



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL OCEAN SERVICE  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
Silver Spring, Maryland 20910

Grover Fugate, Executive Director  
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Wakefield, Rhode Island 02879-1900

AUG 30 2010

Dear Mr. Fugate:

Enclosed are the final evaluation findings for the Rhode Island Coastal Resources Management Program (CRMP) for the period from November 2005 through February 2010.

The fundamental conclusion of this evaluation is that the CRMP is adhering to its programmatic obligations as defined by its approved program document, the terms of federal financial assistance awards, and the Coastal Zone Management Act of 1972, as amended. This evaluation findings document contains seven (7) recommendations, three (3) of which are mandatory.

In response to the State's comments on the NOAA draft evaluation findings, we have deleted the Program Suggestion dealing with the completion and approval of the state's Coastal and Estuarine Land Conservation Plan, which has now been completed and approved by NOAA's Office of Ocean and Coastal Resource Management (OCRM).

It has come to our attention that the Rhode Island Legislature must approve any gubernatorial appointments to the Coastal Resources Management Council (CRMC). Because the deadline in the Necessary Action dealing with increased membership occurs before the Legislature is next in session to act upon any appointments, we have changed the deadline to accommodate that process.

The comment letter on the draft findings includes several proposals for how the CRMC intends to address the Necessary Actions and Program Suggestions. The final findings make no reference to or approval of these proposals. The proposals should be a starting point in discussions with OCRM's Coastal Programs Division as the CRMC moves forward to address the recommendations included in these final findings.

We appreciate your cooperation and assistance and that of the CRMC staff during the accomplishment of this evaluation.

Sincerely,

Donna Wieting  
Acting Director



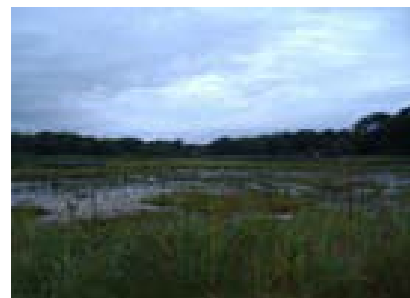
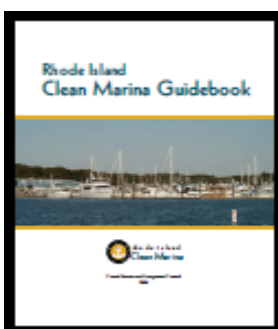
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Enclosure

cc: Michael Tikoian, Chairman, Rhode Island Coastal Resources Management Council  
John King, Chief, Coastal Programs Division, OCRM  
Randy Schneider, OCRM Coastal Programs Division  
Allison Castellan, OCRM Coastal Programs Division  
Greg Gervais, OCRM National Policy and Evaluation Division  
Jeff Willis, Deputy Director, Rhode Island Coastal Resources Management Council

**FINAL Evaluation Findings**  
**Rhode Island Coastal Resources Management Program**  
**November 2005 through February 2010**

August 2010



All photos courtesy of the RI CRMC



Office of Ocean and Coastal Resource Management  
National Ocean Service  
National Oceanic and Atmospheric Administration  
United States Department of Commerce

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## **I. EXECUTIVE SUMMARY**

Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to conduct periodic evaluations of the performance of states and territories with federally approved coastal management programs. This review examined the operation and management of Rhode Island's Coastal Resources Management Program (CRMP or coastal program) by the Rhode Island Coastal Resources Management Council (CRMC or Council), the designated lead agency, for the period from November 2005 through February 2010.

This document describes the evaluation findings of the Director of NOAA's OCRM with respect to the CRMP during the review period. These evaluation findings include discussions of major accomplishments as well as recommendations for program improvement. This evaluation concludes that the State of Rhode Island is successfully implementing and enforcing its federally approved coastal management program, adhering to the terms of the Federal financial assistance awards, and addressing the coastal management needs identified in section 303(2) (A) through (K) of the CZMA.

The evaluation team documented a number of CRMP accomplishments during this review period. The CRMC has developed and continues to maintain a wide range of partnerships and collaborates with organizations on almost every coastal program activity and initiative. Through the development of the urban coastal greenway policy, funding efforts, revisions to the CRMC submerged aquatic vegetation regulations, and work to eliminate invasive aquatic species and to restore eelgrass, the CRMC has worked to preserve, protect, and restore coastal habitat. In a similar way, the CRMC is working to protect and improve water quality with the development of a Clean Marina Program, a suburban buffer design manual, and a stormwater management manual. The coastal program is a national leader in the use of special area management planning (SAMP), and during this evaluation period it began two – Aquidneck Island SAMP and the Ocean SAMP. The Ocean SAMP is being developed to comprehensively plan for Rhode Island's offshore waters to address, among many issues, the siting of alternative energy sources.

The evaluation team also identified areas where the CRMP could be strengthened. If the Rhode Island General Assembly does not address or change the organizational structure of the CRMC during the 2010 legislative session, additional members must be appointed to increase the number of members on the CRMC. The functions of the CRMC administrative hearing officer and the functions of the legal counsel must be separated, and legal services must be provided to the CRMC staff in a manner that is easily accessible, both geographically and whenever needed. The CRMC is urged to collaborate with the Narragansett Bay National Estuarine Research Reserve on education, outreach, and training opportunities, and work with the Rhode Island General Assembly to increase the maximum administrative penalty available to the CRMC for notices of violations and cease and desist orders. The current amount is so low that it is questionable whether it serves its intended purpose.

## II. PROGRAM REVIEW PROCEDURES

### A. OVERVIEW

The National Oceanic and Atmospheric Administration (NOAA) began its review of the Rhode Island Coastal Resources Management Program (CRMP) in November 2009. The §312 evaluation process involves four distinct components:

- An initial document review and identification of specific issues of concern;
- Site visit to Rhode Island, including interviews and a public meeting;
- Development of draft evaluation findings; and
- Preparation of the final evaluation findings, partly based on comments from the State regarding the content and timetables of necessary actions specified in the draft document.

The recommendations made by this evaluation appear in boxes and **bold** type and follow the findings section where facts relevant to the recommendation are discussed. The recommendations may be of two types:

**Necessary Actions** address programmatic requirements of the CZMA's implementing regulations and of the CRMP approved by NOAA. These must be carried out by the date(s) specified;

**Program Suggestions** denote actions that NOAA's OCRM believes would improve the program, but which are not mandatory at this time. If no dates are indicated, the State is expected to have considered these Program Suggestions by the time of the next CZMA §312 evaluation.

A complete summary of accomplishments and recommendations is outlined in Appendix A.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA §312 (c). Program Suggestions that must be reiterated in consecutive evaluations to address continuing problems may be elevated to Necessary Actions. The findings in this evaluation document will be considered by NOAA in making future financial award decisions relative to the CRMP.

### B. DOCUMENT REVIEW AND ISSUE DEVELOPMENT

The evaluation team reviewed a wide variety of documents prior to the site visit, including: (1) the 2006 CRMP §312 evaluation findings; (2) the federally-approved Environmental Impact Statement and program documents; (3) federal financial assistance awards and work products;

(4) semi-annual performance reports; (5) official correspondence; and (6) relevant publications on natural resource management issues in Rhode Island.

Based on this review and discussions with NOAA's OCRM, the evaluation team identified the following priority issues:

- Program accomplishments since the last evaluation;
- The state's response to the previous evaluation findings dated October 2006. These included eight recommendations: three necessary actions and five program suggestions, addressing: 1) staffing; 2) program changes; 3) grants management; 4) special area management plans; 5) marine resources development plan; and 6) federal consistency, permitting, and enforcement;
- The effectiveness of the State in implementing, monitoring, and enforcing the core authorities that form the legal basis for the CRMP;
- Implementation of the Federal and State consistency process;
- The Rhode Island CRMP's efforts to address public access, hazards, coastal habitat, water quality, and coastal dependent uses and community development (CZMA §303(2));
- Status of the State's Coastal and Estuarine Land Conservation Plan (CELCP);
- The Rhode Island CRMP's efforts to plan for and address the effects of climate change and sea level rise;
- Collaboration and involvement in regional and/or national coastal management initiatives;
- Effectiveness of technical assistance, outreach, and education efforts in order to further the goals of the Rhode Island CRMP, as well as opportunities for public participation in the coastal management planning and decision-making process;
- Effectiveness of interagency and intergovernmental (including tribal) coordination and cooperation, both at the state and regional level;
- How the Rhode Island CRMP measures and tracks its success in effectively managing the coast; and
- The clarity and transparency of the Council's decision-making process.

## **C. SITE VISIT TO RHODE ISLAND**

Notification of the scheduled evaluation was sent to the Rhode Island Coastal Resources Management Council, members of Rhode Island's congressional delegation, and a regional newspaper. In addition, a notice of NOAA's "Intent to Evaluate" was published in the *Federal Register* on December 7, 2009, and another notice was published in the *Federal Register* on February 25, 2010.

The site visit to Rhode Island was conducted February 22 – 26, 2010. The evaluation team consisted of Ms. Chris McCay, Evaluation Team Leader, National Policy and Evaluation Division, OCRM; Mr. Gregory Gervais, Program Analyst, National Policy and Evaluation Division, OCRM; and Ms. Allison Castellan, Coastal Management Specialist, Coastal Programs Division, OCRM. Mr. John King, Chief, Coastal Programs Division, OCRM, accompanied the evaluation team during the first day of the site visit.

During the site visit and through phone calls, the evaluation team met with CRMC members and staff, representatives of state government, representatives of state and federal agencies, local government officials, and representatives of nongovernmental organizations and interest groups. Appendix C lists individuals and institutions contacted during this period.

As required by the CZMA, NOAA held an advertised public meeting on Wednesday, February 24, 2010, at 6:00 p.m. in Conference Room A, Department of Administration, One Capital Hill, Providence, Rhode Island. The public meeting gave members of the general public the opportunity to express their opinions about the overall operation and management of the Rhode Island CRMP. Appendix D lists persons who signed in at the public meetings. NOAA's responses to written comments submitted during this review are summarized in Appendix E.

The staff members of the Coastal Resources Management Council were crucial in setting up meetings and arranging logistics for the evaluation site visits. Their support is most gratefully acknowledged.



### **III. COASTAL MANAGEMENT PROGRAM DESCRIPTION**

The National Oceanic and Atmospheric Administration (NOAA) approved the Rhode Island Coastal Resources Management Program (CRMP) in 1978. The Coastal Resources Management Council (CRMC or Council), an independent state regulatory agency, is designated as Rhode Island's lead coastal management agency.

The CRMC's enabling legislation is Title 46, Chapter 23, Rhode Island General Laws. The legislative findings recognized the paramount importance that coastal resources provide to the social and economic welfare of the state, and charged the CRMC with the explicit policy "...to preserve, protect, develop, and where possible, restore the coastal resources of the state for this and succeeding generations through comprehensive and coordinated long-range planning and management designed to produce the maximum benefit for society from such coastal resources; and that the preservation and restoration of ecological systems shall be the primary guiding principal upon which environmental alteration of coastal resources shall be measured, judged and regulated."

In order to properly manage coastal resources, the CRMC is charged with the primary responsibility for the continued planning and management of the resources of the state's coastal region. It is authorized to formulate policies and plans; to adopt regulations necessary to implement its various management programs; to coordinate its functions with local, state, and federal governments on coastal resources issues (including advising the Governor, the General Assembly and the public on coastal matters); and to act as binding arbitrator in any dispute involving both the resources of the state's coastal region and the interests of two or more municipalities or state agencies. It is also responsible for the designation of all public rights-of-way to the tidal water areas of the state, and for carrying on a continued discovery of appropriate public rights-of-way.

The regulatory authority of the CRMC is generally defined by the area extending from three miles offshore to 200 feet inland from any coastal feature. In addition, natural features such as coastal beaches, dunes, barriers, coastal wetlands, cliffs, bluffs, and banks, rocky shores, and manmade shorelines all have an extended contiguous area of two hundred feet from their inland borders which is under the authority of the Council. Cultural features of historical or archaeological significance are also within the jurisdiction of the Council.

Activities proposed within the area extending from the seaward limit of three miles offshore to 200 feet inland of any coastal feature require Council approval in the form of an assent, or permit. Specific policies have been designed to protect each coastal feature and to manage upland development.

