

TITLE 650 – COASTAL RESOURCES MANAGEMENT COUNCIL

CHAPTER 20 – COASTAL MANAGEMENT PROGRAM

SUBCHAPTER 05 – OCEAN SPECIAL AREA MANAGEMENT PLAN

PART 5 – Commercial and Recreational Fisheries

5.1 Authority

- A. Pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 through 1466) and R.I. Gen. Laws Chapter 46-23 the Coastal Resources Management Council is authorized to develop and implement special area management plans.
- B. The regulations herein constitute a RICR regulatory component of the Ocean Special Area Management Plan (SAMP) Chapter 5 - Commercial and Recreational Fisheries, and must be read in conjunction with the other RICR regulatory components and chapters of the Ocean SAMP for the full context and understanding of the CRMC's findings and policies that form the basis and purpose of these regulations. The other RICR regulatory components and chapters of the Ocean SAMP should be employed in interpreting the regulations herein and R.I. Gen. Laws § 46-23-1, *et seq.*

5.2 Purpose

The purpose of these rules is to carry out the responsibilities of the Coastal Resources Management Council in establishing the Ocean Special Area Management Plan (SAMP) for the offshore waters (beyond 3 nautical mile state water boundary) within the geographic location description (GLD) and to provide the regulatory framework for promoting a balanced and comprehensive ecosystem-based management approach to the development and protection of Rhode Island's ocean-based resources. In addition, these rules establish the regulatory standards and enforceable policies within the GLD for purposes of the federal Coastal Zone Management Act federal consistency provisions pursuant to 16 U.S.C. § 1456 and 15 C.F.R. Part 930.

5.3 Policies and Standards (formerly § 560)

5.3.1 General Policies (formerly § 560.1)

- A. The commercial and recreational fishing industries, and the habitats and biological resources of the ecosystem they are based on, are of vital economic, social, and cultural importance to Rhode Island's fishing ports and communities. Commercial and recreational fisheries are also of great importance to Rhode Island's economy and to the quality of life experienced by both residents and visitors. The Council finds that other uses of the SAMP area could potentially displace commercial or recreational fishing activities or have other adverse impacts on commercial and recreational fisheries.
- B. The Council recognizes that finfish, shellfish, and crustacean resources and related fishing activities are managed by a host of different agencies and regulatory bodies which have jurisdiction over different species and/or different parts of the SAMP area. Entities involved in managing fish and fisheries within the SAMP area include, but are not limited to, the Atlantic States Marine Fisheries Commission, the RI Department of Environmental Management, the RI Marine Fisheries Council, the NOAA National Marine Fisheries Service, the New England Fishery Management Council, and the Mid-Atlantic Fishery Management Council. The Council recognizes the jurisdiction of these organizations in fishery management and will work with these entities to protect fisheries resources. The Council will also work in coordination with these entities to protect priority habitat areas.
- C. The Council's policy is to protect commercial and recreational fisheries within the SAMP area from the adverse impacts of other uses, while supporting actions to make ongoing fishing practices more sustainable. It should be recognized that scientific knowledge of the impacts of fishing on habitats and fish populations will advance. Improvements in more sustainable gear technology, fishing practices, and management tools may improve the state of fisheries resources. A general goal of the Council is to constantly improve the health of the Ocean SAMP area ecosystem and the populations of fish and shellfish it provides. Cooperative research, utilizing the unique skills and expertise of the fishing community, will be a cornerstone to this goal.
- D. Commercial and recreational fisheries activities are dynamic, taking place at different places at different times of the year due to seasonal species migrations and other factors. The Council recognizes that fisheries are dynamic, shaped by these seasonal migrations as well as other factors including shifts in the regulatory environment, market demand, and global climate change. The Council further recognizes that the entire Ocean SAMP area is used by commercial and recreational fishermen employing different fishing methods and gear types. Changes in existing uses, intensification of uses, and new uses within the area could cause adverse impacts to these fisheries. Accordingly, the Council shall:

