



Memorandum

To: Jennifer Cervenka, CRMC Chair and Council members

From: James Boyd, CRMC Coastal Policy Analyst

Date: September 19, 2018

Re: **Red Book - 650-RICR-20-00-1** – Proposed amendments for Council consideration

The CRMC issued public notice for rule-making on August 16, 2018 for proposed amendments to the Red Book. The Council held a public hearing in this matter on September 11, 2018 in conformance with R.I. Gen. Laws § 42-35-2.8. No public testimony was offered at the public hearing. The public comment period closed on September 17, 2018 and one set of written comments dated September 6, 2018 were received from Save The Bay (STB), which were electronically distributed to Council members on September 11, 2018, and attached hereto.

The following is a list of the Red Book amendments approved for rule-making by the CRMC Planning & Procedures Subcommittee with the date of meeting and specific sections. Each of these sections were incorporated into the August 16, 2018 public notice for rule-making.

June 12, 2018

- Add new § 1.1.6(I) coastal hazard analysis
- Amend § 1.3.1(C) to add fitness of purpose review for commercial marine facilities
- Amend § 1.3.1(D) to address previously authorized docks
- Amend § 1.3.1(H) to incorporate elements of the 1978 Energy Amendments and requirement for certified verification agent for energy-related facilities.
- Amend § 1.3.1(I) to address upland and in-water dredge material disposal.

January 16, 2018

- Amend § 1.1.2(A)(130) to revise definition of residential boating facility
- Amend § 1.3.1(D) to address previously authorized docks in Type 1 waters
- Amend § 1.6(R) to modify Bristol water type adjacent to RWU (Type 4 waters)

December 19, 2017

- Amend § 1.1.2(A)(100) to revise definition of outhaul
- Amend § 1.1.2(A)(116) definition of recreational boating facility to include outhaul
- Amend § 1.7 to add new Block Island shoreline change maps

May 16, 2017

- Amend § 1.3.1(K) aquaculture for consistency with RIDEM and existing practices
- Amend § 1.3.1(O) to incorporate regulatory elements from CRMC Municipal Harbor Management Plan guidance

Prior to STB filing their comments with the Council, CRMC staff (G. Fugate and J. Boyd) met with STB staff on August 31, 2018 to review and discuss their draft comments on the Red Book amendments. It was mutually agreed that any STB comments that were deemed technical revisions and intended for clarity of the proposed rules would be included as part of the CRMC staff report and recommendations to the Council. Accordingly, this would allow for the proposed amendment process to continue without delay and not require a new public notice. However, any STB proposed changes deemed to be substantially different from the rule proposed in the notice of proposed rulemaking would have to be considered by the Planning & Procedures Subcommittee at a later date for further proposed rule-making action by the Council in accordance with R.I. Gen. Laws § 42-35-6.1.

After careful review of the September 6, 2018 STB comments, including proposed changes to existing definitions as shown in “track changes” below, CRMC staff made further edits for clarification and the recommended modifications are shown below in **yellow-highlighted text**. The proposed changes below appear to be consistent with, and a logical outgrowth of, the rules proposed in the CRMC public notice for rule-making without changing the intent of the definitions or their application within the rules in any way. Accordingly, they are recommended by CRMC staff for Council approval.

All other amendments as proposed for rule-making in the August 16, 2018 public notice are recommended for approval and adoption by the Council.

§ 1.1.2 Definitions

5. “Alterations to coastal wetlands” means any alterations to the functions and values of wetlands including, but ~~shall not be~~ limited to: filling, removing or grading; dredging and dredged materials disposal; and any **significant** cutting or removal of vegetation; and excavation, draining, damming and/or diverting of hydrological flows in a coastal wetland. Any activity, including the aforementioned, taking place in an area adjacent to a coastal wetland which impacts the coastal wetland, shall be considered an alteration to coastal wetlands.