In the Narrow River and Salt Ponds watersheds, assents are required for any subdivision of six units or more, activities requiring 40,000 square feet or more of impervious surface, and

structures serviced by large septic systems. Additionally, the Council requires assents for certain activities regardless of their location if the activity has the potential to impact coastal resources. Such activities include solid waste disposal facilities; minerals extraction; chemical transfer, processing and storage facilities; power generation facilities; petroleum transfer, processing and storage facilities; and sewage treatment and disposal facilities.

The CRMC also relies on water type designations to manage coastal resources and the activities affecting them. State waters have been assigned one of six water type designations. Based on the water type, certain policies and prohibitions apply to activities in or adjacent to the water.

## IV. REVIEW FINDINGS, ACCOMPLISHMENTS, AND RECOMMENDATIONS

### A. OPERATIONS AND MANAGEMENT

#### 1. ORGANIZATION AND ADMINISTRATION

**Council Structure:** The Coastal Resources Management Council (CRMC or Council) was created by the Rhode Island General Assembly in 1971, thus predating the federal Coastal Zone Management Act of 1972 (CZMA). NOAA approved the Rhode Island Coastal Resources Management Program (CRMP or Program) in 1978. The CRMC's enabling legislation, Title 46 Chapter 23, Rhode Island General Laws, specifies that the Council will consist of 16 members appointed by the Governor, Lieutenant Governor, and the Speaker of the House. This includes two state representatives, one representing a coastal municipality; two state senators, both representing coastal municipalities; seven private citizens, five of them from coastal municipalities; two elected or appointed officials of local government from municipalities with populations of less than 25,000, one being a coastal municipality; two elected or appointed officials of coastal municipalities with populations of more than 25,000; and the director of the Rhode Island Department of Environmental Management (RIDEM), an ex officio member.

In November 2004 the citizens of Rhode Island ratified a separation of powers amendment to the Rhode Island Constitution that had been approved by the General Assembly in 2003. The doctrine of separation of powers traditionally forbids lawmakers from executing their own laws. The amendment bans legislators and their appointees from sitting on boards with executive powers under state law, and it vests in the Governor the power to appoint, with the advice and consent of the Senate, the members of boards with executive powers under state law.

The separation of powers amendment was fully implemented for the CRMC in 2008. As a result, the CRMC now has only eight members – no longer are the four state legislators and four legislative appointees on the Council. However the CRMC's enabling legislation has not been amended to re-configure the CRMC to be consistent with the separation of powers amendment. At the time of the site visit, new members had not yet been added to the CRMC. Both the enabling legislation and the CRMC's adopted management procedures still stipulate that a quorum requires seven members without relationship to the total number of members. With only eight members on the CRMC, if more than one member is unable to attend a meeting or must recuse himself, any business requiring a vote of the CRMC cannot be heard, and meetings must generally be cancelled for lack of a quorum. The evaluation team met with the Governor's Chief of Staff, who indicated that a list of possible appointees to the CRMC was being prepared for the Governor, consistent with his authority to appoint members to the CRMC under the separation of powers amendment.

Throughout this evaluation period, several pieces of legislation have been proposed or introduced to revise the CRMP structure and operation, ranging from adding four new members

to the Council to abolishing the CRMC entirely and creating a new Department of Coastal Resources Management. Other formats and changes have been the subject of discussions as well – making the CRMP a division within RIDEM, for example. The issue of the coastal program administrative structure is divisive and contentious in the state, involving viewpoints about which structure provides more public and transparent decision-making and whether appointed citizens (Council members) or trained experts and coastal management professionals are better able to address the issues currently brought before the CRMC for adjudication. The evaluation team met with people who strongly support one position or another.

The CZMA imposes no single coastal management program structure upon all states. Some approved programs are housed within a state agency, some have an independent commission or council like the CRMC (and within that structure type, there may be representation based on geography, stakeholder/interest groups, or specific expertise of members), some are implemented through local coastal programs, while others use a network of agencies to implement. OCRM's primary concern is not with the structure or format per se but with whether the state's approved coastal management program can be effectively and efficiently implemented by whatever structure a state has chosen. Just as the Rhode Island General Assembly established the initial structure of the coastal resources management program, it can retain or change the structure or the elements of the program, so long as the state can demonstrate to NOAA that the changed structure or program continues to meet the requirements of the CZMA.

The structural issue of most immediate concern to OCRM is the number of members on the CRMC (eight) and the number required for a quorum (seven). This affects whether a meeting can be conducted and whether permit and other decisions pending before the CRMC can be reached, which in turn affects the performance and implementation of the CRMP. The Council holds two meetings per month except for July and August, when it holds one each, for a total of 22 meetings per year. The meeting calendars on the CRMC's website indicate when meetings were scheduled and if they were canceled. There is no reason indicated for a cancellation.

A brief review of those monthly calendars shows that in 2006, three meetings were canceled; in 2007, five were canceled; in 2008, five were canceled; and in 2009, seven meetings were canceled. The evaluation team believes that most business that cannot be completed by the CRMC when one meeting is canceled must then be added to the work load on the agenda for the next meeting. The postponement of permit and other decisions to a later meeting adds to the delay for applicants and others.

There are four standing subcommittees of the CRMC: Rights-of-way, Planning and Procedure, Urban Ports and Harbors, and Ocean SAMP (special area management plan). With the decreased number of CRMC members, almost all the remaining members serve on more than one subcommittee in addition to the full council, increasing their workload as voluntary members. Subcommittee work can be delayed due to attendance issues as well.

If the Rhode Island General Assembly does not address the structure of the Coastal Resources Management Council or Program through legislation during the 2010 session, then additional members must be appointed to the CRMC so that it can routinely reach a quorum and regularly scheduled Council and subcommittee meetings can be held.

**NECESSARY ACTION:** Absent any action during the 2010 legislative session by the Rhode Island General Assembly to address the structure of the Coastal Resources Management Council or Program, the CRMC must work with the Governor's Office to ensure that additional members are appointed to the Coastal Resources Management Council as soon as possible and no later than May 1, 2011. The goal is to be able to conduct a regular and full schedule of Council and subcommittee meetings in order to implement Rhode Island's approved CRMP.

**Personnel:** The CRMC is composed of the Council members and a staff of approximately 30. Legal counsel is contractually retained. The staff includes an executive director, deputy director, and others who perform policy and planning, administrative, permitting, and enforcement duties, all providing the Council with the necessary expertise to assist in decision-making. The staff conducts pre-application conferences, reviews all pertinent permit applications and prepares recommendations for decisions to be made by the Council members. The staff also prepares draft plans and regulations for the Council members' consideration.

Many of the people with whom the evaluation team met acknowledged the CRMC staff's professionalism, dedication, and expertise. One person said that the staff provides good guidance to permit applicants to facilitate the permit process, while another person commended the staff's flexibility, timeliness, and the 'good science' they bring to the CRMC's activities. The CRMC has been fortunate to retain many of its staff members for a decade or more, thus maintaining significant institutional memory.

Some CRMC members, staff, and others who spoke with the evaluation team expressed concern that the executive director's heavy involvement in the Ocean SAMP process often limits his availability to the staff – for approximately four of out five workdays, based on his own estimate. The deputy director has stepped in to assume some of the director's non-Ocean SAMP workload, which in turn does not allow the deputy director to handle some of his normal duties to the extent he usually does. If the Ocean SAMP development process and the executive director's heavy involvement will continue for a lengthier time than anticipated, the CRMC may want to consider how to address workload assignments and duties to accommodate that situation.

The evaluation team noted tension and discord that exist between the Council's executive director and the Council's chairman. In the months leading up to the site visit, several newspaper articles were published about CRMC activities, with at least one noting the "signs of disagreement" between the two (projo.com [The Providence Journal], Jan. 13, 2010). At the public meeting held during the week of the site visit, one member of the public who addressed the evaluation team commented on the strained relationship between the executive director and the chairman, as did many people with whom the evaluation team met throughout the week. All of the CRMC staff is aware of the tension, as are the CRMC members. Almost all of the staff expressed unease and concern about the situation to the evaluation team. The tension and discord are a distraction to many and call into question the credibility of the Council – both staff and members – and its decisions when the public is no longer sure who is representing the Council's position on an issue and what that position may be. That, in turn can have an adverse impact on program performance.

OCRM rarely, if ever, addresses personality conflicts or specific personnel issues in evaluation findings. However, the tension and discord between the executive director and chairman has become increasingly public, cited in newspapers, commented upon by a citizen in a public meeting, and mentioned by people with whom the team met. These concerns should be carefully considered by the CRMC with an aim to identify strategies to resolve differences and enhance the performance of the coastal resources management program through improved communication and better sharing of information.

**Legal Counsel:** About two-thirds of the CRMC staff is involved in policy and planning, permitting, and enforcement and compliance activities. These include development of regulations, recommendations to approve or deny permit applications, and decisions regarding cease and desist orders, consent agreements, and administrative fines, among others. Staff members require legal assistance and opinions on many, if not all, of those activities. The Council members also require legal advice on decisions and litigation in which the Council is involved.

The CRMC annually contracts from the private sector for legal counsel, who indicated that slightly less than two-thirds of his professional time is directed to advising the CRMC members and staff. The legal counsel told the evaluation team that his contract funds are normally exhausted in about nine months, so either he and/or additional members of his firm assist pro bono when necessary for the remainder of the contract year.

The same legal counsel serves as the hearing officer for appeals of CRMC administrative fines. The CRMC is authorized by its enabling legislation to assess an administrative penalty of not more than \$2,500 to “Any person who violates, or refuses or fails to obey, any notice or order issued pursuant to § 46-23-7(a); or any assent, order, or decision of the council...” (§46-23-7.1., Rhode Island General Laws.) A request for a hearing from a party receiving notice of an assessment of a fine requires a hearing officer, and the CRMC enabling legislation authorizes the executive director to designate a person to act as hearing officer for administrative hearings. (§46-23-7.1.(1).) Section 46-23-21.1(a) directs the governor to appoint two hearing officers, both of whom shall be attorneys-at-law, and to name one of the two as chief hearing officer. Because no funding was appropriated by the General Assembly for the hearing officers, these appointments have never occurred, and the executive director appointed the CRMC’s legal counsel to serve as the CRMC’s hearing officer pursuant to §46-23-7.1(1) long before this evaluation period.

This legal function was frequently mentioned during the site visit. A number of people with whom the team met said there is a conflict of interest by having legal counsel advise the CRMC staff and also serve as the hearing officer for appeals to administrative fines imposed by the CRMC chairperson or executive director (a staff member). The legal counsel indicated that there is no conflict of interest because he does not discuss with staff members any case that is proceeding to an administrative hearing. He also provided written comments, interpretation, and case law to support the position that there is no inherent conflict of interest.

Whether or not there is a legal basis for a conflict of interest in any particular case by having the CRMC legal counsel also serve as the CRMC's administrative hearing officer is important, but of equal or even greater concern to OCRM is the perception of a conflict of interest by the public. That perception jeopardizes the credibility of the CRMC and could call into question the impartiality of a decision.

OCRM is also concerned about parity between the CRMC staff and appellants at hearings. According to staff, the appellants at administrative hearings are generally represented by an attorney. Because the CRMC legal counsel is the hearing officer, CRMC technical staff must represent the CRMC without advice or assistance from an attorney. Staff should also receive legal counsel in preparation for the administrative fine hearings, not just legal representation at the hearings. There is no contact between CRMC enforcement staff and the CRMC legal counsel for any case put on the administrative fine hearing docket. This can put staff members at a definite disadvantage and potentially affect the outcome of the hearing.

The section of these findings entitled "Permitting and Enforcement" discusses other concerns about the administrative hearing process beyond the issues addressed here. However, it is essential that the functions of the hearing officer and the functions of the CRMC legal counsel be completely separated and conducted by different persons. There may be a variety of ways to accomplish this – contract with a different attorney or person to serve as a hearing officer when needed, or engage the services of a hearing officer(s) from the Rhode Island Department of Administration, for example – and the choice is up to the CRMC.

**NECESSARY ACTION: The CRMC must separate the functions of the CRMC administrative hearing officer from the functions of the CRMC legal counsel by December 1, 2010, so that no single person conducts or is responsible for both functions. The intent of this action is to prevent a real or perceived conflict of interest and to ensure that the CRMC staff members have access to legal counsel in preparation for, and at, hearings.**

Although the legal counsel's office is located in Providence and the CRMC office is located in Wakefield (about 45 minutes apart, depending upon traffic), he indicated that he is available and responsive to staff via e-mail and phone and comes to the CRMC office once every month if any staff members indicate a need to meet with him in person. He indicated his duties include reviewing proposed regulations, supervising CRMC litigation, writing findings of fact for CRMC subcommittee decisions and decisions for the full CRMC, and working closely with the CRMC right-of-way committee.