1. In consultation with the Fishermen's Advisory Board, as defined in § 11.3(E) of this Subchapter, identify and evaluate prime fishing areas on an ongoing basis through an adaptive framework.
 2. Review any uses or activities that could disrupt commercial and recreational fisheries activities.
- E. The Council shall work together with the U.S. Coast Guard, the U.S. Navy, the U.S. Army Corps of Engineers, NOAA, fishermen's organizations, marine pilots, recreational boating organizations, and other marine safety organizations to promote safe navigation, fishing, and recreational boating activity around and through offshore structures and developments, and along cable routes, during the construction, operation, and decommissioning phases of such projects. The Council will promote and support the education of all mariners regarding safe navigation around offshore structures and developments and along cable routes.
- F. Discussions with the U.S. Coast Guard, the U.S. Department of Interior Bureau of Ocean Energy Management, Regulation, and Enforcement, and the U.S. Army Corps of Engineers have indicated that no vessel access restrictions are planned for the waters around and through offshore structures and developments, or along cable routes, except for those necessary for navigational safety. Commercial and recreational fishing and boating access around and through offshore structures and developments and along cable routes is a critical means of mitigating the potential adverse impacts of offshore structures on commercial and recreational fisheries and recreational boating. The Council endorses this approach and shall work to ensure that the waters surrounding offshore structures, developments, and cable routes remain open to commercial and recreational fishing, marine transportation, and recreational boating, except for navigational safety restrictions. The Council requests that federal agencies notify the Council as soon as is practicable of any federal action that may affect vessel access around and through offshore structures and developments and along cable routes. The Council will continue to monitor changes to navigational activities around and through offshore developments and along cable routes. Any changes affecting existing navigational activities may be subject to CZMA Federal Consistency review if the federal agency determines its activity will have reasonably foreseeable effects on the uses or resources of Rhode Island's coastal zone.
- G. The Council recognizes that commercial and recreational fishermen from other states, such as the neighboring states of Connecticut, New York, and Massachusetts, often fish in the Ocean SAMP area. The Council also recognizes that many fish species that are harvested in adjacent waters may rely on habitats and prey located within the Ocean SAMP area. Accordingly, the Council will work with neighboring states to ensure that Offshore Development and other uses of

the Ocean SAMP area do not result in significant impacts to the fisheries resources or activities of other states.

- H. The Council shall appoint a standing Fishermen's Advisory Board (FAB) which shall provide advice to the Council on the siting and construction of other uses in marine waters. The FAB is an advisory body to the Council that is not intended to supplant any existing authority of any other federal or state agency responsible for the management of fisheries, including but not limited to the Marine Fisheries Council and its authorities set forth in R.I. Gen. Laws § 20-3-1 *et seq.* The FAB shall be comprised of nine members, one representing each of the following six Rhode Island fisheries: bottom trawling; scallop dredging; gillnetting; lobstering; party and charter boat fishing; and recreational angling; and three members, including two commercial fishermen and one recreational fisherman, who are Massachusetts fishermen who fish in the Ocean SAMP area. FAB members shall serve four-year terms. The Council shall provide to the FAB a semi-annual status report on Ocean SAMP area fisheries-related issues, including but not limited to those of which the Council is cognizant in its planning and regulatory activities, and shall notify the FAB in writing concerning any project in the Ocean SAMP area. The FAB shall meet not less than semi-annually with the Habitat Advisory Board and on an as-needed basis to provide the Council with advice on the potential adverse impacts of other uses on commercial and recreational fishermen and fisheries activities, and on issues including, but not limited to, the evaluation and planning of project locations, arrangements, and alternatives; micro-siting (siting of individual wind turbines within a wind farm to identify the best site for each individual structure); access limitations; and measures to mitigate the potential impacts of such projects on the fishery. In addition the FAB may aid the Council and its staff in developing and implementing a research agenda. As new information becomes available and the scientific understanding of the Ocean SAMP planning area evolves, the FAB may identify new areas with unique or fragile physical features, important natural habitats, or areas of high natural productivity for designation by the Council as Areas of Particular Concern or Areas Designated for Preservation.

