. 27, 43)
Energy Facilities Sitng Council (MGLA C. 164)
Division of Fisheries and Wildlife (MGLA C. 131, S. 6 and Chpater 839 of the Acts of 1971 - acquisition powers)
Massachusetts Environmental Policy Act (MGLA C. 30, SS. 61-62H)
Designation of Areas of Critical Environmental Concern (MGLA C. 21A, S. 2(7))
Outdoor Advertising Board (MGLA C. 93, S. 29 and C. 93D)
Self-Help Program (MGLA C. 132A, S. 11)
Department of Environmental Management (MGLA C. 132A)
Public Access Board (MGLA C. 21, SS. 17-17A)

Primary Federal Consistency

Section 404 Permits (P.L. 92-500)
Section 10 Permits (Rivers and Harbors Act, 1899)
NPDES Permits, Section 402 (P.L. 92-500)

Policy 3*

Support attainment of the national water quality goals for all waters of the coastal zone through coordination with existing water quality planning and management agencies. Ensure that all activities endorsed by CZM in its policies are consistent with federal and state effluent limitations and water quality standards.

* Federal Consistency applies

The Water Pollution Control Act Amendments of 1972 (P.L. 92-500) established a framework whereby a number of planning, management and construction programs have been set into place to work toward achievement of the national goals of "fishable/swimmable" waters by 1983 and the elimination of pollutant discharges by 1985. The discharge requirements established by P.L. 92-500 are the minimum water pollution control requirements applicable to the CZM Program, consistent with the requirements of Section 307(f) of the Coastal Zone Management Act (P.L. 92-583). (See also Policy (10)). However, in order to provide adequate protection for marine resources, the following additional measures are to be taken in implementing the state's water pollution control programs:

(1) Section 208 Areawide Waste Management Plans: 208 plans for regions within the coastal zone should ensure that non point sources will be adequately managed to prevent adverse impacts on coastal receiving waters and that mutual consistency is achieved between 208 policies and applicable CZM policies.

(2) Title V, State Environmental Code: DEQE and the 208 agencies should monitor the adequacy of the setback provisions of the recently revised code. If, after a sufficient time period has elapsed for operation of the code to be adequately tested and researched, it is determined that the code is inadequate to prevent contamination of wetlands or surface waters, CZM will collaborate with DEQE and the 208 agencies to improve the setback requirements of the Code.

(3) Approval of Ocean Outfalls: DWPC shall require applicants proposing construction and operation of new ocean outfalls for municipal waste treatment facilities or flow increases from existing outfalls to furnish the following data to provide for adequate assessment of effects on marine productivity and public health.

(a) definition of the tidal excursion for the proposed outfall location,

(b) definition of the dilution, of the sewage effluent which can be expected given the volume of water passing the outfall under critical conditions,

(c) calculation of the maximum pollution parameter levels expected at the proposed outfall location, particularly total and fecal coliform bacteria, total nitrogen and total phosphorous, total organics, heavy metals, and toxic substances.

If DWPC, through coordination with the Community Sanitation Program and the Division of Marine Fisheries, finds that location of the outfall will produce adverse effects on marine productivity or public health, the applicant should be required to provide an alternative site or a higher level of treatment. Further, if research conducted by EPA should demonstrate that disinfection methods other than the current chlorine disinfection practices can be used effectively with less impact on the marine environment, CZM will work with DWPC to ensure that such methods are employed in municipal waste treatment. Such

alternatives may include allowing seasonal variation in the minimum required chlorine discharge levels. Discharges in ocean sanctuaries must comply with the provisions of MGLA C. 132A, S. 16, prohibiting new discharges in the North Shore sanctuary after January 1, 1978 and allowing new discharges in the Cape and Islands, Cape Cod Bay and Cape Cod Ocean sanctuaries subject to conformances to the provisions of that section.

(4) 201 Funding Priorities: DWPC's priority selection system for 201 grant applications shall continue to give weight to proposed facilities which would provide for abatement of pollution problems in areas used for shellfishing or swimming (see also Policy (26)).

(5) Discharges from Recreational Vessels: Federal regulations require marine sanitation devices on all recreational vessels equipped with sanitary facilities. With the approval of the Administrator of EPA, certain water bodies can be designated as no discharge areas if the protection and enhancement of the waters require greater protection than would be afforded by use of MSDs. If it is definitively determined through a basin planning study, or other water quality study that discharges from recreational vessels in a particular water segment are causing a violation of the segment's water quality standards, CZM will recommend that the segment be designated a no-discharge water. If boating activity in this area is such that it is generally confined to the segment, sufficient pumpout facilities should be provided at either public boating facilities in the segment, or if this is not feasible, at new private marinas if any are proposed for location in the segment. (MGLA C. 91, S. 59B will be used to require pumpout facilities at private marinas if necessary.) CZM will actively work with EPA and DWPC and marina owners to coordinate implementation of this recommendation as necessary.

IMPLEMENTATION

This policy is to be carried out primarily by: funding additional staff within the Division of Water Pollution Control to review proposed ocean outfalls; CZM review for consistency of 208 plans and 201 facility plans through established MEPA, NEPA and A-95 review processes; collaboration with DEQE and 208 agencies in monitoring operation of the State Environmental Code; CZM comment on NPDES permits, water quality certificates or renewals; coordination with DWPC and EPA as noted in (5) above; and through enforcement by DEM of adherence to the provisions of the Ocean Sanctuaries Act.

Primary State Authorities

Ocean Sanctuaries Acts (MGLA C. 132A, SS. 13-17)
Division of Water Pollution Control (MGLA C. 21, SS. 27, 43)
Division of Water Pollution Control, Marina Licenses (MGLA C. 91, S. 59B)
State Environmental Code, Title V (MGLA Chapter 111, S. 17)

Primary Federal Consistency

Areawide Wastewater Management Plans (Section 208 P.L. 92-500)
NPDES Permits for Ocean Outfalls (Section 402, PL 92-500)
Wastewater Treatment Facilities Construction Grants
(Section 201, PL 92-500)

Policy 4*

Condition construction in water bodies and contiguous land areas to minimize interference with water circulation and sediment transport and to preserve water quality and marine productivity. Approve permits for flood or erosion control projects only when it has been determined that there will be no significant adverse effects on the project site or adjacent or downcoast areas.

Estuaries and coastal embayments are particularly productive areas and prime habitat for a variety of marine species. Fresh water river discharge into estuaries helps to create favorable salinity regimes for certain marine species. Interference with natural river discharge, tidal flushing, and water circulation patterns can deny marine organisms water borne food, alter sediment transport, and create areas of stagnant, polluted water. Erosion control structures such as groins or revetments can adversely affect adjacent or downcoast areas by trapping sediments that would otherwise be transported downcoast by littoral processes or by impairing the functioning of natural buffers.

Thus, design and construction of solid fill piers, bulkheads, groins, jetties, revetments or other permanent structures in coastal waters shall be examined on a case by case basis and shall be permitted if:

a. not inconsistent with Policy (1);

b. in estuaries and coastal embayments, flushing rates and capacity are not significantly reduced;

c. water quality, marine productivity, and anadromous fish runs are not adversely affected to a significant degree;

d. alteration of wave or tidal generated sediment transport will not cause significant adverse effects on the project site or adjacent or downcoast areas, including significant adverse changes in depositional patterns or natural storm damage prevention or buffering functions.

*Federal Consistency applies

The design and construction of highways, roads, bridges, dams, and the diversion or impoundment of water will also be reviewed for conformance to the above provisions. Additionally, construction of these facilities in contiguous upland areas must not:

a. significantly increase upland erosion, induce or accelerate runoff of contaminants, or otherwise adversely affect the quality of coastal receiving waters;

b. affect the quantity of fresh water entering coastal receiving waters such that salinity levels would be adversely altered to a significant degree.

IMPLEMENTATION

This policy is to be implemented principally through the Waterways Program. CZM funding will provide for increased staffing of this division and development of new regulations for tidelands licensing. These regulations will be based on the provisions presented above. In addition, activities such as highway construction on contiguous uplands will be regulated through the Wetlands Protection Program as noted in Policy (1), insofar as they are within the geographic jurisdiction of MGLA C. 40, S. 131.

Because it is authorized to ensure that the passage of anadromous fish is not prevented, the Division of Marine Fisheries shall continue to review proposals for construction in coastal streams, and will require provision of fish ladders or other measures as necessary. In addition, procedures of the federal Fisheries Wildlife Coordination Act shall apply where applicable.

Primary State Authorities

Division of Waterways Tidelands Licensing (MGLA C. 91, S. 14)
Division of Marine Fisheries (MGLA C. 130, S. 19)
Wetlands Protection Program (MGLA C. 131, S. 40)

Primary Federal Consistency

Section 10, Section 404 Permits

Policy 5*

Ensure that dredging and disposal of dredged material minimize adverse effects on water quality, physical processes, marine productivity and public health.

Policies (1) and (2) restrict or prohibit dredging and dredged material disposal in certain ecologically significant resource areas, while Policies

*Federal Consistency applies

(7) and (19) specify criteria for licensing and funding dredging projects on the basis of port and harbor development needs. Regardless of location or need, damage to the environment and public health shall be minimized by ensuring that dredging and dredged material disposal projects will not cause:

a. a significant increase in the volume or velocity of water which may cause flooding resulting from alterations in the bottom morphology of an estuary, embayment or other tidal waters;
b. significant adverse effect on the flood storage capacity of a wetland, river, stream or creek;
c. a significant increase in flood or erosion hazards or significant adverse effect on the natural replenishment of beaches resulting from changes in sediment transport processes;
d. a change in circulation patterns which will result in a significant adverse change in flushing rate, ambient salinity, temperature, and turbidity levels;
e. any significant adverse effects on marine productivity resulting from suspension or transport of pollutants or other substances, blanketing of organisms, bio-accumulation of pollutants by organisms, or habitat or nutrient source area destruction;
f. any significant removal of shellfish beds except as allowed through consultation with the Division of Marine Fisheries;
g. any degradation of water quality which would result in a violation of water quality standards, contamination of recreation waters or marine food sources, or contamination or depletion of public or private groundwater supply (including aquifers and recharge areas).

The following general provisions shall also apply to dredging operations and the selection and use of disposal sites:

(1) Dredging

a. Timing limitations for dredging shall be determined by the Division of Marine Fisheries on a case by case basis in order to minimize impacts to anadromous fish runs. Generally, in streams with herring runs, dredging should not occur between March 15 and June 15 if such dredging would cause turbidity sufficient to impede spawning activity. Also, in such streams, dredging activities occurring from late summer to early fall should confine areas of turbidity to allow unrestricted flow of down-running juvenile fish.
b. Conflicts with recreational activity or other activities occurring within the water body to be dredged shall be minimized.
c. Hydraulic dredging, because of its lesser environmental impacts at the dredge site, should generally be favored over mechanical dredging except when open water disposal of fine grained material is planned. It is recognized, however, that site location, availability of dredging equipment, options for dredged material disposal, and related economic factors must be considered in determining the appropriateness of dredging method.

(2) Sediment Analyses/Impact Evaluation Procedures

a. Testing procedures for evaluating the sediments to be dredged for potential impacts on disposal site environments should include

methods, as they become available, which are based on biological and health parameters, in lieu of or as a supplement to existing elutriate test procedures. Grain size analyses should also be used to provide adequate assessment of the potential for natural transport of dredged material once deposited at the disposal site.

(3) Disposal Sites and Methods

a. On-land disposal of dredged material should be favored over ocean dumping, if appropriate sites are available adverse environmental impacts such as degradation of groundwater can be minimized, and costs are feasible. If contaminated material is involved, it should be covered by clean fill to prevent oxidation of contaminants and uptake by vegetation and wildlife.

b. Clean dredged material should be used for beach nourishment, if the material is of appropriate grain size for the nourishment site and any additional handling costs can be justified.

c. In-harbor sites should be favored over open ocean sites for disposal of contaminated dredged material, if the leaching of contaminants can be contained by an impermeable bulkhead or filtering system. CZM is committed to the protection of the marine environment as a productive resource, and therefore does not favor the use of ocean sites for the disposal of contaminated dredged material. If, however, all other alternatives, including limiting the extent of dredging, not dredging at all, or on-land and in-harbor disposal are not feasible, CZM recommends the continued use of the Boston foul site for disposal of contaminated dredge material.

d. For any dredge material disposal operations to occur at an open ocean site, the following required conditions shall be applied to the disposal permit:

1) use of transport vessels or barges using sudden, high volume release shall be required;
2) transport vessels or barges shall not be overloaded;
3) transport vessels or barges must be dead in the water when the dump is made in order to provide point source disposal;
4) short dumping shall be prohibited; and
5) fishermen must be notified of the time and route of dumping operations and be given LORAN bearings of the dump site so that interference with fishing activity can be avoided.

e. If new open ocean disposal sites suitable for accommodating regional needs for disposal of clean dredged material are deemed necessary, such sites shall:

1) be located in areas of insignificant importance to the fisheries resources of the Commonwealth; and
2) be limited only for use by priority projects meeting the benefit need criteria specified in Ports and Harbors Policy (19).

Additional criteria for selection of such sites shall include:

1) the turbidity plume and/or high density flows formed during disposal operations will not significantly impact fisheries resources; and

2) migration of dredged material from the disposal site will not cover or adversely affect fisheries resources, will not be transported into adjacent navigation channels or otherwise reduce the water depth needed for safe navigation.

f. If selection of a new regional open ocean disposal site for contaminated dredged material is deemed an appropriate disposal alternative, such sites shall:

1) be located in areas of insignificant importance to the fisheries resources of the Commonwealth, and
2) be limited only to priority projects meeting the benefit need criteria specified in Policy (19).

Additional criteria for selection of such sites shall include:

1) the turbidity plume and/or the high density flows formed during disposal operations will not significantly impact fisheries resources, and
2) erosion (wave based or caused by bottom currents) of significant amounts of dredged material will not occur even under extreme conditions..

For such a new regional site, CZM recommends that the Corps of Engineers periodically monitor bottom conditions. This should consist of periodic bathymetric and side scan sonar surveys over the disposal area to assess any changes in the configuration of the spoil mound. Monitoring of bottom water current velocity and underwater photography at the spoil area should be conducted periodically to determine if any dredged material is being eroded. In addition, submersible dives should be made to visually survey both the geological and biological changes. Several biological stations should also be maintained on and over the site to monitor bio-uptake of pollutants and recolonization by photoplankton, zooplankton, indicator polychaete species (e.g., Capitella), mulluscs, and other fauna.

g. Alternative methods of dredged material disposal should also be explored, such as marsh creation or the use of dredged material for fill or construction material aggregate.

IMPLEMENTATION

This policy will be implemented primarily through the authorities vested in the Waterways Program, will be administered consistently with the provisions of Policies (1), (2), (7) and (19), and shall apply to both funding and permitting activities of the Waterways Program. CZM funding will be used to increase the staff of the Waterways Program and to develop new regulations based on the above criteria and provisions, consistent with the intent of the policy. These regulations will detail procedures and time frames whereby reviews by the Divisions of Marine Fisheries, Air and Hazardous Materials, Fish and Wildlife and Water Pollution Control will be coordinated insofar as concerns of these agencies are involved. Permit review will also be coordinated with the Corps of Engineers, EPA., U.S. Fish and Wildlife Service, and National Marine Fisheries Service as required by federal law. Data provided by the Corps' Waterways Experiment Station in Vicksburg, Miss., will also be utilized in investigating alternatives to open water disposal.

Primary State Authorities

Waterways Program (MGLA C. 91, C. 21A, S. 14)
Maintenance Dredging Exemptions (MGLA C. 131, S. 40 as amended)
Community Sanitation Program (MGLA C. 111, S. 150A), (if on-land disposal is involved)
Water Quality Certification, DWPC (Section 401, PL92-500, MGLA C. 21, S. 27)

Primary Federal Consistency

Section 19 and Section 404 Permits
Dredging and navigation projects funded by the U.S. Army Corps of Engineers

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Policy 6*

Accommodate offshore sand and gravel mining needs in areas and in ways that will not adversely affect marine resources and navigation.

The following locational guidelines shall apply to offshore sand and gravel mining activies:

1. mining shall be prohibited in marine areas that serve as sources of sediment supply for coastal beaches or in areas where alteration of bottom contours would adversely modify wave and current patterns affecting shoreline areas. Generally, these areas will be landward of the 80'contour.

2. mining shall be prohibited in areas where contaminated dredge material has been deposited or other hazardous substances have been dumped.

3. mining shall be prohibited within a specified distance of submarine cables and pipelines.

4. mining shall be prohibited in navigation channels or anchorages unless shipping concerns can be safely accommodated.

5. mining shall be prohibited in shellfish, finfish spawning and nursery areas or in other areas of productive sport or commercial fisheries.

In addition, CZM recommends that the following operational guidelines apply:

*Federal Consistency applies

1. all dredging vessels should be adequately lit and equipped with fog horns to prevent accidental collisions.

2. information on dredge's location, duration of mining and navigation lights should be included in Coast Guard's notices to mariners.

IMPLEMENTATION

CZM funding will be used to develop new regulations for licenses issued by the Division of Mineral Resources pursuant to MGLA C. 21, S. 5 to be based on the above provisions and consistent with applicable provisions of the Ocean Sanctuaries Acts.

Primary State Authorities

Division of Mineral Resources (MGLA C. 21, S. 54)
Waterways Program (MGLA C. 91)
Ocean Sanctuaries Acts (MGLA C. 132A, SS. 13-17)

Primary Federal Consistency

Section 401, 404 (PL 92-500)

Policy 7*

Encourage the location of maritime commerce and development in segments of urban waterfronts designated as port areas. Within these areas, prevent the exclusion of maritime dependent industrial uses that require the use of lands subject to tidelands licenses.

Port area shall mean tidelands and adjacent coastal waters and lands exhibiting the following characteristics:

-- navigable channels of 20 foot depth or more at mean low water;

-- tidelands and associated lands abutting such channels which by their topography, size, separation from residential neighborhoods, and/or local government zoning are suited to accommodate maritime dependent industrial uses;

-- the availability of well developed road and rail links leading to major trunk and arterial routes; and

-- the availability of water and sewer services capable of supporting maritime dependent industrial uses.

Port areas which typically include only segments of urban waterfronts are located in the following communities: Gloucester, Salem, Beverly, Lynn, Boston, Everett, Chelsea, Revere, Quincy, Weymouth, Plymouth, New Bedford, Fall River, Fairhaven and Somerset. (See maps in Appendix E)

The intent of this policy is to ensure that within these areas the special physical and operational requirements of uses dependent on access to navigable channels are recognized and not impaired by other development. In addition, assigning priority to the use of designated port areas for maritime dependent industrial development that is important to the economy of the Commonwealth and the nation will encourage such uses to locate there. This will minimize the need for dredging of new deepwater channels elsewhere and maximize the use of prior public investments made in existing ports.

Maritime dependent industrial uses are marine terminals and related structures for the transfer from ship to shore or from shore to ship of goods transported in waterborne commerce; facilities associated with marine terminals for the storage of goods transported in waterborne commerce; manufacturing facilities relying on the bulk receipt of shipment of goods by waterborne commerce; wharfs, piers, docks, processing and storage facilities for the commercial fishing industry; dry docks and other facilities related to the construction servicing, or repair of vessels and other marine structures; and other docks, wharves, berths, dolphins, or mooring facilities for towboats, barges, dredges, ferries, or other vessels engaged in waterborne commerce, port operations, or

*Federal Consistency applies

marine construction. An energy facility proposed for siting in a port area shall be considered maritime dependent if the proposed site has been approved by the Energy Facilities Siting Council.

All proposals for maritime-dependent industrial developments in these port areas will be encouraged by CZM and will be facilitated as much as possible by EOEA agencies, unless the proposed use will seriously conflict with or preempt, either economically or physically, other existing maritime-dependent industrial uses in that port or other ports. Should conflicts arise among maritime-dependent uses requiring tidelands licenses, state and federal permits shall be granted to the use which is more limited in its spatial, locational, or economic options and denied to the other use.

Proposals for development in designated port areas which are not maritime-dependent and which require tidelands licenses will be permitted so as not to deter viable economic uses of vacant port lands. Non-maritime dependent projects involving the use of federal funds which are proposed for location seaward of the first public roadway within a designated port area shall be similarly evaluated. However, should a conflict arise between a non-maritime dependent project and a maritime dependent use, state and federal permits, or in the case of federally funded projects, federal consistency, shall be denied to the non-maritime dependent use if:

1. public agencies and/or fishing, maritime shipping or marine industry spokesmen have expressed firm interest in the site for maritime dependent uses of particular state or national economic importance, and this interest has been documented in the form of a development plan and/or feasibility study; and

2. the proposed activity would irreversibly commit the site, and the site is best available for the foreseeable maritime dependent use.

In determining "irreversibility" and "best available", the following factors shall be considered:

irreversibility:

-- can the proposed structure be converted to maritime dependent use?

-- is the proposed use or structure of a duration or type that is permanent and not easily removed?

-- is future maritime-dependent use of the area effectively denied because water or land access for vessels or truck and rail transportation is precluded?

-- are lease stipulations such as to allow future conversion of the site to maritime-dependent use?

best available:

-- for the foreseeable maritime-dependent use, are alternative sites in port areas available possessing similar characteristics (size, availability of road and rail access, proximity to major shipping channels and open water, suitable turnaround basins and channel depths)?

-- will the use of alternative sites present graver environmental and safety problems (proximity to residential neighborhoods, overloading of road or rail capacities, harbor congestion, expose greater numbers to environmental harm or safety risks)?

Also, in order to encourage location of maritime shipping and marine industry in existing port areas, proposals for creation of new channels or mooring and turn-around basins of 20-foot depth or more will only be licensed if:

-- the project is of regional benefit and/or of national importance,

-- the development needing the dredging cannot be accommodated in existing port areas, and

-- conformance to Policies (1), (2) and (5) can be achieved to the extent that each is applicable.

IMPLEMENTATION

Tidelands licensing, administered by the Waterways Program, will be the principal means for implementing this policy. CZM funding will be used to both expand the staff of the Waterways Program and to develop new regulations specifying how the policy is to be carried out. In addition, compliance with the policy and its related criteria shall be enforced through CZM review for federal consistency of applicable federal permits and funding actions. When determinations must be made to resolve conflicts that arise when proponents of either a maritime dependent or non-maritime dependent use apply for a tidelands license in a designated port, the state permitting agency, in coordination with the federal permitting agency wherever possible, will hold a public hearing to elicit information on the nature and facts of the conflict. CZM may also recommend to the EOEA permitting agency and to the Secretary of Environmental Affairs the preparation of an environmental impact report under the Massachusetts Environmental Policy Act to provide for broader public review of the pending decision, to assess available alternatives, and to provide additional analyses and information pertinent to the resolution of the conflict.

The Waterways Program has authority over tidelands, harbors, and certain rivers below the high water mark. Activities covered by such licenses include filling, wharf construction, bridges, pipelines, etc. DEQE as trustee over public lands below low water, thus issues licenses and not permits for the permission to interefere with these public lands. Between low and high water the land is in private ownership but is subject to a reservation to the public in their rights to fish, fowl and navigate.

Under the law, all licenses are to expire after five years or upon non-use. If, to secure financing, the developer needs to obtain an irrevocable license from the Legislature, CZM will actively support such legislation. Should the project be a non-water dependent development, it will still be licensed provided the criteria relating to non-maritime dependent uses are met.

Primary State Authorities

Tidelands Licensing (MGLA C. 91) and Public Trust Case Law

Primary Federal Consistency

Section 404, and 10 permits
U.S. Army Corps of Engineers projects

Policy 8*

For coastally dependent energy facilities, consider siting in alternative coastal locations. For non-coastally dependent energy facilities, consider siting in areas outside of the coastal zone. Weigh the environmental and safety impacts of locating proposed energy facilities at alternative sites.

Energy facilities serve important public and national interest needs. An energy facility, on one level, is like any other major development project and may entail for example dredging or filling, alteration of dunes, waste discharge, increased run-off. In this regard all of the CZM policies are applicable, subject to the nature, location, and source of funding of proposed facilities. However, energy facilities are also unique because of the magnitude of impacts which they may generate and land which they may consume, because some require coastal sites and others are not coastal dependent and because adequate provision for energy is in the national interest.

As explained below in the implementation section, the Energy Facilities Siting Council will be principally responsible for implementing this policy. Consistent with its statutory responsibilities, the Council will assess the following factors in relation to proposed energy facilities:

-- air, water, and land use impacts associated with the use of the proposed and alternative sites,

-- impacts on existing or future port operations,

-- whether the proposed facility can optimize use of existing delivery, distribution, and transmission networks, and

Furthermore, if a facility is proposed for siting in an APR/ACEC, prime consideration will be given to environmental impact in evaluating the facility.

If a proposed facility is coastal dependent, as defined below, the Council will require the applicant to submit at least one alternative coastal site for evaluation. If a proposed facility is not coastal dependent, the Council will require the applicant to submit at least one inland site as well as a coastal alternative.

*Federal Consistency applies

Coastal dependent energy facilities are:

1. facilities which utiliize the indigenous energy resources of the coastal zone;

2. facilities which serve as a transfer point between ocean and land;

3. facilities which transmit or transport energy from a transfer point or other energy facility located in the coastal zone to an inland or other coastal location; and

4. facilities which store energy necessary for trans-shipment, for surge storage, or to supply coastal energy facilities and maritime industries.

Facilities that do not meet these criteria are not coastal dependent.

Based on this definition, energy facilities are identified below as being coastal dependent or not. (See category 1 under each facility type.) Also, additional factors to be considered in evaluating such facilities are noted. (See category 2 under each facility type.)

Oil Terminals:

1. Coastal dependent.

2. Additional evaluation factors:

   a) weigh impacts on any new dredging that may be required at the proposed site versus the use of alternative sites that may not require new dredging;
   b) consider whether proposed alternatives are accessible to oil distribution pipelines;
   c) evaluate need for the proposed facility to determine if the need can be met by using existing terminal capacity or space in port areas if either is available for use by the applicant.

Oil Tank Farms:

1. Coastal dependent facilities: (1) facilities used for storage of bunker fuel and fuel used by oil fired electric generating plants located on the coast; (2) facilities used to store oil for trans-shipment by coastal tankers and barges; and (3) surge oil storage at oil terminals. Other oil storage facilities are not coastal dependent. In the consideration of inland siting of oil tank farms, CZM is prepared to fund a special study to examine, jointly with oil terminal operators, possible sites for locating new oil storage capacity outside of the coastal zone. Such a study should examine pipeline corridors and costs, as well as the effects of such inland siting on the economics of oil distribution.

2. Additional evaluation factors:

   a) assess impacts associated with tanker truck traffic, if applicable,

b) consider accessibility to pipelines for receipt of oil.

Gas Facilities:

1. Coastal dependent facilities: facilities that rely on cryogenic pipelines to transfer gas or feed stocks from ship to shoreside storage. Not coastal dependent facilities: facilities fed by natural gas pipelines, tanker truck, or rail and gas processing facilities, cryogenic storage facilities.

2. Additional evaluation factors:

   a) assess the risks to public safety, including the potential magnitude of danger and size of populations affected,
   b) evaluate the size of available buffer zones.

Electric Generating Facilities:

1. Not coastal dependent, except for facilities which use tidal power to generate electricity.

2. Additional evaluation factors:

   a) consider the impacts of transmission line corridors that may be required at each alternative site,
   b) evaluate alternative cooling systems other than "once through cooling."

Refineries:

1. Not coastal dependent.

2. Additional evaluation factors:

   a) assess whether sufficient acreage is allotted for a buffer zone,
   b) evaluate alternative cooling systems other than "once through cooling",
   c) assess the impacts associated with the generation of any hazardous wastes.

Deepwater Ports:+

1. Coastal dependent, with the exception of associated onshore tank farms which must be assessed as above.

2. Additional evaluation factors:

   a) in assessing the need for a new deepwater port, determine whether the deepwater port would replace or supplement existing marine terminals,
   b) assess whether any cost savings due to reduced transport costs would accrue to the customer,

+ Under the terms of the federal Deepwater Port Act, gubernatorial approval as well as CZM consistency is required.

c) assess whether harbor congestion and ship traffic would be reduced,
d) assess the change in environmental impacts if the deepwater port is to replace existing terminals or assess the added environmental impacts if the deepwater port is to supplement existing terminals, including but not limited to chronic oil discharge, major oil discharge due to tanker groundings, collisions, and pipelines rupture, oil spill trajectories from proposed sites, impact of pipeline construction, impact of tank farm construction and operation,
e) assess the risks of environmental damage to designated Areas for Preservation or Restoration,
f) assess accessibility to pipelines for distribution of oil.

Coastal dependent energy facilities shall not include facilities which store, process or generate energy, except as provided for above.

Transmission Lines and Pipelines:

1. Coastal dependent where transmitting or transporting energy to, from, or within the coastal zone.

2. Additional evaluation factors:

a) consider the impact of transmission line and pipeline corridors construction and maintenance,
b) assess the risks to public safety, including the potential magnitude of danger and size of populations affected
c) assess the environmental impacts of potential spills, leaks, and ruptures of pipelines.

IMPLEMENTATION

Massachusetts has created a unique state agency - the Energy Facilities Siting Council (EFSC) - for reviewing and approving energy plans and facility sites.

The EFSC has agreed to incorporate the above policy and considerations in its review and approval process. The meshing of CZM policies with EFSC review and approval processes results in a five step procedure to be followed in assessing and approving plans and sites for energy facilities, as outlined below:

Step 1 - Siting Energy Facilities in APRs/ACECs and Restricted Wetlands:

In wetlands restricted in accordance with the model order of Policy (1), only certain energy facility components (transmission lines, underground utility lines, and cooling water intakes and outfall structures) will be permitted, depending on the type of wetland that has been restricted under MGLA C. 130, S. 105. Furthermore, the EFSC has agreed to give prime consideration* to the environmental impacts of siting facilities in Areas for Preservation or Restoration/Areas of Critical Environmental Concern (see Policy (2)). Also, the Massachusetts Ocean Sanctuaries Act (MGLA C. 132, SS. 13-17), which encompasses coastal waters of highest water quality and the preponderance of offshore shellfish beds and traditional commercial and sports fishing grounds, requires state agencies, including the EFSC, to

* See Attorney General's Memorandum Opinion text and footnote 29.

give special cognizance to the care and protection of the sanctuaries in siting energy facilities.

Step 2 - Evaluating Energy Needs and Site Suitability:

This second step involves the process used by EFSC in meeting its statutory requirements, to ensure a necessary energy supply with a minimum impact on the environment at the lowest possible cost. The Council examines ten-year forecasts of demand required for electric companies, five-year forecasts for gas companies, and notices of intent to construct oil facilities required of oil companies. In that examination and approval of forecast projections, the Council reviews analyses of alternatives provided by applicants, including other methods of generating, manufacturing, or storing gas or electricity, strategies for promoting energy conservation or consumption or for modifying load curves, other sources of providing energy, the alternative of not providing additional oil or gas, and applicant provided descriptions of how policies of the Commonwealth or the federal government were taken into account. Through this comprehensive examination and review power, the Council determines whether to approve an applicant's forecast of energy demand needs. Once the need for additional energy is established, and approval given to the way (i.e., the kind of facility) in which the need should be met, the Council examines alternative sites for the approved facility.

National and regional energy needs are, by statute and by regulation, expressly built into EFSC decisions on electric generating facilities and retail gas pipelines. Since most Massachusetts utilities are members of NEEPOOL, electricity generated by them is distributed throughout New England; therefore, EFSC inherently fulfills regional needs when it approves electrical forecasts. Furthermore, as part of the required evaluation of the economic viability of proposed oil facilities, EFSC considers energy needs broader than those of the Commonwealth. (See EFSC regulation, rules 63.2, 63.6, 66.1, 66.6, and 71.5 and Chapter 9, National Interest, for an explanation of this process.)

Among the findings which the EFSC must make in approving a long range forecast or notice of intent, are that the facility plans are consistent with current health, environmental protection and resource use policies of the Commonwealth and consistent with the policy of providing a necessary supply, at lowest cost and minimum environmental impact. In making these environmental findings, the Council will use the CZM Policies as adopted by the Secretary of Environmental Affairs by MGLA Chapter 21A regulations, as an expression of current health, environmental protection, and resource use policies of the Commonwealth. Policy (8) specifies which kinds of energy facilities are coastally dependent and therefore must be accommodated in the coastal zone, and indicates what kinds of alternative sites should be considered by the Council. This policy ensures that reasonable alternatives are considered and that sites are avoided which could lead to substantial harm to the most valued areas of the coastal zone. Other CZM policies will be used by the Council to conduct its evaluation of environmental impacts on proposed sites as part of its statutory charge to provide a necessary energy supply with minimum environmental impact at lowest cost. In this evaluation, CZM policies that may be applicable to privately funded energy facilities include: protection of marine resources (Policies (1), (2)); construction in water bodies and in designated port areas (Policies (4), (7)); dredging (Policy (5)); evaluation of impacts on historic districts or sites

(Policy (12)) and public recreational facilities (Policy (13)); evaluating the exploitation of indigenous and alternative sources of energy for impacts on the marine environment, fisheries, water quality, wildlife and recreation (Policy (9)); and conformance to waste discharge, pollution and wetland protection requirements (Policy (10)). Changes in the EFSC's regulations will be made in order to provide the Council with the minimum information necessary to evaluate projects and ensure their consistency with state environmental policies.

Step 3 - State and Local Permitting and Licensing:

Once the Council approves a facility and site, the third step of the siting procedure takes place. Under this step, the objectives are to obtain required permits and approvals from state and local agencies. Environmental Affairs agencies have regulatory responsibilities over specific resources such as air, water, ocean sanctuaries, wetlands protection, and tidelands. Local regulatory agencies have the responsibility to review the site and facility for conformance to local zoning.

Step 4 - Appeals to EFSC

Since providing energy is a vital public need, and energy facilities provide widespread rather than local benefit (often in the national interest), the Massachusetts energy facility siting procedures provide for an appeal process to ensure that the results of the third step of the procedure do not unreasonably prevent the construction of an EFSC approved energy facility at an approved site. This fourth step is triggered by petition from an electric, gas or oil company to the EFSC for issuance of a Certificate of Environmental Impact and Public Need on the grounds that a state or local agency has denied a permit or taken an action which has imposed burdensome conditions, caused undue delays, or otherwise unreasonably conditioned the construction of an EFSC approved facility at an approved site. If after reviewing the petition, the Council makes an affirmative finding, the Certificate, with whatever conditions it may include, overrides the state or local permit or license in question.

Step 5 - Federal Consistency

Due to the four-step process of energy facility approval at the state level and the dissimilar jurisdiction of certain federal agencies, the federal consistency process for energy facilities is complex. For permits from the FERC and the NRC, CZM will issue its concurrence after forecast approval because of the similarity of jurisdiction of these agencies with the Council. However, the scope of the concurrence for FERC and NRC permits is limited to those siting or financial matters actually involved in the EFSC approval or under the exclusive jurisdiction of federal agencies. This limited concurrence does not preclude the environmental analysis by EOEA agencies when licenses or permits are ultimately sought nor stands as a CZM concurrence for purposes of such agency licensing or EFSC issuance of a Certificate of Environmental Impact and Public Need.

For all energy facilities, once all EOEA permits are granted, CZM concurrence will issue consistently with such conditions. Should an override from the EFSC be sought, on grounds other than the denial or imposition of burdensome conditions by an EOEA agency, no further CZM concurrence is needed. Should a Certificate of Environmental Impact and Public Need be

sought on the basis of the denial or imposition of burdensome conditions by an EOEA agency, federal consistency concurrence will be issued if the EFSC has awarded the Certificate.

Primary State Authorities +

Energy Facilities Siting Council (MGLA C. 164)

Primary Federal Consistency

Federal Energy Regulatory Commission
Nuclear Regulatory Commission

Policy 9*

a. Accommodate exploration, development and production of offshore oil and gas resources while minimizing impacts on the marine environment, especially on fisheries, water quality and wildlife, and on the recreational values of the coast, and minimizing conflicts with other maritime-dependent uses of coastal waters or lands. Encourage maritime-dependent facilities serving supply, support or transfer functions to locate in existing developed ports.

b. Evaluate indigenous or alternative sources of energy (coal, wind, solar and tidal power) and offshore mining to minimize adverse impacts on the marine environment, especially with respect to fisheries, water quality, and wildlife, and on the recreational values of the coast.

Narragansett Basin coal and offshore oil and gas resources on Georges Bank may provide indigenous sources of energy for New England. In addition, increased attention is being devoted to developing and making use of alternative energy sources -- most notably solar and wind power. Since these latter alternatives are likely to pose considerably less environmental impacts than other energy sources, CZM strongly endorses efforts to develop them. (See Policy (25)).

However, in developing all of these much needed energy sources, special care must be exercised to avoid harm to the resources of the coast that already provide benefit to man. The most important of these are the fishery resources of coastal waters (including traditional fishing grounds and known spawning areas); the quality of coastal waters, which maintains the health and harvestability of coastal fisheries and enhances recreational

+ Gas, oil and electric facilities not covered by the EFSC's jurisdiction are solely subject to such other policies of the CZM program as may apply.

*Federal Consistency applies

benefits; wildlife wintering, nesting, and migratory stopover areas; and the recreational resources of the coast, particularly its bathing beaches.

IMPLEMENTATION

The keys to implementing this policy are:

1. The licensing of oil and gas pipelines and related processing and storage facilities by the Energy Facilities Siting Council (see Policy (8));

2. The state's licensing functions that may pertain to offshore mining and alternative energy source development within the state's territorial limits, enforcement of the Ocean Sanctuaries and Wetlands Acts, and application of federal consistency where applicable (see Policies (1), (2), (4), (5) and (6));

3. The encouragement of maritime-dependent OCS support facilities in designated port areas, consistent with local zoning and Policy (7);

4. The role CZM will play in monitoring and reviewing the OCS leasing and development process;

5. The exercise of the federal consistency provisions of the CZMA to such federal actions as pertain to the exploitation of OCS resources; and

6. CZM assistance in planning for onshore development associated with OCS activities.

As noted, 1-3 above have been addressed elsewhere in this plan. The latter three are discussed below.

CZM Role in Reviewing OCS Leasing

CZM has been and will continue to be active in reviewing the OCS leasing process. One CZM role will continue to be suggesting tracts that should be withdrawn from sale because of a combination of such factors as their value for fisheries, the risks of oil spills reaching recreational beaches, and the existence of prime environmental resources. CZM will also review Environmental Impact Reports on OCS leasing and development actions and U.S. Geological Survey operating orders specifying measures to be taken for drilling. CZM will also continue to advise the federal government on possible adverse impacts to the resources of Massachusetts' coastal waters and on measures that might be taken to minimize adverse impacts. The Massachusetts CZMP believes that proposed lease sales and lease sale activities are also appropriate matters for the application of the federal consistency requirement, but acknowledges that this question is now the subject of disagreement between the Departments of Commerce and Interior and therefore is presently unresolved. Accordingly, the Massachusetts CZMP, while not now specifically claiming federal consistency for such activities, reserves the right to make such a claim once this inter-departmental dispute has been resolved.

Review of OCS Exploration and Development and Production Plans

CZM will review for consistency OCS plans for exploration and for development and production submitted to the Department of Interior. CZM will also review for consistency licenses and permits issued on gas pipelines by the Federal Energy Regulatory Commission, on platforms by the Corps of Engineers, on wastewater discharges by the Environmental Protection Agency, and on pipeline rights-of-way by the Bureau of Land Management. Such federal actions will be deemed consistent with the CZM program if:

-- construction in Areas for Preservation or Restoration conforms to applicable regulations,

-- risks of environmental harm to fish spawning areas are assessed and minimized,

-- necessary dredging, spoil disposal, and construction of structures minimize damage to the marine environment,

-- risks of oil and gas spills and possible trajectories are evaluated and appropriate protection measures taken,

-- potential damage or interference to traditional fishing grounds is evaluated and avoided,

-- placement of structures in geologically hazardous areas is avoided, thereby minimizing such risks as pipeline breakage,

-- disposal of drilling muds and drill cuttings does not damage spawning areas and fishing resources,

-- potential harm to wintering, nesting, or migratory stopover areas for wildlife is assessed and minimized, and

-- planned placement of on-shore facilities conforms to Policy (7).

CZM Assistance and Planning - In conjunction with the Lieutenant Governor's Office of Federal-State Relations, the Office of State Planning and the Energy Policy Office, CZM will continue to provide technical assistance to communities on on-shore facilities connected with OCS developments. Also, CZM, in conjunction with other state agencies, will work with communities to make use of Coastal Energy Impact funds made available under the Coastal Zone Management Act Amendments of 1976 to communities to help them shoulder additional costs incurred by accommodating coastal energy facilities. In addition, CZM will continue to participate in special governmental studies for the New England region on possible OCS pipeline corridors, OCS impacts and the like.

Primary State Authorities

Division of Mineral Resources (MGLA C. 21, S. 54)
Waterways Program (MGLA C. 91)
Ocean Sanctuaries (MGLA C. 132A, SS. 13-17)
Energy Facilities Siting Council (MGLA C. 164, S. 69 F-R)
Wetlands Protection Act (MGLA C. 131, S. 40)
Wetlands Restriction Act (MGLA C. 130, S. 105)
Act Regulating Coal Mining (Chapter unassigned)

Primary Federal Consistency

OCS Plans for Exploration and Development and Production
FERC Licenses on Gas Pipelines
U.S. Army Corps of Engineers Section 10 and 404 Permits
EPA NPDES Permits
BLM Pipeline Right-of-Way Permits

Policy 10*

All development must conform to existing applicable state and federal requirements governing sub-surface waste discharges, sources of air and water pollution and protection of inland wetlands.

Regardless of location in the coastal zone, all development actions must conform to existing state and federal permit requirements for the discharge of substances into the air or waters of the Commonwealth and for the protection of inland wetlands. In addition non-point sources of air pollution must be in conformance with the State's air implementation plan. Commercial, industrial and residential development to which other CZM policies do not apply are considered to be of local concern, provided they are in conformance with the State Environmental Code, laws protecting inland wetlands, and applicable discharge permit requirements.

IMPLEMENTATION

This policy is to be implemented by existing EOEA agencies in accordance with existing procedures and regulations. Where necessary, CZM will provide supporting funding for additional staff resources to assure that the laws are adequately administered and enforced.

Primary State Authorities

The State Environmental Code Title V (MGLA Ch. 21A, S.13, C.111,S.17)
Protection of Inland Wetlands (MGLA Ch. 131, S. 40 and MGLA Ch. 131, S. 40A)
Air Quality Permits (MGLA Ch. 111, SS. 142A-142E)
NPDES Permits (MGLA Ch. 21, S. 43 and PL 92-500, S. 402)
Sewer Connections and Extensions (MGLA Ch. 21, S. 43)
State Air Implementation Plan
All Other Existing Permitting Requirements as may be applicable.
Wetlands Protection Act (MGLA C. 131, S. 40)

Primary Federal Consistency

Section 10, 404 Permits

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*Federal Consistency applies

Policy 11**

Protect designated scenic rivers in the coastal zone. Support designation of areas for preservation or restoration as "sign free areas."

IMPLEMENTATION

CZM funding will be used to expand the staff of the Scenic Rivers Program in DEM to expedite implementation of this program. The North River is to be the first river so designated in the Commonwealth and will serve as a model for future designations, although each designation will be strongly tailored to local concerns and recommendations and may involve varying types of land use restrictions. Land use restrictions can encompass the alteration or pollution of rivers and contiguous lands within 100 yards of their banks.

CZM will petition the Outdoor Advertising Board to designate lands within nominated APR's/ACEC's as Sign Free Areas. The significance of this designation is that off-premise billboards and other forms of advertising in areas that are of historical scenic, or environmental siginficance are prohibited.

CZM will also cooperate with the Department of Public Works in identifying and designating Scenic Highways in the coastal zone. This designation carries no regulatory significance but serves as a signal to highway planners that important scenic qualities should be conserved to the maximum extent possible.

Primary State Authorities

Scenic and Recreational Rivers Act (MGLA Ch. 21, S. 17A)
Control of Outdoor Advertising (MGLA Ch. 93, S. 29 and MGLA Ch. 93D)

Primary Federal Consistency

Section 10, Section 404 Permits

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* *Federal Consistency will apply after such areas have been officially designated.

Policy 12*

Review proposed developments in or near designated or registered historic districts or sites to ensure that federal, state, and private actions requiring a state permit respect their preservation intent and minimize potential adverse impacts.

Conservation of coastal wetlands as provided in Policies (1) and (2) will indirectly provide for protection of the coast's most significant natural scenic resources, since permitted activities in these areas will primarily be of a non-intensive nature. This policy is designed to protect significant historic and cultural features in the coastal zone.

For purposes of this policy, the geographic scope of near shall be defined similarly to the application of state zoning act notices (MGLA Chapter 40A, Section 12). Near thus includes parts of abutting properties, properties directly opposite on any public street or way, or any other property to the extent proposed developments on any of these are within 300 feet of the historic site or district.

Historic districts or sites are designated through:

1. placement on the National Register of Historic Places;
2. creation of historic districts by local governments; and
3. establishment by special acts of the Massachusetts Legislature.

Currently designated historic districts in Massachusetts are listed below:

Historic Districts Established by Coastal Communities

Beverly:	Fish Flake Hill Historic District
Dennis:	South Dennis Historic District
Gloucester:	Gloucester Historic District
Harwich:	Harwich Historic District
Manchester:	Manchester Historic District
New Bedford:	Waterfront Historic District
Plymouth:	Town Brooke, Town Square Historic District
Salem:	Derby Street Historic District
Sandwich:	Sandwich Historic District
Tisbury:	William Street Historic District
Wareham:	Parker Mills Historic District
Westport:	Westport Point Historic District

*Federal Consistency applies

Historic Districts Established by Special Acts of Massachusetts Legislature

Barnstable County:	Old Kings Highway Regional Historic District
Falmouth:	Falmouth Historic District (7 areas)
Hingham:	Lincoln Historic District
Marblehead:	Old Town Historic District
	Ginger Bread Hill Historic District
Nantucket:	Nantucket Historic District (entire island)
Yarmouth:	Historic Yarmouthport Historic District

IMPLEMENTATION

Since impacts on historic sites or districts established by special legislative act or in accordance with MGLA Ch. 40A are regulated by local historic district commissions, this Policy is to be implemented primarily at the local level. A state regulatory agency will become involved in implementing this policy, however, when a private action proposed in or near a historic district or site requires both a state permit from the agency and a review under the Massachusetts Environmental Policy Act. Under S. 61 of MEPA, the state agency is charged to find that, prior to issuance of the permit, all practical means and measures have been taken to minimize damage to the environment, including "destruction, damages, or impairment, actual or probable, to...historic districts or sites." Pursuant to this procedure, developments which are found not to be in conformance with the above policy will be conditioned or denied. The Massachusetts Historical Commission will be consulted to assist in the identification and evaluation of potential impacts. Projects involving the use of state funds will be similarly evaluated and appropriately modified or denied in order to mitigate adverse impacts on historic sites or districts.

In addition, most local historic districts and historic sites are already on the National Register, and are thus assured a measure of protection against any potentially damaging effects caused by federally funded or licensed projects. CZM will reinforce the review procedure established by the National Historic Preservation Act, however, by not issuing a certificate of consistency subsequent to review of such projects unless the projects are deemed not to cause significant negative impacts on the historic qualities of the districts or sites. As with state funded or licensed projects, review will be coordinated with the Massachusetts Historical Commission consistent with the procedures established by the National Historic Preservation Act.

Primary State Authorities

Massachusetts Environmental Policy Act (MGLA Ch. 30, SS. 61-62H)
Historic District Act (MGLA Ch. 40C)
Special Historic District Acts.

Primary Federal Consistency

All federal funding and licensing activities.

Policy 13*

Review developments proposed near existing public recreation sites in order to minimize their adverse impacts.

Existing recreation sites are extremely valuable. Demand for recreation is currently unfulfilled, the availability and cost of land precludes the acquisition of many new sites, and high quality recreation sites can stimulate and serve as an economic benefit to new development.

Development and projects near recreation sites, either onshore or offshore, can create adverse environmental impacts which can degrade the quality of the sites. Examples of such impacts are: increased traffic congestion on access roads; obstruction or limiting of public access; water pollution; degradation of the recreation experience through change in site character, air pollution, and noise. These impacts can be mitigated by site planning and design measures which provide setbacks and buffer zones and control water pollution, noise impacts, erosion and sedimentation, and aesthetic impacts.

IMPLEMENTATION

This policy will be implemented similarly to Policy (12) (including the definition of "near") through review of publicly funded projects and private projects requiring both a state permit and a review under the Massachusetts Environmental Policy Act. A list of beaches to which the policy applies is presented on the following pages.

Where impacts cannot be avoided through exercise of this review process, state purchase of easements or development rights or "land swaps" will be considered to bring about the desired results.

Primary State Authorities

Massachusetts Environmental Policy Act (MGLA C. 30, SS. 61-62H)

Primary Federal Consistency

All federal funding and licensing activities

*Federal Consistency applies

BEACHES WITH PUBLIC ACCESS AND PARKING*

(i.e., to which Policy 13 applies)

Plum Island Beach and State Park	Newburyport
Salisbury Beach State Reservation	Salisbury
Salisbury Beach	Salisbury
Crane Beach	Ipswich
Hodgkin's Cove	Gloucester
Wingaersheek Beach	Gloucester
Half Moon Beach	Gloucester
Pavilion Beach	Gloucester
Good Harbor Beach	Gloucester
Cressy Beach	Gloucester
White Beach	Gloucester
Pebbly Beach	Rockport
Back Beach	Rockport
Front Beach	Rockport
Forest River Park	Salem
Collins Cove	Salem
Beverly Harbor	Beverly
Obear Park	Beverly
Dane Street Beach	Beverly
Independence Park	Beverly
Juniper Cove Beach	Salem
Juniper Beach	Salem
Salem Willows Beach	Salem
Horse Shoe Beach	Salem
Porter River Beach	Danvers
Devereaux Beach	Marblehead
Riverhead Beach	Marblehead
Castle Park	Marblehead
Kings Beach	Lynn
Lynn Beach	Lynn
Nahant Beach	Nahant
Revere Beach	Revere
Short Beach	Winthrop
Winthrop Beach	Winthrop
Constitution Beach	Boston
Castle Island	Boston
Pleasure Bay	Boston
City Point	Boston
L Street Beach	Boston
Carson Beach	Boston
Malibu Beach	Boston
Tenean Beach	Boston
Orchard Beach	Quincy
Wollaston Beach	Quincy
Heron Road Beach	Quincy
Willows Beach	Quincy
Perry Beach	Quincy
Rhoda Street Beach	Quincy
Lower Germantown Beach	Quincy
Baker Beach	Quincy
Mound Street Beach	Quincy
Wessagusett Beach	Weymouth
Fort Point Beach	Weymouth
Hingham Bathing Beach	Hingham
Pemberton Beach	Hull
Bay Side Beach	Hull
Nantasket Beach	Hull
Gun Rock Beach	Hull
Brant Rock Beach	Marshfield
Green Harbor Beach	Marshfield
Duxbury Beach	Duxbury
Plum Hills Beach	Duxbury and Plymouth
Long Beach	Plymouth
Scusset Beach	Bourne
Bossetts Island	Bourne
Potuisset Beach	Bourne
Barlows Landing	Bourne
Monks Park	Bourne
Monument Beach	Bourne
Gray Gobles Beach	Bourne
Falmouth Beach	Falmouth
Old Silver Beach	Falmouth
Trunk River Beach	Falmouth
Menauhant Beach	Falmouth
Falmouth Heights Beach	Falmouth
Surf Drive Beach	Falmouth
Megonsett Beach	Falmouth and Bourne
Sandwich Beach	Sandwich
Sandy Neck Beach	Sandwich
South Cape Beach	Mashpee
Kalmus Park Beach	Barnstable
Keyes Memorial Beach	Barnstable
Coville Beach	Barnstable
Craigville Beach	Barnstable
Dowses Beach	Barnstable
Englewood Beach	Yarmouth
Bay View Beach	Yarmouth
Colonial Acres Beach	Yarmouth
Grays Beach	Yarmouth
Bass River Beach	Yarmouth
Parker's River Beach	Yarmouth
Seagull Beach	Yarmouth

* Public parking defines as space for more than 25 cars.

BEACHES WITH PUBLIC ACCESS AND PARKING (cont. page 2)

Chapin Memorial Beach	Dennis
Taunton Avenue Landing	Dennis
Dunes Road Landing	Dennis
Horse Foot Path Beach	Dennis
Bayview Road Beach	Dennis
Corporation Beach	Dennis
Cold Storage Beach	Dennis
Town Beach	Dennis
Sea Street Beach	Dennis
Glendon Beach	Dennis
Haigis Beach	Dennis
South Village Road Beach	Dennis
West Dennis Beach	Dennis
Scargo Lake Beach	Dennis
Harbor Road Beach	Dennis
Inman Road Beach	Dennis
Roycraft Parkway Beach	Dennis
Town Beach	Brewster
Paines Creek Beach	Brewster
Saints Landing	Brewster
Breakwater Beach	Brewster
Crosby Landing	Brewster
Ellis Landing	Brewster
Robbins Hill Beach	Brewster
Handing Beach	Chatham
Ridgevale Beach	Chatham
Cockle Cove Beach	Chatham
Forest Beach	Chatham
Pleasant Street Beach	Chatham
Nauset Beach	Chatham
North Beach	Chatham
Holway Beach	Chatham
Harding Lane Beach	Chatham
Chatham Light Beach	Chatham
Oyster Pond Beach	Chatham
Harding Beach	Chatham
Red River Beach	Harwich
Banks Beach	Harwich
Earle Road Beach	Harwich
Skaket Beach	Orleans
Rock Harbor Beach	Orleans
Nauset Beach	Orleans
Rock Harbor Beach	Eastham
First Encounter Beach	Eastham
Short Life Beach	Eastham
Nauset Beach	Eastham
Nauset Lighthouse Beach	Eastham
Coast Guard Beach	Eastham
Boat Meadow	Eastham
Eastham Beach	Eastham
Indian Neck Beach	Eastham
Mayo's Beach	Eastham
Cahoon Hollow Beach	Eastham
White Crest Beach	Eastham
Lecount Hollow Beach	Eastham
Marconi Beach	Eastham
Corn Hill Beach	Truro
Ballston Beach	Truro
Great Hollow Beach	Truro
Head-of-the-Meadow Beach	Truro
Highland Beach	Truro
Longhook Beach	Truro
Herring Cove	Provincetown
Race Point Beach	Provincetown
South Beach	Edgartown
Oak Bluffs Town Beach	Oak Bluffs
Joseph Silva State Beach	Oak Bluffs & Edgartown
Cisco Beach	Nantucket
Jetties Beach	Nantucket
Madaket	Nantucket
South Beach	Nantucket
Surfside Beach	Nantucket
Sconset Beach	Nantucket
Swifts Beach	Wareham
Minot Forest Beach	Wareham
Little Harbor Beach	Wareham
Onset Beach	Wareham
West Island Beach	Fairhaven
Horseneck Beach	Westport
East Horseneck Beach	Westport
Apponagonsett Point Beach	Dartmouth
Jones Beach	Dartmouth
West Beach	New Bedford
East Beach	New Bedford
Lloyd Street Beach	New Bedford

NON-REGULATORY POLICIES

Policy 14

Encourage and assist commercial fisheries research and development, restoration and management of fishery resources, development of extensive and intensive aquaculture, and enhancement of anadromous fisheries, initiated at local, state and federal levels.

IMPLEMENTATION

CZM funding will be used to supplement the staff of the Division of Marine Fisheries to provide expanded capability for developing a state fisheries management plan and for assessing the implications of management plans developed at the regional level in conjunction with the extension to 200 miles of the federal fisheries jurisdiction. Secondly, CZM will continue to work with the federal government to develop measures to protect the fishing industry from adverse impacts of OCS development. Thirdly, CZM will actively support federal funding for fisheries related research and development in Massachusetts.

Primary State Programs

Division of Marine Fisheries

Primary Federal Funding Sources

National Marine Fisheries Service
U.S. Fish and Wildlife Service
Office of Sea Grant

Policy 15*

Ensure that state and federally funded public works projects proposed for location within the 100 year coastal floodplain will:

a. not exacerbate existing hazards or damage natural buffers,

b. be reasonably safe from flood and erosion related damage, and

*Federal Consistency applies

c. not promote growth and development in damage prone or buffer areas, especially in undeveloped areas of APR's.

While Policy (1) concerns private development, the above policy is aimed at ensuring the soundness of public investment for public works projects in hazardous areas of the coastal zone. Public facilities such as roads or sewers that are constructed in hazardous areas may be subjected to continual damage necessitating costly repair and maintenance. Secondly, the provision of public services in hazardous areas with the capacity to serve growth beyond existing development may encourage new development that would be incompatible with the damage of risks and the need to protect natural buffers. Thirdly, increasing public services, together with the availability of subsidized flood insurance, may increase private property values, thereby inducing pressure for additional federal or state subsidies to build shoreline protection structures. Such a result would be inconsistent with the national policy to shift the burden of risk of living in hazardous areas to the property owner and may induce spiralling subsidies of development in hazardous areas, as well as discourage voluntary relocation.

The installation of sewerage systems and treatment plants in highly dynamic and unstable environments, such as barrier beaches, should be discouraged, since construction of these facilities may, as noted above, encourage conversion of summer homes to year-round use or stimulate some new development. Installation of sewerage without recharge facilities may cause depletion of critical groundwater supplies. Additionally, a system failure during a major tidal flood could cause a severe pollution problem. Thus, structural solutions in high risk hazardous areas should be implemented only if warranted by a severe water pollution problem and if non-structural solutions, such as upgrading of existing subsurface disposal systems are deemed ineffective or cost prohibitive. If implemented, the design capacity of sewerage systems should be limited to the existing peak population and the systems should be adequately floodproofed.

IMPLEMENTATION

This policy will primarily be implemented by central CZM staff within the Office of the Secretary who will formally review proposed Public Works projects through use of existing review processes (A-95, NEPA, and MEPA). Particular scrutiny will be given to design capacity, siting of facility components, service areas or new access provided if applicable, adequacy of floodproofing, and the nature and extent of necessary site disturbance. This policy applies only to public works projects and not to other forms of federal assistance such as home mortgages or dredging.

Primary State Programs

Division of Water Pollution Control (MGLA C. 21, S. 27)
Department of Public Works (MGLA C. 81)
Massachusetts Bay Transportation Authority (MGLA C. 161A)

Primary Federal Consistency

Wastewater Treatment Plant Construction Grants (PL 92-500, S. 201)
Transportation Projects Funded by DOT
Public Works Projects Funded by the Economic Development Administration and HUD's Community Development Block Grant Program

Policy 16

Encourage acquisition of undeveloped hazard prone areas for conservation or recreation use, and provide technical assistance for hazard area zoning and mitigation of erosion problems.

Acquisition of land, either in full or in part through easement purchase, is a common means of preserving or expanding open space. It is also the most effective tool for preventing growth and development that would be vulnerable to storm damage or would impair the buffering functions of natural areas. Further, most open space uses will not require construction of extensive facilities and therefore are appropriate for damage prone areas.

On the state level, it is unlikely that sufficient funds will be available for the acquisition of lands on the basis of hazard protection alone, since the availability of acquisition funds will typically be dependent on the recreational benefits that can be derived. Therefore, hazard prone lands should be given priority for state acquisition if either:

a. undevelopable because of the hazards present; e.g., a rapid rate of erosion makes a piece of shorefront property unsellable or unbuildable; or

b. they serve as a natural buffer protecting public investments in nearby or downcoast areas;

and if: they can be improved through non-structural measures so that they can sustain an appropriate type and level of public recreational activity, given the nature of the hazards present.

Acquisition by local conservation commissions, on the other hand, can be used to conserve the buffering or ecological value of hazard prone areas without requiring that intensive recreational use be supported. It is therefore recommended that hazard prone lands be considered for local acquisition (with or without state assistance) if they serve as natural protective buffers or if their buffering capabilities could be restored through non-structural improvements, particularly if local zoning or other controls are inadequate to prevent development that would be vulnerable to damage or would exacerbate existing hazards.

Acquisition by any level of government should also be given serious consideration if federal, state, or local funds have been repeatedly allocated for floodproofing or repair of damaged utilities, roads, bridges or other public services. Additionally, in extreme cases, acquisition of substantially damaged developed areas may be justified in order to prevent redevelopment that would again risk major losses, degrade natural

buffering functions, or require continued public subsidy (such as disaster relief or flood insurance). "Substantially damaged" should be defined as structural damage whose value amounts to greater than 75% of the market value of the structure (s) prior to occurrence of the damage.

In addition to acquisition, CZM will support local zoning measures that promote use of erosion and flood prone areas appropriate to the risks of damage and the need to protect natural buffers. CZM also supports restoration measures, access controls and other means that may be taken at the local level to enhance the protective capabilities of natural land forms such as dunes and barrier beaches.

IMPLEMENTATION

Acquisition of hazard prone areas by the state could be achieved using existing capital outlay funds, Coastal Zone Management funds, or the Land and Water Conservation Fund of the Bureau of Outdoor Recreation, provided substantial recreational benefits can be derived. The propensity for hazards would thus be considered as only one of many criteria under existing point system selection processes.

The selection system which is used to allocate state Self-Help funds to communities who can meet the matching requirements weights ecological and other natural values more heavily, thereby providing greater flexibility in receiving funding for acquiring hazard prone areas. Use of this fund may therefore be most appropriate to local acquisition of hazard prone areas. In any case, acquisition of coastal lands for hazard area management should be coordinated with acquisition of recreation projects.

CZM technical staff will be available for assistance, on request, in the development of local hazard area zoning by-laws or erosion mitigation measures.

Primary State Programs

Self-Help Fund (MGLA C. 132, S. 11)

Primary Federal Funding Sources

Land and Water Conservation Fund (BOR)
Office of Coastal Zone Management (Section 315, 1976 amendments to CZMZ)
National Flood Insurance Act (S. 1362)

Policy 17*

Provide funding for protection from tidal flooding and erosion, emphasizing the use of non-structural measures where feasible.

*Federal Consistency applies

(Policy 17 cont.)

Non-structural protective and restoration measures, such as beach nourishment, dune rebuilding, and stabilization by vegetation planting most closely simulate the effects of natural conditions. If properly designed, they can provide effective buffers against storm forces, are generally substantially less expensive than structural measures, are aesthetically more compatible with natural landforms, and avoid the creation of adverse effects on adjacent or downcoast areas. Therefore, they should be favored over structural measures on sites where feasible.

Structural solutions, on the other hand, are probably more appropriate to urban areas where natural buffering function have been irrevocably destroyed, where public lands are threatened, floodproofing of extensive development would be cost prohibitive and/or ineffective, or where commercial and industrial activities are dependent on proximity to the waterfront. Structural solutions are most inappropriate to areas characterized by very dynamic conditions such as barrier beaches, and should not be implemented except where clearly required by circumstances mandating their use.

Regardless of whether structural or non-structural measures are used, federal and/or state funding of such measures shall only be used if:

1. The area to be protected is of greater than local significance and substantial public benefit in the form of protection of existing public facilities or development of improved public access and expanded public use opportunities can be achieved in conjunction with construction of the proposed project;

2. adequate land use regulations or physical controls on access can be established to prevent deterioration of restored or stabilized areas;

3. in the case of restoration and nourishment, adequate design criteria have been established and can be achieved to ensure proper height, slope, width, and sand grain size of restored dune and beaches; and

4. the costs of and responsibilities for future maintenance have been identified and agreed to.

In addition to the above criteria, structural solutions should only be implemented if:

1. Non-structural measures, such as acquisition, relocation, land use regulation, floodproofing, and dune/beach restoration or stabilization have been evaluated and rejected as being too costly, ineffective, or legally infeasible, and

2. Implementation of structural measures will not seriously impair the functioning of natural processes, nor adversely affect adjacent or downcoast areas to a significant degree.

IMPLEMENTATION

The Division of Waterways is authorized to undertake improvements to provide protection from erosion and flooding, and will be the principal state agency implementing this policy. CZM will also work

with the Corps of Engineers and Soil Conservation Service to seek necessary appropriations and ensure consistency with this policy. CZM also encourages demonstration and evaluation of new technological solutions such as perched beaches and floating breakwaters.

Primary State Programs

Waterways Program (MGLA Ch. 91, S. 11)

Primary Federal Consistency

U.S. Army Corps of Engineers Projects
Soil Conservation Service Erosion Control Projects
Economic Development Administration

Policy 18

Encourage, through technical assistance and review of publicly funded development, compatibility of proposed development with local community character and scenic resources.

IMPLEMENTATION

The majority of issues relating to visual impacts of proposed developments are matters of local concern, and can best be handled through local management mechanisms. CZM will, however, offer two types of assistance, for promoting improved management of the visual environment at the local level. These include:

(a) Development of handbook to be available to developers and municipalities which will detail facility siting recommendations, measures to enhance visual access and mitigate negative impacts, legal alternatives for managing local visual quality, and methods for evaluating potential visual impacts and affected populations.

(b) Legal assistance, when requested, for the development of local zoning by laws, land use controls, and tax incentives aimed at maintaining are enhancing community character. These include for example; clustered PUD zoning, transfer development rights, density bonuses, performance zoning, design review procedure, local scenic road designation and other measures allowable under various state enabling acts.

In addition, CZM shall act in an advisory role by means of existing A-95, MEPA, and NEPA review processes to suggest how facilities to be constructed with federal or state funds can best be sited and designed to avoid adverse visual impacts. Federal Consistency will only be required

in cases involving impacts on historic districts or sites as provided in Policy 12.

Primary State Authorities

Zoning Enabling Act (Acts of 1975 Ch. 808)
Scenic Roads Act (MGLA Ch. 40, S. 15C)

Policy 19*

Promote the widest possible public benefit from channel dredging, ensuring that designated ports and developed harbors are given highest priority in the allocation of federal and state dredging funds. Ensure that this dredging is consistent with marine environment policies.

Adequate channel depths are a prerequisite for any kind of waterfront dependent activity. Given that public funding for dredge projects is limited, public agencies must, of necessity, allocate these funds to projects which provide the greatest public benefit and demonstrate the most pressing need. At the same time, dredging and disposal, especially of contaminated dredge material, can cause severe and lasting adverse impacts on the marine environment.

As discussed in Policies 1 and 2, all dredging, be it public or private shall be:

1. regulated in salt marshes, dunes, sandy beaches, barrier beaches, and shellfish flats; and

2. limited to maintenance dredging or enhancement of shellfish or other marine productivity in designated Areas for Preservation or Restoration and salt ponds.

In the allocation of federal or state funding for dredging, priority will be given to designated port areas (as defined in Policy (8)) and to developed harbors. Developed harbors are defined as those which meet at least one of the following characteristics:

1. provides public mooring space, berths, slips, ramps, and docks which serve a region-wide boating public, as evidenced by either (a) public access to the harbor which is free or open for nominal fee to non-residents and which has adequate parking facilities; or (b) very heavy boating traffic,

2. hosts harbor facilities used by commercial fishermen,

3. serves cruise boats, ferries and other marine industry, and/or

*Federal Consistency applies

4. presents unique development opportunities for the fishing industry or for waterfront renewal and revitalization.

There are about 100 developed harbors along the Massachusetts coast. In port areas and developed harbors, maintenance dredging will have the highest priority for public assistance. Publicly funded maintenance dredging will be scheduled so that projects demonstrating the most pressing need, widest public benefit, and least environmental damage are carried out first.

Deepening or expansion of channels and mooring or turn-around basins beyond depths or size to which they were initially dredged will be approved for state or federal funding if the project meets two of the following criteria:

1. provides broad public benefits for recreational boating which are spread over a region and which redound to the general public and is necessary to resolve harbor conflicts between fishermen and recreational boaters;

2. enhances benefits to the commercial fishing industry;

3. produces economic returns to maritime shipping and other maritime industries by reducing turn-around times and in-harbor transit delays, and permits usage of more efficient sized vessels; and/or

4. reduces navigational safety risks.

Furthermore, consistent with Policy 7,proposals for creation of new channels or mooring and turn-around basins of 20-foot depth or greater will only be publicly assisted if the need to be met by the project is of national or statewide importance; cannot be accomplished in designated port areas; and impacts on the marine environment are deemed to be acceptable.

IMPLEMENTATION

State funding for dredging projects will be allocated consistently with the benefit criteria of this policy by the Waterways Program within DEQE. Compliance with Policy (19) and its related criteria shall also be enforced through CZM review for consistency of federally funded dredging activities.

Primary State Authorities

Waterways Program (MGLA Ch. 19, S. 11)

Primary Federal Consistency

U.S. Army Corps of Engineers Projects

Policy 20

Encourage, through technical and financial assistance, expansion of water dependent uses in designated ports and developed harbors, redevelopment of urban waterfronts, and expansion of visual access.

In order to accomodate the increasing needs of fishing, shipping and other marine industries, cruise or ferry services, and recreational boating interests, existing Massachusetts's ports and harbors will require considerable improvement and expansion of their facilities e.g. docks, piers, bulkheads, ramps, navigational aids, and other harbor works, in addition to dredging as discussed in Policy (19). Assistance from state and federal funding sources is usually required to enable municipalities to undertake such improvements.

In addition, by taking advantage of the visual assets of waterfront areas, many coastal communities are undertaking major redevelopment initiatives in formerly deteriorated downtown areas, and require state and federal assistance for joint developments including waterfront parks, housing, retail shops, and restaurants. The mixture of these uses along the waterfront can provide innumerable opportunities to the general public for visual and physical access to the waterfront and are therefore encouraged by CZM, provided they do not conflict with port operations (see Policy 7). In conjunction with such renewal efforts, physical measures which provide views of marine dependent activities and port operations in general, are particularly supported by CZM, since these activities have significant educational and interest value as integral elements of the coast's visual resources.

IMPLEMENTATION

One third of the federal funding to CZM in the first year will be made available to coastal communities for planning and feasibility studies of dredging and disposal options, waterfront renewal alternatives, and port and harbor development projects in designated ports and developed harbors. This funding will be open to all coastal communities, but priority will be given to communities having Special Assistance Development Areas (SADA's). The SADA's are areas having special development needs and capabilities as identified through CZM's citizen advisory process. The following coastal communities contain SADA's:

Beverly
Boston
Danvers
Fairhaven
Fall River
Gloucester
Hull
Hyannis
Nantucket
New Bedford
Newburyport
Plymouth
Provincetown
Rockport
Salem
Scituate

Lynn	Somerset
Marshfield	Wellfleet

Secondly, CZM will act in an advocacy role to solicit funding from state and federal sources when requested by coastal municipalities for projects consistent with CZM policies. Thirdly, technical assistance from CZM will be available on a day to day basis to provide help in analyzing and resolving development problems.

Primary State Programs

Waterways Program (MGLA Ch. 91, S. 10-11)
Public Access Board (MGLA Ch. 21, S. 17 17A)
Self-Help Program (MGLA C. 132A, S. 11)
Department of Environmental Management (MGLA C. 132A)

Primary Federal Funding Sources

Economic Development Administration
U.S. Army Corps of Engineers
HUD Community Development Block Grant Program
Land and Water Conservation Fund, BOR
Coastal Zone Management Act, S. 315

Policy 21

Improve public access to coastal recreation facilities, and alleviate auto traffic and parking problems through improvements in public transportation. Link existing coastal recreation sites to each other or to nearby coastal inland facilities via trails for bicyclists, hikers, and equestrians, and via rivers for boaters.

Because some existing coastal recreation sites are underutilized and/or badly distributed, or because resistance by coastal communities to an increase in recreation on the coast is often based on undesirable auto traffic impacts, CZM believes that solving transportation access problems and providing linkages between recreation sites should be given highest priority among measures to improve coastal recreation opportunities. Second priority should be given to increasing the use of existing sites through better management and maintenance. Third priority should be given to the physical expansion of existing public facilities by public acquisition of new sites in areas of high need. Finally, technical assistance should be made available to private recreation developers, whose developments are needed along with public projects to increase public access to the shoreline. The policy above, and the three that follow, have been developed to reflect these priorities.

CZM will support access improvements, both demonstration and permanent solutions, to existing recreation areas where increased use can be sustained without degradation of significant resource areas cited in Marine Environment Policy (1) when:

(1) Existing transportation is inadequate, especially where there are traffic problems or related environmental impacts; or

(2) the area is state or federally owned, since potential impacts from increased use can be more easily managed on public land; or

(3) the area is underutilized based on a ratio of parking to amounts of sandy beach and adequate public facilities, rest rooms, etc., can be provided to support the increased use; or

(4) benefits from public transportation to recreation might spill over into increased town commerce, tourism; or

(5) public transportation investments can service many recreation areas near each other.

IMPLEMENTATION

CZM will participate actively with the Executive Office of Transportation and Construction (EOTC), its constituent agencies, Regional Planning Agencies, Transit Authorities, and other relevant transportation entities, in the transportation planning process. Through agreement with EOTC, CZM will be given the opportunity to review projects proposed in the state's 3-5 year Transportation Improvement Plan (TIP) and its Annual Element (AE) and to propose needed recreation related improvements (see Policy (26) for a full explanation of this process).

Purchase of trail easements will be given a high priority under Section 315 funds of the Coastal Zone Management Act. CZM will also solicit aid from the Department of Public Works to make improvements where such trails are along side roads, over bridges, etc., and from DEM, MDC, the Public Access Board or communities who will manage or share the benefits of the proposed trails. Trails should be developed in conjunction with either designated or potentially designated easements such as scenic roads or rivers, which should be concomitantly implemented. The uses of such trails should be compatible with the intent of the designation.

Primary State Programs

Transportation and Bikeway Programs of EOTC, DPW, MBTA
Self-Help Program (MGLA Ch. 132A, S. 11)
Public Access Board (MGLA Ch. 21, SS. 17, 17A)
Department of Environmental Management (MGLA Ch. 132A)

Primary Funding Sources

Department of Transportation
Land and Water Conservation Fund, BOR
Coastal Zone Management Act (Section 315)

Policy 22

Increase capacity of existing recreation areas by facilitating multiple use and by improving management, maintenance and public support facilities. Resolve conflicting uses whenever possible through improved management rather than through exclusion of uses.

Many recreation sites, if managed more efficiently, could accommodate more and different uses without much change in physical characteristics. CZM intends to promote expanded use when:

1. Opportunities for physical expansion are limited; or

2. The operational aspects of activities do not conflict; e.g., picnicking, and sunbathing; or

3. Improved management and maintenance can control operational conflicts between uses; or

4. Recreational activities are seasonal, thereby allowing sequencing of different uses; or

5. Recreational use of non-recreational areas can be accommodated on weekends; or

6. Improvements in water quality provide expanded opportunities for water contact sports; and

7. Where there is adequate access for additional uses to benefit from such improvements; and

8. Resources are capable of supporting increased use without degradation.

IMPLEMENTATION

In order to maximize benefits which can result from more efficient use of existing recreation sites, CZM will (a) seek and provide technical assistance to design areas for multiple use and (b) ensure that funds for maintenance are made available and used effectively to work with other state, federal and local agencies whose programs provide opportunities for multiple use recreation; e.g., fishing, walkways on bridges over estuaries, launching ramps on roads which abut water, public walkways in urban renewal areas. (See Policy (24) for applicable state programs and federal funding sources.)

If federal and state sources are found to be inadequate to provide necessary funds for maintenance, CZM will work with the Department of Environmental Management and local officials to develop pricing schemes for public recreation that produce revenues sufficient to cover operating expenses.

Policy 23

Provide technical assistance to developers of private recreational facilities and sites that increase public access to the shoreline.

Demand for the kinds of recreation experiences enjoyed on the coast is high; the facilities and sites required to provide these experiences are

coastally dependent. Many of the facilities have adverse impacts on the marine environment. Yet, if Massachusetts is to help the public to enjoy the benefits of a productive marine environment and visually pleasing coastal zone, both public and private means of securing general access to the shore should be encouraged.

IMPLEMENTATION

CZM's Marine Environment policies (see Policy (1) for detailed wording) specifically exempt certain types and amounts of recreation facilities from restrictions placed on salt marshes, dune areas, sandy beaches, and barrier beaches. For example, the construction of boat ramps is permitted in some of these significant resource areas, provided associated parking facilities are built at higher elevations in less sensitive areas away from the waterfront. Marinas are also permitted, provided their wharves or piers are built on pilings, allowing the free flow of the tide and the maintenance of existing circulation.

Conditioning construction to minimize adverse environmental impacts will necessitate more sophisticated planning and design by private developers. Therefore, CZM will prepare a design and construction practice handbook to assist private developers in designing, constructing, and operating marinas, beaches, boat ramps, and other recreational facilities consistent with CZM's Marine Environment and Coastal Hazards, Visual Environment, and Ports and Harbors Policies. CZM will also offer technical assistance to municipalities to identify appropriate boating facility sites, develop harbor master plans, or provide other incentives to encourage private boating facility development. (See Ports and Harbors, Policy (20)).

Policy 24*

Expand existing recreation facilities and acquire and develop new public areas for coastal recreational activities. Give highest priority to expansions or new acquisitions in regions of high need or where site availability is now limited. Assure that both transportation access and the recreational facilities are compatible with social and environmental characteristics of surrounding communities.

Every region of the Massachusetts coast is deficient in various types of recreation. Although all recreation needs will probably never be met, both because of environmental degradation and high costs of acquisition, development and maintenance, some regions are critically deficient, and opportunities are dwindling. CZM's first priority is to improve transportation to and maintenance of existing facilities. Where such improvements would not be sufficient to satisfy recreation demand with areas of high need, acquisition of new land to expand existing sites will be necessary.

*Federal Consistency applies

"High need" areas are shown on the map in Section 3.5 and are based on the demand/supply ratio of recreation facilities. Further specification of high need is incorporated in the site evaluation scheme developed by the U.S. Bureau of Outdoor Recreation for the Land and Water Conservation Fund used for recreation purchases. Generally, the evaluation favors areas with high density population, low recreation land area, low financial ability to make purchases, and above all, the quality of the proposed site and project.

Within regions of high need, CZM favors expansion of existing areas when:

1. Undeveloped areas abutting or near existing recreation sites are suitable for expansion; or

2. Existing sites are over-utilized and there is no nearby substitute which might shift demand for the activity; or

3. Other public improvements have been made or are proposed on/near existing recreation sites; for example, where state or federal funding has been used to slow or prevent erosion of beaches; and

4. Access, including transit, roads and parking, is sufficient or will be sufficient subsequent to implementation of transportation improvements under Policy (21).

The acquisition of completely new sites is a complex process in all areas of the Massachusetts coastal zone: in urban areas there is usually not adequate land or conditions suitable for new sites; in suburban areas community opposition is high because the residential character can be severely impacted by increases in traffic, people and ancillary services; and in rural areas the recreation development must be particularly sensitive to environmental constraints. However, after transportation, expansion and maintenance policies have been implemented, sites must still be acquired in order to satisfy the growing demand for recreation.

In recognition of such concerns, a formal committee comprised of communities affected and relevant state agencies will be convened prior to acquisition of any new sites in order to discuss and resolve the following issues:

-- the "need for the acquisition".

-- potential traffic and environmental impacts.

-- potential social and economic impacts on the surrounding community(ies).

-- possible alternatives, including expansion of other existing sites; acquisition of smaller dispersed sites in conjunction with trails; or acquisition of large sites in other locations.

IMPLEMENTATION

Funding of site expansions will generally be considered a higher priority than new acquisitions. Expansions are a higher priority because the detrimental impacts associated with the expansion will generally be less than disturbing previously untouched areas. However, such expansions must

be consistent with policies of this plan relating to protection of the marine environment.

The following table lists coastal sites which CZM considers to be of high priority for acquisition and development supported by state and/or federal recreation funds, and cites three federal properties, which if disposed as surplus land, should be utilized for recreation purposes. Use of state or federal funds for any of these sites will be considered consistent with Policy (24). However, prior to acquisition, site specific analyses of environmental, economic, and social constraints should be conducted to determine the appropriate form of recreational use and development that should occur. Use of the three potential federal surplus lands for any purpose other than recreation will be deemed inconsistent with this policy. Proposed state or federally funded acquisitions of sites not on this list will require further evaluation by CZM and amendment or revision of the CZM Program affirming that such acquisitions are consistent with Policy (24).

CZM will pass through funds or encourage funding by the Department of Environmental Management or Public Access Board to acquire new recreation sites of highest quality in areas with highest need. If, after consultation with communities, it is determined a site can sustain intensive use, Land and Water Conservation funding should be used for acquisition and development. Conversely, if passive use of an area is more appropriate, the Self-Help fund under Conservation Services should be used. Both funds are administered through the Executive Office of Environmental Affairs. Areas for Preservation or Restoration will have unique characteristics and pristine environments, and as such will be purchased where necessary with Self-Help funds in order to allow citizens to enjoy passive recreation opportunities. Priorities for <u>active recreation in areas of high need</u> (as previously described) are:

1. Swimming and beach use: In swimming deficient regions, in disbursing recreation funds, beaches for swimming will have highest priority for acquisition since they generate the highest recreation use. Highest priority will be assigned to acquire sites of small dispersed sandy beaches and beach easements.

2. Boating: Boat ramps will have highest priority for the expenditure of state funds. State funds for dredging new mooring basins should not be used to meet recreation boating needs except where there are no other feasible alternatives for resolving conflicts between recreational boating and commercial fishing; where a region-wide boating public will be served; and where navigation will be improved (see Ports and Harbors Policy (19)).

3. Fishing and shellfishing: Special easements, piers, landings, access improvements associated with other recreation acquisitions, or public improvements making full use of multiple use concepts will have high priority.

4. Camping and hiking: Development of inland sites to provide near shore camping in conjunction with transportation improvements will have high priority. Easements for hikers and bicyclists to travel between existing/future inland sites and shoreline recreation should also be acquired.

SITES CONSISTENT WITH POLICY 24

I. Local acquisition financially supported by state and/or state allocated federal funds (CZM Act Section 315 Amendments providing acquisition funds, BOR, Self Help):

1) Chariff Property, Rockport
2) Knowlton Wharf and Field, Rockport
3) Halibut Point, Rockport
4) Long Wharf, Gloucester
5) Downtown Gloucester Visitor's Park, Gloucester
6) Danversport - expansion and improvement to Pope's Landing & adjacent park
7) Kernwood Park, Salem
8) Salem Harbor Islands, scenic & recreational easements
9) West Beach, Beverly
10) Lynn Harbor Waterfront, Lynn
11) Forest River, Salem
12) Chelsea Naval Hospital Site, Chelsea
13) Belle Isle Marsh, Winthrop
14) East Boston Waterfront, East Boston
15) Charlestown Naval Shipyard Park Expansion, Charlestown
16) Dorchester Waterfront, Columbia Point & Port Norfolk
17) Mann Hill Beach, Scituate
18) Cohasset Harbor Boat Ramp & Park Expansion, Cohasset
19) Blackman's Point, Marshfield
20) Green Harbor, Marshfield
21) Saquish Beach, Plymouth
22) Ah-de-na, Kingston
23) Ellisville Harbor, Plymouth
24) Access Points on Runnins River, Seekonk
25) Bicentennial Waterfront Park, Fall River
26) Land Adjacent to Assonet Bay, Berkley-Freetown
27) Washburn Island, Mashpee
28) Popponesset Bay Beaches, Mashpee
29) Barrier Beach, Brewster
30) Lamberts Cove, West Tisbury
31) Tiah's Cove, Tisbury Great Pond, West Tisbury
32) Nantucket Water Access Points, Nantucket

II. State Acquisition:

1) Lynn Harbor Waterfront, Lynn
2) Chelsea Naval Hospital, Chelsea
3) Revere Beach Expansion, Revere
4) Boston Harbor Islands
5) Access Points on Palmer River, Swansea-Rehoboth
6) Boat Ramp on Lee River, Swansea
7) Expanded State Owned Rest Area, Route 24, Freetown
8) Limited trail access to Stony Point Dike, Wareham
9) South Cape Beach, Mashpee
10) Elizabeth Islands, Dukes County

III. Potential Federal Surplus Land:

1) Coast Guard Station, Plum Island
2) Air Force Land, Fourth Cliff, Scituate
3) Thacher Island, Rockport

*All these sites are discussed in the Coastal Atlas or have been proposed for purchase.

Any sites not listed here but located in Areas for Preservation or Restoration (Areas of Critical Environmental Concern) are also considered to be consistent with Policy (24) (see Policy (2)).

Primary State Programs and Authorities

Acquisition and Eminent Domain Powers of Public Access Board, DEM, MDC
Self-Help Fund, Conservation Services

Primary Federal Consistency/Funding Sources

Coastal Zone Management Act Amendments, 1976, (Section 315)
Land and Water Conservation Fund (P.L. 88-578)
HUD Community Development Block Grants
Economic Development Administration Grants

Policy 25

Encourage energy conservation and the use of alternative sources such as solar and wind power in order to assist in meeting the energy needs of the Commonwealth.

As noted in Policy (9), CZM strongly endorses efforts to conserve energy and to develop alternative sources of power. To this end, CZM will cooperate with the Massachusetts Energy Policy Office in implementing the Commonwealth's comprehensive energy conservation program, insofar as it relates to state activities within the coastal zone. In addition, CZM will support alternative energy source demonstration projects that may be proposed for location in the coastal zone, and will assist in locating appropriate sites and evaluating feasibility studies as appropriate.

Primary State Programs

Massachusetts Energy Policy Office

Primary Federal Programs

Office of Energy Research, DOE

Policy 26*

Ensure that state and federally funded transportation and wastewater projects primarily serve existing developed areas, assigning highest priority to projects which meet the needs of urban and community development centers.

This policy will focus federal and state investment into existing developed areas or adjacent areas suitable for development to promote development there consistent with the Commonwealth's Statewide Growth Policy. The two types of public investment covered by this policy, state and federally funded sewage treatment and collection facilities and transportation improvements, are dealt with separately below.

IMPLEMENTATION

Transportation Improvements

The state's transportation network in the coastal zone is relatively complete as compared with sewage treatment facilities. Therefore, CZM's involvement in transportation planning, except as enumerated in the Recreation section of this chapter is expected to be more limited. However, CZM will coordinate with the federal, state, and regional agencies involved in transportation planning to ensure that investments in transportation improvements serve to guide growth in a manner consistent with CZM objectives.

Coordination between the Executive Office of Environmental Affairs and the Executive Office of Transportation and Construction will be achieved by means of the following procedures:

a) Implementation of Policy (26) through the process of systems planning.

CZM will actively participate with the Bureau of Transportation Planning and Development and with Regional Planning Agencies in the systems planning process in which alternative transportation improvements for a particular corridor are evaluated for consistency with other regional planning efforts.+ Evaluation of effects on land use and growth which may result from proposed transportation activities in an integral part of this process and must be reflected in the selection of recommended improvements. CZM will also make an explicit effort to ensure that its concerns for providing incentives for focusing growth to existing developed areas are considered in the formulation of regional Annual Unified Work Programs.

+Note: In the case of highway projects, the systems planning phase is the Corridor Planning Studies phase.

*Federal Consistency applies

CZM will review through the systems planning process all major transportation projects for consistency with the above policy. If federal funds are involved, this review will constitute CZM's federal consistency review with respect to Policy (26). Major transportation projects are defined for purposes of this policy as those system projects having a total estimated construction cost of at least five million dollars and involving the construction of new capital facilities which:

1. Provide new access to an area by means of an entirely new right of way.

2. Increase the design capacity of a major transportation system more than 50% beyond its previously existing design capacity; or

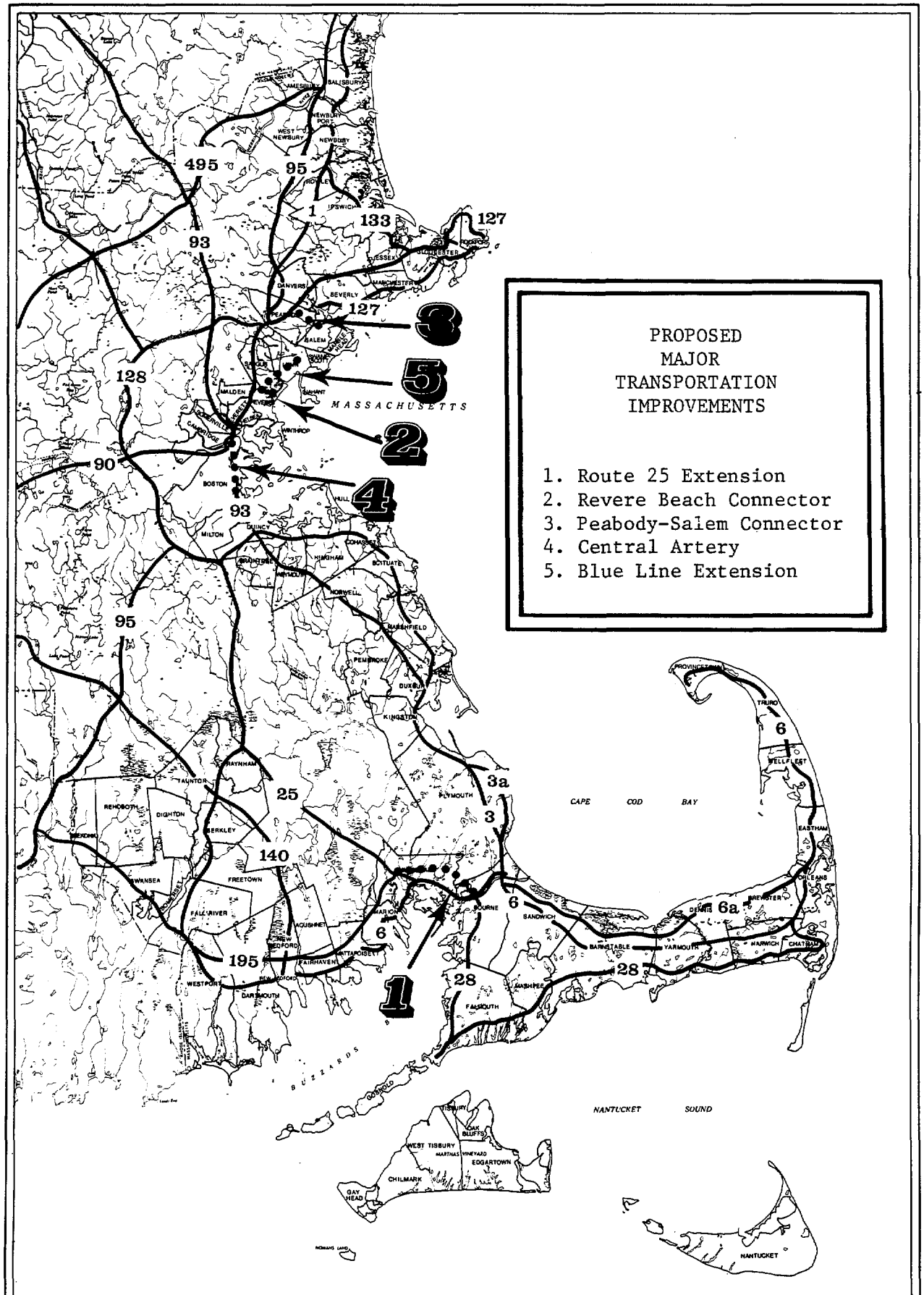
3. Introduce a new transportation mode adding to the capacity of an area's total transportation system by more than 50%.