The evaluation team consistently heard a very different viewpoint from a preponderance of staff. According to the staff, telephone calls and e-mails to the legal counsel are not returned or are returned when it is too late to incorporate assistance and advice. The ability to meet with legal counsel only once a month is not timely, effective, or efficient, according to them, so they have stopped indicating a need to meet. Draft regulations come to the CRMC in a public forum without legal input, and staff members are writing binding permit conditions with no legal review.

The legal counsel and others with whom the team met said that there had been consideration in years past about hiring a staff attorney. At that time an argument was successfully made to continue contracting for legal services because of the supposed greater cost of staff counsel as a result of the expense of employee benefits and a concern that more than one attorney could be needed at the same time. Whether that is accurate now is uncertain, particularly because the CRMC does not pay the total costs for all of the contractual legal services it receives based on the legal counsel's assertion that his funding is generally depleted within approximately nine months.

There are several coastal management programs with a council or commission structure similar to the CRMC that have a permit/regulatory function requiring legal counsel. The San Francisco Bay Conservation and Development Commission (BCDC), one of California's approved CZMA coastal management programs, has regulatory responsibility over development in San Francisco Bay and along the Bay's nine-county shoreline. It issues permits for most activities in the Bay or within 100 feet of the shoreline, including filling, dredging, shoreline development, and other work. BCDC also has enforcement and planning and policy functions. The BCDC has 27 members, including the chairman, and a staff of approximately 35, with an executive director and two full-time staff attorneys.

The California Coastal Commission (CCC) has regulatory, enforcement, and policy and planning responsibilities over the rest of the California coastline. The CCC has 12 voting and three non-voting members, including the chairman, and a staff of approximately 115-120, with an executive director and seven to nine full-time staff attorneys.

Although the South Carolina Coastal Management Program used to have a council structure, it is now a separate office in the South Carolina Department of Health and Environmental Control. The coastal management program has several functions, including permitting as well as enforcement and compliance. It has a staff of approximately 45-50 and one full-time staff attorney.

There is wide variation in the number of council or commission members, staff, and staff attorneys in the examples cited above, but all have at least one attorney available to assist staff at any time. Other coastal management programs rely on legal counsel for day-to-day service from their lead agency or have memoranda of understanding or contracts to obtain legal services from the state's Office of Attorney General, Department of Justice, Department of Administration, etc. Some of the attorney services are paid for with CZMA funds, while others are funded from state sources.

Although the CRMC chairman and members indicated satisfaction with the level of legal service they receive, the CRMC staff clearly communicated their need for legal counsel that is more easily accessible and available to them, both geographically and whenever needed. The legal counsel should provide staff with guidance and/or review for proposed regulations and policies, regulatory concerns, proposed permit conditions, proposed enforcement actions, and other issues or topics about which staff members want legal guidance and advice. Currently, staff members report any need for legal assistance to the deputy director, who in turn notifies the legal counsel, who then comes to the CRMC office once every month if any staff members have indicated a



need to meet with him in person. This process has failed, because, as noted earlier, staff consistently indicated that this process is not timely, effective, or efficient, so they have stopped indicating a need to meet.

Because the current legal counsel has indicated that he often exceeds the budget for his services and that he and other members in his firm provide more time pro bono, the true costs of CRMC's business practices are not reflected, and additional legal services are necessary in order to address the staff needs. Just as with the administrative hearing officer situation, there may be several ways to address the issue to ensure that CRMC staff has sufficient and timely legal advice. For example, a staff attorney could be hired to assist just staff or to provide service to both staff and the Council; or a schedule could be determined by the Council, the staff, and the current attorney to establish daily "office hours" during which the legal counsel will take and respond to phone calls and e-mails, in addition to establishing a schedule of frequent regular hours at the CRMC offices. Whatever process or solution is determined, the Council members and the staff must feel confident that they are receiving sufficient and timely legal advice for CRMC decisions to generally withstand legal challenge and to assure the public that CRMC decisions are legally defensible and credible.

**NECESSARY ACTION: The services of an attorney must be available to the CRMC staff on a daily basis. The CRMC must arrive at a solution to meet that requirement by December 1, 2010, so that staff has timely and sufficient legal assistance. If the solution requires additional time beyond December 1, 2010, to implement (e.g., must fulfill all state hiring or contracting procedures or it is not feasible given state budget cycles), a later deadline must be negotiated and agreed to by OCRM.**

## 2. STRATEGIC PLANNING

The Marine Resources Development Plan (MRDP) serves as the CRMC's strategic planning and implementation guide. In 2004 the Rhode Island General Assembly adopted a law that required the CRMC to develop the MRDP with the aim of improving the health and functionality of Rhode Island's marine ecosystem, providing for appropriate marine-related economic development, and promoting the use and enjoyment of the state's marine resources. The law also requires the CRMC to administer its programs, regulations, and implementation activities in a manner consistent with the MRDP. The CRMC adopted the MRDP in January 2006.

The MRDP identifies four goals to address marine ecosystem health, marine fishing and fisheries resources, marine economic development, and marine resources use and enjoyment. It then identifies strategies in the form of actions to meet those goals. Marine economic development and fishing/fisheries resources goals are combined in terms of strategies, and a fourth set of strategies addresses the CRMC's leadership, coordination and support. The MRDP identifies a suite of 10 implementation activities for the years 2006 through 2011, although they are not individually linked to any specific goal or strategy. Some of the implementation activities seem to be identified in specific terms that lend themselves to easier assessment than others.

The MRDP includes a strategy that calls for a comprehensive review by the CRMC of the MRDP and proposes to assess the effectiveness of the MRDP and associated programs. It also proposes to accomplish this review and assessment prior to the MRDP's five-year update required by the 2004 legislation. By the time of the next Section 312 evaluation of the Rhode Island Coastal Resources Management Program, at least one comprehensive review and assessment of the MRDP will have been completed and the results will be available to the evaluation team. OCRM believes these results will help to inform that Section 312 evaluation.

### 3. GRANTS MANAGEMENT

The 2003 and the 2006 evaluation findings each contained a necessary action requiring the CRMC to submit performance reports by deadlines specified in the performance reporting guidelines provided with each cooperative agreement award. Even evaluation findings prior to 2003 also cited problems with timely submissions. Although there was some improvement during this evaluation period in the timely submission of required performance reports, the CRMC has begun to struggle with this again recently. OCRM will be monitoring the timely submission closely, and this issue will continue to be scrutinized in evaluations of the CRMC. The CRMC is reminded that continued failure to submit complete performance reports on time can have financial repercussions.

In addition to submitting progress reports in a timely manner, the CRMC must ensure that the progress reports provide sufficient detail to illustrate how federal and state matching funds have been spent and what outcomes were achieved during the reporting period. At times, especially for recurring activities, progress initially reported is fairly general and lacks adequate detail to set apart activities performed during the reporting period from previous reporting periods (for example, see the discussion under "Public Access" dealing with the CRMC's Right-of-Way Program). While the CRMC readily provides additional information when requested, it would be more efficient if sufficient descriptions are provided up front so that the specific activities and accomplishments that occurred during the reporting period can be readily determined. The same applies for grant task descriptions.

### 4. PROGRAMMATIC COORDINATION AND PARTNERSHIPS

Perhaps because of Rhode Island's small geographic size, most non-governmental organizations, agencies, academic institutions and others involved in aspects of coastal management know each other and the work of each group. The CRMC has developed strong partnerships and coordinates with a wide range of groups.

Rhode Island Sea Grant, located at the University of Rhode Island (URI), and the URI Coastal Resources Center (CRC) have several shared staff members who have been involved in CRMP projects and activities. Sea Grant's Sustainable Coastal Communities & Ecosystems Extension Program is located at the URI CRC and has been involved in all of the special area management plans (SAMPs) the CRMP has developed or is developing, including the Metro Bay, Aquidneck Island, and Ocean SAMPs during this evaluation period. All of the Ocean SAMP-related

research projects are being conducted by URI, Sea Grant, and CRC staff and students. There is further discussion about SAMPs elsewhere in these findings.

The Ocean SAMP has fostered collaborations with a number of groups. The federal agencies with some interest in or jurisdiction over activities in the offshore waters within the Ocean SAMP boundaries include the U.S. Army Corps of Engineers (USACE or Corps), the U.S. Coast Guard, the U.S. Environmental Protection Agency (EPA), the U.S. Department of Interior Minerals Management Service (MMS), the U.S. Fish and Wildlife Service (USFWS), and the NOAA National Marine Fisheries Service (NMFS). Other stakeholders with whom the CRMC is collaborating in development of the Ocean SAMP include local governments, people who earn their livelihood on the water, economic and environmental groups, the Narragansett Indian Tribe, and the corporate sector.

The CRMC serves on the Rhode Island Bays, Rivers, and Watersheds Coordination Team (BRWCT), a state interagency commission composed of the heads of seven state agencies: CRMC, RIDEM, Department of Administration's Division of Planning, the Economic Development Corporation, Narragansett Bay Commission, Rivers Council, and the Water Resources Board. Its purpose is to increase strategic coordination of these agencies via the application of ecosystem-based management principles to Rhode Island's waters and watersheds. The BRWCT has established economic and environmental monitoring collaborative and public and scientific advisory committees and has initiated a four-year strategic planning cycle called the Systems Level Plan (SLP). The SLP addresses eight topics, all of which the CRMC is involved or interested in, and establishes objectives, strategies, and actions, including agency leads for each action. The partnership of the BRWCT agencies addresses both common interests and responsibilities and provides a mechanism to increase efficiency and cost-effectiveness.

The CRMC collaborates with several federal agencies, including the USACE, NMFS, USFWS, and EPA in a partnership that addresses permitting in Rhode Island. This group is further discussed in the section entitled "Permitting."

The RIDEM coordinates with the CRMC in several areas including habitat restoration, revising the Stormwater Design and Installation Standards Manual, dredging and dredge permitting, brownfields, development of the Urban Coastal Greenway, the Clean Marina Program, and on the CRMC's Working Group on Aquaculture Regulations. There has been good communication and coordination during this evaluation period with the Narragansett Bay National Estuarine Research Reserve (NERR or Research Reserve), which is administratively housed in RIDEM. The Research Reserve manager served with the CRMC and others on the Rhode Island Aquatic Invasive Species Working Group to develop Rhode Island's Aquatic Invasive Species Management Plan. There are opportunities for increased partnership activity with the Research Reserve, and the following section on "Public Participation and Outreach" discusses the opportunities in greater detail and includes a recommendation.

Save The Bay and the Conservation Law Foundation in Rhode Island are environmental advocacy groups that can be critical of CRMC decisions and activities, but they have also worked in partnership with the CRMC in several arenas. Save The Bay has worked in concert with the CRMC on policy issues, habitat restoration, aquaculture, dredging, and clean marinas.

**ACCOMPLISHMENT: The CRMC has maintained many long-term partnerships that are responsible for much of the successful work on the Aquidneck Island and Ocean SAMPs, development of aquaculture regulations, the Clean Marina Program, and coordinated permitting that has been accomplished during this evaluation period.**

## 5. PUBLIC PARTICIPATION AND OUTREACH

The CRMC has a full-time position dedicated to outreach and education. Its updated website has a large amount of information, including council and sub-committee meetings and agendas, archived reports and documents, and a great number of links to other pertinent websites. It is user-friendly and easy to navigate. *Coastal Features*, the CRMC's newsletter, is published quarterly, and current and previous editions are available on the website.

The public educator and information coordinator has been and continues to be involved in the Ocean SAMP and serves on the Ocean SAMP Communications Team. The Ocean SAMP has sponsored a Sea Grant lecture series entitled "Our Ocean in Motion I" on topics related to the Ocean SAMP geared toward the general public. ("Our Ocean in Motion II" lecture series began in March 2010 shortly after the site visit.) The Ocean SAMP process is providing numerous opportunities for stakeholder input and public participation, and there is additional information about those opportunities in the section of these Findings entitled "Coastal Dependent Uses and Community Development – Ocean SAMP."