5.3.2 Regulatory Standards (formerly § 560.2)

- A. Any large-scale offshore development, as defined in §§ 8.3(G) and 11.3(H) of this Subchapter, shall require a meeting between the Fisherman's Advisory Board (FAB), the applicant, and the Council staff to discuss potential fishery-related impacts, such as, but not limited to, project location, construction schedules, alternative locations, project minimization and identification of high fishing activity or habitat edges. For any state permit process for a large-scale offshore development this meeting shall occur prior to submission of the state permit application. The Council cannot require a pre-application meeting for federal permit applications, but the Council strongly encourages applicants for

any large-scale offshore development, as defined in as defined in §§ 8.3(G) and 11.3(H) of this Subchapter, in federal waters to meet with the FAB and the Council staff prior to the submission of a federal application, lease, license, or authorization. However, for federal permit applicants, a meeting with the FAB shall be necessary data and information required for federal consistency reviews for purposes of starting the CZMA 6-month review period for federal license or permit activities under 15 C.F.R. Part 930, Subpart D, and OCS Plans under 15 C.F.R. Part 930, Subpart E, pursuant to 15 C.F.R. § 930.58(a)(2). Any necessary data and information shall be provided before the 6-month CZMA review period begins for a proposed project.

- B. The Council shall prohibit any other uses or activities that would result in significant long-term negative impacts to Rhode Island's commercial or recreational fisheries. Long-term impacts are defined as those that affect more than one or two seasons.
- C. The Council shall require that the potential adverse impacts of offshore developments and other uses on commercial or recreational fisheries be evaluated, considered, and mitigated as described in § 5.3.2(D) of this Part.
- D. For the purposes of §§ 5.3.1 and 5.3.2 of this Part, mitigation is defined as a process to make whole those fisheries user groups that are adversely affected by proposals to be undertaken, or undertaken projects, in the Ocean SAMP area. Mitigation measures shall be in consonance with the purposes of duly adopted fisheries management plans, programs, strategies and regulations of the agencies and regulatory bodies with jurisdiction over fisheries in the SAMP area, including but not limited to those set forth above in § 5.3.1(B) of this Part. Mitigation shall not be designed or implemented in a manner that substantially diminishes the effectiveness of duly adopted fisheries management programs. Mitigation measures may include, but are not limited to, compensation, effort reduction, habitat preservation, restoration and construction, marketing, and infrastructure improvements. Where there are potential impacts associated with proposed projects, the need for mitigation shall be presumed. Negotiation of mitigation agreements shall be a necessary condition of any approval or permit of a project by the Council. Mitigation shall be negotiated between the Council staff, the FAB, the project developer, and approved by the Council. The reasonable costs associated with the negotiation, which may include data collection and analysis, technical and financial analysis, and legal costs, shall be borne by the applicant. The applicant shall establish and maintain either an escrow account to cover said costs of this negotiation or such other mechanism as set forth in the permit or approval condition pertaining to mitigation. This policy shall apply to all large-scale offshore developments, underwater cables, and other projects as determined by the Council.