Consistency of major projects with Policy 26 will be judged on the basis of anticipated changes in land development which may result from changes in transportation accessibility, particularly where development would be stimulated in rural, unserviced, or open space lands, or lands with environmental constraints. Projects will be evaluated for "consistency with the objectives and findings of other planning efforts in the region" consistent with BTP&D's Corridor Planning Studies process for highway projects or systems planning process for non-highway projects.

Where a proposed major project does not require a federal consistency determination because no federal funds are involved, the Secretaries of EOEA and EOTC will collaborate in resolving any inconsistencies with Policy 26. If the inconsistencies cannot be resolved, the proposal will be brought before the state's Development Cabinet (composed of the Secretaries of EOEA, EOTC, Executive Office of Consumer Affairs, and Executive Office of Economic Affairs, Director of OSP, Commissioner of DCA, and a representative of the Governor) to determine how state priorities for meeting transportation needs and protecting the environment can best be reconciled with respect to the particular project. If resolution cannot be reached at this level, the Secretaries of EOEA and EOTC will then bring the issue to the Governor for similar review.

A number of major projects are now proposed for construction within the boundary of the coastal zone. Since the CZM plan, as noted above, provides that CZM review of transportation projects for consistency with Policy 26 will take place in the systems planning stage, CZM will not be undertaking a formal consistency review under Policy 26 for major pending projects which have proceeded past the systems planning stage. CZM has concluded that all major transportation projects now past the systems planning stage will serve existing development and thus are consistent with Policy 26. Major projects included in this category are:

-- Route 25 Extension around Buttermilk Bay
-- Revere Beach Connector
-- Peabody/Salem Connector
-- Northern Section of the Central Artery



EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
COASTAL ZONE MANAGEMENT PROGRAM

Two other major projects - Extension of the Blue Line to Lynn and the Central and Southern Sections of the Central Artery have not yet advanced beyond the CPS phase of planning, but will be deemed consistent with Policy 26 by CZM because they service already developed areas.

b) Implementation of other CZM policies through the processes of A-95, NEPA and MEPA.

EOTC and its constituent agencies will consult with CZM as to the measures which must be taken by the transportation agencies to minimize damage to the environment resulting from the impact of transportation improvements on the unique characteristics of the coastal zone. In particular, CZM will review both major and non-major projects for consistency with other policies of the CZM plan which may be applicable. As with (a) above, if federal funds are involved, such review will constitute CZM's federal consistency review. Such review will focus on the following:

-- assessment of the routing and design of proposed facilities relative to marine resources and potential impacts (see Policies 1, 2, and 4)

-- assessment of the routing and design of proposed facilities relative to flood and erosion hazard concerns (see Policy 15)

-- assessment of impacts on historic districts or sites (see Policy 12)

-- assessment of impacts on public recreation beaches (see Policy 13).

Consistency will be required for these six policies. CZM will also play an advisory role in relation to Policies 18, 21 and 23 whereby recommendations will be made to mitigate adverse visual impacts and improve access to recreation facilities, and provide trail linkups and access to recreational sites in conjunction with transportation improvements.

CZM will be informed of requests for federal funding for transportation through the A-95 process and will participate actively in the development of Environmental Impact Statements under the National Environmental Policy Act and Environmental Impact Reports under the Massachusetts Environmental Policy Act.

Since major transportation projects typically are developed over many years in a number of discrete stages, CZM will develop with the transportation agencies a framework for CZM review and comment which in many cases will provide for CZM evaluation before the stage at which federal consistency requirements are applicable. The goals of such early review will be to assure that special coastal zone considerations are taken into account at the earliest possible time, and also to permit the transportation agencies to engage in other preliminary work with the knowledge that the proposed project will be consistent with the CZM plan. Thus, land use issues will be reviewed in connection with the Corridor Planning process and issues related to other CZM policies will be reviewed in connection with the EIS whenever possible. Further clarification of this process is provided in the Memoranda of Understanding in Appendix B.

c) State and Federal Permits

As with other development activities, transportation projects must comply with federal and state permit procedures. Where a project requires a federal permit, CZM may waive federal consistency determination if it has already deemed the project to be consistent with CZM policies pertinent to the federal permit.

IMPLEMENTATION

Sewage Treatment Facilities and Collection Systems

CZM will coordinate with federal, state, regional and local entities responsible for waste treatment facilities planning, construction and permitting to ensure that the location and design of treatment plants and sewage collection facilities encourage the consolidation of growth in existing developed areas. The Sewer Service Areas map on the next page will be used as a policy guide in determining future state and federal investments in waste treatment facilities in the coastal zone. CZM priorities are summarized below.

-- Accord highest priority to 201 projects in existing urban areas or community centers where water quality problems merit rehabilitation or new construction of treatment and collection facilities.

-- Accord next highest priority to projects proposed for contiguous developed areas, which are as yet unsewered, but whose water quality problems merit implementation of structural solutions.

-- Accord lowest priority to projects proposed for undeveloped areas. Public investment in wastewater facilities will be allowed only when there is a documented public health problem requiring resolution through structural measures. System design will be carefully evaluated as indicated below particularly in coastal wetlands and within floodplains. Unsewered private development within any of these areas must meet all environmental regulations of the Commonwealth (Policy 10) and be consistent with other applicable CZM policies. It is anticipated that unsewered areas will not be developed at a density greater than four units/acre.

These priorities basically parallel the priorities currently used to formulate the state's section 106 Priority List. Sewage collection systems designed to serve newly developed areas or designed with excess capacity greater than one third of the population in existence in 1972 are ineligible for funding.

For purposes of consistency with the coastal zone program, projects that have advanced beyond the Facility Planning Phase (step 1) are deemed to be consistent with the program. Projects for which Step 1 plans and Step II (design) applications have not been completed at the time of the CZM program approval will be reviewed through A-95 (and MEPA and NEPA if applicable) for conformance to all applicable CZM policies when their Step I plans are submitted for approval. Such review will focus on the following:

1. The location of the outfall and/or method of treatment relative to marine resources (see Policies (1), (2), (3)).

2. The location and design of proposed facilities relative to flood and erosion hazards (see also Policy (15)).

3. Whether groundwater quality and quantity will be adversely affected.

4. Whether sources of pollution have been adequately researched and documented, and whether alternative solutions have been adequately considered.

5. The location, design, and capacity of proposed facilities relative to secondary impacts and growth inducement including assessment of:

   * the extent and characteristics of areas that will be opened up for development that were previously constrained by soil limitations on subsurface disposal

   * compatibility with local zoning and density patterns.

6. Potential impacts on historic districts or sites (see Policy (12)).

7. Potential impacts on public recreation beaches (see also Policy (13)).

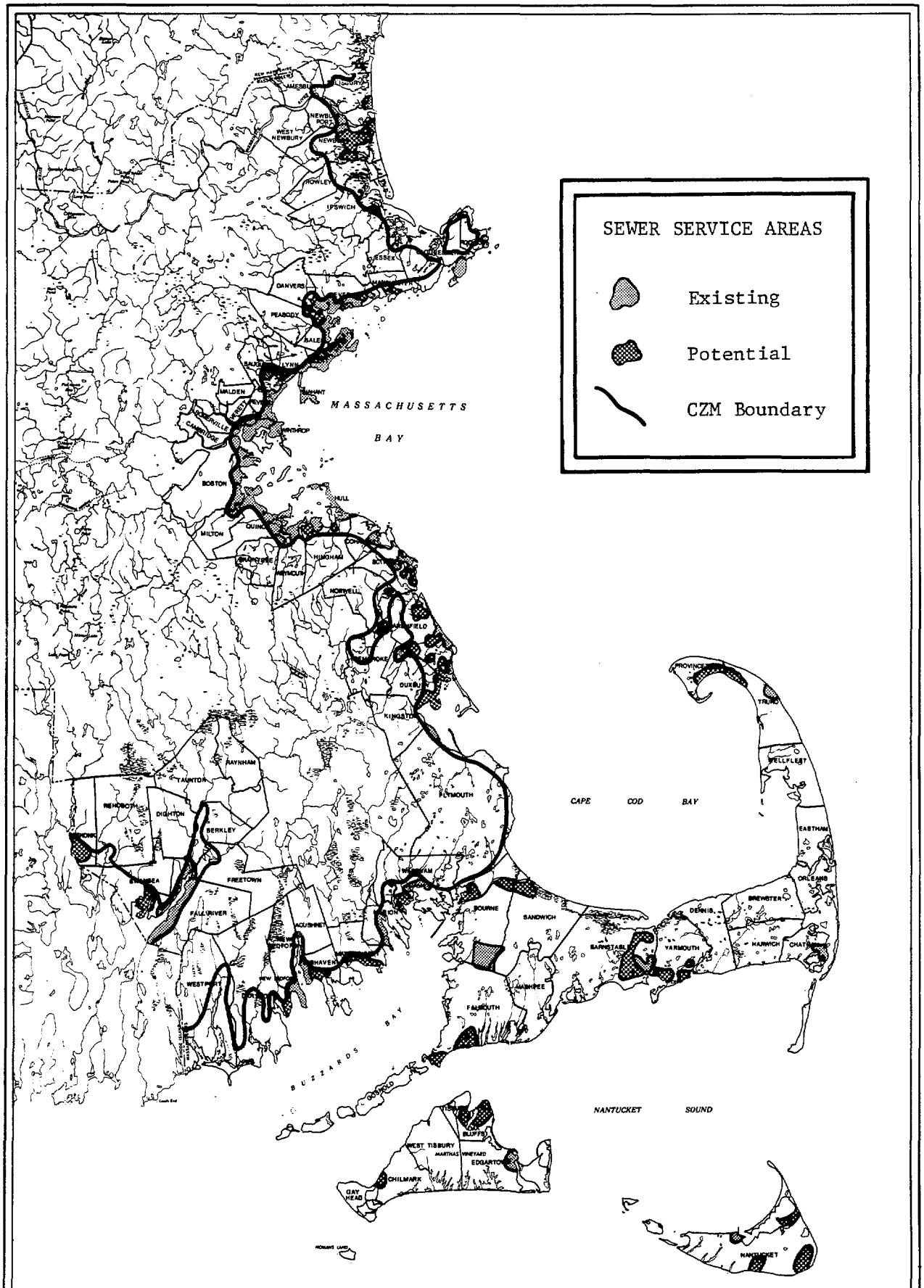
In addition to review through A-95, consistency with Policy 26 will be facilitated through review by the Secretary's Office of the state's annual "106" priority list, since the state funds 15% of construction grant awards and the Secretary is empowered with final approval authority. Furthermore, CZM will continue to review 208 areawide plan sewer service area delineations and five year priority lists for conformance to Policy 26. (201 projects must be consistent with approved 208 plans).

Primary State Programs

Executive Office of Transportation and Construction,
DPW, MBTA
Division of Water Pollution Control
208 Planning (DEQE)

Primary Federal Consistency

EPA - 201 Construction Grants, 208 Areawide Programs
DOT - UMTA, FHWA



EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

COASTAL ZONE MANAGEMENT PROGRAM

Policy 27

Encourage the revitalization and enhancement of existing development centers in the coastal zone through technical assistance and federal and state financial support for residential, commercial and industrial development.

IMPLEMENTATION

Most federal and state programs which provide subsidies for housing development or financial support for commercial and industrial investments are already directed at providing assistance to urban areas and as such serve to stimulate development there. Criteria for the allocation of funds authorized by these programs are well established. CZM, along with OSP and DCA, can act as an advocate for Massachusetts coastal towns in the solicitation of federal and state funds, where the funds are to be used consistently with CZM program policies. CZM will be particularly active in this advocacy role in those situations where the proposed uses of funds will:

1. enhance community and regional character by providing for the rehabilitation or adaptive reuse of older structures within existing urban and community development centers.

2. maximize use of existing or upgraded infrastructure investments consistent with the previous policy.

3. not pre-empt the use of waterfront land for maritime dependent activities (see Ports and Harbors Policy (7)).

In addition, there are a number of local zoning tools (e.g., cluster zoning, phased growth, and transfer development rights), which can be used to promote growth of existing centers, preserve open space, and prevent sprawl development. CZM's Technical Assistance legal staff, in concert with the Office of Local Assistance of DCA will be available on request to assist communities who want to utilize these tools in local land use management.

Finally, CZM staff within EOEA will be available to cooperate with private developers proposing major developments in the coastal zone who request information on applicable EOEA programs and permitting requirements or assistance in examining alternative development options for consistency to the CZM program.

Primary State Authorities and Programs

Zoning Enabling Act (Ch. 808, Acts of 1975)
Subdivision Control (MGLA Ch. 4)
Office of Local Assistance (DCA)
Office of State Planning
Massachusetts Growth Policy Development Act (Ch. 807, Acts of 1975)

Primary Federal Funding Sources

Department of Housing and Urban Development
Housing and Community Development Act
Economic Development Administration

CHAPTER 5

HOW THE PROGRAM AFFECTS DEVELOPMENT ACTIVITIES WITHIN THE COASTAL ZONE BOUNDARY

The Massachusetts Coastal Zone Management Program does not include new laws or increase the present number of state or local permits required for development activities. Rather, the program seeks to improve the administration of existing laws, which when effectively and consistently administered in coordination with applicable public funding and investment programs, will provide for optimal use of Massachusetts coastal resources. Because the program is based on existing regulatory laws, development activities will basically be subject to the same locational constraints which apply now.

Essentially this means that:

(a) general development is encouraged to locate in already developed areas or in areas contiguous to them by focusing public investments in these areas,

(b) development in restricted wetlands is limited to certain permissible uses such as catwalks, piers, boathouses, etc.,

(c) development in unrestricted wetlands is subject to conditions necessary to provide compliance with the Wetlands Protection Act,

(d) development in water areas below mean high tide is subject to compliance with provisions of the Ocean Sanctuary Acts, if applicable, Tidelands licensing, and the Wetlands Acts,

(e) development in upland areas is subject to the conditions of the State Environmental Code, when sewers are not available,

(f) development near public recreation beaches or designated historic sites which requires a MEPA review in conjunction with a state permit is conditioned to minimize adverse impacts at the historic or recreation site,

(g) maritime-dependent development is given priority over non-maritime development in designated port areas, if a tidelands license for dredging, filling or bulkheading, or other construction below mean high water is required.

Development will not otherwise be affected provided existing federal, state and local requirements are met. Energy facilities, for example, will need to obtain approval from the Energy Facilities Siting Council. Whether an area otherwise meeting the above conditions is used for single family homes, high rise apartments, commerce or industry will continue to be decided by local governments. Although the program points out other concerns associated with development pressures present in the coastal zone - competition among land and water uses, loss of community character and visual degradation - the state will use a range of incentive devices

rather than regulatory powers to address them. General development is encouraged to locate in existing developed areas and adjacent lands by directing federal and state investment in sewage treatment facilities and transportation services to these areas. State sewering priorities already follow this policy, and proposed transportation projects will be reviewed for consistency with this policy.

To further facilitate understanding of how the program applies to specific geographic areas within the coastal zone boundary, the following discussion outlines how the policies relate to the use of coastal resources, beginning with open ocean waters and proceeding inland to the coastal zone boundary.

1. Open Ocean Waters

Open ocean waters include waters other than estuaries and coastal embayments. The open ocean provides opportunities for the harvest of living marine resources and mineral resources, recreation, and water transportation.

High priority uses of the ocean are commercial fishing, shipping and water sports, marine transportation and national defense activities. Uses which are conditioned are dredging, dredged material disposal, and mineral and energy resource extraction.

2. Coastal Wetlands

Coastal wetlands are salt marshes, barrier beaches, shellfish beds, dunes, beaches and salt ponds.

These are natural features whose role in the environment is vital to the continued health, productivity, and functioning of coastal ecosystems, and whose values can be destroyed by physical alteration. Massachusetts has two laws relating to the management of coastal wetlands, and therefore two programs of resource management.

(a) Areas Subject to the Wetlands Restriction Act: Under the authority of the Wetlands Restriction Act, about 30,000 acres (mostly salt marshes) have been restricted. This acreage represents about 40 percent of the state's coastal wetlands. Generally, priority uses of these areas are limited to conservation, outdoor recreation, shellfish harvesting, and other non-intensive uses. Other permissible uses include underground energy transportation lines, and certain other utility lines, maintenance of existing roads and boat channels and the construction of wharves, piers, boats, shelters, floats and catwalks. Maintenance dredging is also permitted. All other uses are prohibited. With the availability of federal CZM funds to support the restriction program, the remainder of the Commonwealth's significant wetlands are to be similarly restricted. The Wetlands Protection Act also applies to areas which have been restricted, but the Order of Conditions can not allow any uses which are not permitted under the restriction order.

(b) Areas not Subject to the Wetlands Restriction Act: These are the remainder of coastal wetlands which have not been restricted

under the Wetlands Restriction Act. The Commonwealth plans to place some of these areas under restrictions in the future. It is important to note that until such areas are restricted no uses will be evaluated on a case by case basis. Development in these wetlands is subject to conditions under the Wetlands Protection Act. This Act permits any use provided that the following specified interests are protected:

-- land containing shellfish,
-- fisheries,
-- prevention of pollution,
-- storm damage prevention,
-- flood control,
-- ground water supply, and
-- public or private water supply.

The jurisdiction of this Act extends to 100 feet inland of the 100 year floodplain and includes areas subject to erosion, since these coincide with exposed beaches, dunes, and barrier beaches.

Additionally, construction in water bodies such as embayments and estuaries is to be managed on a case by case basis through the Waterways Program and by the Division of Marine Fisheries to protect anadromous fish runs, and to minimize adverse effects on circulation, sediment transport and water quality.

In the remainder of the area between the significant natural features and 100 feet inland of the 100 year floodline, all uses are permitted provided they do not significantly impact a wetland area. Public works projects which encourage development in hazardous areas are considered low priority, as are structural protection measures unless warranted by overriding public interests.

3. Designated Port and Developed Harbors

These are areas where economic or recreation development is important to the economy of the region or the Commonwealth and where capabilities exist to support coastally dependent development. In these areas development of maritime-dependent and waterfront related use are given high priority. The program encourages land and water development that increases the use and growth of port and harbor facilities. CZM's port and harbor policies (7) and (19) apply only when state or federal permitting or funding is required for dredging, bulkheading, or pier construction.

High priority uses in designated ports are commercial fishing operations, maritime shipping and marine industry, including energy facilities as indicated in Policy (7). Other uses are permitted provided they do not conflict with these priority uses. Recreational boating, tourist facilities, and water-related activities are considered priority uses in developed harbors. New dredging and filling outside of these areas are low priorities.

4. Recreation Areas

These are recreational areas unique to the coastal zone, such as beaches, boat facilities, related trails and campgrounds.

These areas are managed primarily through government funding for maintenance, improvements and acquisition. However, policies also focus on increasing non-auto coastal access. Additionally, the policies presume a public right to recreation; therefore, developments which jeopardize existing public recreation beach facilities shall be reviewed under the Massachusetts Environmental Policy Act and conditioned or denied as appropriate in order to minimize impacts.

5. Upland Areas with Development Constraints

These are areas with impermeable or wet soils, steep slopes, or bedrock near the surface. Unless public sewers are provided to overcome the constraints these factors impose on the use of subsurface disposal systems, development will be constrained by the existing State Environmental Code, which establishes minimum requirements for such systems. In the absence of sewers, the Code will generally restrict permissible uses in these areas to moderate to low density residential, open space, recreation or other uses not requiring subsurface disposal. Permissibility is determined on a case by case basis because of the variability of soil and geologic conditions from site to site. If areas are sewered, they can be developed consistent with the policies for the remainder of the coastal zone.

6. Remainder of the Coastal Zone

The remainder of the coastal zone includes developed areas or areas with soils suitable for development and lies inland of the 100 year coastal floodplain. The limited interests which apply throughout the coastal zone will affect development in these areas. The five interests are:

(a) Accommodate Energy Facilities: Because certain types of energy production, storage and distribution facilities are dependent on waterfront siting and because these facilities usually have impacts affecting the coastal zone, the state program has insured that these uses can be accommodated by using the authority of the Energy Facilities Siting Council. The program specifies that alternative inland sites must be considered for non-coastal dependent facilities.

(b) Protect Public Recreation and Historic Sites: Because of their public recreation, cultural and historic value, these sites or districts must be protected from conflicts caused by nearby uses or activities which would degrade their quality. The Massachusetts Environmental Policy Act and the federal procedures for protection of historic districts will be the principal management measures used to minimize such conflicts.

(c) Focus State and Federal Wastewater Treatment and Transportation Projects into Developed or Contiguous Areas: The state will encourage development in already developed areas and adjacent lands by giving priority for transportation and wastewater treatment facilities funding in these areas. Development can occur at any density deemed appropriate by local governments providing existing state laws are met. For example, the coastal management ment program does not constrain local governments in determining if high rise apartments and hotels or single family homes would

be most appropriate so long as applicable state permits can be obtained. Experience indicates that areas not receiving major public support investments generally will be developed at low densities.

(d) Protect Air and Water Quality in All Parts of the Coastal Zone: Activities which emit pollutants that significantly affect ambient air and water quality can cause significant impacts on coastal waters regardless of their location and will be required to follow existing state and federal laws.

(e) Provide Open Space and Recreation: The remaining state concern in this area is the provision of open space and recreation sites. The acquisition priorities are incorporated into the coastal management program and are carried out through eminent domain powers of the state Public Access Board.

The above five interests (a-e) represent the state's concerns and policy in the remainder of the coastal zone. The resolution of issues involving protection of community character or preference for zoning type and general land use will remain the responsibility of local government.

CHAPTER 6

MANAGING THE COAST: KEY STATE AGENCIES

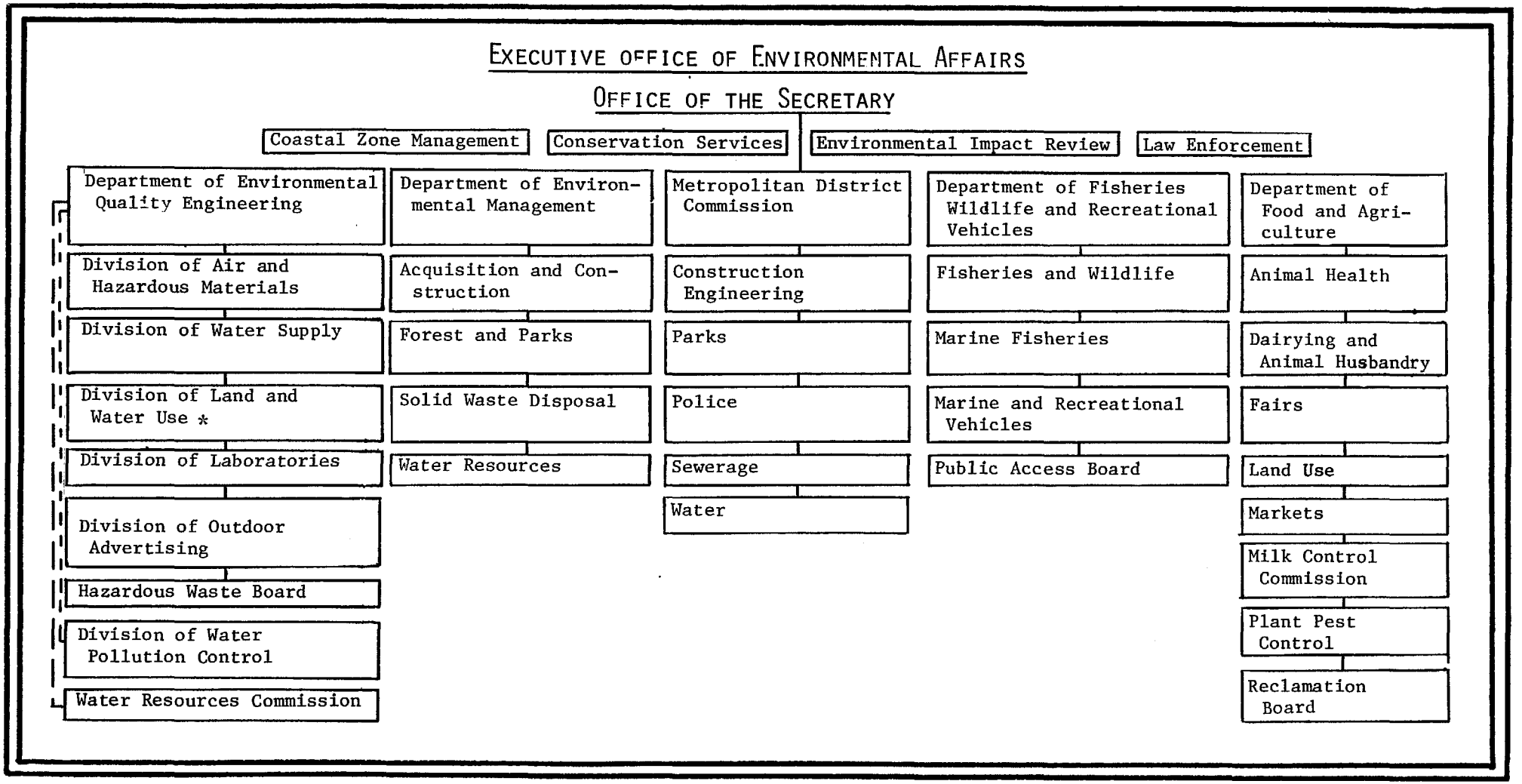
The vast majority of decisions about what can and cannot occur in the coastal zone will still be made by local governments. Decisions of statewide significance will be made in the Executive Office of Environmental Affairs with the exception of decisions about the location of energy facilities which will be made by the Energy Facilities Siting Council (EFSC) using the Coastal Zone Program for guidance. The state recognizes that while many of these agencies have been operating within the coastal zone, this program is the first to coordinate activities among agencies.

This Chapter describes only the key agencies responsible for implementation. Chart 6.5 lists the primary authorities that will be used to implement each policy presented in Chapter 4. Chart 6.6 summarizes the substance of each authority and the status of related agency regulations and guidelines.

6.1 THE OFFICE OF THE SECRETARY WITHIN THE EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

The Executive Office of Environmental Affairs (EOEA) is the designated lead agency for Section 306 implementation of the Massachusetts Coastal Zone Management Program. Created out of forty-three existing state agencies, EOEA together with its various departments and divisions is charged to carry out the state environmental policy. The Coastal Zone Management Program represents the first major attempt by the EOEA and its line agencies to conduct a comprehensive resource management program using the administrative structure and authorities provided by the 1969 reorganization of Massachusetts state government. Through regulations to be promulgated by the Secretary of Environmental Affairs and memoranda of understanding between the Secretary of Environmental Affairs and the various state agencies involved, the Program will be implemented as state environmental policy. Designation of areas of critical environmental concconcern, resolutions of conflicts among EOEA agencies, periodic performance evaluations and fiscal controls are the primary measures that will be specifically utilized by the Secretary to implement the program. Within the Executive Office of the Secretary the two major offices involved in the program are:

1) The Office of Coastal Zone Management, which will continue to advise the Secretary on planning and policy formulation for the coastal zone as well as aid in performance evaluation. In addition, the Office will undertake in-depth technical studies of key coastal issues, promote development consistent with coastal policies, provide technical assistance to local communities, and provide in-service training, technical assistance, clarification of policies, coordination and financial assistance to EOEA agencies in order to enable them to effectively implement the Program. The Office will become involved in the routine activities of agencies in only four ways:



* Includes Wetlands, Waterways, and Mineral Resources Programs

(1) continuing its present role in reviewing actions through MEPA, NEPA, and A-95 reviews;

(2) reviewing all federal agency determinations of consistency with the state program;

(3) serving as an expert witness at formal hearings conducted by any EOEA agency on coastal actions, or bringing cases to a hearing; and

(4) ensuring that EOEA agencies relay notices of pending management decisions in the coastal zone to allow adequate time for local governments to comment.

2) The Environmental Impact Review Section evaluates and monitors state environmental impact statements required by the Massachusetts Environmental Policy Act (MEPA). MEPA established an environmental review process for state actions, projects with state funding contributions, or projects requiring permits or licenses from state agencies. As an information device, MEPA attempts to provide full disclosure of the environmental consequences of state related activities. The MEPA staff also reviews and comments on appropriate federal projects filed under the National Environmental Policy Act (NEPA). MEPA publishes the Environmental Monitor, which is a key mechanism for informing citizens and other government agencies of projects in the coastal zone, of federal consistency decisions, MEPA actions, hearings, etc. The MEPA statutes also direct all agencies of the Commonwealth to "review, evaluate, and determine the impact on the natural environment of all works, projects, or activities conducted by them" and to "use all practicable means and measures to minimize damage to the environment." The MEPA statute further provides, "unless a clear contrary interest is manifested, all statutes shall be interpreted and administered so as to minimize and prevent damage to the environment." This legislative charge makes possible the closer scrutiny and regulation of projects or activities under such EOEA programs as the Wetlands and Waterways Programs, thereby ensuring that the environmental concerns in CZM policies are addressed. (See Appendix I for discussion of recent MEPA amendments)

The Executive Office, itself, will be responsible for designation of Areas of Critical Environmental Concern as provided for in MGLA, Ch. 21A, S. 2(7). This designation, as noted in Policy (2), will be the basic procedural mechanism for designating Areas for Preservation or Restoration in the coastal zone, a process required by the federal Coastal Zone Management Act, and as such, the two designations are synonymous. The basic effect of designation as an Area of Critical Environmental Concern/Area for Preservation or Restoration is to negate all exemptions to filing under the Massachusetts Environmental Policy Act, thereby ensuring that any project proposed for the area is fully reviewed in the interest of protecting the conservation, recreational, ecological, or esthetic values of the area. Other state agencies will act consistently with the designation as indicated in Chapter 4.

As specified in the draft of the Secretary's 21A regulations, nominations of areas may be made by ten citizens, by towns or conservation commissions, by state agencies, RPA's or members of the Legislature. Consistent with this procedure, the CZM Program has identified ten areas in the Massachusetts coastal zone which will be nominated for ACEC/APR designation. The characteristics of these areas are fully described in the Coastal Atlas.

In order for an area to be designated an ACEC/APR it must first comprise several significant natural resources, such as salt marshes, barrier beaches and dunes, and meet the standards for designation described in the draft regulation. The standards relate to the following:

1. Public Health
2. Quality of the Area
3. Productivity
4. Uniqueness of Area
5. Irreversibility of Impact
6. Imminence of Threat to the Resource
7. Economic Benefits
8. Other Supporting Factors

If the Secretary decides to proceed with a designation, public notice is given for a hearing to be held within twenty-five miles of the nominated areas. Members of the public may make known their views concerning the proposed designation either at the hearing or by letter to the Secretary.

6.2 DEPARTMENTS WITHIN THE EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

The Coastal Zone Management structure is essentially one where the line EOEA agencies will have the primary responsibility for the implementation of CZM policies. This will be accomplished via a Memorandum of Understanding with the Secretary and appropriate agencies agreeing to jointly implement the CZM Program with the Executive Office of Environmental Affairs and other EOEA agencies, via the regulations promulgated by the Executive Office adopting the plan as a statement of the state Environmental Policy, and via the development and promulgation of new regulations or changes in existing regulations, if necessary, which govern the regulatory functions of affected implementing agencies. Memoranda of Understanding have already been signed between the Secretary and five Commissioners setting forth the fundamentals of the interagency agreement.

The Secretary of Environmental Affairs has promulgated a 21A regulation adopting the CZM plan as a statement of state environmental policy. Draft regulations have been completed for five major programs and will be implemented according to the time schedule in the "Status of Statutory Authorities" Chart (Ch.6.6). These five programs include:

Wetlands Protection Program	Energy Facilities Siting Council
Waterways Program	Division of Water Pollution Control
Ocean Sanctuaries	

An outline of a proposed regulation for the Division of Mineral Resources to govern offshore sand and gravel mining has also been completed. Each of these regulations will undergo formal public hearings as established by the state Administrative Procedures Act prior to promulgation.

Department of Environmental Quality Engineering (DEQE)

The Division of Land and Water Use is particularly important in implementing the CZM Program in that it administers the Wetlands Protection Act, the Waterways Program and the Community Sanitation Program. In the case of the Wetlands Protection Act, the Division is involved in setting the regulations and reviewing the local conservation commission's order of conditions, either on appeal or if invoked by the Commissioner. Within the same Division, the Waterways Program issues licenses for filling, wharf construction, bridges and pipelines over tidelands, harbors and certain rivers below the high water mark. The Waterways Program also funds such activities as wharf improvement, public piers, jetties, bulkheads, shore protection works, channel dredging and maintenance, dams and wreck removals as well as development of harbor plans and funding of their implementation. The Community Sanitation Program, also within this Division, regulates the siting, placement and design of sub-surface sewage disposal with a capacity of 15,000 gallons per day or more (i.e., septic tanks, leaching fields, cesspools, etc.), the location of sewage disposal sites, sewage treatment plant sites, mobile home parks (siting and lot size and adequacy of waste disposal facilities), and the siting and design of solid waste disposal facilities (including sanitary landfills). Sub-surface disposal systems with a capacity of less than 15,000 gallons per day are regulated by local boards of health to ensure compliance with the State Environmental Code.

The Division of Air and Hazardous Materials in DEQE is responsible for ensuring that sources of air pollution do not contravene state and federal emission limitations, and for assuring conformance with established state and federal ambient air quality standards.

The Division of Water Pollution Control in DEQE has permitting authority (jointly with EPA) over point source pollution, including municipal sewage treatment works. The Division also awards grants for the construction of sewage treatment and collection systems and issues water quality certificates for actions requiring federal permits.

The Division of Mineral Resources in DEQE licenses exploration and extraction of mineral resources in coastal waters.

The Public Access Board (Department of Fisheries, Wildlife and Recreational Vehicles) is charged with acquiring and developing public access points to great ponds or other waters and trails and paths for hiking and other recreational activities. The Board's acquisition, construction and maintenance program is funded by the gasoline fee on watercraft and registration fees from recreational and snow travelling vehicles.

The Department of Environmental Management (DEM) administers several key coastal authorities, including the Wetlands Restriction Programs and the Scenic Rivers Programs. DEM also has the responsibility to enforce ocean sanctuaries laws and to acquire recreational land outside of the metropolitan park district.

6.3 AGENCIES OUTSIDE OF EOEA

The Energy Facilities Siting Council (EFSC) has jurisdiction over determining the need for and the siting of electric generating, gas, and oil facilities. The Council is composed of the heads of four state

cabinet level departments (Consumer Affairs, Environmental Affairs, Administration and Finance, and Manpower Affairs), and five other individuals appointed by the Governor. The energy facility siting decision process of the Council is described in Chapter 4 (Policy 8) and Chapter 9 of this document.

The Martha's Vineyard Commission will implement portions of the program on Martha's Vineyard. The Massachusetts CZM Program supports the regulation of coastal activities on Martha's Vineyard by the Commission, since the MVC's regulating guidelines have been approved by the state and when an action needs both state and Commission approval, both agencies must concur before action can proceed.

The Executive Office of Transportation and Construction oversees the Department of Public Works, the Massachusetts Bay Transportation Authority, the Massachusetts Port Authority, the Massachusetts Turnpike Authority and the Regional Transit Authorities and will be responsible for ensuring that its transportation programs are coordinated and conducted consistently with the CZM Program.

6.4 Improved Agency Coordination

The basic role of EOEA, and particularly the Office of Coastal Zone Management in that office, is one of coordinating the implementation of the program with the various departments and divisions within EOEA, the Energy Facility Siting Council, the Executive Office of Transportation and Construction, and the Martha's Vineyard Commission. The basic coordination mechanisms are summarized below.

A. Within EOEA

1. The Secretary's Regulations

Pursuant to Chapter 21A, the Secretary has promulgated regulations adopting the program as state environmental policy in the coastal zone. The Commissioners of the five departments within EOEA have recognized this authority in their memoranda of understanding with the Secretary (see Appendix B). This regulation binds all EOEA agencies (not all state agencies) to carry out the CZM plan in full, in granting permits, in disbursing funds, or in conducting any other kind of activity in the coastal zone. Two exceptions apply to this rule. First, neither the program nor the regulations require EOEA agencies to take actions not authorized by law, and, second, where the Secretary has utilized the conflict resolution mechanism (see below) and determined that a CZM policy should not be followed because of a conflict with another program of EOEA.

2. Memoranda of Understanding within EOEA

The regulations operate to make the program legally binding upon the five departments within EOEA. The memoranda of understanding, however, ensure that the Secretary is not exceeding her authority under Section 21A by recognizing the program as a statement of state environmental policy and requesting the Secretary to jointly implement the program. Furthermore, the memoranda spell out additional steps, particularly the incorporation of rules and regulations promulgated by the Secretary, and other regulatory measures which they will take to implement the program.

3. Conflict Resolution

The Secretary of EOEA has the authority to resolve administrative or jurisdictional conflicts between EOEA agencies (not all state agencies). Any time a conflict arises, including a permit decision by personnel of EOEA, a statement of issues may be prepared, a public notice issued and formal proceedings held. The conflict resolution mechanism will be employed, for example, where actions by one agency impinge upon the statutory responsibilities of another; or where there are issues concerning how to fund or enforce certain programs.

4. Coordinative Functions of the Office of Coastal Zone Management

a. CZM will be notified of all proceedings conducted by EOEA agencies within or affecting the coastal zone. CZM may appear as an expert witness, may intervene as an interested party, or otherwise submit its comments.

b. CZM shall have the right, where a right of appeal or hearing exists for other interested parties or permit applicants, to request an appeal or hearing of any action taken by an EOEA agency regarding the coastal zone, unless otherwise specifically forbidden.

c. A CZM coordinator shall be located in each of the key implementing agencies to assist in applying the policies in the agency's day to day responsibilities.

d. Performance evaluation: To insure that the program functions efficiently, the Secretary, through the Office of Coastal Zone Management, will periodically conduct performance evaluations. Subject areas requiring the evaluations are outlined in Section 8 of the Secretary's Regulations (see Appendix G).

B. The Energy Facilities Siting Council

The 21A regulations adopted by the Secretary establish CZM policies as the current health, environmental protection and resource use policies of the Commonwealth, as recognized by a memorandum of understanding between the EFSC and the Secretary of Environmental Affairs (see Appendix B). Consequently, pursuant to the Energy Facilities Siting Council Act and the Council regulations, the Council must find any long range forecast or notice of intent as consistent with such policies prior to approval. Further, the Council has agreed to adopt regulations and procedures which will provide for:

(1) review and comment by EOEA on any forecast or application for a Certificate of Environmental Impact or public review prior to any hearing by the Council;

(2) cooperation in developing guidelines for data required of applicants prior to initial review of proposed facilities;

(3) evaluation of at least one alternative coastal site for coastally dependent facilities proposed for siting in the coastal zone and evaluation of at least one inland site, as well as one alternative coastal site for non-coastally dependent facilities;

(4) standing of the CZM program in EFSC proceedings on energy facilities proposed to be sited in the coastal zone.

C. Martha's Vineyard Commission

Although no formal Memorandum of Understanding has been signed by the Commission and the Secretary of Environmental Affairs, several types of assurances exist that the Commission will act in a manner consistent with the Program:

- Local governments can only perform activities in coastal areas if such activities conform to regulations developed under guidelines established by the Commission. The guidelines have been approved by the state and conform to CZM policies.

- The Commonwealth will continue to administer state authorities on Martha's Vineyard.

- The Secretary of Environmental Affairs is the voting Cabinet official appointed by the Governor to sit on the Commission.

- The state will grant the Commission funds to apply the coastal policies to the island and will review coordination in this procedure.

D. Executive Office of Transportation and Construction

The Memoranda of Understanding in Appendix B and the procedures outlined in Policy 26 detail how coordination in the review of major transportation projects will be achieved between CZM and EOTC. With respect to Policy 26, CZM will participate actively in the systems planning stage of transportation planning to ensure that any inconsistencies with the policy are ironed out early on and that undue delays in advancing projects to construction are avoided. Consistency with other applicable policies will be evaluated through A-95, review of EIS's, and through the issuance of EOEA permits where required.

6.5 STATUTORY AUTHORITIES FOR EACH POLICY *

	REGULATORY		NON-REGULATORY	
Policy	Permitting Licensing Authorities	Other Authorities	Funding/ Acquisition Programs	Executive Office Implementation Authorities**
(1)	Wetlands Protection Program (c. 131, s. 40) Waterways Program (c. 91, C. 21A, s. 14) Energy Facilities Siting Council (c. 164)	Coastal Wetlands Restriction Program (c. 130, s. 105); Div. of Marine Fisheries (c. 130) Ocean Sanctuaries Acts (c. 132, ss. 13-17)		c. 21A, s. 2 (2,3,5,10)
(2)	Wetlands Protection Program (c. 131, s. 40) Energy Facilities Siting Council (c. 164) Waterways Program (c. 91, c. 21A, s. 14) Div. of Water Pollution Control (c. 21, ss. 27, 43) Outdoor Advertising Board (c. 93, c. 93D)	Inland & Coastal Wetlands Restriction Programs (c. 131, s. 40A, c. 130, s. 105) Massachusetts Environmental Policy Act (c. 30, ss. 61-62) Ocean Sanctuaries Acts (c. 132A, ss. 13-17) Div. of Marine Fisheries (c. 130, s. 19)	Public Access Board (c. 21, ss. 17-17A) Dept. of Env. Management (c.132A) Self-Help Program (c. 132A, s. 11) Div. of Fisheries & Wildlife (Ch. 839, Acts of 1971)	Designation of Areas of Critical Environmental Concern (c. 21A, s. 2(7)) (2,3,5,10)
(3)	Div. of Water Pollution Control (c. 21, ss. 27, 43) State Environmental Code (c. 111, s 17, c. 21A, s. 13) Marina Licenses (c. 91, s. 59B)	Ocean Sanctuaries Acts (c. 132A, ss. 13-17)	Div. of Water Pollution Control (c. 21, s. 27)	c. 21A, s. 2 (2,10,13)
(4)	Wetlands Protection Program (c. 131, s. 40) Waterways Program (c. 91)	Div. of Marine Fisheries (c. 130 s. 19)		c. 21A, s. 2 (2,3,5,10)
(5)	Waterways Program (c. 91; c. 21A, s. 14; c. 131, s. 40) Water Quality Certification(c.21,s.27) Community Sanitation Program (c. 21A, s. 13)			c. 21A, s. 2 (2,5,10,14)
(6)	Div. of Mineral Resources (c. 21, s. 54) Waterways Program (c. 91)	Ocean Sanctuaries Acts (c. 132A, ss. 13-17)		c. 21A, s. 2 (2,5,10)

* This chart, like the lists of authorities following each policy, only lists the primary authorities implementing each policy and is not intended to include every program which might apply in every instance.

** Chapter 21A, Section 2(1) vests the authority to develop policies, plans, and programs in the Executive Office of Environmental Affairs. Subsection 2-28 provides other management, administration, and advisory powers in EOEA.

	REGULATORY		NON-REGULATORY	
Policy	Permitting Licensing Authorities	Other Authorities	Funding/ Acquisition Programs	Executive Office Implementation Authorities**
(7)	Waterways Program (c. 91)			c. 21A, s. 2 (9)
(8)	Energy Facilities Siting Council (c. 164)			c. 21A, s. 2 (9, 17)
(9) a, c	Waterways Program (c. 91) Wetlands Protection Program (c. 131, s. 40) Division of Mineral Resources (c. 21, s. 54) Energy Facilities Siting Council (c. 164)	Ocean Sanctuaries Acts (c. 132A, ss. 13-17) Wetlands Restriction Program (c. 130, s. 105)		c. 21A, s. 2 (9, 17)
(10)	Wetlands Protection Program (c. 131, s. 40) State Environmental Code (c. 111, s. 17; c. 21A, s. 13) Air Quality Permits (c. 111, ss. 142-E) Air Implementation Plan Water Quality Permits (c. 21, S. 43, NPDES) Sewer Connections and Extensions (c. 21, s. 43) Other Applicable State Permits	Inland Wetlands Restriction Program (c. 131, s. 40A)		c. 21A, s. 2 (2, 10, 13)
(11)		Scenic & Recreational Rivers Act (c. 21, s. 17A) Control of Outdoor Advertising (c. 93, 93D)		c. 21A, s. 2 (5,8,11,18,23)
(12)		MEPA (c. 30, ss. 61-62) Historic District Act (c. 40C) Special Historic District Acts		c. 21A, s. 2 (2,9,11,15)
(13)		MEPA (c. 30, ss. 61-62)		c. 21A, s. 2 (2,9,10,11,15)
(14)			Div. of Marine Fisheries (c. 130, s. 17)	c. 21A, s. 2 (3,5,9,22,23,27)
(15)			Div. of Water Pollution Control (c. 21, s. 27) Dept. of Public Works (c. 81) MBTA (c. 161A	c. 21A, s. 2 (7,9,10,13,16,21)

	REGULATORY		NON-REGULATORY	
Policy	Permitting Licensing Authorities	Other Authorities	Funding/ Acquisition Programs	Executive Office Implementation Authorities**
(16)			Self-Help Fund (c. 132A, s. 11)	c. 21A, s. 2 (9,10,11,15,16,18)
(17)			Waterways Program (c. 91, s. 11)	c. 21A, s. 2 (2,5,7,9-11,25,27)
(18)				c. 11A, s. 2 (11,16,18,27,28)
(19)			Waterways Program (c. 91, s. 11)	c. 21A, s. 2 (9,14,23,25,27)
(20)			Waterways Program (c. 91, s. 11) Public Access Board (c. 21, ss. 17-17A) Self-Help Program (c. 132A, s. 11) Dept. of Env. Management (c. 132A)	C. 21A, s. 2 (2,9,11,14,23,27) c. 21A, s. 2 (8, 9)
(21, 22, 24)			Dept. of Public Works (c. 81) Mass. Bay Transit Authority (c. 161A) Public Access Board (c. 21, s. 17-17A) Self-Help Fund (c. 132A, s. 11) DEM (c. 132A) MDC (c. 92, ss. 33, 35) DPW (Bikeways Program)	c. 21A, s. 2 (8,9,11,15,16,18, 23,25-27)
(23)				c. 21A, s. 2 (8,9,11,18,23)
(25)				c. 21A, s. 2 (2,3,5,9,10,15, 17,21,23,27)
(26)			Water Pollution Control (c. 21, s. 27) Dept. of Public Works (c. 81) MBTA (c. 161A)	c. 21A, s. 2 (9,10,13,16,18, 19,23,27)
(27)				c. 21A, s. 2 (16,23,25)

6.6 SUMMARY AND STATUS OF AUTHORITY

AUTHORITY	STATUS OF AUTHORITIES
1. Coastal Wetlands Restriction Program (MGLA Ch. 130, S. 105) authorizes the Commissioner of the Department of Environmental Management, after a public hearing, to restrict coastal wetland areas against most types of environmentally harmful development. Barrier beaches, dunes, salt marshes shellfish beds, and salt ponds in coastal Massachusetts will be restricted under this program, except those in designated port areas, those under MDC control, or activities by the Department of Public Works, State Reclamation Board, or mosquito control project operating under MGLA C. 252. Approximately 40% of all eligible areas have been restricted to date. In general, filling, draining, or dredging of wetlands, the discharge of hazardous substances, or any act that would destroy natural vegetation, alter existing tidal flow, or otherwise result in the alteration of the natural and beneficial character of these areas, is prohibited. Permitted uses include piers, wharves, duck blinds and so on, essential energy transmission lines and upkeep of existing roads. Local conservation commissions issue an "Order of Conditions" for permitted uses. A model list of the permitted and prohibited uses in restricted areas is provided in Policy 1. A landowner can appeal to the Commissioner within 60 days after restriction orders are proposed. Restriction orders are made on town by town basis. A two-thirds vote of Massachusetts Legislature can repeal a restriction Order.	Approximately 30,000 acres presently restricted. No regulations, none planned. Restriction Orders are issued for each community. A model Restriction Order is contained in Policy 2 and will be followed by DEM All of Cape Cod will be restricted by end of March, 1979.
2. Inland Wetlands Restriction Program (MGLA Ch. 131, S. 40A), also administered by the Commissioner of DEM, is similar to the Coastal Wetlands Restriction Program except that it applies to freshwater inlands.	See above.
3. Wetlands Protection Program (MGLA Ch. 131, S. 40) gives local Conservation Commissions authority to review proposals for projects in wetlands (including permitted use projects in restricted wetlands). The purview of the Act extends to 100 feet beyond either the 100 year floodplain or the landward edge of a wetland, whichever distance is the greatest. All dredging, filling or other alteration in these areas is unlawful without filing a Notice of Intent, both with the local Conservation Commission and the Commissioner of the Department of Environmental Quality Engineering. The Conservation Commission issues an Order of Conditions either conditioning or prohibiting the activity based on the probable impact on the seven interests of the Wetlands Protection Act--public and private water supply, flood control, storm damage prevention, prevention of pollution, protection of land containing shellfish, or the protection of fisheries. An Order of Conditions may be appealed by or to the Commissioner of DEQE.	Current regulations in place. New draft regulations to be submitted to OCZM before program approval. Wetlands Protection Program Review Board is mandated by Secretary & Commissioner to complete recommendations on regulations in calendar year 1977. Final regulations to be promulgated by 6/78
4. Waterways Program (MGLA Ch. 91, S. 1-59), administered by DEQE, has jurisdiction over filling, construction of any new structure, dredging, or removal of sand and vegetation in tideland harbors and certain rivers below high water bank. All land below mean low tide is managed as a public trust by DEQE, and permission to utilize these lands is given in the form of five year licenses. Although land between high and low water is privately held, no activity that interferes with the reserved public rights for fishing and fowling in this area is permitted. The Waterways Program also carries out projects with State funds such as dredging and shoreline protection works.	No regulations now. **Draft regulations on Waterway licensing will be submitted to OCZM prior to Federal program approval.** New regulations incorporating CZM policies to be promulgated 6/78.

AUTHORITY	STATUS OF AUTHORITIES
5. Ocean Sanctuaries (MGLA Ch. 132A, S. 13-17) have been created to protect all State waters except those from Lynn to Marshfield and those in Mt. Hope Bay. In general, such activities as the removal of sand, gravel, or minerals, dumping of any new waste discharge are prohibited. However, a broad class of activities are exempt from these prohibitions. While the terms of the five sanctuaries differ, laying of cables approved by the Department of Public Utilities, projects authorized under the Waterways Program or other improvements authorized by other State or Federal agencies are permitted. No permit is required to conduct an activity in an Ocean Sanctuary besides a permit that would be issued under the Waterways Program. The DEM is responsible to insure compliance.	No existing regulations. January 1, 1978 legislature passed recodified law. Regulations to be promulgated by August, 1978. Draft regulations will be submitted to OCZM prior to Federal program approval.
6. The Energy Facilities Siting Council (MGLA Ch. 164, SS. 69 F-R) has jurisdiction over determining the need for the siting of electric generating gas, and oil facilities in the Commonwealth. The Council's jurisdiction includes controls over electric, gas and oil facilities. Any energy or energy-related facility not subject to EFSC jurisdiction is managed in the same fashion as other coastal activities.	Regulations in place, revised regulations planned. Memorandum of Understanding between EFSC and EOEA that EFSC will consider CZM policies and act consistently with the management program.
7. The Massachusetts Environmental Policy Act (MGLA Ch. 30, S. 61 and 62). Establishes an environmental review process for State actions, projects with State funding, or projects requiring permits or licenses from State agencies. Essentially an environmental full disclosure law, the intent of MEPA is to improve environmental planning and design "so as to minimize and prevent damage to the environment."	Regulations in place.
8. Community Sanitation Program (MGLA Ch. 111, State Environmental Code, Title 5, Regulation 2), administered by Local Boards of Health, requires permits for all subsurface dischares based on DEQE standards for percolation rates, distance from a water body, capacity of system, etc. Systems larger than 15,000 gallons per day are reviewed by DEQE before permits are issued.	Title 5 regulations in place (adopted 1977).
9. Self-Help Program, administered by the Division of Conservation Services, provides reimbursement for up to 50 percent of the cost of acquiring public recreation and open space. Cities and towns must have established conservation commissions to be eligible.	Evaluate guidelines in place (point system). No regulations now.
10. Outdoor Advertising Board (MGLA Ch. 93 and 93D), is authorized to prohibit the use of off-premise billboards and other forms of advertising along primary roads in areas that are not zoned for commercial or industrial use or are not a predominant business character. The Board also has the power to designate areas of historical, scenic, or environmental significance as Sign Free Areas or Sign Free Corridors.	Regulations now in place. No sign free areas or corridors in coast now.
11. Scenic Roads Act, (MGLA Ch. 40, S. 15C) empowers local planning boards to restrict the removal of vegetation or stone walls on designated local roads, exclusive of numbered routes or State highways.	No State regulations as Act enables local action.
12. Historic District Act (MGLA Ch. 40C) enables cities and towns to establish historic districts for the preservation and protection of historic sites and districts. Within such districts, demolition, new construction and alteration to exterior architectual features cannot be carried out without a certificate of appropriateness or certificate of non-applicability.	Legislature has created districts. Act enables local government action.

AUTHORITY	STATUS OF AUTHORITIES
13. Mineral Resources (MGLA Ch. 21, S. 54). The Division of Mineral Resources in DEQE is empowered to license, following a public hearing, the exploration for sand, gravel and other minerals in Massachusetts coastal waters and the seabed and leasing rights for extraction of such mineral resources as have been discovered.	No regulations now. Moratorium in place for any new permits in sand gravel extraction.
14. Marine Fisheries (MGLA Ch. 130, S. 19 et al). The Division of Marine Fisheries in the Department of Fisheries Wildlife and Recreation Vehicles regulates the harvest of fish in coastal waters and is charged with aiding the promotion and development of the commercial fishing industry. The Division also operates a program to assist coastal commissions to increase the supply of shellfish and to ensure that construction on coastal streams does not impact the passage of anadromous fish to spawning areas.	Regulations in place on anadromous fish runs. No changes anticipated.
15. Public Access Board (MGLA Ch. 21, S. 17, 17a) is empowered to acquire access to great ponds and other waters within the Commonwealth and develop trails and related facilities for hiking, skiing, boating and other uses.	No regulations.
16. Scenic Rivers Program (MGLA Ch. 21, S. 17b) provides for the designation and restriction of rivers for scenic and recreational purposes. The Scenic Rivers Act authorizes DEM to regulate the alteration or pollution of designated rivers and contiguous land within 100 yards of their bank.	No Scenic Rivers designated now. No regulations now.
17. Areas of Environmental Concern (MGLA Ch. 21a, S. 2(7); Proposed EOEA Regulations) The Secretary of Environmental Affairs developed a process for designating Areas for Preservation or Restoration (APRs), or in the nomenclature of Massachusetts, Critical Areas of Environmental Concern. As a result of this designation, EOEA agencies will attach a high degree of scrutiny to their activities in these areas, will not proceed with activities that could impair characteristics cited in their designation, and will administer programs consistently with CZM policies regarding the acquisition, protection, and use of such areas. State agencies outside of EOEA will be unaffected by the designation except pursuant to a Memorandum of Understanding with the agency or to MEPA, where no project conducted or permitted by any State agency shall qualify for a categorical exemption if located in an APR.	None yet designated. Ten nominated by CZM Program. By end of first year of 306 funding. Secretary will have approved or denied designation of nominated areas. Memorandum of Understanding signed with EFSC to protect APRs.
18. The Martha's Vineyard Commission is a regional planning and management agency, granted special regulatory powers by State enabling legislation (Chapter 637, Acts of 1974, as amended). The special legislation gives the Commission power to designate Districts of Critical Planning Concern and to review Developments of Regional Impact, provide assistance to the six towns on the island of Martha's Vineyard as well as assume some regulatory control held by the six communities.	Commission operates under State approved guidelines. Specific guidelines prepared for districts.
19. Water Quality Permits NPDES(MGLA Ch. 21, S. 43) administered jointly by the Division of Water Pollution Control and EPA, permits required for point source discharges; discharges must conform to effluent limitations, receiving water standards, or other applicable regulations or adopted water quality plans.	NPDES administered jointly with EPA, State receiving water standards established by regulations, effluent limitations set by EPA, new DWPC guidelines on ocean outfalls to be drafted pending issuance of revised ocean discharge criteria by EPA.

AUTHORITY	STATUS OF AUTHORITIES
20. Water Quality Certification of Dredging and Dredged Material Disposal (PL 92-500 , S. 401) administered by the Division of Water Pollution Control pursuant to federal law.	Regulations to be drafted and framework established for coordinating DWPC, DAHM, DMF, CZM review of water quality, biological and health impacts of dredging and dredged material disposal.
21. Water Quality Standards, Segment Classification, (MGLA Ch. 21, S. 27). Standards of minimum water quality are established by regulation for all waters of the Commonwealth by Division of Water Pollution Control, segments also classified with respect to treatment required or discharges prohibited.	Anti-degradation regulations exist. Revisions to regulations to be drafted prior to program approval. Regulations exist, policy to be incorporated during triennial review and revision of segment standards.

6.7 IMPROVING THE PERMIT PROCESS

Toward this end, a major portion of the federal funds to be received during the 306 implementation phase will be used to consolidate and expedite DEQE's system for reviewing permit and license applications in the coastal zone. The funding will be used to increase DEQE's staff capabilities in order to enable the following:

(1) Regional engineers shall have full responsibility for notifying applicants for Environmental Authorizations of all required DEQE and federal permits, the information and forms that must be submitted to allow DEQE to process the permit applications, the applicant's responsibility for federal consistency certification, and the time frames within which the DEQE permit applications must be acted upon.

(2) The regional engineers will be responsible for taking all steps necessary to ensure concurrent processing of DEQE and federal permits and shall encourage to the maximum extent possible joint site visits, joint notices and joint public hearings.

(3) The regional engineer will be responsible for establishing overall time frames, scheduling and sequencing applicable agency reviews, and for ensuring that time limits established by statute or regulation are adhered to.

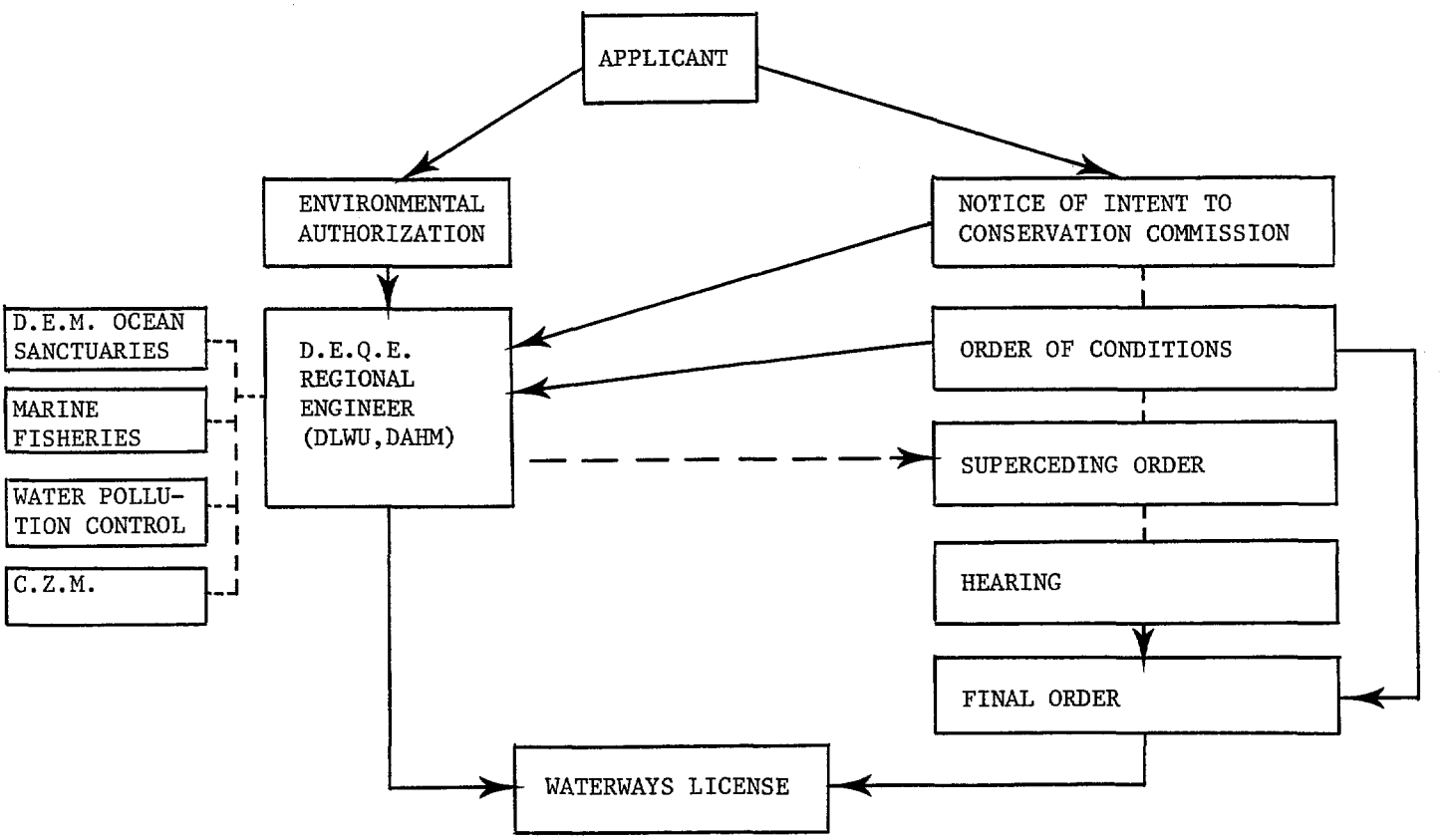
(4) A computerized tracking system will be established and operational by the end of the first year of 306 funding. All permit applications will be entered into this system and updated as information is received or decisions made by the relevant divisions within DEQE. The system will allow the regional engineers to identify permit processing delays, to inform applicants of the exact status of all their permit applications upon request, and to assign permit review staff on the basis of workload.

The effect of these improvements will basically be to consolidate and coordinate DEQE's various permitting and licensing functions under the auspices of the regional engineers so that applicants can be better informed as to permit requirements affecting their projects, the time frames within which they can expect decisions to be made, and the status of their specific applications at any particular time. In addition, the computer tracking system will enable the regional engineer to ensure that his/her subordinate divisions are meeting their respective responsibilities on time, coordinating their reviews, and arriving at consistent decisions.

6.8 HOW THE PROGRAM WILL BE AMENDED

Changes to the Massachusetts Coastal Zone Management Program are expected during the next few years as a normal process of plan evaluation. As many citizens, agencies and levels of government had input on the plan development, many will continue to evaluate and recommend modifications during plan implementation. Recommendations for changes to the plan can come from individual citizens, citizen advisory committees, the

PROCESS FOR WATERWAYS LICENSE AND WETLANDS PROTECTION PERMIT



---- Means may or may not be applicable

statewide coastal resources advisory board, state agencies, the Legislature or the Governor. All proposed changes will be evaluated on a continuous basis by the Massachusetts CZM office and, once approved, forwarded to the federal office of CZM. If approved by the federal office, the change is incorporated into the program.

The specific procedure for incorporating changes varies with the magnitude and impacts of the change. If the proposed change to the program does not significantly alter the environmental impacts or intergovernmental relations identified in this document, it will be considered minor - a refinement (proposed CZMA regulations, Section 923.93). This will be determined initially by the MCZM office (state 306 agency) in coordination with the federal OCZM. A refinement can be implemented by letter from MCZM to OCZM and a return letter granting approval.

Where the MCZM office and the federal OCZM determine that the proposed change will constitute changes in the environmental impacts or intergovernmental relations described in this document, the change will be considered a formal amendment and will require a different procedure for implementation (proposed CZMA regulations, Section 923.92). Examples of changes constituting amendments include elimination/addition of policies, incorporation of new laws into the program, or new regulations not consistent with CZM policies.

The process to amend the program will be initiated by a formal submission from the MCZM office to the Associate Administrator. Prior to the submission, the state will inform the public and affected parties to determine the nature of public comments. This will be accomplished by publishing notice of the proposed change in the Environmental Monitor. The final submission will include: a written request from the Governor; description and justification for the change; evidence of public notice; discussion of environmental impacts. Based on the discussion of impacts, the Massachusetts MEPA office and/or Associate Administrator may also require an environmental impact report or environmental impact statement, respectively.

Within 30 days of the formal submission, the Associate Administrator shall determine whether the amendment is granted/not granted or requires further exploration through the environmental impact statement process. If an EIR/EIS is required, appropriate reviews under the MEPA/NEPA statutes will commence.

When the change constitutes an amendment, implementing that amendment prior to approval by the OCZM could lead to termination of funding by the federal government (Section 923.94(b)(1)(iii)). For example, new regulations for the Waterways Program will be law in the State of Massachusetts 30 days after release of the regulations and public hearings. However, they will not be part of the CZM Program, nor will federal consistency apply until the regulations are submitted and approved by the Associate Administrator as either a refinement or an amendment to the Program.

All federal agencies will have an opportunity to comment on these regulations during the state adoption process.

CHAPTER 7

PUBLIC PARTICIPATION: CITIZEN PARTICIPATION, FEDERAL AGENCY PARTICIPATION, AND COORDINATION WITH OTHER PLANS

7.1 PAST CITIZEN PARTICIPATION ACTIVITIES

The preparation of coastal management program in Massachusetts began in 1974 upon the receipt of federal CZM funds. In its earliest days, Massachusetts CZM made a commitment to involve as many citizens as possible in the development of the coastal zone management program. An open participatory process was the one way of assuring the development of a management program that would meet immediate and long term needs, grow from the demands of citizens and communities, and would have support from all levels of government. Some examples of this open participatory process are:

-- The Governor established a Task Force on Coastal Resources composed of 42 volunteers representing the legislature, all levels of government, and major user groups of the coastal zone.

-- The Coastal Zone staff met with over 2,000 citizens and officials in open public meetings to discuss policies and better management of the coast.

-- Regional Citizen Advisory Committees were established in seven of the ten regions of the coast. CAC members, representing coastal communities and interests, met often on a monthly basis during the past two years to ensure that CZM policies met the needs of sub-areas of the coast.

-- A public opinion survey of 1000 randomly selected coastal residents was conducted to further ascertain the needs and desires of coastal citizens.

-- Questionnaires were prepared to help local officials and CAC members set priorities on subjects such as erosion problems, recreation needs, and alternative management systems.

-- The staff conducted an active public information program to inform many thousands of citizens on CZM issues and progress. Newsletters, publications, slide programs, films and newspaper stories were among the materials prepared for public dissemination.

-- In addition to citizen involvement the CZM staff received excellent technical assistance from the NERBC study of South Eastern New England.

-- After 3 years of this active interaction between citizens and the CZM staff, a program Preview was distributed in December, 1976. Over 2,000 copies were printed and sent to Massachusetts citizens and officials and federal agencies.

-- In the winter and spring of 1977, changes and additions were made in the Program Preview to reflect comments received from federal agencies and citizens. CZM Citizen Advisory Committees worked with the CZM staff to prepare the Coastal Atlas.

-- A public hearing was held on the entire revised program in August, 1977 prior to the Governor's formal submittal.

-- Three thousand copies of the DEIS and the March 1977 Program were distributed for citizen and local, state and federal agency review. Five DEIS MEPA-NEPA hearings were conducted in various coastal regions.

7.2 FUTURE CITIZEN PARTICIPATION ACTIVITIES

The CZM plan represents significant contributions of time, interest and expertise on the part of many Massachusetts citizens. Citizens improved the data base, verified CZM information, evaluated various alternatives, and expressed the values and concerns of their region. There will be a need to continue public involvement in the management phase of Massachusetts CZM to meet many of these same functions.

A. Citizen Advisory Councils

To meet this need, CZM will establish new CZM Advisory Councils for each coastal region. These regional councils will be a natural evolution of the existing CZM Citizen Advisory Committees. The tasks of the Councils can include:

1) Annual Review: The regional Councils will annually review and report to CZM on the applicability of the respective regional chapter, and up-date where necessary.

2) Quality Control: The regional Councils will help to insure overall quality control in the CZM Program. The Councils will review on a periodic basis the state's regulatory and management programs as they relate to their respective region, for quality and consistency with the CZM plan.

3) Observation: The regional Councils will serve as local contacts within the region, alerting the regional environmental engineer and state CZM administrator of problems and issues in the region.

4) Priority Setting: The regional Councils will advise in the setting of priorities in the allocation of technical-assistance funding for the region, should requests for funds exceed available supply.

5) Conflict Resolution: The regional Councils will serve as a forum for discussion and a central point for the collection of information and ideas, should problems or conflicts occur between communities.

6) Monitoring: The regional Councils will monitor the coordination of activities by local, state and federal government programs in the coastal zone.

Council membership will include a formal representative of each city or town in the region, as well as representatives of the major users-interests in the region.

B. Statewide Coastal Resources Advisory Board

There will also be a statewide advisory board to assist the CZM director and the Secretary of Environmental Affairs. This group will evolve from the current Governor's Task Force on Coastal Resources, and will represent a statewide constituency. Membership will consist of inland and coastal representatives. Unlike the regional Councils, this group may not be geographically representative, but will include at a minimum representatives of commerce, business and utilities; universities; state, federal and local governments; regional groups; commercial fishermen; cabinet secretaries; conservation and civil interests; educational groups; CZM regional Councils; and interested citizens.

This statewide group will have a mix of functions:

1) Advisory and Planning: This group will advise the director of the CZM Program and the Secretary of Environmental Affairs on the implementation of the CZM Program. As planning will continue on erosion problems, recreation, and various aspects of outer continental shelf oil and gas exploration and development, this group will help to evolve state planning efforts.

2) Quality Control: This group will work with the CZM director on a periodic review of environmental regulatory and management functions to insure adequacy and consistency in the application of CZM policies.

3) Priority Setting: This group will advise the CZM director and the Secretary of Environmental Affairs on the setting of priorities for CZM funding to local and state agencies, and for overall program objectives and goals.

4) Education: This group will work to ensure development of long term education programs to foster a state coastal ethic.

5) Management: This group will review the CZM Program on an ongoing basis, and recommend changes to the Secretary of Environmental Affairs. This group will advise the Secretary on questions of amendments to the CZM Program.

6) Review: This group will perform for the Secretary an annual independent review of the CZM Program.

7.3 Federal Government Participation

Appendix D documents the opportunity for full participation by relevant federal agencies in the development of the management program. It describes the contacts that were made with federal agencies early in the program preparation, how federal input was obtained on a timely basis, and summarizes the nature and frequency of contacts.

7.4 Coordination with Local, Regional, State, Interstate, and Federal Plans

Appendix C details how the above groups participated in the development of the Massachusetts Plan, and how coordination with existing plans affecting the coastal zone was achieved.

CHAPTER 8

WHAT THIS PROGRAM MEANS TO LOCAL COMMUNITIES

The Massachusetts Coastal Zone Management Program does not include new laws or increase the present number of state or local permits required for private development activities. As long as statewide interests are managed, development decisions and community character will be determined by local governments.

A. Technical Assistance

The state CZM Program will provide technical assistance to local communities to aid in site specific problem solving. Scientific, environmental, planning and legal expertise will be available to assist in short-term studies within coastal communities. CZM assistance will be provided only upon request of the local community. Eligible categories for technical assistance include:

(a) erosion
(b) finfish and shellfish management (coordinated with Division of Marine Fisheries)
(c) recreation facility siting (coordinated with DEM and Metropolitan District Commission)
(d) public access (coordinated with Conservation Services, Fisheries and Wildlife, and DEM)
(e) coastal wetland management (coordinated with DEM, DEQE)
(f) coastal land use planning problems (Department of Community Affairs, Regional Planning Agencies, Massachusetts Historical Commission)
(g) scenic river designation (coordinated with DEM, etc.)
(h) water quality (coordinated with DEQE)

In the first year, about five full-time professionals will be available to local communities on a rotating basis.

B. Financial Assistance

Local communities (selectmen, planning boards, and conservation commissions) also will be able to receive financial assistance from the CZM Program to undertake studies and preparatory work necessary before major project development proposals can be initiated, provided the projects are consistent with the state coastal zone program. Projects eligible for funding include:

(a) waterfront renewal and development studies: preparing harborfront plans aimed at improving visual and physical access to waterfronts; identifying opportunities for waterfront parks; waterfront pedestrian ways, ramps, and other public access improvements; conducting feasibility, cost and preliminary engineering studies for such waterfront improvement projects.

(b) port and harbor development projects: preparing overall port and harbor development plans; assessing future facility needs and the economic return from such facilities; conducting feasibility and preliminary engineering studies for public marinas, town wharfs, and docks, access ramps, and navigational improvements.

(c) dredged material disposal investigations: identifying feasible land alternatives and sites for dredged material disposal; investigating costs; and preliminary engineering for innovative dredge material disposal practices including creating artificial salt marshes, using dredged material as fill, and building containerized sites.

The maximum sum to be awarded for any one proposal cannot exceed $20,000. The minimum sum is $1,000. The maximum time period for any funded project will be one year. About one third of the first year federal money available to the state under Section 306 of the CZMA is proposed to be targeted for financial assistance to local communities.

C. Coastal Energy Impact Program (CEIP)

Coastal communities hosting new coastal energy facilities will be eligible to participate in a new federal loan, loan guarantee, and grant program to cover the costs of public facilities and services necessitated by accommodating coastal energy facilities and the costs of environmental losses and damages sustained by the siting of a coastal energy facility. CEIP is administered by OCZM. These programs are:

1) loans and loan guarantees to help cover the costs of both providing additional public services and constructing new public facilities (roads, water supply, sewage treatment works) made necessary by new coastal energy facilities;

2) refinancing and other financial assistance, including grants in extreme cases of hardship to repay the above loans if the financial burden imposed on a community accommodating new coastal energy facilities is so severe as to cause substantial hardship;

3) grants covering the full costs of environmental losses and damages sustained by the siting of a coastal energy facility; and

4) grants for planning for the impacts in the coastal zone of energy development.

D. Consistency of State and Federal Government Actions

The CZM Program also becomes the central focus for consistent state and federal actions in the coastal zone. The CZM Program staff also will act as a mediator between federal agencies and will be notified through the Monitor early in the process of new or expanded state or federal actions in the coastal zone. Through the proposed permitting procedures outlined in the CZM Program, local involvement in dredge and fill permits should be streamlined and simplified.

E. Public Participation

Finally, through the continuation of the ten citizen advisory councils, local communities will have a direct input into the formation of the on-going CZM Program. The Citizen Advisory Councils will help to set the priorities where CZM funding should be directed on the local level, establish coordinating links between local communities and state agencies, establish on-going communications and regularly update the Coastal Atlas and the program as a whole.

Regulatory programs on the local level will not change. However, the added assistance from the state on specific projects could have a positive impact on how local communities manage their respective coastal areas.

CHAPTER 9

9.1 NATIONAL INTEREST AND USES OF REGIONAL BENEFIT

The Massachusetts coast is of national, historic, scenic, economic, and recreation importance. The seaport of Boston serves as the major terminus for maritime trade and delivery of energy supplies in New England; the fishing grounds off the Massachusetts coast are among the most productive in the world, and the estuaries, salt marshes, and ocean bottom spawning grounds of Massachusetts serve to maintain this productivity; the many historic sites along the Massachusetts coast give tangible evidence of the nation's beginnings; Cape Cod, Nantucket, and Martha's Vineyard are national tourist destinations; and oil and gas reserves off the Massachusetts coast may serve to relieve national energy shortages and reduce dependence on foreign oil.

Recognizing the distinct and irreplaceable value of this country's coastline, the Congress, in enacting the Coastal Zone Management Act, found that "there is a national interest in the effective management, beneficial use, protection, and development of the coastal zone" (Coastal Zone Management Act, Section 302 (a)).

Once approved by the Secretary of Commerce, the Massachusetts coastal program provides the basic policies for managing the Massachusetts coastal zone in accord with both state and national interests. To ensure that the national interest is adequately addressed by the Massachusetts program, the CZMA requires that the state coastal "management program provides for adequate consideration of the national interest involved in planning for, and in siting of facilities (including energy facilities in, or which significantly affect, such state's coastal zone), which is necessary to meet the requirements which are other than local in nature", (Section 306(e)(2)).

The Massachusetts program provided opportunities to federal agencies to participate in program development and solicited federal agency views on their missions relating to national interests. Meetings with individual agencies were also held. These interactions assisted in developing the program's policies and procedures for addressing national interests. (A chart showing this consultation appears in Appendix D.)

In addition to the comments received through consultation with federal agencies, the Massachusetts program looked to the following sources for policies and information that must be taken into account to adequately consider national interest in exercising both its planning and management responsibilities:

a. Federal laws and regulations,

b. Policy statements or Executive Orders from the President of the United States (e.g., National Energy Plan),

c. Special reports, studies and comments from federal and state agencies,

d. Testimony received at public hearings and meetings on the Massachusetts program,

e. Certificates, policy statements and solicited opinions issued on specific projects by federal regulatory agencies such as those within FERC.

f. Statements of the national interest issued by federal agencies.

For three of the national interests salient to Massachusetts - energy production and transmission, recreation and fisheries - NOAA has issued specific statements of national interest. These, in addition to the sources above, are used for defining national interest in energy, recreation and fisheries.

Facilities that are of national interest are often of regional benefit as well, since they typically provide benefits or distribute services to citizens of more than one municipality. Such facilities include energy, recreation, transportation and regional waste treatement facilities. The Commonwealth must be able to ensure that these facilities are not unreasonably restricted or arbitrarily excluded by municipal land and water use regulations.

The discussion below summarizes how the Massachusetts program, both during program development and as a continuing process during implementation, considers facilities and resources which may be in the national interest. The discussions of facilities that are also uses of regional benefit include summaries of how the Commonwealth can prevent unreasonable restrictions or exclusions by municipal land and water use regulations.

1. National Defense and Aerospace: The Massachusetts program recognizes the paramount importance of national defense, and while the Massachusetts coast no longer hosts as many national defense facilities as it once did, national security contingencies may, in the future, require the Massachusetts coast to be the location of new defense facilities. Recognizing these national defense interests, the Massachusetts program excludes from its program existing federally owned or leased lands and military installations.

With respect to proposals for new or expanded defense facilities, the Massachusetts program will not seek to question the national security justification. Rather, it will strive to ensure that reasonable investigation of feasible alternative sites is conducted so that conformance, to the maximum extent practicable, is reached with applicable policies of the Massachusetts program. When necessary, federal consistency mediation procedures will be sought.

2. Energy:* The National Energy Plan sets forth three overriding energy objectives for the United States:

-- as an immediate objective that will become even more important in the future, to reduce dependence on foreign oil and vulnerability to supply interruptions;

-- in the medium term, to keep U.S. imports sufficiently low to weather the period when world oil production approaches its capacity linitation; and

*Note: Because energy is such a vital national interest, it is dealt with in more detail than other national interests. National interest facilities include energy storage and distribution facilities, refineries, electric generating facilities, and deepwater ports.

-- in the long term, to have renewable and essentially inexhaustible sources of energy for sustained economic growth. (Plan Overview p. ix).

The salient features of the National Energy Plan (NEP) are:

-- conservation and fuel efficiency,

-- national pricing and production policies,

-- reasonable certainty and stability in government policies,

-- substitution of abundant energy resources for those in short supply, and

-- development of non-conventional technologies for the future. (Plan Overview p. ix-x).

Elements of the National Energy Plan with particular application to the Massachusetts coastal zone are discussed below. Detailed analyses of energy issues were presented in Volume I of the March 1977 Draft Program. These are summarized in Chapter 3 of this document. Specific policies relating to energy facilities are noted below.

(a) Conservation - "The cornerstone of the National Energy Plan is conservation" (p. 55 of the NEP). Energy conservation efforts in Massachusetts are endorsed in Policies 9 and 25 of the Massachusetts CZM Program. In addition, Policies 26 and 27 encourage energy conservation by encouraging more compact development and in-fill of existing urbanized areas.

(b) Outer Continental Shelf - "Oil and gas under federal ownership in the Outer Continental Shelf (OCS) are important national assets. It is essential that they be developed in an orderly manner, consistent with national energy and environmental policies." OCS related development and activities are specifically addressed in Policy 9 and other policies referenced therein.

(c) Liquefied Natural Gas - "Due to its extremely high costs and safety problems, LNG is not a long-term secure substitute for domestic natural gas. It can, however, be an important supply option through the mid-1980's and beyond, until additional gas supplies become available." (page 57 of the NEP) "The previous Energy Resources Council guidelines are being replaced with more flexible policy that sets no upper limit on LNG imports.

Under the new policy, the federal government would review each application to import LNG so as to provide for its availability at a reasonable price without undue risks of dependence on foreign supplies. The assessment would take into account the reliability of the selling country, the degree of American dependence such sales would create, the safety conditions associated with any specific installation, and all costs involved." (page 57 of the NEP)

Massachusetts currently has a number of natural gas facilities in the coastal zone, including the only existing major LNG terminal in the U.S. LNG facilities are addressed in Policy 8 of the Massachusetts Coastal Zone Management Program.

(d) Nuclear Power - "The United States will need to use more light water reactors to help meet its energy needs. The government will give increased attention to light water reactor safety licensing and waste management so that nuclear power can be used to help meet the U.S. energy deficit with increased safety." (page 70 of the NEP) Massachusetts currently has a nuclear power plant in Plymouth, with a potential for expansion at that site.

Energy facility planning and siting and OCS activities are expressly addressed in Policies 8 and 9 of the Massachusetts CZM Program, as well as in other policies which pertain to other interests (e.g. protection of coastal wetlands, Policy 1). In particular, a five step implementation procedure for energy facility planning and siting is outlined in Policy 8. How this procedure will provide for the continued consideration of national interests in energy and provides for a balancing of energy interests against other national interests is discussed below.

The first step, which is consistent with one approach suggested in CFR 920.18 (h)(1), derives from Massachusetts CZM's findings on the sensitivity of certain coastal ecosystems to withstand the impacts typically associated with energy facilities. Specifically, in order to determine how to balance national interests, the Massachusetts CZM program examined prototypical impacts of energy facilities. In the course of program development, Massachusetts CZM contracted the Institute for Man and Environment to analyze the tolerance, sensitivity, and rejuvenating capacity of coastal ecosystems and fishery resources with respect to a range of impacts. A matching of the prototypical impacts of energy facilities with the Institute's findings led to the conclusion that salt marshes, dunes, beaches, barrier beaches, shellfish beds, salt ponds, and known fish spawning areas should be avoided as sites for energy facilities. Specifically, construction associated with terminals, tank farms, power plants, gas facilities, refineries and coal extraction could lead to severe physical alterations of ecologically significant resource areas, and thus, when these areas are restricted under the Coastal Wetlands Restriction Program, these facilities are not permitted uses. Transmission lines and certain underground utility lines could, however, traverse these areas with minimum damage provided natural topographic features were restored, and thus these are permitted uses.

In addition, of particular concern was the damage that could be wrought by the siting of energy facilities on complexes of coastal ecosystems presenting unique qualities, with high biological productivity, and remaining in a relatively pristine state (designated Areas for Preservation or Restoration/Areas of Critical Environmental Concern). Thus, in APRs/ACECs, the EFSC will give prime consideration to environmental impact in its balancing of environmental impact, need and cost.

In the second step, the Energy Facilities Siting Council examines ten-year forecasts of demand required of gas and electric companies and notices of intent to construct oil facilities. In that examination and approval of forecast projections, the Council reviews analyses of alternatives provided by applicants, including other methods of generating, manufacturing, or storing gas or electricity, strategies for promoting energy conservation or consumption or for modifying load curves, other sources of providing energy, the alternative of not providing additional oil or gas, and applicant-provided descriptions of how energy policies of the Commonwealth or the federal government were taken into account. The consideration of these alternatives meets the requirements of CFR 920(b)(1) relating to evaluating energy source mixes and energy conservation. Through this comprehensive examination and review power, the Council determines whether to approve an applicant's forecast of energy demand needs. Once the need for additional energy is established, and approval given to the way (i.e., what kind of facility) in which the need should be met, the Council examines alternative sites for the approved facility. This review is broad-based, examining and comparing, from the overall perspective of protecting the environment and minimizing energy costs, alternative sites.

In deciding whether or not to approve a long-range forecast, the Council is bound by statute (Chapter 164, Section 69J) to meet five requirements and for a notice of intent, three additional requirements. The first five require findings that all information submitted, including environmental impact and demand projections, is accurate and consistent with other companies and that the plans are consistent with current health, environmental protection, and resource use policies of the Commonwealth and consistent with the policy of providing necessary supply, at low cost and with minimum environmental impact. For notices of intention, the Council must further find that sources of supply listed are accurate, that the project is financially sound, and that the plans, including buffer zones or alternatives thereto, are consistent with current health, environmental protection and resource use and development policies as adopted by the Commonwealth.

The Council's regulations also call for it frequently to act consistently with current health, environmental protection and resource use and development policies of the Commonwealth. These are not defined but by Regulation 62.9(3) include policies "set forth in the constitution, general laws, and duly promulgated rules and regulations of responsible state... agencies having the force of law." Thus, once the Secretary promulgates the Chapter 21A regulations, the CZM Plan is such an environmental policy. 62.9(3) and 67.1 and 72.9 state that the Long Range Forecast or Notice of Intent shall not be approved unless consistent with such policies. Section 64.8 and 67.7 and 73.2 sets forth the information currently required for

such forecast or notice applications. 7.5(4) states that unless there are objections raised by a government body, no Notice of Intent may be denied because of competitive effects or surplus supply. Rule 73.5 provides other decisional criteria including alternatives and conservation measures and 73.6 elaborates on the environmental information required.

CZM's concerns at the Forecast/Notice of Intention stage are that coastal sites are assured for coastally-dependent facilities, that the national interest in energy be weighed with other national interests, that the Council have adequate information to make informed decisions within the limited scope of the Forecast/Notice review and that such decisions not be given more weight than the scope of inquiry constituting them, and that the Council be consistent with all CZM policies where relevant.

Fundamental to the energy policies and to other policies is the concept that some energy facilities are coastally-dependent and, if demand warrants, must be sited in the coastal zone. Here, the EFSC review of alternatives shall evaluate another coastal site but need not address inland sites. Evaluations of non-coastally dependent facilities must include an evaluation of at least one inland site in order to be consistent with the Plan. Coastal dependent and non-coastal dependent facilities are defined in Policy 8.

Consideration of energy needs at the state, regional and national levels is an inherent part of the EFSC review. Concerning its decision regarding the need for the facility (the demand forecast) the Council consistently evaluates demands and supply arrangements out of state. Regulations 61.5, 63.2, 66.1 and 71.5 reveal that such data can be used to justify construction of facilities in the Commonwealth; that the Council is entitled to copies of all agreements regarding the purchase of power; that the applicant must reveal the location and capacity of all facilities, including those out of state; and that for oil facilities, two market forecasts must be prepared, one for in-state and the other for the total marketing region. Thus, the pervasive evaluations by the Council of out of state energy needs and supplies coupled with the balancing of energy v. other national interests in the coastal zone which are contained in the CZM Plan and promoted by the Secretary of EOEA provide for a thorough process for considering national energy interests in the Massachusetts coastal zone.

At the Long Range Forecast and Notice of Intention stage, the Council conducts a preliminary review of environmental impacts. Upon completion of detailed engineering plans, the full environmental review takes place by submittal to the state and local agencies. At this stage (the third step of the process), applicants proposing to construct energy facilities must secure all applicable state and local permit approvals.

