

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

COASTAL RESOURCES MANAGEMENT COUNCIL

Title of Rule: Red Book (650-RICR-20-00-01)

Rule Identifier: 650-RICR-20-00-1

Rulemaking Action: Proposed Amendment

Important Dates:

Date of Public Notice: 08/16/2018

Hearing Date: 09/11/2018

End of Public Comment: 09/17/2018

Authority for this Rulemaking:

R.I. Gen. Laws Chapter 46-23 et seq.

Coastal Zone Management Act 16 U.S.C. §§ 1451 through 1464

Summary of Rulemaking Action:

The purpose of this proposed rule is to amend and consolidate the current Red Book [650-RICR-20-00-1] with existing requirements and standards of the CRMC “Guidelines for the Development of Municipal Harbor Management Plans” [ERLID # 5719] and incorporate desirable elements of the CRMC’s “Energy Amendments” [ERLID # 1060]. The CRMC will concurrently repeal those rules [ERLIDs # 1060 and 5719]. Additionally, a number of amendments are proposed as listed below.

1. Correct definition at § 1.1.2(A)(1) to more accurately define CRMC jurisdiction for certain activities in accordance with R.I. Gen. Laws § 46-23-6. No change in status quo of regulations.
2. Add new definitions in § 1.1.2(A) for (10) “approved waters”; (144) “seed”; (148) “shellfish stock”; (153) “spat”; (154) “spat collection”; (171) “upweller”; and (180) “wild stock” for consistency with amended aquaculture rules in § 1.3.1(K). The amendments clarify previously agreed upon responsibilities and duties between the DEM and CRMC via codification of long-standing, existing practices; no new requirements. No change in status quo of regulations.
3. Add new definitions in § 1.1.2(A) for (9) “approved harbor management plan”; (17) “boat”; (38) “corner buoys”; (74) “global positioning system”; (76) “harbor commission”; (77) “harbormaster”; (97) “moor”; (98) “mooring”; (99) “mooring area”; (133) “RI state plane coordinate system of 1983”; and (173) “vessel” for consistency with amended municipal harbor regulations in § 1.3.1(O). No change in status quo of regulations; § 1.3.1(O) amendments are consistent with existing CRMC guidance and long-standing practice.

4. Modify definition at § 1.1.2(A)(12) to accurately define the term "Areas of historic and archaeological significance" in accordance with R.I. Gen. Laws § 45-22.2-4(12). No change in status quo of regulations.
5. Add new definition at § 1.1.2(A)(24) for "certified verification agent" as referenced in amended § 1.3.1(H).
6. Add new definition at § 1.1.2(A)(35) for "commercial marine facility" for consistency with existing fitness of purpose requirements in amended § 1.3.1(C). No change in status quo of regulations.
7. Modify definition § 1.1.2(A)(54) for "energy-related activities" to include construction of such facilities and to apply to the entirety of the CRMC's jurisdiction as authorized in accordance with R.I. Gen. Laws § 46-23-6.
8. Modify definition § 1.1.2(A)(54) for "freshwater wetland" as defined by R.I. Gen. Laws § 2-1-20(8) and modified in 2015. No change in status quo of regulations.
9. Modify definition § 1.1.2(A)(80) for "house boat" as defined by R.I. Gen. Laws § 46-22-9.1. No change in status quo of regulations.
10. Modify definition § 1.1.2(A)(106) for "one-hundred-year flood level" for consistency with modern terminology and change in federal agency assignment. No change in status quo of regulations.
11. Modify definition § 1.1.2(A)(111) for "outhaul" to clarify that outhauls are indeed a recreational boating facility as defined in § 1.1.2(A)(127) and long-standing CRMC practice. No change in status quo of regulations.
12. Modify definition § 1.1.2(A)(127) for "recreational boating facility" to specifically include outhauls, which are recreational boating facilities. No change in status quo of regulations.
13. Modify definition § 1.1.2(A)(129) for "residential boating facility" to better clarify eligible facilities. No change in status quo of regulations.
14. Modify definition § 1.1.2(A)(130) to more accurately define "residential building." No change in status quo of regulations.
15. Modify definition § 1.1.2(A)(146) to accurately define "sewage" pursuant to R.I. Gen. Laws § 46-12-1(21). No change in status quo of regulations.
16. Modify definition § 1.1.2(A)(161) to define "subdivision" in accordance with R.I. Gen. Laws § 45-23-32(52). No change in status quo of regulations.