7. “Alterations to the flows of tributaries” means the installation of dams or other devices or fill material that alter flows of tributaries to tidal waters and that **significantly** change the timing and/or volumes of fresh water to coastal waters. ~~Such alterations have a reasonable probability to conflict with a Council plan or program for resources management or may significantly affect the environment of the coastal region.~~

18. “Boat and float lift systems” means accessory structures to residential boating facilities that raise either a boat or float out of the water. ~~to facilitate safety and/or maintenance. Boat lifts~~

~~are designed to lift a vessel out of the water.~~ Generally, a cradle or strap supports the vessel or float while it is being lifted by a pulley-type lift system. Overhead arms or crane-like systems may also be used to lift vessels out of the water. ~~Float lifts are designed to lift a float out of the water. Generally, a cradle or cables support the float while it is being lifted by a pulley type lift system.~~

24. "Certified verification agent" or "CVA" means an ~~independent third-party agent that shall use good engineering judgment and practices in conducting an independent assessment of the design, fabrication and installation of an energy-related activity as defined in individual or organization, experienced in the design, fabrication, and installation of an energy related facility or structure, who will conduct specified third-party reviews, inspections, and verifications in accordance with~~ this Part.

25. "Climate" means the long-term weather average observed within a geographic region, and climate change refers to fluctuations in the Earth's climate system as a result of both natural and anthropogenic causes. Currently the long term climate change trend is evidenced by rising global temperatures; increasing storm intensity, extremes within the hydrologic cycle resulting in more frequent floods and droughts; and rising sea level.

33. "Coastal wetland mitigation" means efforts ~~mitigation avoidance and minimization of impacts and compensation for unavoidable losses by creating or restoring coastal wetlands. Mitigation projects are those projects undertaken~~ to compensate for unavoidable losses after impacts associated with a proposed activity have been avoided and minimized to the maximum extent practicable. The Council recognizes the restoration of historic wetlands and the creation of new wetlands as the only acceptable means of compensating for unavoidable losses of coastal wetlands.

34. "Commercial and industrial structures and operations" means all buildings and structures and alterations to ~~such features facilities~~ related to the manufacturing and interchange of goods or commodities, or any other business activity located on a shoreline feature, its contiguous area, or within tidal waters.

35. "Commercial marine facility" or "CMF" means, but is not limited to, commercial structures located partially or wholly within CRMC Type 4, 5 or 6 waters such as bridges, commercial moorings, ship building or repair facilities, public ferry facilities, piers, wharfs, bulkheads, bulk and liquid cargo transfer facilities or other commercial type structures within CRMC jurisdiction. ~~that may warrant certification for protection of public trust resources.~~

46. "Development" means any material change in the use of any structure or land or water body, including but not limited to any building mining, dredging, fillings, excavation, or drilling operation: alteration of the shore, rivers, streams, lakes or ponds: devegetation, demolition, deposition of fill, solid or liquid waste: construction, installation, alteration, reconstruction of a structure: a change in the type of class or use of land: or a material increase in the intensity of use.

48. "Discharge" means the addition of any pollutant to waters of the state, directly or indirectly and includes: any ~~spilling, leaking, pumping, pouring, emitting, emptying, and or dumping either directly or indirectly to the waters of the state of Rhode Island.~~
52. ~~"Ecosystem" means a system formed by the interaction of a community of organisms with their environment.~~
57. "Environmental site conditions" means all environmental factors ~~elements, environmental, engineering and geologic~~ that affects a particular location. These items shall primarily include, fetch, wave conditions, wind conditions, bathymetry, currents, soil bearing capacity, ice impacts, tide range, flood elevation, velocity zone, littoral conditions, erosion/accretion characteristics, presence of wetlands, sub-aquatic vegetation, marine resources and associated habitats. This may include ~~Other~~ site specific environmental conditions that may be relevant ~~required~~ for review.
59. ~~"Estuary" means a semi-closed body of water that has free connection with the open sea within which seawater is measurably diluted with fresh water derived from land drainage.~~
60. ~~"Eutrophication" means nutrient enrichment to the aquatic environment, leading to excessive growth to aquatic plants, which can detrimentally alter water quality parameters, particularly oxygen concentration.~~
61. "Existing hospitality industry business" means a qualifying commercial business which has been continuously operating prior to March 3, 2015 that has lost a view of the shoreline over time ~~for CRMP purposes an existing hospitality industry business that is a continuously operating commercial business that has lost a view of the shoreline over time through the growth of trees within a coastal buffer zone or forested wetland, as of March 3, 2015.~~ Qualifying ~~hospitality industry~~ commercial business are one of the following: a resort, restaurant, or hotel that provides hospitality services to the general public including tourists where such services are dependent upon a view of the shoreline to support their business.
62. ~~"Fauna" means animal life.~~
65. "Filling in tidal waters" means the ~~placing~~ placement of materials ~~from upland sources~~ below the mean high water and includes the utilization of dredged materials to create land in tidal waters for purposes other than ~~those covered by~~ the creation of wetlands or ~~and by~~ beach replenishment ~~or nourishment pursuant to § 1.3.1(l) of this Part.~~
66. "Filling, removing, or grading of shoreline features" means:
- a. "Filling" means the deposition of materials of upland origin onto shoreline features or their contiguous areas.
 - b. "Removing" means the process of taking away any portion of a shoreline or its contiguous area by any method, including: excavation, blasting, or mining, ~~any portion of a shoreline or its contiguous area.~~