However, since providing energy is a vital public need and energy facilities are a use of more than local benefit, and often in the national interest, the Massachusetts energy siting procedures provide for an appeal process to ensure that the results of the third step of the procedure do not unreasonably prevent the construction of an approved energy facility at an approved site. This fourth step is triggered by petition from an electric, gas or oil company to the EFSC for issuance of a Certificate of Environmental Impact and Public Need on the grounds that state or local

agency regulations have imposed burdensome conditions, caused undue delays, or otherwise unreasonably restricted or excluded the construction of an EFSC approved facility at an approved site. If, after reviewing the petition, the Council makes an affirmative finding, the Certificate, with whatever conditions it may include, serves in lieu of the state or local permit or license in question.

The only case where the EFSC could not supercede local regulations involves the siting of oil facilities other than pipelines. If a local zoning by-law prohibiting oil facilities has been placed into effect prior to a filing by an oil company of a notice of intention to construct, the EFSC cannot override the local ordinance. However, ample industrially zoned land currently exists in the coastal zone. Foreseeable demand for new coastally dependent oil facilities is expected to be limited. For example, as a result of a current low berth occupancy rate (approximately 10% for New England and 23% in Boston), it is projected that existing marine terminals are sufficient to meet a reasonable and foreseeable demand beyond the year 2000.

Furthermore, local attempts to amend existing zoning ordinances or by-laws to exclude all industrial uses or, specifically, coastally dependent oil facilities where they previously were permitted would be deemed unconstitutional, as arbitrary, capricious and unreasonable actions, or would constitute illegal "spot zoning" in violation of the state's zoning enabling act. Also, there is a special state procedure available to any landowners directly affected by such zoning changes which allows them to challenge the validity of the changes.

With respect to non-coastally dependent oil facilities (refineries and most oil storage), the state encourages consideration of siting in inland areas, where there is ample industrially zoned land, in addition to that in the coastal zone.

Consequently, the state does not foresee the possibility of any unreasonable restriction or exclusion of oil facilities by local zoning by-laws.

The above procedures make possible adequate coordination between the MCZMP and other relevant state, federal and local agencies involved in energy facility planning and/or siting. The framework for coordination and implementation is provided by the following:

First, the adoption of the CZM Program through rules and regulations promulgated by the Secretary of Environmental Affairs compels the EFSC to give cognizance to CZM policies because by law and its own regulations, the Council is bound to make its forecast and site approval decisions in conformance with current health, environmental protection, and land use and development policies of the Commonwealth as set forth in the Constitution, general laws, and duly promulgated rules and regulations of responsible state, regional or local agencies having the force of law. The Secretary's regulations also bind agencies in the Executive Office of Environmental Affairs to abide by CZM policies, to the extent permissible by law, thereby ensuring the implementation of the second step of the site suitability assessment procedure.

Second, the Memorandum of Agreement between the Secretary of Environmental Affairs and the Council (see Appendix B) sets forth the working and institutional arrangement to be followed in incorporating CZM policies into the Council's forecast and siting approval procedures.

Third, with respect to federal agencies, the Council examines the relationship of forecasts and proposed facilities to Massachusetts and federal energy policies and provides a forum through public hearings on forecasts and petitions for Certificates of Environmental Impact and Public Need for federal agencies to make their views known. In addition, following EOEA agency permit approvals or EFSC override of denials, federal consistency concurrences will be issued in accordance with EFSC determinations. For FERC and NRC permits, limited concurrences will be issued for those issues decided by the Council and not within the scope of review of any EOEA agency.

Fourth, the EFSC, in assessing forecasts and site needs, takes into account arrangements made by Massachusetts energy suppliers to provide out of state requirements, bulk purchase agreements, and other inter-state aspects of energy demand and supply. This facet of the EFSC's review operations meets the requirements of CFR 920.18(b)(7).

Fifth, prior to forecast and site approval, or issuance of a Certificate of Environmental Impact and Public Need, the Council, by law, must hold a public hearing, thereby allowing concerned citizens, organizations, and local, state, regional and federal officials to make their views known.

With regard to OCS development, the MCZMP will consider and balance national interests by means of the following. (See Policy 9 for more detail.) The Massachusetts program will evaluate OCS plans to determine if all reasonable measures - locational, structural or operational - have been taken to reduce the potential interference with traditional fishing operations, the risks of oil and gas spills on marine resources, and the possibilities of spills reaching shore. Siting of land based support facilities will be encouraged where consistent with the ports and harbors policies but will not be permitted in restricted wetlands or where one of the seven interests of the Wetlands Protection Act would be violated. In addition, through the review of OCS plans, special concern will be addressed to designated Areas for Preservation or Restoration and Ocean Sanctuaries.

Finally, the program's port and harbor policies, Policies 7 and 19, also provide for accomodation of the national interest in energy by assigning high priority to coastally dependent energy facilities in the use of designated port areas. Non-coastally dependent energy facilities will be similarly favored if their siting in the port area has been approved by EFSC. Fifteen such ports have been identified. These areas will receive high priority in the allocation of dredging funds, and the exclusion of coastally dependent energy facilities will be prevented through tidelands licensing and review for federal consistency of federal funding actions. Policy 7 also provides for the designation and development of additional port areas if the need to be met is of regional or national significance.

3. Recreation*: The Massachusetts coastline is of more than local and state interest; it is a recreational resource of unique and natural beauty. The Massachusetts Coastal Zone Management Program declares that the "recreation dilemma is critical. Solutions must be provided within the next decade or most remaining opportunities will be lost", and that the primary concern "is to increase and enhance public use of the Massachusetts shoreline while improving existing facilities and minimizing future conflicts of recreation areas." Visitors yearly come from across the country to Massachusetts to utilize the state's recreational facilities, most of which are concentrated in the state's coastal zone. Tourism is a leading contributor to the State Gross Product and the coast accounts for most of the jobs and state tourist income.

Recognizing its responsibilities to the rest of the nation, Massachusetts in its coastal planning has incorporated local, state and federal recreation interests in issues affecting the coastal zone. The Massachusetts coastal recreation policies have been developed after consideration of the following sources:

a) federal laws and regulations

b) the nation-wide Outdoor Recreation Plan

c) state and local recreation programs (e.g., Massachusetts Statewide Comprehensive Outdoor Recreation Plan)

d) special reports, studies and comments from federal, state and local agencies.

The Massachusetts Coastal Zone Management Program has incorporated the State Comprehensive Outdoor Recreation Plan (SCORP), which is consistent with the National Outdoor Recreation Plan adopted in 1973. The SCORP process will continue to be used as the planning process for giving adequate consideration to the national interest in recreation. The Plan calls for:

a) increase the availability and access to recreation resources, especially in central, city, suburban and urban fringe areas,

b) improve the management and administration of recreation resources and programs by local and state governments.

*National interest recreation facilities include national seashores, parks, forests, large and outstanding beaches and recreational waterfronts.

Salient points of the National Plan and their relevance to the Massachusetts CZM Program are as follows:

a) Expand recreation opportunities in urban and high need areas: Policy 24 addresses this concern and includes a list of sites for which future acquisition for recreation purposes would be considered consistent with the program.

b) Improve public transportation facilities to coastal recreation facilities: Policy 21 outlines the state's concern to increase public access by public transportation and by linking existing recreation sites through public trails.

c) Protect existing recreation areas of state and national significance from adverse impacts: Outdoor recreational activities are permitted uses in restricted coastal wetlands; intensive development is not, thereby ensuing that uses of wetlands contiguous to recreation sites will be compatible. In addition, Policy 13 outlines how the state will utilize the Massachusetts Environmental Policy Act to protect existing recreation areas listed with the policy. Also, existing state or locally owned parks or recreation areas cannot, under the Massachusetts Constitution, pass from public to private ownership or be converted for another use without a two-thirds vote of the Massachusetts Legislature, giving these areas a special measure of protection.

d) Provide more effective management: Policy 22 calls for improved management of existing recreation facilities and advocates the facilitation of the use of these facilities for multiple types of recreation activities.

e) Transfer underutilized and surplus federal lands: The list with Policy 24 identifies potential surplus federal lands on which the state would like to see recreational development occur, should they ever be disposed.

Large and outstanding recreational sites and facilities that draw users from areas other than the immediate municipality within which they are located are obviously uses of regional benefit. The Commonwealth has the ability to acquire such sites through the eminent domain powers vested in DEM, MDC and the Public Access Board, thus ensuring that when opportunities arise, potential regional benefits can be realized (see Policy 24).

4) Transportation*: Port development and maritime shipping and industry are accorded high priority and given preference in existing port areas. New port development outside of existing port areas is restricted, unless the need to be met is of national or regional importance as described in Policy 7 and cannot be met in existing port areas. Existing major road and transit plans have been examined, and the status of their consistency is

*National interest facilities include interstate highways, airports, navigation aids, ports, and railroads.

discussed in Policy 26. Logan Airport in Boston is the New England region's airport of major national significance; no plans for expansion are under consideration (see Appendix C). The Massachusetts program policies on wetlands, ports, and general public investment are the chief considerations that would be brought to bear on airport siting and expansion. Other future transportation needs will be determined by relevant federal agencies working with counterpart state and local agencies to develop annual transportation programs consistent with their respective responsibilities. This will provide for adequate consideration of the national interest. Coordination with the Massachusetts CZM Program is addressed specifically in Policy 26.

National interests in transportation, however, must be balanced against the national interest in wetlands and living resources. For instance, the program requires bridges to be constructed so as not to impede anadromous fish passage and so that the basic seven interests of the Commonwealth's Wetlands Protection Act are met.

Where regional transportation improvements are needed, the Department of Public Works can exercise the power of eminent domain to acquire rights of way. MASSPORT Authority is exempt from local zoning, and the state's tidelands law provides authority for preventing the exclusion of maritime transportation in designated port areas and for protecting general navigational rights.

5. Regional Waste Treatment Plants: Concommitant with the program's support to attainment of national water quality goals (see below under water), the program recognizes that public sewage treatment plants are uses of regional benefit. The Division of Water Pollution Control is empowered to order a municipality or a water pollution abatement district to construct treatment facilities and to prepare necessary engineering plans. Highest priority for waste treatment facilities is given to projects serving existing urban areas and community centers where water quality problems currently exist. Next priority is awarded to facilities proposed for contiguous developed areas. In all cases, facilities proposals must demonstrate a documented public health problem requiring resolution through a structural measure (see Policy 26). During implementation, national interest will be considered in developing the annual priority list for federal and state funding of waste treatment facilities. This list is approved by both EPA and the Secretary of Environmental Affairs, thereby allowing for input of national interest concerns.

The national interest on waste treatment plants is balanced against national interests in wetlands, barrier islands, recreation, floodplains, and living marine resources in that treatment plants and outfalls are to be sited so as to minimize potential adverse effects to recreation beaches and shellfish beds and so as to minimize the growth-inducing effects caused by providing sewer services in floodplains, barrier beaches, and wetlands.

6. Water and Air: The program fully incorporates the national interests in air and water quality, and the requirements of the federal Water Pollution Control Act and Clean Air are made part of the Massachusetts

coastal program including non-point sources of water pollution and air pollution (Policy 10). Thus, those water and air national interests will be met during program implementation through the process of issuing state and federal air emission and waste water discharge permits.

7. Wetlands: The national interest in wetlands, as expressed in the President's Executive Order on Wetlands (Executive Order 11990, May 24, 1977) is:

> "to avoid to the extent possible the long and short term adverse impacts associated with the distribution or modification of wetlands and to avoid direct or indirect support of new construction in wetlands whenever there is a practicable alternative."

The Massachusetts program meets this national interest in Policy 1 by permitting in restricted wetlands those activities which have no practicable alternative (e.g., wharves and piers which all require a waterfront location) and by prohibiting or conditioning all other activities which would modify or destroy wetland values. The national interest in wetlands is balanced against the national interest in energy facilities siting in that certain necessary components of energy facilities (transmission lines, pipelines, and intakes and out-take conduits for cooling water) are permitted uses for wetlands. For other types of energy facilities, such as tank farms, the national interest in wetlands is represented by either their prohibition in restricted wetlands or conditioning of them in unrestricted wetlands to protect the interests of the Wetlands Protection Act.

8. Endangered Flora and Fauna: Habitats are protected through the restriction of wetlands as well as through designation as Areas for Preservation or Restoration (Policies 1 and 2). The special scrutiny reserved for activities taking place in Massachusetts ocean sanctuaries also provides assurance that during the implementation the national interest in marine mammal protection is addressed in licensing off-shore activities. Also see living marine resource below.

9. Floodplains and Erosion Hazard Areas: The national interests in these areas as expressed through the President's Executive Order on floodplains and the National Flood Insurance Program are incorporated into the Massachusetts program. Development is conditioned or restricted in wetlands and floodplains (Policy 1). The program supports non-structural measures for erosion and flood control - structural measures are only selectively permitted and then only if downcoast effects are minimized (Policy 15). As the national interest in floodplains is incorporated in the Massachusetts program's policies, those national interests will be accommodated through coastal wetlands restrictions, Wetlands Protection Act permitting and Tidelands licensing.

10. Barrier Islands: See wetlands and floodplains above.

11. Historic Sites and Districts: The program affords protection to designated historic districts or sites from adverse impacts stemming from federal or state actions, and accordingly all national interest facilities must minimize adverse impacts to designated historic districts or sites

Policy 12). During program implementation, the national interest in historic sites and districts will continue to be considered with the program encompassing new districts or sites as they are established or registered.

12. Wildlife Refuge or Reserves: Federally owned refuges are excluded as federal lands from the provisions of the Massachusetts program. State or other publicly owned refuges or reserves may not, under the Massachusetts Constitution, be converted to other use or be sold without two-thirds approval of the Massachusetts Legislature. The presence of feeding and breeding areas for waterfowl or birds dependent on coastal resources is one of the criteria used in designating Areas for Preservation or Restoration. The establishment of wildlife refuges or reserves is of high priority in designated Areas for Preservation or Restoration (Policy 2). During program implementation, the federal consistency mediation procedures may be invoked to resolve conflicts arising from balancing national interests in wildlife refuges or reserves with other national interests, such as municipal sewage treatment plant siting.

13. Areas of Unique Cultural Significance: See historic sites and districts above.

14. Minerals: Mineral development is a recognized permitted use under the Massachusetts program. However, such development is balanced against other national interests in that dredge or filling will be conditioned in wetlands or barrier islands; and offshore, is conditioned upon a showing that there will be no adverse effects to natural sand replenishment processes for recreational beaches or to living marine resources (Policy 6). Presently, there is a moratorium on sand and gravel mining in state waters. During program implementation, federal agencies will be offered opportunities at public hearings on off-shore leases in Massachusetts waters to voice national interest concerns, and the leasing process will take account of these interests.

15. Prime Agricultural Lands and Forests: No agricultural lands or forests of national significance exist in the Massachusetts coastal zone.

16. Living Marine Resources: In determining the national interest in living marine resources, the following documents and specific legislation were used as indicators:

> A Compilation of Federal Laws Relating to Conservation and Development of our Nation's Fish and Wildlife Resources, Environmental Quality, and Oceanography. The Library of Congress, Congressional Research Service. January, 1975.
>
> A Marine Fisheries Program for the Nation. U.S. Department of Commerce. July, 1976.
>
> Fishery Conservation and Management Act of 1976.)P.L. 94-265)

The major objectives of the national interest in living marine resources as expressed are as follows:

> To conserve, enhance and manage in a rational manner commercial fishing which constitutes a major source of employment and contributes significantly to the food supply, economy and health of the nation.
>
> To strengthen the contribution of marine resources to recreation and other social needs.
>
> To develop and protect all species of wildlife, resources thereof and their habitat, and to control losses by damage to habitat areas through coordination with other features of water resource development programs.

Elements of the national interest in living marine resources with particular application to the Massachusetts Coastal Zone Management Program are as follows:

1) Emphasize Commercial Fisheries

Policy 14 outlines the state's emphasis in encouraging and assisting commercial fisheries research and development. Policy 7 accords the fishing industry priority in allocating port space and Policy 19 gives fishing harbors priority for state and federal dredging funds. These priorities assure that the commercial fishing industry's on-shore space and harbor needs are met.

2) Relationship of Marine Resources to Recreation

Policy 1 allows construction associated with recreation activities in coastal wetlands. Policy 21 outlines the state's concern to increase public access by public transportation and establishes the state's interest in linking existing coastal recreation sites to each other or to nearby coastal inland facilities via trails for bicyclists, hikers and equestrians, and via rivers for boaters, thereby expanding recreational fishing opportunity. Lastly, Policy 24 addresses the expansion and development of recreational facilities, including those for recreational fishermen.

3) Develop and Protect Wildlife and Their Resources

The Massachusetts program addresses the adverse effects to wildlife that may stem from construction or development in open ocean waters, estuaries, and coastal rivers. Specifically, Policy 3 speaks to minimizing damage to shellfish beds from outfall placement; Policy 4 addresses impediments to anadromous fish passage; Policy 5 specifies the measures to be taken to avoid adverse impacts to fisheries from dredging or dredged material disposal; and Policy 9 outlines the state's concern for fisheries and wildlife in OCS exploration and development and other off-shore mining.

4) Protection of Wildlife Habitats

Consistent with the national interest in wetlands protection, the Massachusetts program conserves salt marshes, shellfish beds, dunes, beaches, barrier beaches, and salt ponds -- all resources that provide food and habitat upon which marine life depends (Policy 1). In addition, through designating Areas for Preservation or Restoration which encompass particularly important areas of marine productivity, wildlife habitats are afforded additional protection (see Policy 2).

Other national interests in energy facilities siting, mineral extraction and transportation are matched against national interests in fisheries with the result that the planning for and siting of such national interest facilities must avoid adverse impacts to marine productivity and fisheries. Specifically, off-shore mining is prohibited in ocean sanctuaries which constitute the major traditional fishing waters of Massachusetts and encompass the major off-shore shellfish beds and finfish spawning grounds. Moreover, OCS development and exploration is, under the Massachusetts program, conditioned to minimize impacts on fishing operations and on spawning grounds.

During program implementation, the national interest in fisheries will be considered in Wetlands Protection Act permitting, Tidelands licensing, off-shore mineral leasing, water quality discharge permitting, and energy facility siting. These permits, licenses, and approval procedures either expressly include protection of fisheries as a criteria for approval or provide a public process for introduction of evidence that must be considered prior to approval.

9.2 ADMINISTRATION OF FEDERAL CONSISTENCY

Concern for the future of the Massachusetts coast is by no means peculiar to the Massachusetts community. Federal as well as state and local agencies help make the development and preservation decisions which ulitmately impact our lands and waters. Because effective management of coastal resources demands a significant level of governmental coordination as well as a focus of control, the Coastal Zone Management Act provides that:

> "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs."

Requirements within the Act which define the federal/state relationship are referred to as the federal consistency provisions. Under these provisions, the Massachusetts Coastal Zone Management Program has been authorized to work with federal agencies to delineate how federal activities must proceed to realize state CZM requirements. The asterisked policies in Chapter 4 of the FEIS are the principal measures against which federal activities will be judged for consistency. These include the following: 1-13, 15, 17, 19, 24, 26.

Covered by the Act's federal consistency provision are:

(1) Federal licenses and permits;

(2) Federal licenses and permits described in detail in OCS plans;

(3) Federal assistance to state and local governments or any entity related thereto, through grant or contractual arrangements, loans guarantees, or insurance; and

(4) Federally conducted or supported activities directly affecting the coastal zone, including any development project involving a building or other structure or the alterations of terrain or a body of water, conducted by or on behalf of the federal government.

FEDERAL LICENSES OR PERMITS (See Section 9-3 for licenses and permits subject to federal consistency)

(1) Federal agencies shall not approve any license or permit for which requisite state permits or licenses required under applicable Massachusetts laws and regulations have not been obtained. Where categorical concurrences have been made for the type of activity, state permits and/or licenses alone shall be deemed valid state certification of consistency for actions likely to affect land or water uses in the coastal zone. When multiple permits are required and there is a need for CZM coordination, or where there is a possible conflict with the CZM plan, the procedures and thresholds detailed in the 21A regulations apply. Public notice shall be given all categorically concurred projects, whether CZM or the EOEA actually reviews them.

(2) MCZM reserves the right to review the consistency of federal license and permit activities applicable to uses and/or developments which although not subject to the permit or licensing requirements of Massachusetts law may nevertheless significantly affect the state's coastal resources. MCZM shall monitor such federal license and permit activities through the state's designated A-95 clearinghouse, through review of NEPA environmental impact statements and through such other avenues as provided to it by law. MCZM shall notify the appropriate federal agency, the applicant and the Associate Administrator for Coastal Zone Management of its intention to review the consistency of proposed federal permit or licensing activities with applicable provisions of the MCZMP. Such notification shall be in writing and shall be made within a period not to exceed 30 days from the notice date of the federal license or permit application.

(3) If in the absence of an applicable state permit or license, MCZM finds issuance of a federal permit or license to be inconsistent with the MCZMP, it shall indicate the specific nature of the inconsistency, shall propose alternative actions, and shall notify the federal permit or license issuing agency, the applicant and the Assistant Administrator. (see below for activities on the OCS).

FEDERAL LICENSES AND PERMITS DESCRIBED IN DETAIL IN OCS PLANS

Plans submitted to the U.S. Secretary of Interior for Outer Contental Shelf exploration, development or production shall be submitted to CZM together with a certification of their consistency with the Massachusetts CZM program. The certification shall also identify the consistency of required federal permits or licenses with applicable CZM policies. Applicable CZM policies are: Policies 1, 2, 4-13.

(1) Persons submitting any exploration and development and production plans to the Department of the Interior shall also submit an evaluation and certification of its consistency with the Massachusetts CZM Program. After removing confidential information the Department of Interior will transmit the plan, evaluation, and certification of consistency to the Massachusetts CZM Program for approval within a time specified in 30 CFR 250.34.

(2) MCZM shall review OCS plans and consistency certifications for consistency with specific MCZM policies. Any one license or permit contained in the plan which is inconsistent shall render the entirety of the plan inconsistent and thus suspend approval of all other licenses and permits. Where MCZM objects to one or more of the federal license or permit activities described in the consistency certification, it shall separately discuss each objection with reference to specific MCZM policies. Alternatives to or modifications of the proposed activity (ies) which would render the plan consistent with MCZM shall be recommended. The applicant shall further be notified of his right to appeal the Council's objection to the Secretary of Commerce.

(5) Where MCZM disagrees with an agency determination of consistency, it shall indicate the nature of its objection with specific reference to applicable CZM policies. It shall further recommend alternatives to or modifications of the proposed action that would render it consistent with said applicable provisions. A copy of such notification shall be forwarded to the Associate Administrator for Coastal Zone Management. If MCZM does not respond to the federal agencies notification within 45 days, except where additional time is requested, the project is presumed to be consistent.

FEDERAL ASSISTANCE PROGRAMS TO STATE AND LOCAL GOVERNMENTS

CZM will work with coastal communities and federal funding agencies to assure that projects and programs meeting the policies of the CZM program are given priority consideration for federal funding. Occasionally, however, some state and local government applications for federal assistance will contravene CZM enforceable policies (e.g. federally subsidized housing to be located in a salt marsh or assistance to dredge new deepwater channels outside existing port areas). In these instances, CZM will deem the application for federal assistance as inconsistent with CZM policies. Policies for which federal consistency is required are: 1-13, 15, 17,19,24,26.

The process is as follows:

(1) Applications for federal assistance by units of state or local government and/or related public entities to plan for, design, build, alter or expand physical development projects in the following areas or of the following types shall be routinely forwarded to MCZM by the Project Clearinghouse (A-95) for certification of consistency with applicable provisions of the MCZMP.

a. Areas where Certification will be required:
   1. All tidal waters.
   2. Intertidal Areas
   3. Land areas above mean high water extending to 100' inland of the 100 year floodplain.

b. Projects requiring Certification regardless of their location within the coastal zone.
   1. Power generating and designation plants.
   2. Minerals extraction facilities
   3. Wastewater treatment and collection facilities
   4. Transportation facilities

(2) MCZM, however, reserves the right to monitor proposed federal assistance projects other than those described above through the A-95 and NEPA review processes and other similar avenues. Where such monitoring indicates a significant impact on the state's coastal region and a subsequent need for a consistency determination MCZM shall notify the applicant agency, involved federal agencies, and the Associate Administrator for Coastal Zone Management of its intention to make such a determination.

(3) MCZM shall notify in writing, the applicant, the federal license or permitting agencies, the Secretary of Interior and the Secretary of Commerce of its concurrence or objection within a period not to exceed six months after receipt of the OCS plan, consistency certification and supporting information. For amended OCS plans, state concurrence shall be issued in three months.

(4) Where MCZM has previously objected in whole or part to an OCS Plan consistency certification, it shall review amended or new OCS plans, consistency certifications and/or supporting data and information in the manner set forth under (5) above. Such new or amended material shall meet all standards of content and detail required for original submissions as described under (1) - (3) above. Within a period not to exceed three months from receipt of such new or amended material, MCZM shall notify all parties of its concurrence or objection.

FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS

CZM requests federal consistency determinations for all applicable federal activities directly affecting the coastal zone, including:

Army Corps of Engineers:	Applicable MCZM Policies
--proposed project authorization for dredging, channel works, breakwaters, other navigation works, erosion control structures, beach replenishment and dams within the coastal zone and or in rivers directly discharging into coastal waters.	Policies 1,2,4,5,7,10-13, 17,19.
--proposed acquisitions within the coastal zone.	Policies 2,24
Department of Interior:	
--Massachusetts CZM reserves the right to review proposed Bureau of Land Management OCS Lease sales, at such time as the question of whether or not lease sales are eligible for consistency review has been resolved.	Policy 9 and other policies referenced therein.
--proposed National Park Service acquisition within the coastal zone.	Policies 2,24
--proposed U.S. Fisheries and Wildlife acquisitions within the coastal zone.	Policies 2,24
Department of Defense:	
--location and design of new or enlarged defense installations within the coastal zone.	Policies 1-7, 10-13

Department of Transportation:

--location and design of new or enlarged Coast Guard stations, bases and lighthouse within the coastal zone.	Policies 1-7, 10-13
--location and design of aviation communication and air navigation facilities within the coastal zone.	Policies 1-7, 10-13

General Services Administration:

--location and design of proposed federal government property acquisition and building construction within the coastal zone.	Policies 1-7, 10-13
--disposal of surplus federal lands within the coastal zone.	Policies 1-7, 10-13, 24

Amtrak, Conrail:

--railroad, expansions, new construction, or abandonments within or affecting the coastal zone.	Policy 26

(1) Federal agencies shall provide the MCZM office routine and timely notification of all proposed activities and development projects to be located in the Massachusetts Coastal Zone.

(2) MCZM and Federal agencies will develop additional lists of projects that are likely to directly affect the coastal zone but are not actually located in the state's coastal region.

(3) Notification shall:
   a. be in writing and submitted at the earliest practicable time, at a minimum, 90 days to final approval.
   b. be submitted directly to the MCZM office.
   c. indicate the involved agency's assessment of its consistency with policies of the MCZMP.
   d. describe the proposed action or project in sufficient detail, including, as appropriate, facility development plans, maps, engineering drawings, or other data and information, so that the council may independently evaluate its consistency with specific MCZM policies.

(4) The MCZM office shall notify in writing federal agencies proposing activities and development projects, of its agreement or disagreement with their consistency determination within 45 days of receiving said determination and supporting documentation as described under (3), c and d, above; provided that MCZM may, where necessary, request an additional 15 days to evaluate and respond to federal agency determinations pursuant to NOAA regulations.

(3) Within the time limits provided for A-95 review, MCZM shall notify the Statewide Clearinghouses, appropriate federal agencies and applicant of its objections, if any, to proposed projects. Such objections will describe how the proposed project is inconsistent with specific MCZM policies and shall recommend alternative measures (if they exist) which would render the project consistent with the MCZMP. Notification shall further appraise the applicant agency of the appeal procedures set forth under Subpart H of NOAA regulations.

9.3 Summary of Federal Consistency Requirements for

Federal Licenses and Permits

Federal Licenses or Permits U.S. Army Corps of Engineers	CZM Policy Requirements	Scope of State and Federal Regulatory Jurisdiction
Section 404, Federal Water Pollution Control Act, permit for discharge of dredged or fill materials in navigable waters.	When salt marshes, shellfish beds, dunes, barrier beaches and salt ponds restricted under the Coastal Wetlands Restriction Act, prohibit all dredging, filling, construction and discharge of pollutants except: construction of piers on pilings, catwalks, boathouses, boat channels for single family use, maintenance dredging, expansion dredging in port areas, expansion of existing harbor channels where necessary and impacts on shellfish beds are minimized beach replenishment, boat launching ramps, utility lines, driveways, maintenance or reconstruction of existing roads, and shoreline protection works. In unrestricted wetlands, condition alterations and construction so as to protect the seven interests of the Wetlands Protection Act. (Policy 1). Prohibit mining, dumping, and permanent structures on seabed as required by Ocean Sanctuaries Acts; condition other mining or open ocean construction works to minimize adverse effects on water quality, recreational beaches, fish and wildlife (Policies 6 and 9). Condition construction of solid fill piers, bulkheads, shoreline protection works, and other works in coastal waters so as to prevent disruption of circulation patterns, minimize adverse effects on littoral processes and flushing rates, and allow for anadromous fish passage (Policy 4). Condition location and treatment of municipal outfalls so as to minimize impacts on water quality, shellfish and recreation (Policy 3). Restrict new shipping channel development of 20 foot depth or more in non-designated port areas (Policy 7). Prohibit exclusions of maritime-dependent industrial uses in designated ports (Policy 7) Minimize adverse effects on marine productivity, dredging and dredged material disposal (Policy 5). Prohibit dredge material disposal in areas for preservation or restoration/areas of Critical Environmental Concern and prevent damage to characteristics cited in the designation of the area. (Policy 2).	Similar to Waterways Program (MGLA Ch. 91) and Wetlands Program (MGLA Ch. 131, S. 40).
Section 10, River and Harbor Act of 1899, permit for observation of alteration in navigable waters of the United States.	--same as above--	--same as above--
Section 103, Marine Protection, Research, and Sanctuaries Act, permit for transportation of dredged material.	For dredging, filling and construction and discharge of pollutants into saltmarshes, beaches, shellfish beds, dunes, and barrier beaches, see above summary of Policy 1. Prohibit dredged material disposal in APRs/ACECs. (Policy 2). Minimize impacts of dredged material disposal (Policy 5).	State lacks jurisdiction beyond three-mile limit of coastal waters, but permit applications will be reviewed to ensure consistency with CZM policies, especially with respect to spillover effects on the coastal zone.

Section 4f, OCS Lands Act, permit for artificial islands or fixed structure on outer continental shelf.	Condition mining or construction works in the open ocean so as to minimize to the extent practicable, adverse effects on water quality, recreational beaches, fish and wildlife (Policy 9).	--same as above--
U.S. Coast Guard		
Permit for construction or modifications of bridge structures across navigable waters of the United States.	For dredging, filling, construction and discharge of pollutants in salt marshes, beaches, shellfish beds, dunes and barrier beaches, see above summary of Policy 1. Prevent damage to characteristics cited in designation of APRs/ACECs (Policy 2). Condition construction of solid fill piers, bulkheads and other works in coastal waters so as to prevent disruption, of circulation patterns, minimize adverse effects on littoral processes and flushing rates and allow for anadromous fish passage (Policy 4). Prohibit exclusions of maritime-dependent industrial uses in designated port areas (Policy 7).	Federal jurisdiction concurrent with that of Waterways Program (MGLA, Ch. 91).
Deepwater Port License	Energy Facilities Siting Council (EFSC) to consider alternative coastal sites and assess need, impact on port operations, changes in environmental impacts over existing oil delivery systems, and other factors. Based on considerations of these alternatives and assessments and the balancing of supplying energy needs, protection of the environment, and lowest cost to the consumer, the EFSC will approve, deny, or condition deepwater ports in the coastal waters of Massachusetts (Policy 8).	State lacks jurisdiction beyond the three-mile limit, however Deepwater Port Act explicity gives authority to Governor of contiguous state to approve or deny Deepwater Port licenses.
Environmental Protection Agency		
National Pollution Discharge Elimination System (NPDES) permit. (Section 402, PL 92-500).	For dredging, filling, construction, and discharge of pollutants in salt marshes, beaches, shellfish beds, dunes, and barrier beaches, see above summary of Policy 1. Prohibit dredged material disposal, siting of new sewerage treatment facilities, and new industrial discharges in APRs/ACECs (Policy 2). Condition the location and treatment of discharges so as to minimize adverse effects on water quality, shellfish, and recreation (Policy 3). Prohibit exclusion of maritime-dependent industrial uses in ports (Policy 7). Ensure consistency with Areawide Wastewater Management (208) Plans (Policy 3). Minimize impacts on marine environment from OCS related activities (Policy 9).	EPA and the Massachusetts Division of Water Pollution Control share responsibility for issuance of this permit. Federal Consistency will be used to ensure that EPA's responsibility for NPDES permits are consistent with CZM policies.
Ocean Dumping permit (authority exercised jointly with Army Corps of Engineers).	--see Army Corps of Engineers Section 103 permit above--	State lacks jurisdiction beyond three-mile limit of coastal waters, but permit applications will be reviewed to ensure consistency with CZM policies, especially with respect to spillover effects on the coastal zone.

Department of Interior		
Permits for Pipeline Rights of Way for oil or gas transmission on Outer Continental Shelf.	Condition off-shore energy resource extraction or development and construction of related off-shore facilities so as to minimize adverse impacts on the marine environment, especially with respect to fisheries, water quality, fisheries, and wildlife (Policy 9).	--same as above--
OCS exploration and development plans which describe in detail federal license and permit activities (drilling, platform installation, gathering lines, etc).	---see above----	---see above---
Federal Energy Regulatory Comm.		
Permits and licenses for planning, construction, and operation of non-federal hydroelectric power developments.	Ultimate state approval for siting of major energy facilities rests with the Energy Facility Siting Council (EFSC). The Council has agreed to consider the CZM program as an expression of state environmental policy. The EFSC also agreed to incorporate into its own regulations a requirement that utilities provide to the Council an alternative coastal site, and in the case of non-coastal dependent energy facilities in alternative inland site. Additional assessment factors will also be incorporated into EFSC regulations. An application for an FPC or NRC permit or license will be deemed consistent with the CZM program if the facility and site have secured EFSC approval. Other federal permits or licenses for construction of an energy facility will be deemed consistent with the CZM program if they meet pertinent CZM policy requirements or if the EFSC overrides the condition or denial of a counterpart state permit by issuing a Certificate of Environmental Impact and Public Need. (see Policies 8 and 9 for further details).	FERC jurisdiction similar to that of Energy Facility Siting Council, except that FERC expressly mandated to require for water power projects, the conservation and development of land and water associated natural resources at the project, such as fish, wildlife and outdoor recreation and the preservation of historic, scenic and other aesthetic values of project areas. Applicant's Consistency Statement will be approved, if the facility and site are approved by EFSC.
Certificates authorizing natural gas pipelines to construct, extend, acquire or operate transportation and storage facilities for transport of natural gas in interstate commerce.	---see above---	Energy Facility Siting Council also has jurisdiction over gas facilities; applicants consistency statement will be approved if the facility and site have been approved by EFSC.
Authoritzation for import or export of natural gas.	---see above----	--same as above--

Nuclear Regulatory Comm. License for construction and operation of nuclear power plant.	--same as preceding page--	Energy Facility Siting Council (EFSC) has jurisdiction over power plant siting; applicant's consistency statement will be approved if the facility and site has been approved by EFSC.

Part III:

Probable Impacts of the Proposed Action on the Environment: Impacts Directly Resulting from Federal Approval

PART III

PROBABLE IMPACTS OF THE PROPOSED ACTION ON THE ENVIRONMENT

Significant environmental, social and economic impacts will result from Federal approval of the Massachusetts Coastal Zone Management Program. Impacts directly resulting from Federal approval fall into four categories. First, an increase in funds and funding options will permit State agencies to implement the Program through more effective administration of existing management authorities. Second, Federal approval will require that Federal government actions be consistent with the management program to the maximum extent practicable. Third, approval will signify that the State has an acceptable procedure to insure adequate consideration of the national interest involved in siting of facilities necessary to meet requirements which are other than local in nature. While the State is not compelled to propose a program which accommodates certain types of facilities, the impact of this procedure shall assure such national interests are not arbitrarily excluded or unreasonably restricted from the coastal zone.

Finally, Federal approval will insure continued State eligibility to receive assistance under Coastal Energy Impact Section 308 of the Coastal Zone Management Act. This would provide financial aid in ameliorating the impacts associated with offshore oil and gas production off the Massachusetts coast. Additional funding for other coastal zone assistance programs such as interstate coordination, beach access, island preservation, research, and training will also be assured.

In order to fully understand the impacts associated with Federal approval, however, it is necessary to evaluate the probable impact of program implementation by the Commonwealth. The following description of program impacts is divided into two chapters. The first chapter summarizes the probable environmental,social,and economic impacts of the program. The second chapter describes how each of the State's management authorities will be administered differently under an approved program and evaluates the specific impacts of these changes.

CHAPTER 10

SUMMARY OF PROBABLE ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS

A. SUMMARY OF ENVIRONMENTAL IMPACTS

The Massachusetts coastal zone constitutes a large, delicately balanced ecosystem in which changes in any one part may cause alterations in other parts. These causes and effects are linked through geophysical processes (e.g., wave action, movement of currents and tides, flow of surface water, and other hydrologic cycles) and biological processes (e.g., food chain links, reproductive cycles, migration patterns, and habitat adaptation). The Massachusetts Coastal Zone Management Program seeks to preserve key natural processes and conserve biologically productive resources. Thus, implementation of the program should have a generally beneficial impact on the natural environment.

The key natural processes and resources that the program policies are designed to preserve and respect are:

-- littoral sand transport along the shore;

-- flushing and circulation patterns in estuaries, coastal embayments, and salt ponds;

-- storm buffering functions of beaches, dunes, barrier beaches, and salt marshes;

-- soil capabilities to filter and absorb wastes;

-- salt marshes which promote habitat for wildlife and which, through the production of detritus, are a primary source of food for marine life;

-- beaches, dunes, and barrier beaches which provide habitat for wildlife;

-- shellfish beds;

-- anadromous fish runs; and

-- fishery resources.

By protecting certain key natural resource areas of the coast - salt marshes, beaches, barrier beaches, dunes and shellfish beds, in particular - the program will also help to preserve the coast's esthetic qualities and the various types of recreational opportunities available along the shore. By preserving these key natural resource areas the program will also discourage further inappropriate development in hazardous areas and preserve natural buffers against hazards.

While the program seeks to preserve natural processes and resources, the program also recognizes that the coast will continue to experience significant new growth. Marine dependent energy development, offshore mineral mining, and port and harbor development, and their attendant dredging, spoil disposal, and bulkheading activities, will be permitted in certain locations in the coastal zone, so long as potential adverse impacts are addressed and minimized to the extent practicable. Such activities will have a variety of adverse impacts, including reduced marine productivity as a result of habitat destruction and increased turbidity, deterioration of coastal visual resources, and interference with recreational uses of the coast.

Most types of major development located in or immediately adjacent to tidal areas will be regulated by the state directly, or by local conservation commissions subject to state review. The regulation of most other types of development in the coastal zone, with the exception of energy facilities, will remain the responsibility of local governments. Thus a variety of activities, that may not individually, but in the aggregate may have an adverse impact on the coastal zone will not be addressed by the management program.

The Coastal Wetlands Restriction Program will be employed to protect ecologically significant resource areas and natural hazard buffer areas. The Inland Wetlands Restriction Program will be used to protect anadromous fish runs located in Areas of Critical Environmental Concern/ Areas for Preservation or Restoration, once these are formally designated by the Secretary. This should serve to protect coastal and marine fisheries resources.

The Wetlands Protection Act and state Tidelands licensing will be relied upon to protect ecologically significant resource areas and natural hazard buffer areas against inappropriate development. Construction of solid fill structures in estuaries and embayments shall be required to minimize interference with water circulation and sediment transport, and preserve coastal water quality and marine productivity. This should have beneficial impacts on marine productivity as well as the visual quality of water bodies.

In addition, conservation commissions shall approve permits for private flood or erosion control only where there will be no adverse effects on adjacent properties or down coast areas. Uniform criteria for evaluation of proposed projects will be contained in the revised regulations. These should eliminate some of the adverse ecological consequences of inappropriate flood or erosion control projects and protect down coast landowners from economic loss.

The other types of activities regulated under the Waterways Program may have substantial adverse environmental effects. Dredging may generate sufficient amounts of suspended material to harm organisms by blocking light necessary for photosynthesis and by clogging the gills and siphons of fish, molluscs, and other marine fauna. Disposal of dredge material also increases turbidity and may destroy benthic orgamisms. Marine construction frequently results in the loss of coastal habitat areas. The policies on dredging disposal will serve to better protect the marine environment during construction.

The policies on historic districts and recreation areas will help preserve the integrity of these areas and should have positive environmental benefits. The program is expected to have little influence on the noise level of the coastal zone.

In summarizing the environmental implications of the Program, a significant point is that several elements of the Program will not be in effect, or not completely in effect, at the time of Program approval. Thus the positive and negative environmental impacts of these elements will begin to be felt only sometime following Program approval. For example, the Program proposes to restrict the rest of the State's wetland areas over the next three to five years; thus, the positive implications of prohibiting intensive development in these types of areas will expand as the restriction program proceeds. During the interim the less stringent but still quite protective provisions of the Wetlands Protection Act will apply. Also, the various use prohibitions and other regulations in Areas of Critical Environmental Concern/Areas for Preservation or Restoration (See Policy 2) will only take effect once these areas are designated by the Secretary of Environmental Affairs. A decision on all ten nominated areas will be made in the first year after Federal approval of the Coastal Zone Program.

B. SUMMARY OF SOCIAL AND ECONOMIC IMPACTS

The Massachusetts Coastal Zone Management Program seeks to conserve and protect key ecological coastal resources, while it advocates increased development of already developed areas. Although the Massachusetts Program does not anticipate a decline in the present rate of development in the coastal zone, the Program may shift some development activity inland. This may affect property values, property tax revenues and resource extraction or exploration. The program will provide an improved decision-making process for determining coastal land and water uses, siting of facilities in the national interest and generally provide increased predictability about what can and cannot occur along the coast.

Maritime dependent activities that bring sustained economic growth will be given highest priority for coastal locations that have the resources and facilities needed to support them. General development also benefits from a coastal location, but could locate in other areas. General development that involves dredging or filling will be managed in an effort to protect resources valuable to maritime dependent growth.

New Development Impacts

New development is expected to continue at its present rate, but will be encouraged to occur in existing developed areas or adjacent areas. Development is restricted in areas under the Wetlands Restriction Program and permitted subject to certain conditions in areas below mean high tide,

areas covered by the Wetlands Protection Acts, where soil cannot support sewage disposal systems, and near designated recreation or historical sites.

This leaves approximately 120,000 undeveloped acres or 21 percent of the coastal zone immediately suitable for development, without constraints beyond local zoning, the State Environmental Code, federal emission standards, Fish and Wildlife Coordination Act, Federal Water Pollution Control Act and other relevant federal laws. Thus, many decisions concerning economic growth and development will be made at the local level, and future impacts will vary.

Over the long run, as land suitable for development without sewers and State roads is exhausted, the need for public investment will become more critical to future development. Thus, a key impact of the plan will be for the public sector to have an increasing involvement in determining optimum growth in the coastal zone. Since the plan seeks to concentrate development in/and adjacent to developed areas through public investment policies, development may occur at higher densities and in fewer places.

The conservation of sensitive coastal resources advocated may make existing and future development more desirable and may raise property values. Present property owners would benefit economically while potential future residents might suffer as a result of increased housing costs.

Fisheries Impacts

The commercial fishing industry is currently a source of full and part-time employment for 15,000 persons and sport fishing is an equally important activity. In 1974, approximately two million sportsmen fished in Massachusetts coastal waters. Massachusetts coastal zone management policies are designed to conserve habitats and biological processes upon which the fisheries depend. Furthermore, the program promotes the funding of harbor dredging, pier construction, and other harbor projects needed for the benefit and expansion of the fishing industry.

These policies will have a positive impact on the fisheries related sector of the state economy. Without such improvements, the benefits made available by an extended US fishing zone would not be as fully realized in Massachusetts.

Ports and Harbors Impacts

Other waterfront dependent industries in Massachusetts directly employ some 35,000 persons. These industries include ship and boat yards, water transportation services, tugboat operations, marine construction, marine terminals, trucking firms, and waterfront industries relying on maritime shipping of raw materials or finished products. Offshore oil and gas development may bring additional maritime trade to Massachusetts.

The Program will direct redevelopment funds into existing ports and harbors and approve funds and permits for dredging projects according to policies 7 and 19. Through the waterways licensing authority the coastal program will attempt to prevent the exclusion of present and proposed maritime-dependent uses in port areas, while permitting other uses which do not represent an irretrievable commitment of sites and which do not

preempt foreseeable maritime-dependent industrial uses. This policy should have beneficial impacts on maritime sectors of the economy such as fisheries and shipping. Its effects may be somewhat limited, however, since certain projects can occur in port areas without any opportunity for State review of maritime dependency.

Impacts on Individual Coastal Land Owners and Uses

CZM policies advocating the conservation of certain coastal resources (e.g., marshes, beaches) are consistent with existing State laws and therefore do not alter the development rights of individual property owners. Furthermore, no owner's rights are redistributed to other people; i.e., no access rights are conveyed through the plan without just compensation. However, some individual owners will experience negative impacts, though there are judicial processes to allow compensation.

The CZM program advocates the protection of the marine environment by conditioning or restricting dredging, pollution, filling, bulkheading etc. Individual land owners may be burdened in the short run through such conditions, but over the long run, the CZM plan will provide significant benefits to most coastal land owners by promoting a high quality environment.

Local Government Budgets

Many policies of the CZM program advocate efficient use of public funds, better utilization of sunk investments, and increased public benefits for public investments. For example, public investment policies encourage the concentration of new development services such as sewers and the high priority revitalization of existing developed centers. Recreation policies advocate improved transportation to and maintenance of existing facilities.

The immediate impact of these policies will be the availability of Federal/State money into local communities for projects and for new planning. In the short run, this may cause an increase in town expenditures where "matching" funds are required. If the Program is successful in improving the overall efficiency of public investments, local expenditures should be reduced in the long-term.

Property tax revenue may be reduced because of conservation restrictions or constraints on industrial development. This may be partially compensated by increases in maritime dependent industry, payment in lieu of taxes for recreation areas, increases in the value of developable land, or land made developable through public investments.

State Institutions

Several EOEA agencies (e.g., the Wetlands and Waterways Programs in the Department of Environmental Quality Engineering) will have expanded responsibilities under the coastal program. Adjusting to the added review steps that will be required to determine the permissibility of certain projects may cause some temporary delays in permit review and program development. In the long run, however, coastal regulatory and management decisions should be made more efficiently as a result of DEQE computer tracking of permit reviews, streamlining of DEQE permitting procedures

and improved communication and coordination among state agencies. Improvements in the decision-making process and increased staff capabilities will reduce the amount of time taken up by permitting and licensing procedures.

Under Federal Consistency, proposed projects involving federal funds or requiring a Federal permit or license, will have to be considered in light of Massachusetts' coastal policies. Because assistance will be available from the Massachusetts Office of Coastal Zone Management in interpreting the Program, it is expected that few projects will be delayed in making a consistency finding. The consistency determination should require no major delays since it can be satisfied either automatically or shortly after granting of a State permit or through the established A-95 review process. Added steps will be required only in the infrequent instances where applications for a Federal license or permit do not also require a State permit; in these instances, the applicant will be required to prepare a certificate of consistency.

The Coastal Program should also improve communication between the public and EOEA agencies. For example, the list of projects in the Environmental Monitor and its distribution will be expanded. Regional and state level citizen advisory groups will participate in the evaluation of the program and in developing the future course of the program.

Chapter 11

THE PROBABLE IMPACTS OF APPROVAL ON EXISTING MANAGEMENT AUTHORITIES

The second chapter of this discussion of the probable impacts of Federal approval of the Massachusetts Coastal Program is organized in terms of the various management authorities that will be relied on to implement the program. The description of impacts is based primarily on the probable effects of the policies on key management authorities. For reference, the twenty-seven program policies are cross-referenced with the appropriate management authorities in Part II, Section 6.5.

Since the Massachusetts Coastal Program will be based on existing laws and procedures, the Program will basically continue and intensify the present impacts of existing state programs. In order to distinguish present impacts from future impacts under an approved Program, the discussion is divided into two sections. "Present Operation" describes how each authority is presently administered and its impacts. "Coastal Program Impacts" describes how the authorities will be implemented differently under the Program and the environmental or socio-economic impacts that will result from this differential.

A. WETLANDS RESTRICTION PROGRAM

The Commonwealth through the Coastal and Inlands Wetlands Restriction Acts is authorized to place restrictive orders on property owners' deeds prescribing certain prohibited and permitted uses. All beaches, dunes, salt marshes, shellfish beds, and salt ponds in coastal Massachusetts may be restricted under the Coastal Wetland Restriction Program, except for those in designated port areas, those under Metropolitan District Commission control, and portions of barrier beaches which no longer exhibit characteristics of naturally functioning barrier beaches. The Inland Restriction Program will also be used to protect anadromous fish runs in certain locations.

Present Operation: Salt marshes, shellfish beds, beaches, dunes, and salt marshes comprise approximately 70,000 acres, or 12% of the coastal zone. Since the Coastal Restriction Act was passed in 1965, 30,000 acres (45%) have been placed under restrictions. These restricted areas are located in 25 coastal communities (30% of all coastal communities) particularly on the lower Cape, Martha's Vineyard, the north shore of Buzzards Bay, from Cohasset to Duxbury, and from Salisbury to Essex. As a result of different priorities prior to preparation of the Massachusetts Program, beaches and dunes generally were not restricted in the first communities brought under the restriction program.

Although administered pursuant to a separate Act, the Inland Restriction Act is applied jointly with the Coastal Restriction Program by the Department of Environmental Management. As a result, all wetlands in a town are generally restricted at the same time.

Based on past experience, the average cost of applying restrictions is approximately $7,200 per community, plus the salary of a technical staff person. It is estimated that about 3 communities can be restricted per year by one staff person.

Coastal Program Impact: Federal funding will allow the Commonwealth to hire additional staff which should increase the rate at which wetlands are restricted. Areas will be restricted on a priority basis in order to protect Areas of Critical Environmental Concern/Areas for Preservation or Restoration, once these are designated by the Secretary of Environmental Affairs, and to protect wetlands threatened by development in urban areas. It is anticipated that the rest of the State's coastal wetlands will be restricted in three to five years.

The primary new impacts of the Restriction Programs under an approved Coastal Program will be those resulting from an increase in the pace of the restriction process. All of the areas that will ultimately be restricted already are protected in terms of the seven interests of the Wetlands Protection Act. Environmental benefits will result from placing these areas under the more stringent protection of the restriction program earlier than would occur in the absence of Federal funding. Also, certain landowners may be preempted from receiving profits they might have gained as a result of not having had their land restricted. Finally, greater equality will be achieved among landowners if the restriction program is accelerated since all owners of salt marshes, beaches and so on will be treated on a more equal basis.

Another important change is that in the future all of the beaches, dunes, salt marshes, shellfish beds, and salt ponds in coastal towns will be restricted whereas in the past beaches and dunes were generally not included. Thus, under the coastal program, the Coastal Wetlands Restriction Program will provide more extensive protection of coastal resources.

B. WETLANDS PROTECTION PROGRAM

The Wetlands Protection Act gives local conservation commissions authority to review all proposed projects within 100 feet of the 100 year flood plain or, if further landward, within 100 feet of the bank of any beach, dune, flat, marsh, meadow or swamp. If the conservation commission, or the Commissioner of DEQE, (on appeal) finds that the proposed actions present a significant impact to the interests of the Act (public and private water supply, ground water supply, flood control, storm damage prevention, prevention of pollution, protection of land containing shellfish), an order of conditions is imposed to regulate the project and protect the interests of the Act. A conservation commission's Order of Conditions may be appealed to the Commissioner of DEQE, or the Commissioner himself/herself may invoke the appeal process.

Present Operation: In 1974, regulations were promulgated by DEQE to assist local conservation commissions in implementing the Act. These regulations provide guidance on the type of information to be submitted with an application, how the application is to be processed, and whether a proposed action will affect the seven interests of the Act. These regulations do not indicate how different types of use should be managed in different locations to achieve the objectives of the Act.

Since original jurisdiction was delegated to local conservation commissions in 1972, approximately 3,900 Orders of Conditions had been issued through March 1976, and 322 Superseding Orders have been issued by the State. Thus, only about 10% of the conservation commissions' Orders of Conditions were formally overruled by the State. The majority of these

cases were appealed by the applicant, while few appeals were initiated by the Commissioner.

It is difficult to evaluate the impact of the Wetlands Protection Act without comprehensive information on the Order of Conditions issued throughout the Commonwealth. In areas that are restricted under the Restriction Program, the Wetlands Act represents additional regulatory control. The Wetlands Act serves to protect ecologically significant resource areas that have not yet been restricted, as well as other coastal areas not eligible for the restriction process.

The Wetlands Project at the Massachusetts Audubon Society reviewed the 125 Wetland Orders that were appealed to the Department of Environmental Quality Engineering during 1975. Since this study represents the only attempt to date to evaluate the effectiveness of the Wetlands Protection Program, it is appropriate to describe some of the major conclusions of the study:

-DEQE has sought strict adherence to appeal procedures, often denying an appeal or declaring it null and void because of failure to conform adequately with the rules. Eleven of the 125 appeal cases were denied because the request came beyond the time period for appeal.

-DEQE has been inconsistent in dealing with violations of the Wetlands Protection Act. For example, an applicant illegally placed fill, changed the grade, destroyed vegetation and built a canoe pier, and DEQE did not bring legal action. In another case, pipes were placed illegally in a pond, but DEQE allowed the project and did not order them removed. Yet in certain instances DEQE ordered natural conditions to be restored.

-Most of the appeal cases dealt with inland, freshwater wetlands involving streams and ponds. Only 9 percent of the appeals evaluated involved coastal wetlands. (This suggests that implementation of the Protection Act has aroused greater controversy in inland areas than along the coast).

-DEQE has supported the control of activities occurring in an upland area which would pollute a wetland. For example, a residential septic system was not allowed because it would have polluted freshwater recharge areas and contaminated ground water. These recharge areas were crucial for the operation of a trout hatchery.

-The major grounds for appeal, although not clearly specified, seem to vary. Flooding and pollution problems were most often mentioned. Yet, other issues were also raised: water supply loss, erosion, and sedimentation siltation, surface run-off, storm water damage, wetland integrity, aesthetics, recreation, and dune destruction.

In summary, the Wetlands Protection Program appears to have suffered from uneven administration. One cause of this is the absence of explicit State standards or guidelines for local Conservation Commission decisions, although some regulations exist and limited guidance is given to local conservation commissions. A second cause is that the Department presently lacks adequate staff to review local Conservation Commission Orders in order to achieve Statewide consistency in administering the Program.

Coastal Program Impact: Federal approval of the Massachusetts Coastal Program should help to correct some of the deficiences of the present program with beneficial environmental consequences as well as increased predictability for landowners.

A program review board has been established to review the Act's present regulations. Revised regulations are expected to be promulgated in final form in June 1978, following program approval. These regulations should assist local commissions in determining the permissibility of particular uses, and help to ensure the implementation of various Coastal Program policies.

Federal funds will permit the hiring of additional staff in DEQE regional officies to provide technical assistance to local commissions and to review Orders of Conditions. This should help to insure greater Statewide uniformity in the implementation of the Protection Act, and in turn, help to establish greater equity in the administration of the Act.

C. THE WATERWAYS PROGRAM

The Waterways Program has authority over filling, wharf construction, bridges and pipelines in tidewaters. The Commonwealth, as trustee over public lands below low waters, issues revocable licenses granting permission for construction that may interfere with public rights in these lands. While land between low and high water marks is in private ownership, these lands are subject to reserved public rights for fowling, fishing and navigation. The Waterways Program also funds such public works as wharf improvement, public piers, jetties, bulkheads, shore protection works, channel dredging and maintenance, dams and wreck removals.

Present Operation: The Waterways Program has been administered to date without formally adopted rules and regulations.

In 1976, the Waterways Program issued approximately 150 licenses, over one-half involving coastal related projects. The Program has generally approved projects so long as they do not impede navigation, are structurally sound, and are not disapproved by any State reviewing agencies. In practice, the Waterways Program does not issue licenses until projects are approved by the local Conservation Commission, or if appealed by the Commissioner of Environmental Quality Engineering. Conditions are sometimes imposed upon licenses, and payment is required if the project displaces tidal water or is located on Commonwealth lands (below low tide).

Coastal Program Impact: Under an approved 306 Program, Federal funding will be used to support additional DEQE staff to review Waterways license applications. In addition, regulations will be promulgated for the evaluation of proposed dredging, filling and marine construction activities.

In review of license applications, marine construction will be approved if, in estuaries and coastal embayments, flushing rates and capacity are not reduced; water quality, marine productivity, and anadromous fish runs are not adversely affected; and alteration of wave generated littoral currents will not exacerbate or induce shoreline erosion or adversely alter depositional patterns. In designated port areas the applications will be approved only if present maritime dependent industrial uses are not excluded.

The Waterways Program and the CZM staff have been working to develop a ranking system for the allocation of State Funds for dredging and shoreline protection projects. It is proposed that funding be provided for dredging only in developed port and harbor areas, and that maintenance dredging be given priority over any new dredging. This should minimize the serious adverse environmental consequences of dredging in undisturbed coastal areas, while permitting dredging necessary to support maritime-dependent industry.

Non-structural measures will receive higher priority for public funds than structural solutions to shoreline erosion, except where structural solutions would produce widespread public benefits and would minimize adverse environmental affects. Thus many of the adverse economic and environmental consequences of structural shoreline erosion control measures will be avoided.

D OCEAN SANCTUARIES

The Commonwealth of Massachusetts has established five Ocean Sanctuaries to protect the ecology and the appearance of the ocean. All State waters below mean low water are included except for Mt. Hope Bay and that part of Massachusetts Bay from Lynn through Marshfield. On January 7, 1978 the Massachusetts legislature combined the five Acts into one codified law.

Present Operation: In general, such activities as the removal of sand, gravel, or minerals, dumping or any new waste discharge are prohibited. However, a broad class of activities are exempt from these prohibitions. The laying of cables approved by the Department of Public Utilities, projects authorized under the Waterways Program or other improvements authorized by other State or Federal agencies are not prohibited. Essentially, the Ocean Sanctuaries Statutes provides no additional management authority in addition to the Waterways Program, but does create some new permitted and prohibited uses and standards for other programs.

No permit is required from the Department of Environmental Management in order to proceed with an activity in an Ocean Sanctuary. It is expected, however, that individuals and other agencies will confer with the Department to ensure compliance with the terms of the statutes.

Coastal Program Impact: Regulations are expected to be promulgated in final form for the Ocean Sanctuaries Program by June, 1978. These regulations will be based on the recently recodified statute.

In terms of impacts, the Ocean Sanctuaries can be assumed to have impacts comparable to those described under the Waterways Programs.

E. ENERGY FACILITY SITING COUNCIL

The Energy Facility Siting Council has jurisdiction over determining the need for and approval of locations for electric generating, gas and oil facilities. While energy facilities generally require various State agency permits prior to construction, the Council has the authority to override State or local denials of necessary permits.

Present Operations: Energy-related development has significant environmental impacts in the Massachusetts coastal zone for two reasons. First, energy facilities frequently require a coastal location because of their cooling requirements or because they are designed to handle energy resources imported into the State. Second, energy facility construction and operation have a variety of significant deleterious environmental effects.

For example, electric generating plants cause thermal water pollution and may adversely impair the scenic values of coast; fossil fuel plants produce increased air pollution while nuclear plants pose various health and safety risks. Oil and gas transmission, storage and processing facilities create various land use conflicts, pose safety hazards, and can cause increased air pollution.

The Energy Facility Siting Council was established in 1972. The State's energy policy, established by the law creating the Council, calls for the provision of a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. Regulations for the review of energy facility applications have been adopted by the Commonwealth.

As an example of the types of facilities reviewed by the Council, in fiscal 1976, the Council considered approximately thirty proposed facilities including 3 electric generating stations (2 nuclear), 2 liquid natural gas facilities, 1 oil storage tank farm, and numerous high voltage electric transmission lines. The authority of the Council to supercede State or local permitting authorities has not yet been tested, although one case is currently pending.

Coastal Program Impacts: Basically, the Energy Facility Siting Council will operate under an approved coastal program as it has operated in the past. However, there will be several changes.

First, the Council has agreed to recognize the final program as a statement of the health, environmental, and resource use and development policies of the Commonwealth, and to evaluate proposed facilities for consistency with these policies.

The Council has agreed to require that for any proposed energy facility, the applicant provide information on at least one other alternative site. For non-coastal facilities, applicants must also provide information on a alternative inland site. Although this policy does not insure that future energy development will have less serious adverse affects, it does require applicants to consider the environmental implications of locating energy facilities at various alternative sites.

Any permits or licenses issued by the Council will be considered consistent with the Program for purposes of Federal Consistency. In the case of the Pilgrim II nuclear power plant, the EFSC has determined that the facility is "grandfathered" under its legislation. State approval for Pilgrim II was granted prior to formation of the Council. CZM will respect the EFSC determination and will not require federal consistency review of this facility.

F. MASSACHUSETTS ENVIRONMENTAL POLICY ACT (MEPA)

The Massachusetts Environmental Policy Act established an environmental review process for State actions, projects with State funding contributions, or projects requiring permits or licenses from State agencies. The intent of MEPA is to improve environmental planning and the design of activities through full disclosure of the environmental consequences of State actions.

Present Operation: MEPA has been an important instrument of environmental protection in Massachusetts. The environmental assessment requirement has discouraged the planning of activities that would degrade the environment. It is also possible to site various instances in which the MEPA process was either the chief or a contributing factor in a decision by an applicant to modify a proposed action to minimize environmental damage, or in an agency's decision to deny a permit application.

Certain types of activities are categorically exempt from MEPA, with the result that these activities may not receive adequate environmental review. Exempt activities include:

-maintenance or replacement of existing facilities, or structures;

-construction and location of single, small, new facilities or structures;

-minor alterations to the condition of land, water and/or regulation and including areas less than two acres in extent (one acre in wetlands);

-activities not exceeding thresholds of adverse environmental impact, established by State agencies with the approval of the Secretary of EOEA;

-permit determinations or wastewater treatment construction grants by the Division of Water Pollution Control;

-Wetlands Protection Orders issued by local Conservation Commissions and not appealed to the Commissioner of DEQE.

From the inception of the MEPA process on July 1, 1973, through June 30, 1977, 2715 Environmental Assessment Forms were filed with EOEA. The following list shows the number of assessment forms received annually:

1973 (last 6 months)	494
1974	888
1975	795
1976	330
1977 (first 6 months)	208

The reduction in the number of forms each year is the result of successful efforts by the MEPA staff to eliminate minor projects not requiring environmental review from the process, as well as combining related activities for comprehensive environmental review. A detailed assessment of the MEPA process through October, 1975 was prepared by several graduate students

at Harvard University, Department of City and Regional Planning.* This report contains much valuable information relating to the affects of the MEPA process. Based on the 1942 assessment forms evaluated by them, these students made the following findings.

-The State agency with the largest number of submissions was the Executive Office of Environmental Affairs.

-The division with the largest number of submissions was the Highway Division within the Department of Public Works.

-One-third of the submissions under MEPA involve State permitting decisions, while two-thirds represent direct State actions.

-EOEA has concurred with approximately 90 percent of the negative assessment submissions, and with 92 percent of the positive submissions. (This suggests that the MEPA staff conducts careful review of each environmental assessment form submitted.)

-The types of activities submitted for MEPA review varied widely. The four most common activities were: Housing Development (13 percent); Highways and Bridges (10 percent); Schools (9 percent); and Roads, Trails, and Walkways (6 percent).

Coastal Program Impacts: The Massachusetts Environmental Policy Act will be relied on generally to insure that State and State-permitted actions are consistent with Program policies. However, MEPA will also be utilized in several specific ways to achieve the objectives of the Program.

First, categorical exemptions for smaller projects under MEPA will be removed in Areas of Critical Environmental Cocnern/Areas for Preservation or Restoration, thereby providing fuller disclosure of the consequences of State and State-permitted activities in these areas. This should help to provide for more comprehensive and more focused environmental management as intended by the designation process.

Second, MEPA will be employed to review State and Federally funded public works projects within the 100 year coastal floodplain so as to not exacerbate existing hazards or damage natural buffers, to provide safety from flood and erosion related damage, and so as not to promote growth and development in such areas.** Although MEPA itself does not provide authority to the MEPA unit to halt inappropriate projects, full disclosure of environmental consequences will help to discourage such projects. (The funding agency, however, is charged by Section 61 of MEPA to ensure that damage to the environment is minimized).

Finally, projects with State funding contributions or projects requiring licenses or permits, will be reviewed under MEPA to determine whether State agencies have acted to minimize potential adverse impacts of development near designated historic sites or districts, or near existing

*Batchelor, Clara; Thomas Pelham; and Dorrit Sertios, An Analysis of the Environmental Review Process within the Executive Office of Environmental Affairs, Commonwealth of Massachusetts, February, 1976.

**Although actions by the Division of Water Pollution Control are exempt from MEPA, the permits for a wastewater facility that may be required from other state agencies are not exempt

public recreation areas. This policy should have beneficial affects on the recreational, esthetic and economic values of these areas or sites. It should be noted, however, that the Program will be unable to control development adjacent to historic or recreation areas that is not subject to State permitting review or involve State funds.

G. DESIGNATION OF AREAS FOR PRESERVATION OR RESTORATION/AREAS OF CRITICAL ENVIRONMENTAL CONCERN.

The Massachusetts Secretary of Environmental Affairs is authorized to designate Areas of Critical Environmental Concern by Chapter 21A, Section 2(7), and the Federal Coastal Zone Management Act requires States to develop a process for designating Areas for Preservation or Restoration. For the purpose of reviewing the Massachusetts Coastal Program these two types of areas are identical. The purpose of designation in the Massachusetts Program is to utilize Statewide coastal authorities in order to provide focused management attention in selected coastal resource areas which are unique for their contribution to marine productivity.

Present Operation: One such critical area has been designated in an inland marsh and water supply area. The CZM program represents the first comprehensive planned approach to critical area designation by resource type in Massachusetts.

Coastal Program Impact:

CZM has recommended that the Secretary designate 10 APRs/ACECs (see Policy (2) Part II). Detailed descriptions of these areas may be found in the Coastal Atlas.

Since no APRs/ACECs have been designated, this discussion describes impacts that will occur once these areas are designated and not as of the time of program approval. The State will designate or deny all 10 within the first year of the program.

As indicated, under MEPA, categorical exemptions for smaller projects will be removed in these areas once they are designated. Although MEPA is not a regulatory authority, this should provide an additional degree of protection for these areas by requiring disclosure of the environmental consequences of all proposed activities.

The following activities will be prohibited within designated Areas for Preservation or Restoration/Areas of Critical Environmental Concern:

1. New industrial discharges and the discharge of hazardous substances, (once the water segments have been classified anti-degradation)

2. New dredging except for maintenance of existing channels or for enhancement of shellfish and other marine food productivity;

3. Disposal of dredge spoil, except in instances when the spoil can be used for beach nourishment and/or dune stabilization; or marsh creation;

4. Direct discharges from new sewage treatment facilities (once the water segments have been classified anti-degradation);

5. The siting of new municipal sewage treatment plants.

Further, these activities will be prohibited in areas adjacent to APRs if they would have an adverse impact on the APR. These prohibitions should protect these significant ecological complexes against the most likely types of intensive development that might be proposed.

In addition, once APRs/ACECs are designated, they will receive priority application of the coastal wetlands restriction program. The importance of this policy may be limited by the fact that no areas have been formally designated to date. Moreover, this priority system will need to be coordinated with the current practice of restricting wetlands on a town-by-town basis.

Finally, some contiguous land, as well as anadromous fish runs, will be restricted in APRs/ACECs. This should provide greater protection for APRs/ACECs by permitting control of activities in upland areas that might adversely affect the areas. Landowners in APRs/ACECs may feel that a disproportionate amount of their land will be restricted by this policy.

H. PUBLIC INVESTMENTS IN SEWAGE AND TRANSPORTATION FACILITIES

The Massachusetts Coastal Program will use public investments in sewage and transportation facilities to provide incentives for new development to locate in existing development centers or adjacent areas. This policy represents the State's primary growth management authority within the coastal zone landward of the jurisdiction of the Wetlands Protection Act.

Present Operation: The State's "106" Priority List for sewage treatment facilities is currently limited to facilities serving already developed areas, consistent with EPA policy. Thus, the coastal program will be genrally consistent with present State and Federal practices. Transportation planning in Massachusetts, however, is not currently bound by an analagous policy, although the possible growth-inducing effects of transportation improvements are addressed in the Corridor Planning process conducted by BTP&D and RPAs. The state's transportation network in the coastal zone is virtually complete relative to sewage facilities.

Coastal Program Impact: The Massachusetts Coastal Program has developed a set of priorities for State and Federal investment in waste treatment facilities in the coastal zone which:

1. Accord highest priority to projects in existing urban areas or community centers where water quality problems merit rehabilitation or new construction of treatment and collection facilities;

2. Accord next highest priority to projects proposed for contiguous developed areas, which are as yet unsewered, but whose water quality problems merit implementation of structural solutions; and

3. Accord lowest priority to projects proposed for undeveloped areas.

Approximately 25 facility projects that are already in the advanced

stages of planning are deemed to be consistent with the program.

Six major transportation projects are cited as consistent with the Program. Because the projects listed are the only major ones currently planned by the State, the coastal zone program will have little impact. By including these projects as consistent with the Program, it provides a greater predictability to the coastal landowner and user of where major transportation facilities will be built.

In assessing the impacts of the Program's public investment policies, it is important to recognize that infrastructure investments represent an indirect tool to manage the location of development. By providing necessary services at a relatively low cost, infrastructure investments may encourage development to locate in certain locations. On the other hand, the absence of infrastructure will tend to discourage development, except at relatively low densities (less than 4 units/acre).

Within these limitations, these priorities for major infrastructure investments in the Commonwealth should have numerous beneficial impacts as well as certain adverse impacts. The benefits include reduced pressure for development of outlying critical environmental resources, such as wetlands and floodplains; possible preservation of open space and agricultural land; revitalization of urban or community centers; improved efficiency or prior public investments; and improved energy efficiency. On the other hand, concentrating growth can have certain adverse impacts. For example, air quality could be degraded if too many industrial sources of pollution are concentrated in one area or if clustering does not reduce vehicular use.

The Program's policies, including those relating to public investments, are not expected to reduce the rate of development in the coastal zone. However, it is expected that new development will be concentrated to at least some degree in already developed areas. As a result, while some landowners may receive unexpected profits, others might receive smaller profits from commercial or residential development than they might otherwise have received.

1. OPEN SPACE ACQUISITIONS AND PROTECTION

The Massachusetts Program intends to rely on a variety of mechanisms to acquire permanent open space in the coastal zone. These include the voluntary Land Conservation Restriction Program, the Land and Water Conservation Fund of the Department of the Interior, funding under Section 315 of the Coastal Zone Management Act, and the State Self Help Program. The "Present Operation" and "Coastal Program Impact" on each of these programs is described in turn.

A. SELF HELP PROGRAM

Present Operation: The Massachusetts "Self Help" Program, established in

1960, assists cities and towns with established conservation commissions in acquiring land for public recreation and open space. The Program provides up to 50% reimbursement of the cost of acquiring such lands.

Approximately 27,000 acres (39 square miles) have been acquired under the Program since 1960 at a total cost of $15,000,000. Approximately 20 percent of communities in the State have participated, while 30 (39 percent) of the Commonwealth's coastal communities have not participated. Approximately 20 percent of the land acquired under the Program is located in coastal communities. Coastal communities with significant open space lands purchased with the aid of "Self Help" funds include Duxbury, Dennis, Barnstable, Marshfield, and Brewster.

The Program has been largely supported by bond issues totalling $12,000,000 since 1974. $1,500,000 of "Self Help" funds have not yet been expended, while applications pending total $4,000,000.

Coastal Program Impact: The staff of the Division of Conservation Services is currently preparing criteria for funding of proposed acquisitions that will reflect Program policies. In particular, the Program recommends these funds be provided to communities to acquire undeveloped hazard prone areas if they serve as natural protective buffers or if their buffering capabilities could be restored by non-structural improvements. In this fashion, both the prevention of inappropraite development and the preservation of scenic natural areas will be accomplished. In addition, it is proposed that "Self Help" funds be used to acquire waterfront land in urban areas in order to expand visual access to the coast, and to acquire trails linking existing coastal recreation sites to nearby inland facilities. These acquisitions would have beneficial social impacts by improving public access to the coast.

The impact of the "Self Help" Program will depend, in part, on the availability of funds. As indicated, the cost of already proposed acquisitions exceed the amount of funds presently available; the Division of Conservation Services is seeking an additional $5,000,000 in fiscal 1978, for the "Self Help" Program.

B. LAND CONSERVATION RESTRICTION PROGRAM

Present Operation: The Land Conservation Restrictions Program allows property owners to retain title to their land while remaining legally bound not to develop it. In exchange, the landowner receives a property tax advantage based on the open space value of his land. Since it was enacted in 1969, 352 conservation restrictions covering approximately 12,500 acres were accepted by the Secretary of EOEA. During Fiscal Year 1976, 111 conservation restrictions were accepted in 25 Massachusetts coastal communities, and include several large parcels of significant open space and aesthetic value in the coastal zone. Approximately 56 percent of the land subject to conservation restrictions in Massachusetts is located in coastal communities.

Coastal Program Impact: The Land Conservation Restriction Program will continue to be administered as at present under an approved coastal program. As a tool to implement the Massachusetts Program, this Program is limited since it is impossible to insure that adequate natural areas will be

protected, or that the most significant natural areas will be placed under restrictions.

C. SECTION 315 BEACH ACCESS

Present Operation: Section 315 of the Federal Coastal Zone Management Act authorizes the Secretary, in part, to make grants to States for acquiring lands to provide for access to public beaches and other public areas of environmental, recreational, historical, aesthetic, ecological, or cultural value, and for the preservation of islands. No money has yet been appropriated by Congress for these purposes.

Coastal Program Impact: The impact of Section 315 is entirely conditional on the availability of funds. The Massachusetts Program proposes to use these funds for acquisitions similar to those described under the "Self Help" Program. In addition, Section 315 funds are proposed to be used to purchase easements where necessary to protect existing public recreation sites.

D. LAND AND WATER CONSERVATION FUND

Present Operation: The Land and Water Conservation Fund provides funds for the acquisition of active outdoor recreation lands for Federally administered recreation areas; and matching grants for State recreation planning, and State and local land acquisition and development. "Self Help" Funds and the Land and Water Conservation Fund can be used jointly to pay up to 75 percent of the cost of local acquisition projects.

Coastal Program Impact: Funding available from the Land and Water Conservation Fund will be used to expand public access to the coast. In particular, these funds will be used to link existing coastal recreation sites via trails, and for recreation projects in connection with urban waterfront redevelopment and hazard area management. This should help to achieve the objective of the Program to expand recreational opportunities along the coast, especially for urban dwellers.

Part IV:

Alternatives to the Proposed Action

PART IV

ALTERNATIVES TO THE PROPOSED ACTION

The proposed action being evaluated is federal approval of the Massachusetts Coastal Zone program. The essential alternative being considered by the Assistant Administrator is not to approve the program as submitted. In deciding whether to approve the program, he must determine whether the program meets the requirements of the Coastal Zone Management Act as specified in the twenty-six findings needed for program approval. This determination ultimately requires that discretion be used in interpreting the intent of Congress as expressed in the Act.

This part describes the four most likely reasons the Assistant Administrator might deny or delay program approval, as well as the six most likely state alternatives to submitting the proposed program. Although the alternatives are similar to those identified in the DEIS, they have been revised to reflect the objections raised to the program during the review period. In order to determine the full implications of these alternatives the reader should consider the impacts described under each federal alternative as well as those under each state alternative.

A variety of alternatives are available to the state, represented by all possible amendments to the program that might be adopted. Clearly, however, the alternatives considered by the state depends on what actions are taken by the Assistant Administrator. In particular, if the Assistant Administrator delayed or denied approval, the state would have to consider a wide range of options.

The description of state alternatives satisfies in part the requirements of the Massachusetts Environmental Policy Act.

These federal and state alternatives could be carried out in several different ways. Federal approval would lead to program implementation under Section 306. On the other hand, a decision by the Assistant Administrator not to approve the program as submitted might lead Massachusetts to withdraw from the federal program. Alternatively the state might seek an additional year of funds under Section 305 (d) to implement certain program elements and revise other elements deemed to be inadequate for federal approval, also leading to final program submission sometime in the future.

CHAPTER 12

FEDERAL ALTERNATIVES

1) The Assistant Administrator could delay or deny approval if the program is not adequately comprehensive to achieve the goals and objectives of the Coastal Zone Management Act as expressed by Congress in Section 302 and and 303 of the Act.

The Office of Coastal Zone Management has made an initial determination that the Massachusetts Program is adequately comprehensive in scope. In 1972 in creating the Coastal Zone Management Act, Congress found "in light of competing demand...present State and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate." (CZMA Section 302 (g)). Thus, while the Massachusetts Program makes changes to its present State and local institutional arrangements, the reader could question whether or not the State had gone far enough in addressing the competing demands on the coastal area. For example, while maritime dependent uses, recreation and energy facilities are given priority for various coastal locations, the State program does not address whether shopping centers, high rise apartments, warehouses, chemical plants, new towns or amusement parks should or should not be located in the coastal zone. These uses will continue to compete with single family homes, agricultural land and with each other. Local zoning and State sewerage and transportation investments will be the prime determining factors with respect to where they are located in the coastal zone.

The initial determination of approvability was reached partly on the basis of the strong laws already in place in Massachusetts that met many of the concerns Congress expressed in 1972 about institutional arrangements in all States. For example, Massachusetts laws protecting wetlands and siting energy facilities are more advanced than most other States.

One could question if Massachusetts has adequately addressed the Congressional finding that scenic characteristics, cultural and aesthetic values were being destroyed by ill-planned development. The initial determination of approval was based on the existing State Scenic Rivers Act, Outdoor Advertising Board, the Scenic Roads Program and the Areas of Critical Environmental Concern Program, even though they do not blanket the coastal zone. Furthermore, the policies will assist localities to voluntarily consider aesthetic issues. Federal approval funds will assist the localities as well as the state in implementing the existing scenic acts.

The implications of selecting this alternative included a delay in program implementation, no increase in federal funds for Massachusetts under Section 306, the possibility that federal actions affecting the Massachusetts coast might be inconsistent with the policies of the program and that issues of national interest may not be protected. Improved environmental protection anticipated under a federally approved coastal program would not be achieved as rapidly, nor would the increased staff be available to work on designating scenic rivers. Momentum for effective protection of the Commonwealth's coastal resources, gained through preparation of this program, might be lost.

2) The Assistant Administrator could delay or deny approval if the state does not have the authorities necessary to implement the program at the time of 306 approval.

The Office of Coastal Zone Management has made an initial determination that the authorities to be in place at the time of program approval will be adequate to carry out the management program and meet the objectives of the Coastal Zone Management Act. However, concern has been expressed whether additional legislation should be sought, additional regulations should be in place, restrictions and designations on certain lands be completed prior to program approval.

The alternative of getting coastal zone legislation in the state was considered and rejected by Massachusetts as unnecessary given the strong legislation already in place in the state. Furthermore, the Federal Coastal Zone Management Act specifically allows a state to coordinate existing laws providing their total coverage is broad enough to meet the requirements of the Act.

Although the 21A regulations are in place prior to federal approval, some hold that all key substantive regulations resulting from the program should be adopted. The Waterways Program and Ocean Sanctuary Program are currently without regulations. Their adoption would give added assurance the new state policies affecting these programs will be incorporated into day to day operations. Regulations implementing the Wetlands Protection Act are currently under study by a program review board for possible comprehensive revision. Such a revision would provide more effective and consistent administration than the current regulations which add less than optimum refinement to the broad standards of the Act. Withholding approval until agreement on the revisions is reached might provide the incentive needed to complete the revision process. It should be noted that the state will have draft Waterways regulations prior to federal approval. The state is pledged to promulgate the six key regulations during the first year of 306 funds.

While these six proposed regulations will not be adopted at the time of program approval, NOAA/OCZM has initially determined that the program policies will nevertheless be implemented consistently with the program. This decision results from a determination that the authority to implement the program rests not with the regulations but with the authorities given the Secretary under Chapter 21A of the Massachusetts General Laws. The program policies are incorporated into regulation. In addition the individual commissioners have agreed that the program represents state environmental policy and have requested the Secretary to jointly implement the program, thereby triggering the Secretary's authority under Chapter 21A MGL Section 4 to implement programs upon request. Consequently, OCZM has initially determined that the policies are enforceable as written.

Although the Energy Facilities Siting Council operates under current regulations, a claim can be made that the incorporation of coastal zone energy policies into these regulations will offer better assurance that they will be followed than simply a memoranda of understanding. OCZM has determined that these policies are enforceable not because of the MOU but because of the EFSC's statutory duty to ensure consistency with current state environmental policies. This obligation is defined by the MOU between the EFSC and EOEA.

Finally, the program proposes to place certain types of restrictions or designations in order to protect natural areas against inappropriate development. For example, the state plans to restrict most of the unrestricted beaches, barrier beaches, dunes, salt marshes, and shellfish beds in the coastal zone. Also, the program proposes that some coastal rivers be protected under the Scenic Rivers Program, and that Areas of Critical Environmental Concern/Areas for Preservation or Restoration be designated by the Secretary of Environmental Affairs. However, if the Assistant Administrator determined that all or some of these designations or restrictions needed to be in place at the time of program approval to insure program implementation, he could delay or deny approval until the necessary steps were taken. This alternative is undesirable because considerable time would be required, thus delaying the positive environmental impacts resulting from approval. For example, all of the Critical Areas of Environmental Concern nominated in the program document could probably be designated within one year; by contrast, restricting all of the rest of the state's coastal wetland areas would take from three to five years. Furthermore, the Commonwealth has agreed to designate or deny the 10 APRs within the first year after approval.

The environmental implications of this alternative would be similar to those described under Federal Alternative 1; the scale of the impacts would depend on the length of the delay. Other disadvantages are that the Commonwealth would lose additional funds that would be available under Section 306, federal actions would not need to be consistent with the management program, and facilities and resources of national interest may not be adequately protected.

The major environmental advantage of these alternatives is that the State might be encouraged to have better coastal management authorities in place at the time of Program approval. On the other hand, the State might choose to withdraw from the Federal Coastal Zone Management Program rather than make the changes required for Section 306 approval.

3) The Assistant Administrator could delay or deny approval if the national interest in the siting of facilities in the coastal zone was not adequately considered.

The CZM Act states that prior to granting approval of a management program the Secretary shall find "the management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities...) necessary to meet requirements which are other than local in nature."

(Section 306 (c) (8)). NOAA/OCZM has made an initial determination that the Program adequately addresses the national interest in facility siting. in the coastal zone. However, concern has been expressed that the Massachusetts Coastal Program, has not given adequate consideration to these facilities, especially energy facilities.

There are three separate concerns that have been expressed:

a) The Program will prohibit some energy facilities in areas subject to the Restriction Act.

While this is true, the Program has made adequate adjustments to allow necessary transmission lines, certain underground utilities, and water cooling intake and outtake pipes to cross restricted barrier beaches and sandy beaches, so long as the pipes are covered, and the land returned to its natural setting. This last exception to the restrictions generally placed in these important resource areas allows energy facilities to develop immediately upland from the restricted area, and does not prohibit the siting of necessary facilities in the coast, while at the same time adequately protects the national interest in wetlands and providing beach recreation.

b) The Memorandum of Understanding between EFSC and EOEA has no standing.

The memorandum established the necessary procedure in this Program to assure that facilities are adequately considered and not arbitrarily excluded by local governments. It is the State's opinion that the EFSC has a right to enter into such agreements and that it does not affect their responsibilities assigned by law. It appears to the Assistant Administrator that it is merely an administrative clarification recognizing the Coastal Zone Management Program as State environmental policy. Regulation 62.9 (3) of the EFSC requires the Council to act consistently with State environmental policy.

c) The Program does not spell out specific enough criteria for the EFSC to consider.

Many of the policies in the energy portion of the Massachusetts plan are process oriented -- i.e., "weigh," "consider" instead of substantive -- i.e., "prohibit" or "encourage". The Assistant Administrator could deny or delay approval until more substantive energy criteria were developed.

However, as noted in the five step process detailed in Policy 8, the EFSC has agreed to use the CZM policies as adopted by the 21A regulation as an expression of current health, environmental protection, and resource use policies of the Commonwealth. For this reason, OCZM has preliminarily determined the Program is adequate. In addition, to Policies 8 and 9 which pertain specifically to energy facilities,

the other policies that may be applicable include those pertaining to alteration of salt marshes, dune areas, salt ponds, barrier beaches, shellfish flats, and sandy beaches (Policy 1), development in APR's (Policy 2), construction in water bodies and in ports (Policies 4 and 7), dredging and dredged material disposal (Policy 5), preservation of lawfully designated historic sites or districts (Policy 12), evaluation of impacts on public recreational facilities (Policy 13), and conformance to waste discharge pollution and wetland protection requirements (Policy 10).

The selection of this Federal alternative could considerably delay Program approval or make approval unlikely. For the State to change its policy to protect APRs and restricted areas in order to provide for greater accommodation of energy facilities would be a substantial change in the Program which it may not wish to make. Such a change would also raise the question of whether the national interest in wetlands and resource protection were adequately considered. To obtain a stronger legal relationship between EFSC and EOEA would probably require legislative action. To develop more specific criteria would take time. The results of this delay would be similar to those described under Alternative #1. The advantage of strengthening the relationship between EFSC and EOEA would be a clarification of the role CZM policies play in EFSC decisions. The advantage of more specific criteria would be more predictability.

4. The Assistant Administrator could deny or delay approval if the Program does not meet all of the specific requirements of the Coastal Zone Management Act.

Section 306 (c) of the Coastal Zone Management Act requires the Assistant Administrator to find that a State coastal management program meets all of the requirements of the Coastal Zone Management Act prior to approving the Program. The specific findings that the Assistant Administrator must make prior to Program approval are listed in Part 1, Chapter 3. This alternative encompasses all of the possible reasons for not approving the Program as submitted in addition to those already discussed in Federal Alternatives 1-3. For example, someone might feel that the boundary does not extend far enough inland to protect the interests of the Act.

The Office of Coastal Zone Management has made an intial determination that the Program does meet the minimum requirements or will by the time of 306 approval of the Act.

The three primary impacts of a negative decision would be that Massachusetts would not receive necessary funds to implement the Program; Federal consistency would not apply to Federal agencies' activities in the coastal zone; and national interest would not be taken into account.

In addition some delay in Program implementation would occur; the length of the delay would depend on the type of Program deficiency that was found and the types of remedial action taken by the State. (see impacts of Alternative One for more details).

CHAPTER 13

STATE ALTERNATIVES

1. The state could have revised the proposed program by expanding the scope and comprehensiveness of the policies as described under Federal Alternative #1.

As stated, the proposed Massachusetts Program has initially been determined to meet the minimal requirements of the Act necessary for federal approval. However, the state might seek, by revising the Program's policies, to manage a greater number of coastal activities at the state level rather than leaving so much decision making with local governments. For example, the state might develop explicit guidelines for the location of major commercial or residential developments in the coastal zone. Also, more resolution of potential conflicts among competing coastal uses might be resolved prior to Program approval and thus increase predictability. On the other hand, the risk of adverse social and economic effects of the Program on housing costs and availability would probably increase. Opposition to a more comprehensive management program for the Commonwealth might threaten the success of any type of coastal program for Massachusetts.

2. The state could have sought additional legislation establishing more comprehensive management authorities and submit a revised Program based on this legislation.

Instead of relying on existing regulatory programs and procedures, the Commonwealth could adopt new or revised coastal management legislation and submit a revised program based on this legislation. This new coastal zone management authority could be added to the existing state and local authorities, or it could be integrated with or replace existing laws or procedures.

The Governor's Task Force on Coastal Resources identified three alternative types of management based on new legislation that could be enacted by the state as a basis for a coastal management program. After evaluating all of these alternatives, the Task Force determined that new legislation was not required. However, these legislative alternatives are still available to the state and are potentially acceptable under the requirements of the Coastal Zone Management Act. These alternative proposals as well as their advantages and disadvantages are discussed below.

a. Expanded Direct State Control

The state could manage directly a significant number of coastal activities, including some now subject solely to municipal jurisdiction. A variety of institutional arrangements are possible. A new state body with broad powers could regulate directly a broad spectrum of projects; a state agency could review local decisions for conformance with state promulgated guidelines, and override local decisions inconsistent with the state plan; or an agency could be empowered to regulate only activities of greater than local concern, which would have the authority to exercise comprehensive and consistent coastal management. Assuming existing permitting

authorities were combined or eliminated, the coastal regulatory process would be greatly simplified under this alternative. The disadvantages are that this alternative runs counter to the tradition of local land use control in Massachusetts, and potentially could add an additional bureaucratic hurdle for developers without the incentive under the proposed Program to make the present system work better.

b. State Review of Local Plans

The state could review local ordinances and regulations, prepared in line with state criteria, to ensure their consistency with an adopted state coastal plan. Individual communities would be permitted to enact more restrictive ordinances than provided for in state criteria. A number of mechanisms could be instituted to ensure that local governments comply with their own ordinances and regulation, including direct state review of local decisions, or judicial review of individual cases.