- E. Glacial moraines are important habitat areas for a diversity of fish and other marine plants and animals because of their relative structural permanence and structural complexity. Glacial moraines create a unique bottom topography that allows for habitat diversity and complexity, which allows for species diversity in these areas and creates environments that exhibit some of the highest biodiversity within the entire Ocean SAMP area. The Council also recognizes that because glacial moraines contain valuable habitats for fish and other marine life, they are also important to commercial and recreational fishermen. Accordingly, the Council shall designate glacial moraines as identified in Part 11 of this Subchapter, Figures 3 and 4 in § 11.10.2 of this Subchapter, as Areas of Particular Concern. For further information on Areas of Particular Concern see Part 11 of this Subchapter, The Policies of the Ocean SAMP.
- F. The Council recognizes that moraine edges, as illustrated in Figures 3 and 4 in § 11.10.2 of this Subchapter, The Policies of the Ocean SAMP, are important to fishermen. In addition to these mapped areas, the FAB may identify other edge areas that are important to fisheries within a proposed project location. The Council shall consider the potential adverse impacts of future activities or projects on these areas to Rhode Island's commercial and recreational fisheries. Where it is determined that there is a significant adverse impact, the Council will modify or deny activities that would impact these areas. In addition, the Council will require assent holders for offshore developments to employ micro-siting techniques in order to minimize the potential impacts of such projects on these edge areas.
- G. The finfish, shellfish, and crustacean species that are targeted by commercial and recreational fishermen rely on appropriate habitat at all stages of their life cycles. While all fish habitat is important, spawning and nursery areas are especially important in providing shelter for these species during the most vulnerable stages of their life cycles. The Council shall protect sensitive habitats where they have been identified through the site assessment plan or construction and operation plan review processes for offshore developments as described in § 11.10.5 of this Subchapter, The Policies of the Ocean SAMP.
- H. The Council shall consult with the U.S. Coast Guard, the U.S. Navy, marine pilots, the FAB, fishermen's organizations, and recreational boating organizations when scheduling offshore marine construction or dredging activities. Where it is determined there is a significant conflict with season-limited commercial or recreational fisheries activities, recreational boating activities or scheduled events, or other navigation uses, the Council shall modify or deny activities to minimize conflict with these uses.
- I. The Council shall require the assent holder to provide for communication with commercial and recreational fishermen, mariners, and recreational boaters

regarding offshore marine construction or dredging activities. Communication shall be facilitated through a project website and shall complement standard U.S. Coast Guard procedures such as Notices to Mariners for notifying mariners of obstructions to navigation.

- J. For all large-scale offshore developments, underwater cables, and other development projects as determined by the Council, the assent holder shall designate and fund a third-party fisheries liaison. The fisheries liaison must be knowledgeable about fisheries and shall facilitate direct communication between commercial and recreational fishermen and the project developer. Commercial and recreational fishermen shall have regular contact with and direct access to the fisheries liaison throughout all stages of an offshore development (pre-construction; construction; operation; and decommissioning).
- K. Where possible, offshore developments should be designed in a configuration to minimize adverse impacts on other user groups, which include but are not limited to: recreational boaters and fishermen, commercial fishermen, commercial ship operators, or other vessel operators in the project area. Configurations which may minimize adverse impacts on vessel traffic include, but are not limited to, the incorporation of a traffic lane through a development to facilitate safe and direct navigation through, rather than around, an offshore development.
- L. The items listed below shall be required for all offshore developments:
 - 1. A biological assessment of commercially and recreationally targeted species shall be required within the project area for all Offshore Developments. This assessment shall assess the relative abundance, distribution, and different life stages of these species at all four seasons of the year. This assessment shall comprise a series of surveys, employing survey equipment and methods that are appropriate for sampling finfish, shellfish, and crustacean species at the project's proposed location. Such an assessment shall be performed at least four times: pre-construction (to assess baseline conditions); during construction; and at two different intervals during operation (i.e., 1 year after construction and then post-construction). At each time this assessment must capture all four seasons of the year. This assessment may include evaluation of survey data collected through an existing survey program, if data are available for the proposed site. The Council will not require this assessment for proposed projects within the renewable energy zone that are proposed within two years of the adoption of the Ocean SAMP.
 - 2. An assessment of commercial and recreational fisheries effort, landings, and landings value shall be required for all offshore developments. Assessment shall focus on the proposed project area and alternatives.

This assessment shall evaluate commercial and recreational fishing effort, landings, and landings value at three different stages: pre-construction (to assess baseline conditions); during construction; and during operation. At each stage, all four seasons of the year must be evaluated. Assessment may use existing fisheries monitoring data but shall be supplemented by interviews with commercial and recreational fishermen. Assessment shall address whether fishing effort, landings, and landings value has changed in comparison to baseline conditions. The Council will not require this assessment for proposed projects within the renewable energy zone that are proposed within 2 years of the adoption of the Ocean SAMP.

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