Based upon a Necessary Action from the 2006 findings, the CRMC corrected its public notice and comment procedures to conform to the state's Administrative Procedures Act and has revised its public notice forms to clearly alert citizens to comment period length, scheduled workshops, purpose of proposed revisions, and hearing dates.

Based upon another Necessary Action from the 2006 evaluation findings, the CRMC began a training program for Council members on the CRMC's complex policies, regulations, and management procedures. Beginning in August 2006, the Coastal Education Series was created to address this requirement. Generally a presentation is made as a part of a regularly scheduled CRMC meeting. Topics have included, for example, water quality designations and shellfish closures, dredging and filling, hazards, ethics, public trust and access, and permit procedures. The schedules of the series are posted on the CRMC's website, as are the PowerPoint presentations, outlines, notes, or any other materials used by the topic presenter. Because the presentations are made as part of a regularly scheduled CRMC meeting, the Series presentations are open to the public. The public educator and information coordinator oversees and coordinates the Coastal Education Series. Although the presentations add to the length of meetings, OCRM encourages the CRMC to continue this effort and repeat some presentations as a refresher for members as necessary.

Rhode Island is fortunate to have the Narragansett Bay NERR within its coastal zone. One of the major areas for which every NERR, including Narragansett Bay NERR, has a responsibility is education and outreach. There is a good opportunity for the CRMC and Narragansett Bay NERR

to increase their partnership on education and outreach activities. In particular, each NERR has developed a Coastal Training Program (CTP). Narragansett Bay Reserve's CTP helps build the capacity of coastal decision-makers within the Narragansett Bay watershed in making informed decisions as how to best preserve and protect the natural resources of the Bay and its watershed. Target decision-maker audiences include municipal staff and volunteers, designers and developers, landscape architects, engineers, attorneys, and nonprofit organizations such as watershed councils and land trusts. The CTP workshops focus on such topics as conservation development, stormwater and low-impact design, riparian buffer restoration, and others, including a future workshop on sea level rise. There already is some overlap with the CRMP on such issues as aquatic invasive species and sea level rise, and there are opportunities for collaboration on these and other concerns.

**PROGRAM SUGGESTION: OCRM urges the CRMC to look for opportunities for further collaboration with the Narragansett Bay NERR through public participation and outreach on issues facing Rhode Island and of mutual concern to both agencies. Sea level rise, in particular, is an area in which the Narragansett Bay NERR is planning to develop a CTP workshop based on a NERR national system model, and it is an issue for which the CRMC is further developing policies and regulations.**

## **B. PUBLIC ACCESS**

The State of Rhode Island places significant emphasis and importance on the right of its citizens to access the coast and assigns responsibility to the CRMC in its enabling legislation (Title 46, Chapter 23, Rhode Island General Laws) for designation of public rights-of-way to tidal water areas. Further, the CRMC is required to carry on a continuing discovery of appropriate public rights-of-way. Through this process, the CRMC does not create new public rights-of-way but recognizes and officially designates already existing public rights-of-way. To that end, the CRMC established a standing right-of-way (ROW) subcommittee.

The ROW designation process begins with a fact-finding investigation and a title search conducted by the CRMC's legal counsel, usually at the request of a coastal city or town. In many cases, the CRMC's efforts are supplemented with research by the municipality. Evidence is gathered from land records, deeds, tax assessor records, public works records, town documents, and court records. A visual inspection is also made and a public hearing is held in the town or city involved. If a public ROW exists, the ROW subcommittee makes a recommendation to the full Council to designate the site. Following the final Council decision and after any appeal has been resolved in favor of the CRMC, the decisions is recorded and filed with the Rhode Island Secretary of State.

The CRMC has set a goal to designate at least one public right-of-way for every mile of shoreline and claims that it is more than halfway to reaching it. It publishes an annual progress report on designation of public rights-of-way. In reviewing three of those annual reports covering the time period of this evaluation, it is not clear how many rights-of-way have been designated or otherwise examined during this evaluation period. Each report contains a table cumulatively showing sites on appeal, new sites under review, sites not resolved, sites with

insufficient evidence for designation, sites designated, and the total number of potential ROWs reviewed, which presumably represents the sum of the other categories. Yet the sum of all categories exceeds the sum of the other categories all three years. Each year has the same numbers in all categories, except that one year shows an increase by one in the sites designated, yet the total does not change. Based on that, one can assume that in the three years covered by the reports, the same sites remained on appeal; the same new sites were under review, etc. If that is true, then the CRMC has made almost no progress in three years. Otherwise, the annual reports do not reflect the progress it has made.

Further confusing the status of progress is the same statement in the annual report made for two consecutive years – that during the report period, two proposed rights-of-way in the City of Warwick were designated by the CRMC. Were four designated in Warwick? Is the second appearance of the statement a mistake because only a total two of were designated? And whether two or four were designated, they are not reflected in the cumulative table above the statement. The July 2007 through June 2008 annual report notes that a court decision settled a 20-year conflict over the Tuckerman Avenue ROW, upholding the original 1981 designation. The CRMC even held an on-site press conference to celebrate the decision and designation. However, the cumulative table indicates the same number of sites on appeal as the previous year, thus in no way reflecting what the CRMC obviously viewed as an accomplishment.

The CZMA cooperative agreement semi-annual reports for this evaluation period as well as the CRMC's ROW annual reports do not provide a level of detail to make sufficiently clear to OCRM exactly what has been accomplished or what efforts have been made with regard to ROW designation. That in turn makes it ambiguous as to whether the funds identified in the CRMC's cooperative agreement awards were most effectively spent.

**PROGRAM SUGGESTION: The CRMC's cooperative agreement award semi-annual performance reports submitted to OCRM should be more detailed and complete with regard to the task established for the ROW activities. The CRMC's own annual progress reports concerning the designation of public rights-of-way and other related activities of the ROW subcommittee and full council should more clearly and accurately reflect actual work and accomplishments relating to ROW designation.**

Although the discovery and designation of public rights-of-way do not create new public access, the CRMC's permitting process and new urban coastal greenway policy (discussed immediately below), do help increase public access.

## **C. COASTAL HABITAT**

During this evaluation period, the CRMC developed and adopted an urban coastal greenway (UCG) policy. The UCG is a major component of the Metro Bay SAMP, which the CRMC is developing to replace the 1983 Providence Harbor SAMP. The UCG is also a part of the Aquidneck Island SAMP being developed now (see "Aquidneck Island SAMP" in the "Coastal Dependent Uses and Community Development" section later in this document).

The UCG is a new regulatory approach for coastal vegetative buffers. It is designed to provide developers with a permitting option to use either the standard buffer and setback regulations in the CRMP or the UCG. The UCG policy establishes specific standards for overall vegetation of the development site, management of stormwater runoff, low-impact development techniques, and public access. As part of the policy, the CRMC identifies critical habitat to which the CRMC will give its maximum level of protection, thereby balancing economic development with protection of key environmental areas. Another component of the UCG is the inclusion of an option to reduce the urban coastal greenway through compensation. This option allows an applicant to choose a compact UCG standard width in return for site or coastal resource enhancements, including the creation of new public access, or habitat conservation and preservation.

The CRMC held a design contest to develop a standard public access sign to be used at all public access points as part of the Metro Bay UCG. The winning sign design was chosen in 2007.

**ACCOMPLISHMENT: The CRMC developed and adopted the Urban Coastal Greenway policy, the intent of which is to clarify and streamline the regulatory process and to create greater flexibility in development and redevelopment in a way that integrates economic development, expanded public access, and the management, protection, and restoration of valuable coastal habitats.**

The Rhode Island Coastal and Estuarine Habitat Restoration Trust Fund is a state fund dedicated to the planning, design, construction, and monitoring of coastal and estuarine habitat restoration projects. Funds for the program come from the state's Oil Spill Prevention Administration and Response Act (OSPAR), established by the state legislature following the 1996 North Cape oil spill. Each year the Trust Fund provides \$250,000 to the CRMC as administrator to award to habitat restoration projects. During this evaluation period the CRMC awarded funding for over 25 projects. Each year's funding generally leverages much more funding from other sources at a ratio of over 9:1.

In 2009 the CRMC and its project partners (USACE, RIDEM, and the Wood-Pawcatuck Watershed Association) received over \$3 million in federal competitive stimulus funding from NOAA for six fish passage restoration projects on the Pawcatuck River and the Ten Mile River system, collectively called the Rhode Island River Ecosystem Restoration Project. Work began in July 2009 to restore access to approximately 13 stream miles and 1,640 acres of spawning habitat and to improve habitat and biodiversity in the long-term to Narragansett and Little Narragansett Bays.

During this evaluation period, the state completed the Rhode Island Aquatic Invasive Species Management Plan (RIAIS plan or plan), which followed guidance provided by the federal Aquatic Nuisance Species Task Force, co-chaired by NOAA and USFWS. Once the plan was approved by the Task Force in late 2007, the Task Force provides limited annual funds to support plan implementation. The CRMC adopted the RIAIS plan in January 2008.

The first draft of the RIAIS plan was produced by a partnership of the CRMC, the University of Rhode Island, the Rhode Island Natural History Survey, and the Rhode Island Invasive Species Council. These partners met for approximately 12 months to create the draft RIAIS plan; they will continue to work toward the plan's implementation. Because of the leadership role the CRMC played in the plan development, the CRMC administers the annual federal grant allocated to the state to fund the implementation of the RIAIS plan. The CRMC also co-chairs the RIAIS Working Group and is responsible for organizing and scheduling its meetings, ensuring the continued implementation of the RIAIS plan, and updating it as needed.

In 2009 Coastal America awarded the CRMC and its partners the 2008 Coastal America Partnership Award for its work on the South Coast Habitat Restoration Project. Work on the project began in 1997. In 2007 the CRMC and the USACE began the second phase of habitat restoration at Ninigret Pond. This involved restoring eelgrass habitat on the eastern lobe of the flood tidal delta by selectively dredging the sandy bottom to an optimum depth for eelgrass growth. Over the years, the pond has been filled in with sand washing in with the current, choking out the native eelgrass beds that once thrived there. The dredged material was removed and placed at an area below high tide in front of the Charlestown Town Beach so that it will naturally wash ashore. This allows the natural coastal processes to shape the shoreline along the Charlestown and South Kingstown beaches, making them more resilient to the winter storms.

Finally, in 2007 the CRMC adopted a comprehensive reworking of its existing regulations on submerged aquatic vegetation (SAV). The revised regulations allow for the denial of an application where impacts on SAV are substantial or cannot be avoided or minimized, or if the proposed activity is adjacent to or includes a restoration site and/or the site includes the sole sources of SAV habitat in that area. The regulations now require an SAV survey for activities proposed in areas of current or historic SAV habitat, and that surveys must be completed during peak biomass. Prohibited activities over SAV include floats and float platform lifts associated with residential docks; boat lifts having the capacity to service vessels larger than a tender; the long-term docking of vessels at a recreational boating facility; and residential docks proposed to be 200 feet or more in length seaward of the mean low water. A new section on standards has also been added to aid in the surveying process. The regulations are designed to protect eelgrass beds and minimize manmade impacts.

**ACCOMPLISHMENT: The CRMC has taken significant steps through funding efforts, partnerships to eliminate invasive aquatic species and to restore eelgrass, and revisions to its own submerged aquatic vegetation regulations to preserve, protect, and restore Rhode Island's coastal habitats. It has been recognized nationally by Coastal America for habitat restoration work.**

The CRMC is the state's lead agency for the Coastal and Estuarine Land Conservation Program (CELCP), which is administered by NOAA. In this capacity the CRMC has developed the state's CELCP plan. To compete for CELCP funding at this time, a state must have submitted a draft plan. However, at some point it will be necessary to have a final and approved plan in place in order to compete. At the time of the site visit, the state's CELCP plan was not finalized



and approved. Between the time of the site visit and the issuance of these final findings, the CECLP plan has been finalized and approved.

#### **D. WATER QUALITY**

During this evaluation period, the CRMC developed several new mechanisms that have a direct impact on water quality.