The major advantage of this alternative would be that the Commonwealth could enforce comprehensive, statewide coastal policies while providing for a large degree of local authority and public participation. Nevertheless, the shift in the allocation of authority to the state and away from municipalities would create strong opposition. As under alternative (a) if state and local permit authorities were left unaffected, the system might be unduly complex and burdensome.

c. Regional Implementation

A third level of decision-making represented by regional bodies could be delegated some, or all, of the existing state permitting authorities, or they could promulgate criteria and regulations to be implemented by the local governments in their region as under alternative (b). Some form of regional review of local decisions could be provided. Or, enabling legislation might allow local governments to join together over an issue of mutual concern, receive some financial and technical support from the state, reach a decision on the problem, and dissolve.

The advantages of this approach are that a larger degree of public input for decisions of regional concern would be permitted than in the direct state control system and greater consistency in decision-making would be possible than under the state/local option. The major disadvantage of this alternative is the creation of another administrative layer resulting in higher costs and additional procedural steps for approval of development activities. Both state agencies and local government might oppose relinquishing any of their present powers.

3. The state could have restricted under existing authorities all or some of the state's unrestricted significant resource areas, or designate Critical Areas of Environmental Concern, Sign Free Areas, or Scenic Rivers prior to Program approval.

Rather than deferring restriction of additional significant resource areas and designation of various environmental protection areas until after program approval, Massachusetts could take these key steps prior to Program approval. This alternative would require a substantial delay in Program implementation. Hearings would be required which would add a delay of at least several months for each designation process.

First, the Secretary of Environmental Affairs could designate certain Critical Areas of Environmental Concern (APRs) prior to Program approval. The proposed Program provides no assurance that critical areas will be designated, although ten areas have been nominated. Thus, this alternative means that certain policies and restrictions that may not be enforced, or that may not be enforced until some indeterminate time in the future, would be applied to these critical areas from the time of Program approval.

Second, an estimated 43 percent of the Commonwealth's barrier beaches, beaches, dunes, salt marshes and tidal flats are covered by the Coastal Wetlands Restriction Program. The remaining areas, excluding designated port areas, are proposed to be restricted following Program approval. Alternatively, the state could withdraw the Program until all or most of these areas actually have been restricted. However, as noted before this process would take between three to five years.

Finally, under the proposed Program, the Commissioner of DEM will designate certain Scenic Rivers, and the Office of Coastal Zone Management will petition the Outdoor Advertising Board to designate Sign-Free Areas in the coastal zone in the future. Alternatively, these steps could be taken prior to Program approval.

Alternative three would result in delay in the implementation of the coastal program due to administrative and public hearing requirements. The advantages of this alternative are that a greater degree of environmental protection would be afforded certain natural areas than might otherwise occur; for example, additional wetland areas would be restricted against inappropriate development, or Critical Areas of Environmental Concern would receive more focused management attention. Also, the practicability of certain coastal policies might become better understood, for example, if the Outdoor Advertising Board declined to designate Sign-Free Areas, the state might wish to amend the visual policies to reflect this.

4. The state could have promulgated final regulations prior to formal approval following DEIS/MEPA hearings.

The coastal program indicates that new and amended rules and regulations will be adopted by various state agencies following Program approval. Alternatively, the state could delay the final Program submission until these regulations are in place.

The Secretary of Environmental Affairs has adopted regulations to establish the Coastal Zone Management Program as a statement of state environmental policy. In addition, rules and regulations, and review procedures, incorporating CZM concerns will be adopted by various state agencies involved in the program. For example, either new or revised regulations will be adopted for the Ocean Sanctuaries Program, the Waterways Program, the Wetlands Protection Program, and for the Division of Water Pollution Control and the Energy Facilities Siting Council. A timetable for promulgation of these regulations is included in Section 6.6. Waterways and CZM have also been preparing a rating system to rank the relative benefits of proposed navigation improvements. Finally, the Division of Conservation Services is developing new criteria reflecting the CZM Program for the allocation of Self Help Program funds in the coastal zone. All of these rules, regulations, and procedures could be adopted prior to formal approval under this alternative.

The adoption of new regulations and procedures in Massachusetts is particularly significant since the authorities that will be relied upon are based on statutes that were adopted at widely different dates and have been administered according to various standards of environmental protection. Thus, new regulations might be considered central to the purpose of the Massachusetts Program to make the implementation of present management authorities more consistent and effective.

The most significant disadvantage of this alternative is that a delay in Program implementation would occur. The advantages are that the implications of the coastal program for diverse coastal users would become clearer if the regulations were adopted prior to Program approval. Also, it might be easier to insure the consistency of these regulations with the overall Program if they were adopted prior to actual Program implementation.

5. The state could have revised the Program by defining a different landward coastal boundary than the one proposed.

The Massachusetts coastal zone includes the lands and waters within the area defined by:

> The seaward limit of the state's territorial sea (i.e., 3 miles), extending from the Massachusetts-New Hampshire border south to the Massachusetts-Rhode Island border, and landward to 100 feet inland of specified major road, rail, or other visible rights-of-way. The Cape and Islands are included entirely within the coastal zone.

In isolated instances, where the road boundary might exclude significant resource areas, the boundary line departs from the road to encompass them. Tidal rivers and adjacent uplands are included inland, at a minimum, to the extent of vegetation affected by saline water. Anadromous fish runs are included to the fresh water breeding area, if such area is within a coastal town.

Prior to selecting this boundary, the Massachusetts Office of Coastal Zone Management evaluated ten alternative boundaries:

Natural Features Boundaries	Cultural or Distance Boundaries
1. Coastal watersheds	6. Town jurisdictions
2. Coastal storm floodplain	7. 1/2 mile from mean high tide
3. 50-foot topographic elevation	8. Major coastal road
4. Coastal ecological systems	9. Coastal census tracts
5. Visual features	10. Immediate water or beach frontage

These boundaries were then evaluated on the terms of how well they satisfied the following criteria:

(a) "A state's coastal zone must include transitional and intertidal areas, salt marshes, wetlands and beaches.... In no case, however, will a state's landward coastal zone boundary include only such areas...." (CZM Program Approval Regulations: 15 CFR 923.11)

(b) "The area must not be so extensive that a fair application of the management program becomes difficult or capricious, nor so limited that lands strongly influenced by coastal waters and over which the management program should reasonably apply, are excluded." (CZM Program Approval Regulations: 15 CFR 923.11)

(c) "The coastal zone must include within it those lands which have any existing, projected or potential uses which have a direct and significant impact upon the coastal waters and over which the terms of the management program will be exercised." (CZM Program Approval Regulations: 15 CFR 923.11)

(d) The boundary must be adequately delineated on maps or in words so that there are no questions as to whether someone's property is within or without. (CZM Institute, 1974)

(e) The cost of necessary surveying and administration should not be excessive because of a too large or too complex boundary.

(f) The boundary should coincide with existing special districts, jurisdictions, or other existing institutional frameworks if and where possible.

6. The state could withdraw the approval application from OCZM and continue Program development and/or attempt to use other sources of funding to meet the objectives of the proposed coastal management program.

Since coastal zone management is a voluntary program of state-federal cooperation, a state can withdraw its application without any penalty, except that no additional OCZM funding will be provided and federal agencies actions will not need to be consistent with the management program. Since Massachusetts includes some of the nations most valuable shoreline, withdrawal of the Program could mean that the overall objectives of the CZMA would not be met.

The legislative history of the CZMA shows Congress did not intend the requirements of the CZMA to be so stringent or difficult to achieve that a state would be precluded from achieving program approval after reasonable time and effort. Nevertheless, experience has shown that it is not easy to develop an adequate program. The reasons for program withdrawal can be diverse. Important weaknesses in the program may have gone unnoticed until the state submitted its program for approval, or, a number of unresolvable issues surfaced during the review process.

In the case of Massachusetts, withdrawal would not result in a different type of management system than is proposed under CZM. The Program relies extensively on existing authorities and these presumably will continue to be implemented whether or not the Program is adopted. However, funding to hire additional staff to make the present management system more effective would not be available. Also, the restriction of additional ecologically significant resource areas and the designation of certain scenic areas for protection might not occur or would occur at a slower rate in the absence of a formal coastal program. Federal actions would not need to be consistent with the management program.

Part V:

Probable Adverse Environmental Effects Which cannot be Avoided

Chapter 14

PART V

CHAPTER 14

PROBABLE ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED

The probable effects of Massachusetts CZM Program implementation will, on the whole, be environmentally beneficial. However, there will probably be a number of adverse impacts to both the natural and socio-economic environments which cannot be avoided.

Adverse impacts will continue to be associated with the siting of major facilities for purposes of defense, transportation, energy requirements and others in which both the state and federal governments have interest. The Program makes provisions for consideration of the siting of facilities which are in the national interest. It is important to note, however, that under the CZM Program and related federal acts (e.g., NEPA), each such project will be evaluated as to the impacts on the natural coastal environment. That is, investigations will be made, alternatives considered, etc.

Outside of Significant Resource Areas, state interests are confined to the meeting of air and water quality standards; ensuring that the capability of soils to accommodate sub-surface discharges are not overtaxed, energy facility siting; the avoidance of adverse impacts to the qualities of designated historic districts or sites and public recreational beaches; and the channeling of new sewer and transportation services to already developed areas or areas contiguous to them. Thus, under the Massachusetts CZM Program, local governments will continue to have sole responsibility for a very wide range of land use decisions and broad areas of the coastal zone. Apart from the state's interest enumerated above, whatever adverse environmental impacts stem from such local decision-making will not be avoided by implementation of the Program.

Part VI:

Relationship Between Local Short Term Uses of the Environment and the Maintenance and Enhancement of Long Term Productivity

Chapter 15

PART VI

CHAPTER 15

RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF THE ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

While approval of the Massachusetts Coastal Zone Management Program will restrict some local, short-term uses of the environment, it will also provide long-term assurance that the natural resources and benefits provided by the Massachusetts coast will be available for future use and enjoyment by more effectively administering existing resource protection laws.

The Massachusetts Coastal Zone Management Program does the following:

A. Short-Term Uses:

1. Does not prohibit future development but encourages medium-high intensity growth to occur in existing developed areas or areas contiguous to them insomuch as growth is constrained by state sewer and state highway programs.

2. Recognizes that some energy facilities and coastal-dependent developments have adverse environmental consequences, but that they may still have to be located in the coastal zone to protect the inland environment as well as help provide for orderly economic development and meet national interest.

B. Long-Term Uses:

1. Recognizes the coastal zone as a delicately balanced ecosystem.

2. Establishes a process of balanced management of coastal resources.

3. Allows growth to continue at present rates, while protecting key resources.

4. Provides for a framework which can protect regional, state and national interests by assuring the maintenance of the long-term productivity and economic vitality of coastal resources necessary for the well-being of the public, and to avoid long-term costs to the public and a diminished quality of life resulting from the misuse of coastal resources.

Without the implementation of rationally based land and water use management programs, some intense short-term uses and gains, such as provided by residential or industrial development, might be realized in natural resource areas of the coastal zone. However, such uses would most likely result in long-term limitations on coastal resource use and benefit because of degradation of the environment. Without proper management, the traditional conflicts between shoreline resources uses -- residential, commercial, industrial, recreational, and wildlife -- could be expected to occur.

Implementation of the Program will result in minimization of the social costs which inevitably accompany environmentally destructive development, the mitigation of which often requires public investment.

Part VII:

Irreversible or Irretrievable Commitments of Resources that Would be Involved in the Program Should it be Implemented

Chapter 16

PART VII

CHAPTER 16

IRREVERSIBLE OR IRRETRIEVABLE COMMITMENTS OF RESOURCES THAT WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED

The approval of the Massachusetts Coastal Zone Management Program will not in itself lead to the loss of resources that a site specific project would. Tradeoffs will have to be made based on the policies of the Massachusetts Program. For instance, some urbanized areas or less intensive industrial areas may receive greater development pressures and a commitment of the surrounding resources because of the policy to concentrate development of sewers and transportation projects to serve already developed areas.

Also, the Program provides that priority will be given to coastal-dependent development (certain energy facilities, port and harbor development, etc.) which in turn is often the most damaging to the environment and is located in the coastal zone to utilize its resources. However, the Program establishes criteria and standards for siting and requires that alternatives be considered and mitigation measures be taken. Development will occur in the absence of Program approval, but the Massachusetts Coastal Zone Management Program will channel such activity toward environmentally suited land areas.

The Program supports the acquisition of areas to meet the demand for recreation. The acquisition of recreation sites would preclude further development and reduce the tax base of local government, although if the site were state owned, payment in lieu of property taxes would be made. The commitment of those purchased areas to recreation would be irreversible, unless the state Legislature, as required by state law, were to approve by two-thirds vote a change in use.

Part VIII:

Consultation and Coordination
Chapter 17

PART VIII

CHAPTER 17

CONSULTATION AND COORDINATION

Extensive consultation, coordination, and input has been received in developing the Massachusetts Coastal Zone Management Program. Because the Program was developed with the natural and human environment in mind, many alternatives have been considered.

The Office of Coastal Zone Management requires that a state conduct an environmental impact assessment on their coastal management program prior to any approval of the Program. This assessment was used in developing the draft EIS. Additional input has been received from various federal agencies throughout the duration of the state's program development period on such things as the impact of the Program on the federal agency program as well as an analysis of the Program.

Coordination with all local, state, federal, public, and private interests remains a key component of the Massachusetts Program. The Program will provide for the public notice of major state actions, establish regional and statewide advisory groups to monitor and review implementation, provide technical assistance to coastal communities as to how local plans may be made consistent with the CZM Program, assist the private sector through the publication of handbooks and other means of communication on meeting CZM policy requirements, and continue coordination with federal agencies to resolve potential conflicts during implementation.

Appendix A:
The Secretary's Authorities under 21A

APPENDIX A

THE SECRETARY'S AUTHORITIES UNDER 21A

THE CREATION OF THE EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS AND MGLA CHAPTER 21A, SECTIONS 2, 3 AND 4

The Executive Office of Environmental Affairs (EOEA) was established by the 1969 reorganization of Massachusetts state government. Reorganization combined 43 different agencies and programs into one Secretariat. Previously, there was no state policy to have these programs administered in any consistent way. Reorganization brought these programs together, assigned them among five major departments distinguished by broad areas of responsibility. (DEQE, to administer the state's environmental regulatory programs; DEM, to manage state lands and physical resources; Food and Agriculture, to promote and regulate farm production; MDC to manage recreation and utilities within the greater Boston area; and Fisheries, Wildlife and Recreational Vehicles, to manage and promote our living resources.) The Legislature also recognized that this marriage of diverse programs would require central direction and thus gave to the Office of the Secretary powers to plan and coordinate the operations of the individual programs, to have central budgetary responsibility, and to resolve conflicts.

The first step in the Reorganization process was Chapter 704 of the Acts of 1969 which created the Executive Offices in the Commonwealth and charged them to make recommendations for restructuring state government. Section 50 of that act states:

> Such recommendations shall be made with a view to the elimination of duplication and overlapping in the functions, administrative practices and facilities of said agencies, the combination and coordination of information systems, the creation of administrative structures which will assure coordinated and joint planning, the establishment of clear and readily identifiable lines of authority and allocations of responsibility, the coordination and consolidation of the delivery of state services at state and regional levels, and the enlargement of career opportunities.

In 1974, Chapter 806, now codified as M.G.L. Chapter 21A, created new powers and clarified the roles of the Executive Office of Environmental Affairs and its constituent agencies. Three sections (2, 3, and 4) of that act are key to the CZM program.

SECTION TWO

Section Two charges Environmental Affairs with the following power and responsibilities:

"The office and its appropriate departments and divisions shall carry out the state environmental policy and in so doing they shall:

1) develop policies, plans and programs for carrying out their assigned duties;

2) provide for the management of air, water and land resources to assure the protection and balanced utilization of such resources within the commonwealth, realizing that providing safe water to drink and clean air to breath is a basic mandate;
3) provide for the propagation, protection, control and management of fish, other aquatic life, wildlife, and endangered species and promote and further develop hunting, fishing, recreational and competitive marksmanship, and trapping opportunities in the commonwealth;
4) aid in the promotion and development of the food and agriculture resources of the commonwealth to preserve agricultural lands, and insure an adequate supply of high quality farm products;
5) provide for the regulation and management of marine and coastal fisheries and natural resources including those located in the territorial waters, the economic zone waters and the continental shelf, wetlands, estuaries, shorelines, and interior of the commonwealth;
6) promote the perpetuation, extension, and proper management of the public and private forest lands of the commonwealth;
7) develop statewide policies regarding the acquisition, protection and use of areas of critical environmental concern to the commonwealth;
8) develop and administer programs relating to recreation including the acquisition of land, development of facilities, and the provision of advisory services to municipalities and private organizations;
9) promote the best usage of land, water, and air to optimize and preserve environmental quality by encouraging and providing for, in cooperation with other appropriate state agencies, planned industrial, commercial, recreational and community development;
10) provide for the preservation and abatement of water, land, air, noise, and other pollution or environmental degradation;
11) promote the preservation and enhancement of natural, scenic, historic, and aesthetic qualities in both urban and rural areas;
12) provide for the control of insects, plant diseases, and pests, and regulate the use and disposal of pesticides;
13) develop programs relating to the reclamation or disposal of solid waste material and the operation of sewer and water systems;
14) encourage the restoration and reclamation of degraded or despoiled areas, including harbors and inland and coastal waters;
15) manage all lands and properties acquired by or assigned to them to preserve their natural beauty, wilderness, or open character of hydrological, geological, historical, scientific, wildlife management, recreational or other significance value.
16) assist other state and regional agencies in developing appropriate programs and policies relating to land use planning and regulation in the commonwealth;
17) analyze and make recommendations, in cooperation with other state and regional agencies, concerning the development of energy policies and programs in the commonwealth;

18) advise, assist, and cooperate with such other departments, agencies, authorities, officials, and institutions, including state institutions of higher learning, as may be concerned with or involved in matters under their control or supervision;
19) encourage recycling, resource recovery and environmentally sound purchasing practices to conserve resources and reduce waste;
20) monitor the environment to identify changes and to insure efficient and effective control practices;
21) develop environmental data management capabilities to aid environmental planning and decision-making;
22) encourage, support, and undertake research facilities to produce information relating to the ecological system, pollution preservation and abatement, resource management, and other areas essential to implementing the environmental policies of the commonwealth;
23) advise and assist local governments, private and public institutions, organizations and associations, businesses, industries, and individuals by providing and acting as a clearing house for environmental information, data and other materials;
24) promote the development of sound environmental education programs;
25) represent and act on behalf of the commonwealth in connection with federal grant programs;
26) keep accounts, records, personal data, enter into contracts, adjust claims, accept gifts, grants, bequests and devises, and subject to appropriation acquire real or personal property by eminent domain or otherwise;
27) advise and assist state agencies, cities and towns, and other units of local government in the preparation of grant of loan applications with respect to any environmental protection or enhancement programs;
28) promulgate rules and regulations necessary to carry out their statutory responsibilities

In order to assist the office in the discharge of its duties, the Secretary may request from any agency or political subdivision of the commonwealth any information relevant to the discharge of such duties. An information copy of each application submitted by any political subdivision to any public or private agency for a grant or loan with respect to any environmental protection or enhancement program, including the acquisition of land and facilities for these purposes shall be filed with the office not later than the twentieth day after submission. As the primary agency of the commonwealth for environmental planning, the office shall utilize the services and plans of regional planning agencies, conservation districts, conservation commissions and historical commissions in fulfilling its environmental planning responsibilities."

It is significant that these broad powers and responsibilities are given to the departments and divisions of Environmental Affairs in addition to the Office of the Secretary itself. Thus, while each

line agency still has its own specific enabling legislation, Chapter 21A superimposes on the specific criteria in those individual acts the requirement that every EOEA agency carry out the state environmental policy in the manner directed by Section Two.

The State Environmental Policy is voiced in several places. Article 49/97 of the Constitution declares:

> "The people should all have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural scenic, historic and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose."

Chapter 30 M.G.L. Section 61, the Massachusetts Environmental Protection Act (MEPA) directs:

> "All agencies, departments, boards, commissions, and authorities (to) . . . determine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means and measures to minimize damage to the environment . . .(which) shall mean any destruction, damage or impairment and eutrophication of rivers, streams or subsurface water resources; destruction of seashores, dunes, marine resources, and underwater archaelogical resources, wetlands, open spaces, natural areas, parks, historic districts or sites. Damage to the environment shall not be construed to include any insignificant damage to or impairment of such resources."

Other sources of the state environmental policy can be found in Executive Orders promulgated by the Governor as statements of environmental policy; in statements of environmental policy promulgated by the Secretary of Environmental Affairs; or statements of policy promulgated by the Secretaries with other Executive Offices which are adopted by the Secretary as statements of environmental policy.

How does Section Two operate with respect to the EOEA agencies? How do the 27 directives and the mandate to carry out the state environmental policy affect the existing enabling legislation of each agency?

Section Two does not expand basic agency jurisdiction or authority, but it does serve to define or focus the direction of such authority. It does not require agencies to undertake new programs which are beyond the scope of their authorizing legislation. But it does impose an affirmative duty to implement the state environmental policy when they are acting within their existing jurisdiction, whether reviewing a permit or initiating a project.

The key idea here is the phrase "acting within their existing jurisdiction." The scope of discretion granted to agencies by the legislature varies from statute to statute. Some acts grant a wide range of discretion to an agency. Statutes such as these may contain

such phrases as "Public Welfare", "good order", or "care and control". A second category of statutes are those that set forth certain explicit concerns which the agency is to address, but allow wide discretion for how to act within those named concerns. A third category both sets forth the subject area of review and the standards to be used in the administration of the act. Thus, the administrator is essentially without any discretion; if a case arises in the area addressed by the statute and fits the criteria named therein, then the administrator must act accordingly. Laws of this third type are often referred to as ministerial.

An example of the first category are the Waterways laws. Chapter 91 Section 2 states, "The department shall . . . have charge of the lands, flats, shores and rights in tidewaters belonging to the Commonwealth . . ." and at Section 10, "The department shall have general care and supervision of the harbors and tidewaters of the Commonwealth..." A fully developed body of case law has also addressed the role of the state in the management of waterways. These statutes and the courts' interpretation reveal that since waterways are public lands, the state is to act as a trustee over them and must weigh all proposed uses of the waters as to the public good versus the private good that could be obtained from such uses. Thus, the state has broad discretion when reviewing uses in waterways and a concomitantly broad responsibility to incorporate Chapter 21A.

21A, overlaid upon Chapter 91, thus ensures that if a project were proposed which would entail risks to marine resources (for instance) an administrator could not act in ways which would be inconsistent with the directives to "provide for the propagation, protection, control and management of fish, other aquatic life. . ." or to "provide for the regulation and management of marine and coastal fisheries and natural resources including those located in the (open sea), wetlands, estuaries, shorelines. . .", etc.

The Wetlands Protection Act (Ch. 131, Sec. 40) is an example of the second category of statutes. Here the law calls upon Conservation Commissions and DEQE to protect fisheries, prevent pollution, and prevent storm damage, etc. Thus, an administrator could again turn to the directives of subsections 3 and 5 (quoted just above) in deciding how to protect fisheries. And, once the CZM policies are adopted, those relevant to the protection of fisheries would apply to the administration of the Wetlands Act. Contrary to the first category of broad discretion, the limited list of protected interests named in the Wetlands Act would preclude an administrator from applying those parts of 21A dealing with recreation or visual concerns.

An example of a ministerial statute is Chapter 21 which states, "Each person intending to engage (in the business of digging or drilling wells) shall register annually with (the water resources commission) and upon payment of a fee of ten dollars shall be issued a certificate. . ." There are very few such statutes in EOEA.

In sum, the Legislative mandate to the EOEA agencies requires an integrated approach towards critical areas, towards the balanced

and best usage of all resources, and towards conflicting uses of land - natural and commercial, urban and rural or historical and industrial. Section Two furthers the essential purpose of reorganization by ensuring that no agency willfully can act to undermine the concerns of any other unit within EOEA.

SECTION THREE

Section Three of Chapter 21A declares in part that "the Secretary shall conduct comprehensive planning with respect to the functions of the office and shall coordinate the activities and programs of the (agencies) within the office. He shall continually review the operation of the office with a view toward improving administrative organization, procedures and practices, (and) promoting economy and efficiency."

The CZM program has been the first major effort by the Executive Office and the line EOEA agencies to conduct a thorough program of comprehensive planning for a vital resource area of the Commonwealth. The planning effort and the management structure described in this Chapter and in the Secretary's Regulations adopting the CZM Program rest their authority in part directly upon this section. The performance evaluation procedures, (explained in Part 3) while within the scope of authority of any administrator, are further reinforced by the Legislative directive of Section Three.

SECTION FOUR

Section Four is referred to as the conflict resolution section. This phrase, and this section of the statute encompasses several concepts.[2] The section reads:

> "In order to enable him to coordinate and improve the operations of all departments, divisions and other administrative units within the office, the secretary shall have the following powers and duties concerning

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[2]These concepts parallel those expressed in Section 306 (c)(1) of the CZMA. With regard to these requirements, the CZM plan itself resolves many conflicts among competing uses. The CZM policies, taken as a whole, represent a conscious balancing of the needs to preserve some areas, to develop others or to further recreational uses. The implementation of these policies by the EOEA agencies will mean that for the many activities in areas that the plan addresses directly, the conflicts have already been resolved. Secondly, through the continuingplanning role of the Secretary, by technical assistance and special planning grants, and by directing the use of public infrastructure spending, the CZM Program will obviate many conflicts by resolving them in advance. Thirdly, should individual conflicts develop or should there be a conflict within the CZM plan as it is applied to a particular situation, the conflict resolution powers of the Secretary will be applied to ultimately resolve any such issues.

any power or duty assigned to any such department, division or other administrative unit:

(1) the power and duty to resolve administrative and jurisdictional conflicts between any such agencies or officers;

(2) the power and duty to implement, upon request of any such agency or officer, programs jointly agreed to by the secretary and such an agency or officer;

(3) the power and duty to coordinate and improve program activities involving two or more agencies or officers."

The first five lines of Section Four reiterate the philosophy of the Reorganization legislation. This section is key to insuring that the dual legislative purposes of carrying out the state environmental policy and of integrating program activities is performed. First, the Secretary's powers extend to "any power or duty" assigned to any EOEA agency. In subsection (1), the Secretary may resolve "administrative and jurisdictional conflicts." This concept is far broader than simple subject matter jurisdiction, such as whether or not hooking up to a sewer falls within the jurisdiction of Water Pollution Control or the MDC. The power includes situations where two laws or programs have inconsistent criteria or require inconsistent outcomes; where the actions of one agency have the potential for undercutting, interfering with, or duplicating another program; or where there are issues concerning how to fund or enforce certain programs. As an example, the Division of Marine Fisheries may have spent significant funds and efforts in an area to improve fisheries resources. Some other agency of EOEA may wish to dredge, may have a request to permit a water discharge, may want to allow off-shore mining, or may want to encourage a marina development with public access in the same area. Any of these proposals could significantly undercut or nullify the efforts of Marine Fisheries, yet to disallow them could deny other valid public benefits. Difficult choices must be made. The legislature foresaw that it was preferable to consciously make such choices, and to have them made by the administrator who also plans the future course of the agencies (in order to obviate the chances of such situations in the future) than to have both activities proceed in an uncoordinated, expensive and possibly futile fashion.

This reasoning does not deny that there have not been valiant efforts on the part of individual administrators to coordinate their programs or that there are not some laws which expressly require consultation with other agencies. But, Reorganization was essentially a corporate merger, and as any business executive would agree, without clear and firm leadership empowered to resolve conflicts, effective management and unified direction cannot occur.

Chapter 21A(4)(2) gives the Secretary the power and duty to jointly implement programs with EOEA agencies, upon their request. The Memoranda of Understanding with the Commissioners (explained in Part II) trigger this section by requesting that the Secretary join them in implementing the final CZM plan. These requests further underscore the commitment of the EOEA administrators to carry out the CZM policies.

Appendix B:
Memoranda of Understanding

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
100 Cambridge Street, Boston 02202

DAVID STANDLEY
COMMISSIONER

February 28, 1977

Evelyn F. Murphy, Secretary
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Ma. 02202

Dear Secretary Murphy:

Inasmuch as the implementation of the Coastal Zone Management Program will require the coordination of programs within my agency with other EOEA agencies, and with the Office of the Secretary, I hereby express my support for the program. I hereby request to jointly implement the program. I accept the final Coastal Zone Management Plan, as approved by the Governor, as a statement of the state environmental policy for the coastal zone.

I further agree that:

(1) I will adopt and incorporate the rules and regulations promulgated by the Secretary for implementation of the program, to the extent permissible by law.

(2) I will adopt within my agencies, following proper procedures, rules, regulations, and appropriate procedures, for those parts of the Plan dependent upon the authorities and statutory responsibilities of my agencies in order to improve the coordination of activities and programs within EOEA, pending formal approval of the Plan by the Governor.

(3) I will provide legal standing in my affected agencies' proceedings for other agencies within EOEA, if so requested.

(4) I request that to enable the Secretary to coordinate and improve the operations within EOEA as they relate to the issues of the Coastal Zone Management Plan, when conflicts arise between my agency and other agencies of EOEA as to the consistency of my agency's action with the Coastal Zone Management Plan, that the Secretary invoke the conflict resolution process, as established by Chapter 21A of the General Laws, Section 4, first by informal consultation and then if necessary, by formal proceedings. A statement of findings shall be prepared for all such formal proceedings.

I am currently reviewing the proposed submission in detail and support the policies relevant to my agency and the overall concept of the Plan. This statement of agreement should not be construed to change, alter or affect statutory powers within my agency.

Sincerely,

David Standley
Commissioner

RICHARD E. KENDALL
COMMISSIONER

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Management
Leverett Saltonstall Building, Government Center
100 Cambridge Street, Boston 02202

March 10, 1977

Evelyn F. Murphy, Secretary
Executive Office of
Environmental Affairs
Leverett Saltonstall Building
100 Cambridge Street
Boston, Massachusetts 02202

Dear Secretary Murphy:

Inasmuch as the implementation of the Coastal Zone Management Program will require the coordination of programs within my agency with other EOEA agencies, and with the Office of the Secretary, I hereby express my support for the program. I hereby request to jointly implement the program. I accept the final Coastal Zone Management Plan, as approved by the Governor, as a statement of the state environmental policy for the coastal zone.

I further agree that:

(1) I will adopt and incorporate the rules and regulations promulgated by the Secretary for implementation of the program, to the extent permissible by law.

(2) Following proper procedures, I will adopt within my agencies, rules, regulations, and appropriate procedures for those parts of the Plan dependent upon the authorities and statutory responsibilities of my agencies in order to improve the coordination of activities and programs within EOEA, pending formal approval of the Plan by the Governor.

(3) I will provide legal standing in my affected agencies' proceedings for other agencies within EOEA, if so requested.

(4) I request that to enable the Secretary to coordinate and improve the operations within EOEA as they relate to the issues of the Coastal Zone Management Plan, when conflicts arise between my agency and other agencies of EOEA as to the consistency of my agency's action with the Coastal Zone Management Plan, that the Secretary invoke the conflict resolution process, as established by Chapter 21A of the General Laws, Section 4, first by informal consultation and then if necessary, by formal proceedings. A statement of findings shall be prepared for all such formal proceedings.

I am currently reviewing the proposed submission in detail and support the policies relevant to my agency and the overall concept of the Plan. This statement of agreement should not be construed to change, alter or affect statutory powers within my agency.

Sincerely,

Richard E. Kendall
Commissioner

REK/RL:kc

BRUCE S. GULLION
COMMISSIONER

The Commonwealth of Massachusetts
Department of Fisheries, Wildlife and Recreational Vehicles
100 Cambridge Street
Boston, Massachusetts 02108

March 10, 1977

Evelyn F. Murphy, Secretary
Executive Office of
Environmental Affairs
Leverett Saltonstall Building
100 Cambridge Street
Boston, Massachusetts 02202

Dear Secretary Murphy:

Inasmuch as the implementation of the Coastal Zone Management Program will require the coordination of programs within my agency with other EOEA agencies, and with the Office of the Secretary, I hereby express my support for the program. I hereby request to jointly implement the program. I accept the final Coastal Zone Management Plan, as approved by the Governor, as a statement of the state environmental policy for the coastal zone.

I further agree that:

(1) I will adopt and incorporate the rules and regulations promulgated by the Secretary for implementation of the program, to the extent permissible by law.

(2) Following proper procedures, I will adopt within my agencies, rules, regulations, and appropriate procedures for those parts of the Plan dependent upon the authorities and statutory responsibilities of my agencies in order to improve the coordination of activities and programs within EOEA, pending formal approval of the Plan by the Governor.

(3) I will provide legal standing in my affected agencies' proceedings for other agencies within EOEA, if so requested.

(4) I request that to enable the Secretary to coordinate and improve the operations within EOEA as they relate to the issues of the Coastal Zone Mangement Plan, when conflicts arise between my agency and other agencies of EOEA as to the consistency of my agency's action with the Coastal Zone Management Plan, that the Secretary invoke the conflict resolution process, as established by Chapter 21A of the General Laws, Section 4, first by informal consultation and then if necessary, by formal proceedings. A statement of findings shall be prepared for all such formal proceedings.

I am currently reviewing the proposed submission in detail and support the policies relevant to my agency and the overall concept of the Plan. This statement of agreement should not be construed to change, alter or affect statutory powers within my agency.

Sincerely,

Bruce S. Gullion
Commissioner

BSG/RL:kc

The Commonwealth of Massachusetts
Metropolitan District Commission
20 Somerset Street, Boston 02108

hn F. Snedeker
Commissioner

March 18, 1977

Evelyn F. Murphy, Secretary
Executive Office of Environmental Affairs
Leverett Saltonstall Building
100 Cambridge Street
Boston, Mass. 02202

Dear Secretary Murphy:

Inasmuch as the implementation of the Coastal Zone Management Program will require the coordination of programs within the Metropolitan District Commission with programs of other EOEA agencies and of the Office of the Secretary, the Commission hereby expresses its support for the program. We are currently reviewing the proposed submission in detail, andendorse the policies relevant to the Commission and the overall concept of the Plan. Subject to our review of the final plan to determine whether the plan is consistent with the Commission's responsibilities and authorities, I hereby accept the final Coastal Zone Management Plan, as approved by the Governor, as a statement of the state environmental policy for the coastal zone, and hereby request that it be jointly implemented with the Secretary. Again, subject to our review of the final plan, the Commission agrees to the following:

(1) The Commission will adopt and incorporate the rules and regulations promulgated by the Secretary for implementation of the program, to the extent permissible by law.

(2) Following proper procedures, the Commission will adopt rules, regulations, and appropriate procedures for those parts of the Plan dependent upon the authorities and statutory responsibilities of the Commission in order to improve the coordination of activities and programs within EOEA, pending formal approval of the Plan by the Governor.

(3) The Commission will provide legal standing for any of the agencies within EOEA, at any hearings which may be held involving issues of the Plan, if so requested.

(4) The Commission requests that to enable the Secretary to coordinate and improve the operations within EOEA as they relate to the issues of the Coastal Zone Management Plan, when conflicts arise between the Commission and other agencies of EOEA as to the consistency of the Commission's action with the Coastal Zone Management Plan, that the Secretary invoke the conflict resolution process, as established by Chapter 21A of the General Laws, Section 4, first by informal consultation and then, if necessary, for formal proceedings. A statement of findings shall be prepared for all such formal proceedings.

This statement of agreement should not be construed to change, alter or affect statutory powers within the Metropolitan District Commission.

Sincerely,

John F. Snedeker

JOHN F. SNEDEKER
Commissioner

JFS/RL/SGC:ml

The Commonwealth of Massachusetts
Department of Food and Agriculture
Leverett Saltonstall Building, Government Center
100 Cambridge Street, Boston 02202

March 10, 1977

Evelyn F. Murphy, Secretary
Executive Office of
Environmental Affairs
Leverett Saltonstall Building
100 Cambridge Street
Boston, Massachusetts 02202

Dear Secretary Murphy:

Inasmuch as the implementation of the Coastal Zone Management Program will require the coordination of programs within my agency with other EOEA agencies, and with the Office of the Secretary, I hereby express my support for the program. I hereby request to jointly implement the program. I accept the final Coastal Zone Management Plan, as approved by the Governor, as a statement of the state environmental policy for the coastal zone.

I further agree that:

(1) I will adopt and incorporate the rules and regulations promulgated by the Secretary for implementation of the program, to the extent permissible by law.

(2) Following proper procedures, I will adopt within my agencies, rules, regulations, and appropriate procedures for those parts of the Plan dependent upon the authorities and statutory responsibilities of my agencies in order to improve the coordination of activities and programs within EOEA, pending formal approval of the Plan by the Governor.

(3) I will provide legal standing in my affected agencies' proceedings for other agencies within EOEA, if so requested.

(4) I request that to enable the Secretary to coordinate and improve the operations within EOEA as they relate to the issues of the Coastal Zone Management Plan, when conflicts arise between my agency and other agencies of EOEA as to the consistency of my agency's action with the Coastal Zone Management Plan, that the Secretary invoke the conflict resolution process, as established by Chapter 21A of the General Laws, Section 4, first by informal consultation and then if necessary, by formal proceedings. A statement of findings shall be prepared for all such formal proceedings.

I am currently reviewing the proposed submission in detail and support the policies relevant to my agency and the overall concept of the Plan. This statement of agreement should not be construed to change, alter or affect statutory powers within my agency.

Sincerely,

Frederic Winthrop, Jr.
Commissioner

FW/RL:mc

Memorandum of Understanding Between the Executive Office of Environmental Affairs and the Energy Facilities Siting Council Relative to the Coastal Zone Management Plan

This Memorandum of Understanding sets forth the areas of responsibility and the operating procedures to be followed by the EFSC and the EOEA under the Coastal Zone Management plan.

Statement of Existing Agency Powers

1. The EOEA and its appropriate departments and divisions are responsible for carrying out state environmental policies and enforcing state environmental laws.

2. Under the Coastal Zone Management Act, the EOEA has the responsibility for insuring compliance with the state Coastal Zone Management plan, as approved by the Governor and implemented by the regulations of the Secretary of EOEA.

3. The EFSC has the mandate under M.G.L.A. Chapter 164, Section 69G, et. seq. to insure a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.

4. Pursuant to its statutory scheme, the EFSC reviews proposals for major energy facilities submitted to it by utilities and other energy companies. In its review process the EFSC must determine whether the proposed facilities are consistent with current health, environmental protection, and resource use and development policies as adopted by the Commonwealth. The EFSC may inquire into the need for the facility, the economics of the facility and alternative proposals and sites. An approval from the EFSC is required before an applicant commences construction on any energy facility subject to the act.

Responsibilities under the Coastal Zone Management Program

In agreeing to the following procedures and responsibilities, the EOEA and EFSC recognize the statutory limitations of both agencies and do not intend this document to expand or limit their existing statutory powers in any way.

1. The EFSC hereby expresses its support for the Coastal Zone Management program and agrees to cooperate and coordinate with the EOEA in the implementation of said program.

2. The EFSC hereby agrees to recognize the final Coastal Zone Management Plan, as approved by the Governor, as a statement of health, environmental, and resource use and development policies of the Commonwealth in the coastal zone.

3. The EFSC hereby agrees to act consistently with the policies of the plan and to amend or adopt such regulations and procedures as may be necessary to implement those parts of the plan which fall under its jurisdiction, including, but not limited to:

a) a regulation or administrative bulletin providing for cooperation between the EFSC and the EOEA on the review of any Long-Range Forecast, Supplement, Notice of Intention to Build an Oil Refinery, or Certificate of Environmental Impact and Public Need in which an energy facility is proposed for the coastal zone. Such regulation or bulletin will include provisions

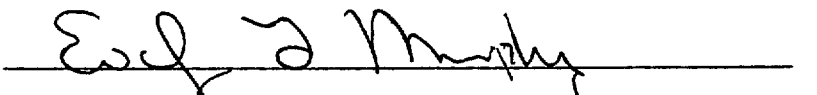
i) that all such submissions will be forwarded to the EOEA for comment and review prior to any hearing before the EFSC;
ii) that the EOEA and the EFSC will cooperate on developing guidelines for data for initial review pursuant to M.G.L. Chapter 164, Section 691 (3); and
iii) that such guidelines will contain a requirement that for any proposed coastal facility, an applicant provide information for at least two alternative sites, one of which shall be an inland site.

b) a regulation or administrative bulletin that recognizes that the administration of the Coastal Zone Management plan by the EOEA or any subdivision thereof may be substantially and specifically affected by a proceeding before the EFSC in which the proposed site or alternatives are located in the Coastal Zone and will therefore recognize the standing of the Coastal Zone Management office in any such proceeding.

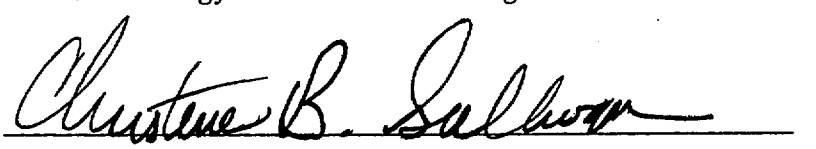
4. In conducting its review of facilities proposed for critical areas of environmental concern, the EFSC will give prime consideration to the environmental impact in these areas. While thus insuring a minimum impact on the environment in such critical areas, the EFSC will continue to consider the need for a necessary energy supply at the lowest possible cost and will retain its final power under Massachusetts law over the siting of energy facilities.

5. The EFSC agrees to adopt forthwith rules and regulations which will implement paragraphs 2, 3 and 4 of their MOU, and the CZM agrees that upon adoption of satisfactory rules and regulations by EFSC, decisions by the Council will be deemed for any federal license or permit, to be consistent with the CZM Program under the provisions of Section 307 of the CZMA.

For the Executive Office of Environmental Affairs:



For the Energy Facilities Siting Council:



The Commonwealth of Massachusetts
Executive Office of Transportation & Construction
One Ashburton Place
Boston, Massachusetts 02108

FREDERICK P. SALVUCCI
SECRETARY

11 January 1978

Secretary Evelyn Murphy
Executive Office of Environmental Affairs
100 Cambridge Street - 20th Floor
Boston, Massachusetts 02108

Dear Secretary Murphy:

By this letter, the Executive Office of Transportation and Construction (EOTC), on behalf of itself and its constituent agencies and authorities, hereby expresses its support for the Massachusetts Coastal Zone Management Program formulated by your Office. EOTC agrees to cooperate and coordinate with the Executive Office of Environmental Affairs (EOEA), insofar as consistent with existing statutory responsibilities and limitations, in implementing the policies of the Program as they relate to transportation policies, programs, and projects.

In particular, EOTC supports the promotion of major public infrastructure including transportation projects primarily to serve already-developed coastal areas, as provided for in Policy 26 of the Program, and the general implementation mechanisms discussed in the Program for that policy. Consistent with these principles, EOTC agrees to work with the Office of Coastal Zone Management within EOEA to establish specific administrative procedures that ensure that:

1. CZM receives notice of all major transportation projects, as defined in Policy 26, proposed for location within the coastal zone;

2. CZM receives sufficient opportunity and information during the systems planning phase, or an equivalent planning stage, to review the consistency of such proposed major transportation projects with Policy 26;

3. where a proposed major transportation project will be financed in whole or in part with federal funds, CZM makes a determination of consistency or inconsistency with Policy 26 for purposes of compliance with the federal consistency provisions of the Coastal Zone Management Act of 1972, P.L. 92-593 (Section 307 of the Act) by the completion of the systems planning phase or its equivalent, which determination shall be conclusive as to issues relating to Policy 26;

4. where a proposed major transportation project will be financed without the use of federal funds, and where CZM determines the project to be inconsistent with Policy 26, the Secretary of Transportation and Construction will consult with the Secretary of Environmental Affairs to determine how the inconsistencies might be resolved; that, if they are unable to agree, the Secretary of Transportation and Construction will bring the proposed project before the state's Development Cabinet to

review how state priorities for meeting transportation needs and coastal management can best be reconciled with respect to this particular project; and that, if the Development Cabinet is unable to resolve the issue to the satisfaction of the Secretaries of Transportation and Construction and Environmental Affairs, either may bring the issue to the Governor for similar review; and

5. no consistency finding shall be required for the release of federal funds to finance the systems planning phase or its equivalent.

These specific administrative procedures may be embodied in a Memorandum of Understanding between EOTC and EOEA, or such other form as EOTC and CZM may deem appropriate.

The EOTC further agrees to collaborate with CZM in developing administrative procedures for implementing federal consistency requirements with respect to non-major transportation projects and with respect to other applicable policies of the Program other than Policy 26.

Sincerely,

Frederick P. Salvucci

FPS:bwp

Appendix C: Coordination with Existing Plans: Local, Regional, State Interstate and Federal

APPENDIX C

COORDINATION WITH EXISTING PLANS
Local, Regional, State, Interstate, and Federal

The Massachusetts CZM Program, from its very beginning in the Spring of 1974, was determined to make maximum use of existing governmental plans both to guide the direction of the program and to provide needed data. Plans were identified; contracts made with governmental agencies responsible for these plans; plans were examined; pertinent portions incorporated into the program; and conflicts, if any, identified. This coordination process is described in the following sections.

LOCAL GOVERNMENT PLANS

In the first year of program development, coastal regional planning agencies were contracted by CZM to report on local government plans and their pertinency to coastal zone management. In the spring and summer of 1975, two law student interns gathered and analyzed the zoning by-laws, ordinances, and maps of all communities in the coastal zone. Also, CZM staff collected copies of existing community open space, redevelopment, port and harbor development and historic district plans.

Coordination with these plans was achieved through membership by local governmental agencies on regional citizen advisory committees. (see Appendix B: Public Participation - Public Information). In addition, CZM staff met during the second and third year of program development with individual municipal redevelopment authorities, and selected port and harbor and economic development commissions. In the course of preparing the chapter on coastal regions, meetings were held in each coastal community to discuss the CZM program and its policies. Selectmen, City Council members, planning board members, conservation commission members, industrial development commission members and recreation department officials were invited to these meetings. Starting in the summer of 1976 and continuing through the winter of 1977, CZM staff arranged these meetings for the Upper North Shore, Lower North Shore, South Shore, and Plymouth Bay regions. During the same time the Cape Cod Planning and Economic Development Commission and the Southeastern Regional Planning and Economic Development District, under contract to CZM, set up similar community by community meetings for Cape Cod, Buzzards Bay, and Mt. Hope Bay. For the Boston Harbor region, a CZM staff member met individually with redevelopment authorities, conservation commissions, and municipal planning offices. In all these town-by-town meetings, the policy objectives of the CZM program were presented; community plans and goals for specific geographic areas discussed; and the possibility of incorporating these into the CZM program explored.

As a result of these coordination efforts, the CZM program, in its chapter on coastal regions, reflects the several priorities of local government studies or plans with respect to (1) major port and harbor development and urban waterfront development (such priorities are reflected in the SADA designations;see Policy (20)) and (2) coastally related open space and recreation acquisitions (see Policy 24).

LOCAL ZONING BY-LAWS

Town	Zoning	Wetlands By-Law or District	Flood-plain By-Law	Wetlands Restricted	Coordination With Local & Regional Agencies	Potential Conflict with CZM Plan
Salisbury	Yes	No	Yes	Yes	8/76	1b
Newburyport	Yes	No	Yes	Yes	8/76	1b, 3
Newbury	Yes	Yes	No	Yes	8/76	1b, 3
Rowley	Yes	No	Yes	Yes	10/76	1b
Ipswich	Yes	Yes	Yes	Yes	9/76	1b, 3
Essex	Yes	Yes	No	Yes	9/76	1b
Gloucester	Yes	Yes	Yes	No	9/76	1b, 2
Rockport	Yes	No	No	No	9/76	1a
Manchester	Yes	Yes	No	No	9/76	1b
Beverly	Yes	No	No	No	10/76	1a
Salem	Yes	Yes	No	No	10/76	1b
Marblehead	Yes	No	No	No	7/76	1a
Swampscott	Yes	No	Yes	No	9/76	1a
Lynn	Yes	No	No	No	10/76	1a, 2
Nahant	Yes	No	Yes	No	7/76	1b
Saugus	Yes	Yes	Yes	No	8/76	1b
Revere	Yes	No	No	No	10/76	1a
Chelsea	Yes	No	Yes	No	9/76	1b
Everett	Yes	No	No	No	11/75	1a
Boston	Yes	No	No	No	6/76	1a
Quincy	Yes	No	Yes	No	9/76	1a
Weymouth	Yes	No	Yes	No	10/76	1b
Hingham	Yes	Yes	Yes	No	1/77	1b
Hull	Yes	No	No	No	1/77	1a
Cohasset	Yes	Yes	Yes	Yes	8/76	1b
Scituate	Yes	Yes	Yes	No	9/76	1b, 3
Marshfield	Yes	Yes	No	Yes	8/76	1b
Norwell	Yes	Yes	No	Yes	9/76	1b
Pembroke	Yes	No	Yes	Yes	9/76	1b, 3
Kingston	Yes	No	Yes	No	9/76	1b
Duxbury	Yes	Yes	Yes	Yes	9/76	1b
Plymouth	Yes	Yes	No	No	9/76	1b
Wareham	Yes	Yes	Yes	Yes	3/77	1b
Marion	Yes	No	Yes	Yes	1/77	1b
Mattapoisett	Yes	No	Yes	No	12/76	1b
Fairhaven	Yes	Yes	Yes	No	1/77	1b
Achushnet	No	Yes	No	No		1b
New Bedford	Yes	No	Yes	No	2/77	b
Dartmouth	Yes	Yes	Yes	No	2/77	1b
Westport	Yes	No	Yes	Yes	1/77	1b
Fall River	Yes	No	No	No	1/77	2, 1a
Freetown	No	No	No	No	12/76, 1/77	1a
Somerset	Yes	No	Yes	No	10/76	1a

Town	Zoning	Wetlands By-Law or District	Flood-plain By-Law	Wetlands Restricted	Coordination With Local & Regional Agencies	Potential Conflict with CZM Plan
Swansea	Yes	No	Yes	No	10/76	1b
Dighton	Yes	No	No	No	11/76	1a
Berkley	No	No	No	No	11/76	1a
Rehoboth	Yes			No		
Seekonk	Yes	No	No	No		1a
Bourne	Yes	No	Yes	No	7/76 9/76 10/76	1b
Falmouth	Yes	Yes	No	No	9/76	1b
Sandwich	Yes	Yes	Yes	No	9/76	1b
Mashpee	Yes	Yes	Yes	No	7/76, 8/76	1b
Barnstable	Yes	Yes	No	No	7/76 10/76 10/76	3
Yarmouth	Yes	Yes	Yes	No	9/76	1b
Dennis	Yes	Yes	No	No	7/76, 8/76	1b
Brewster	Yes	Yes	Yes	No	9/76	1b
Harwich	Yes	Yes	No	No	7/76	1b
Chatham	Yes	Yes	No	No	9/76, 10/76	1b
Orleans	Yes	Yes	Yes	Yes	7/76, 8/76	None
Eastham	Yes	No	No	Yes	6/76, 7/76	1b
Wellfleet	Yes	No	No	No	7/76	1a
Truro	Yes	No	No	Yes	7/76, 8/76	1b
Provincetown	Yes	No	Yes	No	7/76, 9/76	1b
Nantucket	Yes	No	Yes	No	12/76	1b
Chilmark	Yes	Yes*	Yes*	Yes	12/76	None
Edgartown	Yes	Yes*	Yes*	Yes	12/76	None
Gay Head	Yes	Yes*	Yes*	Yes	12/76	None
Oak Bluffs	Yes	Yes*	Yes*	Yes	12/76	None
Tisbury	Yes	Yes*	Yes*	Yes	12/76	None
West Tisbury	Yes	Yes*	Yes*	Yes	12/76	None

*A coastal district which includes wetlands and floodplains was established by the Martha's Vineyard Commission for the entire island.

With respect to local government plans which have been adopted and have the force of law, that is municipal zoning, the CZM program is consistent with locally designated historic districts (see Policy(12)) and with the general pattern of zoning in interior areas of the coastal zone. In some other respects, however, the CZM program does conflict with existing municipal zoning. These conflicts are identified in the following table as are the dates of CZM town-by-town meetings. These conflicts are of three basic types as indicated in the last column of the table:

(1) a. municipal zoning allows for uses on salt marshes, beaches, barrier beaches, shellfish beds, salt ponds, and floodplains which are contrary to CZM Policy (1), and the municipality has not adopted wetland or floodplain by-laws or ordinances to condition or deny construction in such areas.

b. municipal zoning sanctions uses of salt marshes, beaches, barrier beaches, shellfish beds, salt ponds, and floodplains which are contrary to CZM policy (1), but the municipality had adopted wetland or floodplain by-laws or ordinances to condition or deny construction in such areas.

(2) municipal zoning allows for uses in port areas which are not maritime dependent (Policy (7), and

(3) municipal zoning allows for uses that may be incompatible with the features and characteristics to be protected in areas to be designated as Areas for Preservation or Restoration/Areas of Critical Environmental Concern (Policy (2)).

The first type of conflict is resolved by the new Zoning Enabling Act (MGLA Ch. 40A, s. 3) which specifically prescribes zoning ordinances or by-laws which would "exempt land and structures from floodplain or wetlands regulations established pursuant to general law." These "regulations" include the Wetlands Protection Act (MGLA Ch. .3., s. 40) whereby Conservation Commissions review and issue permits for wetlands alterations subject to (a) appeal to or by the Commissioner of the Department of Environmental Quality Engineering and (b) conformance with regulations promulgated by the Commissioner. They also include restrictions under the Coastal Wetlands Restriction Act (MGLA Ch. 130, s. 105) which authorizes the Commissioner of Environmental Management to place orders on property owners' deeds restricting alterations to wetlands. Both the state Wetlands Protection and Restrictions Acts thus supercede local zoning.

Under the CZM Program, technical assistance (Policy 16) will be provided to communities to assist in bringing local zoning ordinances into conformance with the intent of Policy (1). Notice will be given whenever a new wetlands area is to be restricted under the Wetlands Restriction Program, thereby giving communities an opportunity to voice their concerns and strive for resolution of conflicts. Notice will also be given of revised regulations for the Wetlands Protection Act and a public hearing held at which these concerns can be addressed.

The second type of conflict will be addressed on a case-by-case basis. Policy (7) stipulates that port interests and public agencies be consulted and, if necessary, a public hearing be conducted whenever

a project in a port area may be denied required state permits or be deemed, for federal permits or assistance, inconsistent with the CZM program because it is presumed to conflict with another possible use. Assistance will also be provided to port communities to develop harbor plans and zoning ordinances or by-laws in conformance with the CZM policy intent of promoting maritime dependent development in port areas. (Policy 20)

The third type of conflict will be resolved through the APR/ACEC designation process. Public notice will be given of any proposed APR/ACEC designation to be implemented by the Secreatary of Environmental Affairs' power to establish Areas of Critical Environmental Concern. Affected local governments will be consulted and a public hearing held. If the designation proceeds, technical assistance will be provided to aid in bringing municipal zoning by-laws or ordinances into conformance with the purpose of the designation.

REGIONAL PLANNING AGENCY PLANS

During each of the three years of program development, the coastal regional planning agencies have been contracted by CZM to coordinate existing regional plans and on-going regional planning efforts with the CZM program. Regional planning agency staff have also been members of the Planning Committee of the Governor's Task Force on Coastal Resources. Through their participation on the Planning Committee, the coastal regional planning agencies had an opportunity to shape the CZM program and assure consistency with existing regional plans. Many of the regional planning agency plans' recommendations are incorporated in the chapter on Coastal Regions. For example, the recommendations of the Metropolitan Area Planning Council's Open Space Plan for coastal open space are reflected both in the priority given to urban waterfront open space acquisition and the acquisition recommendations made for the Lower North Shore, Boston Harbor and South Shore. (Policy 24).

In recognition of the similarity in goals and planning timeframe between the CZM program and the "208" areawide waste water management planning being conducted by regional planning agencies, special efforts to coordinate the two programs were made. CZM prepared a paper circulated to "208" planning agencies describing the program's objectives and policy thrusts and setting further the criteria by which "208" agency planning outputs would be reviewed for consistency with the CZM program. In addition, CZM participated selectively in "208" public participation meetings as did 208 agency personnel in CZM public participation meetings. Since the "208" plans are not yet completed, the process of coordination between CZM and areawide wastewater management planning is on-going.

CZM also developed a special relationship with the Martha's Vineyard Commission so that the policies of the CZM program fitted with the unique regional-level regulatory powers exercised by the Commission. Specifically, CZM contracted with the Commission to analyze how the regulatory powers of the Commission could be relied upon to implement the CZM program on the Vineyard, to explore the feasibility of the Vineyard Commission qualifying as a "segmented" program, and to develop an open space and recreational development strategy for the island. The Vineyard Commission will, under the Massachusetts 306 program,

continue to enjoy a special status, and will be contracted to implement parts of the CZM program on the island.

CZM also met with regional transit authorities on Cape Cod, southeastern Massachusetts, and metropolitan Boston to coordinate recommendations for demonstration projects and transit studies for transportation to coastal recreation. Transit authorities have plans for extending or creating bus and subway services both within urban areas and outlying areas. Those plans which entail physical construction within the coastal zone have been reviewed, and the CZM program does not conflict with them (see listing of transportation projects in General Development and Public Investment).

The process of coordinating with regional plans did not surface any outstanding conflicts with the CZM program. While the priorities for action in existing regional plans and the CZM program are not completely identical, the policies of the CZM program have generally been viewed as supportive and compatible with those in existing regional plans.

STATE AGENCY PLANS

The CZM program has been coordinated with six distinct state plans. These plans and their relationship to the CZM program are discussed below.

-- Statewide Comprehensive Outdoor Recreation Plan (SCORP) has been prepared by the Department of Environmental Management (DEM) and recommends that recreational needs be met where demand is greatest and supply most deficient and that priority be placed on satisfying the needs for the most widely demanded recreational activity. The Plan identifies swimming as the most popular recreational activity and finds that urban areas, particularly the greater Boston area is the area of highest need for new recreational facilities. DEM reviewed drafts of the CZM program. The CZM program incorporates both the SCORP data base and demand methodologies and endorses the SCORP priorities by giving high priority for both public beach acquisition and open space/recreation development in urban areas. (Policy 24)

-- State Growth Policy Plan has been prepared by the Office of State Planning (OSP). It recommends that new growth and development be channelled to existing urban centers or to regional development centers and that state actions, in particular state programs of public investment, adhere to the policy and support urban redevelopment. OSP, through its membership on the Planning Committee of the Governor's Task Force on Coastal Resources, reviewed various drafts of the CZM program and advocated explicit incorporation of the State Growth Policy into the CZM program. Policies 26 and 27 were developed to reflect the State Growth Policy.

-- Water Quality Basin Plans have been prepared by the Division of Water Pollution Control (DWPC) to comply with both state and federal water quality requirements for establishing water quality classifications

for stream segments. Plans have been completed for all but one of the major coastal basins and the proposed classifications do not conflict with the CZM program. These plans are not enforceable until a public hearing has been held and the classifications adopted by regulation. DWPC has also reviewed drafts of the CZM program and endorses its policy thrusts. However, in identifying areas where water quality problems are sufficiently severe as to indicate a need for treatment plant facilities, some of the Basin Plans propose the extension of sewer service to sensitive environmental or hazard areas. Such extensions would be contrary to the CZM program. These conflicts will be resolved as sewage treatment plant facility plans are developed. The process of resolution will be guided by a review of such plans for conformance to the CZM program, 208 areawide waste water management plans, to the state's Growth Policy, and DWPC's own policy of denying funding for treatment works or collection systems to newly sub-divided areas, and by evaluation of the severity of water quality problems the treatment system is designed to ameliorate. (For further detail see Policy (27).

-- Transportation Plans have been and continue to be prepared by the Department of Public Works (DPW) in conjunction with regional planning agencies. The Secreatry of Transportation and Construction, the cabinet officer in charge of transportation, was a member of the Governor's Task Force on Coastal Resources and was thus provided an opportunity to shape the course of the CZM program. DPW has also reviewed drafts of the CZM program. Current transportation plans have been reviewed for consistency with the CZM program. As others are developed, coordination with the CZM Program will be achieved through the process outlined under Policy (26).

-- Metropolitan District Commission (MDC) Plans have been reviewed in the course of preparing the section on the Boston Harbor Region in Chapter V. MDC was a member of the Boston Harbor Committee which advised the CZM program during its preparation of that section.

-- Port Plans have been prepared and adopted by MASSPORT for the airport (Logan Masterplan). The Logan Masterplan does not conflict with the CZM program. No plan has yet been prepared or adopted for the seaport. MASSPORT has been consulted in the development of the CZM program, and CZM's port and harbor policies have been supported by MASSPORT. MASSPORT was also an active participant in the preparation of the section of the regional chapter on Boston Harbor.

INTERSTATE AGENCY PLANS

The New England River Basins Commission's Southeastern New England Study (SENE) is the only interstate plan affecting the Massachusetts coastal zone. The Governor's Task Force on Coastal Resources and CZM staff, in the fall of 1974 and winter of 1975 devoted much effort to reviewing the draft SENE plan and endorsed its general thrusts. The Commission's Executive Director was a member of the Governor's Task Force on Coastal Resources and participated in the development of the CZM program. Extensive use was made of the information and policy direction provided by SENE and no conflicts have been identified be-

tween the SENE plan and CZM.

Interstate consultation as required by 923.34 of 15 CFR Part 923 on the development of individual State CZM Programs as been achieved as detailed in the following letters.

Although other interstate planning is occuring involving the Massachusetts Coastal Zone, such as New England Regional Fisheries Management Council, no plans have been adopted by those other agencies which significantly affect this program.

OFFICE OF COMPREHENSIVE PLANNING
STATE OF NEW HAMPSHIRE
STATE HOUSE ANNEX, CONCORD 03301

RECEIVED
JAN 6 1978
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

January 3, 1978

Ms. Kathryn Cousins
North Atlantic Regional Coordinator
Office of Coastal Zone Management - NOAA
3300 Whitehaven Street, N.W.
Washington, D. C. 20235

Dear Kathy:

This office has consulted with the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts on their proposed Coastal Zone Management Program as required in section 923.34 of 15 CFR Part 923, CZM Program Approval Regulations and because it is in the interest of this state that such consultation occur.

Interstate consultation has occurred regularly at the New England - New York Coastal Zone Task Force meetings at which each state has the opportunity to discuss the progress of their program development and comment on the progress of neighboring states. This process, with the related printed information to be discussed at the meetings, has permitted us to follow the development of the Massachusetts program. In addition, we have received relevant printed reports directly from both the Executive Office of Environmental Affairs and from your office.

This office has reviewed this information and I met with the program director, Mr. Eric Van Loon, and with Mark Kraczkiewicz and Daniel Calano of the Massachusett's program at their offices on December 14, 1977 to discuss how our programs coincide at the state border. Differences between their program boundary and our proposed three zoned boundaries were discussed as was progress on agreeing to an interstate boundary in the ocean. Also, discussed were their proposed regulations and plans for the tidal Blackwater River which flows from the saltmarshes behind Salisbury Beach, MA, to Hampton Harbor, N.H. Other topics briefly discussed included erosion, commercial and sport fishing, and marina and second home developments in Massachusetts between the state line and Newburyport. Massachusetts brought up the following three topics: New Hampshire's existing and proposed legislation and regulations regarding saltmarshes, the Seabrook power plant, and a review of our proposed coastal program authorities in each of the three zones.

Please let me know if you have any questions.

Sincerely,

Larry

Laurence E. Goss, Jr.
Director, Coastal Resources
Management Program

LEG:am

cc: Eric Van Loon, Massachusetts CZM

COASTAL ZONE
MANAGEMENT

Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

December 16, 1977

Mr. Robert Knecht
Acting Associate Administrator
U.S. Department of Commerce
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Page Building #1
Washington, D.C. 20235

Dear Bob:

This joint letter from both the Massachusetts and Rhode Island CZM programs summarizes the consultation that has taken place between the two programs on interstate boundaries pursuant to the requirements of 15 CFR Part 923.34.

CZM program staff from both states met on March 25, 1976 in Providence specifically to review the respective elements of each state's CZM program and the potential for incompatibility in managing common coastal resources. A later meeting was held for the same purpose on December 6, 1977. In addition, both states have participated in the New York-New England CZM Task Force, organized under the aegis of NERBC. In that forum concerns over the management of common resources have been broached, and, when possible, regional approaches have been taken to address them.

In the course of these meetings, three interstate issues between Rhode Island and Massachusetts have been raised. Their status are discussed below:

1) Ocean Dumping for Dredge Spoil - Brown's Ledge: Controversy has surrounded the use of Brown's Ledge as a site for the ocean disposal of dredge spoil from Providence Harbor and Fall River, and Massachusetts and Rhode Island have taken differing positions on the use of this site. Both states are, however, aware that this is a mutual problem and will be working toward a mutually satisfactory solution with the Army Corps of Engineers.

2) Lateral Seaward Boundaries: Massachusetts and Rhode Island, as well as the remaining New England coastal states, are working through the New York-New England CZM Task Force to settle disagreements over the extension of lateral seaward boundaries to the Georges Bank OCS area.

3) Pollution from Mt. Hope Bay into Narragansett Bay: The Rhode Island CZM Program has been concerned that pollution and new discharges in Mt. Hope Bay could impact adversely the water quality of downstream Narragansett Bay. Both the Massachusetts and Rhode Island CZM Programs incorporate federal air and water pollution control requirements and thus, those impacts should be mitigated to the extent mandated by federal law.

Sincerely,

Eric E. Van Loon
Director
Coastal Zone Management

Stephen Olsen
Coastal Resources Center, R.I.

EEVL/MK:mc

Appendix D: Federal Participation in Developing the Program

APPENDIX D

FEDERAL PARTICIPATION IN DEVELOPING THE PROGRAM

Under the requirements of the Coastal Zone Management Act, special provision is made for federal participation in the development of a state's Coastal Zone Management Program. The nature of that involvement has been interpreted in a variety of ways by other coastal states whose approches have helped guide Massachusetts in best directing its own federal participation efforts. From the beginnings of its Coastal Zone Management Program in the summer of 1975, Massachusetts has been cognizant of the integral role which federal agencies have played and will continue to have in shaping the future uses and development of the Massachusetts coast.

The first steps were to educate federal agencies about the MCZM Program -- its origins and direction -- and to gain a clear understanding of the respective roles and authorities the federal government held in relation to our coastal zone. The New England River Basins Commission was instrumental in establishing lists of federal agency regional offices whose technical and policy level work would weigh significantly in the formation of the Program's planning and management approach. These lists formed the core for what has become a group of some thirty-five participatory agencies and was the basis for distribution of a CZM introductory letter in June of 1975. This correspondence formally introduced the Program, outlined its purposes and requested pertinent information on federal programs; thereby marking the beginning of federal involvement in the Massachusetts Program. Of these thirty-five agencies, several had missions which bore directly on the coastal zone. CZM staff met with the Environmental Protection Agency, the U.S. Geological Survey, the Department of Housing and Urban Development's Flood Insurance Branch, and the Army Corps of Engineers during that summer to expand its knowledge of the agencies' coastal interests and to define the relationship of those federal programs and activities to the state's coastal zone planning.

During its first months, as the staff began to compile and analyze data and formulate positions on coastal uses, CZM again sought federal involvement through submission of its reports and newsletters for information and response. Under a cover letter in April, 1976 copies were distributed of the CZM newsletter "Coastlines" -- which reported on the Program's planning developments and current activities -- together with a coastal zone planning guidebook, "Living by the Sea". The letter requested confirmation of each agency's CZM designee and invited comment on and participation in the Program. The majority of responses, however, indicated that substantive federal involvement would begin with formal reaction to a CZM Plan draft; that in the absence of such a document, little meaningful interchange could occur.

In the interim between that time and the draft submission, there still existed a number of steps which were necessary to ensure adequate consideration of federal interests. Two interns, over the summer of 1976, were assigned the task of interviewing each federal agency's representative and collecting pertinent background information, including copies of relevent federal regulations, statements of agency missions and administrative repsonsibilities, and such guidance as had been provided nationally to the agency regarding the interrelationships between that agency and developing CZM programs. (Refer to Federal Consultation Chart.) This task continued May through September resulting

in the compilation of meeting notes and information into two federal information volumes. This resource was heavily relied upon when setting priorities for future uses of the coastal zone, formulating policies to guide or condition major activities having direct and significant impact on coastal waters, and in developing mechanisms by which such priorities and policies could be assured of implementation. Further steps were taken when Plan authors, in the course of their work, supplemented and refined their understanding of federal programs by directly contacting federal agencies where federal agency missions were shown to be directly pertinent to setting priorities and instrumental to policy implementation. This kind of contact has helped CZM staff in expanding its grasp of federal/state interactions. Similarly, it has allowed federal agencies to follow the development of the Program and provided them with opportunities to participate directly in developing coastal policies.

In November, 1976, the Program Preview was formally distributed to each of the thirty-five federal agencies for review and comment. The document represented the sum of CZM's completed efforts and was the focus of the Program's first comprehensive review by federal, as well as state and local, officials. A formal day-long presentation — with commentary by members of the Coastal Zone Task Force, Governor Dukakis, Secretary of Environmental Affairs Evelyn F. Murphy, and NOAA -- was given on December 16, 1976 with invitations to attend sent to all of our federal contacts. The presentation offered an overview of the Program's policies and provided a forum for publicly airing comments and concerns.

Over the course of the next two months, letters of comment came from the majority of federal agencies. Each was included in a compendium of comments and distributed amongst CZM staff for consideration when revising the Preview into a formal Program Submission; all received CZM written response. Those federal agencies who had not responded by January were contacted by telephone as a reminder of the importance of such comment to ensure consideration in amending the document. In cases where we had no response after a reasonable period of time, letters were sent encouraging prompt review.

The serious nature of some responses warranted special consideration. In order to reconcile these conflicts and isolate the areas of concern, CZM arranged meetings with several federal agencies. These meetings were held during January with the Corps of Engineers, the Department of Transportation, the Department of Housing and Urban Development's Planning and Community Development section and the Flood Insurance Program, the Department of Interior and its six agencies, the Environmental Protection Agency and the Federal Energy Administration. The sessions were useful in clearing up misunderstandings, airing serious concerns and mutually resolving problem issues. At the conclusion of these meetings CZM corresponded in writing with the CZM federal contact and each of the participants to reiterate the points discussed and results achieved. The meetings' accomplishments have been reflected in both specific changes and additions made when converting the Program Preview into a Program Submission. (See Attachment 3).

Other Participation Opportunities

During the life of the Program, many of its activities have brought federal involvement on particular coastally-related issues, and CZM's evolving policies have been the basis for staff A-95 and NEPA review comments. In the course of many such reviews, relevant federal agencies were contacted to discuss certain projects and CZM's position on them. In all such reviews, the appropriate federal

agency was informed in writing of CZM's concerns and recommendations. These review processes have helped to shape CZM's policies on an issue-specific basis and maintain a dialogue with various federal agencies.

The Office has also been deeply involved in the North Atlantic OCS oil and gas development process and has worked closely with the Bureau of Land Management, the U.S. Geological Survey, the U.S. Coast Guard and the federal Office of Coastal Zone Management. Our responses to OCS-related issues have served as an indication of overall CZM policy and our continuing exchange with these agencies has provided a direct state/federal information link.

The Program has also established a strong citizen participation effort which has included sub-regional meetings to discuss the Plan and solicit input. These meetings have called for open participation and have been announced regularly in CZM's newsletter, "Coastlines", distributed to all CZM federal contacts. The very frequency of these meetings and the diversity of meeting locations made it possible for all Massachusetts-based regional federal offices to attend.

It is strongly felt by CZM that its efforts to establish both formal and informal working relationships with federal agencies of the Massachusetts CZM Program have provided the opportunity for and succeeded in establishing a full participatory process with its federal contacts.

FEDERAL CONSULTATION CHART

Agency	1975-6 Meeting	4/15/76 Letter	Agency Response	Summer '76 Interview	Program Preview	Agency Response	CZM/Federal Meeting
Air Force		*		*	*	*	
Navy		*	*	*	*	*	
Corps of Engineers	*	*	*	*	*	*	*
HUD/Regl. Administ.		*	*	*	*	*	*
HUD/Flood	*	*	*	*	*	*	*
HEW		*	*	*	*		
MARAD	*	*	*	*	*	*	
EDA		*	*	*	*	*	*
USDA/SCS	*	*	*	*	*	*	
NERCOM		*		*	*	*	
NERBC	*	*	*	*	*	*	
NEIWPCC		*			*	*	
FRC		*	*				
GSA	*	*	*	*	*	*	
EPA	*	*	*	*	*	*	*
DOT		*	*	*	*	*	*
FPC		*	*	*	*	*	
FEA		*	*	*	*	*	*
ERDA		*	*	*	*	*	
Marine Fisheries Comm.		*	*	(requested that N.A.M.F.C. be ommitted from list)			
NMFS	*	*	*	*	*		
OCZM		*	*	*	*		
NOAA		*	*	*	*		

Agency	1975-6 Meeting	4/15/76 Letter	Agency Response	Summer '76 Interview	Program Preview	Agency Response	CZM/Fed. Meeting
DOI		*	*	*	*	*	*
NPS		*	*	*	*	*	*
USGS	*	*	*	*	*	*	*
BLM	*	*	*	*	*	*	*
Mines		*	*	*	*	*	*
BOR		*	*	*	*	*	*
USF&W		*	*	*	*	*	*

Appendix E: The CZM Boundary: Road by Road Description

BOUNDARY APPENDIX

The following roads depict the inland boundary of the Coastal Zone. (For consistency, the actual boundary is 100 feet inland of the inland side of the road.)

As stated in the Coastal Zone Chapter, where the road may have excluded some significant resource areas, the boundary line departs from the road to encompass them. Tidal rivers and adjacent uplands are included, at a minimum, to the extent of vegetation affected by measurably saline water. Anadromous fish runs are included, as well as their floodplains, to the fresh water breeding area, if such area is within a coastal town.

Upper North Shore

At New Hampshire border follow Rt. 1 south to Rt. 110. Follow Rt. 110 west to I95. Follow I95 south over Merrimack River. Follow Ferry Road east to High Street into Newburyport. Take Rt. 1 south to Boston Road. Go west on Boston Road, then south on Middle Street. Turn west onto Orchard Street to Central Street. Turn southeast on School Street, then east on Elm Street to Rt. 1. Take Rt. 1 south to Central Street in Rowley. Take Central Street into Rowley center. Follow Rt. 1A and Rt. 133 through Ipswich. At Candelwood Golf Club, turn southwest onto Candelwood Road. Take Chebacco Road south to Choate Road. Follow Choate back to Rt. 133. Follow Rt. 133 into Essex. Take right onto Martin Street heading southwest. Take Western Avenue. Turn left onto Apple heading southeast. Then head north on Southern Avenue back to Rt. 133. Follow Rt. 133 to Rt. 127. Follow Rt. 127 through Manchester into Beverly (Lower North Shore region).

Cape Ann Boundary (All land seaward of this boundary is included in the Coastal Zone.) At Rt. 128 and Washington Street interchange, follow Washington Street south into Gloucester center. Take a left on Prospect to Friend Street. Take Webster Street to Eastern Avenue. Take a right onto Witham Street to Starknaught. Follow Starknaught into Rockport joining Thatcher Road (Rt. 127A). Follow Thatcher Road into South St. Take a left onto Prospect Street. Take Summer Street west to Parker St. Then take Railroad Avenue to Granite Street. Follow Granite Street (Rt. 127) to Curtis St. Follow Quarry Road from the end of Curtis St. southwest to Leverett St. Follow Leverett St. to Washington - to N. Kilby Street - to Colburn St. then back to Washington St. Take a left onto Dennison St. to Holly Street back to Washington. Follow Stanwood St. to Cherry St. to Poplar St. back to Washington St. and the Rt. 128 rotary.

Lower North Shore

Southwest on Rt. 127 from Manchester into Beverly to Lothrop St. Southwest on Lothrop St. to Water St. Northwest on Water St. to Rantoul St. North on Rantoul St. to Elliot St. Northeast on Elliot St. (also Rt. 62) to Rt. 128. Rt. 128 south to Andover St. (Rt. 114). Southeast on Rt. 114 to Rt. 107. East on Rt. 107. South on Rt. 1A through Salem, and Swampscott to Lynn. North 1 block to Commercial St. in Lynn. West on Boston and Maine Railroad to Summer St. West on Summer St. to

Hamilton St. (was Hesper St.). West on Hamilton St. and then on to Holland. Left onto Elm St. and on to Central St. Central St. to Winter Street. Winter St. to Lincoln. Follow Lincoln to the Saugus/Revere line (Boston region).

Exception - Follow line 100 feet inland of 100 year flood contour around Forest River (between Salem and Marblehead) ending landward extension at Boston and Maine Railroad tracks.

Boston Boundary

Southwest on Salem St. (Lincoln St.) from the Saugus/Revere line. Southeast on the Bennett Highway. Through rotary then southeast on Rt. 1. South on Rt. 1 to 1A (Revere Beach Parkway) to intersection with northeast expressway. Southwest on N.E. expressway to Webster Avenue. Southeast on Webster Avenue to Eastern Avenue. West on Cresent Ave. to Broadway. South on Broadway to railroad. Southeast on railroad to Willow St. South on Willow St. to Congress Avenue to Park Street. West on Park Street to Chelsea Square. Northwest on Second Street to railroad. West on railroad to Rt. 16. West on Rt. 16 to Amelia Earhart Dam Road. Cross river on Amelia Earhart Dam Road to railroad. South on railroad (Somerville) to Mystic Avenue (Rt. 38). Southeast on Mystic Avenue to Sullivan Square (Charlestown). From Sullivan Square east on Medford Street to Rt. 95. Southwest on Rt. 95 to Fitzgerald Expressway (Rt. 3). South on Rt. 3 to Penn Central railroad (before interchange 16). Northeast on railroad track which intersects with Dorchester Ave. At this intersection a short unnamed street connects with B Street. Northeast on B Street to Second St. Southeast on Second St. to Dorchester St. Northeast on Dorchester St. to East Second St. East on East Second St. to P Street. South on P Street to Swallow St. West on Swallow St. to Scott St. South on Scott St. to East 8th St. West on East 8th St. to Patterson St. Southwest on Patterson to Old Colony Ave. South on Old Colony Ave. to Rt. 3. Rt. 3 to Neponset interchange. Rt. 203 west to Hallet St. South on Hallet St. to Hilltop St. West on Hilltop St. to Granite St. North on Granite St. to Minton St. West on Minton St. to Adams St. South on Adams St. to Dorchester Ave. South on Dorchester Ave. to Milton town line (middle of Neponset River). Milton town boundary southeast to intersection with boundary of Neponset River Reservation. Follow reservation boundary east, southeast, then northeast across Rt. 3 to intersection with Granite Ave. Then southeast on Granite Ave. to West Squantum St. Follow West Squantum St. to intersection of Hancock Street (Rt. 3A). Follow Hancock Street south to Southern Artery.

Southeast on Southern Artery (Rt. 3A) to railroad just south of Fore River. East on railroad to intersection with Main St. (Hingham). East on Main St. which becomes Winter St. to Rt. 228 (East St). Northeast on Rt. 228 to Summer St. North on Summer St. to Rockland St. Northeast on Rockland St. to intersection with Summer St. South on Summer St. to Rt. 3A. East on Rt. 3A to Cohasset (South Shore region).

South Shore

South on Rt. 3A through Cohasset to Scituate. East on Henry Turner Bailey Rd. to railroad bed. South on railroad bed to Driftway. West on Driftway to intersection of Rt. 3A & Rt. 123. West on Rt. 123 to River St. South on River St. to Elm St.. S. on Elm St. to West Elm St. South on West Elm to Oldham St. East on Oldham to Barker

St. (Rt. 14). North on Barker St. to Rt. 53. North on Rt. 53 to Water St. Northwest on Water St. to Rt. 139. East on Rt. 139 to Union St. North on Union St. to Highland St. East on Highland St. to Spring St. Northeast on Spring St. to Rt. 3A. Rt. 3A to Old Plain St. West on Old Plain St. to Cross St. South on Cross St. to Ocean St. West on Ocean St. to Mt. Skirgo St. West on Mt. Skirgo to North St. Southwest on North St. to Myrtle St. West on Myrtle St. to Union St. Southeast on Union St. to Keene St. North on Keene St. to River St. East on River St. to Temple St. Southeast on Temple St. to Franklin St. North on Franklin St. to Acorn St. North on Acorn St. to Rt. 3A (Plymouth region).

Plymouth Bay

South on Rt. 3A through Duxbury to Main Street, Kingston. West on Main Street to Elm Street. South on Elm Street to Brook Street (Rt. 80). East on Brook Street to Rt. 3A. South on Rt. 3A to Bourne. Follow the Bourne-Plymouth town line southwest to Red Brook Road (Buzzards Bay region).

Mount Hope Bay

Start in Seekonk on Rt. 6 at the Rhode Island border southeast to Barney (Rehoboth). North on Barney. East on County. South on Mason. Southeast on Rt. 6 (Swansea). North and East on Millford. South on Hortonville. East on Main. South on Elm. South on Lees River Road, Somerset. Southeast on Rt. 6 (Somerset). North on 138. West on Main Street (Dighton). North and East on Elm. North on Rt. 138 to Taunton/Dighton corporate line. Along Dighton/Taunton line in Threemile River to Taunton River, north along Berkley-Taunton line in the Taunton River. East across Dirt Rd. at approximately 41°51'45" N, 71°06'15" W. North on Berkley. South on Forest. East on Elm. South on S. Main. South on N. Main (Freetown). East on Mill. East on Slab Bridge Road. South on N.Y./New Haven Railroad. North on High. South on S. Main. South on N. Main, Fall River. South on Western Expressway to I 195. Southwest on Rt. 138 (Broadway). West on Williams St. South on Bay St. to Rhode Island border.

Buzzards Bay

West from Bourne/Wareham town line on Red Brook Road. West on Route 6-28. Northwest on Route 25. Southwest on I 195. East on Point Road (Marion). West and south on Route 6 through Marion, Mattapoisett and some of Fairhaven. South on Shaw Road, Fairhaven. West on Shaw Rd. North on Weeden. West on railroad grade. South on Pleasant. West on Cedar Street. North on Fort Street. West on Church. North on Main. North on South Main, Acushnet. West on Main, Acushnet, New Bedford. South on River. West on Howard. South on Riverside. West on Coffin. South on Belleville. West on I-195. South on Front. West on Wamsutta. South on Route 18. West on Elm. South on Haus. East on Union. South on 2nd. South on MacArthur Drive. South on Front. East on Gifford. South on Harbor. East on Cove. South on Cleveland. East on Rodney. South on Cleveland. East on Butler. South on Swan. South on Mina. South on Lighthouse Lane. South on Belmont. West on Portland. South on Fort. West on Rodney French Boulevard. North on Brock. West on

Cove. South on Padanaram to Dartmouth. West on Rogers. South on Dartmouth. West on Prospect. North on Elm. West on Russells Mills. South on Tucker. Southwest on Russells Mills. Southwest on Horseneck Road to Westport. North on Horseneck Road. North on New Pine Hill Road. North on Pine Hill Road. West on Country Road. North on Reed. North on Forge. West on Route 177. South on Drift. West on Hicksbridge. North on Main. West on Adamsville to Rhode Island border.

Cape Cod and the Islands

The entire Cape and the islands of Nantucket and Martha's Vineyard are included in the Massachusetts Coastal Zone Boundary.

Special Note: During the public review of the Draft Environmental Impact Statement, Cape Cod's citizens commented on the proposed Cape's coastal zone boundary. Many felt that the Cape was an ecological unit and should be managed as a single coastal zone. Others felt that activities in the interior of Cape Cod would not have direct and significant impact on coastal waters.

The Cape Cod Advisory Committee voted on December 6, 1977 to include all of Cape Cod within the coastal zone (assumption made for purposes of this proposed amendment). In view of the role of regional citizen advisory councils for program implementation, notably to monitor program implementation and to raise regional issues, the Cape Cod council will have a major voice in recommending changes to the program. Based on experience with program implementation and the kinds of uses taking place on Cape Cod, the Advisory Council may, at its option, vote on whether a change in the boundary would be desirable after the first year of CZM implementation.

(See Management for specific discussion on amendments to the Program.)

Appendix F: Comments and Responses to the Massachusetts Draft Environmental Impact Statement

APPENDIX F

RESPONSES TO COMMENTS RAISED ON THE MCZMP AND DEIS.

This appendix is comprised of issues raised and responses to all written testimony presented during the review period for the draft Environmental Impact Statement. Generally, the response to the comments is provided in one or a combination of forms:

1. expansion, clarification, or revision of the MCZMP or EIS,

2. comments by MCZM,or OCZM in response to issues of concern raised by reviewers.

The State and Federal responses to these comments have been coordinated between the MCZM Office and OCZM.

No attempt has been made to distinguish between comments made on the DEIS and those made on the Management Program, due to the combined format of the document and the interrelated nature of most comments received.

The first eleven questions were posed with such frequency that they have been considered general issues of the Massachusetts Program. They are answered in detail in order to help explain the program. All other questions and concerns are specifically answered, often with reference to the ten general questions for additional information.

Many of the comments stimulated changes in the program and format of this document. As explained in the note to reader at the beginning of the document, the March 1977 draft MCZMP Volume I has been replaced by this final Environmental Impact Statement. The FEIS is shorter and more concise than Volume I, incorporating only the essential elements of program implementation. Thus, questions and concerns raised about Volume I may not be reflected in this document; for example, a concern to have more exploration of energy needs, in the March draft Volume I text could not be addressed in this document since the technical text is not included. However, where it is indicated in the response that change will be made to the March draft, a master copy will be changed and kept in the CZM office as part of the official administrative record of the plan development.

Where changes have been requested and approved in the March 1977 Draft Coastal Atlas (Vol. II.), they will be incorporated in a reprinting of the Atlas.

Comments received included: Index of commentators on next page.

Federal	11
State	5
Local	51
Other	90
Total	157

INDEX OF COMMENTORS

FEDERAL

1. Department of Interior
2. Federal Energy Regulatory Commission
3. Environmental Protection Agency
4. Department of Agriculture
5. Department of Defense, Navy
6. U. S. Coast Guard
7. Department of Defense, Army
8. National Marine Fisheries
9. Department of Energy
10. Department of Defense (Office of Assistant Secretary)

10a Department of Housing & Urban Development

STATE

10b Letter from Senator Kennedy et al
11 Massachusetts Historical Commission
11a Executive Office of Environmental Affairs
12. Massachusetts Division of Water Resources
13. Massachusetts Executive Office of Transportation & Construction

LOCAL

14. Essex Board of Selectman
15. Marshfield Planning Board
16. Wareham Board of Health
17. Town of Mattapoisett
18. Southeastern Regional Planning & Economic Development
19. Mayor of Salem, Jean Levesque
20. Gloucester City Council
21. Ipswich Board of Selectman
22. Boston Redevelopment Authority
23. Provincetown Board of Selectman
24. Barnstable Conservation Commission
25. Old Colony Planning Council
26. Metropolitan Area Planning Council
27. Freetown Selectman's Representative
28. Mass. Shellfish Constable Officers Ass.
29. Wareham Office of Economic Development
30. Wareham Planning Board
31. Chatham Board of Selectman
32. Bourne Board of Selectman
33. Harwich Board of Selectman
34. Martha's Vineyard Commission
35. Brewster Conservation Commission
36. Tisbury Planning Board
37. Truro Board of Selectman
38. Orleans Board of Selectman
39. Provincetown Board of Selectman
40. Chatham Conservation Commission
41. Mashpee Board of Selectman
42. Barnstable County Shellfish Ad. Comm.
43. Edgartown Board of Selectman
44. Westport Board of Selectman
45. Wareham Board of Selectman
46. Wareham Marine Resources Comm.
47. Quincy Conservation Commission
48. Newbury Conservation Commission
49. City of Boston
50. Scituate Board of Selectman
51. Scituate Conservation Commission
52. Wareham Shellfish Constable
53. Nahant Growth Policy Committee
54. Gloucester Development Commission
55. Salisbury Conservation Comm.
56. Manchester Conservation Comm.
57. Revere Conservation Commission
58. Fall River Conservation Comm.
59. Dennis Conservation Commission
60. Duxbury Planning Board
61. Hingham Board of Selectman

61a Hingham Planning Board

62. Hingham Conservation Commission
63. Hingham Harbour Dev. Commission

64 Hingham Bare Cove Park Committee

65. Scituate CZM Commission

OTHER PARTIES

66. Massachusetts Petroleum Council
67. Natural Resources Defense Council
68. Boston Chamber of Commerce et al
69. New England Regional Commission
70. Gilbert Tower
71. Jeanne Gormley
72. Edward Sanchez

73. Charles Soares
74. Petition from 43 Residents of Somerset, Swansea and Fall River
75. Greg Robinson
76. Thomas Lynch
77. Rep. David Lane
78. Rep. Peter McDowell
79. Senator John Alymer
80. Brenda Boleyn
81. William O'Connell, Quincy Historical Society
82. Ralph Goodno
83. Grace Saphir
84. Lt. governor Thomas O'Neill
85. Jean Foley
86. William McCarty
87. George Lane
88. Dr. Thomas Leschine
89. Dr. Judith Spiller
90. Dr. Arnold Lum
91. A. Dix Leeson
92. Susan Nystedt
93. Fred Bauer
94. Rep. James Smith
95. Helen Sayers
96. Dr. Christopher Martin
97. Kenneth Robinson
98. Mary Hood Hagler
99. Nancy and George Jackson
100. Richard Preston
101. Montaup Electric Company
102. Howard Whiteside
103. Landowners Ass. of Indian Neck
104. U.S.S. Mass Memorial Commission
105. League of Women Voters of Buzzard Bay
106. Lower Cape Cod League of Women's Voters
107. Association for the Preservation of Cape Cod
108. The Nickeroon Companies
109. Associated Contractors of Mass.
110. League of Women Voters of Mass.
111. Mass. Forest & Parks Association
112. Boston Shipping Association
113. Mass. Association of Conservation Commissions
114. Boston Edison Company
115. Plymouth Rod and Gun Club
116. Mass. Audubon Society
117. Mass. Port Authority
118. MIT Sea Grant
119. Mass. Beach Buggy Assôciation
120. Boston Harbor Associates
121. Boston Broadcasters
122. East Boston Chamber of Commerce
123. Boston Harbor Citzen Ad. Committee
124. Sierra Club
125. EUA Corporation
126. Beverly Shoreline Rights Assoc.
127. Sangus Action Volumteers for the Environment
128. New England Power Service Company
129. League of Women Voters of Greater Newburyport
130. Essex County Greenbelt Assoc.
131. Ispswich River Watershed Assoc.
132. Cape Code Contractors & Builders Assoc.
133. South Shore Chamber of Commerce
134. Mass. Roadside Council Vision
135. Boston Society of Landscape Architects
136. Mrs. Harvey Fairbank
137. Marguerite Morris
138. Mass. Federation of Planning Boards
139. Marquis Graham
140. Thomas Walsh
141. Elliot Krefetz
142. William Webber
143. Greater Lawrence Chamber of Commerce
144. Mobil Oil Corporation
145. Residents of the Great Neck Neighborhood
146. Richard Loring
147. Mass. Shellfish Officers Association
148. Stephan and Barbara Brune
149. Appalachian Mountain Club
150. Joanne Willis et al
151. Association for the Preservation of Cape Code
152. New England Power
153. George and Nancy Jackson
154. David Harrison
155. Crocker Snow
156. Colonial Coastal Corporation

1. Explain the existing authority that allows the Secretary of Environmental Affairs to implement the CZM program without additional legislation. Should there be legislation establishing an Office of Coastal Zone Management?

