

650-RICR-20-05-7

## **TITLE 650 – COASTAL RESOURCES MANAGEMENT COUNCIL**

### **CHAPTER 20 – COASTAL MANAGEMENT PROGRAM**

#### **SUBCHAPTER 05 – OCEAN SPECIAL AREA MANAGEMENT PLAN**

PART 7 – Marine Transportation, Navigation and Infrastructure

#### **7.1 Authority**

- A. As authorized by 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 may implement special area management plans.
- B. The regulations herein constitute a RICR regulatory component of the Ocean Special Area Management Plan (SAMP) Chapter 7 - Marine Transportation, Navigation and Infrastructure, 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.*

#### **7.2 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.

#### **7.3 Policies and Standards (formerly § 770)**

##### **7.3.1 General Policies (formerly § 770.1)**

- A. The Council recognizes the importance of designated navigation areas, which include shipping lanes, precautionary areas, recommended vessel routes, pilot boarding areas, anchorages, military testing areas, and submarine transit lanes to marine transportation and navigation activities in the Ocean SAMP area. The Council also recognizes that these and other waters within the Ocean SAMP area are heavily used by numerous existing users who have adapted to each other with regard to their uses of ocean space. Any changes in the spatial use patterns of any one of these users will result in potential impacts to the other users. The Council will carefully consider the potential impacts of such changes on the marine transportation network. Changes to existing designated navigational areas proposed by the Coast Guard, NOAA, the R.I. Port Safety and Security Forums, or other entities could similarly impact existing uses. The Council requests that they be notified by any of these parties if any such changes are to be made to the transportation network so that they may work with those entities to achieve a proper balance among existing uses.
- B. The Council recognizes the economic, historic, and cultural value of marine transportation and navigation uses of the Ocean SAMP area to the state of Rhode Island. The Council's goal is to promote uses of the Ocean SAMP area that do not significantly interfere with marine transportation and safe navigation within designated navigation areas, which include shipping lanes, precautionary areas, recommended vessel routes, pilot boarding areas, anchorages, military testing areas, and submarine transit lanes. See § 7.3.2 of this Part for discussion of navigation areas which have been designated as Areas of Particular Concern.
- C. The Council will encourage and support uses of the Ocean SAMP area that enhance marine transportation and safe navigation within designated navigation areas, which include shipping lanes, precautionary areas, recommended vessel routes, pilot boarding areas, anchorages, Navy restricted areas, and submarine transit lanes.
- D. 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 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.
- E. 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

### **7.3.2 Regulatory Standards (formerly § 770.2)**

- A. Navigation, military, and infrastructure areas including: designated shipping lanes, precautionary areas, recommended vessel routes, ferry routes, dredge disposal sites, military testing areas, unexploded ordnance, pilot boarding areas, and anchorages, as shown in Figure 5 in § 11.10.2 of this Subchapter, have been designated as Areas of Particular Concern. The Council recognizes the importance of these areas to marine transportation, navigation and other activities in the Ocean SAMP area. See Part 11 of this Subchapter, The Policies of the Ocean SAMP, for requirements associated with Areas of Particular Concern.
- B. The Council shall consult with the U.S. Coast Guard, the U.S. Navy, marine pilots, the Fishermen's Advisory Board as defined in § 11.3(E) of this Subchapter, fishermen's organizations, and recreational boating organizations when scheduling offshore marine construction or dredging activities. Where it is determined that there is a significant conflict with season-limited commercial or recreational fisheries activities, recreational boating activities or scheduled events, or navigation uses, the Council shall modify or deny activities to minimize conflict with these uses.
- C. 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.

- D. 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
- E. Any assent holder of an approved offshore development shall work with the Council when designing the proposed facility to incorporate where possible mooring mechanisms to allow safe public use of the areas surrounding the installed turbine or other structure.
- F. The facility shall be designed in a manner that minimizes adverse impacts to navigation. As part of its application package, the project applicant shall submit a navigation risk assessment under the U.S. Coast Guard's Navigation and Vessel Inspection Circular 02-07, "Guidance on the Coast Guard's Roles and Responsibilities for Offshore Renewable Energy Installations."
- G. Applications for projects proposed to be sited in state waters pursuant to the Ocean SAMP shall not have a significant impact on marine transportation, navigation, and existing infrastructure. Where the Council, in consultation with the U.S. Coast Guard, the U.S. Navy, NOAA, the U.S. Bureau of Ocean Energy Management, Regulation and Enforcement, the U.S. Army Corps of Engineers, marine pilots, the R.I. Port Safety and Security Forums, or other entities, as applicable, determines that such an impact on marine transportation, navigation, and existing infrastructure is unacceptable, the Council shall require that the applicant modify the proposal or the Council shall deny the proposal. For the purposes of this Part, impacts will be evaluated according to the same criteria used by the U.S. Coast Guard, as follows; these criteria shall not be construed to apply to any other Ocean SAMP chapters or policies:
  - 1. Negligible: No measurable impacts.
  - 2. Minor: Adverse impacts to the affected activity could be avoided with proper mitigation; or impacts would not disrupt the normal or routine functions of the affected activity or community; or once the impacting agent is eliminated, the affected activity would return to a condition with no measurable effects from the proposed action without any mitigation.

3. Moderate: Impacts to the affected activity are unavoidable; and proper mitigation would reduce impacts substantially during the life of the proposed action; or the affected activity would have to adjust somewhat to account for disruptions due to impacts of the proposed action; or once the impacting agent is eliminated, the affected activity would return to a condition with no measurable effects from the proposed action if proper remedial action is taken.
4. Major: Impacts to the affected activity are unavoidable; proper mitigation would reduce impacts somewhat during the life of the proposed action; the affected activity would experience unavoidable disruptions to a degree beyond what is normally acceptable; and once the impacting agent is eliminated, the affected activity may retain measurable effects of the proposed action indefinitely, even if remedial action is taken.

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