The CRMC adopted a Clean Marina Program in 2007. The voluntary program was developed with the cooperation of RIDEM, the Rhode Island Marine Trades Association (RIMTA), and Save The Bay. It was designed to protect the state's coastal waters and benefit the marina industry in Rhode Island. As part of the program, a clean marina guidebook and a self-assessment checklist were developed to assist marinas as they seek *Rhode Island Clean Marina* designation. The designation certifies marinas, boatyards, and yacht clubs that have voluntarily exceeded regulatory requirements and have adopted innovative pollution prevention best management practices. The CRMC, RIDEM, RIMTA, and Save The Bay comprise a team that evaluates each marina applying for the designation. Marinas that have achieved the *Clean Marina* designation are distinguished as "green" businesses that offer clean, safe, and environmentally friendly facilities. In addition, the designation replaces the Operations and Maintenance Plan required by CRMC regulations. At the time of the evaluation site visit, three marinas had received the *Clean Marina* designation.

During this evaluation period the CRMC has worked with RIDEM to develop a new *Stormwater Design and Installation Standards Manual* to replace the existing 1993 stormwater manual. (Since the site visit, a final draft of the new manual has been completed and is the subject of public workshops at the time of the issuance of these findings.) In addition to that effort, the CRMC adopted in October 2006 stormwater treatment requirements focusing on Low Impact Development (LID) design within the UCG Policy for the Metro Bay Region SAMP, which includes portions of Providence, East Providence, Pawtucket, and Cranston. The CRMC is also working on a Suburban Buffer Design Manual which will supplement the Greenwich Bay SAMP. Both SAMPs rely heavily on LID techniques for the management of stormwater runoff. All regulatory standards and requirements contained in CRMC's SAMPs take priority over the standard requirements of the State's stormwater manual or other CRMC regulations.

<p><b>ACCOMPLISHMENT:</b> The CRMC has developed a Clean Marina Program, is working with the Rhode Island Department of Environmental Management to develop a new <i>Stormwater Design and Installation Standards Manual</i>, developed the Urban Coastal Greenways policy, and is developing a suburban buffer design manual, all to help improve the water quality in Rhode Island's coastal waters.</p>
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#### **E. COASTAL HAZARDS**

Based upon the CRMC's 2006 Section 309 Program Assessment and Strategy, Rhode Island faces the most frequent level of risk and highest potential severity from hurricanes, storm surge

and flooding, and shoreline erosion. Since 2006 the CRMC has placed greater emphasis on sea level rise as a more significant natural hazard. The CRMC's efforts to recognize and adapt to sea level rise are addressed in the next section entitled "Climate Change."

The CRMC's regulations address coastal hazards in terms of both pre-storm mitigation and post storm actions. These are generally requirements or prohibitions for permit applications and assents. The CRMC and RIDEM developed new regulations for individual sewage disposal system repair in critical erosion areas in January 2006 after a series of storms that affected several properties in South Kingstown.

As discussed in the "Coastal Habitat" section earlier in these findings, the CRMC and the USACE began the second phase of habitat restoration at Ninigret Pond in 2007. This involved restoring eelgrass habitat on the eastern lobe of the flood tidal delta by selectively dredging the sandy bottom to an optimum depth for eelgrass growth. The dredged material was removed and placed at an area below high tide in front of the Charlestown Town Beach so that it will naturally wash ashore. This allows the natural coastal processes to shape the shoreline along the Charlestown and South Kingstown beaches, making them more resilient to winter storms.

The Metro Bay SAMP is now in development as an update and expansion to the original Providence Harbor SAMP. (Further discussion regarding SAMPs is contained in the "Coastal Dependent Uses and Community Development" section later in this document.) The CRMP has recently adopted a chapter for the Metro Bay SAMP that addresses the natural hazards of hurricanes, floods, and sea level rise. The Hazards chapter seeks to advise the communities, state and local governments, and the public on the relevant coastal hazard issues in the Metro Bay region and propose recommendations to effectively address and mitigate those hazards.

## **F. CLIMATE CHANGE**

The CRMC is addressing climate change and sea level rise planning and adaptation in a variety of ways. In December 2006 the Rhode Island General Assembly passed legislation authorizing the CRMC to develop and adopt policies and regulations needed to manage the state's coastal resources and to protect life and property from coastal hazards resulting from projected sea level rise and probable increased frequency and intensity of coastal storms due to climate change. In the fall of 2007, the CRMC proposed a new policy to address sea level rise as a new section in its program document (called the "Red Book"). The new Section 145 of the Red Book – Climate Change and Sea Level Rise – was adopted by the Council in January 2008. The policy sets the stage for adopting future regulations and includes the current science and facts about climate change and sea level rise impacts in the state, including anticipating 3 to 5 feet of sea level rise in coastal Rhode Island by 2100. Section 145 also includes recommended coastal construction guidelines and provides a framework for the CRMC to better manage development and related concerns while taking future sea level rise into account. The policy establishes criteria for the CRMC to develop future policies, plans, and regulations to proactively address and adapt to climate change and sea level rise.

In June 2008 the CRMC and University of Rhode Island (URI) Coastal Institute hosted a day-long discussion for approximately 150 people on climate change and its effects on Rhode Island's coastline entitled "Where Will Tomorrow's Shoreline Be?" Conference sponsors included The Nature Conservancy of Rhode Island, the Rhode Island Sea Grant Program, and the 2008 URI Honors Colloquium: People and Planet – Global Environmental Change. Discussions were led by the CRMC, URI Graduate School of Oceanography, the state's geologist, coastal town officials, and other environmental professionals.

As discussed above in the "Hazards" section, the Metro Bay SAMP now in development includes a chapter addressing the natural hazards of hurricanes, floods, and sea level rise. The Ocean SAMP will also include a chapter on climate change. Other efforts discussed in the "Hazards" section pertain to climate change and sea level rise planning and adaptation. In addition, the CRMC is beginning to work with partners to discuss how climate change should be considered during habitat conservation and restoration planning. Some of the habitat restoration efforts undertaken by or funded by the CRMC create adaptations to sea level rise.

**ACCOMPLISHMENT: The CRMC received statutory authorization to adopt policies and regulations to address the effects of sea level rise. The CRMC adopted a specific policy addressing sea level rise and has addressed sea level rise in the current development of the Metro Bay Special Area Management Plan.**

## **G. COASTAL DEPENDENT USES AND COMMUNITY DEVELOPMENT**

### **1. SPECIAL AREA MANAGEMENT PLANS**

The CZMA authorizes state coastal management programs to develop SAMPs to provide for natural resource protection and reasonable coastal-dependent economic growth in specific geographic areas within the coastal zone. The Rhode Island Coastal Resources Management Program is a national leader in the development of SAMPs. It adopted its first SAMP in 1983 for Providence Harbor, and the Metro Bay SAMP now in development is an update and expansion to the original Providence Harbor SAMP. The Metro Bay SAMP was begun during the previous evaluation period, but chapter development has continued throughout this evaluation period. It was for the Metro Bay SAMP that the CRMC developed and adopted its new UGC policy, which is discussed in the "Coastal Habitat" section above.

The two new SAMPs on which development was started during this current evaluation period are:

**Aquidneck Island SAMP** – The CRMC began development of the Aquidneck Island (AI) SAMP in January 2007. The CRMC and the University of Rhode Island's Coastal Resources Center are working with the towns of Middletown, Newport, and Portsmouth to design a plan that encompasses smart growth elements, buffers and setbacks to accommodate the expected mixed-used developments on the west side of the island, the planned transfer of federal land from the U.S. Navy consistent with CRMC regulations and SAMP guidelines, and possible water type designation changes for the west side of the island. The SAMP will also incorporate many

elements of the Aquidneck Island West Side Master Plan that was developed in 2005 by the Aquidneck Island Planning Commission as the island communities' vision for future development. The AI SAMP is the second SAMP to incorporate the CRMC's UGC policy.

**ACCOMPLISHMENT: The CRMC is successful at using the SAMP process to help coastal communities thoughtfully and strategically plan ways to integrate and accommodate smart growth elements, economic development, the protection of coastal resources, and the provision of public access.**

**Ocean SAMP** – Throughout the coastal United States, including the state of Rhode Island, there has been a surge of interest in the offshore environment over the past five to ten years, much of it due to energy facility siting. An increasing demand for energy coupled with a desire to reduce the nation's dependence on foreign oil and to decrease one's carbon footprint to combat climate change have played a role in the strong interest in energy facility siting in the coastal zone, especially offshore renewable energy sources. Liquid natural gas (LNG) and renewable energy sources are increasingly identified as sources to meet the energy need. The State of Rhode Island has set a goal of obtaining 15% of state energy needs from wind energy resources. Proposals for LNG terminals and offshore wind farms have often generated considerable controversy in several states. As with many kinds of building and construction, reacting to a single siting proposal is generally not as satisfactory as identifying and planning for suitable locations beforehand.

The CRMC has long utilized the SAMP as a tool to recognize competing uses and to create a comprehensive plan that coordinates competing and sometimes conflicting uses and goals, such as economic development, natural resource protection, cultural and historic resource preservation, and human needs and uses within the coastal zone. The CRMC has zoned Rhode Island's near-shore waters since 1983 and saw the zoning of offshore waters as a way to address proposals to develop renewable energy sources in those waters.

To that end the CRMC initiated the development of an Ocean SAMP in 2008. The Ocean SAMP addresses both state and federal waters off the coast of Rhode Island. The objectives of the SAMP are:

- maintaining the ecology of the ocean resources;
- promoting and enhancing existing commercial and recreational fisheries activities;
- maintaining a healthy marine transportation network;
- promoting and enhancing existing recreational activities;
- determining appropriate and compatible roles for future activities within the study area, including offshore renewable energy infrastructure; and
- building a framework for coordinated decisionmaking between state and federal management agencies.

To accomplish this, the CRMC is using a research and planning process that integrates the best available science with open public input and involvement. Research projects undertaken by the University of Rhode Island scientists are providing the scientific basis for the Ocean SAMP. Stakeholder groups like commercial fishermen have also been able to provide important

information that complements the scientific research efforts. Federal agency partners participating in the Ocean SAMP development and having some area of jurisdiction in offshore waters include the USACE, the U.S. Coast Guard, the EPA, MMS, USFWS, and NMFS. Stakeholder participation in development of the Ocean SAMP comes from town officials and organizations, people who earn their livelihood on the water, economic and environmental groups, the Narragansett Indian Tribe, and the corporate sector. Frequent public meetings are also held as part of the development process.

Another step is to identify and map existing uses and critical zones, including transportation corridors, military applications, commercial and recreational fishing, essential habitats, and cultural and historic resources. This is necessary to ensure that future activities, including the installation of renewable energy infrastructure, do not significantly impact existing or potential future uses of this region. It also allows CRMC to identify locations that merit additional protection through the SAMP process. When these maps are overlain, areas of existing and/or critical use and areas with less visible conflicts will emerge. The maps will be used to attempt to identify conservation zones and eliminate unsuitable areas for certain uses, such as wind turbines, and identify other areas with the most potential for those uses. Ultimately, a comprehensively planned map will be created that identifies preferred and suitable sites for renewable energy infrastructure.

The CRMC will generate regulatory standards and policies as part of the CRMP for guiding development and protecting the state's resources. As chapters of the Ocean SAMP are drafted they are reviewed and commented on by agencies and stakeholders.

The Ocean SAMP is on a fast track for completion (August 2010), and a moratorium is in place on applications for alternative energy proposals until the regulations are in place. Throughout the evaluation, many stakeholders and federal agency representatives expressed support for the development of the Ocean SAMP and generally felt the process was going well. Because of the rapidly approaching completion date, several reviewers said they felt the 10-day review period allowed for each chapter did not give them enough time to give thoughtful review and provide very specific comments. A couple of reviewers said they found it a bit difficult to review a chapter out of context of the entire plan. Many felt the process was very transparent and provided many opportunities to review and comment, although another few representatives with whom the evaluation team met felt there was still no clear process through which comments from the general public will be made and final approval given for the Ocean SAMP as a whole, and whether there would be adequate time for public review.

The Ocean SAMP may be the most complex and ambitious SAMP the CRMC has initiated to date. In 2009 the Ocean Renewable Energy Coalition, a national trade association, recognized the State of Rhode Island and the CRMC as a leader in developing SAMPs, particularly the Ocean SAMP. The Coalition filed comments on a framework for ocean policy coordination and marine spatial planning in response to President Obama's Ocean Policy Task Force and cited Rhode Island and the Ocean SAMP in particular in its comments.