Since many reviewers of the DEIS and Massachusetts program questioned the authority of the Secretary of Environment Affairs under General Laws c. 21A to adopt and implement a CZM program, a formal Attorney General's opinion was requested on this issue. The Massachusetts Attorney General's memorandum issued on January 20, 1978 concluded that:

-- the policies of the CZM program can be implemented by the authorities and programsof the individual agencies specifically identified under each policy;

-- the Secretary of Environmental Affairs, by virtue of the authority vested in Section 2 of Chapter 21A of the General Laws to develop policies, is enabled to prepare a CZM program.

-- the Secretary of Environmental Affairs is empowered to promulgate regulations and, as the memoranda of understanding from the Commissioners of EOEA Departments request to jointly implement with the Secretary the CZM program under General Laws c. 21A, s. 4.

-- the Secretary is enabled by General Laws Chapter 21A to carry out the functions assigned to the Office of the Secretary by the CZM program, namely performance evaluation, conflict resolution, fiscal controls, and the designation of areas of critical environmental concern; and

-- the Office of Coastal Zone Management is lawful in that the Secretary is empowered to appoint experts (General Laws c. 21A, s. 6) and in that the duties assigned the office are extensions of the Secretary's own authority (including that of acting on behalf of the Commonwealth in connection with federal grant programs) and duties assigned to the Office of the Secretary by the Massachusetts Environmental Policy Act and federal law.

The findings reached in the Attorney General's memorandum opinion indicate that the Secretary has the authority to adopt the program; that the agencies of the Executive Office of Environmental Affairs are empowered to implement the program; and the legislation to establish an Office of Coastal Zone Management is unnecessary.

Many commentators raised the question of the enforceability of the memoranda of understanding (MOU), between the Secretary and EOEA Commissioners.

It is the regulations rather than these memoranda themselves that operate to make the program legally binding upon the five departments. However, by recognizing the program as a statement of state environmental policy and requesting the Secretary to jointly implement the program they ensure that the Secretary is not exceeding her authority under section 21 A. Furthermore, the memoranda spell out further steps, particularly the adoption of incorporations of rules and regulations promulgated by the Secretary, which they will take to implement the program.

2. Why will the agencies of Environmental Affairs promulgate new or revised regulations after, rather than prior to, CZM program approval?

The CZM policies can be implemented by the agencies identified by the CZM program (see reply to general question #1) these policies have been adopted by regulation of the Secretary and are binding upon such agencies. The promulgation of further agency regulations is unnecessary prior to program approval to ensure enforceability. The policies upon which the CZM program relies for implementation are sufficiently specific to ensure predictable administration of the program until the individual agencies promulgate new or revised regulations. A time table for regulation promulgation is in section 6.6.

Delaying program approval until subsidiary regulations for the Wetlands Protection Act, Tidelands Licensing , Ocean Sanctuaries and other programs are promulgated could put at risk the broad support the program has already received due in part to expectations that it would be implemented expeditiously. The uncertainty that would surround program approval could also place in jeopardy the reforms being made to streamline the state permitting process. Delay on program approval would deny to Massachusetts the ability to exercise federal consistency over oil and gas exploration and development activities on Georges Bank, scheduled to begin in January, 1978. These federal actions may have far-reaching impacts on the Massachusetts Coastal Zone and, unless the program can exercise federal consistency, Massachusetts cannot be assured that potentially adverse impacts to recreational beaches, and shellfish and finfish resources are avoided and port facility development channeled to designated port areas. Public hearings will be required prior to adoption of the regulations.

A schedule for the promulgation of these subsidiary regulations has been set and drafts of regulations are being prepared. Most agency regulations will be promulgated within 6 months of program approval.

The Secretary of Environmental Affairs has adopted and put into effect the Massachusetts coastal program by promulgation of the 21A regulations. An ad hoc committee comprising representatives of the state Legislature and spokesmen from utilities, industries, contractor's associations, and environmental groups reviewed these regulations. Similar input will be sought to be in the review of other regulations.

3. What is the Relationship Between the Energy Facilities Siting Council and EOEA?

The EFSC is required to find that plans for the construction or expansion of energy facilities are consistent with the environmental protection, resource use and development policies of the Commonwealth prior to approving any long range forecast for electric or gas facilities or a notice of intent for an oil facility.

In accordance with section 62.9(3) of the EFSC's regulations, the policies of the program constitute such environmental protection and resource use and development policies of the Commonwealth by virtue of their incorporation into the 21A regulations duly promulgated by EOEA. Consequently, the EFSC must act consistently with all policies of the program in approving long range corecasts and notices of interest. See Attorney General's memorandum in Appendix.

The role of the Memorandum of Understanding between EOEA and the EFSC has been misunderstood. This MOU itself is not intended to provide the mechanism for requiring conformance by the EFSC to the program. As explained above, the duty is established by statute and Council regulations. The MOU primarily ensures that the EFSC recognizes the program as a statement of policies with which it must be consistent and forecloses any question that the Secretary of EOEA acted independently of the EFSC in establishing such policies.

4. How was the coastal zone boundary chosen, and why is all of Cape Cod included in the boundary?

Subsection 304(1) of the Coastal Zone Management Act states that "the term coastal zone means the coastal waters (including the lands therein and thereunder), and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other.... The zone extends inland from the shoreline only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on coastal waters." Program approval regulations, CFR 923.31, specify the extent to which shorelands must be included. The zone must include:

1) areas, the management of which is necessary now or is likely to be necessary in the near future to control uses identified pursuant to CFR 923.11 (i.e., uses subject to management because of direct and significant impacts);

2) special management areas identified pursuant to CFR 923.21 (i.e., geographic areas of particular concern);

3) transitional and intertidal areas;

4) salt marshes and wetlands;

4) islands - interior portions may be excluded if uses of those lands do not cause direct and significant impact on coastal waters; and

6) beaches.

The state's prerogative is to manage other inland areas, including entire watersheds if there are some uses of the watershed which would have direct and significant impact on coastal waters.

In delineating the coastal zone, the Massachusetts CZM program first mapped Geographic Areas of Particular Concern (GAPC's) to ensure that they were included, at a minimum, within the coastal zone. Since floodplains were determined to be GAPC's, the minimumboundary had to include all areas subject to tidal flooding. In most coastal areas, this included land areas up to a 10 foot elevation above sea level.

With the floodplain established as a minimum zone, other possible boundaries were delineated, encompassing lands whose uses might have direct and significant impacts. These boundaries included coastal watersheds, the 50 foot elevation above sea level, the coastal "viewshed", coastal ecological systems, town jurisdictions, major coastal roads, and coastal census tracts. Each boundary's advantages and disadvantages were discussed in a staff report and presented to Citizen Advisory Committee during the planning process.

Boundaries inland of the floodplain were discussed in the context of whether activities within them could affect coastal waters. Effects from these activities ranged from effluent pollution from inland activities to long range effects of inland population growth that would place future demands on coastal recreation facilities. A final boundary was approved

combining an easily identified feature (coastal road or prominent right of way) with the inland extent of shoreland critical for the management of the effects of coastal activities. Thus, the coastal road encompasses all intertidal areas and some undeveloped areas where future uses could impact coastal waters.

Cape Cod, Martha's Vineyard, and Nantucket were perceived as single ecological units, surrounded by coastal waters. Although it is not certain that all the above mentioned activities, if located in the Cape and Islands' interiors, would directly and significantly affect coastal waters, there are many likely cause-effect relationships.

5. How will CZM implementation lead to a streamlining of DEQE permitting procedures: Will DEQE eventually create a "one-stop" permit?

The CZM plan will not produce a one-stop permit, but will streamline permitting. Agencies within the Executive Office of Environmental Affairs will be coordinated to grant, deny or condition permits for projects in accordance with adopted CZM policies. Furthermore, the procedure for administering applicable permits will be coordinated by one office in each of two regions and monitored by a computer program that tracks the status of permit applications.

Currently, many coastal projects may need up to 20 permits or approvals before they can be initiated; at least half of the permits are administered by local governments. As stated in the response to general question 10, CZM does not interfere with those local permits and thus cannot streamline the local process. However, after local permits are obtained, projects may still require sanction from state and federal authorities. Typically, a tidelands license in state tidelands, water quality certificate, review of wetlands conditions, and general environmental review will be required. Presently, the applicant must submit at different times various pieces of information to each responsible agency. The reviews may overlap, may be carried out independently or may be sequenced in an illogical order, since procedural regulations governing such reviews do not currently provide for their coordination. Time delays and inconsistency are often the result. The CZM plan initiates several steps to remedy these current problems.

First, regulations are being written or revised for each responsible EOEA agency, in order to coordinate all agencies' reviews and make all determinations consistent with CZM policy. For example, Division of Waterways regulations will require the Commonwealth to process simultaneously the issuance of water quality certificates by the Division of Water Pollution Control, once regulations are promulgated.

Second, the practical application of coordinated permitting (see section 6.7) will occur in two regional offices, one each in the northern and southern areas of the coastal zone. Single forms, called Applications for Environmental Authorization, will be submitted to an appropriate regional office. The regional engineer and staff will determine the permits that are required for the project and additional project information necessary to complete the reviews. After receipt of the additional information, the regional engineer and staff will submit the application for environmental authorization to appropriate divisions for permit determinations; the regional engineer will monitor the review through the computer tracking program to ensure timely deliberations. After all permit determinations are made, the regional engineer shall appropriately grant/deny the environmental authorization to the applicant. Institutionalizing this permit review procedure with additional funding support will result in coordinated reviews, with reduced time frames, and centralized regional coordinating offices.

Federal review will also be coordinated with state procedures where possible. Where permits are similar at both the state and federal level; e.g., a tidelands license and an U.S. Army Corps permit, concomitant review periods may be established after consultation with federal agencies.

In addition, determinations of federal consistency will be automatic for federal licenses and permits where all applicable state permits have been granted. Similary, no federal project will be allowed to be finalized unless it is consistent with the CZM plan, thus eliminating inconsistency of decisions and long periods of ambiguous review and debate. (See chapter 9 for specific procedure).

As a final step in streamlining, the Secretary of Environmental Affairs has been granted the authority to resolve conflicts within her departments and divisions (Chapter 21A). Previously, agencies could make different decisions regarding projects, resulting in conflict, often for unrestrained lengths of time. Final regulations have been promulgated and are inserted in the Appendix. These regulations specify how and in what time frames such conflicts will be resolved, thereby reducing delay of final decisions.

6. Can the original 800 page CZM plan be reduced in size and simplified, with policies divided into regulatory and nonregulatory categories?

The concern that the March 77 draft program Document (Volume I) is overly long, complex, and redundant has been frequently voiced throughout the DEIS review period. Development interests in particular, expressed concern over the inability to determine which policies involved regulatory functions, which policies related to state and federal funding, which policies related to incentives and advisory actions to be undertaken by the state, and which policies required consistency of federal actions. Moreover, since the program is essentially based on existing state statutory authorities, many readers were perplexed by the document's physical size; it seemed to indicate that another layer of bureaucracy was being created.

In order to make the plan more easily understood, the document has been substantially condensed and simplified. Part II now incorporates all of the essential elements of the program, and has been prepared by the Commonwealth to replace Volume I as the program document to be used during implementation. (Volumes I and II will be referred to as the March 1977 Draft Program Submission and Coastal Atlas, and will be part of the administrative record of the development of the plan.) The number of policies has been reduced from 38 to 27 by combining those policies designed to achieve similar objectives. The substance of the policies has been retained, except as refined in response to comments received during the DEIS review period.

Policies have been grouped into two categories: Regulatory and Nonregulatory, to distinguish between the policies which involve permitting, licensing, and special designation actions by the state, and those which involve funding, technical assistance, and other advisory functions undertaken by the state. Policies for which federal consistency is required are asterisked.

Implementation sections under each policy have been revised to clarify exactly how CZM funding and the applicable authorities are to be used to carry out the policies. A new table has been added to Chapter 6 to cross-reference policies and applicable authorities, while the other table in this section outlines which new regulations are to be developed or old regulations revised.

7. Does the DEIS adequately evaluate the socio-economic impacts of program implementation, with special attention paid to the potential impact on the local tax base?

It is not possible to discuss in an EIS the literally limitless decisions affecting environmental, social and economic variables that are made during the three year process of developing a state coastal zone management program. The program itself generally provides a broad rationale for the more important decisions which are reached.

The principal concern of the commentators is a more detailed discussion of such potential socio-economic factors as the gain or loss of jobs, shifts of economic benefits to individuals or corporations, or the increase or loss of tax revenues to local governments which might result from the implementation of the program. OCZM feels that the discussion in the summary of Social and Economic Impacts in Chapter 10 while general and intentionally concise, fully satisfy any requirements that NEPA may impose as to discussion of socio-economic impacts. The impacts of a program on specific sites cannot be discussed because of the range of possible decisions under implementation. Thus, this EIS can not be as specific as an EIS on a particular project.

Furthermore, the purpose of NEPA is to insure that the broad range of environmental factors are adequately analyzed prior to federal actions which will significantly affect them; courts have consistently held that socio-economic impacts alone are not protected by the National Environmental Protection Act. Rather they are significant only in conjunction with related environmental impacts. Thus, the fact that a particular application of the Wetlands Restriction program might result in shrinking the tax base of town X or an economic loss for company Y is by itself not required to be discussed under NEPA.

8. What is the procedure for amending and improving the CZM program in the future?

Changes to the Massachusetts Coastal Zone Management program are expected during the next years as a normal process of plan evaluation. As many citizens, agencies and levels of government had input during plan development, many will continue to evaluate and recommend modifications during plan implementation. Recommendations for changes to the plan can come from individual citizens, citizen advisory councils, the statewide coastal resources advisory board, state agencies, the Legislature or the Governor. All proposed changes will be evaluated on a continuous basis by the Massachusetts CZM office and, once approved, forwarded to the federal office of CZM. If approved by the federal office, the change will be incorporated into the program.

The specific procedure for incorporating changes varies with the magnitude and impacts of the change. If the proposed change to the program does not significantly alter the environmental impacts or intergovernmental relations identified in this document, it will be considered a refinement (See proposed CZMA regulations, Section 923.93). This will be determined initially by the MCZM office (the state lead agency) in coordination with the federal OCZM. A refinement can be implemented by a letter requesting the change from MCZM to OCZM, and a return letter granting approval.

Where the MCZM office, initially, or the federal OCZM determines that the proposed change will constitute changes in the environmental impacts or intergovernmental relations described in this document, the change will be considered a formal amendment and will require a different procedure for implementation (proposed CZMA regulations, section 923.92). Examples of changes constituting amendments include elimination/addition of policies, or incorporation of new laws into the program.

The process to amend the program will be initiated by a formal submission to the Assistant Administrator for CZM. Prior to the submission, the state will provide public notice and hold at least one public hearing to determine the nature of public comments. Notice will be accomplished by publication in the Environmental Monitor. The final submission to OCZM will include: a written request from the Governor; description and justification for the change; evidence of public notice and hearing; and discussion of environmental impacts. Based on the discussion of impacts, the Massachusetts MEPA office and/or the Assistant Administrator may also require an environmental impact report or environmental impact statement, respectively. After receipt of the formal submission the Assistant Administrator shall determine whether the amendment is to be granted or denied.

As an example of this process, new regulations for the Waterways Program will be law in the State of Massachusetts 30 days after release of the regulations and public hearings. However, they will not be part of the CZM program, nor will federal consistency apply until the regulations are submitted and approved by the Associate Administrator as either a refinement or an amendment to the program. All federal agencies will have an opportunity to comment on new or revised state regulations during the state adoption process.

9. How has CZM insured full public participation in program development? What role will citizens and officials play during CZM implementation? And, will CZM's regional Citizen Advisory Councils (CAC's) have more than an advisory role?

The Massachusetts Coastal Zone Management program made a concerted effort to involve officials and citizens with varied backgrounds and needs in the development of the CZM plan. The Governor appointed a Task Force on Coastal Resources to serve as the "Board of Directors" to the CZM program. Membership on the Task Force included representatives of the Legislature, state and local government, commerce and industry, port and harbor development interests,utilities, environmental and recreation interests, and citizen groups like the League of Women Voters. The Task Force guided staff planning efforts, and helped in the development of CZM policies and the management system.

Throughout the development of the CZM plan, over 1000 public meetings were held in coastal communities to explain CZM plan development and hear about local problems and concerns.

Regional Citizen Advisory Committees (CAC's) were formed to guarantee local involvement and to prepare the regional volume of the CZM plan. The CAC's generally included an appointee of the mayor or board of selectmen, as well as the major interest groups in the region. The CAC's critiqued the CZM Program Preview and each chapter of the subsequent CZM plan. The Committee members worked with planning boards, conservation commissions and boards of selectmen to evaluate coastal resource information, to identify local opportunity and problem areas, and to prepare the regional section on the plan.

CZM conducted a statistically valid public opinion survey of about a thousand coastal residents. The survey respondents represented another source of information on the needs and desires of coastal residents. Finally, DEIS hearings indicated major public support for the CZM Program and the role that citizens played in its development.

Public information and education activities supported the public participation process. All CZM meetings were well publicized through newsletters, direct mail and the print and broadcast press. CZM meetings were open to all.

The CZM program represents significant investments of time, interest and expertiseon the part of many Massachusetts citizens and officials. Citizens and officials will play an important advisory role during CZM implementation. Ten regional Citizen Advisory Councils and a Statewide Coastal Resources Advisory Board to the Secretary of Environmental Affairs will be formed to facilitate public participation. These Councils will take the place of those formed during the program development phase. Citizen Advisory Council (CAC's) membership will include a formal representative of each city or town in the region, as well as representatives of the major users-interests in the region. Each CAC will perform an annual review of the respective regional chapter, and up-date where necessary. The regional Councils will help to insure overall quality control in the CZM program and will serve as local ombudsmen within the region alerting the

regional environmental engineer and state CZM office of problems and issues in the region. The CAC's will advise in the setting of priorities for the allocation of financial assistance. The CAC's will serve as a forum for discussion and a central point for the collection of information and ideas should problems or conflicts occur between communities. Finally, the regional Councils will monitor the coordination of activities by local, state and federal government programs in the coastal zone.

The Statewide Coastal Resources Advisory Board will assist the Secretary of Environmental Affairs and the CZM Director during program implementation. The Board will represent a statewide constituency, and will include representatives of the Legislature, state and local government, utilities, commerce and industry, civic organizations, recreation groups and environmental interests. One representative from each CAC will sit on the Statewide Board, and will help to provide consistency between state and regional activities.

The Board will advise on CZM planning, technical assistance, and annual grant applications and appropriations. The Board will work with the CZM Director on a periodic review of environmental regulatory and management functions to insure adequacy and consistency in the application of CZM policies. The Board will help establish a long term education program, will advise the Secretary on amendments to the CZM program, and will review the program on an annual basis.

Both groups are advisory in nature. State laws dictate that the Commissioners of individual agencies or the Secretary of Environmental Affairs have the final authority and take the final responsibility for state actions. Citizens can assist in the decision making process, but the authority must rest with the legislatively mandated unit of government.

10. Since CZM implementation is based solely on existing laws, what effect will CZM have on traditional home rule authorities and local government?

The Massachusetts CZM program has a very limited affect on the division of responsibilities and powers between local and state government and adds absolutely no state responsibilities not previously authorized by the Massachusetts Constitution and laws enacted by the General Court. Communities will remain free to zone or acquire lands and review subdivisions as at present, but within 300 feet of desigrated historic and recreation sites, state permits will be reviewed for effects on historic and recreation qualities. Local government's powers to enact and administer by-laws and ordinances, to plan for community services and public improvements, and to raise and expand tax revenue as seen fit continue to be subject only to the programs currently in effect. Local government will also continue to administer such state regulatory programs as the Wetlands Protection Act and the State Environmental Code, subject to appeal and enforcement by the Department of Environmental Quality Engineering. Also, local government under the CZM program will be guaranteed a voice in management program decisions as discussed in general question 9.

Zoning and other local government regulation, however, has never been the sole determinant of how land or waters are to be used. As in the past, state and federal requirements will also have to be met. The Massachusetts CZM program organizes these state and federal requirements for improved administration. The particular land and water use powers which the state Legislature has reserved to the state and which are included in the CZM program include: (1) the authority by the Energy Facilities Siting Council to approve major energy facilities and to override, on appeal, local zoning for the placement of energy facilities; (2) the authority vested in the Department of Environmental Quality Engineering to require modification or cessation of the emission of pollutants into the atmosphere or water bodies and to require the construction of sewerage treatment facilities; (3) the authority to take land by eminent domain for recreation and conservation purposes; (4) the authority by the Department of Environmental Management to restrict wetlands and scenic rivers; (5) the authority to allocate state funds for sewers and transportation, waterways, public parks, and other public improvements; (6) the authority to protect and license the use of or lease tidelands and ocean resources held in the public trust; (7) the authority to review and take into consideration the environmental impact of state projects; and (8) the authority to appeal and enforce the Wetlands Protection Act and the State Environmental Code.

Local government projects, such as school, library, and firehouse construction, the establishment of municipal parks, or the construction of municipal roadways will only be reviewed for conformance to the CZM program if:

(1) the project requires a state license or permit under, for example, the Wetlands Protection Act, the Waterways Program (G.L. c. 91), the State Environmental Code, compliance with air and water quality standards, or approval by the Energy Facilities Siting Council; or

(2) the project is to receive state or federal funding and the project is in an area, or of a type, to which a CZM policy applies.

For example, in the case of a local firehouse to be constructed with federal Economic Development Administration funds within the coastal zone, but in an upland area away from a port area, the 100-year floodplain, and an historic district or recreation site, the only policies that would apply are Policy 12 and Policy 13.

11. Given limited state and federal funding, can CZM monies provide all the help that is necessary to solve problems at the local level?

MCZM was proposed that a third of the annual federal CZM grant be passed on to coastal cities and towns and conservation commisssions for site studies, implementation of the Wetlands Act, and other action projects on the local level. Half of the CZM staff will comprise a technical team of scientists, lawyers and planners on call to coastal communities to help solve local problems. The technical team members will also serve as staff to help the Citizen Advisory Councils. The combination of technical assistance and financial assistance should help communities to improve local coastal management and coastal resource related decision making over time. However, CZM funds alone are not adequate to meet all of the needs of coastal communities.

Comment	Response
1. Department of Interior (Office of the Secretary)	
1. "We find the MCZMP to be potentially an excellent program. For the most part, the policies and procedures are adequately described and comprehensive."	No response necessary
2. Lack of enforeceability of the EOEA agencies' Memoranda of Understanding (MOU's) with the Secretary of EOEA.	See general question 1 and Attorney General's memorandum opinion in the Appendix.
3. The second of the Department's major concerns is that the Program is proposed to be approved before promulgating Chapter 21A regulations.	The Chapter 21A regulations will be promulgated before program approval. Also see general question 1.
4. The program should include revised and new regulations for EOEA agencies to implement the CZM Program.	See general question 2.
5. There is no discussion of enforcement mechanisms and penalties for the Waterways Program, Wetlands Protection and Restriction Programs and the Ocean Sanctuaries Program.	Each statute has specific penalties associated with the statute, however, it is not necessary to detail these statutes in the FEIS.
6. We view the functions of DEQE as both a regulatory and construction agency as a potential serious conflict of interest.	DEQE does fund various coastal projects (e.g., jetties); however, limitations on these projects are provided by existing statutes. Funding projects are bound by Waterway regulations and must meet this criteria.
7. DEQE lacks adequate biological expertise.	Part of CZM funding will go to increase the staff of DEQE. Biologists are now involved in the permit process.
8. The exemption of the Metropolitan District Commission (MDC) from the provisions of the Wetlands Restriction Act is not explained in the MCZMP.	Added in Policy 1 and Section 6.6
9. A simplified flow-chart displaying the permit process and responsible agencies should be included for the three major permits.	A flowchart has been incorporated for the three major permits in Section 6.7.
10. The overall Program is weak in addressing State and Federal coordination during and after implementation.	See Appendix E which adequately addresses the coordination that has and will occur.
11. Fish and wildlife service should be represented on Dredge Spoil Task Force.	The State will extend an invitation for the Fish and Wildlife to be represented.
12. Department wants a mechanism whereby Federal agencies can be involved in the yearly evaluation of the program.	Federal agencies will have a chance to participate in yearly public hearings on the evaluation under Section 312 of the CZMA.
13. Document fails to address how conflicts will be resolved if local governments prefer not to accept State technical assistance but prefer to keep their zoning ordinances as they are.	There is no recourse for the State if local governments don't seek technical assistance. Local governments have the option of refusing local technical assistance. The State already has control over issues of Statewide concerns e.g., Wetlands.

1.	Department of Interior (cont.)	
	14. Conflict resolution section needs to be further clarified.	Conflicts within EOEA agencies are described in Section 6.2. Resolution of conflicts with other agencies are described in Section 6.3. See 21A regulations for further clarification in Appendix A.
	15. A substantive example where the MCZMP is seriously deficient in omitting discussion of interagency conflict resolution procedures is in the areas of transportation projects with program policies. How will CZM ensure compliance with program policies.	See Policy 26 for changes.
	16. Inconsistency in DEIS between page 11-29 and VI-1. DEIS states on 11-29 that the transportation network is virtually complete, but on V-1 negative impacts are described as being numerous.	The word "numerous" has been deleted. See Chapter 14.
	17. Concerned about the lack of specific State procedures to implement Federal Consistency.	See Chapter 9 for changes.
	18. We find the commentary in the introductory sections of the Federal Consistency procedures especially candid and realistic.	No response necessary.
	19. Agency responsible for review of consistency certifications should be identified. This could be done by a flowchart.	The CZM office within EOEA will act as the agency responsible. See Chapter 9.
	20. Section 7.31 and 7.32 of 21A regs. should be changed.	These sections have been changed in the revised 21A regulations.
	21. Mention of OCS lease sales being subject to consistency should be deleted from the FEIS.	Mass. CZM reserves the right to review proposed OCS lease sales at such time as the question of applicability of consistency is confirmed.
	22, Section 7.34 (A) of 21A regs. should conform to NOAA regulations.	This has been changed in the 21A regulations.
	23. Section 7.34 (D) should also be changed.	This has been changed in the 21A regulations.
	24. Section 7.35 (A) should be changed to reflect NOAA regulations.	This has been changed in the 21A regulations.
	25. The program fails to address Fish and Wildlife service refuges within the State's proposed coastal zone boundary.	These omissions have been added to to a Master Coastal Atlas located in the Massachusetts CZM Office. This will be updated yearly.
	26. The Department questions the use of the term "balancing" throughout the Program document and the DEIS in regard to national interest particularly relating to resources, energy and transportation needs (pp. 11.55, & 11.61). "3alancing should be replaced with term "consider and reconcile".	The CZMA regulations use the term "balancing".
	27. MCZMP makes a commendable attempt to recognize Federal agency interests.	No response necessary.
	28. What is local governments' involvement in Federal Consistency determinations.	Local governments will not be involved in federal consistency determinations. Only the State will issue consistency certificates.

1. Department of Interior (cont.)

29. How will national and regional benefits be considered in light of local authorities.	The national and regional benefit issues are protected at the State level. There is no local government involvement.
30. The Department is concerned that beds of submerged aquatic vegatation, nonvegetated tidal flats, finfish spawning areas, freshwater areas are not included in the list of significant coastal resource areas and therefore could be outside the purview of the proposed policies.	All of these areas are covered by State statutes which are part of the program. The term "SRA" has been deleted.
31. The policies provide adequate specificity to ensure predictability.	No. response necessary.
32. The Department is also concerned with the exclusion of freshwater inland wetlands from the jurisdiction of MCZMP.	This is not necessary to meet the requirements of the CZMA.
33. We are concerned that the restrictive use of the term "marine" limits resources which should be addressed--definition should be clarified to include palustrine and estuarine resources and freshwater lacustrine habitats. (Policy 1).	The types of areas specifically addressed in CZM policies are defined in the Definitions
34. Policy 1 should be expanded to address endangered and threatened species.	Policy 2 has been revised to reflect this concern.
35. In the discussion of "Areas for Preservation or Restoration" we view the use of "preservation" as inappropriate and suggest it be replaced with "conservation". (Policy 2)	Preservation is the word from the CZM and is most appropriate. The term "preservation" is used by Massachusetts in the same way as the CZMA regulations.
36. Adverse impacts to terrestrial resources in the case of upland disposal of dredged material should be included in Policy 5.	Such a discussion would add unnecessarily to the length of the document.
37. The potential stresses which "extensive and intensive aquaculture" could place on complex ecological systems have not been adequately considered and evaluated in the MCZMP. Policies should reflect controls over these activities (Policy 7).	The potential stresses of such aquaculture projects have not been adequately evaluated by the scientific community. The permitting process in Massachusetts for aquaculture projects requires a case by case review.
38. Clarify whether policies regarding floodplain zoning and other management of hazardous areas in coastal towns will extend to areas outside of the coastal zone boundary (Policy 8(d)).	Such policies will not apply beyond the coastal zone, however, the CZ by definition includes all of the 100 year coastal floodplain.
39. Expand policy on adverse effects on adjacent properties or downcoast areas to include adverse effects on project sites proper (Policy 12(b)).	See Policy 4 which has been reworded.
40. The 4 criteria for "deepening or expansion of channels and mooring or turn-around basins beyond authorized or existing depths or size" are seen as seriously deficient in lack of provision for protection of ecological resources (Policy 18).	Policies protecting ecological areas apply for all dredging projects. The criteria for Policy 5 apply to all dredging and disposal regardless of location.

1. Department of Interior (cont.)

41. The coastal zone is sufficiently narrow in several locations to preclude adequate control over stormwater runoff in urban areas, buffer areas adjacent to proposed Areas for Preservation or Restoration (APR s) and anadromous fish runs.	The 208 management program coordinated and consistent with CZM will have adequate control over urban stormwater runoff. The coastal zone does include anadromous fish runs up to the boundary of the first coastal town. Anadromous fish runs are covered by the Wetlands Protection Act or the Division of Marine Fisheries Statutory authority regardless of where they may be in the State. The buffer area for APR's is the 100 year flood plus 100 ft. Such coverage is adequate.
42. Supports the inclusion of Cape Ann in the boundary.	The North Shore Citizens Advisory Committee voted to exclude this area and MCZMP concurred that the area would not significantly impact coastal resources.
43. Department concerned about the narrow inland boundary for the Merrimack River.	See general question 4.
44. Wetlands restriction regulations need to be promulgated.	The restriction order is a covenant on the deed. A model restrictive order is provided in Policy 1. General regulations are not necessary.
45. Criteria for selecting APR's should be in document.	See Section 6.1.
46. Definitions for "maritime-dependent" and waterfront-related uses" should be in a glossary.	See Policy 7.
47. "Port Areas" should be mapped.	Maps have been included in Chapter 3.
48. A reference to the water treatment capacities of salt marshes could be included to strengthen the need to protect these salt marshes (pp. 44, 6 v. 1).	This will be incorporated into the administrative record.
49. It is not clear on what basis the Secretary of the EOEA can reject a nomination for an APR.	See 21A regulations in Appendix F.
50. The differentiation between APR's and Areas of Critical Environmental Concern (ACEC) is not clearly developed in the Program document--(it is stated in the DEIS however (p. 11.40).	This has been incorporated in the Appendix.
51. Management for restoring areas in APR's is not addressed in the MCZMP.	Only a process for designation is required by the CZMA and not a management program by the time of program approval. Some management programs will be developed in the first year of 306 funding based on the priorities outlined in Policy 2.
52. Historic sites are limited to "designated" and "registered" sites and districts assuming that all significant sites have been identified-- this is especially important in regard to archeological sites.	To add to predictability of the Program only designated sites have been listed. Newly designated areas will become part of the program.

1. Department of Interior (cont.)

53.	Onshore mining of minerals including Narragansett coal and other minerals should receive equal consideration (pp. 254-256, v.1).	Most onshore mining would occur outside the coastal zone. Narragansett coal is predominately outside the coastal zone, thus not subject to the program.
54.	We recommend that the MCZMP address the permissibility of onshore support facilities for mineral extraction which are not in commercial fishing areas (p. 155, v.2).	Onshore landing sites are permissible in noncommercial fishing areas assuming local zoning and other permits are obtained and CZM policies are met. Such facilities are encouraged in developed ports.
55.	The fisherman's concern regarding removal of "bottom material" page 155 is contradicted on page 199 of vol. II.	Correction made to administrative record.
56.	The MCZMP fails to evaluate what mining or mineral products mean to Massachusetts' economy.	This is not necessary for program approval.
57.	The MCZMP program fails to show how many acres of sea bottom a gravel dredge might disturb annually compared to the total coastal sea area.	This is not necessary for program approval.
58.	The State Division of Mineral Resources in the organization chart is not provided. (p. 11.53).	This has been added in Section 6.1.
59.	The "national interest" discussion in the DEIS fails to mention the State's moratorium for permits to extract sand and gravel (p. 11.53).	The reference to a moratorium has been added to No. 14 in Chapter 9.
60.	The "national interest" section must also include onshore minerals and associated processing, handling, and transportation facilities.	Significant onshore minerals are outside the coastal zone boundary.
61.	None of the documents specify an inventory of those mineral resources lost to development because of MCZMP land entry restrictions.	Land entry restrictions are few and do not cause significant impact.
62.	We believe that the MCZMP is compatible and supportive of the outdoor recreational responsibilities of the Department--we commend the State on the recognition and attention given to recreational aspects of coastal zone management.	No response necessary.
63.	We find the subject document to be clearly written and that a full disclosure has been made of alternatives to the management program and a description of the proposed action.	No response necessary.
64.	We believe the DEIS portion represents the best effort to date of the seven EIS's on CZM programs which we have reviewed.	No response necessary.
65.	We find the discussion of environmental impacts inappropriately brief, it could quantify and be more specific on likely impacts.	The EIS is appropriately brief according to CEQ guidelines. More quantification and specificity is not as possible with a progmatic EIS as with a project EIS. The attachment comments have been incorporated into the administrative record of the FEIS unless they are mentioned here under response 69.

1. Department of Interior (cont.)

66. The "Visual Environment" heading should be changed to "Historic, Cultural, Visual, and Aesthetic Environment", since historic properties are important to State citizens for reasons other than and in addition to their visual attractiveness.	This has been incorporated in Section 3.3
67. Policy (14) should be expanded as follows, "Review developments proposed near designated or registered historic districts or sites or districts or sites eligible for for such designation...,".	See response to 1-52.
68. "Encourage use of resource inventories, local zoning,.."	Section 306 funds to local communities will be used only to implement policy aspects of the program.
69. a) In the "Overview of What Can Occur in the Coastal Zone," Section (c) should be revised to read as follows, "near recreation sites or designated historic sites or sites eligible for designation if the development would have a negative impact."	See comment 1-52.
b) Under "Remainder of the Coastal Zone", Federal laws should be added, historic sites as well as districts should be included, "conduct inventory" should be included in policy 14.	"Federal laws "have been added; however "sites" is not consistent with the policy 12 to "conduct inventories" is allowed but is not needed for program approval.
c) It appears that the "easiest way out" was used to choose spoil sites. The discussion is not clear on the subject of the discussion of previous and current dump sites proposed for use under CZM.	Site specific dump sites are not required for Program approval. The State Dredge Spoil Task Force is addressing this issue in the first year, after program approval as a 306 work task.
d) The list under "Remainder of the CZ" should include mudflats and finfish spawning areas as separate resource areas.	See comment 1-30.
e) Department of Environmental Quality Engineering: Is there any biological expertise represented on the staff?	See comment 1-7.
f) Policy (14) should include "historic site, sites or districts eligible for designation or registration.	See comment 1-52.
g) Change item (1) to read "Federal licenses and permits except as listed in (2) below. Add a new (2) which reads "Federal licenses and permits for activities described in detail in Outer Continental Shelf exploration and development plans."	See comment 1-21.
70. Coastal Wetlands Restriction Program: The restrictions do not affect mosquito control and other State Reclamation Board projects. Exemption should be justified.	This is true; see Policy 1 for clarification. This part of the statute passed by the Massachusetts legislature.

*Note: The DOI submitted an attachment with more specific comments. All have been incorporated with the exception of those listed under 69.

1. Department of Interior (cont.)

71. Disposal Sites and Methods: Why should in-harbor sites be favored over open ocean sites?	In-harbor sites are favored if it can be shown that leaching will be prevented and adequate structural measures are employed to withstand the severest storm.
72. Policy (8): If a house is destroyed in the coastal zone by a flood, erosion, etc., will it be permitted to be rebuilt in the same location?	Yes as long as regular permit requirements are met.
73. The first sentence in the fourth paragraph of Energy introduction on this page should be changed to reflect that "coastal areas may be affected by oil and gas exploration and production on the roughly one million acres of land in the North Atlantic Outer Continental Shelf (OCS) being considered by the Department of the Interior for lease sale in 1978".	Change incorporated in Section 3.6.
74. Omit item 1 at the top of page 267.	See response 1-21.
Insert the words "functionally dependent" before the word "on-shore" in line 25.	See revised chapter 4, Policy 8.
75. "Permit for approval of platform installations" is one of the items included in the immediately preceding part and therefore should not be duplicated.	Changed in Chapter 9.
76. Omit the second line which pertains to lease sales.	See comment 21.
77. Section 7.15(g) is incomprehensible. Please clarify it.	See regulations in the Appendix.
78. Is the EFSC/CZM MOU legally binding.	See general question 1.
79. The State Historic Preservation Plan should be included in the list of State Agency Plans with which the CZM program is to be coordinated.	Incorporated in Appendix C.
80. The Department of Interior had numerous comments about Vol. II which have been incorporated into the Master Coastal Atlas located in the MA CZM office.	See response 1-81.
81. Page 1: The CZ Boundary should include all of the Merrimack River estuary and related wetlands.	Not necessary for program approval.
a) Include the scenic viewpoint in Newbury within the Boundary.	This has been included.
b) The Boundary should include buffer areas for the proposed APR's indicated.	The Buffer area includes 100 ft. from the 100 year floodplains.
c) Plate 3: Include the scenic viewpoint in Rowley.	This has been included.
d) Plate 4: Is all of the 100-year floodplain included?	Yes. See 1-81(h)
e) Plate 5: Why is a marsh within the 100-year floodplain excluded?	All 100 year floodplain included by definition.

1. Department of Interior (cont.)

g) Plate 7 and 9: Portions of the 100-year floodplain appear to be excluded.	All 100 year floodplains are included by definition and will be changed in a redrafted coastal Atlas.
h) There is concern that the Boundary comes very close to erosion areas. Such areas should have a good buffer area which the existing Boundary does not provide.	All 100 year floodplains are included by definition.
i) Plate 8: Portions of the 100-year floodplain are excluded.	All floodplains included by definition.
j) Page 49: Note that the Metropolitan District Commission is shown as owning five islands in Boston Harbor and yet is exempted from the Wetlands Restriction Act.	All floodplains included by definition.
k) Plates 10 and 13. Portions of the 100-year floodplain appear to be excluded.	All floodplains included by definition.
l) Plate 15: Portions of the 100-year floodplain are excluded.	All floodplains included by definition.
m) Plate 16: Portions of the 100-year floodplain are excluded.	All floodplains included by definition.
n) Plate 18: Portions of the 100-year floodplain are excluded.	All floodplains included by definition.
o) Plate 23: Portions of the 100-year floodplain are excluded. Provide buffer for proposed APR's.	All floodplains included by definition.
p) Plates 24 and 25: Portions of the 100-year floodplain appear to be excluded. Provide buffer for proposed APR's.	All floodplains included by definition.
q) Plate 26: Portions of the 100-year floodplain are excluded.	All floodplains included by definition.
r) Plate 27: Portions of the 100-year floodplain are excluded. Provide greater buffer for areas of erosion.	All floodplains included by definition.
s) Plates 28 and 42: Provide buffer for proposed APR's.	APR's already include sufficient buffers.
t) Plate 29: Portions of the 100-year floodplain appear to be excluded.	All floodplains included by definition.
u) Plate 30: Portions of the 100-year floodplain appear to be excluded.	All floodplains included by definition.
v) Plate 32: Portions of the 100-year floodplain appear to be excluded.	All floodplains included by definition.
w) Plate 34: Provide buffer for proposed APR's. Portions of the 100-year floodplain are excluded.	All floodplains included by definition. See response 1-41 for discussion of buffer.
x) Plate 35: Portions of the 100-year floodplain are excluded.	All floodplain included by definition.
y) Plate 38: Portions of the 100-year floodplain are excluded.	All floodplain included by definition.
z) Plate 41: Portions of the 100-year floodplain are excluded.	All floodplains included by definition.

1. Department of Interior (cont.)

82. 11-2: Significant Resource Areas should include "Historic and Cultural Resources" as a fourth category. "d. Significant Resource Areas (History and Cultural): These are districts, sites, buildings, structures, and objects significant on a local, State, or national level in American history, architecture, archeology, or culture."	Categories of SRA's have been deleted.
83. 11-4: Insert the word "substantially" before conflict in line 27.	To insert "substantially" would not be State policy.
84. Item 4.b on page II-5 should note that Federal legislation protects buildings, structures, and objects as well as sites and districts. We recommend that all of these types of historic resources be mentioned.	This is a summary and need not detail federal legislation.
85. We recommend that the commentary on Policy (14) recognize all types of historic resources, per the preceding comment, and that it include resources eligible for inclusion in the National Register as well as those formally listed. This section should also note that additional historic resources may be designated in the future.	See question 1-52.
86. The percent of the coastline under Restriction is unclear. Clarify.	Percent of coastline under restriction is approximately 6% of coastal zone, including Cape and Islands.
87. We recommend that two columns be added to the charts on pages II-36-41: "Principal State Agency" and Enforcement Penalties."	Chart of principal State agencies added. Penalties would add unnecessarily to length of document.
88. Include the legislation recodifying the five existing Ocean Sanctuaries laws in the FEIS.	Legislation was passed January 1978, but not available for inclusion in FEIS. Available upon request. The same provisions from the previous acts apply.
89. No principal State agency is stated; it should be.	Lead agency is EOEA.
90. The "framework...for coordinating DWPC, DAHM, DMF, CZM Review..." should be included in the FEIS.	General framework for coordination of CZM activities is described in Section 6.4.
91. 11-42-49: We are concerned that there is no mention of coordination with the Massachusetts State Historic Preservation Officer.	This comment has been incorporated in Appendix D.
92. There is no mention of the Metropolitan District Commission, its responsibilities and its role in the CZM; there should be.	This comment has been incorporated in Policy 1.
93. What kind of conflict resolution is available between one or more agencies outside of the Executive Office of Environmental Affairs? For example, what if the Department of Public Works has a disagreement with CZM? Please clarify.	Conflict resolution has been described in Section 6.4.
94. We recommend that "protection of historic and cultural resources" be included in the list of eligible categories for technical assistance.	These would be eligible for technical assistance money.

1. Department of Interior (cont.)		
94a.	On Page II-55 change the fourth line to read "has drawn the following conclusions." Change "Balancing to "Considering and Reconciling" in line 35 and in line 4 on p.11-55, change "possible" to "practicable" in line 43.	The term "balancing" is from the regulations and remains in the FEIS.
95.	11-63: Item II, Historic Sites and Districts, reflects lack of necessary coordination with the State Historic Preservation Officer. There is no mention of the State Historic Preservation Plan.	See Appendix D for changes.
96.	Consideration should be given to listing migratory waterfowl separately under salt marshes, beaches, dunes, and barrier beaches.	This has been incorporated in Chapter 10.
97.	Paragraph 6, line 6: The sentence should state that the spoil may destroy benthic organisms and fish eggs.	Unclear where comment is located in document.
98.	The summary of environmental impacts should at the very least, mention potential impact on historic resources.	This has been incorporated in Chapter 10.
99.	On Page II-4, paragraph 1, lines 3-4: The environmental impacts may be negative as well as positive.	This has been incorporated in Chapter 10.
100.	The section entitled "New Development Impacts" should recognize the potential for new development to affect as-yet unidentified historic resources, including archeological sites.	See response 11-2 for clarification.
101.	As stated in the DEIS, it appears that only three types of controls are on lands suitable for development. No mention is made of the Fish Act, and Federal Water Pollution Control Act and Amendments.	This comment has been incorporated as well as other Federal laws.
102.	The drafts of all the regulations should be part of the FEIS.	Draft regulations will be available before program approval. No additional benefits will result from including these in the program and might add confusion to the FEIS.
103.	On Page IV-3, paragraph 4, line 18: How are the programs enforceable?	Enforceability is availabe under present State law. See revised chapter 6.
104.	The adoption of new regulations and procedures is significant and therefore the draft regulations should be in the FEIS.	See response 1-103 and 1-102
2. Federal Energy Regulatory Commission		
1.	The staff was impressed with the quality and excellent balance in the consideration and evaluation given to energy and environmental interests in the coastal zone.	No response necessary.
2.	All references to the Federal Power Commission (FPC) should be changed to the Federal Energy Regulatory Commission (FERC) or Department of Energy (DOE).	These changes have been made in the program and the administrative record.

2. Federal Energy Regulatory Commission (cont.)	
3. Mention should be made that maximum feasible length of a cryogenic pipeline (for a LNG facility inland) is approximately 2.5 miles due to heat gain from friction and outside sources. Thus technological and monetary constraints limit siting LNG inland.	The administrative record has been changed to reflect this comment.
4. FERC can process applications simultaneously with the State.	See general question 5.
5. Federal Consistency section on licenses or permits must clarify that CZM cannot dictate when Federal permit processing, joint public hearings can begin (page 351).	This change has been incorporated in Chapter 9 and also in the administrative record.
6. FERC as well as other agencies, should be invited to provide comments during the annual performance review.	OCZM has agreed that Federal agencies may comment in its yearly section 312 public hearing of the MA Program that Federal agencies may comment.
3. Environmental Protection Agency	
1. A memorandum of understanding with the State Secretary of Transportation and Construction would be helpful.	Memorandum of Understanding in Appendix B.
2. Expand the program to include non-point sources of water pollution and indirect or mobile sources of air pollution.	Non-point sources and indirect sources are incorporated in the Program as is noted in Policy 10. The existing State procedures for following these standards are incorporated by reference. Much of the State control over non-point water pollution will become more effective when the State 208 plans are adopted. They will be reviewed for consistency with the CZM Plan. It is not necessary to add their incorporation into other policies.
3. Discuss the effects of the State of Massachusetts being declared a nonattainment area for oxidents--any new sources of air pollution will have to be offset by reduction elsewhere in the area.	At the date of final EIS preparation the State nonattainment areas have not been yet declared. It appears that nonattainment regulations will be applied relatively uniformly due to the size and configuration of the Mass. Coastal zone while the overall level of industrialization might be affected, locational decisions would tend not to be.
4. State that the Secretary of the EOEA will use her conflict resolution powers to assure that decisions under the CZM Program meet both the air and water quality standards.	The Secretary cannot use conflict resolution powers beyond what is permitted at law. Thus it is not her opinion to determine whether air and water quality standards should be met. Standards are mandated by Federal law.

3. Environmental Protection Agency (cont.)

5. Outline how the Program will incorporate and implement the recommendations of the State and areawide 208 water quality standards.

CZM, DEQE and the 208 agencies have been reviewing each other's programs throughout their development in order to ensure consistency between the two programs once they are implemented. In particular, the following CZM policies reflect objectives common to both programs: critical area protection (policies 1 and 2), appropriate analysis of outfalls and method of treatment (3), subsurface disposal management (3), design of wastewater facilities in hazardous areas (15), 201 grant priorities, sewer service area delineations, and secondary growth impacts (26), and technical assistance for local growth management (27) and will facilitate future coordination between the two programs.

6. Discuss specifically in the implementation section how provisions of the Clean Air Act, as recently amended will be built into the CZM decision-making process -"consistency" review of transportation plans-nonattainment areas -visibility protection-consistency of wastewater treatment construction grants with SIP's-Federal facilities conformance with SIP's

The specific methods for implementing the Clean Air Act are not described in the Program because of an attempt to reduce the length.

7. We recommend that OCZM approve and fund the Program only after a firm schedule for APR designations and adoption of Rules and Regulations.

The ten ARP's proposed will be through the hearing stage within the first year. The CZMA only requires a process and not actual designation. See also general question 2.

4. United States Department of Agriculture
Soil Conservation Services

1. The coastal zone boundary does not appear to include nationally significant agricultural or Forestry resources. Also important farmland, cranberry bogs are not adequately addressed.

The MCZMP Program carefully reviewed and considered that no farmland and forests within the coastal zone were determined to be of national significance. (See number 15 of Chapter 9). Most cranberry bogs are outside the coastal zone and while they are important to the State, the management of those within the boundary is not of national significance.

Comment	Response
5. Department of Transportation	
1. FEIS should address the effect of noise on coastal zone.	Incorporated in Chapter 10.
2. The term "port" should include airports as significant resource areas (Economic)	SRA categories have been deleted.
3. Existing procedures for considering environmental protection mechanisms with regard to parklands, wetlands, and historical areas adjacent to airports should be more clearly outlined in the FEIS.	Existing procedures do not need to be described for Program approval.
4. Policies in the CZM Plan and DEIS "can lead to responsible development within the coastal zone...(They) see no major conflict within existing Federal airport plans for development planned under the Airport Development Aid Program."	No response necessary.
5. The MCZMP does not make reference to the Coast Guard's issuance of site specific permits for private aids to navigation.	Coast Guard aids to navigation will not be subject to Federal consistency requirements.
6. No mention is made if future Federal land acquisition is exempt from the coastal zone?	Once Federal land is acquired it is exempt from program.
7. Coast Guard feels the CZM Program doesn't have present or long-term requirements that would hamper Coast Guard operations.	No response necessary.
8. Concerned that document is not specific enough on final determination of consistency.	See revised Chapter 9.
6. Department of Defense	
The Department of the Army (Corps of Engineers)	
1. Coordination and review opportunities have been inadequate and not in keeping with the law or applicable regulations, nor as suggested in the Program document (p.C.6)	Federal participation has been adequate to meet the CZMA requirements. Numerous meetings were held with Department staff and CZM personnel. These are listed in the chart in Appendix D.
2. We feel that it is essential for a single State coordinating office to respond to Corps EIS's and that this process be mentioned in the DEIS.	A single State office is not a requirement. The State can delegate this responsibility to regional offices so long as they are clearly identified. This is part of the State goal to streamline the response process on permits.
3. The Program document and the DEIS should show consideration of flexible alternatives for dredged material disposal.	Program document is flexible on this issue, see wording on revised Policy 5.
4. We would prefer the use of the term "dredged material" in place of "spoil" throughout the Program document and the DEIS.	This has been changed in Policy 5.
5. We find it disturbing that the State has not resolved the controversy of an ocean dumping site for dredged material (p.72 v.1).	Such a resolution is not necessary for program approval. It will continue to be addressed after program approval.
6. We are concerned that the documents discuss problems associated with dredging activities without presenting solutions. Much of the dredging discussion is meaningless and inadequate.	See revised Policy 5.

6. Department of Defense
The Department of the Army (Corps of Engineers)
(cont.)

7.	In the sentence "there are seven open water disposal areas approved for the dumping of clean dredge spoil," the word "approved" should read "recommended" (p.72,v.1).	This has been deleted from the FEIS.
8.	The Program document mistakenly implies that the Corps is precluded from processing a permit application from a non-Federal applicant until the MA CZM agency affirmatively issues a certification statement (p.351, v.1).	Processing can occur simultaneously but a permit can't be granted until a positive Federal consistency certificate has been issued by MA CZM. See rewritten Chapter 9 to correct this implication.
9.	The Program document incorrectly states that Federal consistency will be relied upon to ensure compliance with the CZM Program when the State's scope of jurisdiction is insufficient.	This incorrect statement has been deleted.
10.	The implementation of Policy 34 should be expanded to include Corps jurisdiction over Section 10 and Section 404 permits.	This has been incorporated by revision into Chapter 9.
11.	The third sentence of Policy (17) in the DEIS should be deleted--we are concerned by the continuing preemption of prime waterfront areas along Boston Inner Harbor for non water-dependent uses due to the degree of irreversible commitment of the site (p. 11.14).	This is a misinterpretation of the policy. The policy would not allow activities that would create an irreversible commitment of the site.
12.	The Program document states that where local by-laws provide stringent requirements the policies of the Wetlands Restriction Act may be superceded (p.81)--the Corps of Engineers will not be bound by Federal Consistency to local restrictions not a part of this document. Will the Corps be bound by these local restrictions if not in program?	The Corps is only bound to the approved State policies in the Program. The Corps will only be bound by stricter Wetland Restrictions imposed by locals when they are incorporated into the State Program by refinement or amendment.
13.	There is no clear understanding of what specific environmental criteria the States will use to evaluate coastal activities for Federal consistency.	The Federal agencies will need to abide by the policies as summarized in the chart in Chapter 9. These policies provide a fair degree of specificity and regulations to be promulgated in the next six months will provide still further detail.
14.	How does the Program determine: a) clean dredge spoil (p.72) b) high water turbidity (p.92) c) contaminated dredge material (p.97) d) adverse effects on water quality (p.352) e) adverse effects on marine productivity (p.352)	The Dredge Spoil Task force will be working on specific definitions in the first year.
15.	The "Ocean Sanctuaries" discussion contained in the Volume I Addendum (for insertion on page 95 of Volume I) includes the line "any dumping or any waste discharge are prohibited"--the statement should read "or the discharge or commercial or industrial waste are prohibited."	This section has been deleted from the revised FEIS, but incorporated in the administrative record.
16.	We endorse the 10 areas recommended for APR designation.	No response necessary.
17.	"With the two notable exceptions discussed earlier in these comments, we endorse the basic policies."	No response necessary.

7. Department of Defense
   Department of the Navy

1. Summary should be modified to State that Federal actions be consistent to the maximum attempt practicable with the Program.	Has been incorporated in the summary.
2. On page 1-1- insert "if practicable" between developments and near under A-5.	This section has been revised.
3. The seaward boundary should be specified, avoid the term "territorial limit" (p.11.1)	"Territorial limit" is the language of the CZMA in Section 302 and is an acceptable abbreviation.
4. High priority uses of open waters should include marine transportation and National Defense activities (p.11.2).	This has been incorporated in Chapter 5.
5. Policy footnotes in Chapter 2 should be amended to read: "Federal Government activities will be expected to conform to this policy in accordance with NOAA's consistency regulations."	Footnote has been changed to read "Federal Consistency required" in Chapter 4.
6. "...all feasible alternative sites and mitigation measures are..." in its place we would like to see: "...the reasonable investigation of feasible alternative sites..." (p.11.54).	This has been incorporated in revised Chapter 9, Number 1.
7. Federal Consistency mediation should be changed to read: procedures will be "sought" as opposed to "invoked" since procedures are voluntary (p.11.54).	Chapter 9 now reflects this comment.

8. Department of Defense
   (Office of the Assistant Secretary)

1. Compelling public interest on page 318 should include the national interest and National defense.	This section has been deleted in the 21A regulations.
2. The term "applicant" on page 351 should be changed to reflect NOAA regulations.	
3. The Coastal Atlas should list Navy lands in the Coastal zone.	This change has been made in a Master Coastal Atlas located in the MA CZM Office.
4. Certain Army lands are not listed in the Coastal Atlas.	This change has been made in a Master Coastal Atlas located in the MA CZM Office.

9. National Marine Fisheries Service

1. The MA CZM should widen the boundary north of Boston to include areas of maximum salinity intrusion at low flow.	The boundary was determined by North Shore Citizens Advisory Committee and is adequate to meet the requirements of the CZMA. Comment appears to be based on a misunderstanding.
2. The organizational structure to implement the program is lacking as well as the procedures by which the policies will be enforced.	The organizational structure is outlined in Chapter 6, and procedures for enforcing the policies are listed after each policy.
3. Endangered species or marine mammals only briefly mentioned in DEIS or program.	Section 3.1 has been revised to incorporate this concern.
4. Explanation of the permit procedure and networking of existing authorities is confusing and unclear.	Section 6.7 has been revised to allow for greater detail on this issue. Also see general issue 5.

9. National Marine Fisheries Service (cont.)

5. Networking of existing programs is vague and relationship of lead agency unclear.	The permit procedures under this program will not change. The same agency that administers program permits today will remain under an approved Section 306 program, i.e., DEQE will administer all wetland permits. The Office of Coastal Zone management will become involved in the permitting process only in the four situations described in Section 6.1.
6. The Program doesn't prioritize the various policies.	This is not a requirement of the CZMA.
7. The Program fails to coordinate with the N.E. Regional Fisheries Management Council.	The CZMP does not officially coordinate with the N.E. Regional Council but through the State Division of Marine Fisheries there is coordination.
8. MCZMP should be conditionally approved for one year.	Conditional approval is not an option allowed under CZMA. Each year the State will undergo a thorough review by OCZM to determine if adequate progress has occurred under Section 312 of the CZMA.
9. Protection of marine resources should be included in policy 8(C).	Policy 8 has been incorporated into Policy 1 in the FEIS. Policy 1 specifically provides protection to marine resources.
10. Development can occur in sensitive areas.	This can happen if the development meets certain conditions designed to protect these areas.
11. Preservation of fisheries should be addressed in greater detail.	Policies 1-10, 14, and 19 all deal with fisheries preservation as well as section 3.1. Any further discussion would add unnecessarily to the length of the document.
12. Regulations should be in place before program approval.	See general question 2.
13. The exemption of the MDC and State Reclamation Board to the Wetlands Act should be clarified.	These concerns have been incorporated in the revised Policy 1.
14. Under Federal Consistency can the State permit a project that the Federal agency would deny?	The Federal agency's denial of the permit would terminate the project. The Federal consistency requirements cannot force a Federal agency to approve projects.
15. What checks and balances are there that the EFSC will assure protection of living aquatic resources.	See general question 3.
16. How are "smaller" projects defined under MEPA.	The MEPA statute defines "smaller" projects generally as new construction of small structures. Class 3 consists of construction and location of single, small, new facilities or structures and installation of minor new equipment and facilities. These are exempt except where such construction may be viewed as a part of a whole, larger project not otherwise exempt,

9. National Marine Fisheries Service (cont.)

	or series of projects, all of which are interrelated and logically from the component parts of a single larger project as specified in Section 4." Each agency defines specifically in its regulations what the small projects are.
17. To the list of Federal Consistency permits subject to the program add permits under the Fishery Conservation and Management Act of 1976.	This has been added.
18. A discussion of goals for fisheries management should be listed in the Program.	This is not necessary to meet the requirements of the CZMA.
19. Conflicts between commercial and recreational fisherman should be discussed.	This is adequately addressed in Section 3.1 and 3.5.
20. Concerned over conflicts between CEIP funded projects and NMFS responsibility under Fish and Wildlife Coordination Act.	There are no conflicts anticipated.
21. Coastal Wetlands should be included under Policy 34.	This has been included under Policy 10.
22. The management section should discuss how the Program will coordinate adjacent State Fisheries Management Programs.	General interstate coordination is discussed in Appendix C.

10. Department of Energy

1. The Program contains the basic authorities and policies required to support implementation of a CZM Program.	No response necessary.
2. Authorities and Regulations for the Energy Facility Siting Council should be part of the Program.	These regulations are available upon request. They would add unnecessarily to the length of the document.
3. Economic feasibility should be added to the factors the EFSC must consider in evaluating the suitability of an energy site.	This has been added in Chapter 9.
4. Department requests clarification on underground energy transmission lines as a permissible use in SRA's.	They are allowed as permitted uses under Policy 1.
5. Additional information should be included in the FEIS on Ocean Sanctuaries and their effects on EFSC regulations.	See revised Policy 8 and Chapter 9.
6. Department feels a further elaboration on how OCS development is being planned for and accomodated is needed.	See revised Policy 8.
7. Pilgrim Nuclear Power Plant does not appear on plate 27 of the Coastal Atlas.	This change has been made in a Master Coastal Atlas located in the MA CZM Office.

10a. Department of Housing and Urban Development

1. We would like to commend the Commonwealth's recognition of the significance of coastal hazard management.	No response necessary.
2. An evaluation program should be established to review the performance of the program.	This will be accomplished yearly by the state and OCZM.

3. A-95 reviewers should be issued specific guidance on the CZM program to use in their reviews.	Each A-95 agency will receive the program and additional information on permit reviews and state regulations.
4. A firm schedule for the agency regulations are needed.	See general question 2 and Section 6.6.
5. A more readable summary should be prepared for general distribution.	See Note to Reader for clarification.
6. Policy 20 may be contrary to Policy 17 in encouraging housing and community development in waterfront areas.	The port areas in Policy 17 are only segments of urban waterfronts. See Policy 7 in this document.
7. Policy 35 is consistent with HUD objectives or concentrating resources for central city and neighborhood revitalization program.	No comment necessary.
8. Policies 36 & 37 are generally consistent with HUD policy.	No response necessary.
9. HUD had 6 comments on the FIA program.	These comments have been incorporated in the administrative record.

10b. Letter from Senator Edward M. Kennedy, Senator Edward W. Brooke, Representative Thomas P. O'Neill, Edward Boland, James Burke, Margaret Heckler, Robert Drinan, Silvio Conte, Joe Moakley, Michael Harrington, Gerry Studds, Paul Tsongas, Joseph Early and Edward Markey.

1. We believe that the proposed program is consistent with the policies, purposes, and goals of the Coastal Zone Management Act.	No response necessary.
2. A primary cause of our support for the program has been the willingness of the state office to consult with and to heed recommendations made by local public officials.	No response necessary.

11. Mass. Historical Commission

1. Adequate coordination with Massachusetts Historical Commission not provided for.	Consultation with Commission in making federal consistency and MEPA reviews now provided for in Policy 12.
2. Protection for properties not yet included in National Register, and areas not yet designated as historic districts should be provided.	A key requirement of the CZMA is predictability; when new historic sites or districts are designated, MCZMP will be modified to include them.
3. Policies should cover all cultural resources, including prehistoric and archaeological sites.	No such sites in the coastal zone designated; if they are the MCZMP will be modified to include them.
4. MCZMP should ensure compliance with Section 106 of National Historic Preservation Act.	Program does not vitiate reviews by Advisory Council on Historic Preservation. See Policy 12.
5. Importance of rehabilitation and adaptive reuse order structures should be stressed in Policy 36.	See Policy 27 for revision.

11a. Evelyn F. Murphy, Secretary, Executive Office of Environmental Affairs

1. DEIS adequately and properly complies with requirements of MGLA, Chapter 30, Section 62 (Massachusetts Environmental Policy Act).	No response necessary.
2. FEIS should contain an appendix indicating how changes in MEPA as a result of recent legislation will relate to MCZMP.	See Appendix I.

11a. Evelyn F. Murphy (cont.)

3. DEIS (p. II-29) inaccurately characterizes current status of proposed Rte. 25 extension around Buttermilk Bay by saying the project "has advanced beyond the environmental studies and design development phases. No environmental impact report has been filed for MEPA review on this project.

See Chapter 4, Policy 26.

12. Mass. Division of Water Resources, DEM

1. Coastal Wetlands Restriction Act need not apply to shellfish beds beyond point of private ownership.

Policy 1 revised to ensure tidelands licensing rather than the Coastal Wetlands Restriction Act, protects shellfish beds beyond mean low water.

2. Application of coastal wetlands restriction program to beaches and dunes represents an expansion of program's scope.

This is correct, but within the intent of the law.

3. DEIS inaccurately characterizes Massachusetts Self-Help Program as supporting purchase of lands for public recreation and open space. Lawful purpose is for conservation, passive recreation, and open space. Also, expenditure figures should be updated.

This section has been appropriately revised.

13. Mass. Executive Office of Transportation and Construction

1. Generally supports the substance of the policies. Particular support of policy to promote transportation projects primarily to serve already developed coastal areas.

No response necessary.

2. Very much concerned over method proposed for reviewing major transportation projects for consistency with Policy 35. As proposed this would require the Federal Department of Commerce to review through the amendment process major transportation projects. Such a review would be contrary to purpose of CZMA which was to strengthen state management as well as unnecessarily delay projects found consistent.

This concern has been incorporated into revised policy 26 and between EOTC and EOEA.

3. Alternative proposed which allows CZM to review major projects for consistency before proceeding beyond the systems planning stage.

See comment 13-2.

14. Essex Board of Selectmen, Augustus Means, Jr.

1. Requests deletion of page 12 # 17 of March, 1977 Draft Coastal Atlas: "In terms of recreational boating, citizens feel that the Essex River has reached its saturation point and they do not want to see more marinas or boat ramps built. Some people feel that the river needs dredging but many others feel this would only increase boating traffic and sedimentation."

This statement was derived after meetings with interested citizens, and both sides of the dredging question were presented. Policy 2 allows maintenance dredging in APR's, and CZM would not oppose requests for such dredging if the Essex River is designated an APR.

15. Marshfield Planning Board & Selectmen's representative on Advisory Committee, William Finn

1. MCZMP should not have blanket exclusion of sewage treatment plants in APR's or elsewhere; should make provision for accepting facilities if research shows or technology develops which demonstrates that facilities would not have an adverse impact on ecosystem.

Municipal discharges into the water bodies of APR's are regulated in accordance with the classification of the segments within the APR's by the Division of Water Pollution Control. Typically, a variance procedure is provided which would allow such new technological advances. In

15. Marshfield Planning Board & Selectmen's representative on Advisory Committee, W. Finn.(Cont.)

addition, the set of permitted and prohibited uses listed in Policy 1 is to be used as a model order in restricting wetlands within the APR or elsewhere. Since it is only a model, sufficient flexibility exists to allow new innovative solutions as they become available. The wording of Policy 1 has been revised to clarify this, i.e., that the order presented is a model only.

2. Offshore sand and gravel mining criteria in Policy 6 should be more stringent given current information on potential impacts.

The CZM Policy attempts to balance the need for mining with the need to prevent adverse environmental impacts. The policy focuses on what is thought to be the primary impact of mining--the effect on sediment supply to beaches. More specific regulations, based on the guidelines in the policy, will be developed by CZM in cooperation with the Division of Mineral Resources, the Division of Water Pollution Control, the Division of Waterways, and the Army Corps of Engineers. At the present time there is a moratorium on sand and gravel mining in state waters.

3. The MCZMP should incorporate the work done at the Army Corps Experiment Station in Vicksburg, Miss., on use of dredge spoil to create wetlands.

The MCZMP has been changed to include a statement on CZM role in research into alternative dredge spoil disposal methods (see Policy 5, Chapter 4 and Section 3.1).

16. Wareham Board of Health

1. Opposes land access to Long Beach and Stoney Point Dike.

At the urging of the Wareham Board of Selectmen, Marine Resources Commission, the Board of Health and other local units of government, the Long Beach recommendation has been withdrawn. Limited public access remains a priority for Stoney Point Dike. A site specific plan will be developed with the assistance of the town prior to any development. The site plan will respect the fragile and productive nature of the resource. Also, see response #45.

17. Town of Mattapoisett, Office of Selectmen

1. Endorses MCZMP in principle.

No response necessary.

2. Not clear on implementation. If there is a loss of local initiative, the Selectmen would oppose MCZMP.

See general questions 9, 10 and 11.

18. Southeastern Regional Planning and Economic Development District, Raymond Fleurent

1. Expressed concern about a meaningful role for local elected officials in the CZM decision-making process.

See general question 9.

19. Mayor of Salem, Jean Levesque

1. Supports CZM and its recommendations for Salem. The City looks forward to receiving planning money and technical assistance from CZM.

No response necessary.

20. Gloucester City Clerk, for City Council and Mayor, Fred Kyrouz

1. City Council and the Mayor oppose use of Gloucester's waterfront, especially property within City jurisdiction, for offshore oil facilities. (March 77 Draft Coastal Atlas, p. 14).	This statement has been changed in the Master Coastal Atlas, deleting the words "and in developing commercial facilities for offshore drilling."

21. Ipswich Board of Selectmen, Merle Pimentel

1. The Board supports the program because it will protect and preserve our natural resources.	No response necessary.

22. Boston Redevelopment Authority, Director, Robert Walsh

1. Policy 17 appears to preclude all but industrial development in ports, and does not address how residential waterfront communities will be affected.	The policy has been revised to clarify the circumstances under which non-maritime dependent industrial uses will be permitted.
2. Belle Isle Marsh, Governor's Island Cove, Pattons Cove, Savin Hill Cove and Neponset River Marsh should be designated APR's.	These areas can be nominated, but probably would not be high priorities for designation under criteria established in Policy 2.
3. A greater portion of Boston Harbor should be designated an SADA.	The March 1977 Draft Coastal Atlas has been revised to include an SADA designation for the Dorchester waterfront from Columbia Point to Fort Norfolk, and for the North End waterfront from the Charlestown Bridge to the downtown waterfront renewal area.

23. Provincetown Board of Selectmen, George Bryant, Clerk

1. Requests special initiatives in securing federal funds for commercial fisheries.	Because Provincetown is designated an SADA, CZM will work to secure federal funds for commercial fisheries enhancement.

24. Barnstable Conservation Commission, Arlene Wilson

1. Expresses support for plan. Some concern that discouragement of structural erosion control measures might prevent people from protecting existing construction.	Policy 17 provides for use of structural solutions to protect existing development if there is widespread public benefit. Private erosion control projects will be allowed if there will be no significant adverse effects on the site or adjacent or downcoast areas.
2. Objects to the goal of clustering growth.	Public investment policies of the MCZMP only encourage the clustering of growth in order to coordinate with expenditures in sewer services. Where sewering is not necessary, e.g. low density housing, clustering is not advocated.
3. Suggests less use of technical jargon.	This document represents an edited MCZMP to eliminate technical jargon, where possible.
4. Supports inclusion of entire Cape within boundary.	The Cape Advisory Committee voted on Dec. 6, 1977 to include the entire Cape within the boundary.

25. Executive Director, Old Colony Planning Council, Daniel Crane

1. Supports the MCZMP. OCPC interested in working with CZM in dealing with problems and opportunities in Plymouth Special Assistance Development Areas.

No response necessary.

26. Executive Director, Metropolitan Area Planning Council, Carla Johnston

1. Citizen and local official concerns must be responded to prior to implementation. Concerns must be reflected in individual case/project decisions.

See general question 9.

27. Selectmen's representative, Freetown, Cecile Montplaisir

1. A public hearing on regulations affecting conservation commissions and planning boards should be held before the plan is approved. Further changes in regulations should also have public hearings.

Regulations will be drafted and public hearings on the drafts will be held during the first year of program implementation. Any further significant regulation changes will also have public hearings. (See general question 2 for more information). A hearing on 21A regulations was held.

28. Mass. Shellfish Constable Officers Association, Joseph Almeida

1. Concerned over possible loss of management responsibilities within the three mile limit.

CZM will not infringe on shellfish officers' management responsibilities. Policies 1 through 6 and 14 will help ensure shellfisheries enhancement and protection.

29. Wareham Office of Economic Development, John Healey, Director

1. Development of public access to Stoney Point Dike would create sewage disposal and beach maintenance problems.

Limited public access remains a priority for Stoney Point Dike. A site specific plan will be developed with the assistance of the town prior to any development. The site plan will respect the fragile and productive nature of the resource.
Also, see response #45.

30. Wareham Planning Board, Robert Packard, Chairman

1. Board opposed to development of Stoney Point Dike and Long Beach for recreation.

At the urging of the Wareham Board of Selectmen, Marine Resources Commission, the Board of Health, the Planning Board and other local units of government, the Long Beach recommendation has been withdrawn. Limited public access remains a priority for Stoney Point Dike. A site specific plan will be developed with the assistance of the town prior to any development. The site plan will respect the fragile and productive nature of resource.
Also, see response #45.

31. Chatham Board of Selectmen

1. Endorses MCZMP and inclusion of the Town of Chatham in the coastal zone.

The entire Cape is within the coastal zone.

32. Board of Selectmen, Town of Bourne

1. Endorses CZM plan and inclusion of town of Bourne in coastal zone as long as future amendment to boundary is possible, if desired.

Amendment process is outlined in general question 7. The Cape Advisory Committee voted on Dec. 6, 1977 to include the entire Cape within Coastal Zone. (See general question 8).

33. Board of Selectmen Town of Harwich

1. Inclusion of all Cape Cod as coastal zone is to extensive.

The entire Cape is within the coastal zone. (See general question 4).

34. Martha's Vineyard Commission, Martha's Vineyard

1. Supports MCZMP, but emphasize local implementations.

The MCZMP proposes a local implementation strategy. Funds are disbursed equally among implementing agencies, i.e., 1/3 state, 1/3 local, 1/3 for CZM staff for coordination and technical assistance. (See general questions 9 and 10 for more information.)

2. Plan needs more emphasis on water quality planning, particularly in relation to minor OCS related incidents.

Further work under Coastal Energy Impact fund should foster legislation and/or planning to address this concern.

3. Expressed concern over the viability of networking and the reliance upon memoranda of understanding.

See Section 6.4 for a discussion of MOU's. AG memorandum opinion relating to coordinating authority vested in Chapter 21A clarifies these concerns (also see general question 1). Chapter 21A regulations have been written, with legislative/executive input to clarify general concepts presented in CZMP.

4. Determination of needs should be made locally.

See general question 9.

5. More funds should be allocated to local level for effective implementation.

1/3 of total CZM funds will go directly to towns and 50% of CZM staff will be used for technical assistance to towns. The majority of implementing responsibility lies with the state.

6. Regional Planning Agencies can provide T.A. if funded properly.

306 funds must be used for implementation.

35. Brewster Conservation Commission, Brenda Boleyn

1. Expresses support for MCZMP

No response necessary.

36. Tisbury Planning Board

1. Generally support MCZMP, but has reservations similar to the ones raised by Martha's Vineyard Commission.

See response to Martha's Vineyard Commission. (#34)

37. Truro Boards of Selectmen and Assessors

1. There should be a strong local advisory board during implementation.

Advisory Committees will continue to give direction to the program (see general question 9 for specific responsibilities of advisory committees.)

2. Support inclusion of entire Cape within coastal zone.

The entire Cape is within the coastal zone. (See general question 4.)

38. Orleans Board of Selectmen and Orleans Citizens Advisory Committee

1. Express support for MCZMP and for inclusion of the entire Cape within the coastal zone; request that future CZM work continue to have citizen input.

The entire Cape is within the coastal zone (see general question 4). Implementation of MCZMP is dependent on continuing citizen input through citizen advisory committees. (See general question 9.)

38. Orleans Board of Selectmen and Orleans Citizens Advisory Committee (cont.)

2. Concerned about OCS development and whether towns will be able to influence process.

Through the regional advisory committees, communities will have the opportunity to comment to the Department of Interior on such issues as the approval of plans for exploration and development. The details of this procedure for input will be developed through the CZM office.

39. Cycil J. Patrick, Provincetown Board of Selectmen

1. Supports MCZMP and inclusion of entire Cape within the coastal zone.

The Cape Advisory Committee voted on December 6, 1977 to include the entire Cape within the coastal zone. (See general question 4.)

40. Chatham Conservation Commission

1. Endorsed entire MCZMP and inclusion of all Cape Cod in coastal zone.

The Cape Advisory Committee voted on December 6, 1977 to include the entire Cape within the coastal zone. (See general question 4.)

41. Mashpee Board of Selectmen

1. Expresses general support of MCZMP and inclusion of entire Cape in coastal zone, with some concern over complexity of plan.

Final MCZMP has been condensed to minimize redundancy (see general questions 4 and 6).

42. Barnstable County Shellfish Advisory Committee, Burke Limeburner

1. Expresses strong support for MCZMP.

No response necessary.

43. Edgartown Board of Selectmen

1. Expresses opposition to plan because of fear it will usurp home rule.

See general question 10.

44. Westport Board of Selectmen

1. CZM districts with power to implement federal, state and local coastal programs should be established.

Three Federal regulations require there be a state overview of local implementation. This option was rejected as being inconsistent with citizen concerns to preserve home rule prerogatives. Establishment of such districts would require passage of state legislation.

45. Wareham Board of Selectmen

1. Opposes opening Stoney Point Dike as a public beach accessible by land.

Stoney Point Dike is federally owned property at the mouth of the Cape Cod Canal. There is no land access to the dike, though boaters use the beaches along the dike for sun bathing, walking and swimming. CZM has recommended the purchase of an easement to provide for limited public land access.

This recommendation came from citizens in the Buzzards Bay Region interested in improved recreation access. According to SCORP and SENE, the Buzzard Bay Region is deficient in public beach facilities.

Because of the special ecology and sociology of the area, CZM will work with DEM to prepare a careful site

45. Wareham Board of Selectmen (cont.)

plan and study of Stoney Point Dike prior to any potential purchase of an easement. Any proposal must be consistent with the policies of the CZM Program.

It may be reasonable to allow only limited pedestrian and bicycle access to the site. However, CZM does not now have adequate information to develop a site specific recreation plan for the area.

CZM policies dictate that DEM will work with the Town of Wareham and the regional Citizen Advisory Council if a purchase of an easement is in fact proposed. State law requires DEM to have local approval of eminent domain actions.

Information included in the comments prepared by the Environmental Collaborative for the residents abutting Stoney Point Dike will be considered in any potential site study by DEM.

The Coastal Atlas has been amended to include these comments.

46. Wareham, Board of Selectmen and Marine Resources Commission

1. Public access should be encouraged at the public beaches in the Onset area and not at Stoney Point Dike and Long Beach.

See Comment 45 and Comment 16.

47. Quincy Conservation Commission

1. Expresses support for the MCZMP.

No response necessary.

48. Newbury Conservation Commission

1. Fully endorses the MCZMP.

No response necessary.

49. City of Boston, Lorraine M. Downey

1. Expresses support for CZM goals, objectives, and policies.

No response necessary.

2. Requests a timetable for the promulgation of EOEA agency rules and regulations to implement the CZM program.

Regulations for the Division of Waterways and for the Wetlands Protection Act will be promulgated by June, 1978. Regulations for the Division of Water Pollution Control, EFSC, Division of Mineral Resources and the Ocean Sanctuaries Act, are scheduled to be promulgated during the first year of MCZMP implementation.

3. Proposes six Areas for Preservation or Restoration (APR's) be declared in Boston Harbor.

Other more pristine areas have been proposed for designation as critical areas. However, a community may petition the Secretary of Environmental Affairs to designate a critical environmental area pursuant to MGLA C. 21A S.2(7).

4. Proposes redrafting of policy 17 to allow for non-maritime dependent uses in designated port areas.

See Policy 7, Chapter 4.

49. City of Boston, Lorraine M. Downey (cont.)	
5. Proposes three additional SADA's for Boston Harbor.	The March 1977 Coastal Atlas has been revised to include an SADA designation for the Dorchester waterfront from Columbia Point to Fort Norfolk and the North End waterfront from the Charlestown Bridge to downtown urban renewal area. However, because the Charlestown Navy Yard redevelopment is already the recipient of Federal funding and because of the great number of coastal areas needing planning assistance, CZM will not designate the area an SADA. Staff assistance can be made available to assist Charlestown in their redevelopment effort.
6. Proposes restating the policies as regulatory and non-regulatory.	See revised Chapter 4.
50. Scituate Board of Selectmen	
1. Expresses support for MCZMP.	No response necessary.
51. Scituate Conservation Commission	
1. Endorses MCZMP.	No response necessary.
2. The Waterways Program should be coordinated with wetland regulation promulgated under the Wetlands Protection Act.	Regulations are being written for the Division of Waterways, and revised Wetlands regulations are being prepared. The regulations will be coordinated to respond to CZM policies, thus ensuring coordinated programs.
3. Federal agency coordination with state and local projects should be mandatory.	The "federal consistency" section of the CZMA will require that federal projects, federal permits, and federal funding channeled to states and municipalities must be consistent with the approved state CZM Plan.
52. Wareham Shellfish Constable, Edwin W. Studley	
1. Opposes CZM recommendation to improve access to both Stoney Point Dike and Long Beach in Wareham because of their importance for shellfishing.	See Comment 45 and Comment 16.
53. Nahant Growth Policy Coastal Zone Management Committee, Carl Brooks	
1. Expresses support for MCZMP.	No response necessary.
2. Requests that Nahant's waters be included in an ocean sanctuary area.	Inclusion in an ocean sanctuary requires an act of the state legislature. If Nahant would like to be included in a sanctuary, the town should petition its representative and/or senator to sponsor a bill.
3. Urge that no sand and gravel mining take place until a complete study of its effects is completed.	See response to 15-2.
54. Gloucester Downtown Development Commission, William O'Connor	
1. Expresses support for MCZMP.	No response necessary.
2. The Gloucester Historic District was omitted from the list of "Historic Districts Established by Coastal Communities" on pages 11-14 of DEIS.	District added, see Policy 2, Chapter 4.

55. Salisbury Conservation Commission, Frank Kramer

1. Expresses support for MCZMP. — No response necessary.

56. Manchester Conservation Commission

1. Expresses support for MCZMP. — No response necessary.

57. Revere Conservation Commission and Growth Policy Committee

1. Request inclusion of Revere in the Lower North Shore region for purposes of public participation. — Because Revere contains a portion of the Saugus/Pines River Marsh, the city has an interest in the activities of the Lower North Shore Advisory Council. Therefore CZM supports the participation of a representative from Revere on the Lower North Shore Council. However, because the city has interests in the activities of Boston Harbor communities, Revere will remain in the Boston Harbor region for purposes of public participation. If, at the end of the first year of MCZMP implementation the city and CZM determine that Revere more appropriately belongs in the Lower North Shore Region, such a change will be made.

2. Request that the Saugus/Pines River Marsh and the Belle Isle Marsh be designated Areas for Preservation or Restoration. — Other more pristine areas have been proposed by MCZMP for designation. However, a community may petition the Secretary of Environmental Affairs to designate a critical environmental area pursuant to Mass. General Laws Chapter 21A, Section 2(7). Also the marsh will be restricted under the Wetlands Restriction Act.

3. Request that two representatives be appointed from each community to serve on the CZM Regional Advisory Councils. — While there will be one voting representative per community appointed by the chief elected official(s), interest and user groups will also be represented on the councils.

58. Fall River Conservation Commission

1. Expresses support for MCZMP. — No response necessary.

2. Suggests a one permit system. — See general question 5.

3. Requests designation of adjacent zones outside of the coastal zone as eligible for technical and planning assistance, particularly with regard to visual access in the Taunton River/Mt. Hope Bay area. — While staff assistance will be provided within the coastal zone on a priority basis, CZM is interested in working with communities in areas outside the coast zone to provide visual access to the coast. Staff assistance, therefore, could be requested and provided.

59. Dennis/Conservation Commission

1. On page II-23 of the DEIS, Chapin Memorial Beach is listed as located in the town of Yarmouth. It is in the Town of Dennis. — See Policy 24, Chapter 4.

2. Expresses support for MCZMP and for inclusion of entire Cape within coastal zone. — The entire Cape is within the coastal zone.

60. Duxbury Planning Board

1. Expresses support for MCZMP. — No response necessary.

61. Hingham Board of Selectmen

1. Questions the impact of MCZMP on home rule. — See general question 10.

61. Hingham Board of Selectmen (cont.)	
2. The MCZMP creates another level of government bureaucracy which allows the state to determine how and where development will take place in the future.	See general question 10 and 5.
3. Public participation in the development of the plan was inadequate, there was no formal citizen role during implementation.	See general question 9.
4. No provision to include regional planning agencies on the statewide advisory board.	The DEIS and MCZMP do not detail the membership of the statewide advisory board; currently, a representative of regional planning agencies and the President of MAPC are members of the Governor's Task Force.
5. Expresses concern the OCS development and CZM together will lead to a loss of local control over energy facility siting.	The Energy Facilities Siting Council (EFSC) has the final authority over energy facility siting in the Commonwealth. The EFSC has agreed to consider CZM policies in making its determinations. The authority of local governments and the EFSC on energy facilities remain unchanged under MCZMP.
61a. Hingham Planning Board	
1. Expresses conditional support for the concept of MCZMP.	No response necessary.
2. Believes public participation has been inadequate.	See general question 9.
3. Concerned about being a part of the Boston Harbor region and therefore losing potential influence in MCZMP.	CZM is willing to entertain other CAC options for Hingham.
4. Do not understand the implementation of Hingham's designation as a developed harbor.	As a developed harbor, Hingham will receive priority for maintenance dredging funds and for certain technical and financial aids from CZM.
62. Hingham Conservation Commission	
1. Expresses strong support for approval of MCZMP.	No response necessary.
2. Wishes to review draft EOEA agency regulations to implement CZM.	CZM will submit draft regulations to the Conservation Commission for review.
63. Hingham Harbor Development Committee	
1. Does not support MCZMP.	Comment noted.
64. Hingham Bare Cove Park Committee, Alice Heelzel	
1. Supports concept behind MCZMP but does not think MCZMP is the answer.	No response necessary.
65. Town of Scituate, CZM Commission	
1. Expresses support for MCZMP.	No response necessary.
2. Desire boundary changed to the "old railroad bed."	This change has been incorporated in Appendix F.
3. APR categorical prohibition of sewage treatment plants is not in best interest of town.	Changes are incorporated to allow some discharge in APR's.
4. Purchase of storm destroyed property should only be done with owner consent.	Changes are incorporated to modify the policy dealing with storm damaged property. However, the state retains the rights of eminent domain

65. Town of Scituate, CZM Commission (cont.)

proceedings. See Policy 16, Chapter 4.

66. Mass. Petroleum Council

1. The bulk of the management policies are "unenforceable."

The policies of the MCZMP have been regrouped in the final EIS into 2 categories: regulatory and non-regulatory. The regulatory policies were the principle ones evaluated in determining adequacy of the program for federal approval and have been judged to satisfy the requirement that the program be sufficiently enforceable.

2. Only "enforceable" policies should be included in the program because of the burden of federal consistency requirements.

Only those policies in Chapter 4 that are asterisked require consistency of federal actions. Non-regulatory policies are included to give public accountability and predictability to EOEA administrative actions affecting the Ma. coastal zone (e.g. allocation of state dredging funds).

3. The program has not been duly adopted; the Sec. of EOEA does not have the power to promulgate state enforceable environmental policy for the coastal zone.

The program has been adopted by the Governor as state policy. The Secretary is acting jointly with the respective line agencies, which have the authority to implement state environmental policy within the scope of their statutory authority.

4. No hearing was held on the total coastal management program because the 21A regulations were not promulgated prior to the program hearing.

Draft 21A regulations were included in the program submission document on which 5 hearings were held. An additional hearing was held on the 21A regulation itself. Subsequent changes in the 21A regulation did not significantly change the substance of the program as a whole so as to warrant additional hearings.

5. The program doesn't provide for adequate consideration of the National interest in the planning and siting of energy facilities.