17. Add requirements for applicants in § 1.1.3 (originally in Red Book introduction section). No change in status quo of regulations.
18. Add “dunes” to § 1.1.4(A)(4) to correctly list all CRMC shoreline features. No change in status quo of regulations.
19. Amend § 1.1.4(B) to correct the CRMC categories and activities in accordance with R.I. Gen. Laws § 46-23-6. No change in status quo of regulations.
20. Amend § 1.1.4(C)(1) to accurately specify which CRMC SAMPs are critical coastal areas and the activities subject to CRMC jurisdiction within those SAMPs. No change in status quo of regulations.
21. Modify § 1.1.4(D) for consistency with CRMC freshwater wetlands in the vicinity of the coast. No change in status quo of regulations.
22. Amend matrices for water types 1-6 to modify the definition of “recreational mooring areas” in § 1.1.5 to cover all mooring areas, not just recreational mooring areas. No change in status quo of regulations.
23. Add new § 1.1.6(I) for coastal hazard analysis application requirements. Amendment driven by new Council adopted Shoreline Change (beach) SAMP guidance document. While applicants will be required to use the CRMC online tools, it will not add additional cost to the application. The resulting analysis will be informative for the applicant and will not be used to approve or deny a project.
24. Add new § 1.1.9(D) for setback requirements involving demolition to be consistent with existing requirement in § 1.1.11 of this Part. No change in status quo of regulations.
25. Amend § 1.1.10(A)(4) to incorporate 2017 NOAA sea level rise scenario and replace outdated 2012 data. No change in status quo of regulations.
26. Amend § 1.1.11(B) to incorporated buffer policies from findings. No change in status quo of regulations.
27. Amend § 1.1.11(D) to incorporate long-standing buffer management standards from the CRMC buffer zone management guidance document. No change in status quo of regulations.
28. Add new § 1.1.11(E) to incorporate long-standing buffer pathway prohibition consistent with CRMC buffer zone management guidance document. No change in status quo of regulations.

29. Amend § 1.1.12(E)(1) to eliminate transient aquaculture gear lease fees (no longer acceptable method). No change in status quo of regulations.
30. Amend § 1.2.2(C)(1)(a) to add contiguous freshwater wetlands protected under the program consistent with existing definition. No change in status quo of regulations.
31. Amend § 1.2.2(D)(1)(a) to add coastal bluff policy from findings. No change in status quo of regulations.
32. Amend §§ 1.2.2(F)(1)(a) and (e) to add manmade shoreline policy from findings. No change in status quo of regulations.
33. Amend §§ 1.2.2(G)(1)(a), (b) and (d) to add dune policy from definition and findings. No change in status quo of regulations.
34. Amend § 1.3.1(A)(1) to make Category B application requirements of the Red Book necessary data and information (NDI) as part of federal consistency reviews. The amendment clarifies existing requirements for federal consistency applicants (federal consistency applicants do not pay an application fee); no change in status quo of regulations.
35. Amend § 1.3.1(B)(1)(a) to exempt agricultural practices under this subpart consistent with the definition moved to § 1.1.2. No change in status quo of regulations.
36. Add new § 1.3.1(C)(4)(b) to codify existing practice of fitness of purpose analysis for commercial marine facilities consistent with CRMC guidance document and in accordance with R.I. Gen. Laws § 46-23-6(4)(vi). No change in status quo of regulations, as amendment is consistent with CRMC guidance document and in accordance with R.I. Gen. Laws § 46-23-6(4)(vi).
37. Amend § 1.3.1(D)(3)(h) to address previously authorized docks. Further clarification of existing rules from Pre-existing Residential Boating Facilities Program (now repealed as part of Red Book consolidation). No change in status quo of regulations.
38. Amend § 1.3.1(D)(7)(b) to address docks in Type 1 waters. Further clarification of existing rules from Pre-existing Residential Boating Facilities Program (now repealed as part of Red Book consolidation). No change in status quo of regulations.
39. Add new § 1.3.1(F)(1)(h) to address maximum extent practicable standards found in the definition “maximum extent practicable” (now in § 1.1.2). This portion of definition is policy. No change in status quo of regulations.