c. "Grading" means the process whereby fill or the soils of a shoreline or its contiguous area are redistributed or leveled.

69. ~~"Flora" means plant life.~~

72. "Freshwater wetland" means those wetlands defined by R.I. Gen. Laws § 2-1-20(8), and further defined in the CRMC Rules for Freshwater Wetlands in the Vicinity of the Coast and any or all wetlands located in the vicinity of the coast, created as part of, or the result of, any activity permitted or directed by the CRMC or DEM ~~after July 16, 1971~~ including, but not limited to: restored wetlands; value replacement wetlands created to compensate for wetland loss such as flood plain excavations; and any wetlands created, altered or modified after July 16, 1971.

74. ~~"Glacial till" means unconsolidated and unsorted material left by the movement of glaciers, consisting of clay, sand, gravel, and boulders.~~

75. ~~"Global Positioning System" or "GPS" means a navigational system using satellite signals to fix the location of a receiver on or above the earth's surface.~~

82. ~~"Hydrologic" means related to water.~~

89. ~~"Longshore current" means a current that flows parallel and adjacent to the shoreline.~~

91. "Maintenance of structures" means repairing a structure to ~~the rebuilding, reconstructing, repairing or re-establishing to~~ previously approved conditions and dimensions ~~a damaged or deteriorated structure or facility~~. Maintenance includes only those activities that do not significantly alter the assented design, purpose and size of the structure. Maintenance does not include demolishing a structure to repair it or restore it to a previously approved condition. Maintenance provisions for marina in-water facilities and residential boating facilities are found at § 1.3.1(D) of this Part.

92. "Manmade shoreline" means those shorelines that are characterized by concentrations of shoreline protection structures and the existence of other permitted alterations, to the extent that natural shoreline features are no longer dominant. They most commonly about Type 3, 5, and 6 waters.

105. "Ocean dumping" means the disposal of materials or pollutants without a permit into waters of the state. ~~non-dredged waste materials from vessels or by other means into marine waters.~~ Ocean dumping does not include discharges of effluent incidental to the operation of vessels, the dumping of fish wastes, or the placement or deposit of materials on the sea floor for the purpose of enhancing fisheries.

106. "Oil" means oil of any kind and in any form as defined in R.I. Gen. Laws § 46-12.5.1-1(5) ~~including, but not limited to petroleum, fuel, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydro-carbons regardless of specific gravity.~~

"Pollutant" means any material or effluent as defined R.I. Gen. Laws § 46-12-1(15).

118. "Point source discharge" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which a pollutant ~~sewage~~ is or may be discharged.

119. "Priority of use" means ~~a reflection of~~ the Council's assessment of those uses deemed most likely to be consistent with adopted Council policies and regulations.

120. "Program" or "CRMP" means the State of Rhode Island Coastal Resources Management Program.

125. "Public trust resources" ~~or "PTR"~~ means the resources held in trust for the benefit of the public and includes tangible physical, biological matter substance or systems, habitat or ecosystem contained on, in or beneath the tidal waters of the state, and also include intangible rights to use, access, or traverse tidal waters for traditional and evolving uses including but not limited to recreation, commerce, navigation and fishing.

127. "Recreational structures" means swim floats, beach pavilions and other structures that are located in the water or constructed for recreational purposes on a shoreline feature, its contiguous area, or in tidal waters.

130. "Residential boating facility" means a dock, pier, wharf, or float, or combination of such facilities, ~~contiguous to that shares a common boundary or is located directly across the width of a public road with~~ a private residence, developed condominium, developed cooperative or other home owners' association properties that may accommodate up to four (4) boats.

132. "Restoration" means a return to a former, natural ~~condition closely resembling a former, original, normal,~~ or unimpaired condition.