**ACCOMPLISHMENT: The CRMC has undertaken the development of an Ocean Special Area Management Plan in partnership with numerous federal agencies and stakeholder groups to comprehensively plan for Rhode Island's offshore waters. When completed, the Ocean SAMP will identify and map existing uses and critical zones within the boundaries of the SAMP; and generally identify conservation zones, unsuitable areas for certain uses, such as wind turbines; and other areas with the most potential for those uses. This will enable the state to better manage offshore water use conflicts and the siting of alternative energy sources.**

## **2. AQUACULTURE**

The aquaculture industry in Rhode Island began with the issuance of the first oyster lease in 1798. The industry went through several swings of high production and low production, and in 1999 there was a total of 10 acres leased. The CRMC is the leading agency for aquaculture permitting in Rhode Island, and in 1999 the CRMC hired an aquaculture coordinator.

The CRMC Working Group on Aquaculture Regulations (WGAR) first convened in 2000. It included representatives from several non-governmental organizations, industry representatives, academia, the U.S. Department of Agriculture, state legislature, and four state regulatory agencies, including the CRMC. After meeting for two years, the members believed the WGAR's goals had been met and ceased meeting. In early 2007 the WGAR reconvened in response to growing concerns about the growth of aquaculture leasing in salt ponds and its impacts on the environment. The CRMC's aquaculture coordinator served as the chair. By then aquaculture leasing had grown to 100 acres, all for shell fish. (The CRMC did issue a permit for the state's first land-based ornamental marine fish farm in 2007.)

The WGAR approved a final report in January 2008. The WGAR looked at a significant amount of scientific information to attempt to determine whether the impact of the physical presence of shellfish aquaculture is acceptable to ecosystem structure and function and to the citizens of Rhode Island. The final report indicates that more information and work is needed to determine the ecological carrying capacity in any given water body, although evidence to date shows no evidence that Rhode Island shellfish aquaculture is having negative environmental impacts and that it is having some positive impacts in the ecosystem.

The WGAR final report includes recommendations based on available information, the need for funding for additional information needs, and suggested changes to the regulatory environment. The CRMC adopted changes to its aquaculture regulations in November 2009.

## **H. GOVERNMENT COORDINATION AND DECISION-MAKING**

### **1. FEDERAL CONSISTENCY AND PROGRAM CHANGES**

Federal consistency is the CZMA provision that federal actions that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone must be consistent with

the enforceable policies of a coastal state's federally approved CMP. There are four types of federal actions: direct federal agency activities; federal license or permit activities; outer continental shelf (OCS) exploration, development, and production activities; and federal assistance to state and local governments. When those activities are proposed, the application or proposal of activity must include a statement by the applicant that the activity is consistent with the enforceable policies of the CRMP – the federal consistency determination. (For direct federal agency activities, the agency must indicate that the activity is consistent to the maximum extent practicable.)

Because Rhode Island's coastal resources management program is a direct permitting program, concurrence or non-concurrence with a federal consistency determination is captured in the review of state permit applications. According to the CRMC staff, on average the CRMC receives over 100 state permit applications per month, many of which also come under the jurisdiction of the USACE and require individual federal permits. When an activity requires an individual federal permit from the USACE, the CRMC also receives a copy of the federal permit for state review. When the CRMC permit is reviewed, it also is reviewed for federal consistency.

Because of the Programmatic General Permit program (also discussed below), the CRMC issues the state permit and the federal permit for certain classes of federal activities (the issuance of the permits is also a concurrence with the federal consistency determination); conversely, the denial of the permits is non-concurrence with the federal consistency determination. During this evaluation period, the CRMC annually reviewed from approximately 15 to 35 federal permits for federal consistency.

CRMC staff and local federal agency staff have strong relationships and have developed a protocol to address federal consistency determinations for direct federal activities. Prior to the formal submission of a federal consistency determination for direct federal activities, a pre-application meeting is held to identify possible program issues and develop strategies to mitigate them so that the actual determination can be submitted without issue and processed quickly. This is the same as the pre-application process the CRMC staff extends to all applicants for a CRMC assent. During this evaluation period, the CRMC annually reviewed approximately 30 to 50 direct federal activities for federal consistency. In the mid-1990's the CRMC delegated review and concurrence/non-concurrence for federal consistency determinations to the executive director, out of concern that the Council as a body would be unable to meet the deadlines established by the CZMA for the process.

Generally there are few denials or non-concurrences with federal consistency determinations in state coastal programs, and the CRMC is no different. Most inconsistencies are resolved prior to denial of federal consistency through consultations, including a pre-application process. However, during this evaluation period, a major case became involved in litigation involving the federal consistency process. Weaver's Cove Energy LLC proposed to construct and operate a liquefied natural gas (LNG) facility in Fall River, Massachusetts, requiring authorization from the Federal Energy Regulatory Commission. The proposal also required a Category B assent because of significant dredging required in Rhode Island tidal waters. The case ultimately went

to the First Circuit Court of Appeals, where an opinion in favor of Weaver's Cove Energy LLC and against the CRMC was issued.

In 2000, NOAA revised its Federal Consistency Regulations to provide clarity regarding interstate federal consistency review (15 C.F.R. part 930, subpart I). Under subpart I, state coastal management programs have the ability to review a federal action in another state if previously authorized by NOAA. States can submit to NOAA a list of federal activities occurring in specific areas within other states. NOAA may approve such activities for interstate consistency review, if it concludes such actions will have reasonably foreseeable effects on the state's coastal uses and resources. Interstate consistency does not give a state authority to review the laws or policies of another state. It only allows the state to review the federal authorization.

Only a handful of state coastal management programs have approved interstate consistency lists. The Weaver's Cove project in Massachusetts, however, illustrates that the CRMC may want to consider developing an interstate consistency list so that it will have the authority to review federal actions occurring in other states that may have reasonably foreseeable effects on Rhode Island's coastal resources and uses. With an approved interstate consistency list, its federal consistency review would not be limited to only those federal activities occurring within Rhode Island's coastal zone.

**PROGRAM SUGGESTION: The CRMC should consider working with OCRM to revise the state's federal consistency list to include select interstate activities of concern to Rhode Island.**

In order for any coastal management program to concur or disagree with a determination of federal consistency with that program's enforceable policies, those enforceable policies must be incorporated in the program. This occurs both at the time of initial program approval and later in time through the program change process. New policies or changes to existing policies must be submitted to NOAA for approval and incorporation. The CZMA requires state programs to update their programs on a regular basis.

The evaluation findings dated October 2006 contained a Necessary Action requiring that all outstanding program changes to the CRMP be submitted to OCRM by April 2007 and that a schedule be developed for submitting future program changes on a regular basis. The CRMC submitted all the required program changes, established a schedule for regular submissions, and is now up-to-date on program change submittals.

## **2. PERMITTING AND ENFORCEMENT**

The regulatory authority of the CRMC is generally defined by the area extending from three miles offshore to 200 feet inland from any coastal feature. In addition, natural features such as coastal beaches, dunes, barriers, coastal wetlands, cliffs, bluffs and banks, rocky shores, and manmade shorelines all have an extended contiguous area of 200 feet from their inland borders and are under the authority of the Council.



Depending upon the proposed activity within the CRMC's regulatory jurisdiction, applicants must submit a permit application and receive one of four types of CRMC assents (authorization to proceed with the activity): a Finding of No Significant Impact (FONSI), Certification of Maintenance, Category A Assent, or Category B Assent. Generally, a FONSI is issued for minor activity that poses little or no threat to coastal resources. A Certification of Maintenance is issued for activity that does not significantly alter the assented design, purpose, and size of a structure. A Category A Assent is issued for activities that include routine matters and types of construction or maintenance work that normally do not require review by the full Council. A Category B Assent is issued for large, complex, and/or contentious projects. A Category B assent is also required for all dock and pier proposals.

With the exception of Category B and certain Category A applications, all assents are processed administratively by the CRMC staff. Category B applications and certain Category A applications that cannot be approved at the staff level (because a substantive objection to the proposed activity has been received or the proposed activity does not meet the applicable policies and standards contained in the CRMP) require a public hearing before the full Council, which makes determinations on these assents.

Both the 2003 and 2006 evaluation findings discussed issues and included necessary actions to address the need for the CRMC to clearly specify, based on the approved Rhode Island CRMP, the justification for decisions to approve or deny a permit application, including the rationale and justification for decisions contrary to staff recommendations, so as to provide clarity and transparency for the public. The evaluation team heard from several people during the site visit who expressed concern that there are still some permit decisions that do not include clear, compelling justification as to why the specific decision was made. The Council needs to be vigilant that every decision it makes is justified in writing and is based upon the policies and regulations of the approved coastal resources management program.

During this evaluation period, a contentious case involving a 2003 permit application and the CRMC's 2006 denial of an assent to the Champlin's Realty Associates continued in litigation that began shortly after the assent denial. Champlin sought to expand the marina it operates on Block Island. The case was appealed to the Rhode Island Superior Court and then to the Rhode Island Supreme Court, which then remanded it to the Superior Court. Litigation is ongoing at the time of the issuance of these final findings.

According to the permitting staff members with whom the evaluation team met, approximately three percent of all permit applications go to the full Council, and generally no more than about five are heard at any single CRMC meeting. The evaluation team heard comments from several CRMC members, staff members, and others who indicated a desire for the Council to become more focused on planning and policy development and less on permitting. The CRMC already began moving in that direction during this evaluation period when the Council approved changes to the CRMP to allow additional permitting of uncontested, standard activities to be processed by staff and signed by the executive director. If it is the desire of the full CRMC to continue this shift, then the CRMC might wish to consider whether another set or subset of those permit

applications requiring full Council action could be handled administratively by the CRMC staff instead – for example, some or all dock and pier proposals.

The CRMC enforces violations of the approved coastal program. In most cases, this involves enforcing violations of permit assents and taking action against those activities that are being conducted without a required assent. Because there are only two enforcement staff members, they are rarely able to do compliance inspections but become aware of violations through complaint calls from the public or occasionally from a CRMC staff member who has noted a violation when driving past a project.

By law, the only recourse available to the CRMC for violations is the imposition of an administrative penalty of not more than \$2,500 for each violation, regardless of the type of violation or size of the development or project. Additional penalties of not more than \$500 are authorized for each day a violation continues after receipt of a cease and desist order, but the penalties in aggregate cannot equal or exceed \$10,000. In comparison, the administrative financial penalty for violation of a permit issued by the California Coastal Commission is not more than \$30,000. The Rhode Island Department of Environmental Management can assess a civil penalty of not more than \$25,000 for each day during which a water pollution violation occurs. As several people with whom the evaluation team met pointed out, the \$2,500 penalty that can be imposed by the CRMC is an amount that some developers and others with large or expensive projects simply consider the cost of doing business and does not serve as much of a deterrent or cause to change development procedures and business practices.

After the CRMC has issued a notice of violation (NOV) or cease and desist order, the party in violation may request a hearing. The CRMC legal counsel serves as the hearing officer. If the violation is found to have occurred, the hearing officer issues a final order assessing not more than the amount of the penalty in the NOV. According to some people with whom the evaluation team met, fines have been lowered by the hearing officer as part of the settlement of the case. If the party in violation wants to appeal the hearing officer's decision, it is appealed to superior court. According to the CRMC's legal counsel, approximately 98 percent of all NOV's and cease and desist orders are resolved at the hearing level. That likely means that those 98 percent paid \$2,500 or less per violation. Unless the maximum fine amount is increased, fine payment will likely continue to be part of the cost of doing business for some developers and property owners.

<p><b>PROGRAM SUGGESTION: The CRMC is strongly encouraged to work with the Rhode Island General Assembly and Governor to increase the maximum administrative penalty for CRMC notices of violation and cease and desist orders.</b></p>
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The USACE New England Division has developed a programmatic general permit (PGP) for each of the states in the Division, including Rhode Island. Certain activities that fall under the jurisdiction of the USACE in Rhode Island and would normally require an individual USACE permit, but which will only have minimal adverse effects, are covered by the PGP and are not required to obtain an individual permit from the USACE. The PGP process eliminates individual review and allows the activities specified in the PGP to proceed with little or no delay, provided

that the general or specific conditions of the PGP are met. In Rhode Island, the PGP covers activities authorized by Section 10 of the Rivers and Harbors Act, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act.