How the EFSC procedures satisfy the requirements of Section 305(b) (8) is addressed in Chapter 9. The programs energy policies, by their express terms, are to be carried out by the EFSC. See Policies 8 and 9. This body in actual practice is required by its formal regulations to consider regional and national energy needs in its long range forecast process. See regulations 63.2, 63.6, 66.1, 66.6, and 71.5. Virtually all electric generating companies are members of NEPPOL, the New England Power Pool, and many though Mass. based, possess partial ownership of facilities in neighboring states and therefore include regional data in their forecast reports to EFSC. (For example, the EFSC may evaluate an interstate forecast area when considering a facility proposed for siting in Mass). Thus, by statute, regulation, and actual practice, the EFSC actively considers needs beyond the borders of the Commonwealth in its decision making process.

66. Mass. Petroleum Council (cont.)

Additionally, the plan expressly includes a commitment to site coastally dependent energy facilities in the coastal zone and to accomodate OCS development. Through the designation of port areas (Policy 7), the MCZMP will encourage coastally dependent oil facilities (including marine terminals and certain oil storage facilities). Non-coastal dependent facilities will be accomodated if the site has been approved by the EFSC. Exclusion of maritime dependent uses in these port areas will be prevented. These areas are almost exclusively industrially zoned and industrially used (oil facilities being a primary use). Priority will also be given to these areas in the allocation of public funds for dredging (Policy 19) 14 ports are currently designated. Additional ports can be designated if proposed and Policy 7 expressly provides for accomodating such if the need is of regional or national benefit.

6. The EFSC is not required to take the National or regional interest into account in its decision-making process.

See response 66-5.

7. Chapter 6 of the DEIS which discusses National Interest was authored by the federal government and is ineffective as a statement of state policy.

Chapter 6 of the DEIS was originally written by state personnel based on federal guidance. It now appears as Chapter 9 of the Ma. Plan and has been substantially revised to better state the state's position with respect to the national interest and uses of regional benefit.

8. The program suggests that the state may not have an effective method for assuring that local land and water use regulations don't unreasonably restrict oil facilities other than pipelines which may be of regional benefit.

Attempts by localities to amend zoning bylaws to specifically prohibit oil facilities in these areas would be unlikely, and would be vulnerable to a suit alleging an arbitrary and capricious exercise of the zoning power. In addition, EFSC can override any zoning changes made following the filing of a notice of intention to construct any energy facility. As indicated in Chapter 9, an adequate amount of land is zoned allowing these facilities.

9. The DEIS fails to adequately analyze possible costs associated with approval.

As to possible economic cost see general question 7; as to possible negative environmental costs, it's difficult to conceive of realistic costs associated with better implementation of existing management framework. Such a discussion would be simply an exercise in speculations, for example, that speeding up the restriction process could lead to development in other parts of the state or that the application of consistency might channel OCS related development elsewhere.

10. The DEIS fails to consider alternatives in any meaningful way.

The discussion of alternatives (Chapter 12 + 13) covers the meaningful alternatives in reasonable detail.

Comment	Response
67. Natural Resources Defense Council	
1. The program is not sufficiently comprehensive.	The program protects wetlands, beaches to 100' inland of the 100 year flood, recreational and historic sites and addresses port areas. Energy facility siting is included contrary to suggestion. See question 3 and alternative 1, Chapter 12.
2. Half the policies are advisory and by and large, management of the coastal zone will continue as it has in the past which has proved largely ineffective.	The existing authority meets minimum federal standards. The thrust of the program is to improve existing state management.
3. The EFSC is not bound by enforceable program policies. Now EFSC regulations are needed to ensure enforceability.	Statement is unfounded. See discussion in Policy 8, and general question 3 and Attorney General's memorandum opinion.
4. Even if enforceable, the energy policies are too weak to afford predictability.	Chapter 9 now sets forth how the EFSC planning process does in fact produce added predictability.
5. The transportation policy is not enforceable and does not help cure lack of program comprehensiveness.	The means for ensuring that major transportation projects conform to the program has been revised. See Policy 26 and EOTC/EOEA MOU in Appendix B.
6. The lack of program control over local decisions on sewering renders infrastructure policy defective in curing lack of comprehensiveness.	Any significant sewering would need a state permit.
7. There is no commitment to give low priority to infrastructure in underdeveloped areas.	Such a commitment is not required by the CZMA.
8. There is no commitment to deny infrastructure where development would be inconsistent with program policies.	Where development would be inconsistent with the policies, the permits or funding for such development will be denied. When institutional supports like sewers and roads are proposed in undeveloped areas as described in Policy 26, they will be denied as described in Policy 26.
9. There is no control over cumulative impacts.	The most effective way to control cumulative impacts is through infrastructure investment which is subject to the program. In any event control of all cumulative impact is not a requirement for approval.
10. Many of the policies are vague and do not provide the requested predictability. The provision for disregard of the program in the case of "compelling public interest" adds further unpredictability.	Some policies have been made more specific; i.e., those dealing with dredging and with recreational and historic sites. The specificity of the energy policies is addressed in question 2 above. Compelling public interest has been deleted from the regulations.
11. Chapter 21A together with MOU's may not provide adequate legal basis for program approval.	See general question 1 and Attorney General's memorandum in Appendix.

12.	The substantive agency regulations must be in place before the detailed limitations contained in certain policies are enforceable and the program can be implemented.	See general question 2. Revised Chapter 6 makes it clear that it will not be solely "through" new or revised regulations that policies will be implemented but rather that regulations will provide added specificity. EOEA agencies will be legally bound to conform to program policies as written at time of program approval.
13.	The statutory authority of the individual agencies to implement program policies is unclear, particularly tidelands licensing and ocean sanctuaries.	The Attorney General specifically addressed this concern. See general question 1.
14.	Activities which take place inland of 100' of the 100 year flood can "alter" wetlands through siltation on storm water runoff and should be subject to the program.	100' inland of 100 year flood plain is an adequate buffer zone to control direct significant impacts.
15.	It may be unrealistic to expect DEQE to review orders of Conservation Commissions except on appeal basis and the importance of the Wetlands Restriction Program may be overstated.	Copies of orders of condition currently are given to the Regional Engineer and will be logged for computer tracking. If necessary, DEQE will intervene without an appeal from another party. MCZM feels that the Wetlands Restrictions are extremely important.
16.	The program does not incorporate proposed amendments to Title 5 of the Environmental Code which would provide important protection.	The proposed Title V regulations were finalized and promulgated on July 1, 1977. (See Policy 3.)
17.	The relationship between the Division of Water Pollution Control and DEQE Division of Land & Water Use regarding subsurface discharge needs to be resolved.	DEQE has full responsibility for permitting subsurface disposal pursuant to the State Environmental Code, Title V.
18.	The use of MEPA as an authority for program implementation must be carefully evaluated.	See Attorney General's memorandum opinion with regard to MEPA and Policies 12 and 13.
19.	The program does not adequately resolve conflicts among competing uses, particularly with respect to recreational sites.	Policies 12 and 13 provide for conditioning or denying activities requiring a State permit or federal consistency which negatively impact recreation or historic sites. See also alternative 1 responding to comprehensiveness of the program.
20.	Boundary must clearly encompass all areas lying inland of 100' from the 100 year flood plain or landward edge of wetlands.	The program includes all such areas. The Coastal Atlas is being suitably revised. See response 1-81(n).
21.	Anadromous fish runs should be included in boundary wherever they occur.	They are included.
22.	Justification for excluding most of inland portions of Cape Ann questioned.	See general question 4 for discussion of how boundary was chosen and see response 1-42 for Cape Ann response.
23.	A major failure of the program is the failure to establish enforceable policies and regulations to ensure protection of GAPC's/APR's.	Protection of GAPC's and APR's is ensured through existing statutes. CZM policies will be implemented through such statutes as respective regulations are revised and written. See general question 11 regarding such regulations.

24.	There are no enforceable guidelines on priority of uses for GAPC's or APR's.	Policies 1 and 2 explicitly state permitted and priority uses for GAPC's and APR's. These policies are enforceable through existing statutes.
25.	The program does not manage all uses which have a direct and significant impact on coastal waters.	See responses 67-1 - 5, 12 & 19.
26.	The program goes too far in accommodating energy facilities in the coastal zone.	The location of energy facilities may be in the national interest and in such instances their provision must be accommodated. Other commentators have argued that the program places too many restrictions on energy facilities.
27.	Federal consistency procedures are unclear.	See revised Chapter 9.
28.	The program was formally submitted prior to public hearings.	The program was not formally submitted to the U.S. Department of Commerce until January 20, 1978. A letter dated March 18, 1977 from the State, refers to an earlier work program draft.
29.	Unresolved issues remain concerning legal basis for the program.	A memorandum opinion of the Attorney General addressed this issue. See General Response and Summary in Appendix.
30.	Section 2.0 (Purpose) overlaps with Section 5.2.	The Purpose Section is intended to summarize the scope of the regulations. Section 5.0 et. seq. and other sections are the operative portions of the regulation, therefore it is anticipated that these may overlap.
31.	Agencies which may have a role in implementing CZM Plan may be left out because the definition of "appropriate EOEA agency" gives the Secretary the authority to exclude an agency from coverage.	Regulation revised to delete exhaustive list of agencies so as not to overlook one, or to be hampered by later administrative reorganizations or new statutes. There is no intention here to exclude any relevant EOEA agency but to permit a reasonable process for voluntary withdrawal if any agency does not in fact have an interest in an issue.
32.	Confusion exists concerning APR/ACEC designation.	See revised regulation.
33.	Boundary description is not clear whether natural resources inland of the boundary roads are included in the coastal zone.	The boundary definition has been rewritten to clarify that all resources inland to 100 year flood plain are included regardless of the roads.
34.	It is too difficult to understand exactly what constitutes the CZM Plan.	The FEIS has been written to provide all essential elements of the Program in one document. See general question 6 for more information.
35.	"State Environmental Policy." Exactly what will constitute should be clearly set forth.	All of Chapter 4 has been adopted in the 21A regulations and is State Environmental Policy.
36.	Authority of individual agency to implement policies 8b and 8c is questionable.	Policy 8b and c has been incorporated into Policy 1 and reworded. It is enforceable through provisions of the Wetlands Protection Act.

37.	There are not enough enforceable policies.	See response 67-2.
38.	Incorporating entire program by reference should be dropped.	Done.
39.	Evidentiary weight of program needs clarification.	The regulations have been revised to clarify the meaning of "dispositive", in accord with this suggestion.
40.	Change the word "hearing" to "proceeding" in 5.5.	Done.
41.	"Substantial and compelling public interest" language should be dropped.	Language deleted.
42.	Need individual agency regulations prior to approval.	See general question 2.
43.	There should not be an automatic finding of federal consistency in critical areas.	The CZM plan utilizes a system of modified equivalency. Projects consistent with categorical concurrences will not require a filing. For other projects, public notice will be given. CZM will have 10 days to determine whether the project is above a threshold such that CZM will participate in agency review or whether the federal consistency determination can be equivalent to the state permit and have the agency issue the concurrence. This allowsflexibility for more intensive review of major actions, but minimizes bureaucratic involvement.
44.	Advisory Council language is weak.	Language has been clarified.
45.	Conflict Resolution--The conflict resolution process should be more formal and open to more participants than currently provided.	Purpose of mechanism is to be informal.
46.	Projects in critical areas should automatically be subject to MEPA Environmental Impact Report.	CZM is supporting the concept of categorical inclusions within the MEPA reg. We feel the revised statute creates a significantly improved process for environmental evaluation because it occurs at the time of filing for state licenses.
47.	In critical areas the projects already on file should not be "grandfathered."	The grandfather clause for the regulation as a whole has been rewritten to impose a time cut-off and/or a stage-of-processing-cutoff for the regulation to apply.
48.	Expand explanation of federal consistency.	Done.
49.	Add NRC to list of federal permits.	Done. It appears to be a typing error, as the permit description is included.
50.	Individual permits and grants programs should be included as Management Program Decisions to be published in the Monitor.	This is simply too burdensome for all permits will fall under the federal consistency notice provisions. Federal consistency for federal grants will now be required so listing them would also be highly repetitive.

51.	Include consistency criteria.	The National Interest section has criteria for interpreting and applying energy and recreation policies. Secondly, Section 7.14 includes the thresholds which CZM will use to evaluate whether it will become actively involved in the federal certificate process or whether the EOEA agency will.
52.	CZM has too much of an equivalency process for consistency and shouldn't put so much faith in line agency implementation. CZM should be able to override any agency determination of consistency.	CZM will be staffing many new technical people in the line agencies; it does not want to create a duplicative process unnecessarily. Only those projects above the threshold described in 7015 will be evaluated by CZM. The regulations are purposely flexible in order to allow for adjustments as experience suggests. A revised 7.15(c) makes clear, if new information reveals to CZM that it should participate more fully in the agency's process after its initial determination it may do so. CZM may not set aside a permit issued by EOEA agency pursuant to its own statute but retains the authority to deny federal consistency.
53.	The incorporation by reference language is unwise because amendments to regulations must go through the Administration Procedures Act.	Incorporation by reference language deleted.
54.	Process regulations are only illustrations and procedural. Question some of the provisions.	These regulations will not be in effect prior to program approval. CZM appreciates the effort invested in this comment and will evaluate these comments closely in drafting the agency regulations.

Comment	Response
68. Boston Chamber of Commerce, et al	
1. The DEIS fails to accurately describe the MCZMP and addendum.	The DEIS summarized the MCZMP and has been redrafted in the FEIS to represent the Program and reflects the comments received during the DEIS review period. See note to reader.
2. There are contrasting statements in the EOEA memorandum (in the Program Appendix) and the DEIS regarding the EFSC's statutory duty to ensure consistency with the Program.	See general question 3.
3. There is a different assertion of jurisdiction regarding federal licenses and permits for OCS exploration and development between page 350 of the MCZMP and page I-4 of the DEIS.	See revised Chapter 9 for an accurate description of this jurisdiction.
4. The DEIS does not adequately address environmental and socio-economic impacts of the MCZMP.	See general question 7.
5. The statement limiting local project monies to $20,000 and a one-year funding period per project of federal CZM grant money referred to on page II-5 of the DEIS is misleading.	No such statement appears on page II-5 of the DEIS. The statement found on page II-5 reflects the CZMA requirements that annual grants be made available to the states. However, consecutive grants are available on a continuing basis.
6. The DEIS does not adequately discuss alternatives in that specific alternatives to the 38 proposed policies are omitted.	According to the CEQ Guidelines, the discussion addresses "Alternatives to the Proposed Action." The proposed action is the federal approval of the MCZMP as submitted, and the federal alternatives address options available to them other than Program approval. One state alternative, that of revising the Program, has discussed policy modifications.
7. The DEIS does not discuss the impact of alternatives on inland and out-of-state areas.	Inland impact section has been expanded in Chapter 10, however a discussion of out-of-state impacts would be too speculative to discuss.
8. The DEIS does not discuss the designation of the State Planning Office nor the Office of Communities and Development as the possible lead agency under the MCZMP.	The designation of the Office of State Planning or Office of Communities and Development as lead agencies is not a feasible alternative. Neither agency has statutory authority to implement necessary aspects of an approvable CZMP. This was recognized several years ago, when the decision was made for EOEA to receive the planning grants.
9. The DEIS does not accurately describe the federal consistency requirements of the CZMS as they relate to the MCZMP.	The FEIS reflects the federal regulations regarding federal consistency. The FEIS accurately reflects the interpretation of federal consistency to date.
10. The MCZMP does not comply with federal consistency requirements by extending these requirements to existing facilities and to Pilgrim II.	The FEIS does clearly indicate that the MCZMP will not apply federal consistency to existing facilities or facilities under construction. The FEIS further clarifies that Pilgrim II is "grandfathered" as all state permits have already been issued.

11.	The DEIS does not accurately describe the Program's impact on federal regulatory agencies and through them its impact on the environment.	It is not required as a part of this impact statement to discuss the impacts of federal consistency on the federal agencies, only to discuss the impact on the environment. These impacts are adequately discussed in Chapter 10.
12.	The "working arrangements" with federal agencies for achieving concurrent permitting or licensing procedures are unknown.	These "working arrangements" have not been developed. Currently, separate processes and hearings are held for federal and state permit and license applications. The development of these concurrent procedures would greatly streamline these permit processes and will be a task for development in the first year of Program approval. See Section 6.7 for clarification.
13.	The draft EOEA CZM regulation 7.23 giving the state the authority to unilaterally amend the list of activities for consistency determinations is contradictory to NOAA rules proposed in Section 930.55	The amendment of the list of federal activities subject to consistency determinations is discussed in Section 930.54 of the federal regulations pursuant to Section 307 of the CZMA. The state regulation meets federal requirements of making the refinement and other information available to the federal agency, OCZM, and the public. Any refinements to the approved list are subject to the approval of the Assistant Administrator.
14.	Draft EOEA CZM regulation 7.19 concerning federally permitted activities occurring outside the coastal zone is inconsistent with NOAA rules proposed in Section 930.54(b) and Section 304.1 of the CZMA.	This has been changed in the FEIS to reflect the wording and requirements of Section 930.54 pursuant to Section 307 of the CZMA.
15.	Regulation 7.19 asserts a state CZM power to require modifications and changes of actions which is beyond its ability to enforce.	The section has been revised to reflect the current language of the federal regulations. In no instance may CZM impose conditions which are not consistent with the policies.
16.	EOEA regulation 7.11 fails to apprise applicants seeking consistency certification of their rights under CZMA and NOAA regulations 930.58 of their right to withhold "confidential and proprietary material."	The redrafted regulations at Section 7.11(b) include such protection for applicants.
17.	EOEA regulation 7.16 is inconsistent with the Section 307(e)(f) of the CZMA by denying federal consistency to activities which do not meet state air and water standards which may be more stringent than those of the Federal Air and Water Acts.	Federal consistency applies to the coastal program policies with asterisks which may be more stringent than federal law.
18.	The criteria and policies for energy facility siting represent an illegal subdelegation of authority and abdication of responsibility of EFSC.	See general question 3.
19.	The Plan incorrectly implies that the state will exercise federal consistency over areas not able to be regulated at the state level.	The FEIS clarifies that federal consistency will be applied, in a regulatory sense, only as applicable in NOAA regulations pursuant to Section 307 of the CZMA.

20.	The DEIS is an afterthought to an already adopted state CZM program for which the federal decision for approval has been made. This does not conform with the NEPA requirements.	The proposed MCZMP was submitted for federal approval and is was determined that approval appears sufficiently possible to warrant issuance of a DEIS. No final approval has or will be accorded until 30 days after the FEIS is available and the Assistant Administrator has reviewed it and other documentation on approvability.
21.	Item #8 (p.1-1 of DEIS) misstates the provisions of the Plan in that it does more than "consider" non-structural solutions for coastal erosion problems. It rather states a preference to such solutions.	See Section 1.1 for revision.
22.	Item #9 (p.1-1 of DEIS) is incorrect as the Plan goes beyond identifying critical areas by restricting or assigning priorities to land use.	See Section 1.1 for revision.
23.	The Plan sets up a new office in EOEA with responsibilities which have serious economic effects.	The EOEA was established in 1969 by the Governor of Massachusetts with responsibilities pursuant to the Act and 21A regulations. The economic effects are incidental and result from the exercise of its mandated authorities.
24.	It is unclear whether or not the Plan is comprehensive and provides adequate management of important environmental and economic resources due to its failure to discuss alternatives.	See answer to response 68-6.
25.	All relevant "interests" have not been consulted nor relevant viewpoints considered.	The MCZMP has had a broad public participation program which, though concentrated primarily in the coastal zone, has employed the media and reached public and private agencies across the state. Public meetings were held throughout the program's development and comments were incorporated into the draft programs. The DEIS process solicited the comments of interested parties across the state and the nation and these comments are reflected in the FEIS. See general question 9.
26.	The absence of EOEA and other agency regulations constitutes a lack of comprehensiveness and makes it difficult to analyze and comment adequately on consistency requirements and the meaning of many policies.	The regulations (available in draft form before program approval) will be promulgated during the first year of 306 approval and will be based on the policies as explained in the MCZMP. Thus the scope of the program will be no more comprehensive following promulgation. Federal agencies will not be required to be consistent with the regulations until they have been incorporated into the program. As to the question of specificity, see response 6-13.

27.	The policies, standards, objectives and criteria upon which decisions are based are not "articulated clearly" and not "sufficiently specific" to provide a "clear understanding" of the content of the program nor give a clear sense of direction or predictability.	The FEIS states these policies, standards and objectives more clearly. In addition the simplification of the program into one compendium document should further clarify the program goals, objectives, and related impacts. The final EOEA regulations are included in the FEIS and draft agency regulations are available for public review.
28.	There are not "sufficient policies of an enforceable nature" contained in the Plan.	The policies listed as being "enforceable" in the DEIS are sufficient to meet the OCZM requirements for a comprehensive coastal program. To dispell confusion regarding "enforceable" policies the policies have been delineated as regulatory and non-regulatory in the FEIS. All regulatory policies and non-regulatory policies which involve state funding actions are considered enforceable.
29.	The "consistency" powers and program approval of the MCZMP cannot confer licensing authority to an agency not authorized for these responsibilities under state law. This is not, but should be reflected in the DEIS.	Applications to responsible agencies for permits will follow the same procedures as they did previously. Consistency determinations will be made by the EOEA.
30.	There are inconsistencies between the MCZMP and other state programs as to whether state or local government has "prime responsibility" for land use implementation.	Local home rule powers will not be usurped by the MCZMP. The prime responsibility for coastal zone management is the state EOEA. Where state and local permit authorities conflict, and a state permit is needed, the state determination rules according to standard Massachusetts administrative procedures. Further explanation is included in Chapter 8.
31.	The MCZMP fails to meet the requirements of Section 306(c)(1) of the CZMA as it has not been "adopted."	The cover letter to the FEIS from the Governor of Massachusetts meets this requirement and the 21A regulations have been promulgated.
32.	The opportunity for formal public input required for adoption of generally applicable regulations has not taken place for the EOEA and other agency regulations.	The EOEA final regulations are in the FEIS, and were available for comment under MEPA and M.G.L. Chapter 30A. The draft regulations for the other agency programs will be available for review and comment before incorporation in the MCZMP.
33.	EOEA and other agency regulations should be adopted and in place before an adequate assessment by the public and OCZM of the environmental and socio-economic impacts of the MCZMP can be made.	See general questions 2 and 7.
34.	The state has not fulfilled the requirement of coordination of the CZMP with other local, areawide, and interstate plans.	See Chapter 7 and Appendices C,D. The MCZMP coordinates with the administrative procedures act regarding local and state procedures. Public hearings were held in several towns along the coast and the views of the public have helped to shape the MCZMP, DEIS and FEIS. Letters from Rhode Island and New Hampshire appear in the FEIS certifying consistency with adjacent state plans.

35.	The MCZMP fails to fulfill the requirements of the CZMA that the state has adequate authorities and ability to administer land and water uses.	The state has the authorities necessary to implement the program. See Attorney General's opinion.
36.	The MCZMP fails to contain an adequate method of assuring that local land and water regulations do not unreasonably restrict uses of regional benefit.	See Chapter 9 for discussion of regional benefit.
37.	A discussion of what areas of the coast are to be left open specifically for energy uses, defense uses and other national and regional uses should be provided.	The program is not required to specify particular sites for such uses, but rather to insure predictability in siting. The Summary Map in the March draft indicates development, conservation, preservation areas, etc. and will be used as a policy guide for future state decisions.
38.	The EOEA does not have the authorities necessary to implement the program.	See general question 1 and Attorney General's memorandum in Appendix.
39.	The boundaries are too vague. What is the boundary--the map, the atlas, the description of roads or natural features?	It is the description of roads and natural features described in Chapter 2, the 21A regulation Appendix G and boundary Appendix F, and are shown on the maps in the Coastal Atlas.
40.	The MCZMP does not adequately meet the requirements of Section 306(e) and therefore could not assert the powers referred to in Section 306(d)(1).	See response 68-38.
41.	The MCZMP does not adequately discuss the effects of local regulations on uses of regional benefit, the three new planning elements and air and water pollution control requirements.	See response 68-36.
42.	Small informal meetings do not substitute for highly publicized open meetings.	Only one public meeting on the program is required, but in fact there were five on the DEIS Program.
43.	The Governor did not certify the October 7 Addendum.	That is correct. However, the entire revised program FEIS has been certified by the Governor (see cover letter).
44.	The overview does not state how the plan was chosen among other alternatives.	This is described in the alternative section of the DEIS and is not necessary in the overview.
45.	The coastal zone is not adequately described.	See comment 68-39 above.
46.	The boundary description implies it can be expanded as the situation calls for it. It is unclear whether the boundary description or map is binding.	The description has been clarified in the FEIS. See Chapter 2, 21A regulation Appendix G and Appendix F.
47.	There is no discussion as to why this boundary was drawn or alternatives considered.	See general question 4 for more detail.

48.	The MCZMP imposes new growth management standards on existing law.	There is no discussion of growth management in the MCZMP. The implementation of policies which may effect growth are oriented towards the protection of GAPC's and/or efficient utilization of public investments. The impact of the policies on growth has been addressed in this document.
49.	The legislature has not granted the Secretary the power to interfere with funding applications of local governments.	The CZMA gives a state with an approved coastal plan the authority to decide whether the expenditure of federal funds in the coastal zone is consistent with the approved coastal plan.
50.	Water Quality planning and CZM may conflict. Why continue "208" planning if CZM has already made the decisions?	MCZMP carefully incorporates the 208 planning process and 201 facilities development process into CZM policy.
51.	On p. II-3 the DEIS presupposes the Wetlands Protection Act is a first level introduction to the Wetlands Restriction Act.	Although the restrictions may be placed on wetlands it is not mandatory. See revised discussion, Chapter 5.
52.	Page II-4 of DEIS does not discuss incentives to economic development.	See Sections 3.4, 3.6, 3.7, and Chapters 4 and 5 for this information.
53.	MEPA does not give CZM authority to establish new standards under existing laws.	See response 67-18 for clarification.
54.	The DEIS does not describe specific areas in the remainder of the coastal zone where development can occur.	See Chapter 5 of the FEIS and the Summary Map of the March 77 draft.
55.	There is no description of economic impacts on Pages II-3-6.	Description not necessary in the overview.
56.	On page II-6 it appears all projects in the entire state will be reviewed for conformance to the CZM plan.	Only projects within the coatal zone will be subject to the policies. The section referred to in the comment is entitled "Remainder of the Coastal Zone"; therefore it should be clear that the policies apply only within the coastal zone.
57.	The potential powers of the CZM Plan are grossly understated.	The CZM plan is based on existing state laws and regulations and on federal consistency provisions of the CZMA.
58.	The overview section should be expanded to include a discussion of program funding.	This would add unnecessarily to the length.
59.	The imposition of restriction on "all" beaches should be analyzed.	Analysis occurred during program development. It would add unnecessarily to the length of the document.
60.	Are the recommendations of the Wetlands Program Review Board going to be incorporated in the new DEQE regulations for the Wetlands Protection Program?	DEQE will collaborate with the Wetlands Review Board in review of draft regulations.
61.	The proposed Memorandum of Understanding with DFWRV is not a legally proper method.	The DFWRV is bound by its statutory responsibilities and the MOU only requests the Secretary to enter into any conflicts among EOEA agencies.

62.	DWPC cannot agree in advance not to issue licenses for activities prohibited under Policy 1.	Policy 1 has been revised. DWPC is not required to categorically prohibit certain discharges.
63.	Where is the DWPC Memorandum of Understanding?	DWPC is under DEQE which has an MOU already.
64.	What are the definitions of: Minimize interference, Policy 4 Minimize adverse affects, Policy 5,12 Discourage, Policy 8 Hazardous, Policy 8 Prefer natural buffer, Policy 8 Widespread public benefit, Policy 12 Protect, Policy 2 Impacting, Policy 2 Minimize adverse impact, Policy 2 Ensure, Policy 3,5,9 Condition, Policy 4	The terms are sufficiently specific and self-explanatory to define their intent.
65.	Alternatives to Policy 2 should be addressed, and environmental, social and economic impacts analyzed.	See response to 68-6.
66.	The effects of transferring impacts to other areas of the coastal zone should be analyzed.	Analyzed during program development. Not necessary to be here.
67.	The Plan does not explain methodology for designating anadromous fish runs.	These are based on maps provided by the Division of Marine Fisheries.
68.	The world "localized" should be included on page 60 of the Plan.	This section has been deleted from the FEIS.
69.	Discussion of recreational boating should include a discussion of leaching of toxic anti-fouling coatings from boat bottoms.	This not necessary for program approval.
70.	Dredging section should discuss benefits of dredging and economic/social impacts.	Environmental social and economic impacts are discussed in Chapter 10.
71.	Use of word "conserve" as a regulatory directive unclear.	The wording has been revised.
72.	No discussion of alternatives to Policy 1 or the impacts of such alternatives.	See response to 68-6.
73.	The Wetlands Protection Act does not give the Commissioner of DEQE the right to protect certain coastal areas in advance of permit decisions.	See revised wording of Policy 1 which clearly specifies how only the Wetlands Restriction Act will be used to prohibit uses on a priori basis.
74.	The Wetlands Restriction Act does not authorize a pre-determined system of permissible or priority land use controls.	The list of prohibited and permitted uses is a model order as explained by the revised language.
75.	Alternatives to the permitted and prohibited uses under Policy 1 are not addressed to new paragraph N.	See response 68-6.
76.	How much land and water area is removed by the Policy 1 permitted and prohibited uses?	Currently, 30% of GAPCS are restricted. GAPC's constitute 12% of the coastal zone.

77.	Paragraph N conflicts with paragraph C on page 83.	This is a misinterpretation of the two sections--paragraph N allows the conduits transporting the discharge to cross the cited wetlands while paragraph C prohibits the discharges into the wetlands.
78.	No basis for putting burden of proof on applicant, since permit statutes regulates variances or exceptions.	This has been clarified in the revised Policy 2.
79.	EFSC did not agree not to site energy facilities in APR's.	This is correct--they only will give prime consideration. See revised Policy 2.
80.	Policy 3 requiring highest level of water quality infringes on the responsibilities of DWPC.	See revised Policy 3.
81.	CZM should not and has no authority to review NPDES permits.	DWPC and EPA still have primary review of NPDES permits; however, CZM may review for consistency to applicable policies.
82.	Will CZM monitor and coordinate 208 programs throughout the state?	Only those 208 programs within the coastal zone.
83.	What standards are being proposed for the Title V Code? These should be in the FEIS.	See response 67-16 and revised language of Policy 3.
84.	Criteria for solid fill piers, bulkheads, and other marine structures, are overly broad and stated in absolute terms. Alternatives of this policy should be addressed and analyzed.	The criteria are not overly broad. See response to 68-6.
85.	How can CZM legally exercise control over the design and construction of highways, roads and bridges?	Control is provided by means of the Wetlands Protection Act, also MEPA and federal consistency.
86.	No authority exists over dredging and transportation and disposal of dredged material.	MGLA Chapter 2IA. S.14 confers such authority on DEQE.
87.	Policy 6 is too absolute as a prohibition of activities of economic importance.	This is a misinterpretation of the Policy. The Policy does not provide "absolute prohibition"--the word "accommodate" is used. See Policy 6.
88.	Does Policy 7 create new licensing standards?	This is an advisory, non-regulatory policy--no new standards are established. See revised Policy 14.
89.	The DEIS and Plan do not adequately identify the scope of the coastal hazard problem in Massachusetts.	See Section 3.2 for a brief description and hazard map.
90.	Alternative solutions to erosion problems include: no preference for or against structural solution. Should be analyzed.	See response 68-6.
91.	Subpart "a" of Policy 8 and Subpart "b" are illegal.	Policy 8 has been incorporated into Policy 1. See revised Policy 1.
92.	The relationship of EOEA with other state agencies in implementing Policy 9 is unclear.	See Policies 15 and 26 which details the relationship between CZM and EOTC and DWPC.

93.	Will land owners be compensated for lands acquired under Policy 10?	Yes, just compensation will occur.
94.	Where do the funds come from to implement Policy 10?	BOR Lands and Water Conservation money could be used and other programs which are listed under Policy 16.
95.	Policy 12 is biased against structural solutions.	Structural solutions will be approved when nonstructurals are shown to be too costly, ineffective, or legally infeasible.
96.	Subpart "a" and "b" of Policy 12 are unclear and not legally enforceable.	One of the seven interests of the Wetlands Protection Act is "storm damage prevention" which permits implementation of this Policy. (See Policy 4.)
97.	The terms "adjacent properties" and "downcoast areas" are too vague in Policy 12 to measure impacts of structural solutions.	These terms will be used on a case-by-case basis with individual permit applications.
98.	What is the meaning of the following terms in Policy 12: cost prohibitive ineffective legally infeasible greater than local significance substantial public benefit seriously impair adversely affect downcoast areas extreme circumstances	The terms are sufficiently specific and descriptive to define their intent.
99.	There is no authority to implement Policy 13.	This is only an advisory policy. See revised Chapter 4, Policy 18.
100.	Justification should be given for statement that "utility systems should be placed underground."	This advisory statement referred to their visual impacts.
101.	The Massachusetts Historical Commission does not have the power to deny through federal consistency, actions that would harm historic qualities.	The Commission will advise the CZM program which does have the authority.
102.	Clarification is needed as to whether MEPA visual concerns are to be applied to private projects or only to government projects.	This will apply to all projects requiring a state permit or funded by the state or federal government. (See Policy 12.)
103.	There is ambiguity as to whether Policy 15 is or is not enforceable for federal consistency purposes.	This ambiguity has been corrected in the FEIS. See revised Policy 20.
104.	The Procedural Steps for the Scenic Roads Act, and Outdoor Advertising Control Board are not adequately outlined in the program.	See Policy 11 for clarification and the OAB regulations.
105.	Policy 17 is contrary to law.	See revised Policy 7 for clarification and Attorney General's opinion.
106.	A more broad definition of coastal dependency, namely one of economic dependency ought to be studied.	This will be looked at during the first year of Section 306 funding, but is not required for approval.

107.	Policy 18 is vague and unclear. Will this policy result in foregone economic development policies?	No, it will not. See revised Policy 19.
108.	Policy 19 and 20 are biased against balanced economic development.	See revised Policy 20. It is not biased against economic development.
109.	The plan fails to adequately address the economic, property tax, environmental and social impacts of SRA's.	The SRA category has been deleted from the program.
110.	Impacts of the five interests listed under Remainder of the Coastal Zone (p.11-5) are inadequately described.	Impacts on development resulting from protecting these five interests are adequately addressed in Chapter 10 and Chapter 11.
111.	The DEIS does not adequately describe the effects on competing land use of the public taking of an additional 50 miles of beach.	The MCZMP does not propose to take 50 miles of beach.
112.	The program does not adequately address the impacts on the recreation policies.	The DEIS adequately addresses impacts of the recreation program pursuant to CEQ guidelines.
113.	DEIS fails to discuss alternatives to public acquisition for expanding recreational facilities and access to coastal resources.	The EIS does discuss alternatives such as increased public transportation to existing beaches.
114.	It is unclear whether the energy policies are enforceable on the EFSC since they are not listed as enforceable. How can the EFSC "weigh" and "consider" the 18 specified policies listed and not have them be enforced?	See general response 3.
115.	There is a conflict within the DEIS (p. IV-5 and p.5 of the attached August 23, 1977 memorandum) regarding when and how the CZM policies are binding on the EFSC.	There is no conflict. Both texts explain that the EFSC is obligated by its regulation 62.9(3) to follow the CZM policies once they become state environmental policy as will be done when the 21A regulations are promulgated. The Memorandum of Understanding itself does not trigger the policies as binding it merely clarifies when the binding occurs.
116.	Even 21A regulations will not trigger enforceability on EFSC (see above) since 21A regulations are illegal.	See general question 3 and Attorney General's findings that 21A regulations are legal.
117.	EOEA cannot establish land use and energy siting policies which are binding on EFSC.	See general question 3.
118.	EOEA cannot bind EFSC to the principle of "coastal dependency."	The EFSC is not bound to follow this principle, they have agreed to consider it in making their decisions.
119.	EFSC cannot be required to disapprove the siting of energy facilities in APRs.	See revised wording of Policy 2 which clarifies EFSC's consideration of APRs in siting determinations.

120.	The Secretary of EOEA cannot be an advocate of environmental concerns as a member of EFSC.	The Secretary serves dual statutory functions regarding energy facilities in the coastal zone--as a member of the Council and pursuant to various environmental statutes, to carry out and implement environmental policy and laws. Principles of administrative law are strict in that a single administrator cannot rule in adjudicating matters where to do so would be a pecuniary or personal conflict of interest, but the law holds that matters of policy are not governed by as strict a test. The Secretary will act fully within the law, but by her appointment to the Council, she must inherently bring to its deliberations an environmental perspective.
121.	EOEA cannot impose eighteen new policies on the energy industry and EFSC by the manner proposed.	See general question 3.
122.	EOEA cannot by MOU bind EFSC to issue regulations.	See general question 3.
123.	Policy 33b, requiring the acceleration of solar and wind power and conservation measures cannot bind agencies.	This is an incorrect reading of Policy 33b. It said "Encourage the acceleration of uses of solar and wind power etc." Policy 33b is now placed in the non-regulatory category as Policy 25.
124.	Policy 31 refers to a function of the State CZM office of "providing for" electric energy development. No such function or procedure has been authorized by law.	This is an incorrect reading of the sentence which only refers to studying the provision of electric energy. The sentence is not in the FEIS.
125.	The CZM policies do not discuss adequately the economic and environmental costs associated with inland energy facility siting.	The EFSC must consider such costs in its forecast and construction approvals as required by statute. A more detailed description of such costs would not be appropriate until specific costs were available for consideration.
126.	The impacts on other states of discouraging and systematically excluding energy facilities are not adequately addressed.	This is not a requirement of CZMA.
127.	The systematic exclusion of Outer Continental Shelf related on-shore activities from APRs and other large areas of the coast and the bias against "non coastally dependent" components of such activities will cause socioeconomic impacts on Massachusetts and other states which are not adequately discussed.	Energy facilities are not discouraged by the policies, since the policies and EFSC's statutory obligations provide for a balancing of need, cost, and environmental impact. Certain energy facilities will be excluded in wetlands restricted under the Wetlands Restriction Act, but this by no means excludes them from the entire Massachusetts coastal zone.
128.	Alternatives to the energy policies are not discussed.	See Part IV for a general discussion of alternatives to the proposed action. It is not a requirement of the CZMA to discuss alternatives to each policy.
129.	Energy facilities are uses of regional benefit which may be unreasonably restricted.	See response 66-5.

130.	Effects on the CZM program of the exclusion of several energy activities such as nuclear power plant radiation safety and hydroelectric and interstate gas transmission activities from state jurisdiction are not addressed.	The state retains authority over these facilities with regard to siting, land use, water use, pollution control, etc. The policies adequately address the issues of state concern associated with these facilities.
131.	DEIS does not discuss exemption of smaller energy facilities from EFSC's jurisdiction	See footnote to Policy 8.
132.	Discussion of Policy 33 in DEIS is inadequate.	See Policies 9 and 25 for revision.
133.	The Title "private investment" is inaccurate (DEIS, p.11-28).	Correction has been noted in administrative record. The title does not appear in the FEIS.
134.	Alternatives to the policies inadequately addressed.	See response 68-6.
135.	The DEIS discussion of economic activity is over-simplified, vague, uninformed and naive. Tenor of discussion is not positive.	See general question 7.
136.	The alternative of designating other state agencies to implement the economic development policies is not considered.	This is not a requirement of the CZMA.
137.	Effects of the plan's complexity on small businessmen and its misuse by environmental interests to prevent development are not discussed.	This program adequately addresses the effects on small businessmen and small businesswomen and on large business people as well. By promulgating regulations in accordance with CZM policies, a consistent application of the policies will be ensured.
138.	DEIS fails to consider whether existing laws and regulations already unreasonably exclude uses of regional benefit.	Existing state laws and regulations were examined in preparation of the MCZMP. See Chapter 9 for discussion of regional benefit.
139.	Yardsticks to judge the permissibility of uses in the coastal zone are not provided.	The policies provide sufficient specificity, yet maintain some flexibility.
140.	DEIS inadequately described effects of policies 10 and 21-23, 25-27 on the amount of land designated as developable in the zone.	See Chapter 5 for how the policies affect development.
141.	DEIS does not adequately address negative economic impact on project feasibility resulting from CZM process such as legal exposure, collateral, legal attack, and investor insecurity.	See general question 7.
142.	Relationship of policies 14 and 15 to policies 34-38 is vague in relation to what are developments of local concern.	See revised wording of policies. Chapter 1 summarizes statewide concerns in the coastal zone, while the National Interest Chapter 9 summarizes national and regional concerns. All remaining concerns are thus considered to be local issues only.

143.	The DEIS fails to adequately consider the effects of the density constraints in the state environmental code.	It is not required that the DEIS consider the impacts of all provisions of all statutes to be used in implementation.
144.	There is a conflict between transportation investments for recreation access and the effects it will have on developable land. This only encourages local growth control which then precludes improved access.	The policies are intended to ensure access to recreation resources on a scale which the resources can support. MCZMP cannot prevent imposition of local growth controls.
145.	Impact of Policy 27 is inadequately described. Does this include potential areas?	See Policy 13 for revision. The Policy does not include "potential" areas only "existing public recreation beaches."
146.	No discussion is included of how policies 10, 21, 22, 23, 25, 26, and 27 affect developable land.	See Chapter 5 for discussion of policies significantly affecting developable land.
147.	DEIS fails to consider interaction of policies 34-38 with policies 10, 21-25 and 27 and the effects on land values, development costs, local revenue and tax base.	See Chapter 10 for discussion of probable environmental, social and economic impacts.
148.	The effects on inland communities have been totally ignored.	A discussion of probable impacts on inland communities would be too speculative.
149.	Won't the plan result in increased no-growth restrictions?	The policies are intended to provide a balanced approach for managing growth, not stopping it. To the contrary, technical assistance and grants to localities provided by CZM will be used to actively encourage development in those areas where it can be best sustained.
150.	There is no discussion of the Clean Air Act Amendments of 1977 and their effect on the location of development.	All development must conform to existing federal and state statutory requirements, as noted in Policy 10. Compliance with the Clean Air Act Amendments of 1977 may in fact constrain further development in existing developed areas, depending on the type of development proposal. A discussion of various federal acts is not required.
151.	What effect does CZM have on FWPCA Sections 303, 201, 208 and 404 projects not listed?	See Policy 26.
152.	Policy 35 constrains development to only urban areas.	The policy does not constrain development to urban areas; it encourages assigning highest priority to projects which meet the needs of urban and community development centers.
153.	The program does not prevent increased local restrictions on development, etc.	CZM does not interfere with home rule perrogatives provided by enabling statutes.
154.	The federal consistency provisions will enable CZM to dictate to municipalities where all federally funded projects should be located.	Application of federal consistency is limited to certain policies of the program, as indicated by an asterisk. Also see Chapter 9 (revised).

155.	The anti-degradation policy of DUPC is incorrectly stated.	Agreed. Properly licensed municipal waste discharges and thermal effluent discharges are permitted in anti-degradation waters under existing regulations. Correction has been noted in administrative record.
156.	There is a conflict in that land claimed to be "potentially developable" is really excluded from development if not within potential sewer service areas.	Development that does not require municipal sewage collection facilities would not be excluded - e.g., housing with subsurface disposal systems or larger developments with their own package treatment plants or subsurface disposal systems.
157.	Policy 34 is devoid of any information of the effects of local prerogatives in administration of Title V.	See Policy 10 for revision.
158.	By requiring the 208 plans to be consistent with the MCZMP, CZM has preempted the authority of the 208 agencies.	CZM and the 208 agencies have agreed to ensure that their programs are mutually consistent and have been reviewing each other's work to ensure that such consistency is attained. Section 307 of CZMA requires all federal activities to be consistent with the approved CZM program. This includes 208 and 201 plans and projects.
159.	CZM has no authority to regulate or guide public transportation and sewer investments.	CZM policy in this area basically reflects current state growth policy, EPA policy, transportation policy, and existing criteria used by DWPC to prioritize and review 201 projects. The federal consistency provisions of CZMA require ERDA and DOT funded projects to be consistent with the approved state program.
160.	The program will delay the EPA water clean up program and transportation projects (p.11-29, DEIS).	See revised wording of Policy 26. The requirement to amend/revise the plan for new projects has been deleted.
161.	The economic impacts of the infrastructure policies are not addressed.	See Chapter 10. See general question 7.
162.	DEIS inadequately addresses the three criteria for public infrastructure consistency.	See revised wording of Policy 26.
163.	The plan cannot create in and of itself a self-contained enforcement power by virtue of any policy's inclusion in the plan.	The policies have been reorganized into regulatory and non-regulatory categories.
164.	DEIS does not address the meaning of "providing" in Policy 36 (as in providing Federal...support").	See revised Policy 27.
165.	What does "encourage" mean in Policy 37 and what is the effect on the CZM plan if such measures are not locally adopted?	The state cannot require federal, state, or local consistency with this policy. The program is still approvable without local adoption of this policy.
166.	No authority exists for CZM to implement Policies 36-38. Further discussion of impacts needed, "major development" should be defined.	These policies have been combined into one policy, now Policy 27 which is intended to be advisory only. Further discussion is added. Federal consistency will not be required. Major development is a project subject to MEPA.

167.	The CZM plan provides unlimited legal exposure by virtue of the policies and statements contained on pages 39-305. The text of Policy 38 opens the possibility of MEPA being used illegally.	The preamble to the policies and Chapter 21A regulations and the way the policies have been reorganized minimize such possibility.
168.	The Executive Office of Environmental Affairs has no authority over economic development matters and should not be involved in matters which are the responsibility of other state agencies.	The Governor designated EOEA as the lead agency to develop and implement the CZM program. The intent of the general development policies is not to usurp authority from other agencies more direclty involved in growth planning and promotion of economic development, but to ensure that EOEA involvement in economic development activities involving the use of coastal resources is consistent with statewide growth and economic policies developed by agencies such as Commerce and Development and OSP. In addition, Chapter 21A, Section 2(9) charges EOEA to "promote the best usage of land, water, and air to optimize and preserve environmental quality by encouraging and providing for, in cooperation with other appropriate state agencies, planned industrial, commercial, recreational and community development."
169.	CZM cannot be legally adopted or implemented through memoranda of understanding. Nor can such memoranda be deemed binding and enforceable against private parties. EOEA does not have statutory authority to issue regulations.	The program is implemented through existing statutes and regulations; the MOUs serve as clarification. See the Attorney General memorandum and general question 1.
170.	The designation of "Critical Areas of Concern" does not give EOEA any substantive authority to impose restrictions on uses in such areas. The resolution of conflicts power of EOEA is devoid of substantive content.	See general question 1.
171.	EOEA has no automatic powers to review all federal agency determinations of consistency with the state CZM program.	"Federal consistency" stems from the federal CZM Act rather than state law.
172.	MEPA discussion in the DEIS fails to adequately address MEPA's inability to accept or reject environmental impact reports or the projects and permits to which the impact report relates.	The discussion has been clarified regarding the jurisdiction of MEPA. The use of MEPA is limited as an implementation method. In issuing their permits, however, agencies are required by Section 61 to consider all environmental impacts.
173.	Apparent conflicts existing among CZM policies. Twenty one of CZM's 38 policies are unenforceable.	Policies in FEIS have been organized by regulatory and non-regulatory. Purpose of "unenforceable" policies is to encourage certain actions. CZMA requires techniques for resolving conflicts; in terms of energy facility siting conflicts, the EFSC is the ultimate arbiter under Massachusetts law.
174.	CZM plan does not adequately delineate the scope of the authorities.	See revised Chapters 4 and 6.

175.	The validity of the policies is questioned since it is admitted that 21 of the 38 policies are unenforceable and some of these policies, 1,2, and 8 establishing a system of permitted uses in large areas of the coastal zone, conflict with policies 25-33 which acknowledge the power of the EFSC to override such restrictions.	The policies have been clarified regarding their regulatory nature. See Attorney General's memorandum opinion in Appendix H regarding enforceabilities. See general response 3 regarding EFSC. The EFSC cannot override Wetlands Restrictions.
176.	It is poor management practice to leave the scope of each agency's authority to implement CZM policies for resolution on a case-by-case basis.	During the first year of program implementation regulations will be promulgated for each agency; however, they are not needed prior to program approval. See general question 2.
177.	CZM implementation will lead to conflicts among EOEA agencies, delays in permit reviews and further delays due to litigation due to inconsistencies of regulatory action under the 40 or more Massachusetts statutes.	Implementation will be clearer because all agencies will use the policies as their starting point. See general question 5 for more information.
178.	The CZM plan fails to adequately consider the negative impacts to the national interest in planning for and siting of energy facilities in the coastal zone.	See general question 3.
179.	The DEIS fails to describe or consider the impacts of the Secretary's regulation on existing regulatory programs; specifically adopting the entire 800 page plan by reference as state environmental policy and requiring consistency.	The 21A regulation no longer incorporates the entire 800 page plan, only Chapter 4.
180.	The Secretary of Environmental Affairs is not authorized to override individual EOEA permit statutes.	The Secretary will act only as a mediator when conflicts among agencies arise.
181.	The alleged authority of the Secretary to promulgate the CZM plan as a binding regulation is principally based on the provisions of G.L. c. 21A S 3&4.	The Secretary's promulgation authority is also based on G.L. c. 21A, S2. The wording stating the entire plan as a binding regulation has been deleted.
182.	The power of "comprehensive planning" is clearly confined to the functions of the Office of the Secretary itself.	The office is defined by statute, G.L. c. 21A, S1 to mean the Executive Office of Environmental Affairs, i.e., all the agencies, not just the Office of the Secretary.
183.	Neither the Office of the Secretary nor any agency within the EOEA has the power to establish land use or energy-siting controls through a system of permissible or priority uses. Secretarial power is limited to "coordination" of "administrative" and "jurisdictional" conflicts and line agencies are limited to programs within their own jurisdiction only.	The authority to control any land and water uses results indirectly from existing statutory authority particularly permitting authority over coastal wetlands under the Wetlands Protection Act and tidelands under Chapter 91 and the Ocean Sanctuaries Act and Restricting Authority under the Restriction Program.

184.	To the extent that the CZM land-use and energy policies are advisory and unenforceable under Massachusetts law, these policies are not binding on federal agencies in issuing federal permits or grants, yet the DEIS assumes the enforceability of many of these policies (p.11.7).	Federal agencies must only be consistent with the asterisked policies. Energy policies are enforceable.
185.	The incorporation of the entire CZM plan by reference as a regulation of EOEA is unconstitutionally vague given the standards for clarity and precision of applicable regulations.	Incorporation of the entire plan by reference language has been deleted.
186.	Items such as "statements by the governor" or "statements of environmental policy promulgated by the Secretary of EOEA by secretarial order" cannot be incorporated into regulations without specific references to the statements or orders being incorporated. Nor without a rulemaking proceeding under G.L. C 20A providing public notice of what is being adopted.	Gubernatorial and Secretariat orders, like Executive Orders issued by the President, apply primarily to internal agency operations and are not binding on private parties. In situations where Chapter 30A requires promulgation of regulations, public notice will be provided.
187.	Not possible to address comments to significant aspects of the CZM plan if implementing regulations are not formally proposed before program approval.	Draft 21A regulations have been available for one year and comments have been strongly solicited. A final hearing was held prior to adoption. (See general question 2 for more information.)
188.	Questions the authority of the Secretary under the conflict resolution procedure to interfere in or direct the result to be reached in a permit proceeding by a line agency on grounds that the line agency purports to act inconsistently with the CZM plan.	See response 68-180.
189.	DEIS fails to reflect that MOU's, unless publicly promulgated as regulations under G.L. c. 30A S4, are unenforceable.	March '77 Draft Plan states at page 319 that MOU's are not enforceable but serve to trigger the joint implementation section and to grant standing in agency proceedings.
190.	State CZM may not intervene as a party, appear as an expert witness or comment on the merits of EOEA actions.	Massachusetts G.L. c. 30A, S1(3) permits intervention in agency proceedings by any other person "allowed by the agency to intervene as a party." The MOU's formally allow CZM to make such an intervention.
191.	Appearances by the Secretary in adjudicatory proceedings before the EOEA commissioners or departments could only be interpreted as a direction of the outcome of the case; particularly inappropriate in the case of energy facilities since the Secretary is a voting member of the EFSC.	See Attorney General's memorandum opinion.
192.	The Secretary's regulation (in 6.31) presents a conflict in permitting the MOCZM to appeal decisions of other EOEA agencies in the courts.	See Attorney General's memorandum opinion.

193.	The DEIS inadequately describes the negative impacts of the proposed MOU with the EFSC.	Negative impacts are not expected. See general question 7 with respect to economic impacts.
194.	The CZM plan itself will not constitute a regulation adopted by a state agency at the time of federal approval; therefore no statutory authority exists upon which the provisions in the MOU with EFSC can be based.	21A regulations will be adopted before federal approval.
195.	Under G.L. Chapter 21A, Section 2, the Secretary of Environmental Affairs is not empowered to establish substantive policies.	See response 66-3.
196.	The Secretary's authority to adopt policy must be limited to environmental protection policies. Other agencies of the state are charged with responsibility for health and resource use and development policies.	The Secretary will work to coordinate with agencies outside of EOEA and those agencies where MOU's have not been established.
197.	The Governor's approval does not add to the legal status of regulation; his approval does not make the CZM plan a constitution, statute or duly adopted rule or regulation as required by rule 62.9(3) of the Council's regulations.	The promulgation by regulation by the Secretary of the State environmental policy for the coastal zone triggers the consistency section in the EFSC's legislation. The EFSC has recognized these policies in its MOU.
198.	The MOU (and the DEIS) neglects to take into account the Siting Council's statutory obligation.	The MOU clearly states that it does not eliminate other existing statutory duties of each agency.
199.	The Secretary of EOEA cannot presume that she has the authority under G.L. Chapter 21A, Section 2 to set policies for matters unrelated to environmental protection.	Several of the Secretary's Section 2 powers allow her to make recommendations concerning such matters.
200.	The MOU requirement for the EFSC to act consistently with the CZM Plan is beyond the Council's authority. Administrative agencies may not alter by regulation or agreement the statutory standard under which it decides cases.	See general question 3.
201.	The MOU between EOEA and EFSC in paragraph 3 of the responsibilities section states that the Council will adopt regulations requiring the consideration of at least one inland site for coastal energy facilities in accordance with the CZM plan. A similar statement on p. 11-48 of the DEIS is unclear.	For coastally dependent facilities one alternative coastal site will be evaluated. For non-coastally dependent facilities, two alternative sites, one of which is inland, will be evaluated. This has been clarified under Policy 8.
202.	Evaluation of inland alternatives will make the entire state subject to review under CZM plan.	The Council will evaluate the alternative inland sites.

203.	The State CZM office is organized as a branch of the Secretary of Environmental Affairs. It would violate ethical principles applicable to judicial officials to permit personnel within the Secretary's office to intervene as parties, or otherwise appear as advocates, before the body on which she sits as a voting member deciding cases.	General principles pertaining to judicial impartiality do not necessarily apply to all administrative agency hearings. Pursuant to the principles of exhaustion of administrative remedies, superior administrative officers frequently decide appeals of matters in which their subordinates have participated as long as they have only a policy and not a personal or pecuniary interest in the matter.
204.	The MOU makes a distinction as to such areas which have been restricted under the Wetlands Restriction Act, G.L. Chapter 130, Section 105, and those which have been designated but not restricted.	This comment is unclear. The EFSC's override authority does not apply to wetlands restrictions orders placed on deeds.
205.	"The Energy Facilities Siting Council" cannot give prime consideration to environmental impacts in particular areas at the expense of consideration of the need for power and cost impacts.	"Prime consideration" serves as a very high presumption of environmental impact in such areas but can be outweighed by other factors in the balancing process.
206.	The Siting Council is able to override provisions of the CZM plan, as well as decisions of EOEA agencies made on the basis of EOEA interpretation of the CZM plan.	See general question 3 and memorandum. The Council can override EOEA. This process is fully described in Policy 8 and Chapter 9.
207.	The CZM plan and its policies are to be considered to be only advisory in nature by the Siting Council.	Not true. See general question 3.
208.	The DEIS should consider alternatives to the Memorandum of Understanding with the Siting Council.	Evaluation of alternatives is made on the basis of alternatives to whole program.
209.	The proposed MOU with the Martha's Vineyard Commission should be available for comment.	There is no MOU with the Martha's Vineyard Commission. The contract between CZM and the Martha's Vineyard Commission, for interim services prior to program approval, serves as the current basis for coordination. The 306 contract will be developed when program approval is imminent and the contract will be reviewed through the A-95 process.
210.	The type of "public participation" used to date in preparing the CZM plan has not provided adequate opportunities for participation not only for the business community but also to the Massachusetts legislature.	Business interests were consciously sought in forming the Governor's Task Force and Local Citizen Advisory Committees. Several of the organizations making these comments were members of the Task Force. See general question 9.
211.	The federal annual review procedure should include specific detailed mechanisms for all interested Massachusetts citizens to participate.	This will be handled by the future advisory groups, see sections 5.8 and 5.9 of the 21A draft regulation.
212.	Chapter 5 misstates the power which this plan will have over local development decisions.	The plan does not deny the influence which state actions have over local actions. This action has, however, been clarified with regard to federal consistency jurisdiction.

213.	Of the projects available for funding under the plan, the bias in the policies toward environmental concerns predispose how financial assistance will be allocated.	Purpose of technical and financial assistance is to promote certain actions by local governments. Criteria for project selection is presented in Chapter 8 and, if there is a bias, it is towards harbor development.
214.	How can the DEIS suggest on page 11-51 that local communities know the extent of state activities?	State authorities and activities that are relevant to CZM are already in existence and known to local communities.
215.	The Citizen advisory councils are not described.	See general question 9.
216.	In the discussion of effects on local communities, there is no mention of economic effects.	See general question 7.
217.	The Overview section must include a discussion of program funding. Local funding criteria and priorities should be presented.	Program funding is discussed in Chapter 8.
218.	The reference (p. 366, March draft of the CZM plan) should reflect the fact that Section 7.11 of the draft regulation requires a consistency certificate only for federal actions, or is it the intent to certify all projects? What about developments of local concern, will they require certification as well?	A consistency certification is only for federally funded projects, direct federal actions, and federal permitting and licensing activities.
219.	How will technical assistance affect local communities?	Technical assistance will have a positive impact on local communities. See Chapter 8.
220.	The DEIS also fails to take cognizance of the inherent delays in the Massachusetts permitting process by limiting the maximum time period for funded projects to one year.	Financial assistance is for planning, not construction costs. Renewals may be sought. CZM funding is on an annual basis.
221.	The DEIS on page 11-56 incorrectly states that interstate gas facilities are reviewed by the Energy Facilities Siting Council.	The Council receives information on interstate gas facilities.
222.	The DEIS fails to describe how maritime shipping is given high priority.	The ombudsman/advocate role of CZM before other funding agencies is an affirmative means to promote shipping.
223.	"A problem arises where these CZM policies may conflict with planning determinations under P.L. 92-500 S. 208." What about future treatment plant proposals, will they require amendments to the MCZMP?	Close coordination of 208 plans and 201 grants is occurring to resolve conflicts. MCZM is currently reviewing 208 plans to determine where they are consistent with CZM goals and objectives. Future treatment plants will have to be consistent but will not require an amendment to the program as was described in the DEIS.
224.	The plan is of statewide importance, but there was no attempt to include citizens or interested groups from non-coastal communities.	Non-coastal residents served in the subcommittees of the Governor's Task Force.

225.	The DEIS should explain the degree to which local citizen groups were consulted on the basic policies--did they merely identify specific problems in local areas?	Chapter 7 addresses the amount of public input there was on all aspects of the MCZMP.
226.	It should be acknowledged that the public hearing process is of prime importance. Adequate comment is impossible because of the absence of regulations.	We concur that public hearings are important. The final 21A regulations are incorporated in the FEIS.
227.	Are there new laws, standards and regulations that are administered differently or is the CZM plan a mere restatement of existing laws, standards and regulations?	There are no new laws proposed under the MCZMP.
228.	The DEIS fails to identify the statutory reference for much of the program.	See revised Section 6.6.
229.	The DEIS attempts to summarize the environmental impacts. However it fails to accomplish this goal... what and where are the impacts?	The EIS is a programmatic response to impacts, i.e., it defines impacts of the overall program, not of hypothetical projects as influenced by MCZMP policies.
230.	What state law allows or prohibits actions near historic sites?	MEPA, G.L. 30, S. 61-62 permits evaluation of impacts on historic and recreation sites. See Attorney General's memorandum opinion in Appendix H.
231.	The preamble paragraph on p.III-8 suggests that existing laws will be intensified, and, under CZM, they will be implemented differently. How is this in concert with statements that no new laws will be created?	New statutes are not needed. The purpose of the MCZMP is to coordinate programs, increase staff support and make EOEA regulations consistent. The word"intensified" has been deleted.
232.	The DEIS on page III-9 inaccurately describes the relationship between the Restriction Act and the Protection Act...the legislature enacted two laws for two degrees of areas.	The Protection Act is a case-by-case evaluation, the Restriction program is designed to provide long-term protection before specific development proposals are made.
233.	In view of the requirement for matching state funds, the DEIS does not describe any effect on inland programs resulting from a priority use of state funds for coastal communities.	State match for CZM funds is 20%. No staff or funds will be removed from inland areas because of increased effort in coastal areas.
234.	The DEIS is very deficient in its analysis of the effects of the restriction programs. In particular it does not indicate that approximately forty suits are pending in Superior Court concerning Wetlands Restriction.	The courts determine whether there has been a taking. Nearly all of the 40 suits are on inland restrictions.
235.	Where in the Wetland Protection Act did the Legislature give local commissions authority over areas 100 feet from the 100 year floodplain?	The existing regulations provide for jurisdiction within 100 feet of the 100 year flood line.

236.	The Wetlands Protection Act is project specific, not site specific and does not permit regulations to be promulgated that effectively create permitted and prohibited uses.	Distinctions between the two wetlands acts have been clarified in the revised wording of Policy 1.
237.	There is no discussion in the DEIS of irrevocable permits issued by the legislature.	The March Draft MCZMP states, on p. 177, that CZM will actively support legislation granting irrevocable licenses for consistent projects. The legislature is not bound to pass such bills, however.
238.	The Massachusetts G.L. Chapter 30, Section 62, MEPA impact report procedure is not a regulatory permit process. It is a disclosure law.	Section 62 of MEPA sets out the procedures for fulfilling the substantive duties of Section 61.
239.	DEIS admits there are gaps in historic site protection. Why isn't this discussed in the March Draft MCZMP?	This has been incorporated in the administrative record.
240.	The legal status of APR designation is in doubt. Serious questions have been raised as to the authority for such designation and the scope of its effects.	CZMA regulations only call for a process for designation. Consult Attorney General's memorandum opinion in Appendix.
241.	Is EOEA in control of the Mass Transportation Department?	No. There is an MOU between the Secretaries of EOTC and EOEA to establish review and federal consistency procedures for transportation projects. See MOU in Appendix.
242.	The Secretary doesn't have adequate authorities to implement the program.	See general question 1.
243.	All regulations should be in place before program approval.	See general question 2.
244.	The large upland areas within the coastal zone should be reduced, particularly on Cape Cod.	The Cape Cod citizen advisory committee voted twice to include the entire Cape within the coastal zone. (See general question 4.)
245.	Are the maps binding as part of the CZM Plan?	The maps are policy guidelines outlining future state actions. The maps will be used in considering state investment decisions.
246.	We point out that the August 23, 1977 Memorandum being an unsigned position paper of the Secretary's office, has no legal status as part of the CZM plan.	The August 23, 1977 Memorandum is a fuller explanation of the EFSC siting process; it will not be part of a regulation.
247.	On page 1, the Memorandum states that the CZM program will evaluate energy facilities as it would any facilities, with consideration of opportunities for visual enhancement, impacts on recreational opportunities, water dependency, etc. This statement does not take into account the prime role of the Energy Facilities Siting Council with respect to Energy Facilities. Are Policies 1-27 binding on the EFSC?	See general question 3.

248.	With respect to items (1) through (4) on pages 3-4 of the Appendix, the Memorandum assumes that many substantive and procedural regulations are already in place.	Items 1-4 discuss how the EFSC procedures and the CZM policies interrelate.
249.	We disagree particularly with the first unnumbered paragraph of the Memorandum, since the EFSC may under its enabling legislation override any denial, condition or disapproval ... including wetlands restrictive orders.	Comment is incorrect.
250.	The memorandum on p.5 assumes... that a secretarial regulation under G.L. C.21A, will be in place prior to program approval...Such a regulation, formally available for public comment, should be part of the DEIS review procedure in order to provide for meaningful public participation.	The draft regulation, published in Appendix G to the plan, has been available for review for more than six months. The final regulations are included in the FEIS.
251.	On p.6 the Memorandum fails to take into consideration that the concept of coastal dependency is absent from the siting council's enabling legislation, and also from the enabling legislation of the EOEA permitting agencies.	The council can evaluate alternatives. Waterways is the chief EOEA authority implementing this policy and access for navigation is clearly a part of the public trust of the tidelands.

Chamber of Commerce et al Appendices:

Five of these Appendices (A-D and unlettered) consist of legal memorandum, all of which, as stated by the Chamber's letter of December 13, 1977, were prepared prior to the DEIS. These were included (incorporated in their entirety) because, purportedly, "the concerns addressed thereon (sic) have not been adequately resolved in the program of the DEIS."

One of these, "Existing Institutional Capacity for the Management of Resources and Growth in the Massachusetts Coastal Zone," dated July 1, 1975, by Alan H. Kaufman, Esq., was prepared over two and a half years ago for the Massachusetts Office of CZM during the preliminary stages of program development. It is 154 pages in length and raises innumerable, detailed issues, major and minor, most of which were fully addressed during program development, particularly by the 264 page report prepared by Dean David Rice, "Legal Authorities for the Implementation of the Massachusetts Coastal Zone Management Program," in Appendix D of the March Volume I Draft.

It seems unlikely that the comments consider every issue raised by the Kaufman report still unresolved and in the absence of further clarification, it is assumed that the issues they do consider unresolved are essentially the same as the major issues raised by three legal memoranda dated April and May 1977 and repeated in the draft legal commentary on the program dated October 17, 1977. These three legal memoranda also predate the DEIS and again it seems probable that many of the concerns have been resolved (see particularly EOEA response to October 17 document, dated October 25, 1977), but the following appear to be the major comments.

1. The boundary is too extensive.	See general question 4.
2. The Secretary does not have the authority to adopt and implement the CZM Program under Chapter 21A.	See general question 1.
3. Neither the Secretary nor any constituent EOEA agency has the power to adopt predetermined use restrictions pursuant to the Wetlands Protection Act.	Comment was based on misreading of prior draft program. Program never attempted to adopt such restrictions. Point was clarified in DEIS (see Policy1) and is further clarified in FEIS.
4. The policies of the program are not binding upon the EFSC.	This is the same comment as that made by Chamber earlier throughout their comments. See general question 3.

Appendix E consists of a letter from John I. Kearney to Michael Shapiro dated October 28, 1977 commenting on OCZM's federal consistency regulations.

Appendix F consists of an undated letter from Robert Knecht of OCZM to Hon. George Rodgers thanking him for his interest in the program and confirming the timetable for DEIS comments. Contrary to the assertion on page 12 of the Chamber et al letter, it does not indicate program approval prior to completion of the full NEPA/MEPA process.

How the EFSC procedures satisfy the requirements of Section 305(b)(8) is specifically addressed in the EOEA Memorandum of August 23, 1977 found in the DEIS. This memorandum also discusses the relationship of this requirement to the national interest, which is further described in Chapter 9 of this document.

The EFSC's process provides for full consideration of the national interest in the siting of any facility in the coastal zone in accordance with the procedures established by the MGLA Ch. 164 (see response below). The CZMA does not require the type of affirmative commitment to site energy facilities in the national interest in the coastal zone as suggested by the commentator.

Comment	Response
69. New England Regional Commission	
1. The program is negative on encouraging economic growth; should be positive inducement to economic development in coastal zone.	Program does so; see Policies 7, 8, 20, 27.
2. Program doesn't provide for coordination on interstate coastal zone management issues.	The New England States and New York have formed the Interstate CZM Task Force, operating under the New England River Basins Commission. Where possible, issues of an interstate nature have been given consideration. Coordination is expected to continue during implementation. See letters in Appendix C.
3. Concern about authority to implement program.	See general question (1).
4. Program should pre-select sites for energy facilities.	EFSC evaluates energy facilities on the basis of need, supply, and environmental impact; under current procedures, EFSC doesn't direct applicants to site facilities on preselected sites, but weighs alternative sites proposed by applicants. Further, EFSC appeal process designed to ensure that once applicant's proposed site is approved by EFSC, other State and local regulation isn't unduly burdensome or capricious.
5. Ocean Sanctuaries Acts prohibit construction of OCS oil or gas pipelines by shortest route from Georges Bank to Cape Cod, thereby handicapping Georges Bank OCS development or forcing use of environmentally more dangerous tankers.	While Ocean Sanctuaries Acts do prohibit placement of permanent structures on seabed or subsoil, Acts do allow for projects licensed under MGLA Chap. 91, such as pipelines, under certain circumstances. Specifically, an oil or gas pipeline could cross an ocean sanctuary, provided it's of public necessity and convenience and doesn't seriously alter or otherwise endanger the ecology or the appearance of the ocean, the seabed, or subsoil thereof in the Cape Cod National Seashore.
70. Gilbert S. Tower, Cohasset	
1. Recommends that a chapter on salt marshes be added to MCZMP.	A description of salt marshes and their ecological significance is included in the Marine Environment section of the March 1977 draft MCZMP and in Section 3.1 of the FEIS.
2. Proposes amendment of the Coastal Wetlands Restriction Act (Chapter 130, Section 105) to provide for for various types of development in coastal wetlands.	The Coastal Wetlands Restriction Act is an important part of CZM implementation. CZM is opposed to any amendments that will weaken this Act. Model restriction order (Policy 1, Section 3.1) specifies permissible development.
3. The MCZMP violates home rule.	See general question 10.

Comments	Response
70. Gilbert S. Tower, Cohasset (cont.)	
4. Identifies need for "some kind of oversight legislation" in order to incorporate citizen input through legislative representation.	Citizen Advisory Councils are being formed to ensure continued regular input to MCZMP (see Section 6.7 and general question The MCZMP doesn't preclude new legislation if citizens and their representatives find it desirable. If legislation were passed, the MCZMP would probably be amended to reflect new law. (See general question 9 for more information on amendments to MCZMP.)
71. Jeanne T. Gormley, Cohasset	
1. Recommends that all laws of the Commonwealth be studied and amended to clarify the property rights of owners, especially MGLA C. 184, S. 31.	Massachusetts General Laws establish the property rights of owners. MGLA C. 184, S. 31, the Conservation and Preservation Restrictions Act, establishes that the holder of a conservation restriction can either be a governmental body or charitable organization.
72. Edward Sanchez, South Dartmouth	
1. Opposes implementation of CZM by the Commonwealth and prefers local implementation. Perceives CZM as an unnecessary bureaucracy. Unsure of who will be responsible for CZM implementation, the Office of Environmental Affairs or the Board of Coastal Resources.	Of the options available under the CZMA (P.L. 92-583), Massachusetts chose state and local authorities to implement the program. State authority rests with departments, divisions and offices of EOEA and with the EFSC. Relying solely on local implementation, without mandatory state standards, would not satisfy requirements of the CZMA regarding national and regional interests. The EOEA will be the lead agency.
2. Identifies need for "some kind of oversight legislation" in order to incorporate citizen input through legislation representation.	Citizen Advisory Councils are being formed to ensure regular, continued input to MCZMP (see Section 6.7 and general question 1). The MCZMP does not preclude new legislation if citizens and their representatives find it desirable. If legislation were passed, the MCZMP would probably be amended to reflect new law. (See general question 8 for more information on amendment to MCZMP).
73. Charles L. Soares, Swansea	
Expresses strong support for CZM as a program that balances economic and environmental needs.	No response necessary.
74. Petition from 43 Residents of Somerset, Swansea, and Fall River	
Opposes CZM because it would reduce home rule authority.	No response necessary.

Comments	Response
75. Gregg Robinson, Buzzards Bay	
1. Opposes CZM because it infringes on home rule.	See general question 10.
2. Opposes the process of "networking" because it adds additional bureaucracy to state government.	See general question 5 and 10.
3. Opposes CZM because it fails to balance economic and environmental concerns.	The program has policies to expand economic interests with least environmental damage.
76. Thomas Lynch, State Representative First Barnstable District	
1. Raised concerns about discrepancies in scope and application of C. 21A to implement plan.	A joint legislative/executive/public review committee has been formed to review regulations promulgated under C. 21A.
2. Expresses support for MCZMP.	
77. Representative David Lane, Essex	
Requests that an operating gravel pit in Essex be excluded from the proposed APR because Policy 2 would prohibit dredging and would give priority to restricting the land pursuant to the Wetlands Restriction Act.	The boundary for the APR is a proposed one based on the 100-year floodline. A final APR boundary will be addressed at the public hearing on the actual designation by the Secretary of Environmental Affairs. Policy 2 has also been changed to clarify that APR designation doesn't prohibit or eliminate existing uses. Policy 2 states that in APR's the Coastal Wetlands Restriction Program will apply on a priority basis to salt marshes, shellfish beds and beaches. However, if an area has received a formal exemption in the past from the Restriction Program, that exemption will be honored.
78. Peter McDowell, State Representative, Fourth Barnstable District	
1. Requests delay of program approval until the legislature authorizes the Secretary of EOEA to implement MCZMP.	The Attorney General has clarified the scope and authority vested in the Secretary of EOEA by C.21A. Chapter 21A permits the Secretary to implement the MCZMP without further legislation.
2. Secretary of Environmental Affairs doesn't have authority to issue substantial regulations on land use planning, or energy policies, or to create a new office; i.e., Office of CZM.	See general question 1 and Attorney General's memorandum opinion.
3. Eminent domain authority is not vested in any EOEA agency as could be construed in draft C.21A regulation (March 77 draft MCZMP, p. a-50, 6.64(d))..	The Final C.21A regulation lists EOEA agencies with eminent domain power.
4. Authority to purchase land isn't vested in any EOEA agency as could be construed in draft C.21A regulation (March 77 draft MCZMP, p. a-50, 6.64(e)).	The final C.21A regulation lists EOEA agencies with authority to purchase land.

Comments	Response
78. (cont.)	
5. The draft C21A regulation illegally gives CZM the right to appeal to the courts from any decision rendered by an EOEA agency.	See Attorney General memorandum in Appendix H.
79. John F. Aylmer, State Senator, Cape and Islands District	
Supports MCZMP except inclusion of mid-Cape area bounded by Route 6 and Route 28.	The entire Cape within the coastal zone. (See general question 4 for more information.)
80. Brenda Boleyn, Brewster	
Expresses support for MCZMP and for inclusion of all Cape Cod with the boundary.	The entire Cape is within the coastal zone (see general question 4 for more information).
81. William O'Connell, Quincy	
Expresses support for MCZMP.	No response necessary.
82. Ralph H. Goodno, Danvers	
Expresses support for MCZMP.	No response necessary.
83. Grace Saphir, East Sandwich	
1. Why had the MCZMP been given Federal acceptance before the public hearings were held?	The DEIS stated that the Federal Office of Coastal Zone Management believed the plan was acceptable, but final approval will not be given until the public has had the opportunity to comment for 30 days on this FEIS.
2. The MCZMP says no new agency will be established to administer the program; yet the MCZMP Addendum states an Energy Facilities Siting Council has been established.	The EFSC was established by statute prior to the development of the MCZMP.
3. The MCZMP will infringe on home rule.	See general question 10.
4. Aren't the chief interests of CZM offshore sand and gravel mining and energy facility siting?	Offshore mining and energy facility siting are only two of many CZM concerns. The MCZMP attempts to address various concerns with equal emphasis.
5. Why is it necessary for the boundary to extend inland one-half mile?	See general question 4.
84. Massachusetts Lt. Governor Thomas P. O'Neill, III	
Expresses full support for the MCZMP with emphasis on potential benefits to Massachusetts economy.	No response necessary.
85. Jean Foley, Pembroke	
Fully endorses the MCZMP and designation of the North River as an Area for Preservation or Restoration.	No response necessary.
86. William H. McCarty, Swampscott	
Fully endorses the MCZMP, emphasizing that the plan shouldn't be weakened before implementation.	No response necessary.
87. George Lane, Harwich	
Endorses the MCZMP including the full inclusion of Cape Cod within the coastal zone	The entire Cape is within the coastal zone. (See general question 4 for more info.)

Comments	Response
88. Dr. Thomas Leschine, Falmouth Expresses support for the MCZMP, while raising general concerns in evaluating the program. Specifically, does CZM have the authority to assure that energy development won't preclude fulfilling other CZM goals?	See general question 3.
89. Dr. Judith Spiller, Falmouth Expresses support for inclusion of entire Cape Cod within the CZM boundary.	The entire Cape is within the coastal zone.
90. Dr. Arnold Lum, Falmouth	
1. Protection under the APR designation should be expanded to include other habitats (i.e., rocky intertidal shore) which don't meet the five criteria for "high natural productivity."	A rocky intertidal shore or other natural area can be nominated for designation as a Critical Environmental Area pursuant to the Secretary's authority under G.L. C.21A s. 2(7). However, the criteria for designation of APR's were designed to give priority to large complexes (i.e., estuaries) which were the most threatened by improper use and could be protected using existing laws.
2. Policy 2 should establish as one of its goals interstate coordination for preserving natural features.	The CZM Act requires that there be interstate coordination of CZM plans. The New England states, through the New York/New England Coastal Zone Task Force, fund a full-time liaison at the New England River Basins Commission to facilitate coordination and exchange of information. Also see letters Appendix C.
3. There should be a policy supporting nomination of APR's as Federal estuarine sanctuaries or at least an explanation of the estuarine sanctuaries program should be given.	Because of the implications of estuarine sanctuaries designation (restriction of use to scientific research), CZM has not recommended at this time designation of any areas in Massachusetts.
4. The MCZMP doesn't mention the state's policy on the Federal Marine Sanctuaries Program and its potential.	There is no official state policy regarding Marine Sanctuaries. MCZM has worked with Congressmen and state and Federal offices on proposed marine sanctuaries; the MCZMP could be revised to incorporate such recommendations.
91. A. Dix Leeson, Jr., Cambridge Expresses support for the MCZMP.	No response necessary.
92. Susan Nystedt, Marblehead Expresses support for the MCZMP.	No response necessary.
93. Fred Bauer, Marblehead Expresses support for the MCZMP.	No response necessary.
94. Rep. James E. Smith, State Representative, Lynn Expresses support for the MCZMP.	No response necessary.
95. Helen Sayers, Boston Expresses support for the MCZMP.	No response necessary.

Comments	Response
96. Dr. Christopher Martin, Gloucester Expresses support for the MCZMP.	No response necessary.
97. Kenneth Robinson, Boston 1. Expresses support for the MCZMP.	No response necessary.
2. Questions how plan will apply to any activity when no state permit is required.	The regulatory control supporting CZM policies is exercised through the state permit process. CZM planning has determined that the existing permit process protects state interests and that where no permit is required, no significant state interest is involved. If only local permits are required, CZM policies may be considered if towns choose to incorporate CZM guidelines into their by-laws.
3. Questions whether real inland alternatives exist for certain energy facilities requiring deep water.	Only applications for energy facilities considered to be non-coastally dependent will be required to provide an alternative inland site (i.e., certain types of gas facilities, oil tank farms, electric generating facilities, refineries).
4. Questions where final approval of siting LNG facilities lies--with the EFSC or the Federal Government, (FPC, Coast Guard, OPSO).	The EFSC has ultimate authority to issue permits for the siting of gas facilities.
98. Mary Hood Hagler, Dennis 1. Expresses strong support for CZM policies and CZM's recognition of home rule prerogatives.	No response necessary.
2. Endorses Policy 13 and CZM's concern for visual environment.	No response necessary.
99. Nancy and George Jackson, Stonington, Connecticut Express concern for overuse of Duxbury and Saquish Beaches and the Gurnet, all ecologically fragile.	CZM has recommended the beaches and surrounding salt marshes be designated an Area for Preservation or Restoration (see Policies 1 and 2).
100. Richard Preston, Hamilton Expresses support for MCZMP, particularly in the ways it'll encourage a balanced use of the coast.	No response necessary.
101. Montaup Electric Company 1. The boundary for Somerset includes lands which won't affect the coastal zone.	See general question 4.
2. The Secretary of Environmental Affairs will have veto power over all major developments in the coastal zone.	See general question 1.
3. The plan interferes with the functions of the Energy Facilities Siting Council.	See general question 3.

Comments	Response
101. (cont.) 4. Policies 1, 2, 8, 17, and 31 should be redrawn to permit orderly development of power plants.	A goal of the program is to encourage such orderly development by supporting industrial use of the coastline in ports where infrastructure and services exists which helps to ensure protection of other areas of the coast which are ecologically fragile and valuable.
102. Howard Whiteside, Wareham Opposes unlimited access to Stoney Point Dike.	Limited public access remains a priority for Stoney Point Dike. A site specific plan will be developed with the assistance of the town prior to any development. The site plan will respect the fragile and productive nature of the resource.
103. Landowners Association of Indian Neck, Wareham Oppose public access to Long Beach.	Because of opposition by the Board of Selectmen, Board of Health, Planning Board, Marine Resource, Commission, and others in the community, the reference to Long Beach in the Coastal Atlas has been withdrawn.
104. U.S.S. Massachusetts Memorial Committee, Inc. Expresses support for the MCZMP	No response necessary.
105. League of Women Voters of Buzzards Bay Expresses support for the MCZMP.	No response necessary.
106. Lower Cape Cod League of Women Voters (speaking for Leagues of Lower Cape, Falmouth, and Martha's Vineyard Express support for MCZMP and for inclusion of all of Cape Cod within the coastal zone.	The entire Cape is within the boundary.
107. Association for the Preservation of Cape Cod 1. Expresses support for the MCZMP, especially Federal support expressed for the withdrawal of vulnerable tracts from the offshore oil drilling lease process.	No response necessary.
2. Specificity needed in FEIS as to what "certain projects" can be permitted in port areas without opportunity for state review for maritime dependency.	Policy 9 Chapter 4 has been clarified to indicate that uses which would require no state or Federal permits or funds wouldn't come under state review for maritime dependency.
3. Permits for wastewater treatment construction grants by the Division of Water Pollution Control should be required to undergo MEPA review.	Currently, actions the the Division of Water Pollution Control (DWPC) are exempt from a MEPA filing. However, if an action by DWPC requires a state permit from another agency, it may be required to file under MEPA. In addition, since wastewater treatment projects receive Federal funds they must be consistent with CZM policies, regardless of MEPA involvement.

Comments	Responses
107. (cont.)	
4. Questions DEIS assertion that CZM won't review National security status as a justification for exemption from Federal consistency provisions.	The MCZMP won't question a National security justification nor the need for such a project. However, MCZMP will address the suitability of alternative sites for the project and will review the project to ensure that it conforms to the maximum extent practicable, with the enforceable policies.
5. Energy conservation is discussed on six pages in the plan, not two as stated in the DEIS, page II-57.	This correction has been noted in the administrative record.
6. The DEIS discussion of National interest and impacts should include cautions on energy-related impacts outlined in the plan.	Since the EIS is intended to discuss the general impacts of the program, it's not possible to enter into a detailed discussion of specific activities mentioned in the plan.
7. Regional CAC's have met since July 1975, not just "over the past year." (p. II-67)	See Chapter 7, indicating that regional CAC's have met, often on a monthly basis, during the past 2 years.
8. Supports inclusion of entire Cape within the coastal zone.	The entire Cape is within the coastal zone. (See general question 4 for more information.)
9. Appreciates the Federal support for the withdrawal of particularly vulnerable tracts from the OCS leasing process.	No response necessary.
108. The Nickerson Companies, Orleans, J.A. Nickerson	
1. MCZMP creates new executive power without enabling legislation.	See general question 1.
2. MCZMP removes local powers.	See general question 10.
3. Tighter State control within the coastal zone will result in more cost and delays for development not encountered in other parts of the State.	See general question 5.
4. Questions legality of "networking" in management plan.	A state may "network" existing authorities for a management program if they are comprehensive enough to meet the requirements of the CZMA. See general question 1.
5. MCZMP ignores the economic impact on the areas affected.	See general question 7.
6. MCZMP sets a precedent for transfer of economic development decisions to the Office of Environmental Affairs.	There is no statutory authority giving the Office of Environmental Affairs power over economic development issues, and since the MCZMP will be implemented using existing legislation, the purview of EOEA will not be expanded.

Comments	Response
109. Associated General Contractors of Massachusetts	
1. CZMA requires that the State have prime reponsibility for coastal management while the Growth Policy report says local officials will have prime responsibility.	The Executive Office of Environmental Affairs has prime responsibility for implementing coastal management and works directly with the Federal Office of Coastal Zone Management.
2. It is not clear what "policies, standards, objectives and criteria" an activity in the coastal zone would be subject to. Is it only the regulations promulgated as a result of MCZMP which an applicant would be bound to or is it also the March 1977 Draft MCZMP and the March 1977 Coastal Atlas?	See Chapter 4 for a discussion of the regulatory policies to which an applicant will be subject, through the State permitting process immediately following approval. New regulations will be promulgated during the first year of program implementation.
3. The MCZMP will inhibit development; it does not provide development with predictability and clarity in EOEA decision-making.	See general question 5.
4. Since only 17 of the 38 policies are enforceable, the plan doesn't meet the Federal requirement for "sufficient policies of an enforceable nature."	Seventeen of the 38 policies in the March 1977 Draft MCZMP and DEIS are regulatory in nature. They were the only policies upon which a finding of "sufficient policies" was made under the CZMA. The rest of the policies are not intended to be regulatory; they are meant to provide guidelines for meeting the goals of CZM. In addition, neither the CZM Act nor the regulations define "sufficient policies of an enforceable nature" on the basis of number or percentages.
110. League of Women Voters of Massachusetts	
1. Expresses support of the MCZMP, but recommends that the regional Citizen Advisory Committees be charged with the task of evaluating the program and recommending changes to the Secretary of Environmental Affairs.	The Statewide advisory group is charged with evaluating the MCZMP and advising the Secretary of Environmental Affairs on amendments to the MCZMP; each regional advisory council will have a representative on the Statewide advisory group who will be charged with reflecting the opinions and evaluations of his/her region.
2. Add to the Statewide advisory groups' responsibilities the task of involving inland communities in decision making when CZM decisions affect them; e.g., inland energy facilities siting.	There will be representation from inland communities on the Statewide advisory group (see Chapter 7).
3. OCZM should condition the first year of funding by mandating the revision of regulations and the designation of Areas for Preservation or Restoration.	Regulations will be promulgated during the first year of implementation. (see schedule of regulation promulgation, Section 6.6). A decision on each of the 10 APR's recommended for designation in the MCZMP will also be made during the first year of implementation; i.e., public hearings will have been held and the Secretary of Environmental

	Affairs will decide on the basis of such hearings which APR's to designate. There is an annual review of the state by the federal OCZM to determine if funding should continue. The non-completion of either of these issues would subject the state to possible withdrawal of funds.
111. Massachusetts Forest and Park Association	
1. Expressed support for the program, particularly coastal hazards policies. Would like to see policies categorized by their regulatory or non-regulatory nature.	See Chapter 4.
2. Approval of the Program should not be withheld until regulations are promulgated.	See general question 2.
3. A strict timetable for promulgation of Division of Waterways and Wetlands Protection Act regulations must be adhered to.	The Federal Office of Coastal Zone Management has required and the Massachusetts office is committed to promulgation of these regulations by June, 1978. See Section 6.5 for schedule of promulgation.
4. The DEIS states Scenic Rivers regulations will not be drafted, but the March 77 draft MCZMP states that CZM is assisting in drafting such regulations.	Generic regulations for the Scenic Rivers program will not be written. However, as each river is designated, regulations will be drafted which will be tailored to local concerns and recommendations.
5. Urges promulgation of Ocean Santuaries regulations by plan approval.	Draft regulations will be submitted to OCZM by the end of March.
6. Approval of program renewal should be tied to designation of APR's and vigorous implementation of the Wetlands Restriction Program.	A decision on whether to designate each of the 10 proposed APR's will be made in the first year. Public hearings on those chosen for designation will also be held in the first year of the program implementation. A portion of CZM funding will be allocated to the Dept. of Environmental Management to accelerate coastal wetlands restriction.
7. Relationship between MCZMP recommendation to acquire undeveloped hazard-prone areas and the funding criteria of the Self-Helf Program should be clarified.	CZM is working with the Division of Conservation Services, which administers Self-Help funds, to incorporate in their funding deliberations criteria for acquiring such land.
112. BOSTON SHIPPING ASSOCIATION, ARTHUR LANE, President	
1. Expresses support for the MCZMP. specifically for port and harbor policies.	No response necessary.
113. MASSACHUSETTS ASSOCIATION OF CONSERVATION COMMISSIONS	
1. Expresses full support of the MCZMP.	No response necessary.