135. "Riparian rights" means the rights and privileges of a person owning land containing or bordering on a watercourse ~~related to access to the water, certain privileges regarding its uses, and the benefits of accretion and reliction.~~

138. "Runoff" means that portion of precipitation which is not absorbed into the ground and which directly or indirectly drains ~~naturally or~~ through natural or manmade channels to surface water bodies.

139. "Salt marsh" means areas regularly or irregularly inundated by salt water through either natural or artificial water courses and where one or more of the following species predominate: smooth cordgrass (*Spartina alterniflora*), salt meadow grass (*Spartina patens*), spike grass (*Distichlis spicata*), black rush (*Juncus gerardi*), saltwort (*Salicornia* spp.), sea lavender (*Limonium carolinianum*), saltmarsh bulrush (*Scirpus* spp.), high tide bush (*Iva frutescens*). Saltmarsh includes both high saltmarsh and low saltmarsh defined as follows:

- a. High salt marsh is defined as that portion of the saltmarsh that is typically ~~is~~ flooded by spring, moon, or other flooding tides but otherwise is not flooded on a daily

basis. The vegetative composition of high salt marsh typically consists of one or more of the following: salt meadow grass (*Spartina patens*); [short-form *Spartina alterniflora*](#); spike grass (*Distichlis spicata*); black rush (*Juncus gerardi*); tall reed (*Phragmites communisaustralis*); Sea Lavender (*Limonium carolinianum*); tall cordgrass (*Spartina pectinata*); saltmarsh bulrushes (*Scirpus* spp.); and high tide bush (*Iva frutescens*).

b. Low salt marsh is defined as that portion of the saltmarsh that is flooded daily and the vegetative composition typically consists predominantly of smooth cordgrass (*Spartina alterniflora*).

141. “Sea level” means the height of the sea with respect to a horizontal control point or benchmark such as the North American Vertical Datum of 1988 (NAVD 88). Sea level rise refers to the net increase in mean sea level over time in response to global climate, local tectonic changes, glacial isostatic adjustment, and ocean dynamics. Sea level rise indicates a positive trend, thus an increase in sea level as compared to historic measurements. ~~Global sea level rise is the worldwide variations in sea level due to eustatic contributions such as thermal expansion of seawater and melting glacial ice sheets. Relative sea level rise is a regional change in sea level relative to land surface elevations.~~

143. “Seawall” means a ~~massive, standalone~~ structure built of placed or dumped stone, concrete, or steel sheet pile. Concrete seawalls often have curved, or stepped face designed to withstand the direct onslaught of ocean waves.

146. “Setback” means the minimum distance from the inland boundary of a coastal feature [or buffer zone upon at](#) which [construction or](#) an approved activity or alteration may ~~be permitted~~[take place](#).

147. [“Sewage” means fecal material and human waste pursuant to R.I. Gen. Laws § 46-12-1\(21\). For purposes of the Coastal Resources Management Program sewage is further defined to include freshwater discharges, including stormwater runoff that may significantly alter the salinity of tidal waters or salt ponds, and wastewater and septage, as defined by the DEM OWTS Rules, and discharges of heated waters to tidal waters of the state](#)[For purposes of this Part sewage further includes pollutant as defined herein.](#)

153. ~~“Siltation curtains” means devices placed in the water during a dredging operation or other activity which prevent the spreading of dredged sediments.~~

169. “Tributary” means any flowing body of water or watercourse which provides intermittent or perennial flow to tidal waters, coastal ponds, coastal wetlands or other down-gradient watercourses which eventually ~~or immediately~~ [discharges](#) to tidal waters, coastal ponds or coastal wetlands.

171. “Undue hardship” means an inappropriate, unsuitable, unlawful, or excessive standard or requirement levied upon an applicant. [This does not include economic diminution in value.](#)

175. “Water-dependent ~~activity-use~~” means activities and/or uses which can only be conducted on, in, over, or adjacent to tidal waters or coastal ponds because the use requires access to the water from transportation, recreation, energy production, or source of water and also includes non-water-dependent activities that provide access to the shore to broad segments of the public.

179. “Wetland walkover structure” means a ~~raised~~ pile-supported ~~facility~~structure no more than 30 inches wide ~~which that~~ provides passage over a wetland. ~~for purposes of providing pedestrian access between areas of upland isolated by the presence of wetland~~Any pile supported structure that does not meet the requirements of § 1.3.1(Q) of this Part or terminates in a wetland or in tidal or non-tidal waters is not a wetland walkover structure.