In Rhode Island, the CRMC is a partner in an informal PGP group. The group includes the CRMC, USACE, NMFS, USFWS, and EPA. The NMFS, USFWS, and EPA participate because the USACE must solicit input from them on all USACE permit applications. All state applications that also require a federal permit from the USACE are provided to the USACE New England District. These are reviewed by the PGP group against the Rhode Island PGP conditions, and the group decides whether state applications for assents from the CRMC that are also under the jurisdiction of the USACE can be issued a federal permit through the state regulatory process because the PGP permit conditions are met. According to the CRMC staff, most permit applications are deemed to be covered by the PGP and remain at the state level, allowing the state to issue the federal permit at the same time the CRMC permit is issued.

The federal agency representatives with whom the evaluation team met all thought the PGP group was a very effective way to know what projects and developments were seeking permits and to provide input into those permits based upon their agency mission and jurisdiction.

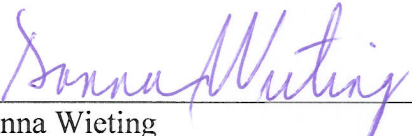
## V. CONCLUSION

For the reasons stated herein, I find that the State of Rhode Island is adhering to the programmatic requirements of the Coastal Zone Management Act and its implementing regulations in the operation of its approved CRMP.

The Rhode Island Coastal Resources Management Program has made notable progress in the following areas: Programmatic Coordination and Partnerships; Coastal Habitat; Water Quality; Climate Change; and Coastal Dependent Uses and Community Development/SAMPs.

These evaluation findings also contain seven (7) recommendations: three (3) Necessary Actions that are mandatory and four (4) Program Suggestions. The State must address the Necessary Actions by the dates indicated. Program Suggestions should be addressed before the next regularly-scheduled program evaluation, but they are not mandatory at this time. Program Suggestions that must be repeated in subsequent evaluations may be elevated to Necessary Actions. Summary tables of program accomplishments and recommendations are provided in Section VI.

This is a programmatic evaluation of the Rhode Island Coastal Resources Management Program that may have implications regarding the State's financial assistance awards. However, it does not make any judgment about or replace any financial audits.

  
Donna Wieting  
Acting Director, Office of Ocean and Coastal  
Resource Management

AUG 30 2010  
Date

## VI. APPENDICES

### Appendix A. Summary of Accomplishments and Recommendations

The evaluation team documented a number of the Rhode Island CRMP's accomplishments during the review period. These include:

Issue Area	Accomplishment
Programmatic Coordination and Partnerships	The CRMC has maintained many long-term partnerships that are responsible for much of the successful work on the Aquidneck Island and Ocean SAMPs, development of aquaculture regulations, the Clean Marina Program, and coordinated permitting that has been accomplished during this evaluation period.
Coastal Habitat	The CRMC developed and adopted the Urban Coastal Greenway policy, the intent of which is to clarify and streamline the regulatory process and to create greater flexibility in development and redevelopment in a way that integrates economic development, expanded public access, and the management, protection, and restoration of valuable coastal habitats.
Coastal Habitat	The CRMC has taken significant steps through funding efforts, partnerships to eliminate invasive aquatic species and to restore eelgrass, and revisions to its own submerged aquatic vegetation regulations to preserve, protect, and restore Rhode Island's coastal habitats. It has been recognized nationally by Coastal America for habitat restoration work.
Water Quality	The CRMC has developed a Clean Marina Program, is working with the Rhode Island Department of Environmental Management to develop a new <i>Stormwater Design and Installation Standards Manual</i> , developed the Urban Coastal Greenways policy, and is developing a suburban buffer design manual, all to help improve the water quality in Rhode Island's coastal waters.
Climate Change	The CRMC received statutory authorization to adopt policies and regulations to address the effects of sea level rise. The CRMC adopted a specific policy addressing sea level rise and has addressed sea level rise in the current development of the Metro Bay Special Area Management Plan.

Coastal Dependent Uses and Community Development	The CRMC is successful at using the SAMP process to help coastal communities thoughtfully and strategically plan ways to integrate and accommodate smart growth elements, economic development, the protection of coastal resources, and the provision of public access.
Coastal Dependent Uses and Community Development	The CRMC has undertaken the development of an Ocean Special Area Management Plan in partnership with numerous federal agencies and stakeholder groups to comprehensively plan for Rhode Island's offshore waters. When completed, the Ocean SAMP will identify and map existing uses and critical zones within the boundaries of the SAMP; and generally identify conservation zones, unsuitable areas for certain uses, such as wind turbines; and other areas with the most potential for those uses. This will enable the state to better manage offshore water use conflicts and the siting of alternative energy sources.

In addition to the accomplishments listed above, the evaluation team identified several areas where the program could be strengthened. Recommendations are in the form of Program Suggestions and Necessary Actions. Areas for improvement include:

Issue Area	Recommendation
Organization and Administration	NECESSARY ACTION: Absent any action during the 2010 legislative session by the Rhode Island General Assembly to address the structure of the Coastal Resources Management Council or Program, the CRMC must work with the Governor's Office to ensure that additional members are appointed to the Coastal Resources Management Council as soon as possible and no later than May 1, 2011. The goal is to be able to conduct a regular and full schedule of Council and subcommittee meetings in order to implement Rhode Island's approved CRMP.
Organization and Administration	NECESSARY ACTION: The CRMC must separate the functions of the CRMC administrative hearing officer from the functions of the CRMC legal counsel by December 1, 2010, so that no single person conducts or is responsible for both functions. The intent of this action is to prevent a real or perceived conflict of interest and to ensure that the CRMC staff members have access to legal counsel in preparation for, and at, hearings.

Organization and Administration	NECESSARY ACTION: The services of an attorney must be available to the CRMC staff on a daily basis. The CRMC must arrive at a solution to meet that requirement by December 1, 2010, so that staff has timely and sufficient legal assistance. If the solution requires additional time beyond December 1, 2010, to implement (e.g., must fulfill all state hiring or contracting procedures, or it is not feasible given state budget cycles), a later deadline must be negotiated and agreed to by OCRM.
Public Participation and Outreach	PROGRAM SUGGESTION: OCRM urges the CRMC to look for opportunities for further collaboration with the Narragansett Bay NERR through public participation and outreach on issues facing Rhode Island and of mutual concern to both agencies. Sea level rise, in particular, is an area in which the Narragansett Bay NERR is planning to develop a CTP workshop based on a NERR national system model, and it is an issue for which the CRMC is further developing policies and regulations.
Public Access	PROGRAM SUGGESTION: The CRMC's cooperative agreement award semi-annual performance reports submitted to OCRM should be more detailed and complete with regard to the task established for the ROW activities. The CRMC's own annual progress reports concerning the designation of public rights-of-way and other related activities of the ROW subcommittee and full Council should more clearly and accurately reflect actual work and accomplishments relating to ROW designation.
Federal Consistency and Program Changes	PROGRAM SUGGESTION: The CRMC should consider working with OCRM to revise the state's federal consistency list to include select interstate activities of concern to Rhode Island.
Permitting and Enforcement	PROGRAM SUGGESTION: The CRMC is strongly encouraged to work with the Rhode Island General Assembly and Governor to increase the maximum administrative penalty for CRMC notices of violation and cease and desist orders.

## **Appendix B. Response to Previous (2006) Evaluation Findings**

**Program Suggestion:** OCRM urges CRMC to fill the Coastal Policy Coordinator position with a competent, qualified individual within one year of receipt of final evaluation findings.

**Response:** Completed. Shortly after the delivery of the Evaluation Findings, such a position has been authorized and filled by the agency.

**Necessary Action:** CRMC must submit all outstanding program changes within six months of receipt of final evaluation findings. Following submission of all outstanding program changes, CRMC must work with OCRM's RICRMP Specialist to develop a schedule for submitting future program changes on a regular basis. CRMC will provide quarterly updates to OCRM describing progress in addressing this Necessary Action.

**Response:** During the first week of December 2006, the Council's staff participated in a NOAA CSC training program, where its federal program specialist was present. At that time, staff presented a draft of all outstanding RPC's to the Council's federal program specialist for review and comment. Staff is coordinating with its federal program specialist to ensure that the information submitted is sufficient for formal review. Once such input is received, staff will submit these RPC's formally to OCRM, which should be well in advance of the NOAA-required six-month submittal date (which equates to April 2007).

As to creating a schedule for submitting RPC's, staff proposes that such submittal coincide with or immediately follow the submittal of each Section A report, since Section A reports contain a subsection on RPC's for the period in question.

RPC submittals are up-to-date.

**Necessary Action:** Beginning with the first performance report due following the date of issuance of final evaluation findings, CRMC must submit performance reports by the deadlines specified in the guidelines provided with each financial assistance award. Each performance report must contain appropriate content and must: (1) report on assent approvals and denials; and (2) include written rationale that adheres to the RICRMP for assent decisions contrary to staff recommendations. CRMC will provide quarterly updates to OCRM describing progress in addressing this Necessary Action.

**Response:** Staff has prepared a draft Section A Performance Report that includes added sections within it to address this requirement. When the Section A report is submitted as normally required for the period that is covered by this Necessary Action (ie: beginning with the July – December 2006 report), this requirement will be fulfilled.

Subsequent Performance Reports have each contained a new section that addresses this Necessary Action; also an internal database report has been developed to quickly identify those



decisions contrary to staff recommendations.

**Program Suggestion:** In order to ensure that the Greenwich Bay SAMP produces tangible outcomes, OCRM recommends that the Council: (1) add or designate staff to monitor and to implement the plan; (2) incorporate appropriate Greenwich Bay SAMP policies into the federally-approved RICRMP; and (3) work with the community to incorporate appropriate Greenwich Bay SAMP policies into relevant local ordinances.

**Response:** Shortly after the Evaluation Findings were delivered to CRMC, the agency was successful in hiring a program specialist to concentrate on SAMP-related issues such as: development of new initiatives; revisions to existing plans; and implementation of existing plans. Outreach has also been a significant element of this position's duties. As various revisions to existing SAMP policies and regulations have been made, their subsequent incorporation into the federal RICRMP has occurred via the RPC process. To that end, this program suggestion has been completed.

**Program Suggestion:** OCRM strongly encourages CRMC to reassess the role of the Council based on thirty years of experience and the need to have a structure in place to address current circumstances and initiative. Any assessment should focus on determining the optimal role of the Council in advancing the objectives of the RICRMP and the CZMA given emerging issues and state initiatives. The assessment should address the appropriate roles for CRMC in: (1) planning, policy development and coordination; and (2) the "design of the coastal economy" envisioned by the MRDP.

**Response:** This Program Suggestion was successfully addressed with the adoption of the Marine Resources Development Plan by the Council in 2006.

**Program Suggestion:** OCRM strongly recommends that CRMC provide comprehensive training to ensure that staff possesses necessary negotiation, conflict resolution, problem-solving and presentation skills. The CRMC Public Educator and Information Coordinator should participate in the development of training programs for staff. OCRM also recommends that the CRMC Legal Counsel devote adequate time to work with staff to improve their skills, particularly when presenting a difficult case.

**Response:** CRMC engaged the University of Rhode Island, Roger Williams School of Law and its Legal Counsel to develop and hold a three-day training workshop that addressed application negotiation, resolution, problem-solving and presentation skills, as well as the principles involved in litigating agency decisions and how the legal process is embedded in staff work products such as permit application staff reports. Given the legal significance of staff reports in litigation, staff was trained by the attorneys in how their staff reports could be better constructed to ensure the program's integrity. Council members participated in this training.

**Program Suggestion:** OCRM recommends that Rhode Island consider establishing a

mandatory certification program for Council members. The program should include initial training and refresher courses on CRMC policies, regulations and management procedures. Council members should be required to obtain and maintain certification in order to vote on assents. The CRMC Public Educator and Information Coordinator should participate in the development of training programs for Council members.

**Response:** See response to Program Suggestion below, as well. This suggestion was addressed by the agency.

**Necessary Action:** CRMC must ensure that Council members: (1) receive training on the CRMC's complex policies, regulations and management procedures; and (2) provide clear rationale that adheres to the RICRMP for decisions contrary to staff recommendations in a structured discussion at Council meetings. CRMC must provide OCRM with a detailed plan describing how it will achieve both of the requirements in this Necessary Action within six months of receipt of final evaluation findings. Implementation of the plan must be completed within one year of OCRM's approval of it. CRMC will provide quarterly updates to OCRM describing progress in addressing this Necessary Action.