114.	Boston Edison Company, Frank Lee	
	1. "Coastal dependency" should be defined to include economic as well as physical dependency. Thus, ports should allow energy facilities.	Policy 8, Ch. 4 has been revised with regard to the location of energy facilities in ports.
	2. New standards are imposed on the Energy Facilities Siting Council. (See p. IV-6 of DEIS and p. 3 of Addendum to March 1977 Draft MCZMP).	The plan, in no manner, usurps the Energy Facilities Siting Council's decision making authority. Both Chapter 9 and Policy 8 describes EIS. As described in the Memo of Understanding, the EFSC has agreed to adopt rules and regulations incorporating CZM concerns as part of their evaluation process to site energy facilities
	3. The electrical generating plant, Pilgrim Unit 2, should be grandfathered under the plan because this has already had extensive federal, state, and local reviews.	Because of the state's determination of federal consistency is automatic if all state permits or licenses have been issued, and because state approval has been granted, Pilgrim 2 is consistent with the MCZMP. The plan has been amended to clarify this status. (See Policy 8.)
	4. The MCZMP should not review renewal of water discharge permits.	The MCZMP relies on the Division of Water Pollution Control, the legally authorized agency, to renew and issue water quality certificates. That review will not be usurped.
	5. The policies of the Visual Environment are uncertain and vague.	This section has been amended to be more specific. (See Policy 18.)
	6. Recreation Policy 27 is vague in defining "near" recreation areas.	Policy 13 has been amended similar to the visual policies, clarifying the meaning of "near".
	7. "Unenforceable" policies should not be included in the MCZMP.	See Chapter 4 for clarification of whether policies are regulatory, funding, or incentive in their nature. However, MCZMP feels that a plan should contain a variety of policies and implementation techniques, not just regulatory or "enforceable" policies. (See general question (6) for further discussion of policies and implementation techniques.)
	8. The MCZMP fails in one of the states requirements of the DEIS (p 1-3): the policies and standards are not articulated clearly and sufficiently enough to identify who will be affected and how.	See Chapter 5 for discussion of how MCZMP affects development activities within the coastal zone boundary. Chapter 4 has been revised to provide added specificity.
115.	Plymouth Rod & Gun Club Fully endorses the MCZMP.	No response necessary.
116.	Massachusetts Audubon Society, Deborah Howard Supports MCZMP.	No response necessary.
117.	Massachusetts Port Authority (Massport) Finds MCZMP compatible with Massport plans for the future of the airport, seaport, fish pier, etc. Supports MCZMP, especially port and harbor policies.	No response necessary.
118.	MIT Sea Grant, Dr. Dean Horn Expresses support for MCZMP.	No response necessary.

119. Massachusetts Beach Buggy Association Conrad Smith Expresses support for MCZMP.	No response necessary.
120. Boston Harbor Associates, Boston	
1. Urges federal acceptance of the MCZMP once state legislative support has been received.	State legislative approval not necessary as program is based on existing laws.
2. Urges broader outreach of the Monitor.	The use of the Monitor is being expanded to give notice of all activities requiring federal consistency certification as well as those requiring environmental impact assessments.
3. Urges creation of a council to address MCZMP issues.	A statewide council and regional advisory councils will be formed to advise on matters relating to implementation of the MCZMP.
121. Boston Broadcasters, Inc., Leo Beranek	
1. Expresses strong support for MCZMP because it balances the economic and environmental needs of the Commonwealth.	No response necessary.
2. Recommends a chapter be added to the MCZMP to address the consensus of the business community.	This shorter, more concise document represents an edit of the March 1977 MCZMP which was done, in part, to address many of the concerns of the business community about length.
122. East Boston Chamber of Commerce, R. Dell Orfano Expresses support for MCZMP port and harbor policies, especially Policy 17 which gives highest priority to maritime dependent activities in designated port areas.	No response necessary.
123. Boston Harbor Citizen's Advisory Committee Lydia R. Goodhue	
1. Expresses general support for MCZMP, for planning and for the need to have hard data for use in decision making.	No response necessary.
2. Disappointed with CZM's public participation in the Boston Harbor area, and recommends that Boston Harbor have a Citizen Advisory Council (CAC) and a representative on the Coastal Resources Advisory Board (CRAB).	See general question 9. The Boston Harbor area will have a CAC during CZM implementation. Each CAC will have representative on the Coastal Resources Advisory Board.
3. Recommends that additional pump out sanitary facilities be constructed at existing or new boat ramps and launching sites.	The Commonwealth, through the Division of Water Pollution Control, will meet or exceed EPA standards for pump out facilities.
4. Recommends that the prison be removed from Deer Island, while expanding recreation facilities and the sewage treatment plant on the island.	This recommendation is consistent with the MCZMP. (See the discussion of Policy 3 in the Boston Harbor section of the March 1977 Coastal Atlas.)

124. Sierra Club, New England Chapter, Birge Albright	
1. Expresses support for MCZMP.	No response necessary.
2. Recommends more state control over local activities and authorities, as a part of of MCZMP implementation.	MCZMP implementation is based on both state and local authorities. Improved EOEA agency rules and regs along with CZM technical and financial assistance will help communities to improve coastal resource management.
3. Recommends promulgation of rules and regs prior to program implementation.	See general question 2.
125. EUA Service Corporation, Boston	
1. Concerned that new roadblocks will be thrown in the way of constructing electric generating facilities.	See general question 5.
2. Suggests inclusion of a statement supportive of accommodating energy facilities in the coastal zone.	The plan states that there will be a need for more energy and that the siting of facilities is in the public interest. The policies are designed to allow for adequate provision of energy needs.
126. Beverly Shoreline Rights Association	
Expresses support of MCZMP.	No response necessary.
127. Saugus Action Volunteers for the Environment	
Expresses support for MCZMP.	No response necessary.
128. New England Power Service Company, New England Power Company, and Massachusetts Electric Patric J. Kenny	
1. Questions the legal authorities to implement the MCZMP.	See general question 1.
2. A review of the issues and requirements of the MCZMP should be conducted.	The planning process which has been ongoing since May, 1974, accomplished this review. Involved in the determination were CZM staff and many interest groups, officials, and citizens.
3. The authority of the Secretary of Environmental Affairs under Chapter 21A is not sufficient to implement the MCZMP.	See general question 1.
4. Seventeen of 38 policies are not enforceable.	See Chapter 4 for a clarification of the policies regarding their regulatory/non-regulatory implementation technique.
129. League of Women Voters of Greater Newburyport, Susan Sexton	
Unanimously in favor of MCZMP.	No response necessary.
130. Essex County Greenbelt Association	
Expresses support for the MCZMP.	No response necessary.
131. Ipswich River Watershed Association	
Expresses support for MCZMP.	No response necessary.
132. Cape Cod Contractors and Builders Association Thomas W. Joy	
1. Does not feel economic considerations have been adequately addressed.	See general question 7. Because of the importance of the coastal zone with regard to economic development on Cape Cod, OCZM may be able to fund further economic studies during the first year of implementation.

2. Believes MCZMP will add additional layers to the state bureaucracy through new and revised rules and regulations.	See general question 5.
3. Believes MCZMP will reduce local zoning authority.	See general question 10.
4. Recommends a reassessment of the decision to include all of Cape Cod within the coastal zone boundary.	The entire Cape is within the coastal zone.
5. Policy 12 denies protection of private property unless there are public benefits	The policy does not prevent privately funded erosion protection work as long as it does not adversely affect adjacent property or downcoast areas. The policy allows for federal or state funded structural protective works if certain criteria are fulfilled (See Chapter 4.)
6. Objects to Policy 22 (linking recreation sites) because it will be interpreted to mean any development anywhere on Cape Cod.	Comment on Policy 22 is not detailed enough to make a response.
7. Objects to Policy 35 which is difficult to understand and which addresses water and sewage issues covered under federal programs.	The policy is designed to ensure consistency among federal and state agencies with MCZMP objectives. The policy (renumbered as #26) has been revised to make it more clear.

133. Massachusetts Roadside Council Vision, Inc., Ron Fleming

Believes MCZMP represents a competent beginning for setting visual quality standards. However, recommends: -Action should not be advisory but regulatory; -Review and regulatory authorities should include public and private projects; -General guidelines should be supported with specific requirements such as mandatory design review for National Register historic districts, landscaping requirements for parking lots and mandatory undergrounding of new utility systems; -Design review power within the coastal zone must be considered a key legal tool; -Develop corridors in the coastal zone which are free of off-site signs; - -Expand the authority of the Massachusetts Historical Commission to review state development projects and private activity requiring a state permit.	The MCZMP recognizes that the primary authorities for establishing and implementing visual design criteria are local. The local authorities include zoning and design review by an established local board (i.e., Zoning Enabling Act, Historic District Act, Scenic Roads Act). Application of the Scenic and Recreational Rivers Act Act (GL. 21 S.17A), review of projects near historic features and designation of sign free areas by the Outdoor Advertising Board will ensure that statewide concerns are met. Stronger state control is beyond the jurisdiction of existing law and would be contrary to the majority of the public who consider visual issues to be primarily of local concern.

134. South Shore Chamber of Commerce, Ronald Courvelle

1. Expresses opposition because MCZMP does not represent a sound management structure built on the foundation of current statutes and equitably managed. The MCZMP does not accomplish permit consolidation, management improvements, concurrent reviews where possible, and establishment of computer tracking of permit applications.	See general question 5.
2. Desire management flow charts and budget allocations under MCZMP.	EOEA organizational charts are included in earlier drafts and this DEIS. Chapter 4 of the DEIS

134. South Shore Chamber of Commerce, Ronald Courvelle	contained a discussion of management authorities and corresponding policies. The grant application for funding under Section 306 of P.L. 92-583, showing the allocation of CZM funds, will be circulated through the A-95 review process for comments.
3. Concerned about subjective, value-laden language in the MCZMP.	See revised program in the FEIS.
135. Boston Society of Landscape Architects, A. Curtiss Pollari	
1. Increase state authority (in the Executive Office of Environmental Affairs) over local jurisdiction in coastal areas to ensure full MCZMP implementation.	MCZMP implementation is based on both state and local government. MCZMP builds upon existing management tools, and seeks to improve the efficiency and operations of government. If the existing management authorities prove inadequate to implement CZM, EOEA, or the legislature might seek additional state coastal management authority.
2. For MCZMP to be enforceable, additional regulations must be adopted for the Ocean Sanctuaries, Waterways and Wetlands Protection Program. A regulation should be promulgated to formalize the relationship between EOEA and EFSC.	During the first year of Section 306 funding, new or revised rules and regulations will be promulgated by the respective EOEA agencies for the Ocean Sanctuaries, Waterways and Wetland Protection Programs. The EFSC has the final authority over energy facility siting in the Commonwealth. CZM will not interfere with this authority. The EFSC has agreed to consult the CZM plan in making its determinations and adopt appropriate regulations.
3. All Areas for Preservation or Restoration (APR) should be designated prior to program approval to assure protection.	APR designations (Areas of Critical Environmental Concern) will begin in the first year of MCZMP implementation. Each designation will require public involvement and many months of state, local, and regional discussions. Federal approval only requires a process for designation - not completion of the process.
136. Mrs. Harvey N. Fairbank, Duxbury Opposes any acquisition of the Saquish or Gurnet in Plymouth.	These proposed acquisitions were reviewed by the Plymouth Coastal Advisory Committee.
137. Marguerite Morris, Marshfield	
1. Expresses support for MCZMP.	No response necessary.
2. MOU's should be evaluated within two years of implementation.	A comprehensive review of the program will take place each year by the Federal CZM office in which implementation measures will be evaluated. The Secretary of EOEA will also conduct periodic performance evaluations. In addition both the state and regional advisory councils will be responsible for critique of program effectiveness.

138. Massachusetts Federation of Planning Board, Inc. Unanimously supports MCZMP.	No response necessary.
139. Marquis B. Graham, West Newton Recommends no acquisition of Saquish and Gurnet Point, Plymouth, because of sanitation, traffic, and dune erosion problems. If acquisition necessary, prefers at federal level to ensure sufficient funds to correct problems.	MCZMP will work toward proper maintenance of such acquisition and will work with local advisory committee to develop facilities compatible with facility of area.
140. Thomas Walsh, Co-Chairman, Orleans, CZM Committee Expresses concern over many unanswered questions relating to administration and implementation of MCZMP.	This document has been rewritten to clarify questions brought out by extensive review.
141. Elliot Krefetz, Chelsea Expresses support for MCZMP.	No response necessary.
142. William Webber, Great Barrington 1. Legislators should be represented on regional advisory councils.	Representatives and Senators will be informed of the dates and agenda of all advisory committee meetings and their involvement is invited in the advisory process.
2. A memorandum of understanding between MCZMP and Labor & Industry should be signed, acknowledging their partnership in the coastal zone.	The MCZMP acknowledges both environmental and economic concerns in its policies and looks to working with other interests to ensure that a variety of uses are accommodated.
143. Greater Lawrence Chamber of Commerce, John Bassett Supports delay of MCZMP implementation until legal authority to implement the program is determined.	See general question 1 and Attorney General's memorandum opinion in Appendix H.
144. Mobil Oil Corporation, New York 1. The approval process (public notice requirements) for siting oil related facilities is too complex.	The approval process requirements for siting oil-related facilities are promulgated by the Energy Facilities Siting Council and not by the MCZMP.
2. Recommends consideration of points raised in American Petroleum Institute comments.	See responses to comments 66.
145. Residents of the Great Neck Neighborhood of Wareham 1. The Draft EIS has failed to evaluate the environmental impact of the Stony Point Dike proposal.	See comment 45.
2. The proposal does not conform to the Massachusetts Coastal Zone Management plan or to Federal, state or local plans for the area.	See comment 45.
3. Public access to Stony Point Dike would have an adverse environmental impact.	See Comment 45.

145. Residents of the Great Neck Neighborhood of Wareham	
4. The recommendation for public land access to Stony Point Dike has such functional shortcomings as to require its elimination from the Massachusetts CZM Program.	See comment 45
5. The Draft Environmental Impact Statement is of insufficient detail to evaluate the extent of their impact on the physical and social environment of the Stony Point Dike project.	See comment 45
6. The Draft Environmental Impact Statement is insufficient to satisfy the requirements of the Massachusetts Environmental Policy Act.	See comment 45
7. The Stony Point Dike proposal is not in conformance with policies 1,2,7,8,9,21, 23,25,26,34,35,36.	See comment 45
8. The recommendation for public access and a major recreational beach on Stony Point Dike is unadvisable because of its poor recreational potential, hazard to its users and the environment, and its costly nature.	See comment 45
9. The dike is now serving an important and suitable recreational, economic, ecological, and navigation protection function. The proposal for the Stony Point Dike will detract from these existing functions.	See comment 45
146. Richard H. Loring, Chairman, Cape Code CZM Advisory Committee	
1. The Cape Advisory Committee voted to include the entire Cape within the boundary.	See Appendix E for boundary description including entire Cape.
2. Recommends changing word "near" in Policies 14 and 27 to "abutting."	The word "near" has been defined. See Policies 12 and 13, Chapter 4.
3. Finds the word "infrastructure" in Policy 35 confusing. Either omit from MCZMP or define the term.	Word "infrastructure" has been omitted. See Policy 26, Chapter 4.
147. Massachusetts Shellfish Officers Association, Joseph Almeida	
Endorses the MCZMP and requests a greater role in enforcement and management.	The MCZMP supports the role of shellfish officers and will work with them to determine how they can more fully utilize their authorities within existing statutes.
148. Stephen and Barbara Brune, E. Sandwich	
Oppose further recreation development of Saquish Beach.	MCZMP will work toward proper maintenance of such acquisition and will work with the local advisory committee to develop facilities compatible with the fragility of the area.

149. Appalachian Mountain Club, Southeastern Massachusetts Conservation Committee, Stephen Driscoll

Expresses support for MCZMP but concerned with ecology of "wild" areas if they are turned into recreation areas.

Any plans for recreational use of an area will respect its ecological fragility.

150. Joanne Willis et al
Duxbury

1. Oppose acquisition at the Gurnet and Saquish Beach, Plymouth.

See comment 136.

151. Association for the Preservation of Cape Cod, Charles E. Oglesby

Expresses strong support for Policy 13 regarding the visual environment.

No response necessary.

152. New England Power Company, David Beattie

Questions legal basis for implementation of MCZMP.

Massachusetts Attorney General memorandum opinion verified authorities vested by Chapter 21A to implement the CZM Plan (see general question 1).

153. George & Nancy Jackson, No. Stonington, CT.

Concerned about expansion of recreation facilities on Duxbury, Plum Hills and Saquish Beaches because of their fragility.

Any expansion of facilities or use of the areas will respect their fragile ecology.

1. Opposes local acquisition of Saquish Beaches because of inadequate police protection. Would prefer federal acquisition.

MCZMP will work toward proper maintenance of such acquisitions and will work with the local advisory committee to develop facilities compatible with the area.

154. David Harrison for Miles River Sand and Gravel Co., Inc., Ipswich

Requests that the operation of the Miles River Sand and Gravel Co., Inc. be allowed to continue.

MCZMP will not and does not have the authority to review all existing coastal uses to determine whether they should or should not be allowed to continue. A sand and gravel operation will not be affected by MCZMP unless it would, at some time in the future, be required to obtain a state or federal permit or be required to meet new state or federal standards. Since the Miles River Sand and Gravel Co. is adjacent to a salt marsh the Conservation Commission, in issuing an order of conditions, would have to ensure that the activity was so conditioned or denied as to minimize damage to land, to protect public and private groundwater supply, and to ensure storm damage prevention and flood control (Policy 1). Revised regulations under the Wetlands Protection Act are being drafted to incorporate these concerns. Also, since part of the property is within an area proposed for designation as an APR, policy 2 would apply if the area is so designated. However

	the boundary for the APR is the proposed one based on the 100-year floodline. A final APR boundary will be addressed at the public hearing on designation. In addition, Policy 2 has been clarified to indicate it will not prohibit existing uses.
155. Crocker Snow, Ipswich Supports MCZMP as it affects Ipswich	No response necessary.
156. Colonial Coastal Corporation, Paul Neelon 1. The "private sector" has not been sufficiently educated on the MCZMP.	Through a mailing list of 5,000, through meetings with special interest groups and through advertised, public meetings in coastal regions, the CZM staff attempted to keep all citizens informed. In addition, both the Governor's Task Force on Coastal Resources and regional citizen advisory committees counted representatives from the private sector among their members. The opportunity to become involved and informed was given to any interested citizen. As in any citizen effort, participation is voluntary.
2. Fears that visual environment policies could be used to prevent development for arbitary reasons.	Of the visual environment policies, only the ones dealing with impacts on historic districts and encouraging scenic river and road designation are regulatory in nature. The others (encouraging visual concerns in facilities design and visual access in urban areas) are meant to encourage an awareness of visual factors through development of a design handbook and other types of technical assistance and through coordination with state and federal programs authorized to develop sites, acquire property or grant permits in the coastal zone. Any consideration of visual impacts of a proposal must be within the specific authorities legislatively granted to an agency and, therefore, cannot be applied arbitrarily to prevent development. Any adoption by local boards of the visual concerns and criteria set forth in the policies would have to be detailed in a bylaw.
3. The ports and harbors policies, in conjunction with MOU's, almost amount to re-zoning or forcing a town to re-zone.	The regulatory policy (7) which prohibits the preemption of maritime-dependent activities in port areas applies only to very limited sections of waterfront, all of which are already zoned to accommodate such activites. None of the other ports and harbors policies would require re-zoning because they do not proscribe certain types of development.

156. Colonial Coastal Corporation, Paul Neelon

4. Concerned that MCZMP will increase the number of state owned ramps in competition with private marina facilities.	MCZMP has stated as one of its goals to improve public access to coastal recreation resources. With increasing demand for recreation facilities, including boat ramps, the efforts of the public and private section will be needed to satisfy demand.
5. Concerned about MCZMP requirement that each marina have a sewage pumpout and disposal facility.	The policy has been clarified to indicate that MCZMP will not require pumpout facilities at each marina. If it is determined through a basin study that discharges from recreational vessels are causing violation of water quality standards, CZM will recommend that the segment be designated a no discharge area. Pumpout facilities at new marinas would then be required only if the boating activity is generally confined to the segment and if sufficient facilities cannot be provided at public boating facilities.
6. MCZMP credibility damaged by "recent admission" that a one stop permit system is not possible under present law.	MCZMP does not claim to institute one stop permitting. See general question 5.
7. Fears MCZMP will increase the power of the Executive Office of Environmental Affairs which could be economically disastrous.	See general questions 1 and 7.
8. Fears small business will have no voice in future policy formulation. Suggests representatives from chambers of commerce be appointed to state and regional advisory councils.	During the MCZM planning phase, small businessowners have had representatives on both the Governor's Task Force and regional advisory committees. See general question 9 for a further discussion of past and future citizen involvement in MCZMP.

Appendix G:
The Secretary's 21A Regulation

Establishment of the Coastal Zone Management Program

by the Executive Office of Environmental Affairs

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1.0 Authority - These regulations are promulgated by the Secretary of the Executive Office of Environmental Affairs pursuant to the Reorganization Acts and other authorities. Specifically, they are promulgated pursuant to Chapter 6A of the General Laws, Sections 2 through 7 (all references to the General Laws will hereinafter be abbreviated as G.L. c. 6A, s. 2-7), G.L. c. 21A Chapter 706 of the Acts of 1975 (codified throughout the Massachusetts General Laws) and Chapter 1230 of the Acts of 1973.

These regulations consist of 8 Parts and two Appendices, which are described in Sections 5.4 and 4.8, respectively.

Commentary

(The Commentary is not part of the formal regulation, but is intended to explain or clarify the provisions of the regulation and it is typed in italics.)

All of the authorities cited above are a part of the legislation which has reorganized Massachusetts government. The basic intention of this legislation has been to organize the administration of state government along functional lines, so that agencies with related areas of responsibility can operate in a coordinated and consistent manner.

The first piece of Reorganization legislation was Chapter 704 of the Acts of 1969, codified in part as Ch. 6A, SS. 1-7, which created the nine Executive Offices, including Environmental Affairs, established the position of the Secretary, and gave to her powers to accept funds, to have access to the records of all agencies within the Executive Office, and empowered her to:

> *"Act as the executive officer of the governor for accomplishing the purposes of his executive office. He shall conduct comprehensive planning with respect to the functions of said office and coordinate the activities and programs of the state agencies therein. He shall conduct studies of the operations of said agencies with a view to effecting improvements in administrative organization, procedures and practices, and to promoting economy, efficiency, and avoiding useless labor and expenses in said agencies. He shall from time to time recommend to the governor such changes as he shall deem desirable in the laws relating to the organization, structure, efficiency or administrative functions, services, procedures and practices of any such agency or agencies. He shall review and act upon budgetary and other financial matters concerning said agencies in accordance with sections two C, three, three A, four, nine B and twenty-nine of Chapter twenty-nine."*

The sections of Chapter 29 cited above and other sections codified throughout the General Laws were all a part of Chapter 1230 of the Acts of 1973. This piece of legislation created strong budgetary and administrative authority in the Secretary including the authority to approve or disapprove of the annual budget requests of the constituent agencies or of the year-round use of funds (for personnel, capital expenditures, administration, etc.); to approve or disapprove of the creation of positions and the hiring of personnel; and to approve or disapprove of general operating procedures (travel, over-time, etc.).

Chapter 704 contained a further charge to the Executive Offices (printed in the General Laws Annotated before Section 1 of Chapter 6A) which stated the basic intent of the reorganization efforts.

"Section 50. Each secretary first appointed to any of the executive offices established by chapters six A and seven of the General Laws, or his successor in office, as the case may be, shall, within two years following such first appointment, recommend to the governor such changes in the laws relating to such executive office, and to the departments, commissions, offices, divisions, institutions and other agencies therein, as he deems necessary for the accomplishment of the purposes for which said executive office was established.

"Such recommendations shall be made with a view to the elimination of duplication and overlapping in the functions, administrative practices and facilities of said agencies, the combination and coordination of information systems, the creation of administrative structures which will assure coordinated and joint planning, the establishment of clear and readily identifiable lines of authority and allocations of responsibility, the coordination and consolidation of the delivery of services at state and regional levels, and the enlargement of career opportunities.

"Such recommendations shall be prepared by each secretary on the basis of a study of the departments, commissions, offices, divisions, institutions and other agencies within his executive office to be conducted in accordance with such management guidelines as the commissioner of administration may from time to time promulgate."

Responding to the charges to create a coordinated management structure which could eliminate duplication and utilize joint planning, the Executive Office of Environmental Affairs then drafted further Reorganization legislation. Chapter 806 of the Acts of 1974 dealt specifically with Environmental Affairs. The provisions of this law (codified in part in Chapter 21A) grants extensive new powers to the Secretary. This legislation is discussed at length in Appendix A of the FEIS. In summary, it establishes the Executive Office as "the primary agency of the Commonwealth for environmental planning," charges the Executive Office and the EOEA agencies "to carry out the state environmental policy" in 28 diverse ways; empowers the Secretary to "conduct comprehensive planning with respect to the functions of the office and (to) coordinate the activities and programs of the departments and divisions within the office; and in "coordinating and improving the operations of all (agencies) within the office," enables the Secretary to resolve conflicts between agencies, to jointly implement programs with agencies and to coordinate program activities involving two or more agencies.

The final piece of legislation, Chapter 706 of the Acts of 1975, completed the Reorganization process for Environmental Affairs by assigning and transferring specific functions and agencies with the Executive Office of Environmental Affairs.

2.0 Purpose

a. These regulations are promulgated to establish the CZM Policies as statements of the state environmental policy for the Executive Office of Environmental Affairs; to ensure that the diverse powers and responsibilities within the Executive Office of Environmental Affairs which operate in or affect the resources of the coastal zone are administered in a coordinated and consistent manner in order to carry out the purposes of the Reorganization Acts; to comply with the requirements of the Federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq) by implementing the CZM Program, conducting continued planning and receiving grant awards; to establish the Coastal Zone Management Office within the Office of the Secretary; and to conduct such other activities as are consistent with the CZM Policies and state and federal laws.

b. It is the intent and purpose of the Massachusetts CZM Plan, as approved, to rely solely on existing statutory authority so that none of the policies, memoranda of understanding and proposed regulations is interpreted to allow an expansion of governmental authority beyond existing law. Where the Plan and regulations are inconsistent with, or interpreted to allow an expansion of such authority beyond existing law, that part of the Plan or regulation shall be null and void.

c. "Policy" means a general guideline, a broad purpose. As is the case with all policies and goals, it is not expected that all policies can be met all the time because they may conflict.

d. The intent of the CZM Plan is to express certain regulatory and non-regulatory policies. Regulatory policies are to form a basis for administrative decisions to approve activities only to the extent that such policies are contained in the text of the statutes of the Commonwealth or regulations duly adopted and promulgated pursuant thereto. They are to be applicable to each agency only to the extent each agency has jurisdiction and authority to enforce such statutes. Other policies are non-regulatory. They are included in the CZM Plan to help set out priorities in administrative decisions and to inform the public and decision makers of a coherent state framework, but such policies are not binding on private parties.

COMMENTARY

Consistent with Parts 5 and 6 of these regulations, the CZM Policies are binding on all EOEA agencies upon the effective date of this regulation to the extent their statutory authority permits or unless there is a conflict between two policies. Some EOEA agencies will be revising their regulations to clarify how they will be implementing the CZM Policies; other EOEA agencies will require no regulatory changes as their current regulations adequately define their roles in the coastal zone.

3.0 Definitions

A-95 shall mean the inter-agency circular administered at the state level by the Office of State Planning and created by the federal Office of Management and Budget to coordinate state and local comments on federal assistance requests.

Agency shall mean any board, body, commission, corps, council, department, division, office, or administrative unit, however labeled, and any authority of any political subdivision which is specifically created as an authority under special or general law.

Anadromous fish runs shall mean areas within estuaries, streams, bays and coastal waters which are spawning or feeding grounds for anadromous fish as defined by the Division of Marine Fisheries.

APA shall mean the Administrative Procedures Act, G.L. c. 30A.

Appropriate EOEA Agency shall mean any EOEA agency whose activities, authority, jurisdiction or concerns are conducted within the coastal zone, affect the coastal zone, are identified in the CZM Program, or are otherwise affected by or responsible for carrying out the policies of the CZM Program.

Area of Critical Environmental Concern (ACEC) shall mean an area which has been so designated by the Secretary of Environmental Affairs pursuant to the procedures outlined in Section 6.40 et seq. For the purposes of the CZMA, which requires states to have a process for designation of areas for their conservation, recreational, ecological, or esthetic values, the federal term 'Area for Preservation or Restoration' (APR) will be synonymous with Area of Critical Environmental Concern.

Barrier beach system shall mean a narrow low-lying strip of land composed of unconsolidated material extending roughly parallel to the general coast and either completely or partially separated from the mainland by a narrow body of fresh, brackish or saline water or marsh system. Barrier beaches are dynamic landforms that are presently migrating landward in response to rising sea level. They serve as a buffer to protect landward public and private property and natural areas from the force of storms and coastal flooding. In addition, barrier beaches provide valuable natural habitats and function as natural dynamic systems that change in response to coastal processes (erosion and accretion, storm overwash, and dune development).

Beach shall mean the gently sloping shore of a body of water consisting of unconsolidated material subject to wave, tidal, and coastal storm action. Beaches extend from the mean low water line to the duneline, beachgrass line or to the seaward edge of existing man-made structures.

Coastal embayments shall mean marine waters that have a restricted opening to the ocean due at least in part to the formation of a barrier beach. Unlike estuaries or salt ponds there is very little fresh water influence. Coastal embayments are shallow and may support healthy stands or eel grass and populations of shellfish. Most coastal embayments support well developed salt marsh systems.

Coastal Zone shall mean that area defined by the seaward limit of the Massachusetts territorial waters; i.e., three miles beyond the mean low water line or three miles beyond the Exterior Line of the Commonwealth as established by the Marine Boundaries Commission of the General Court; by the Massachusetts-New Hampshire border, by the Massachusetts-Rhode Island border, and 100 feet inland of the roads, rail lines, or rights-of-way listed in the Boundary Appendix of these regulations and delimited in the coastal atlas, scale 1:40,000. The coastal zone shall further include all islands contained within the aforedescribed area, but shall exclude federal lands. The coastal zone shall also include the following areas inland of the roads, rail lines, or rights-of-way described in the Boundary Appendix: intertidal areas, coastal wetlands and beaches, tidal rivers and adjacent uplands to the minimum extent of vegetation affected by measurable saline water, and anadromous fish runs to the inland boundary of the coastal town, and shall extend in width to 100 feet inland of the 100 year floodplain along such tidal rivers or anadromous fish runs.

Coastal Zone Boundary shall mean the line of demarcation between those lands and waters within the coastal zone and those lands and waters landward of the coastal zone, as set forth in the Boundary Appendix.

Coastal Zone Management Act (CZMA) shall mean the federal Coastal Zone Management Act of 1972 (P.L. 92-583, 16 U.S.C. 1451 et seq.), as amended.

Coastal Zone Management Office (CZM Office) shall mean that office established withi the Office of the Secretary pursuant to Section 5.0 of these regulations.

Consistency Determination shall be that statement required by the CZMA of federal agencies proposing an activity directly affecting the coastal zone. Please refer to Section 7.30-7.35 of these regulations.

Consistency Certification shall be that statement required by the CZMA to be prepared by applicants for federal licenses or permits in order to show the consistency of their proposed action with the CZM Policies. Please refer to Sections 7.10-7.25 of these regulations.

Consistency Concurrence shall be that statement issued by CZM or an EOEA agency which indicates the consistency, inconsistency or conditions necessary for consistency of the activity with the CZM policies.

CZM Policy or CZM Policies shallmean any of the policies stated in Section 5.3 and the Policy Appendix of these regulations or as they may be amended pursuant to Section 4.3.

CZM Program shall mean the CZM Policies, the Final Environmental Impact Statement (FEIS) and Report (FEIR), regulations, guidelines, memoranda of understanding, Volumes I and II of the draft CZM Plan, regional chapters, maps or other material prepared to implement, interpret, guide or otherwise effectuate the CZM Policies. CZM Plan shall be synonymous with CZM Program.

Departments and Divisions - see EOEA agency.

Developed Harbors shall mean sheltered harbors and navigable channels which provide mooring space, berths, slips, ramps, and docks serving a region-wide boating public, commercial fishermen, cruise boats, ferries, or light marine industry. Such harbors may also present unique opportunities for the fishing industry or for waterfront renewal and revitalization.

Director shall mean the Director of the CZM Office.

Dune shall mean any low hill, mound, or ridge of sand deposited by wind action or storm overwash or by artificial means for shoreline protection. Dunes extend from the beach landward to the end of beachgrass vegetation or the end of the topographic expression.

Environmental Monitor shall mean the semi-monthly publication of proposed actions and projects which require filings with the Secretary pursuant to G.L. c. 30, s. 62-62H, and implementing regulations.

EOEA Agency shall mean any agency, as defined by these regulations, under, within, or created by the Executive Office of Environmental Affairs. EOEA department or division shall be synonymous with EOEA agency.

Erosion Areas shall mean areas where there is a loss of land along the shoreline caused either by natural forces or by the action of man. "Critical" erosion is typically defined to mean erosion of shorefront property that causes it to become unusable or will render it unusable imminently. Critical erosion is evidenced by a loss in significant recreational beach benefits, a significant loss in other public lands or facilities, significant damage or destruction of private property, or significant change in the morphology of conservation land.

Estuary shall mean a semi-enclosed boy of water which has a free connection with the open sea within which sea water is measurably diluted with fresh water derived from outflowing fresh water rivers. In most instances, the landward extent of the mixing of fresh and salt water is shown by the presence of salt water marshes which form along the banks of the river.

Executive Office of Environmental Affairs (EOEA) shall mean the agency created by G.L. c. 21A, composed of an Office of the Secretary, five departments (the Department of Environmental Quality Engineering, of Environmental Management, of Fisheries, Wildlife and Recreational Vehicles, of the Metropolitan District Commission, and of Food and Agriculture) and other agencies. It shall be referred to as EOEA.

Financial Assistance shall mean any direct or indirect financial aid provided by any agency, which shall include but not be limited to mortgage assistance, special taxing arrangements, grants, loans, loan guarantees, debt of equity assistance and the allocation of state or federal funds.

Floodplains shall mean coastal lands located within the 100 year flood zone, as defined by the Army Corps of Engineers flood profiles.

Historic Sites or Districts shall mean man-made sites of historic, archeological, architectural or cultural value listed on the National Register of Historic Places or districts established by special legislative act or pursuant to G.L. c. 40C.

Local Government shall mean those units of local government with the power under existing state statutes to regulate or restrict the construction, alteration or use of land, water or structures thereon or thereunder. For the purposes of Sections 6.60 - 6.68 local government shall further mean Boards of Selectmen or Mayors, Planning Boards, Conservation Commissions and the Martha's Vineyard Commission but shall not mean such groups as Shellfish Wardens, Boards of Health or Town Engineers.

MEPA shall mean the Massachusetts Environmental Policy Act, G.L. c. 30, s. 61-62H.

Negative Determination shall mean that statement prepared by Federal agencies that a consistency determination is not required, see section 7.33.

NEPA shall mean the National Environmental Policy Act of 1969, 42 U.S.C. 4231 et seq., 83 Stat. 852, Pub. L. 91-190.

NOAA shall mean the National Oceanic and Atmospheric Administration.

Office of the Secretary shall mean the chief administrative, policy program planning and enforcement agency of EOEA. It is composed of the Division of Law Enforcement, the Division of Conservation Services and special executive programs which include, at present, the Environmental Impact Review Program (the MEPA Unit) and the Coastal Zone Management Office (CZM Office).

Permit shall mean a permit determination, order or other action, including the issuance of a lease, license, permit, certificate, variance, approval or other entitlement for use granted to any person, agency, firm or corporation, including trusts, voluntary associations or other forms of business organizations, by an agency for a project but shall not include a general entitlement to a person to carry on a trade or profession or to operate mechanical equipment which does not depend upon the location of such trade or operation.

Port Area shall mean locations that include navigable channels of 20 foot depth or more, lands abutting the channels which are suited for marine dependent or industrial use, and well-developed road and rail links leading to major arterial and truck routes. Such locations are also served by public water supply and sewage treatment systems capable of accommodating heavy industrial use and are separated or remote from residential neighborhoods and commercial business districts.

Project shall mean any work, action, use or activity either directly undertaken by an agency, or, if undertaken by a person, which seeks the provision of financial assistance by an agency or the issuance of a permit by an agency but shall not include a grant of aid for medical services or personal support, such as welfare or unemployment funds to an individual or a third party on behalf of an individual. The word "activity" shall be synonymous with "project". (The federal consistency provisions, Section 7.00 et seq. uses the term "activity" so as to parallel the use of that term in federal law and regulations.)

Public Recreational Beaches shall mean suitable, sandy beaches with access adequate to provide recreation opportunities for a region-wide public.

Salt Marsh shall mean either a high marsh which is a low-lying coastal wetland characterized by the presence of Spartina patens and flooded by seasonal high tides or a low marsh which is characterized by the presence of Spartina alterniflora and submerged by normal high tides.

Salt Pond shall mean a shallow enclosed or semi-enclosed bay of saline water formed as the result of glaciation or barrier beach formation at the mouth of a shallow bay. Salt ponds are subject to fresh water influence from small streams emptying into their uppr reaches or springs along their periphery and/or in the pond itself. Salt marsh vegetation usually forms a fringe around the pond.

Shellfish beds shall mean those areas of bottom and associated vegetation which presently provide a habitat for any one or more of the following: shellfish, mussels, oysters, quahogs, soft shell clams, bay and sea scallops, surf clams, and ocean quahogs.

Significant Resource Areas (SRA) shall mean anadromous fish runs, barrier beach systems, beaches, coastal embayments, developed harbors, dunes, erosion areas, estuaries, floodplains, historic sites or districts, port areas, public recreation beaches, salt marshes, salt ponds and shellfish beds. For the purposes of Sections 305(b)(2)(4) of the CZMA which requires that Geographical Areas of Particular Concern (GAPC) be inventoried and designated, SRA's shall be synonymous with GAPC's.

State Environmental Policy shall mean those statement of environmental policy identified by Section 5.1, 5.3 and the Policy Appendix of these regulations.

The Office shall mean the Executive Office of Environmental Affairs.

User Groups shall mean those groups which are in some measure involved with the use of coastal resources. User groups may include, but need not be limited to, the following: recreation groups; commercial contractors, labor, business and utility interests; university, research and educational groups; state, federal, and local government officials or planners; the Legislature; sportsmens' groups or commercial fishermen; conservation and civic interests; and interested citizens. (See Sections 5.8 and 5.9.)

4.0 Miscellaneous Provisions

4.1 Jurisdiction - These regulations shall have force and effect within the area defined as the coastal zone in Part 3.0. Such area is further described in the Boundary Appendix.

4.2 Severability - If any provision of these regulations or the application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or the application of any part of these regulations not specifically held invalid, and to this end the provisions of these regulations are declared to be severable.

4.3 Amendments to These Regulations and the CZM Plan

a. These regulations may ben amended from time to time by the Secretary in accordance with the applicable provisions of the APA. At least once each year and following any major changes in the CZM Program or in the CZMA, the Secretary may review these regulations and determine whether they continue properly to fulfill their purposes and the requirements of applicable legislation.

b. Minor amendments to the CZM Program shall include, but not be limited to, changes in the CZM maps, changes in the text, relatively insignificiant or non-controversial changes in the policies and the annual up-dates of the Regional Chapters as prepared by the Regional Citizen Advisory Councils. Notice of such changes shall be published in the Environmental Monitor and given to each member of the Regional Citizen Advisory Councils,

the Governor's Advisory Council and to NOAA. If the CZM Office has not been notified of any objection to the amendments within 30 working days of the postmark of the notice to the NOAA, and there have been no objections from the pulic or the Advisory Councils, the amendments shall become effective. The APA shall be compiled with when applicable.

c. Major amendments to the CZM Program shall include fundamental changes in the CZM Policies or the management framework. These changes shall be discussed at the Regional Advisory Council meetings, at the meetings or the sub-committee meetings of the Governor's Advisory Council and with NOAA. Notice of the proposed amendments shall be published in the Environmental Monitor. A public hearing may be held. A minor amendment which becomes controversial may be deemed a major amendment.

d. These regulations may be amended to reflect (b) or (c) amendments during the Secretarial review pursuant to Section (a).

Commentary

Subsections (b) and (c) parallel NOAA's amendment provisions, see 15 CFR 920.57.

4.4 Delegation of Authority - Generally whenever the Secretary is to assume some duty or perform some function in these regulations, she may appoint a representative or designee to assume such duty or perform such function in her name.

4.5 Number and Gender - Words imparting the singular number may extend and be applied to several persons or things, words imparting the plural number may include the singular, words imparting the masculine gender may include the feminine and neuter, words imparting the feminine gender may include the masculine and neuter, and words imparting the neuter may include the masculine and the feminine.

4.6 Advisory Rulings - Upon the request of any interested person, the Secretary may make an advisory ruling as to the interpretation or the applicability of these regulations to any person, property or state of facts. In issuing the advisory ruling, the Secretary may comply with the requirements of Section 8 of the APA, but need not comply with other sections regarding regulations.

4.7 Midstream Projects - These regulations shall not apply to any project (1) for which, as of January 1, 1978, an application for a permit has been received by any EOEA agency, or (2) for which an application for financial assistance has been received by any EOEA agency prior to January 1, 1978. These regulations shall apply to applications for the renewal or reissuance of permits unless a categorical concurrence has been issued. An application shall be the good faith completion of all forms and the submission of sufficient information to enable the agency considering such application to make its decision on the permit or financial assistance request.

4.8 Waiver - The Secretary or the Director may waive any provision or requirement in these regulations not specifically required by state or federal law when in their judgement strict compliance with such provision or requirement would result

in an undue hardship and would not serve to minimize or avoid damage to the environment and in the case of public notice requirements, would not be necessary to provide a substantially similar audience of adequate notice in fact. Hardship stemming from a delay in compliance with the law or regulations by the person requesting the waiver will normally not be a sufficient reason for granting such a waiver.

4.9 Effective Date - These regulations shall become effective upon their promulgation pursuant to G.L. c. 21A, or April 13, 1978, whichever is sooner.

5.0 Establishment of the Coastal Zone Management Office and Adoption of the CZM Plan - There shall be established in the Office of the Secretary a CZM Office to be administered by a Director. The Office and the Director shall take such actions in furtherance of the CZM Program and Policies as the Secretary may direct.

Commentary

Pursuant to Chapter 21A, Section 6, the Secretary may appoint such experts as he shall deem necessary to perform the functions of her office.

5.1 State Environmental Policy - State Environmental Policy shall mean those statements of environmental policy contained in:

a. Article 49 of the amendments to the Constitution of the Commonwealth as amended by Article 97 of the amendments to the Constitution of the Commonwealth;

b. Any environmental statute passed by the Legislature; or

c. Statements of environmental policy promulgated by regulation by the Secretary or any agency within EOEA.

5.2 Adoption of the CZM Policies; Implementation of the CZM Program - Consistent with the requirements under Chapter 21A, Section 2 through 4, to conduct comprehensive planning with respect to the functions of EOEA; to coordinate and improve program activities within EOEA; to implement programs jointly agreed to by the Secretary and EOEA agencies; to serve as the primary agency of the Commonwealth for environmental planning; and to carry out the state environmental policy including policies relating to Areas of Critical Environmental Concern, the policies of Section 5.3 and the Policy Appendix are hereby promulgated as statements of the state environmental policy for the coastal zone, and these regulations are hereby adopted in order to implement the CZM

5.3 The CZM Policies - The CZM Policies are in two groups -- regulatory and non-regulatory. The non-regulatory policies shall include policies regarding state financial assistance and direct state actions. In the coastal zone, the state environmental policy shall be, but need not be limited to, the policy to:

a. Regulatory Policies

(1) Protect ecologically significant resource areas (salt marshes, shellfish beds, dunes, beaches, barrier beaches, and salt ponds) for their contributions to marine productivity and value as natural habitats and storm buffers;

(2) Protect complexes of marine resource areas of unique productivity (Areas for Preservation or Restoration (APR s)/Areas of Critical Environmental Concern (ACEC's), ensurethat activities in or impacting such complexes are designed and carried out to minimize adverse effects on marine productivity, habitat values, water quality and storm buffering of the entire complex;

(3) Support attainment of the national water quality goals for all waters of the coastal zone through coordination with existing water quality planning and management activities. Ensure that all activities endorsed by CZM in its policies are consistent with federal and state effluent limitations and water quality standards;

(4) Condition construction in water bodies and contiguous land areas to minimize interference with water circulation and sediment transport and to preserve water quality and marine productivity. Approve permits for flood or erosion control projects only when it has been determined that there will be no significant adverse effects on the project site or adjacent or down coast areas;

(5) Ensure that dredging and disposal of dredged material minimize adverse effects on water quality, physical processes, marine productivity and public health;

(6) Accommodate off-shore sand and gravel mining needs in areas and in ways that will not adversely affect marine resources and navigation;

(7) Encourage the location of maritime commerce and development in segments of urban waterfronts designated as port areas. Within these areas, prevent the exclusion of maritime dependent industrial uses that require the use of lands subject to tidelands licenses;

(8) For coastally dependent energy facilities, consider siting in alternative coastal locations. For non-coastally dependent energy facilities consider siting in areas outside of the coastal zone. Weigh the environmental and safety impacts of locating proposed energy facilities at alternative sites;

(9) a. Accommodate exploration, development and production of off-shore oil and gas resources while minimizing impacts on the marine environment, especially with respect to fisheries, water quality and wildlife, and on the recreational values of the coast, and minimizing conflicts with other maritime-dependent uses of coastal waters or lands. Encourage maritime-dependent facilities serving supply, support or transfer functions to locate in existing developed ports;

b. Evaluate indigenous or alternative sources of energy (coal, wind, solar and tidal power) and off-shore mining to minimize adverse impacts on the marine environment, especially with respect to fisheries, water quality, and wildlife, and on the recreational values of the coast;

(10) All development must conform to existing applicable state and federal requirements governing sub-surface waste discharges, sources of air and water pollution and protection of inland wetlands;

(11) Support designation of scenic rivers in the coastal zone. Support designation of Areas for Preservation or Restoration as "sign-free areas";

(12) Review proposed developments in or near designated or registered historic districts or sites to ensure that federal and state actions and private actions requiring a state permit respect their preservation intent and minimize potential adverse impacts;

(13) Review developments proposed near existing public recreation sites in order to minimize their adverse impacts;

b. Non-Regulatory Policies

(14) Encourage and assist commercial fisheries research and development, restoration and management of fishery resources, development of extensive and intensive aquaculture and enhancement of anadromous fisheries initiated at local, state and federal levels;

(15) Ensure that state and federally funded public works projects proposed for location within the 100 year coastal floodplain will:

a. not exacerbate existing hazards or damage natural buffers,

b. be reasonably safe from flood and erosion related damage, and

c. not promote growth and development in damage prone or buffer areas, especially in undeveloped areas of APR's;

(16) Encourage acquisition of undeveloped hazard prone areas for conservation or recreation use, and provide technical assistance for hazard area zoning and mitigation of erosion problems;

(17) Provide funding for protection from tidal flooding and erosion, emphasizing the use of non-structural measures where feasible;

(18) Encourage, through technical assistance and review of publicly funded development, compatibility of proposed development with local community character and scenic resources;

(19) Promote the widest possible public benefit from channel dredging, ensuring that designated ports and developed harbors are given highest priority in the allocation of federal and state dredging funds. Ensure that this dredging is consistent with marine environment policies;

(20) Encourage through technical and financial assistance expansion of water dependent uses in designated ports and developed harbors, redevelopment of urban waterfronts and expansion of visual access;

(21) Improve public access to coastal recreation facilities and alleviate auto traffic and parking problems through improvements in public transportation. Link existing coastal recreation sites to each other or to nearby coastal inland facilities via trails for bicyclists, hikers and equestrians, and via rivers for boaters;

(22) Increase capacity of existing recreation areas by facilitating multiple use and by improving management, maintenance and public support facilities. Resolve conflicting uses whenever possible through improved management rather than through exclusion of uses;

(23) Provide technical assistance to developers of private recreational facilities and sites that increase public access to the shoreline;

(24) Expand existing recreation facilities and acquire and develop new public areas for coastal recreational activities. Give highest priority to expansions or new acquisitions in regions of high need or where site availability is now limited. Assure that both transportation access and recreational facilities are compatible with social and environmental characteristics of surrounding communities;

(25) Encourage energy conservation and the use of alternative sources such as solar and wind power in order to assist in meeting the energy needs of the Commonwealth;

(26) Ensure that state and federally funded transportation and wastewater projects primarily serve existing developed areas, assigning highest priority to projects which meet the needs of urban and community development centers; and

(27) Encourage the revitalization and enhancement of existing development centers in the coastal zone through technical assistance and federal and state financial support for residential, commercial and industrial development.

5.4 The Policy Appendix - The Policy Appendix elaborates upon the intent of the CZM Policies contained in Section 5.3 and provides direction for those EOEA agencies primarily responsible for their implementation. All appropriate EOEA agencies including the Office of the Secretary shall implement the CZM Policies contained in Section 5.3 and the policy direction in the Policy Appendix and shall so enforce their laws, process regulatory reviews, conduct program activities, disburse funds, construct works, supervise the construction of works or otherwise administer their programs in the coastal zone, except as provided by Section 5.6.

5.5 Other CZM Materials

a. The materials known as the CZM Program, such as the FEIS and FEIR, Volumes I and II of the draft CZM Program and other guidelines, memoranda of understanding or other materials prepared to implement, interpret or otherwise effectuate the CZM Policies shall not carry the full weight and force of law unless adopted by properly promulgated regulations. However, they may be relied upon by EOEA agencies to the extent they reflect the CZM Policies of Section 5.3 and may serve as guidance in implementing the CZM Policies.

b. In the case of a conflict between the CZM Policies and the CZM Program or other CZM materials, the CZM Policies shall govern.

5.6 Legally Impermissible Actions - No EOEA agency shall apply a CZM policy where to do so would require it to take an action impermissible at law.

Commentary

As explained in the Management Chapter of the Draft CZM Program, the discretionary authority of the EOEA agencies range from being very broad to being ministerial. The extent to which the CZM Policies, as a statement of the state environmental policy, operate to affect the decisions of the EOEA agencies is determined by reference to the scope of authority under each EOEA law. This regulation does not compel any EOEA agency to take an ultra vires action. It does require all appropriate EOEA agencies to apply CZM Policies when they take a lawful action in the coastal zone. As examples, where an agency's scope of discretion is very broad, and it can balance the public good vs. the private good, it can determine that a heavy industrial facility may not be placed next to a public recreation area. Where an agency has been specifically directed to protect an area for its flood damage prevention and fisheries values and where the CZM Policies and the standards of the HUD Flood Insurance Program call for structures to be placed on pilings, then those conditions can be imposed. However, if aesthetic concerns are not addressed by the enabling statute, then the agency could not require that the structure be painted in earth-tone colors rather than red, white and blue stripes. Further, if the CZM maps erroneously show an area to be a marsh, when in fact it is not and to follow the CZM Policies would then be an unlawful exercise of jurisdiction, this exception allows agencies to make such minor deviations from the letter of the CZM Policies. As is laid out in the Performance Evaluation Section 8.0, one of the issues to be addressed by that evaluation process will be whether or not the agency consulted with the CZM Office prior to determining to proceed with an action inconsistent with a CZM Policy, allegedly because acting consistently with the CZM Policy would then have been impermissible at law.

5.7 Procedures for Implementing the CZM Policies

a. All appropriate EOEA agencies shall review and if necessary prepare amendments to their regulations, administrative procedures, standards and criteria so as to incorporate the Policies contained in Section 5.3 and the Policy Appendix to the extent permissible at law.

b. In any adjudicatory proceeding or other occasion when the weight to be accorded to a CZM Policy is at issue, the CZM Policy shall be dispositive. This provision shall mean that the CZM Policies shall govern to the fullest extent permissible at law in the resolution of all disputed findings of fact and questions of law involving coastal matters.

c. All appropriate EOEA agencies may also enter into Memoranda of Understanding with the Secretary and/or other appropriate EOEA agencies in order to jointly implement this program. Such Memoranda may detail the ways in which specific programs will function, may provide for in-serve training of agency staff or continuing assistance by the CZM Office or other EOEA agencies in order to aid agencies in implementing the program, may agree to seek the assistance and direction of the Secretary in resolving any administrative or jurisdictional conflict or may include such other matters as may expedite the coordinated implementation of the CZM Program by all appropriate EOEA agencies.

d. In order to ensure that appropriate EOEA agencies fulfill their responsibilities under this regulation and to expedite efficient and consistent administration of their laws, such agencies are encouraged to prepare memoranda for the file, issue advisory rulings or otherwise compile a body of administrative findings relative to their statutory authority with reference to the CZM Policies. Such body of administrative actions shall be for the purpose of clarifying or interpreting CZM Policies in relation to that agency and for the purpose of building a body of precedential agency actions for consistent decision-making and public knowledge. The agencies are encouraged to work with the CZM Office and the Office of the Attorney General as needed. Such memoranda, rulings or findings shall be made available for public inspection or distributed as the EOEA agencies deem proper.

5.8 Regional Advisory Councils

a. Regional Advisory Councils on Coastal Resources shall be established by the Secretary. Such Councils shall be composed of a representative from each town in the coastal zone in that region who shall be appointed by the local Board of Selectmen or mayor and representative of regional user groups who shall be appointed by the Secretary.

b. The Regional Advisory Councils shall generally advise the Secretary on the CZM Program as it is implemented in the region. Additional functions will, at the Council's option, include:

(1) Annual Review: Annual review and reporting to the CZM Office on the applicability of the respective regional chapter and the suggestion of revisions where necessary.

(2) Quality Control: Helping to insure overall quality control in the CZM Program. The Councils may review on a periodic basis the state's regulatory and management programs as they relate to their respective region for quality and consistency with the CZM Policies.

(3) Observation: Serving as local contacts within the region, alerting the regional environmental engineer and the Director to problems and issues in the region.

(4) Priority Setting: Advising in the setting of priorities in the allocation of technical-assistance funding for the region should requests for funds exceed available supplies.

(5) Conflict Resolution: Serving as a forum for discussion and a central point for the collection of information and ideas should problems or conflicts occur between communities.

(6) Monitoring: Monitoring the coordination of activities by local, state and federal government programs in the coastal zone and recommending changes or amendments in the CZM Program or Policies.

5.9 The Governor's Advisory Council on Coastal Resources

a. The Governor may establish the Governor's Advisory Council on Coastal Resources by Executive Order. Its membership shall not be geographically representative but shall include representatives of state-wide user groups, both coastal and inland, who shall be appointed by the Governor.

b. The Governor's Advisory Council shall generally advise the Governor and the Secretary on the CZM Program as it is implemented state-wide. Additional functions will, at the Council's option, include:

(1) Advisory Planning: Advising the Director and the Secretary on the implementation of the CZM Program. As planning continues on erosion problems, recreation, and various aspects of OCS oil and gas exploration and development, this group may help to evolve state planning efforts.

(2) Quality Control: Working with the Director on a periodic review of environmental regulatory and management functions to insure adequacy and consistency in the application of the CZM Policies.

(3) Priority Setting: Advising the Director and the Secretary on the setting of priorities for CZM Office funding of local and state agencies and for overall program objectives and goals.

(4) Education: Working to ensure development of long-term education programs to foster a state coastal ethic.

(5) Management: Reviewing the CZM Program on an on-going basis and recommending changes to the Secretary. This group may advise the Secretary on questions of amendments to the CZM Policies.

(6) Review: Performing for the Secretary an annual independent review of the CZM Program.

b. If the Governor shall fail to establish this body, the Secretary shall establish it and appoint its members in accordance with (a).

Commentary

Please refer to the definition of user groups.

6.00 Procedures for Actions in the Coastal Zone

6.10 Role of EOEA Agencies - The appropriate EOEA agencies shall be the primary agencies responsible for the implementation of the CZM Program. Except as provided by this regulation, projects conducted by appropriate EOEA agencies shall follow the standard procedures established by those agencies, including any modification in those procedures, to expedite implementation of the CZM Program. Requests for permits or state financial assistance (non-CZM Office funding) should thus be addressed to the appropriate EOEA agency and not to the CZM Office.

6.20 Resolution of Conflicts in the Coastal Zone - Whenever an administrative or jurisdictional conflict exists between any two (or more) EOEA agencies or where programs are jointly administered by the request of any agency, and a conflict results in the course of their administration, the Secretary has the power and duty to resolve such conflicts under Chapter 21A, Section 4.

6.21 Instances of Inter-Agency Conflicts - Instances of conflicts between EOEA agencies in which resolution may be appropriate include:

a. Subject matter jurisdictional conflicts;

b. Actions by one agency impinging upon the statutory responsibilities of another agency;

c. Issues as to how to enforce a particular law or program;

d. Questions about how funding should be allocated;

e. Questions about how priorities should be established for agencies or programs; or

f. Issues as to the interpretation or application of a policy adopted by the Secretary, whether as applied to a particular site or as contrasted with another policy, and specifically for the coastal zone, whether or not a proposed EOEA action is consistent with the CZM Policies.

Commentary

Section 6.21(a) intends to encompass situations where two different laws each give two different agencies responsibility for the same project or area.

Section 6.21(b) addresses situations where an action by one agency could have the potential for undercutting, interfering with, duplicating, or being inconsistent with, the actions or programs of another agency. It is sufficient if another agency has expertise or concern in an area; it is not necessary for both to have regulatory powers. For example, if one EOEA agency has been funding a shellfish management program in an area, it would be inconsistent for another EOEA agency to dredge these beds. Rather than have both agencies continue to pursue their own course, this mechanism is designed to enable the Secretary, with appropriate public input, determine the best course for state actions in that area.

6.22 Initiation of Conflict Resolution Mechanism - When any EOEA agency feels that a conflict may exist with another EOEA agency regarding a project in the coastal zone, that agency shall communicate its concerns to the Secretary or her designee. An issue identification session shall be arranged.

6.23 Issue Identification Session - An issue identification session shall be held informally but shall include any appropriate administrators named by the Secretary. If the action is in the coastal zone but the CZM Office was not an objecting agency, it shall be presumed to be an appropriate agency, but it may withdraw after its own evaluation of the conflict.

The purpose of the session is to clarify issues, isolate matters of concern, resolve matters which are not of concern, to re-evaluate the positions of the agencies and to informally resolve the conflict.

6.24 Formal Statement of Issues, Resolution Without Hearing - If it is determined that a conflict does exist, a formal statement of the issues may be prepared, based in part or in full upon material presented at the issue identification session. The statement shall set forth the matters to be resolved by the Secretary. The Secretary, at her discretion, shall then take such action as may be appropriate to resolve the conflict, except when Section 6.25 applies. If the Secretary determines that it shall be appropriate to call a public hearing, a formal statement of issues shall be prepared, notice shall be sent to those persons or agencies listed in Section 6.25(b) and the procedures of Sections 6.25(c), (d), and (e) shall be followed.

6.25 Hearings - In all cases when the legal rights, duties or privileges of specifically named persons are to be determined, as established by the APA, such persons have a right to request a hearing and any ten citizens of the Commonwealth have the right to intervene in such proceeding, pursuant to G.L. c. 30A, s. 10A. In such situations, the following procedures shall be followed:

a. The named person shall be informed by the Office of the Secretary that following initial review (Section 6.23) by the appropriate EOEA agencies, it was determined that a conflict exists concerning the proposed action. The named person shall be informed as specifically as possible of the nature of the conflict, that the Secretary will resolve the conflict, and that such person has a right to request a formal adjudicatory hearing. If the Office of the Secretary does not receive a request for a hearing within 20 days of the mailing of such notice to the specifically named person, then that person will be deemed to have waived his right to a formal hearing, and the Secretary shall proceed to resolve the conflict pursuant to Section 6.24. At the option of the named person or an intervenor, an informal session or prehearing conference may be held before any formal hearing or in place of any formal hearing.

b. Should the specifically named person request a hearing, notice of the hearing shall be issued by the Office of the Secretary. It shall be published in the Environmental Monitor and sent to the specifically named person, to any town planning board, conservation commission or other governmental agency, or to such interested individuals as the Secretary may deem appropriate.

c. The notice shall include a formal statement of issues based in part or in full upon material presented at the issue identification session. It may also include a call for more information. It shall name the time and place of any hearing. It shall also specify the means that members of the public may use to submit their views. The hearing shall not occur less than 21 days following publication of notice in the Environmental Monitor.

d. A conflict resolution hearing regarding a project in the coastal zone shall be a management program decision pursuant to Sections 6.60-6.69 of these regulations concerning local government consultation. No statement of findings shall be issued by the Secretary less than 37 days from the publication of notice in the Environmental Monitor, unless local governments comment or indicate that they waive their right to comment before 37 days have elapsed.

e. The Secretary shall issue a statement of findings following the hearing which shall be published in the Environmental Monitor and sent to the persons and agencies identified under Section 6.25(b).

6.26 Effects of Conflict Resolution - Whether the issue is resolved under the procedures of Section 6.23, 6.24 or 6.25, the following shall apply:

a. By virtue of Section 5.5 of these regulations and by the requests of EOEA agencies to the Secretary to jointly implement the coastal zone management program, the CZM policies are binding upon the Secretary and the EOEA agencies as limited by Section 5.6.

b. Following the resolution of the conflict, agency actions shall be consistent with the findings of the Secretary.

c. If the Secretary makes a finding contrary to the CZM Policies and a statement of findings has not been prepared because there was no hearing, the named person, other interested parties, any named EOEA agency, or the Director may request, and the Secretary shall provide, written reasons as to why CZM Policies were not applied.

Commentary

While this authority and these procedures could be applied to any issue arising within the Secretariat, these regulations are limited to resolving issues arising under the CZM Program.

6.27 Agency Hearings

a. When the issue to be resolved is the consistency of the agency's actions in relation to the CZM Policies or when the agency has agreed to jointly implement the CZM Program and the agency has, pursuant to its enabling legislation, made certain findings of fact based upon the substantial weight of the evidence after an adjudicatory hearing or opportunity for a hearing, the Secretary

shall not set aside the findings of an agency that are consistent with the clear weight of the evidence, but she may set aside findings when, after investigation, she determines that the agency did not adequately address the issues apply the criteria required by the CZM Policies or give adequate weight to the evidence or policies of other EOEA agencies.

b. If the CZM Policies are in conflict as applied, the Secretary shall determine which policy shall prevail.

Commentary

The authority of the Secretary to resolve conflicts stems from Chapter 21A, Section 4(1). In addition, the Memoranda of Understanding with the Commissioners triggered Section 4(2) of 21A which enables the Secretary to jointly implement the CZM Program at their request.

It is also anticipated that many issues will be resolved pursuant to Sections 6.23 or 6.24 because they will involve internal administrative issues, such as priority areas for agency action, or divisions of responsibility among programs, and not permit decisions.

6.28 Time Limit - The Section 6.25 procedures shall not take more than 45 days after the publication of the notice in the Environmental Monitor unless they are stayed by agreement of the other parties of the hearing and the named party.

6.30 Proceedings Conducted by EOEA Agencies - The Director or his designee shall have the right to be notified in advance of all proceedings affecting the coastal zone or otherwise affecting any of the CZM Policies, in order that the Secretary, the Director or a designee may appear as an expert witness, may intervene as an interested party, or may otherwise submit comments to the EOEA agency. For the purposes of this Section and Section 6.31, the Secretary hereby designates the Director as her designee.

6.31 Right of Appeal - Unless otherwise forbidden by law, the Secretary or any EOEA agency shall have the right, where a right of appeal to a hearing exists for other interested parties or permit applicants, to request an appeal or hearing of any action taken by an EOEA agency regarding an project within the coastal zone, affecting the coastal zone, or otherwise affecting any of the CZM Policies. The CZM Office shall, in all cases, be bound by the procedures of the EOEA agency.

Commentary

These sections make clear that the CZM Office shall have the right to intervene in EOEA agency proceedings or standing to request a hearing whenever EOEA agencies are conducting or evaluating projects within or affecting the coastal zone. The intention of these sections is to integrate the CZM Program directly into existing EOEA procedures and thus to obviate resort to the conflict resolution mechanisms.

6.40 Procedures for Designation of an Area of Critical Environmental Concern within the Coastal Zone - The following procedures shall apply to the process of designating Areas of Critical Environmental Concern within the coastal zone, pursuant to Chapter 21A, Section 2(7), which charges the Secretary and the EOEA agencies to develop statewide policies regarding the acquisition, protection and use of Areas of Critical Environmental Concern to the Commonwealth.

6.41 Purpose - Sections 6.40 - 6.55 are promulgated in order to implement Chapter 21A, Section 2(7). for the coastal zone and to comply with the requirements of the CZMA.

Commentary

Section 306(B)(9) of the CZMA, 16 U.S.C. 1455, requires that the CZM Policies contain procedures whereby specific areas may be designated for the purpose of preserving or restoring their conservation, recreational, ecological, or aesthetic values. After discussion by the Citizen Advisory Committees, the CZM Program contains ten proposed areas. The Coastal Atlas shows them in blue on the maps. Pursuant to the procedures outlined in this regulation, the CZM Office will nominate these areas for possible designation as Areas of Critical Environmental Concern. The effects of such designation are described in Section 6.51. For federal purposes, these areas proposed as Areas for Preservation or Restoration (APR's) are also proposed as Areas of Critical Environmental Concern.

6.42 Nominations for Designation - The Secretary shall consider designating an Area of Critical Environmental Concern within the coastal zone upon a nomination by:

a. Any ten citizens of the Commonwealth;

b. The Board of Selectmen, the town Planning Board, or the Conservation Commission of any town which would be affected by the designation;

c. The Secretary or any EOEA agency; or

d. Other state agencies, Regional Planning Agencies, the Governor, or a member of the General Court.

6.43 Nominations - Nominations should include summary information regarding the resources of an area, a suggested boundary of the area and a general description of the advantages that would be achieved through designation and subsequent management of the area. The area so nominated shall be delimited on an 8½ x 11" section of a U.S.G.S. 7½ minute, 1:24,000 scale map or on the appropriate map from the Coastal Atlas. If the features of the area cannot be clearly shown on the above maps, maps, diagrams or sketches at a larger scale should be included.

6.44 Coastal Resource Areas - Areas eligible for nomination as Areas of Critical Environmental Concern within the coastal zone shall include at least 5 of the following SRA's: barrier beaches, dunes, beaches, salt marshes, shellfish beds,

salt ponds, estuaries, coastal embayments, floodplains, anadromous fish runs, erosion areas, historic sites and districts or public recreational beaches.

Commentary

The reason that an area must contain at least five of the listed characteristics is to preclude the consideration of areas that are of less than statewide importance. This threshold was established as being indicative of a significant ecological system with critical interrelationships between its components. In addition, in order to preserve or restore these areas as intended by their designation (as opposed to other special areas where development is encouraged), they must have a very high number of natural attributes. It is not the intention of the designation to remove these areas from public enjoyment or use. Areas which also have recreational, historic or scenic attributes are welcomed nominations. Human activities which can be conducted without adversely affecting the qualities of the area are encouraged. A basic function of this designation is to coordinate and focus EOEA programs (such as water pollution control, acquisition, wetlands, MEPA, CZM etc.) with federal programs and to encourage local agencies to act consistently with the state's concern for their valued resources.

6.45 Further Information - The Secretary may request such additional information from the party nominating the area or from other sources as would assist her in making the finding set forth in Section 6.49.

6.46 Further Information - The Secretary shall evaluate the nominations and may decide either to decline to designate the area or to proceed with a full review of the nominated area. The Secretary shall inform the nominating party of the results of this decision within 45 days of receiving the nomination or such additional information as she may request under Section 6.45, whichever is later.

6.47 Public Notice/Public Hearing - Before designating an area, the Secretary shall hold a public hearing. The hearing must be held within 25 miles of the area nominated or at the nearest location where a suitable facility exists. Public notice of the hearing shall be published by the Secretary not less than 30 days before such hearing in the Environmental Monitor. Notice shall also be published in a newspaper of general circulation in the vicinity of the nominated area under nomination and in any appropriate trade, industry, informational, or professional publications. Such notice shall be mailed to the appropriate Boards of Selectmen or Mayors, Planning Boards, Conservation Commissions, and any interested citizens or organizations which have come to the attention of the Secretary. Such notice shall include a citation of the authority under which the designation would occur, a summary of the reasons proposed for such a designation, the time and place of the hearing, and the method by which members of the public may make their views known. A map of the area to be designated may be included.

Commentary

These hearings are intended to be legislative, not adjudicatory proceedings. Members of the public are invited to present their views, but since no individual rights of named people are involved, appearances by attorneys are unnecessary.

6.48 Designation - The Secretary shall consider the following factors in deciding whether or not to designate an area. These factors need not be weighed equally, nor need they all be present in order to designate an area. However, areas which possess many significant resources (as listed in Section 6.44), are characterized by a high number of the following factors or which are exceptionally important in terms of one of the following factors may be given priority over other nominations.

Public Health, Inappropriate Use: Future development of the area potentially may threaten the public health, safety, or welfare because of: pollution of the water supply; pollutants introduced indirectly through the food chain; landform alterations which adversely affect land stability and/or natural protection; existing natural hazards; other direct or indirect effects which vary with the potential uses.

Quality of the Area: The area possesses outstanding natural characteristics such as: high or potentially high water quality; undeveloped or unaltered land and water; healthy indigenous trees and/or grasses; recreational opportunities.

Productivity: The area is unusually rich in nutrients serving as a food source for or hosting a high diversity of finfish, shellfish or waterfowl.

Uniqueness of Area: The area is unique or unusual from a regional or national perspective. Uniqueness will apply to: endangered plant and animal species; geologic features; archeological/historic/cultural features; other resources of educational value.

Irreversibility of Impact: The area has resources or characteristics which are potentially exhaustible or so fragile that alterations may have irreversible consequences. Irreversibility of impact will be assessed based on such factors as: the dependence of natural systems on groundwater; the tolerance of animals and habitats to pollutants; the degree of interdependence of ecosystems; and the sensitivity of species to changes in the salinity balance.

Imminence of Threat to the Resource: The area is subject to imminent threat such as: current proposals for major private development projects; plans for major new public infrastructure developments such as sewers, water systems, roads; or regional growth trends.

Economic Benefits: The area has intrinsic values which are important to a region's economic stability. Such values include: recreation, tourism, fisheries development, and water supply.

Supporting Factors: The area has other factors which facilitate preservation or restoration. Such factors may include: strong public consensus on the intrinsic value of the area; legislative identification of the value of the resource; public awareness of the importance of the area; the lack of coordinated local control because the area is contained within more than one town; ownership of some or all of the resource by the local, state, regional or federal government; or the existence of supplementing management programs in the area.

Commentary

These factors are provided in order to focus the scope of the Secretarial inquiry into the value of the area. While the more factors that an area possesses may well influence the need for its designation, the strong presence of any single factor (for instance, public health or an imminent threat to the resource) may well given an area a high priority for immediate Secretarial attention.

6.49 Secretarial Finding - Based upon her review of the factors listed in Section 6.48, or information presented by the nominating party at the public hearing, the Secretary may find that the area is one in which an otherwise insignificant impact could become significant and thus may designate it an Area of Critical Environmental Concern.

6.50 Notice of Decision - The Secretary shall publish notice of her decision in the Environmental Monitor within 90 days of the hearing. Failure to provide such notice shall be the equivalent of a decision not to designate. Written findings and conclusions shall be available for public inspection at the Office of the Secretary. In no case shall the decision be made prior to 37 days from the publication of notice of the hearing.

6.51 Effect of the Designation - The designation shall have the following effects: (1) Pursuant to Section 5.4 of this regulation, all appropriate EOEA agencies shall take actions, administer program and/or revise regulations consistently with this designation, except as described by Section 5.6, in order to have consistent EOEA policies regarding the acquisition, protection, and use of areas of critical environmental concern to the Commonwealth. (2) As a result, all state agencies, offices, departments, etc., outside of the EOEA and entities apart from the state government shall be affected by the designation insofar as they require a permit from an EOEA agency, provide financial assistance for projects with state funds, conduct a direct action with state funds, or otherwise fall under the environmenal disclosure provisions of MEPA and its implementing regulations. (3) For federal purposes, any area which has been designated by the Secretary as an Area of Critical Environmental Concern and lies, in whole or in part, within the coastal zone shall be considered an Area for Preservation or Restoration (APR) as described in Section 306(c)(9) of the CZMA and 15 CFR 923.16. Pursuant to Section 307(c) of the CZMA and 15 CFR 930, no federal agency shall conduct, support or permit any activity in the coastal zone which is inconsistent with the designation.

In reviewing federal activities, federal financial assistance applications or concurring with consistency certifications prepared by applicants, for actions in areas that have been designated as ACEC's/APR's, the CZM Office shall use the procedures outlined in Part 7.00 of these regulations. The CZM Office shall conduct such reviews and issue its concurrence only when proposed projects are consistent with the "purpose of preserving or restoring such areas for their conservation, recreational, ecological, esthetic values."

6.52 Timing of Order - The effective date of the designation shall be the date of publication of the notice of the decision unless the Secretary shall otherwise provide.

Commentary

Refer to Policies 1 and 2 of the Policy Appendix for a summary of the other EOEA agencies which will coordinate their actions in APR's/ACEC's.

The timing of the Designation Order, when combined with the requirements of local government consultation provisions and the APA, means that the Order may not take effect until 7 days after the public hearing if it is held 30 days after the notice of the hearing was published. This 7 day delay decreases if the hearing is held more than 30 days after public notice so that the Order may take effect immediately if the hearing is held 37 days or more after public notice.

6.53 Review of Designations

a. Every four years the Secretary may review the designations to evaluate whether they should be continued, amended, or repealed.

b. After one year from the designation of an area or from the decision under Sections 6.46 or 6.49 not to designate an area, any of the parties listed under Section 6.42 may request the Secretary to re-evaluate her decision. Such requests shall be subject to the provisions of Sections 6.43 - 6.50.

6.54 Effect of Coastal Atlas - The Secretary and the EOEA agencies shall refer to the Coastal Atlas for guidance in deciding whether to designate an area.

6.55 Mid-Stream Projects - The designation shall not apply to any project: (1) for which, as of the date of nomination, an application for a permit has been received by any EOEA agency, or (2) for which an application for financial assistance has been received by any EOEA agency as of the date of nomination.

6.60 Continuing Consultation Mechanisms with Local, Regional and Inter-State Agencies and Other State Agencies - This part is promulgated in order to insure continuing local participation in the CZM program and to meet other federal requirements.

Commentary

This part is promulgated pursuant to sub-sections 23, 16, and 18 of Chapter 21A, Section 2, which call for EOEA agencies to "advise and assist local governments, private and public institutions, organizations, and associations, businesses, industries, and individuals by providing and acting as a clearinghouse for environmental information, data and other materials"; to assist other state and regional agencies in developing appropriate programs and policies relating to land use planning and regulation in the commonwealth"; and to "advise, assist, and cooperate with such other departments, agencies, authorities, officials, and institutions...as may be concerned with or involved in matters under their control or supervision"; and Section 306 (c) (2) (b) of the CZMA, which calls for the CZM Plan to establish "an effective mechanism for continuing consultation and coordination between the management agency...and local governments, interstate agencies, regional agencies and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of (CZMA)." The federal regulations for this section appear at 15 CFR 923.42.

6.61 Notice to CZM by EOEA Agencies - At least 60 days before any EOEA agency shall implement a management program decision, defined in Section 6.64, it shall send a notice of such decision to the CZM Office.

6.62 Notice by CZM - Upon receipt of such notice or pending any management program decision by the Office of the Secretary, the CZM Office shall publish notice of such pending decision in the Environmental Monitor. The Environmental Monitor shall be mailed to the following local government agencies: Boards of Selectmen or Mayors, Planning Boards, Conservation Commissions, and the Martha's Vineyard Commission.

Commentary

Regional, areawide, interstate and other state agencies which are not local governments (see definitions) and members of the public are urged to utilize the public notice function of the Environmental Monitor in order to comment to the state agency on proposed management program decisions.

6.63 Procedures in Lieu of Sections 6.61 and 6.62 - If an agency already has procedures for giving public notice of its actions, it may enter into a Memorandum of Understanding with the CZM Office in order to meet the requirements of Sections 6.61 and 6.62 through alternative procedures. In order to enter into such a Memorandum, the Secretary or the Director must find that the alternative procedures are as effective in notifying a substantially similar audience as the Environmental Monitor. The CZM Office shall publish notice in the Monitor that it is considering procedures in lieu of Sections 6.61 and 6.62 and shall not approve such procedures without allowing 30 days for public comment.

Commentary

Since the Monitor will be used as the key information vehicle concerning state and federal actions in the coastal zone, existing forms of notice required of other agencies (such as publication in the newspaper) may not in fact be as effective as publication in the Environmental Monitor. But, in order to minimize the burden on agencies, the CZM Office is open to alternative suggestions as long as the local governments do receive effective notice.

6.64 Management Program Decisions - These decisions shall be major state policy or plan implementation actions and shall include proposals to:

a. adopt Coastal Wetlands Restriction Orders by the Department of Environmental Management.

b. designate an Area of Critical Environmental Concern in the coastal zone by the Secretary.

c. designate scenic rivers in the coastal zone by the Department of Environmental Management.

d. take by eminent domain by any EOEA agency of any land in the coastal zone.

e. purchase by any EOEA agency of any land in the coastal zone without taking eminent domain action.

f. adopt regulations by any EOEA agency relating to the implementation of the CZM program, except for the adoption of emergency regulations.

g. amend the CZM Program.

h. announce application deadlines for EOEA grant programs in the coastal zone.

i. resolve EOEA conflicts pursuant to Section 6.25.

Management program decisions do not include individual permit or regulatory actions, issuance of grants by EOEA agencies or construction programs carried out by EOEA agencies.

6.65 Content of Public Notice of Section 6.62 - The notice shall provide that the local government may, within the 30-day period commencing on the date of receipt of the notice, submit to the EOEA agency with a duplicate to the CZM Office written comments on such management program decision and any recommendation for alternatives thereto. The notice shall further state that in order to enable the state to proceed without unnecessary delay, the local government is encouraged to forward to the state agency and CZM Office a written statement of its willingness to waive its rights to comment, of its concurrence with the management program decision or its intention to take actions which conflict or interfere with the management program decision. In all instances, if no written comments are received by CZM Office from the local government within 37 days of the publication of the notice in the Environmental Monitor, the local government will be presumed to have chosen not to comment.

Commentary

It is recommended that local governments send comments by certified mail.

6.66 EOEA Agency Procedures

a. Any EOEA agency which receives comments from local governments shall consider such comments before proceeding with the management program decision. The EOEA agency may decide to hold a public hearing, unless it has already held or will hold one. Unless the EOEA agency has received a written statement from the local government indicating its willingness to waive its rights to comment, its concurrence with the proposed decision or its intention to take actions which would conflict or interfere with the management program decision, the EOEA agency shall not proceed with the management program decision until 37 days have elapsed from the date of its publication in the Environmental Monitor.

b. To ensure that the EOEA agency has considered the local comments, it shall provide a written response to the local government within a reasonable period of time following the receipt of the local comments. Such response may include a discussion of the information presented for the EOEA agency's consideration at the public hearing, if the initial notice also called for such a hearing; whether or not the agency has decided to hold a hearing if it had not originally planned on doing so; other factors, laws or constraints, or the views of other affected local bodies, members of the public or other agencies which the agency has also taken into account in reaching its decision; modifications in the proposed decision which have been made in light of public comments, including those made by the local government; and whether or not the EOEA agency is staying the implementation of its decision for more than 37 days from publication in the Environmental Monitor in order to receive or consider further public comment.

c. Other statutory standards or requirements of the agency's enabling legislation or the APA will still be applicable to any management program decision.

6.67 Local Government Procedures - Local governments may use this comment mechanism to inform the EOEA agencies whenever a proposed decision conflicts with existing zoning ordinances, variances, special exceptions, master plans or official maps. Local governments shall decide that such a conflict exists only when the EOEA decision is incompatible with or contradictory to such ordinances, variances, exceptions, plans or maps and not when the EOEA decision consists of additional or different requirements.

Commentary

This section parallels the federal regulations.

6.68 Conflict Resolution - EOEA agencies shall attempt, through informal consultations, public hearings, additional studies, environmental impact statements or other appropriate measures to resolve such conflicts with local governments. The EOEA agencies shall, however, act consistently with their responsibilities towards all citizens of the Commonwealth in providing uses or services for regional and statewide benefit and shall act consistently with their existing legislative mandates.

6.69 Notice of Financial Assistance Applications Received and Awards Made

a. Upon the receipt of applications for financial assistance in the coastal zone, the EOEA agency shall transmit notice of such applications to the CZM Office for inclusion in the Monitor. Such notice shall include the applicant's name, the town and type of activity and how the public may comment. Receipt of a grant application is not a management program decision but it still shall be made public. Such notice may be on an individual, annual or periodic basis.

b. When any EOEA agency has decided to grant financial assistance in the coastal zone, it shall transmit notice of the award to the CZM Office for inclusion in the Environmental Monitor. The grant award decision is not a management program decision. Such notice may be on an individual, annual or periodic basis.

Commentary

Sections 6.64 (h) and 6.69 are designed to give public notice of the availability of grant monies in the coastal zone and to provide an opportunity for public comment on applications submitted but not to delay the ability of the agency to disburse the funding once awards have been made.

EOEA agencies are strongly encouraged to transmit notice of application deadlines to the CZM Office at the earliest possible opportunity, even before the 60 day requirement of Section 6.61.

7.00 Federal Consistency Procedures - This Part establishes procedures and policies to be utilized by EOEA agencies and the CZM Office for implementing the federal consistency provisions of the CZMA, Sections 307, 316 and 317.

Commentary

The CZMA establishes the national policy that all actions by federal agencies - federal licenses or permits, federal assistance, or activities or projects undertaken by the federal government - must be consistent with approved state coastal zone management plans.

These regulations have been prepared to reflect the draft federal regulations.

Since this is the first time that the federal government has sought, in such a widespread effort, to coordinate its activities and procedures with those of states, it may require a period of trial and error in order to effectively coordinate the procedures of both levels of government. It is anticipated that refinements and amendments to these regulations may be required during CZMA Section 306 period implementation to reflect working experience with these procedures. For instance, the categorical concurrence procedures will be used to eliminate many minor projects,which are consistent with the CZM Policies, from any CZM Office review.

As is explained in the CZM Program, the goal of the procedures is to expedite concurrent processing of applications by state and federal governments, to hold joint public hearings or site visits, and to make all relevant parties (the applicant, the federal agencies, other EOEA agencies) aware of how much scrutiny the CZM Office will need to apply in order to determine the consistency of any project with the CZM Policies.

The CZMA establishes four separate categories of federal activities which have varied standards and procedures. Please refer to the Federal Consistency chapter of the CZM Program for fuller details. Briefly, the four types of federal activities are those involving direct actions undertaken by a federal agency (dredging, land acquisitions); those involving the issuance of permits; those providing financial support to state or local governments (grants, etc.); or those regarding activities described in OCS Plans. The standard for licenses, OCS licenses, and financial assistance is whether the activity is one "affecting land or water uses in the coastal zone", whereas for direct federal actions it is whether it is one "directly affecting the coastal zone". For direct actions, the federal agency submits the consistency notice; for licenses, the applicant submits it; for OCS plans, the person submitting the OCS plan; for funding applications, the A-95 clearinghouse serves as the notice vehicle. Direct federal activities must be "consistent with the CZM Program". This difference is significant under federal law.

The federal consistency part of these regulations (Sections 7.00-7.50) describes the procedures which will be used in Massachusetts for the implementation of the federal consistency requirement. In many cases, these regulations closely parallel the language of the draft federal regulations. In other places, the procedures unique to the Massachusetts CZM Program are described. The federal licenses and permits provisions (Sections 7.10-7.25) are the most detailed because it is expected that many private citizens who may not have access to the federal regulations will use these regulations only. The provisions relating to direct federal actions and federally funded assistance, OCS leasing and the conflict resolution procedures are not as detailed, based on the assumption that federal agencies and anyone involved in the OCS leasing process or a dispute with the CZM Office will refer to the federal regulations.

7.10 Procedures for Activities Requiring a Federal Permit

a. When an applicant applies to an EOEA agency for a permit and subparts (c)(1)(2) and (3) below apply, the EOEA agency shall inform the applicant that before a Federal agency will be able to grant its license or permit, the applicant must complete a consistency certification and the CZM Office must find that the activity is consistent with the CZM Policies.

b. The EOEA agency shall urge the applicant to complete his consistency certification at the same time that he submits his EOEA permit application.

c. Activities affecting land or water uses in the coastal zone require a consistency certification if:

(1) they will be located in whole or in part within the coastal zone, and

(2) one or more of Policies 1-13 of Section 5.3 and the Policy Appendix apply or might apply, and

(3) they will require one of the following federal permits:

U.S. Army Corps of Engineers: Section 404, Federal Water Pollution Control Act (33 U.S.C.A. 1344), permit for discharge of dredged or fill materials in navigable waters; Section 10, Rivers and Harbors Act (33 U.S.C.A. 403-404), permit for obstruction or alteration in navigable waters; Section 4(f), OCS Lands Act (43 U.S.C.A. 1333(f)), permit for artificial islands or fixed structures on the OCS; Section 9, Rivers and Harbors Act (33 U.S.C.A. 401), permit for construction or modification of bridge structures across navigable waters; Ocean dumping permits, see EPA below.
Department of Commerce: Section 302(f), Marine Protection, Research and Sanctuaries Act (16 U.S.C.A. 1432(f)), approval of activities affecting marine sanctuaries.
Department of the Interior: Section 5(c), OCS Lands Act (43 U.S.C.A. 1334(c)), granting of rights of way for oil or gas pipelines on the OCS.
Department of Transportation: Section 4 Deepwater Port Act (33 U.S.C.A. 1503), license.
Environmental Protection Agency: Sections 402 and 404 Federal Water Pollution Control Act (33 U.S.C.A. 1342, 1344), NPDES permit and ocean dumping activity; Sections 102-104, Marine Protection, Research, and Sanctuaries Act (33 U.S.C.A. 1412-1414), ocean dumping permit issued in conjunction with U.S. Army Corps of Engineers.

Department of Energy: Section 401, Department of Energy Organization Act (42 U.S.C.A. 7172 (a)(1)(A) and (D)), permit for construction, operation and maintenance of non-federal hydro-electric power developments and certificate authorizing natural gas companies to extend, improve or abandon its transportation facilities; authorization to import or export natural gas (see 15 U.S. 717 et seq.).
Nuclear Regulatory Commission: Section 201, Energy Reorganization Act (42 U.S.C.A. 5841 (f)), license for construction and operation of nuclear power plant.

d. For exceptions to Sections 7.10(a)-(c), see Section 7.23 - Categorical Concurrences and Section 7.18 - Unlisted Federal Activities or Activities Outside of the Coastal Zone.

e. In the case of any difference between the procedures of Sections 7.10-7.25 and any federal regulations implementing Section 307(c)(3)(A) of the CZMA, these regulations shall govern. In the case of a conflict between a consistency concurrence with the CZM Policies issued by Massachusetts and any federal agency, NOAA's conflict resolution procedures shall govern.

Commentary

The CZM Office strongly urges that applicants commence the federal consistency process at the same time that the state permitting procedures are being conducted. This will greatly facilitate coordinated and consistent EOEA actions and reduce time delays for the applicant. One purpose of the process described in Sections 7.10 (a)-(c)-7.25 is to provide an applicant with an early determination of consistency in order to permit federal agencies to initiate their reviews without delay. Another purpose is to facilitate concurrent permit reviews at the state level and at the federal level and to encourage joint site visits or hearings. The federal regulations encourage such multiple permit reviews.

If an applicant chooses not to file his consistency certification at the time he initiates the state permit procedures, federal consistency requirements will still apply, and, pursuant to the federal regulations, the applicant must submit his consistency certification to the federal agency at the time he submits the federal permit application. A copy of the certification must be sent to the CZM Office which has up to six months to concur before consistency with the CZM policies is presumed. Public notice of the filing of the consistency certification must also be given; the CZM Office may not issue its concurrence until the notice requirements are met. Then, the federal agency may act.

Under federal law, it is the applicant who must prepare the consistency certification. It is expected that there will not be a need to create a new form for the certification; where possible, existing DEQE or MEPA forms will be used, with the addition of a few questions and a signature line. Applicants are urged to consult with the CZM Office or the EOEA agency in order to fill out the certification, to understand the CZM Policies, or to spotlight anticipated inconsistencies with them. But the completion of the consistency certification itself is all that is required to trigger early CZM/EOEA review. As stated above, applicants are strongly urged to participate in these procedures in order to expedite the whole state and federal process.

7.11 Consistency Certification: Content

a. The consistency certification must be accompanied by a description of the type, scale or size of the proposed action, a statement of whether any public funds are involved or are sought, and the location of the activity. The activity shall be located on a map of suitable scale. The applicant shall also identify the proximity of the activity to the special areas of the CZM Program including, APR's/ACEC's, SRA's and SADA's, and what CZM Policies are affected.

b. The CZM Office, after consultation with other EOEA agencies, may prepare guidelines, explanatory material, or more specific requirements for the preparation of consistency certifications, if existing EOEA application forms or procedures are inadequate.

c. No proprietary or confidential materials shall be required unless sufficient protection from public disclosure is provided. However, the CZM Office may condition or deny concurrence on the grounds of insufficient information, consistent with the federal regulations.