40. Amend § 1.3.1(F)(4)(b) to delete anachronistic text. No change in status quo of regulations.

41. Amend § 1.3.1(H) to incorporate desirable elements of the CRMP's Energy Amendments (adopted in 1978, formerly § 600 of the CRMP) and requirement for certified verification agent (as already required by 650-RICR-20-05-11) for energy-related facilities. See cost/benefit analysis.

42. Amend § 1.3.1(I) to address upland and in-water dredge material disposal. Add new standards in 1.3.1(I)(5)(d) for disposal within CAD cells. No change in status quo of regulations, as dredge operators already follow long-standing CRMC guidance and permit conditions.

43. Amend § 1.3.1(J) to add filling in tidal water policies previously in definition. No change in status quo of regulations.

44. Amend § 1.3.1(K) for consistency of current practices and policies for aquaculture by CRMC and DEM. Clarification of responsibilities and duties between the state regulatory agencies; no new requirements. No change in status quo of regulations.

45. Amend § 1.3.1(N) to add requirement for inspection and analysis consistent with CRMC "Guidelines for Fitness of Purpose Investigations and Certifications" if maintenance history indicates is necessary. No change in status quo of regulations, as amendments are consistent with CRMC guidance document and in accordance with R.I. Gen. Laws § 46-23-6(4)(vi).

46. Amend § 1.3.1(O) to integrate regulatory elements of the CRMC "Guidelines for the Development of Municipal Harbor Management Plans." No change in status quo of regulations as amendments codify long standing CRMC practice and are consistent with existing CRMC guidance.

47. Amend § 1.3.1(Q) to add wetland walkover policy from findings. No change in status quo of regulations.

48. Amend § 1.3.1(R) to add submerged aquatic vegetation policy from findings. No change in status quo of regulations.

49. Amend § 1.3.3 for consistency with R.I. Gen. Laws § 46-23-6. No change in status quo of regulations.

50. Amend § 1.3.4 to add critical coastal areas policy from findings. No change in status quo of regulations.

51. Amend § 1.3.5 to change guidelines to policies. No change in status quo of regulations.

52. Amend § 1.3.6 to add important public access policy from findings. No change in status quo of regulations.
53. Add new § 1.5 Public and Government Participation, which is an existing section of the CRMP and formerly known as CRMP § 700 to be consolidated with the Red Book. No change in status quo of regulations.
54. Amend § 1.6(R) for Bristol water type map change. No change in status quo of regulations as water type change is more permissible and affects only RWU property, as requested by the University.
55. Amend § 1.7 to add nine (9) new Block Island shoreline change maps. No change in status quo of regulations, as changes only add more precise erosion rates for more predictable application process and permitting efficiency.

Additional Information and Comments:

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed amendment until September 17, 2018 by contacting the appropriate party at the address listed below:

James Boyd
Coastal Resources Management Council
RI Coastal Resources Management Council
4808 Tower Hill Road
Wakefield, RI 02879
jboyd@crmc.ri.gov

Public Hearing:

A public hearing, in accordance with R.I. Gen. Laws § 42-35-2.8, to consider the proposed amendment shall be held on September 11, 2018 at 6:00 pm at Department of Administration, Conference Room A, One Capitol Hill, Providence, RI 02908 at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-783-3370 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

Regulatory Analysis Summary and Supporting Documentation:

In the development of the proposed adoption consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information. Additionally, the benefits of the proposed amendments justify any costs of the proposed rule, and the proposed amendments will achieve the objectives of the authorizing statute in a more cost-effective manner, or with greater net benefits, than other regulatory alternatives.

For full regulatory analysis or supporting documentation see agency contact person above.