7.12 Filing - The applicants for an EOEA permit who also file a consistency certification shall file it with that EOEA agency. The EOEA agency will determine whether the project qualifies for a categorical concurrence. It is does, no individual CZM Office concurrence will be required, and the issuance of all relevant EOEA permits will constitute a finding that the project is consistent with the CZM policies. If the project does not qualify for a categorical concurrence, the EOEA agency shall forward the certification to the CZM Office and proceed with its review.

Commentary

The advantage to applicants in filing their consistency certifications early is clear; they can receive a prompt and early decision on whether their activity is consistent with the CZM policies. Failure to file a consistency certification until after EOEA permits are issued could entail significant delays if the project is inconsistent with the CZM policies.

7.13 Notice - Upon receipt of the consistency certification, the CZM Office shall publish notice in the Environmental Monitor which shall include a summary of the proposed activity and its location. The notice shall include a request for comments to be submitted to the CZM Office within 30 days of the publication of the notice.

7.14 Threshold Determination by the CZM Office

a. Within 10 days of receipt of the consistency certification, the CZM Office shall determine which of the following categories the proposed activity falls into:

(1) The activity is one that on the basis of the certification application and any other materials readily at hand, can quickly be determined to require no further CZM coordinated because it is clearly consistent or inconsistent with, or of no concert to, the CZM Policies.

(2) The activity, either due to its type, scale, location or design, requires a site visit, technical review, or the submission of more detailed information in order to evaluate its consistency with the CZM Policies;

(3) The activity requires a case-by-case analysis in order to determine its consistency with the CZM Policies;

(4) The activity entails use of federal or state funds and may involve other federal consistency procedures under Sections 7.30-7.50 or CZM Policies relating to public funds. It thus could result in inconsistent or duplicate federal consistency concurrences;

(5) The activity entails other EOEA permits and therefore may involve duplicate or inconsistent federal consistency concurrences;

(6) The activity is an application from a state agency for a license and therefore requires either intra-EOEA coordination, inter-agency coordination, or a potential conflict of interest for an agency issuing a federal consistency concurrence for itself;

(7) The activity is located in or near an APR/ACEC and therefore would require in-depth scrutiny by all EOEA agencies; or,

(8) The activity involves some procedure, use or activity discussed in a Memoranda of Understanding between the CZM Office and some other EOEA, state or federal agency and may thus entail special procedures or other efforts to coordinate processes.

b. Depending upon the decision of the CZM Office under (a), either Section 7.15 or Section 7.16 shall apply.

7.15 Procedures When CZM Office Coordination or Action is Not Needed

a. For all those proposed activities for which EOEA agencies are processing applications for state licenses or permits consistently with the CZM Policies and which do not contain circumstances requiring CZM Office coordination, the CZM Office shall issue, deny or condition its consistency concurrence with the federal consistency certification, subject to whatever conditions may be imposed by the EOEA agency implementing the CZM Policies. The CZM Office shall send such concurrence to the EOEA agency. The EOEA agency shall issue its permit or license together with the CZM Office concurrence. Should the EOEA agency deny the license or permit pursuant to CZM Policies, then the EOEA agency shall likewise indicate disagreement with the consistency certification. If the EOEA agency denies the permit on grounds other than inconsistency with the CZM Policies pursuant to its own enabling authority, it shall still issue the CZM consistency concurrence, upon request of the applicant.

b. The EOEA agency shall act within its statutory or administrative time-frame in issuing, denying or conditioning the permit or license. The CZM Office shall contact the EOEA agency regarding any public comments received prior to EOEA agency action. Aside from emergency actions, no EOEA agency may act within less than 30 days from publication of the notice required under Section 7.13 in the Environmental Monitor.

c. Should later information obtained during the permit review, such as from public comments, reveal circumstances which would affect the Section 7.14(a) decision, and therefore may require greater CZM Office involvement, the CZM Office shall appropriately participate in the EOEA review, including the issuance of its concurrence or its disagreement with or conditioning of the consistency certification.

7.16 Procedures When CZM Office Coordination or Action is Needed - For those proposed activities which will require CZM Office coordination, the CZM Office shall contact the necessary agencies, conduct studies or site visits, or take other appropriate measures within any statutory or administrative time limits of the EOEA agency to assess the consistency of the proposed action with the CZM Policies. At the applicant's request, the CZM Office or the EOEA agency may inform the applicant and the appropriate federal and state agencies of the nature of the review, what CZM policies are at issue, and an estimate of the time needed to evaluate the activity, consistent with the time limits of the EOEA agency. The CZM Office shall then issue its concurrence directly with the certification.

Commentary

All consistency certifications will need to come through the CZM Office in order to be published in the Environmental Monitor (which is also administered by the Office of the Secretary and located on the same floor). The CZM Office

has imposed a 10 day time limit on itself in order to make the threshold decisions described in Section 7.14. It is anticipated that the vast majority it projects will fall either into Section 7.14 (a)(1-2) or be categorically exempt. If the project falls within subsection (2) and if the EOEA agency has the staff adequate to make the investigation, the CZM Office will again promptly issue its concurrence. The types of projects anticipated to fall into subsection (2) are those addressed by those CZM Policies which require site impact evaluation before consistency can be determined. For example, Policy 4 allows private flood and erosion control projects with no adverse effects on adjacent properties or downcoast areas. Clearly a site review would be needed. But where another EOEA agency such as DEQE, has to conduct a site review, the CZM Office will not routinely conduct a second site review.

It is further anticipated that for many of the other cases (subsections 3-8), the role of the CZM Office will merely be to contact other EOEA or federal agencies to insure that, within the scope of their authority, the EOEA agencies consider and are responsive to public comments. For instance, the CZM Office, by working closely with the CZM coordinator in the DEQE Office, will be able either to issue its concurrence consistently and concurrently with the DEQE issuance of the permit or to transmit to DEQE its concurrence as in Section 7.15 (a).

In the case of projects that have major policy implications involve several, possibly contradictory policies, or are of such a scale or magnitude that they require a thorough multi-agency review, the CZM Office will need to be fully involved. Examples are when a non-water dependent use is proposed for a port area or when an activity is proposed for an APR. Other cases, for instance, where state and private monies are being used to provide waterfront redevelopment, might be entirely consistent with CZM Policies, and thus, the CZM Office's role would be to promote and ease such actions through the permitting system.

The CZM Office will also be responsible for coordinating with federal agencies. Special Memoranda of Understanding may be entered into which will relate to coordinated processing, joint site visits, etc. It will be the CZM Office's responsibility to contact the EOEA agency and the federal agency in order to promote such intergovernmental cooperation.

The basic function of Sections 7.14-7.16 will be to filter out those projects which will require some measure of CZM Office coordination from those which the EOEA agencies can process independently in order to eliminate duplication of the more routine reviews and to expedite inter-agency review of the more complex ones.

7.17 Other Procedures

a. If an applicant fails to file a consistency certification during the review of his state permit application, the CZM Office shall, upon receipt of a copy of the certification from the applicant after he applies for a federal permit, publish the notice in the Environmental Monitor, as provided in Section 7.13. 30 days after such publication, the CZM Office may issue its concurrence.

b. Applicants for federal permits listed under Section 7.10 who do not require a state permit, shall file their consistency certification directly with the CZM Office which shall publish notice in the Environmental Monitor, as above, and may issue its concurrence 30 days after publication.

Commentary

7.17(b) encompasses Deepwater Port or OCS activities, for example.

7.18 Procedures for Unlisted Federal Licenses or Permits or Activities Outside the Coastal Zone

a. For any activity requiring a federal permit not listed in Section 7.10 or occurring outside the coastal zone which may significantly affect land or water uses in the coastal zone, the CZM Office may require a filing of a consistency certification. The CZM Office may use A-95, MEPA or NEPA reviews, citizen information or other measures to learn of such pending activities.

b. The CZM Office shall notify the applicant, the federal agency, and the Assistant Administrator of NOAA within 45 days from the notice of federal permit or license application of the need to file a consistency certification.

c. The CZM Office shall publish notice in the Environmental Monitor of its receipt of the certification pursuant to Section 7.13.

7.19 Decision of the CZM Office - 30 days after such publication, the CZM Office may:

a. concur with the action as proposed and mail its consistency concurrence to the applicant; or

b. concur with the action subject to such conditions as mode, scale, location, design, or operation of the proposed activity and/or may, under limited circumstances, conditionally concur reserving the right to object and compel modifications or withdraw its concurrence if monitoring discloses that the activities are not consistent with the CZM Policies and then mail copies of its conditions and/or reservations to the applicant and the federal agency; or

c. object to the action and mail copies of the objection to the applicant, the federal agency, and the Assistant Administrator of NOAA. The objection must describe how the proposed action is inconsistent with the CZM Policies and (if they exist) alternative measures which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the CZM Policies. The objection may be based on a determination that the applicant has failed, following a written request, to supply sufficient information for the CZM Office

to find, with reasonable assurance, that the proposed action will be conducted consistently with the CZM policies. If the objection is based on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the action with the CZM Policies.

d. In the case of (b) or (c), the notice to the applicant shall inform the applicant of her right to appeal to the Secretary of Commerce.

Commentary

This section parallels draft 15 CFR 930.55 and 930.66.

7.20 Time Periods

a. The CZM Office need not issue its concurrence until 10 days after the final appropriate EOEA permit is issued if:
(i) the CZM Office is directly issuing its concurrence pursuant to Section 7.16 and the applicant has not yet applied to a federal agency, or
(ii) due to appeal proceedings for an EOEA permit, the failure of the applicant to apply for all appropriate EOEA permits concurrently, or other provisions of law or procedure, the final EOEA permit appropriate to the project and a CZM Policy has not been issued.

b. If the applicant has applied to a federal agency, the CZM Office shall issue its concurrence, disagreement or conditions within six months, whether or not final action by all EOEA agencies has been taken.

c. The CZM Office shall issue its concurrence within six months for projects under Sections 7.17-7.19.

Commentary

These time periods are another incentive for applicants to initiate concurrent state and federal processing. Since the federal regulations, which permit a maximum of six months for state concurrence, are triggered by application to the federal agency, early federal application during the state process ensures that the state will act during this six month period. Since Massachusetts' procedures in Section 7.10 are optional with the applicant and not imposed by federal law, the federal time limits need not apply.

The CZM Office believes that the six months time period is too long in the majority of cases and therefore has imposed upon itself the 10 day time limit in Section 7.14 for threshold determinations. But, in order to allow for flexibility for cases where a fuller study or appeals are involved, the option to await final EOEA permit issuance is retained. The CZM Office, of course, could always issue its concurrence subject to the EOEA conditions, as set out in Section 7.15.

The amended MEPA law, G.L. c. 30, s. 62D, now imposes a 90 day deadline for state action on permit applications which should shorten delays in issuance of non-appealed EOEA permits.

7.21 Lost Papers - Upon a showing of proof of the submission of their consistency certification by certified mail, return receipt requested, which indicates delivery to the CZM Office or an EOEA agency, any applicant may compel the CZM Office to issue its concurrence within the time limits of Section 7.17.

Commentary

This section is included for the protection of applicants in the event that papers are not delivered or are misplaced by the agencies. Applicants are urged to call or write the CZM Office if they do not hear from it or an EOEA agency within an expected time period, rather than waiting for the full time period to elapse.

7.22 Conflict Resolution - The CZM Office will utilize and abide by the conflict resolution procedures established by the CZMA and any implementing regulations.

7.23 Categorical Concurrences

a. When an agency routinely processes permits for minor activities or maintenance activities to existing structures or facilities, the CZM Office may issue a categorical concurrence for such activities if:

   (1) The proposed activities are all of similar types, scale, and/or geographical location such that a single evaluation by the CZM Office could substantially reveal the impacts of the proposed activities and their consistency with the CZM Policies; and

   (2) The activities all fall within Section 7.14(a)(1) and thus would receive limited scrutiny by the CZM Office under normal procedures; and

   (3) The CZM Office publishes notice of the proposed categorical concurrence in the Environmental Monitor and holds a public hearing; and

   (4) The categorical concurrence describes in detail the types, scale , geographical location , and duration of the activities which the CZM Office finds are consistent with the CZM Policies, and specifies any conditions or exceptions thereto, which may include notice to the CZM Office of when any activity is to occur; and

(5) The CZM Office has coordinated the terms of its categorical concurrence with other federal, state or local agencies where possible.

b. The CZM Office shall notify the federal, state and local agencies of its categorical concurrence.

c. Once a categorical concurrence has been made for a type of project, no consistency certification shall be required and no notice shall be placed in the Environmental Monitor. The EOEA agency shall provide the applicant with a copy of the categorical concurrence, at the request of the applicant.

Commentary

Section 7.14(a)(1) is designed to inform applicants and federal agencies swiftly of the consistency of activities with the CZM Policies where it is possible to make that determination after limited evaluation. For instance, if the activity is permitted under Policy 1 (a wharf on pilings or utility lines through a marsh), or Policy 10 (a residential home outside of any SRA or any APR with hook-up to an existing sewer or soils satisfactory to Title 5 of the Environmental Code (septic standards) and approved by the local government), then concurrence by the CZM Office is automatic. Therefore, when such activities will occur frequently, separate applications and review of each activity could create unnecessary burdens on applicants and on agencies. Section 7.23 is designed to require a single in-depth public evaluation of certain types of proposed activities, and then to permit the individual activities to proceed without focused review by the CZM Office.

7.24 Amendments to Section 7.10 - The list of federal licenses or permits in Section 7.10 which are subject to consistency review by the CZM Office may be amended at any time by giving 30 days public notice in the Environmental Monitor, notice to the federal agency, to NOAA, and by conforming to the requirements of the APA.

7.25 Concurrences for Energy Facilities - For energy facilities subject to the jurisdiction of the Energy Facilities Siting Council (Council), except for facilities relating to OCS exploration, development and production activities, the CZM Office, in issuing its concurrence, shall be governed by the following procedures:

a. Where Council approval for a Long-Range Forecast or Supplement has been given following opportunity for EOEA review of and comment on the lead company submission and the Council's consideration of the CZM Policies is in accordance with the Council's regulations amended pursuant to the Memorandum of Understanding between the Secretary and the Council, the CZM Office shall issue its concurrence for permits required by the Federal Energy Regulatory Commission or the Nuclear Regulatory Commission

for all issues, including siting or safety, which are not within the scope of review of any EOEA agency. Such limited concurrence shall not be deemed a consistency concurrence for any CZM Policies over which the CZM Office or the EOEA agencies have enforcement jurisdiction.

b. Once all EOEA permits have been granted, with or without conditions, the CZM Office shall issue its concurrence in accordance with Section 7.16. When a Certificate of Environmental Impact and Public Need (G.L. c. 164, s. 69K) is not sought, no further concurrence by the CZM Office is needed.

c. If a Certificate of Environmental Impact and Public Need is sought on grounds other than the denial of or imposition of conditions on a permit by an EOEA agency, no further CZM Office concurrence is needed for the activity to be consistent with the CZM Policies.

d. Where a Certificate of Environmental Impact and Public Need is sought after the denial of or the imposition of conditions on a permit by an EOEA agency and is approved by the Council following EOEA review of and comment on the application, appropriate environmental impact review, EOEA opportunity to intervene or participate in the hearing on the application and Council consideration of CZM Policies in accordance with Council regulations adopted pursuant to the Memorandum of Understanding between the Secretary of EOEA and the Council, then the CZM Office shall automatically issue its concurrence.

7.30 Procedures for Federal Agency Activities - The Massachusetts CZM Program shall follow the standards and implementing regulations of Section 307(c)(1-2) of the CZMA as its general procedures governing the conduct of federal agencies and the CZM Office regarding federal activities significantly affecting the coastal zone, subject to the special provisions below.

Commentary

Federal agencies are required by Sections 307(c)(1-2) of the CZMA to make consistency determinations for activities significantly affecting the coastal zone, to notify state agencies of all consistency determinations and to conduct all activities consistently with the state CZM Plan to the maximum extent practicable. Federal activities include federal development projects, resource management practices and the issuance of licenses or permits to other federal agencies.

7.31 List of Federal Activities Requiring Consistency Determination - The following activities in the coastal zone significantly affect the coastal zone and shall always require a federal agency consistency determination:

Army Corps of Engineers:

- proposed project authorization for dredging, channel works, breakwaters, other navigation works, erosion control structures, beach replenishment, dams;

- proposed real property acquisitions.

Department of Interior:

- proposed Bureau of Land Management OCS lease sales;*

- proposed National Park Service real property acquisitions;

- proposed U.S. Fisheries and Wildlife real property acquisitions.

Department of Defense:

- location and design of new or enlarged defense installations.

Department of Transportation:

- location and design of new or enlarged Coast Guard stations, bases and lighthouses;

- location and design of aviation communication and air navigation facilities.

General Services Administration:

- location and design of proposed federal government construction;

- real property acquisitions and disposals of surplus federal lands.

Amtrak, Conrail:

- railroad expansions, new construction or abandonments.

7.32 Other Federal Activities

a. The CZM Office shall utilize MEPA, NEPA, A-95 review or citizen information to learn of proposed federal activities not listed in Section 7.31. If the CZM Office determines that the activity could significantly affect the coastal zone, it shall so notify the federal agency within 45 days of gett notice of the unlisted federal activity and shall request a consistency determination.

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* The CZM Office reserves the right to review proposed Bureau of Land Management OCS lease sales when the question of whether or not lease sales are eligible for consistency review has been determined.

b. The list of federal activities in Section 7.31 may be amended at any time by giving 45 days public notice in the Environmental Monitor, notice to the federal agency, to NOAA and by otherwise conforming to the requirements of the APA.

7.33 Negative Determinations

a. Federal agencies may apply for a categorical concurrence for similar or minor actions pursuant to Section 7.23. Once a categorical concurrence has been issued by the CZM Office, the federal agency may then submit a negative determination to the CZM Office notifying it of the commencement of the individual activity.

b. If a federal agency submits a negative determination to the CZM Office for an activity which is not covered by an existing categorical concurrence, the CZM Office shall treat the negative determination as if it were a standard federal agency consistency determination.

7.34 Form for Consistency Determination

a. The consistency determination shall be provided to the CZM Office at least 90 days before the federal activity reaches a stage of final approval.

b. The consistency determination shall be sent to: Executive Office of Environmental Affairs, Coastal Zone Management Office, 100 Cambridge Street, Boston, Massachusetts 02202.

c. The consistency determination shall include a detailed description of the activity and comprehensive data and information sufficient to support the federal agency's position.

d. The consistency determination shall also identify:

(1) whether the proposed activity is located within or outside of the coastal zone;

(2) whether the proposed activity is located in a SRA;

(3) whether the proposed activity is located in or near a SADA;

(4) whether the proposed activity is located in or near an APR/ACEC; and

(5) what CZM Policies are affected by the proposed activity.

Commentary

In lieu of subsection (b), if the federal agency prefers the A-95 or NEPA procedures or a mechanism detailed in a Memorandum of Understanding with the CZM Office, such procedures may be used to provide the CZM Office with the consistency determination as long as the substantive information provided is sufficient for the CZM Office to determine whether or not it agrees or disagrees with the federal agency's determination.

Completion of the information required in subsection (d) is critical to a determination of the consistency of the proposed action with the CZM Policies. Pursuant to the draft federal regulations, federal agencies must relate the impacts of the activity to the relevant elements of the state management program. Most of the CZM Policies are either area or activity related. The CZM Office maps and other matrices and guidelines can be used to quickly identify those areas and activities which are relevant to the CZM Policies. Since some CZM Policies support and strongly encourage some types of federal activities and since other policies seek to discourage or prohibit other types of activities in certain areas, the maps and matrices/guidelines may be important tools to identify the relevant policies and assist in determining consistency with the CZM Policies.

7.35 CZM Response

a. Within 15 working days of receipt of the consistency determination, the CZM Office shall inform the federal agency of its agreement, disagreement, or need to further evaluate the proposed action. The CZM Office review shall follow the procedures described in Section 7.15 with the following exceptions. Consistent with the federal regulations, if the CZM Office requires additional time to conduct further studies or site investigations, it may request that the 45 day time period be extended. Federal agencies shall approve a request for 15 days or less. Longer requests may be granted depending on the magnitude and complexity of the proposed activity and the information in the consistency determination.

b. If the CZM Office disagrees with the consistency determination, it shall describe how the proposed activity will be inconsistent with the CZM Policies and how alternative measures, if they exist and are adopted by the federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the CZM Policies. The CZM Office shall send a copy of its disagreement to the Assistant Administrator of NOAA.

c. In the event of such disagreement, the CZM Office shall attempt to informally resolve the issue with the federal agency or shall utilize the mediation services of the Secretary of Commerce.

7.40 Procedures for Federal Financial Assistance to State and Local Governments

a. The CZM Program shall follow the standards and implementing regulations of Section 307(d) of the CZMA as the general procedures governing the issuance of the CZM Office agreement or disagreement with requests for federal financial assistance by state and local governments, subject to the special provisions below.

b. The CZM Office shallutilize the A-95, MEPA and NEPA review procedures, citizen information, Memoranda of Understanding or other measures to receive notice of all grants, contracts, loans, subsidies, guarantees, insurance or other forms of federal financial assistance to be awarded to any unit of state or local government or any related public entity.

Commentary

The CZMA and the Federal Consistency Regulations prevent any federal agency from granting any form of assistance to any public body which may significantly affect the coastal zone without the concurrence of the CZM Office. Furthermore, no federal agency may disburse such funds if a dispute has arisen concerning whether or not the federal assistance project is subject to the consistency review until such dispute has been settled.

7.41 Federal Assistance Requiring CZM Office Review

a. As set forth in Section 7.40(b), any federal financial assistance shall be reviewed by the CZM Office if it is:

(1) for an activity located in:

a. tidal waters, or
b. intertidal areas, or
c. land areas above mean high water extending to 100 feet inland of the 100 year floodplain, or

(2) for the following facilities regardless of their location within the coastal zone:

a. power generating and desalination plants,
b. minerals extraction facilities,
c. wastewater treatment and collection facilities,
d. transportation facilities, or

(3) for an activity located in the balance of the coastal zone or outside the coastal zone but which significantly affects the coastal zone, as determined by the CZM Office in its review, pursuant to Section 7.40 (b).

b. Activities located in the areas described in (a)(1) above or of the type described in (a)(2) shall require a consistency concurrence. The CZM Office shall notify the applicant agency, the federal agency and the Assistant Administrator of NOAA of its intention to review an activity under (a)(3).

c. Copies of this regulation shall be sent to all federal agencies, units of state and local government and A-95 state and regional clearinghouses.

7.42 Review Through A-95 Procedures - The CZM Office shall receive copies of all proposed assistance projects from the state A-95 clearinghouse, the Office of State Planning. Within the Office of State Planning's 30 day time limit, the CZM Office shall review the proposed assistance project according to the same criteria as described in Section 7.15.

a. For those proposed federal assistance projects whose consistency with the CZM Policies can be quickly assessed, the CZM Office shall issue its agreement or disagreement on the forms provided by the Office of State Planning.

b. For those proposed federal assistance projects which will require additional time for on-site evaluation, in-depth review, etc., the CZM Office shall notify applicant agencies, federal agencies, state and regional clearinghouses and the Assistant Administrator of NOAA. Such notice shall specify which policies are at issue and what the scope of the investigation will be, including estimates of the time involved.

c. After the review set out in Section 7.42(b) is completed, the CZM Office shall issue its agreement or disagreement, either on forms provided by the Office of State Planning or by letter to all the parties previously notified under Section 7.42(b).

Commentary

The CZM Office has been using the A-95 process during the past three years to monitor federal assistance projects affecting the coastal zone. The state Office of State Planning has 30 days from receiving federal financial assistance requests to distribute them to various agencies, including the CZM Office, receive the comments and return them to the federal agency. This time limit has meant that commenting agencies, such as the CZM Office, effectively have about two weeks in which to respond. Paralleling the procedures set out for federal licenses or permits, this allows sufficient time for the CZM Office to make a threshold decision about the consistency of a proposal or the need for further evaluation.

7.43 CZM Office Objections - The CZM Office shall object to or agree with, subject to certain modifications or conditions, the proposed federal financial assistance project. Such objections, conditions or modifications must describe how the proposed project is inconsistent with the CZM Policies and what alternative measures, if they exist, would permit the proposed project to be conducted in a manner consistent with the CZM Policies.

CZM Office objections shall include a statement notifying the applicant agency of the right to appeal to the Secretary of Commerce.

7.50 Procedures for Federally Permitted Activities Described in Detail in OCS Plans

a. The Massachusetts CZM Program shall follow the standards and implementing regulations of Section 307(c)(3)(B) of the CZMA as the general procedures governing the conduct of federal agencies, applicants and the CZM Office regarding consistency for OCS permit activities.

b. Submission of a consistency certification to the Executive Office of Environmental Affairs, Coastal Zone Management Office, 100 Cambridge Street, Boston, Massachusetts 02202 shall be required for all OCS Exploration and Development/Production plans (drilling, platform which include placement and gathering line permits issued by the U.S. Geological Survey). Copies of the Plans, certifications and any other information shall be sent to the above address.

c. The CZM Office shall publish notice of the receipt of the certification in the Environmental Monitor.

8.0 Performance Evaluation - The Secretary, consistent with her statutory responsibilities to continually review the operations of the Office with a view towards improving administrative organization, procedures and practices, promoting economy and efficiency, managing the budgetary processes of the EOEA agencies, and continuing her fiscal responsibility to the federal government to insure that the standards of Section 306 of the CZMA are being met, shall conduct periodic performance evaluations of the status of the CZM Program in all appropriate EOEA agencies. Such evaluations may incorporate, but need not be limited to, such areas of inquiry as: (a) whether the EOEA agency has made an initial determination as to the applicability of any CZM Policy to an issue at hand and performed necessary investigations as to facts, site conditions, etc.; (b) whether the EOEA agency has incorporated the CZM Policies in its decision-making process and in its final decision, to the extent permitted under Section 5.6; (c) whether the EOEA agency has attempted, through informal consultation with the CZM Office and other EOEA agencies, to clarify and coordinate actions where there is a question as to the meaning or intention of a CZM Policy or how it should be applied in a particular circumstance or situation; (d) whether, in cases where the CZM Policy has not been followed, it was not so followed because of Section 5.6 and whether that decision was legally correct and whether or not early efforts were made to communicate such concerns to the CZM Office; (e) whether the local government notification requirements were complied with; and (f) whether an agency acted contrary to policies or Memoranda of Understanding regarding direct state funded projects or financial assistance.

POLICY APPENDIX
See Chapter 4.

BOUNDARY APPENDIX
See Appendix E.

Appendix H:
The Attorney General's Memorandum Opinion on the Secretary's 21A Authority

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE ATTORNEY GENERAL
JOHN W. Mc CORMACK STATE OFFICE BUILDING
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FRANCIS X. BELLOTTI
ATTORNEY GENERAL

January 20, 1978

Evelyn F. Murphy
Secretary
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

Dear Secretary Murphy:

On November 21, 1977, you forwarded to me 16 questions concerning the Massachusetts Coastal Zone Management (CZM) program. You posed four of these questions on your own behalf as Secretary of Environmental Affairs.[1/] You transmitted an additional 12 questions on behalf of the Joint Committee on Natural Resources of the Legislature.[2/]

1/ Your questions may be paraphrased as follows: (1) does the statutory authority of EOEA, including its constituent agencies, empower appropriate EOEA agencies to implement a CZM plan for the Commonwealth, which includes such policies as those 27 set forth in the (draft) Massachusetts CZM Plan? (2) Do the Secretary's statutory responsibilities under G.L. c. 21A, §§3 and 4 authorize the Office of the Secretary to develop and implement a CZM program jointly with EOEA agencies, when requested in a memorandum of understanding? (3) Is it within the authority of the Energy Facilities Siting Council to agree to recognize and to act consistently with EOEA regulations concerning CZM policies? (4) Does G.L. c. 21A, §2(7) or any other provision of law authorize the Secretary to designate areas of critical environmental concern within the coastal zone as provided in the CZM plan?

2/ As Secretary, you are entitled to obtain legal advice from the Attorney General on questions relating to your immediate official duties. G.L. c. 12, §3. That section does not apply to the Joint Committee, whose legal relationship with the Attorney General is defined by G.L. c. 12, §9. Under the terms of §9, the Joint Committee would not be entitled to an opinion on the questions it has raised because none of the questions concerns legislation pending before it. I understand that you transmitted the Joint Committee's 12 questions along with your own as a matter of courtesy.

As background for your request you stated the following. In 1972 Congress passed the Coastal Zone Management Act of 1972, Pub. L. 92-583, 86 Stat. 1280, 16 U.S.C. §§1451-1464. The Act authorized federal funding to states which were developing plans for the coordinated management of coastal areas. The Executive Office of Environmental Affairs (EOEA), pursuant to the Governor's designation, has received federal and matching state funds for the past three years to develop a CZM plan for Massachusetts. The plan has now been drafted, and you have submitted it to the United States Department of Commerce for approval; that approval is a prerequisite of the plan's implementation. However, several questions have recently been raised concerning the legal authority of EOEA to carry out the provisions of the CZM plan without additional enabling legislation. Your opinion request seeks an answer to those questions, for final federal approval of the plan will not be forthcoming until the issues of state statutory authority are resolved. See 16 U.S.C. §1455.

For the reasons discussed below, I must respectfully decline to answer the questions you have asked in the context of a formal opinion; the abstract, hypothetical and general nature of the questions prevents my doing so. Nevertheless, I recognize your special need to resolve the issues of legal authority you have raised, since final review of the CZM plan by federal authorities cannot be completed without such a resolution. Accordingly, pursuant to my responsibilities under G.L. c. 12, §3, I have undertaken to answer your questions in a separate memorandum accompanying this opinion.

It has been the long established policy of the Attorney General to refuse to give opinions on hypothetical questions or those calling for a general, abstract interpretation of statutory provisions. See, e.g., 1966/1967 Op. Atty. Gen. at 112, 114; 1934/1935 Op. Atty. Gen. at 31; 3 Op. Atty. Gen. at 425, 428-429 (1911); 1 Op. Atty. Gen. at 273-275 (1895); cf. 1946/1947 Op. Atty. Gen. at 23. The reasons for this practice are not hard to discern.

Every opinion of the Attorney General is advisory in a sense, and is to some extent a general pronouncement or prediction about the law. Cf. Opinion of the Justices, 365 Mass. 665, 679 (1974); Opinion of the Justices, 341 Mass. 738, 748 (1960). Nevertheless, when legal questions are presented which are divorced from a concrete factual context or application, the Attorney General's ability to properly advise the requesting state official on their answers is extremely limited. Obviously the answers may change depending on the particular circumstances in which the questions arise. Cf. Ierardi, Petitioner, 366 Mass. 640, 649 (1975); Commonwealth v. Welosky, 276 Mass. 398, 400 (1931). Rather than hazard a factually unfounded guess as to the correct legal determination in such situations, the Attorney General has traditionally declined to rule on the questions presented. The policy finds analogous support in the advisory opinions of the Supreme Judicial Court. See, e.g., Opinion of the Justices, Mass. Adv. Sh. (1977) 1814, 1818; cf. Opinion of the Justices, 347 Mass. 797, 798 (1964).

These principles govern the present opinion request. The draft CZM plan[3/] represents a proposed course of governmental action to be put into effect in the future. Your questions ask whether a variety of statutory provisions, some identified in the questions and others only generally referred to, authorize you, the Office of the Secretary, and the agencies, departments, commissions and boards under the jurisdiction of EOEA, to implement that plan. By their terms, the inquiries are extremely broad and their answers call for a general examination of legislation removed from a sufficiently developed factual framework. In these circumstances I find I must abstain from considering the questions within this opinion.

At the same time, I wish to emphasize that my inability to render a formal opinion should not be construed as a conclusion that the appropriate EOEA agencies and officers presently lack the statutory authority to implement the policy objectives presented in the draft CZM plan. My memorandum on these issues makes plain that this is not the case. What is more, I want to assure you that if EOEA proceeds to implement the plan and its legal authority to do so is challenged in court, I will provide representation for those state officials and agencies named as defendants. See 1977/1978 Op. Atty. Gen. No. 6.

Very truly yours,

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

3/ The draft CZM plan is presented in a two-volume document of commentary, analysis, maps and other information, totalling 800 pages. It appears that the draft is still undergoing a process of amendment and revision; your staff has recently forwarded new material reflecting changes in the wording and number of CZM policies and in the accompanying commentary. The fluid status of the actual CZM plan underscores the inappropriateness of my rendering a formal opinion in this instance.

Memorandum Opinion on Coastal Zone Management Program

TO: Evelyn F. Murphy
Secretary
Executive Office of Environmental Affairs

This memorandum addresses the questions[1] you have posed concerning the legal authority the Secretary of Environmental Affairs (the Secretary), the Executive Office of Environmental Affairs (EOEA), and its constituent agencies[2] to implement the Massachusetts Coastal Zone Management (CZM) program, as that program is presented in the proposed Massachusetts CZM plan which you have forwarded to me for review.[3]

In summary, I answer your questions as follows. (1) As a general matter, my review of the proposed CZM plan is necessarily limited in scope because of its draft status and the abstractness of your questions. However, within these constraints I have concluded that the statutory powers of EOEA and the separate agencies, departments, and other entities within its sphere are broad

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1/ The questions are set forth in the body of the memorandum.

2/ EOEA is established by G.L. c. 21A, §1. It has under its jurisdiction five principal or line agencies: Department of Environmental Quality Engineering (DEQE); Department of Environmental Management (DEM); Department of Food and Agriculture; Department of Fisheries, Wildlife and Recreational Vehicles (DFW & RV); and Metropolitan District Commission (MDC). See G.L. c. 21A, §7. Each of these agencies in turn supervises a number of divisions, departments, boards, etc. See G.L. c. 21A, §8. A large compendium of statutes charges EOEA, its agencies, and departments with varied responsibilities and functions relating to the protection or enhancement of the environment. Many of these statutes are discussed below.

3/ In the opinion accompanying the memorandum, I set forth the reasons that I could not consider your questions in the context of a formal opinion of the Attorney General. However, I indicated that I would undertake to address them in a separate document, which this memorandum represents.

enough to permit them to implement the proposed CZM plan. (2) The management powers vested in the Secretary by G.L. c. 21A, empower her to develop and implement the CZM program jointly with the several EOEA agencies in accordance with the terms of joint memoranda of understanding between them. (3) The Energy Facilities Siting Council (EFSC) may agree to recognize and act consistently with EOEA coastal zone management policies so long as EFSC retains and continues to exercise its discretion to balance the three statutory factors of (a) energy supply requirements, (b) environmental impact and (c) cost in each siting determination. See G.L. c. 164, §§69H, 69J, 69 O.[4/] (4) The Secretary has authority under G.L. c. 21A, §2(7) and St. 1974, c. 806, §40 to designate areas of critical environmental concern within the coastal zone.[4A/]

A. The Secretary's Questions

1. Does the statutory authority of EOEA including its constituent agencies, empower appropriate EOEA agencies to implement a plan of coastal zone management for the Commonwealth which includes such policies as those 27 [5/] proposed in the CZM plan?

4/ Your third question, inquiring into the authority of the Energy Facilities Siting Council, is not a question that you may properly ask since the Council is not under your jurisdiction. However, the Secretary of Environmental Affairs is a member of the Council, G.L. c. 164, §69H, and in view of the particular circumstances presented here, I have answered the question informally in this memorandum.

4A/ My answers to the Joint Committee's questions are set forth in the last section of this memorandum.

5/ The original draft CZM plan and Addendum contained 38 policies. However, your staff has recently forwarded to me a new listing of policies which renumbers, rewords and consolidates the original 38 into 27 policies. In this memorandum I have considered only the 27 newly-designated policies.

The draft CZM plan represents a proposed course of governmental action to be implemented in the future. It is not, and does not purport to be, a duly adopted regulation. Rather, the draft plan recognizes that the implementing agencies, including EOEA itself, will be required to carry out the plan's policies through their own existing regulations or through regulations they intend to adopt at a later date. Examination of the facial validity of administrative regulations is narrow in scope. If (1) the regulations can by "any reasonable construction be interpreted in harmony with the legislative mandate," Consolidated Cigar Corp. v. Department of Public Health, Mass. Adv. Sh. (1977) 1419, 1433, and (2) "the line of arbitrariness is not crossed," Cambridge Elec. Light Co. v. Department of Public Utilities, 363 Mass. 474, 496 (1973); see id. at 490-491, 493, they will be upheld.[6/] Without having been presented with either regulations implementing a final CZM plan or a concrete application of the plan, my review must be even more limited than suggested by the cases just cited.[7/] Within these boundaries I have made the determination

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6/ In rendering a legal opinion under G.L. c. 12, §3, my role is similar to that of a court. My inquiry is limited to the legal questions presented, leaving considerations of policy to the appropriate officers or agencies. See, e.g., 1976/1977 Op. Atty. Gen. No. 25; 1961/1962 Op. Atty. Gen. at 199; cf. First National Bank of Boston v. Konner, Mass. Adv. Sh. (1977) 2095, 2105.

7/ Two principles of administrative law are particularly pertinent to my review here: (1) in administering statutes, agencies may exercise those powers expressly delegated to them and those reasonably necessary to effectuate the statutory purposes. See, e.g., Massachusetts Commission Against Discrimination v. Liberty Mut. Ins. Co., Mass. Adv. Sh. (1976) 2403, 2406-2407, 2409; Scannell v. State Ballot Law Commission, 324 Mass. 494, 501 (1949); (2) the Legislature may validly vest wide discretion in an agency to select the appropriate means of effectuating a broadly phrased statutory scheme. See, e.g., Commonwealth v. Racine, Mass. Adv. Sh. (1977) 1101, 1106-1107; Scannell v. State Ballot Law Commission, supra.

that the statutes authorize the contemplated agency action. However, questions concerning the validity of particular CZM regulations or application of the CZM policies in an individual case must be left for another day. See Cambridge Elec. Light Co. v. Department of Public Utilities, supra, 363 Mass. at 493.

In answering this question, I have confined my review to state statutes directly involving EOEA and its agencies. The validity of actions that you, the Office of Coastal Zone Management (OCZM) or other EOEA agencies intend to take in implementing the CZM plan under the federal Coastal Zone Management Act, 16 U.S.C. §§1451 et seq., or in connection with other federal statutory programs, is a matter of federal law. Accordingly, it is not appropriately within my jurisdiction to consider. See, e.g., 2 Op. Atty. Gen. at 570 (1905). It is sufficient to note that G.L. c. 21A, §2(25), charging EOEA and its agencies with the duty of acting on behalf of the Commonwealth in relation to federal grant programs, supplies those agencies with any necessary state authorization for their federally-oriented activities.[8/]

In the following discussion I begin my review with the first 13 policies, designated as "regulatory." I have considered each separately, although quite briefly. I then turn to the

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8/ Several agencies have also been granted specific individual authority to cooperate with federal agencies and to seek and use federal funds. See, e.g., G.L. c. 21, §§9, 18, 27; c. 91, §11; cf. G.L. c. 30, §62 (state regulations on environmental impact reviews to conform with corresponding federal statute's requirements).

14 "non-regulatory policies" which are treated in a more summary fashion. The main focus of the discussion is on the individual statutes creating specific programs and duties for the various separate EOEA agencies. The Secretary's authority to implement the EOEA plan, an issue governed by G.L. c. 21A, is treated principally in my answer to your second question.

(1) Regulatory Policies

> Policy 1: Protect ecologically significant resource areas (salt marshes, shellfish beds, dunes, beaches, barrier beaches, and salt ponds) for their contributions to marine productivity and value as natural habitats and storm buffers.

The draft CZM plan indicates that this policy will be carried out under existing statutory licensing, permit and restriction programs by EOEA line agencies.[9/] See, e.g., G.L. c. 131, §40 (wetlands protection - DEQE and local conservation commissions); G.L. c. 130, §105 (coastal wetlands restriction - DEM); G.L. c. 91, §§1-59B (waterways program - DEQE); G.L. c. 132A, §§13-17 (ocean sanctuaries - DEM); G.L. c. 21, §§27, 43, 55 (discharge permits - Division of Water Pollution Control [DWPC]). Nothing in the plan's description suggests that the implementing agencies intend to act in excess of their respective statutory authorities. In my opinion the statutes relied upon are broad enough to accommodate Policy 1.[10/]

9/ It appears that the Office of Coastal Zone Management (OCZM) within the Secretary's office will play a coordinating role among the line agencies. The functions and status of OCZM and the Secretary's Office are discussed in other parts of this memorandum.

10/ In so concluding, I assume that actual implementation of Policy 1 by EOEA and its agencies will be preceded by promulgation of specific regulations if and as required under the terms of the specific statutes cited above or by virtue of the state Administrative Procedure Act, G.L. c. 30A.

Policy 2: Protect complexes of marine resource areas of unique productivity (Areas for Preservation or Restoration [APR's]); ensure that activities in or impacting such complexes are designed and carried out to minimize adverse effects on marine productivity, habitat values, water quality, and storm buffering of the entire complex.

This policy seeks to protect marine resource areas designated by the Secretary as "areas of critical environmental concern", see G.L. c. 21A, §2(7), or "areas for preservation or restoration" (APRs).[11] See 16 U.S.C. §1454(b)(3). The draft CZM plan specifies that certain activities will generally be prohibited in these areas: (1) new industrial discharges and the discharge of hazardous substances; (2) new dredging (with certain exceptions); (3) disposal of dredged materials (with certain exceptions); (4) direct discharges from new sewage treatment facilities; and (5) the siting of new wastewater treatment plants. The plan also mentions that the ESPC, in reviewing energy facilities proposed for APRs, will give prime consideration to the need to prevent adverse environmental impacts in these areas. See G.L. c. 164, §§64H, 64J, 64 O.

As authorities relied upon for implementing Policy 2, the plan cites among other statutes the Massachusetts Environmental Policy Act (MEPA), G.L. c. 30, §§61, 62, and MEPA Regulations, §§8.2 and 8.3 (appearing in Mass. Register Issue No. 36 at 1, 17 [1976]),[12] as well as specific statutory programs designed to protect marine

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11/ The Secretary's authority to designate such areas is the focus of Question 4. See pp. 27-28 infra.

12/ MEPA has recently been amended by St. 1977, c, 947, §1, which amends G.L. c. 30, §62 and adds eight new sections, G.L. c. 30, §§62A-62H. Under the new version of MEPA, the Secretary has increased rulemaking responsibilities. See §62H. In addition, the Secretary is now specifically charged with responsibility for establishing general and special categories of projects (footnote cont.)

environment resources. These include: G.L. c. 131, §40A, (inland wetlands restriction - DEM); c. 21 (water pollution control - DWPC see, in particular, §§27, 43, 57-58); and the statutory provisions cited above in relation to Policy 1 -- G.L. c. 91, §§51-59; c. 131, §40; c. 130, §105, c. 132A, §§13-17. I have reviewed these statutes as well as the other cited in the plan, and conclude that they authorize the proposed implementation of Policy 2 by EOEA and its agencies.[13/]

12/ (Continued)
which shall or shall not require environmental impact reports. See §62E. This last section goes into effect July 1, 1978. The other new sections of G.L. c. 30 are effective February 15, 1978. See St. 1977, c. 947, §§4,5. Since the effective date of the additional sections of MEPA is imminent, I refer throughout to MEPA as G.L. c. 30, §61-62H.

13/ Again I assume compliance with relevant rulemaking requirements. Furthermore, since your first question asks only about the authority of the Secretary and EOEA agencies, I do not address here any actions that the EFSC might take to implement Policy 2. The authority of the EFSC to implement the policies of the CZM plan is the focus of your third question, and I discuss the issue in my response to that question.

Policy 3: Support attainment of the national water quality goals for all waters of the coastal zone through coordination with existing water quality planning and management agencies. Ensure that all activities endorsed by CZM in its policies are consistent with federal and state effluent limitations and water quality standards.

By its terms this policy provides that EOEA, its OCZM and the line agencies will follow and support existing federal and state water quality statutes, regulations and duly promulgated goals. EOEA and its agencies not only have the authority but the duty to take such action. Moreover, the Division of Water Pollution Control (see G.L. c. 21, §26), apparently the primary agency involved in implementing Policy 3, has an express mandate to take all necessary action to secure for the Commonwealth the benefits of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500, 33 U.S.C. §§1251 - 1376. G.L. c. 21, §27(3). This federal legislation is the source of the major programs which the EOEA and its agencies intend to support and work with in implementing Policy 3.[14/]

14/ To the extent that Policy 3 calls on OCZM to work with other EOEA and regional agencies, such cooperative efforts are authorized by G.L. c. 21A, §§3, 4(2), and 2(16)(23), (27).

Policy 4: Condition construction in water bodies and contiguous land areas to minimize interference with water circulation and sediment transport and to preserve water quality and marine productivity. Approve permits for flood or erosion control projects only when it has been determined that there will be no significant adverse effects on adjacent or down coast areas.

The draft CZM plan indicates that the purpose of this policy is to protect estuaries and coastal embayments as ecologically productive natural areas by conditioning construction and flood and erosion control projects in the manner suggested. The authorities reled upon include: G.L. c. 131, §§40, 40A; c. 130, §105; c. 91, §§14-18, 30, 30A;[15/] c. 21, §§8-15 (protection of state water resources -- DEM and DEQE [division of water resources and water resources commission]); and regulations promulgated by the agencies charged with administering these statutes. In addition, funds available under the federal Coastal Zone Management Act, 16 U.S.C. §1456c(b), will be used to conduct relevant studies. See G.L. c. 21A, §2(22), (25). My review of these statutes indicates EOEA and its agencies have the power to conduct the activities contemplated under Policy 4.

15/ The statutory provisions cited are described above. See pp. 5, 7 supra.

Policy 5: Ensure that dredging and disposal of dredged material minimize adverse effects on water quality, physical processes, marine productivity and public health.

It appears that this policy will be enforced by: DEQE and the Division of Marine Fisheries within the DFW & RV pursuant to G.L. c. 130, §§23-26 (discharge of oil, sewage and other substances in coastal waters); DEQE under the waterways program, G.L. c. 91, §§1-59B (see in particular §§2, 10-15, 52-55); DEM under the ocean sanctuaries program, G.L. c. 132A, §§13-17; the Division of Water Pollution Control in conjunction with the United States Environmental Protection Agency under G.L. c. 21, §§27, 42, 43; DEM under the coastal wetlands restriction act, G.L. c. 130, §105; conservation commissions or other local authorities and DEQE under the wetlands protection program pursuant to G.L. c. 131, §40; and local boards of health and DEQE pursuant to G.L. c. 111, §150A. These statutory provisions encompass the activites described under Policy 5, assuming, as with all these policies, that you comply with any rulemaking requirements which the statutes or G.L. c. 30A might impose.

Policy 6: Accommodate off-shore sand and gravel mining needs in areas and in ways that will not adversely affect marine resources and navigation.

Sufficient authority to implement this policy, as its contents are described in the draft CZM plan, exists in the Division of Mineral Resources within DEQE. See G.L. c. 21, §§54-56. Accordingly, I need not consider the extent to which other agencies may also carry out the policy's provisions.

Policy 7: Encourage the location of maritime commerce and development in segments of urban waterfronts designated as ports. Within these areas, prevent the exclusion of maritime dependent industrial uses that require the use of lands subject to tidelands licenses.

The draft CZM plan defines "port areas" as a class of areas more limited than the term "harbor" generally connotes, and with specific reference to marine dependent industry and activity. Policy 7's proposed encouragement of maritime commerce and development would be implemented primarily through the licensing activities of DEQE under the waterways program. See G.L. c. 91, §§10 (care and supervision of harbors and tidewaters in DEQE), 14-18 (licenses for construction of wharves, piers and other structures in or over tidewaters), §23 (abatement of unauthorized structures), §49B (removal of dilapidated wharves and piers). The wetlands protection program established by G.L. c. 131, §40 is also relied upon.

The protection of port areas and encouragement of navigation and maritime commerce enjoys a long history of recognition as a legitimate and significant governmental purpose. See, e.g., Commonwealth v. Charlestown, 1 Pick. 180, 183-184 (1822); Commonwealth v. Alger, 7 Cush. 53, 95 (1851); see also Illinois Central R. Co. v. Illinois, 146 U.S. 387, 452 (1892). So too does the authority of the sovereign to reasonably exercise its judgment in choosing between conflicting uses of such port areas. See Commonwealth v. Charlestown, supra at 184. Reading the relevant provisions of G.L. c. 91 and G.L. c: 131, §40 in light of these principles, I conclude that EOEA and its agencies have sufficient power to implement Policy 7.[16/]

16/ The draft CZM Plan refers to actions EFSC will take in assisting with the implementation of Policy 7, pursuant to that agency's memorandum of understanding with EOEA. However, the particular reference recognizes EFSC's paramount role in the energy facility siting process.

Policy 8: Weigh the environmental and safety impacts of locating proposed energy facilities at alternative sites. For coastally dependent facilities, consider siting in alternative coastal locations. For non-coastally dependent facilities consider siting in areas outside of the coastal zone.

As mentioned elsewhere, and as reflected in the discussion of this policy in the draft plan, the EFSC exercises primary jurisdiction over the siting of energy facilities. G.L. c. 164, §§64G-64S.[17/] Thus EOEA and its line agencies do not have authority to implement Policy 8 in the sense of requiring other governmental agencies or private persons to abide by the policy's terms. Under G.L. c. 21A, §2(17), however, all EOEA agencies are empowered and directed to analyze and recommend energy policies and programs in cooperation with other state agencies. See, also G.L. c. 164, §64Q. Insofar as the implementation of Policy 8 calls for the making of such policy recommendations, it is authorized by existing statutes.

Policy 9: a. Accommodate exploration, development and production of off-shore oil and gas resources while minimizing impacts on the marine environment, especially with respect to fisheries, water quality and wildlife, and on the recreational values of the coast, and minimizing conflicts with other maritime-dependent uses of coastal waters or lands. Encourage maritime-dependent facilities serving supply, support or transfer functions to locate in existing developed ports.

b. Evaluate indigenous or alternative sources of energy (coal, wind, solar and tidal power) and off-shore mining to minimize adverse impacts on the marine environment, especially with respect to fisheries, water quality, and wildlife, and on the recreational values of the coast.

17/ See the discussion of Question 3, at pp. 24-26 infra.

To the extent this policy is regulatory in character, it relies for state authorization on G.L. c. 21, §54 (removal of mineral resources - DEQE [Divison of Mineral Resources]); c. 91, §§14-18 (construction of structures below highwater mark - DEQE); and G.L. c. 132A, §§13-17 (ocean sanctuaries - DEM). These statutes confer adequate authority on the Division of Mineral Resources, DEQE and DEM, respectively, to cover the proposed actions under Policy 9. See also G.L. c. 30, §§61-62H (MEPA); c. 130, §17A (regulations for marine fisheries -- DFW & RV [Division of Marine Fisheries]), §§23-24 (penalties for discharge of oil and other substances into coastal waters causing injury to fish); §105 (coastal wetlands restriction - DEM); c. 91, §§59 - 59A (liability for discharge of petroleum products into Commonwealth waters and flats); c. 21, §§50-52, (regulation of oil terminals and disposal of oil products - (Division of Water Pollution Control), §§57-58 (hazardous waste disposal). Insofar as the policy calls for encouragement by EOEA and its agencies of certain industry decisions and evaluation of certain new information, it is justified by the provisions of G.L. c. 21A, §2 and c. 21, §§54-55, among other statutes.[18/]

18/ Again, the draft CZM plan's reference to the EFSC cannot be read as purporting to authorize EOEA agencies to determine siting policies.

Policy 10: All development must conform to existing applicable state and federal requirements governing sub-surface waste discharges, point sources of air and water pollution and protection of inland wetlands.

By its terms Policy 10 states the obvious: development projects, whether or not located in the coastal zone, must comply with the requirements of applicable state and federal statutes. To the extent these requirements are set forth in statutes which EOEA or its line agencies adminster, clearly the agencies have the authority to enforce them. See G.L. c. 21A, §13; c. 111, §17 (state environmental code, subsurface sewage disposal systems); c. 111, §§142A-142E (regulation of air pollution); c. 21, §43 (regulation of point source discharges and sewage connections and extensions). The draft CZM plan discussion of this policy shows that it will be implemented by the appropriate agencies through their continued administration of programs already set up under these statutes. Accordingly, I conclude that the agencies have sufficient statutory powers to carry out Policy 10.

Policy 11: Support designation of scenic rivers in the coastal zone. Support designation of areas for preservation or restoration as "sign free areas."

Under G.L. c. 21, §17B, the Commissioner of DEM is vested with broad authority to protect and regulate, by adoption of specific orders, the use of scenic rivers throughout the Commonwealth, including 100 yards on either side of the banks. The statute clearly includes the power to "designate" or adopt protective orders relating to particular scenic rivers in the coastal

zone. As stated in the draft CZM plan, implementation of the first sentence of Policy 11 primarily will be a function of DEM's administration of G.L. c. 21, §17B, although in addition OCZM will work with local interests to encourage visual protection of scenic rivers. Such activity is permited and indeed specifically encouraged by G.L. c. 21A, §2(5), (8), (11), (18), (23).

Turning to the second sentence of Policy 11, designation of "sign free areas" is the responsibility of the Outdoor Advertising Board within DEQE. G.L. c. 21A, §8. See G.L. c. 93, §29. The Board's current regulations provide for designation of "sign free areas" after notice and public hearing. See OAB Regulations, §4(h), reprinted in 9 C.M.R., Part 4 at 10(1973). Pursuant to the provisions of G.L. c. 21A, §2(7), (11), (16) and (18), OCZM may validly encourage the Outdoor Advertising Board to designate APRs or "areas of critical environmental concern" as "sign-free areas."

Policy 12: Review proposed developments in or near designated or registered historic districts or sites to ensure that Federal and state actions and private actions requiring a state permit respect their preservation intent and minimize potential adverse impacts.

Authority to implement this policy is grounded in MEPA, G.L. c. 30, §§61-62H. The statutory scheme creates a review process to assess potential "damage to the environment" arising from all state or federal projects or private projects requiring a state permit or license. Areas entitled to protection from such environmental damage include historic districts and sites. G.L. c. 30, §61. See generally Secretary of Environmental Affairs v.

Massachusetts Port Authy., 366 Mass. 755, 767-773 (1975). The program is administered primarily by the Office of Environmental Impact Review within the Secretary's office. The discussion of Policy 12 in the draft CZM plan reveals that the policy will be implemented through continuation of the existing environmental impact review program;[19/] no other or additional regulatory powers or functions are asserted on behalf of EOEA or its agencies.[20/] In my judgment, MEPA provides sufficient authority to carry out Policy 12.

19/ I assume there will be changes in MEPA's administration to accomodate the amendments to MEPA. See n. 12 supra. However, I presume that such changes will accord with the new legislative provisions. See Consolidated Cigar Corp. v. Department of Public Health, supra, Mass. Adv. Sh. (1977) at 1433.

20/ The draft plan discusses local zoning measures and other local programs that could be used to advance Policy 12, as well as national programs. EOEA and its agencies have the power to encourage such measures and programs, see generally G.L. c. 21A, §2, and the draft plan does not suggest that the agencies intend to go beyond permissible encouragement activities.

Policy 13; Review developments proposed near existing public recreation sites in order to minimize their adverse impacts.

As with Policy 12, the draft CZM plan indicates that Policy 13 will be implemented primarily through the environmental impact review system established by MEPA. The review contemplated in the plan is therefore limited to development projects undertaken directly by state or local governmental bodies or for which state permits or licenses are required; MEPA permits such review. However, insofar as public recreation sites are located on coastal or inland waters, wetlands or related areas, the EOEA agencies have additional regulating powers that may be used to further Policy 13. See e.g., G.L. c. 130, §105; c. 131, §§40, 40A.

(2) Non-Regulatory Policies

The remaining 14 policies included in the draft CZM plan have been generally classified by EOEA as "non-regulatory." Their implementation requires the EOEA agencies to: (1) assist other state and regional agencies, local governments or private individuals and industry in their activities relating to the coastal zone and in seeking state or federal funding for various programs and proposals; (2) work as advisors or advocates with federal, state and local agencies and groups concerning the policies and purposes of the CZM plan; and (3) generally utilize the EOEA agencies' own numerous and varied regulatory and reviewing powers[21/] to advance the substantive purposes which Policies 14-27 embody.

21/ These are the powers enumerated in the discussion above of the first 13 CZM policies.

I have examined these 14 policies and the draft CZM plan's discussion of them. In my judgment, sufficient legal authority for them may be found in the provisions of G.L. c. 21A in general and of c. 21A, §2[22/] in particular, supplemented by the specific enabling statutes for each agency described above. A separate discussion of remaining policies would be in large part redundant and is unnecessary. Accordingly, what follows is a list of the 14 policies, each followed by citation of the relevant statutory provisions authorizing the policy's implementation by EOEA and its agencies. I should point out, however, that the statutes cited are not intended to be an exclusive compilation of authorities. Other relevant provisions may exist, but those listed here are in themselves sufficient to support implementation of Policies 14-27.

22/ This section directs EOEA and its agencies together to "carry out the state environmental policy", and delineates 28 separate functions which the agencies are to perform in meeting the statutory mandate.

Policy 14: Encourage and assist commercial fisheries research and development, restoration and management of fishery resources, development of extensive and intensive aquaculture, and enhancement of anadromous fisheries. initiated at local, state and federal levels.

G.L. c. 21A, §2(3), (5), (9), (22), (23), (27); c. 130, §17.

Policy 15: Ensure that state and federally funded public works projects proposed for location within the 100 year coastal floodplain will:

a. not exacerbate existing hazards or damage natural buffers,

b. be reasonably safe from flood and erosion related damage, and

c. not promote growth and development in damage prone or buffer areas, especially in undeveloped areas of APR's.

G.L. c. 21A, §2(7), (9), (10), (13), (16), (21); c. 21, §27; c. 30, §§61-62H; c. 92, §32.

Policy 16: Encourage acquisition of undeveloped hazard prone areas for conservation or recreation use, and provide technical assistance for hazard area zoning and mitigation of erosion problems.

G.L. c. 21A, §2(2), (9), (10), (11), (15), (16), (18), (20), (23), (25); c. 132A, §3.

Policy 17: Provide funding for protection from tidal flooding and erosion, emphasizing the use of non-structural measures where feasible.

G.L. c. 21A, §2(2), (5), (7), (9)-(11), (25), (27); §9; c. 91, §§2, 5, 9, 10-13, 31.

Policy 18: Encourage through technical assistance and review of publicly funded development, compatibility of proposed development with local community character and scenic resources.

G.L. c. 21A, §2(11), (16), (18), (23), (27); c. 30, §§61-62H.

Policy 19: Promote the widest possible public benefit from channel dredging, ensuring that designated ports and developed harbors are given highest priority in the allocation of federal and state dredging funds. Ensure that this dredging is consistent with marine environment policies.

G.L. c. 21A, §2(2), (9), (14), (23), (25), (27); c. 30, §§61-62H; c. 91, §§3, 4, 10-11, 31, 52, 53; c. 132A, §§13-17.

Policy 20: Encourage, through technical and financial assistance, expansion of water dependent uses in designated ports and developed harbors, redevelopment of urban waterfronts, and expansion of visual access.

G.L. c. 21A, §2(2), (9), (11), (14), (23), (27); c. 21, §§17, 17A, 43; c. 30, §§61-62H; c. 91, §§9A, 10-14, c. 92.

Policy 21: Improve public access to coastal recreation facilities, and alleviate auto traffic and parking problems through improvements in public transportation. Link existing coastal recreation sites to each other or to nearby coastal inland facilities via trails for bicyclists, hikers, and equestrians, and via rivers for boaters.

G.L. c. 21A, §2(8), (9), (11), (15), (16), (18), (23), (25), (26), (27); c. 21, §§17A, 17B, 18; c. 30, §§61-62H; c. 132A, §11.

Policy 22: Increase capacity of existing recreation areas by facilitating the multiple use of the site and by improving management, maintenance and public support facilities. Resolve conflicting uses whenever possible through improved management rather than through exclusion of uses.

G.L. c. 21A, §2(8), (9), (11), (15), (16), (23), (25), (27); c. 30, §§61-62H.

Policy 23: Provide technical assistance to developers of private recreational facilities and sites that increase public access to the shoreline.

G.L. c. 21A, §2(8), (9), (11), (18), (23).

Policy 24: Physically expand existing recreation facilities and acquire and develop new public areas for coastal recreational activities. Give highest priority to expansions or new acquisitions in regions of high need or where site availability is now limited. Assure that both transportation access and the recreational facilities are compatible with social and environmental characteristics of surrounding communities.

G.L. c. 21A, §2(25), (26); §9; c. 21, §§17, 17A, 18; c. 132A, §§3, 11.

Policy 25: Encourage energy conservation and the use of alternative sources such as solar and wind power in order to meet the energy needs of the Commonwealth.

G.L. c. 21A, §2(2), (3), (5), (9), (10), (15), (17), (21), (23), (27); c. 21, §54; c. 30, §§61-62H; c. 91, §14; c. 132A, §§13-17.

Policy 26: Ensure that state and federally funded transportation and wastewater projects primarily serve existing developed areas, assigning highest priority to projects which meet tne needs of urban and community development centers.

G.L. c. 21A, §2(9), (10), (13), (16), (18), (19), (23), (27); c. 21, §43; c. 30,§§61-62H.

Policy 27: Encourage the revitalization and enhancement of existing development centers in the coastal zone through technical assistance and federal and state financial support for residential, commercial and industrial development.

G.L. c. 21A, §2(16), (23), (25); c. 30, §§61-62H.

2. Do the Secretary's Chapter 21A statutory responsibilities to conduct comprehensive planning, improve program activities and implement programs jointly upon request, empower the Office of the Secretary to develop and implement a program of coastal zone management jointly with EOEA agencies, to the extent permitted by law, [23/] when requested in a memorandum of understanding. [24/]

The planning and implementation powers referred to in this question are those set forth in G.L. c. 21A §§3 and 4. Section 4(2) specifically contemplates the formation of agreements between the Secretary and the various EOEA agencies or officers, and directs the Secretary to implement programs pursuant to such agreements. By its terms, a memorandum of understanding represents an agreement. The five memoranda which the Secretary and the EOEA line agency commissioners have entered into thus come directly within the statute's provisions.

23/ Taken literally, the phrase "to the extent permitted by law" produces the question whether the Office of the Secretary may develop and implement a CZM program jointly with EOEA agencies to the extent legally permitted. The obvious answer is yes. To give the question meaning, I treat the phrase as surplusage, and consider your inquiry to be whether the Office of the Secretary under G.L. c. 21A may jointly develop and implement a CZM program by memoranda of understanding with the EOEA agencies.

24/ Such memoranda exist between the Secretary and the Commissioners of each of the five EOEA line agencies; copies are included in the draft CZM plan. The terms of each memorandum are virtually the same. In each, a Commissioner has (1) expressed acceptance and support for the CZM plan, (2) requested the Secretary to jointly implement it, (3) agreed to incorporate the plan into his agency's, department's, etc. regulations through proper rulemaking proceedings, and (4) requested the Secretary to use the conflict resolution procedures of G.L. c. 21A, §4(1) as necessary.

Turning to the CZM program itself, my answer to your first question shows that the Secretary and the line agencies may validly enter into a memorandum of understanding concerning that program. As discussed above, the five agencies play varying roles under the CZM plan, each responsible for the plan's implementation to the extent that the agency's own enabling statutes give it duties affecting the coastal zone.[25/] Clearly each agency has the power and discretion to accept and support the CZM program insofar as it relates to the agency's functions, and, under G.L. c, 21A, §4(2), to request the Secretary's assistance in implementing that program. Cf. Secretary of Environmental Affairs v. Massachusetts Port Authority, supra, 366 Mass. at 775-777 (memorandum of understanding between Massachusetts Port Authority and Executive Office of Transportation and Construction regarding Logan Airport construction project).

Additional support for the EOEA memoranda of understanding lies in G.L. c. 21A, §2. As mentioned, §2 provides that "[t]he office [EOEA] and its appropriate departments and divisions shall carry out the state environmental policy [emphasis supplied]", and sets forth 28 duties and responsibilities to be performed by them.

25/ Each agency may also have independent responsibilities under the several provisions of G.L. c. 21A, §2.

In terms of substance, the various policies of the CZM plan[26/] fall within the scope of these 28 tasks. On a more procedural level, the vesting of joint responsibility for carrying out the tasks strongly implies a legislative expectation that the EOEA and its agencies would cooperatively work together in implementing environmental programs such as the CZM program.[27/]

3. Is it within the authority of the EFSC, when carrying out its statutory duty to weigh the environmental impacts of proposed energy facilities, to agree to recognize and to act consistently with duly promulgated EOEA regulations concerning coastal zone management policies, while retaining its ultimate authority to determine the siting of facilities?

26/ The plan itself represents state "environmental policy." This is indicated in the Governor's letter to the United States Secretary of Commerce, incorporated into the CZM plan.

27/ One cautionary note should be added. General Laws, c. 21A, §§3 and 4 give the management powers at issue here directly to the Secretary, and not to a separate or independent office or program of coastal zone management. The legal status of such an office needs some definition. Obviously personnel will be necessary to carry out the CZM plan and the program, and the Secretary has the authority to hire them. G.L. c. 21A, §6. I view OCZM as an integral part of the Office of the Secretary, similar to the Environmental Impact Review Board. The CZM plan itself defines OCZM as the planning and policy-formulation arm of the Secretary for coastal zone affairs.

EFSC is established by G.L. c. 164, §69H. It is the agency charged with the review and approval of the construction and siting of all major energy facilities -- gas, electric and oil -- in the Commonwealth. See G.L. c. 164, §§69G-69S, defining the powers and functions of the agency. See also Plymouth County Nuclear Information Committee, Inc. v. Energy Facilities Siting Council, Mass. Adv. Sh. (1978) 139. A number of these provisions demonstrate that EFSC must consider environmental impact in all its construction and siting determinations. Thus the guiding mandate of EFSC is to implement the Commonwealth's energy policies so as "to provide a necessary energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost." §69H. Moreover, in making the specific energy facility determinations called for under the legislative scheme, the agency is under an explicit command to assess the proposed facility in relation to established environmental policies of the Commonwealth. See §§69J, ¶2 (approval of plans for construction of new electric, gas and oil facilities), 69 O(2)(3) (approval of certificates of environmental impact and public need); see also §§69I (electric power, gas, and oil companies applying for energy facility construction approval to submit information showing, inter alia, environmental impact of proposed facilities), 69L(2) (applicants for certificates of environmental impact and public need to submit studies of environmental impact of proposed facility).[28/]

28/ The Secretary of Environmental Affairs' seat on EFSC, one of four cabinet secretaries designated as members, see §69H, also shows the importance of environmental considerations to the agency.

Furthermore, EFSC has been granted express powers to work cooperatively with other agencies of the Commonwealth as well as other states and the federal government. See G.L. c. 164, §§69H, ¶4, 69Q. Reading these provisions in light of the clear legislative intent that EFSC consider environmental concerns, I conclude that EFSC may agree to recognize and to act consistently with duly promulgated EOEA regulations concerning coastal zone management policies. Cf. Holyoke St. Ry. Co. v. Department of Public Utilities, 347 Mass. 440, 450 (1964); cf. also New York Cent. R.R. v. Department of Public Utilities, 347 Mass. 586, 591-592 (1964); Newton v. Department of Public Utilities, 339 Mass. 539, 546-548 (1959).[29/]

29/ At the same time, it is useful to define certain limits to the Council's authority to agree to, or to bind itself to, policies and regulations of EOEA. I have examined the present memorandum of understanding between EFSC and EOEA relating to the CZM plan, which appears in the draft plan document. Included within the memorandum is a commitment by EFSC to "give prime consideration to the environmental impact" on critical areas of environmental concern in reviewing facilities proposed for these areas (emphasis in original). This covenant requires some analysis. An agency may voluntarily limit broadly granted statutory discretion by announcing standards for its exercise. See Dixon v. Love, 431 U.S. 105, 115 and n. 12 (1977); Service v. Dulles, 354 U.S. 363, 388 (1957); see generally K. Davis, Adminstrative Law Treatise, §§2.04, 2.05, 2.07, 2.11 (1958 and Supp. 1976). However, an agency may not act in contradiction of its enabling legislation. E.g. Bureau of Old Age Assistance of Natick v. Commissioner of Public Welfare, 326 Mass. 121, 124 (1950).

Here, the Legislature has commanded EFSC to consider all three criteria of "necessary energy supply for the commonwealth," "minimum impact on the environment," and "lowest possible cost" in its determinations. G.L. c. 164, §§69H, 69J, 69 O(3). At the same time the Legislature has directed EOEA to "develop statewide policies regarding the acquisition, protection, and use of areas of (footnote cont.)

4. Does G.L. c. 21A, §2(7) or any other provision of law authorize the Secretary to designate areas of critical environmental concern within the coastal zone as provided for in the CZM Plan?

General Laws, c. 21A, §2(7) provides that the EOEA "shall develop statewide policies regarding the acquisitions, protection, and use of areas of critical environmental concern to the commonwealth"; St. 1974, c. 806, §40(e)(1) further specifies that critical areas may include "the coastal zone." In short, the plain language of these provisions empowers the Secretary, on behalf of EOEA, to designate areas of critical environmental concern within the coastal zone. As to the procedures

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29/ (Continued)
critical environmental concern to the commonwealth," G.L. c. 21A, §2(7). Such "critical areas" may include the coastal zone. St. 1974, c. 806, §40(e). To harmonize these legislative objectives, the Council and EOEA may agree that the criterion of environmental impact is entitled to special weight in the Council's consideration of an energy facility site proposed for a critical area. If this policy is the meaning of the phrase "prime consideration", it lies within the Council's statutory power.

However, EFSC may not agree to make the environmental criterion automatically determinative of siting decisions for critical areas. Such a policy would contradict the statutory mandate of the Council to weigh all three criteria of energy needs, low cost, and environmental effect, and would therefore be invalid. See Bureau of Old Age Assistance of Natick, supra. Had the Legislature intended one criterion to be decisive in particular circumstances, it plainly could have said so. In addition, G.L. c. 164, §§69I,O prescribe that the Council's consideration of every energy facility application is to be a deliberative, adjudicatory process. EFSC must exercise its judgment in each instance. It cannot contract away its statutory duty to exercise its discretion by agreement with another agency. See Mass. Const., Pt. 1, Art, 20; cf. Accardi v. Shaughnessy, 347 U.S. 260, 266-267 (1954).

and standards the Secretary will use to designate these areas, I note that the draft CZM plan contains proposed regulations which treat both of these matters. Recognizing the limited scope of my review of these suggested provisions, I conclude that in substance they seem to represent reasonable and valid measures. See Consolidated Cigar Corp. v. Department of Public Health, supra, Mass. Adv. Sh. (1977) at 1432-1437; Warner Cable of Massachusetts, Inc. v. Community Antenna Television Commission, Mass. Adv. Sh. (1977) 915, 925; Secretary of Environmental Affairs v. Massachusetts Port Authority, supra, 366 Mass. at 774.[30/]

B. The Questions of the Joint Committee on Natural Resources

I turn next to the 12 questions proposed by the Joint Committee. Many of these overlap with the four questions of the Secretary or call for answers deriving from the discussion above.[31/] For the most part they can be answered more concisely.

1. Do EOEA and its constituent agencies have the statutory authority to implement the Massachusetts CZM program by basing such authority on St. 1974, c. 806, now codified in G.L. c. 21A?

My response to the Secretary's first question indicates that in my judgment, G.L. c. 21A, together with the various statutory provisions cited in my response and in the draft CZM plan,

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30/ The remaining phrases of this question (whether "any other provision of law" similarly authorizes the Secretary to designate areas "as provided in the CZM Plan"), are too indefinite to permit even an informal answer.

31/ I regret I have not been able to answer all of the Joint Committee's questions. As with some portions of the Secretary's requests, the meaning of some portions of the questions is not sufficiently clear to permit an adequate response. In addition, I have declined to consider a few of the questions because they appear to have no connection to the CZM plan in its current form or to the EOEA's current proposed implementation of the CZM program.

empower EOEA and its constituent agencies to implement the CZM program proposed by that plan. Since EOEA does not attempt to justify the CZM plan solely on the basis of G.L. c. 21A, it does not seem necessary to consider that question at the present time, and I have not done so.

2. Does the State Environmental Policy, declared in Article 49/97 of the Constitution, mean that in conjunction with its own specific enabling legislation, every agency within EOEA, due to the powers and responsibilities enumerated in G.L. c. 21A, §2, must make its policies consistent with the CZM program?

Article 97 of the Amendments to the Constitution, amending art. 49 of the Amendments, declares certain broad rights of the people to protection of the environment. It has no express connection with the CZM program. In any event, the agencies within EOEA have voluntarily agreed through memoranda of understanding to make their policies consistent with that program. In these circumstances, I need not examine the implicit relationship between art. 49 and the CZM plan and program.

3. Does the enabling legislation outlined in the [U.S. Department of Commerce] Draft Environmental Impact Statement (pages 11-35 to 11-41) allow an agency to implement the CZM without expanding [its] existing jurisdiction as authorized by law?

As set forth in my answer to Question 1 of the Secretary, the EOEA and its constituent agencies presently possess sufficient statutory authority to implement the proposed CZM program.

4. Do the existing statutes upon which EOEA relies to implement the CZM Program create a different standard to be applied when exercising its authority under G.L. c. 30, §61, the Massachusetts Environmental Policy Act; G.L. c. 131, §40A, the Inland Wetlands Restriction Act; and G.L. c. 131, §40, the Wetlands Protection Act?

The meaning of this question is unclear. I do not know the statutes referred to by the phrase "existing statutes upon which EOEA relies." Moreover, I cannot determine whether the question intends to ask if the referenced statutes create standards of conduct different from each other, different from G.L. c. 21A, or from other statutes. I therefore decline to answer it.

5. General Laws, c. 21A, §3 provides that "the Secretary shall conduct comprehensive planning with respect to the functions of the office and shall coordinate the activities and programs of the agencies within the office." Does this planning authorization imply that after development of such planning activities, said Secretary shall have the power to implement the plans without new legislation?

The planning authorization of G.L. c. 21A, §3, permits the Secretary to implement plans so long as their substance lies within the authority conferred upon the Secretary by existing legislation. With that qualification, I answer Question 5 affirmatively.

6. Does the Office of Coastal Zone Management [OCZM] require statutory status to implement the CZM Program as described in Volume I and II of the [draft] CZM Plan?

OCZM does not require statutory status to implement the program or plan presently proposed. It may implement the plan or program as an "arm of the Secretary" under the authority of G.L. c. 21A, §§1, 6. See my answer to Question 2 of the Secretary at p. 24, n. 27 supra.

7. Are the Memoranda of Understanding which have been signed by the five Commissioners within EOEA and EFSC a formal recognition of the CZM Program as a statement of the state environmental policy, therefore compelling such commissioners and EFSC to implement the program? If such memoranda represent valid actions by the adopting agencies, must such memoranda be adopted as regulations under G.L. c. 30A in order to be enforceable?

As discussed above, the memoranda of understanding between the Secretary and the five constituent agencies of EOEA, and between the Secretary and EFSC, are commitments to the policy of the CZM plan which each agency may undertake so long as it does not exceed or violate its statutory authority or duty. The memoranda are an expression of voluntary, practical cooperation among the agencies. The agencies are not irrevocably or indefinitely bound by the "understanding" in the sense of contractual obligation. An agency might withdraw from the understanding if it concluded that wise policy or legal duty required. As a practical matter, of course, I assume that differences of policy between the Secretary and the five agencies of EOEA would be worked out among them, since the Secretary supervises the agencies and appoints their commissioners. G.L. c. 21A, §7. See also G.L. c. 21A, §4(1), giving conflict resolution powers to the Secretary. Questions of legal duty could be settled by a proper opinion request to the Attorney General or ultimately by resort to the courts. With special regard to the EFSC, see the discussion in answer to Question 3 of the Secretary, supra.

Since the memoranda are inter-agency instruments of general policy, they need not be adopted as formal regulations to be enforceable among the signatory agencies. Insofar as the policies set forth in the memoranda will be applied to others, I note that the documents specifically contemplate adoption or amendment of regulations. It is accordingly unnecessary to consider further the application of G.L. c. 30A to the memoranda themselves.

8. Is the passage of enabling or other legislation necessary in order to empower the Secretary of Environmental Affairs and or OCZM to implement the proposed CZM Program?

In my opinion, no further legislation is necessary. The reasons are discussed in the answers to Questions 1, 2, and 4 of the Secretary, supra.

9. Does EOEA have the authority to create an Office of Coastal Zone Management with the power:

   (a) to determine whether applications for federal grants, projects or permits in the coastal zone are consistent with the CZM Plan, and to veto any such federal grants, projects or permits which are determined to be inconsistent with the CZM Plan?

   (b) to intervene as a party in adjudicatory proceedings before agencies within EOEA which may affect the coastal zone?

As I have explained in answer to Question 2 of the Secretary, an "office" of Coastal Zone Management has no legal existence independent of the Secretary. Considered in this light, Question 9 addresses the power of the Secretary to take the action described in subsections (a) and (b).

(a) To the extent this question asks about the Secretary's powers to require consistency of federally approved projects with the CZM program pursuant to 16 U.S.C. §1456(c)(3), it is one of federal law, which I may not properly consider. To the extent the question asks about the Secretary's authority under state law, I point out again that G.L. c. 21A, §2(25) authorizes EOEA to represent and act on behalf of the Commonwealth in connection with federal grant programs. See also id. §2(28), third paragraph.

(b) Because OCZM lacks independent legal status, it may not formally intervene in adjudicatory proceedings as a distinct party. However the Office of the Secretary, of which it would be part and which does enjoy statutory status, could duly intervene in such proceedings and present views concerning the CZM program, in accordance with G.L. c. 30A, §10. See generally Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667, 673-674 (1975). See also G.L. c. 164, §69N.[32/]

32/ If and when the Secretary appears as an interested party in an adjudicatory proceeding before an EOEA agency, or before EFSC, she should avoid participation in the judicial or decisionmaking process so as to avoid the risk of an unconstitutionally biased outcome. The due process requirement of a fair trial before a fair tribunal applies to administrative agencies performing adjudicatory duties as well as to courts. Withrow v. Larkin, 421 U.S. 35, 46-47 (1975); Gibson v. Berryhill, 411 U.S. 564, 578 (1973). See G.L. c. 164, §69H. One who personally participates in a case as a party or on behalf of a party cannot then sit as a decisionmaker on the same case. Trans World Airlines, Inc. v. Civil Aeronautics Board, 254 F. 2d 90, 91 (D.C. Cir. 1958); cf. In re Murchison, 349 U.S. 133, 136-137, 138-139 (1955); American Tel. & Tel. Co. v. Federal Communications Commission, 449 F. 2d 439, 453-455 (2d Cir. 1971); cf. also Board of Selectmen of Barnstable v. Alcoholic Beverages Control Commission, Mass. Adv. Sh. (1977) 2434, 2439. (Continued)

12. [33] Can EOEA by a memorandum of understanding bind EFSC to issue regulations or an administrative bulletin to implement the CZM Plan; to recognize the CZM Plan, as approved by the Governor, as state environmental policy; to submit company submissions to EOEA prior to a hearing before EFSC; to recognize the standing of OCZM in EFSC proceedings; to give "prime consideration" to environmental impacts of facilities proposed for areas of critical environmental concern?

EOEA cannot "bind" the EFSC by memoranda of understanding to undertake any of the conduct described in Question 12. The reasons are discussed in the answer to Question 3 of the Secretary and to Question 7 of the Committee, supra. The EFSC is "bound" only to the performance of its statutory duties. As I have explained

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[32] (Continued)
Consequently, if the Secretary were to appear as a party in an adjudicatory proceeding before the EFSC, she should not sit as a member of the Council in deciding the matter. I do not consider, however, whether she should disqualify herself if an EOEA office or agency were to appear as a party before the EFSC.

[33] I must decline to answer the Committee's tenth and eleventh questions. Both are too general and abstract to allow for proper consideration. Moreover, it seems that answers are not presently necessary. Question 10 asks about EOEA's power to establish priorities of uses or prohibited uses within coastal zone areas. Insofar as the question asks about areas of critical environmental concern, see my answer to Question 4 of the Secretary, supra. If the question asks about other areas, the proposed plan does not suggest that the Secretary or OCZM will unilaterally establish such uses. Question 11, concerning the draft CZM plan's validity as a regulation, needs no answer since the CZM plan is not a regulation.

in those answers,[34/] however, that agency may voluntarily undertake any of the conduct described in Question 12 as a matter of discretionary policy, so long as its activities do not exceed or contradict its statutory authority and duties. Consequently, I answer the literal question posed in the negative.

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

34/ On the status of OCZM as a party in EFSC proceedings, see my answer to the Committee's Question 9(b) at p. 33 and n. 32 supra.

Appendix I
M.E.P.A. Amendments

APPENDIX I

A recent amendment to MEPA (effective February 15, 1978) is intended to retain environmental standards while providing greater guidance to applicants early in the process and more expeditious review of projects.

The significant revisions of the law delegate more authority to the Secretary of Environmental Affairs and specify time frames for decision making and permit granting. The Secretary of Environmental Affairs, rather than the secretaries of each executive office, is now empowered to promulgate regulations under the Act, thus simplifying the process because only one set of regulations will be used in determining what is required in a filing. The provision placing the power to determine whether an environmental impact report is required with the Secretary, rather than with the agency involved, merely codifies how decisions were made in many cases prior to the amendment. And by giving the Secretary power to determine the scope of an impact report, including the range of alternatives which must be considered, the preparation time can be shortened, attention focused on the important issues and the size of the report reduced.

Other provisions of the amendment aim at expediting the process by placing responsibility for filing on the applicant instead of the agency; requiring agencies to act on an application within a certain number of days; and establishing procedures for filing on emergency actions or land acquisitions in an urban renewal project.

Since the recent amendment should allow for more expeditious and consistent review of projects, it should complement the efforts of the CZM policies to improve existing decision making within EOEA.

DEFINITIONS

I SIGNIFICANT RESOURCE AREAS*

Anadromous fish runs: areas within estuaries, streams, bays and coastal waters which are spawning or feeding grounds for anadromous fish. Defined by the Division of Marine Fisheries.

Barrier beach system: a narrow low-lying strip of land composed of unconsolidated material extending roughly parallel to the general coast and either completely or partially separated from the mainland by a narrow body of fresh, brackish or saline water or marsh system. Barrier beaches are dynamic landforms that are presently migrating landward in response to rising sea level. They serve as a buffer to protect landward public and private property and natural areas from the force of storms and coastal flooding. In addition, barrier beaches provide valuable natural habitats and function as natural dynamic systems that change in response to coastal processes (erosion and accretion, storm overwash, and dune development).

Beach: the gently sloping shore of a body of water consisting of unconsolidated material subject to wave, tidal, and coastal storm action. Beaches extend from the mean low water line to the duneline, beachgrass line or to the seaward edge of existing man-made structures.

Coastal embayments: marine waters that have a restricted opening to the ocean due at least in part to the formation of a barrier beach. Unlike estuaries or salt ponds there is very little fresh water influence. Coastal embayments are shallow and may support healthy stands of eel grass and populations of shellfish. Most coastal embayments support well developed salt marsh systems.

Developed harbors: sheltered harbors and navigable channels which provide mooring space, berths, slips, ramps, and docks serving a region-wide boating public, commercial fishermen, cruise boats, ferries, or light marine industry. Such harbors may also present unique opportunities for the fishing industry or for waterfront renewal and revitalization.

Dune: any low hill, mound, or ridge of sand deposited by wind action or storm overwash or by artificial means for shoreline protection. Dunes extend from the beach landward to the end of beachgrass vegetation or the end of the topographic expression.

Erosion Areas: areas where there is a loss of land along the shoreline caused either by natural forces or by the action of man. "Critical" erosion is typically defined to mean erosion of shorefront property that causes it to become unusable or imminently rendered unusable. Critical erosion is evidenced by a loss in signficant recreational beach benefits, a significant loss in other public lands or facilities, significant damage or destruction of private property, or significant change in the morphology of conservation land.

* These areas are Geographical Areas of Particular Concern as defined in the federal Coastal Zone Management Act.

Estuary: semi-enclosed body of water which has a free connection with the open sea within which sea water is measurably diluted with fresh water derived from outflowing fresh water rivers. In most instances, the landward extent of the mixing of fresh and salt water is shown by the presence of salt water marshes which form along the banks of the river.

Floodplains: coastal lands located within the 100 year flood zone, as defined by the Army Corps of Engineers flood profiles.

Historic sites or districts: man-made sites of historic, archeological, architectural, or cultural value listed on the National Register of Historic Places. Districts established by special legislative act or pursuant to MGLA Chpater 40C.

Port areas: locations that include navigable channels of 20 foot depth or more, lands abutting the channels which are suited for marine dependent or industrial use, and well-developed road and rail links leading to major arterial and truck routes. Such locations are also served by public water supply and sewage treatment systems capable of accommodating heavy industiral use and are separated or remote from residential neighborhoods and commercial business districts.

Public recreational beaches: suitable, sandy beaches with adequate access which provide recreation opportunities for a region-wide public.

Salt marsh: high marshes are low-lying coastal wetlands characterized by the presence of Spartina patens. These marshes are flooded by seasonal high tides. Low saltwater marshes are areas vegetated by Spartina alterniflora. This land is submerged by normal tides.

Salt ponds: a shallow enclosed or semi-enclosed bay of saline water formed as the result of glaciation or barrier beach formation at the mouth of a shallow bay. Salt ponds are subject to fresh water influence from small streams emptying into the upper reaches of the pond or springs along the periphery and/or in the pond itself. Salt marsh vegetation usually forms a fringe around the pond.

Shellfish beds: areas of bottom which, in combination with other environmental factors, favor the establishment and reproduction of harvestable shellfish; blue mussel, oyster, quahog and soft shell clams, bay scallops, sea clam, and ocean quahog. Bottom areas with associated Zostera marina serve in places as bay scallop nurseries. Defined by the Division of Marine Fisheries.

II ABBREVIATIONS

A-95	Review established by the Intergovernmental Coordination Act of 1968. This review process ensures that federal agencies are made aware of state, regional and local concerns about the compatibility of proposed federally funded projects with other state or federal programs.
ACEC	Area of Critical Environmental Concern
APR	Area for Preservation or Restoration
BLM	Bureau of Land Management
BOR	Bureau of Outdoor Recreation
BPD	Barrels Per Day
BRA	Boston Redevlopment Authority
CAC	Citizen Advisory Committee
CCPEDC	Cape Cod Planning and Economic Development Commission
CFR	Code of Federal Regulations
CZM	Coastal Zone Management
CZMA	Coastal Zone Management Act
DCA	Department of Community Affairs
DCS	Division of Conservation Services
DEM	Department of Environmental Management
DEQE	Department of Environmental Quality Engineering
DFW&RV	Department of Fisheries, Wildlife and Recreational Vehicles
DLE	Division of Law Enforcement
DMF	Division of Marine Fisheries
DOC	Department of Commerce
DOI	Department of Interior
DOT	Department of Transportation
DPW	Department of Public Works
DWPC	Division of Water Pollution Control

DWT	Dead Weight Ton
EDA	Economic Development Administration
EDIC	Economic Development and Industrial Corporation
EFSC	Energy Facilities Siting Council
EIS	Environmental Impact Statement
EOCD	Executive Office of Communities and Development
EOTC	Executive Office of Transportation and Construction
EOEA	Executive Office of Environmental Affairs
EPA	Environmental Protection Agency
ERDA	Energy Research and Development Administration
FAA	Federal Aviation Administration
FEA	Federal Energy Administration
FIA	Federal Insurance Administration
FIRM	Flood Insurance Rate Maps
FPC	Federal Power Commission
FRC	Federal Regional Council
GAPC	Geographical Area of Particular Concern
GSA	Unites States General Services Administration
HEW	Health, Education and Welfare (Department of)
HUD	Housing and Urban Development (Department of)
LNG	Liquid Natural Gas
MACC	Massachusetts Association of Conservation Commissions
MAPC	Metropolitan Area Planning Council
MARAD	Maritime Administration, Department of Commerce
MBTA	Massachusetts Bay Transportation Authority
MCZM	Massachusetts Coastal Zone Management
MDC	Metropolitan District Commission
MEPA	Massachusetts Environmental Policy Act

MGLA	Massachusetts General Laws Annotated
MOU	Memorandum of Understanding
MVC	Martha's Vineyard Commission
MVPC	Merrimack Valley Planning Council
NAAQS	National Ambient Air Quality Standards
NEIWPCC	New England Interstate Water Pollution Control Commission
NEPA	National Environmental Policy Act
NEPOOL	New England Power Pool
NERBC	New England River Basins Commission
MERCOM	New England Regional Commission
NESHAPS	National Emission Standards for Hazardous Air Pollutants
NFIP	National Flood Insurance Program
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollution Discharge Elimination System
NPEDC	Nantucket Planning and Economic Development Commission
NPS	National Park Service
OCS	Outer Continental Shelf
OCZM	Office of Coastal Zone Management
OSP	Office of State Planning
SADA	Special Assistance Development Area
SCORP	State Comprehensive Outdoor Recreation Plan
SENE	Southeastern New England Study
SNG	Synthetic Natural Gas
SRA	Significant Resource Area
SRPEDD	Southeast Regional Planning & Economic Development District
RPA	Regional Planning Agency
UMTA	Urban Massachusetts Transit Association

USDA/SCS	Unites States Department of Agriculture/ Soil Conservation Service
USF&W	United States Fish and Wildlife
USGS	United States Geological Survey