**Response:** Beginning in August of 2006, the Council began a training program that it has named the Coastal Education Series. Topics presented to-date have ranged from Coastal Hazards and the roles of the Council in hazards' response; to setbacks and coastal buffer zones; to the public trust doctrine and takings. The training schedules vary each year and will include continued discussions on additional topics similar to the above plus will include detailed policy discussions on programmatic issues such as marina management, SAMP development and flood plain management. Schedules have included detailed presentations and discussions on each section of the Redbook. All schedules of the Coastal education Series are posted on the Council's website.

**Necessary Action:** The CRMC must re-examine its public notice and comment procedures to ensure that they provide for: (1) sufficient and timely notice of CRMC meetings and activities; and (2) adequate and clear opportunity for and consideration of public comments. Procedures found to be lacking must be revised. If existing procedures are deemed adequate, the CRMC must develop a strategy to improve their implementation as well as the understanding of the procedures by the general public. This Necessary Action must be completed within one year of receipt of final evaluation findings. CRMC will provide quarterly updates to OCRM describing progress in addressing this Necessary Action.

**Response:** Procedures were found to be lacking. Corrective measures were taken immediately.

(1) All notifications of the CRMC conform to the state APA and are additionally posted electronically on the Secretary of State's website in accordance with legislative requirements (as are the meetings' subsequent minutes). Such notification is posted on the Secretary of State's website at least 48 hours prior to said meetings, in accordance with legislative requirements. Such notification is also posted at the CRMC's website.

(2) Public Notice forms have been revised to clearly alert constituents of the 30-day comment period, scheduled workshops (if to be held prior to a hearing); the purpose of each proposed revision; and a hearing date.

## **Appendix C. Persons and Institutions Contacted**

### **Rhode Island Coastal Resources Management Council**

Grover Fugate, Executive Director	Michael Tikoian, Chairman
Jeff Willis, Deputy Director	Paul Lemont, Vice Chairman
Brian Goldman, Legal Counsel	Bob Driscoll
	Don Gomez
Ken Anderson	David Abedon
Greg Baribault	Michael Sullivan
Dave Beutel	Bruce Dawson
James Boyd	
Caitlin Chaffee	
Kevin Cute	
Michael DeVeau	
Sean Feeley	
Janet Freedman	
Dan Goulet	
Brian Harrington	
Brian Kavanagh	
Rich Lucia	
Tom Medeiros	
Laura Miguel	
Tim Motte	
David Reis	
Laura Ricketson-Dwyer	
Amy Silva	
Tracy Silvia	

### **State Government and State Agencies**

The Honorable Susan Sosnowski, Rhode Island State Senate  
The Honorable Eileen Naughton, Rhode Island House of Representatives  
The Honorable Jan Malik, Rhode Island House of Representatives  
Richard Kearns, Policy Advisor, Rhode Island House of Representatives  
Andy Hodgkin, Governor's Chief of Staff  
Tim Costa, Governor's Deputy Chief of Staff and Director, Governor's Policy Office  
Jared Rhodes, Department of Administration, Statewide Planning Program  
Michael Sullivan, Director, Department of Environmental Management (RIDEM)  
Russ Chateaufneuf, Chief, Groundwater and Wetlands Protection, RIDEM  
Larry Mouradjian, Associate Director, Bureau of Natural Resources, RIDEM  
Terry Maguire, Associate Director, Finance, RIDEM  
Terry Gray, Assistant Director, Bureau of Environmental Protection, RIDEM  
Bob Stankelis, Manager, Narragansett Bay National Estuarine Research Reserve, RIDEM  
Ames Colt, Chair, Rhode Island Bays, Rivers, and Watersheds Coordination Team

## **Federal Agencies**

Sue Tuxbury, NOAA National Marine Fisheries Service  
Ed LeBlanc, U.S. Coast Guard  
Bob DeSista, New England District, U.S. Army Corps of Engineers  
Mike Elliott, Regulatory Division, New England District, U.S. Army Corps of Engineers  
Mel Coté, Office of Ecosystem Protection, Region 1, U.S. Environmental Protection Agency  
Margherita Pryor, EPA Coordinator, Narragansett Bay Estuary Program  
Erin Trager, Office of Offshore Alternative Energy Programs, Minerals Management Service

## **Non-governmental Organizations**

John Torgan, Director of Advocacy, Save the Bay; and Narragansett Baykeeper  
Paul Ryan, General Counsel, Save the Bay  
Wendy Waller, Staff Attorney, Save the Bay  
Warren Prell, Board of Directors, Save the Bay  
Tricia Jedelee, Rhode Island Advocacy Center Director, Conservation Law Foundation  
David Faria, President, CCARE (Citizens for Clean Air and Reclaiming the Environment)  
Anthony Faria, CCARE  
Dorothy Faria, CCARE

## **Others**

Jen McCann, Rhode Island Sea Grant and University of Rhode Island Coastal Resources Center  
John Brown, Historic Preservation Officer, Narragansett Indian Tribe  
Tina Dolan, Chair, Aquidneck Island Planning Commission  
Sandra Whitehouse, former Policy Advisor, Rhode Island House of Representatives; Team Lead  
for Marine Spatial Planning, The Ocean Conservancy  
Mike McGiveney, Rhode Island Shellfishermen's Association  
Lanny Dillinger, Lobsterman  
Rick Belavance, Priority Fishing Charters  
Ken Kubic, Kubic and Conradi Consultants  
Chris Hunter, Advocacy Solutions  
Joel Cohen, Vice President, Promet Marine Services Corporation  
Michael Keyworth, Brewer Cove Haven Marina  
Chris Ruhling, Rhode Island Marine Trades Association

## **Appendix D. Persons Attending the Public Meeting**

The public meeting was held on Wednesday, February 24, 2010, at 6:00 p.m. in Conference Room A, Department of Administration, One Capital Hill, Providence, Rhode Island. The following members of the public attended the meeting:

Wendy Waller, Save The Bay

Paul Ryan, Save The Bay

J. E. Duffy

Don Pryor

Rick St. John, St. John Engineering

Roy Dempsey

Tony Simon, Office of U.S. Senator Sheldon Whitehouse

## **Appendix E. NOAA's Response to Written Comments**

OCRM received written comments regarding the Rhode Island Coastal Resources Management Program. Each of the letters is part of the official record of the evaluation and is briefly summarized below, followed by OCRM's response.

**Jonathan Stone, Executive Director  
Save The Bay  
Providence, Rhode Island**

**Comments:** On behalf of Save The Bay, Mr. Stone indicates the CRMC is widely recognized as a national leader in coastal management and that Save The Bay would like to see that position preserved. He has commented on and/or raised several concerns within the general areas of council operations and staff; program areas; and government coordination and decision-making.

Mr. Stone discusses the effects of the diminished number of Council members and the need to appoint additional members regardless of the possibility of future legislation that could change the structure of the Council or the coastal management program. He compliments the staff for its technical expertise but also thinks there is a need for legal capacity and expertise to assist staff with its increasing regulatory workload and development of new policies. Legal counsel for staff should be separate from the legal counsel for the council itself. In addition, hearing officers need to be appointed so that the CRMC legal counsel does not serve in that capacity.

Save The Bay has been a partner in the CRMC's important and successful habitat restoration program, the development of the Clean Marina Program, the Working Group on Aquaculture Regulations, and the Dredging Task Force and has supported the Council's efforts to develop coastal buffer policies. Save The Bay is enthusiastic about joint work on the development and implementation of a Living Shorelines and Coastal Adaptation Program for Rhode Island and commends the CRMC for its work in developing policies to address climate change challenges. Development of the Ocean SAMP has been "...an open, extensive, and participatory process..." that illustrates the CRMC's capacity to bring resources to and enlist stakeholder participation in a very complex policy development process. However, Save The Bay is concerned that the CRMC has not made clear the linkages between the development of the Ocean SAMP and the subsequent permitting steps and is unsure about the process by which public comments will be made and final approval given for the Ocean SAMP as a whole. Mr. Stone indicates that the group would like to see the CRMC make and enforce decisions that are more protective of wetlands and "engage in a more energetic defense and consistent legal follow-through of designated rights-of-way in dispute.

Save The Bay has had direct experience with the CRMC as a permittee and found the Council to be very fair and constructive. Mr. Stone says that transparency and access to permitting files is excellent, staff is accessible, and staff reports provide valuable information and perspective. He believes that the handling of several recent high profile and important permitting and federal

consistency cases is indicative, however, that additional legal resources would strengthen the capacity of the Council and staff to deal with important issues facing Rhode Island.

**OCRM's Response:** The evaluation team thanks Mr. Stone and Save The Bay for its comments. OCRM agrees with the need to appoint additional Council members, to separate the functions of CRMC legal counsel and CRMC administrative hearing officer, and to provide additional legal resources to the CRMC staff. These findings contain three Necessary Actions to address these three issues (see the Section entitled "Organization and Administration"). The findings also acknowledge the strong partnership between the CRMC and Save The Bay in a variety of programs and projects.

**Tricia K. Jedele, Vice President  
Conservation Law Foundation and  
Director, Rhode Island Advocacy Center  
Providence, Rhode Island**

**Comments:** On behalf of the Conservation Law Foundation (CLF) Rhode Island Office, Ms. Jedele has offered comments, many of which were comments that the evaluation team heard during the site visit and which were discussed in comments from Save The Bay (above). The CLF believes that the CRMC in its current organizational structure needs additional members, but that is only a short term fix to larger problems. She cites numerous problems and failures by the Council in its current configuration, including the difficulty of reaching a quorum, which results in the delay of critical permitting decisions and the hindrance of planning and policymaking functions. Her letter discusses the need for mandatory training and education of council members as to the applicable ethical codes of conduct and substantive rules and regulations; and the ongoing need for the CRMC to provide clear and compelling justification for decisions that disagree with staff recommendations on permits. The CLF believes that the Council is failing to fulfill its mandate and suggests that OCRM consider whether the current structure of Rhode Island's lead coastal resource management agency allows the state to fulfill federal obligations of operating a coastal resource management program.

Ms. Jedele indicates that in the absence of a complete restructuring of the program, several changes are necessary for compliance with the federal CZMA. Some of these would alleviate what the CLF sees as implementation of policy through permitting. In summary, these include:

- the addition of administrative hearing officers;
- in-house legal counsel for staff, with separate legal counsel for the Council;
- the CRMC's primary function should be to protect and preserve coastal resources, and not to foster coastal development at the same time.

**OCRM's Response:** The evaluation team thanks Ms. Stone and the CLF for its comments. OCRM agrees with the need to appoint additional Council members, to separate the functions of CRMC legal counsel and CRMC administrative hearing officer, and to provide additional legal resources to the CRMC staff. These findings contain three Necessary Actions to address these three issues (see the Section entitled "Organization and Administration").



With regard to “...the conflicting dual statutory goals of fostering coastal development and protecting and preserving coastal resources...” (letter from Tricia Jedeke dated 2/25/10) that the CLF believes are inconsistent and incompatible, it is the CZMA that encourages states to develop management programs that achieve wise use of land and water resources of the coastal zone as well as address the needs for compatible economic development. Until that declaration of national policy in the CZMA is changed, the CRMC must foster coastal development and protect and preserve coastal resources as long as Rhode Island wants to receive federal funding for its coastal management program.

In response to the suggestion that OCRM consider the structure of the coastal resource management agency, the CZMA imposes no single coastal management program structure upon all states. This evaluation and all other Section 312 evaluations conducted by OCRM consider whether a state’s approved coastal management program is being effectively and efficiently implemented by whatever structure a state has chosen. Just as the Rhode Island General Assembly established the initial structure of the coastal resources management program, it can retain or change the structure or the elements of the program, so long as the state can demonstrate to NOAA that the changed structure or program continues to meet the requirements of the CZMA.

**Joseph A. Duffy**  
**Charlestown, Rhode Island**

**Comments:** Mr. Duffy’s comments pertain to a single permitting situation. He indicates that CRMC’s field investigators are fully qualified, ethical, helpful, and informative in assisting permit applicants. However, in Mr. Duffy’s opinion, the applicant for the permit he discusses submitted erroneous documents and took advantage of the CRMC’s internal controls that grant permit applicants significant leeway to present their case for the permit. According to Mr. Duffy, the Council’s administrative policies and matters have taken precedence over its mission to enhance accessibility to state coastal waters and created the situation whereby it took 14 years to result in resolution and issuance of a permit assent. He believes NOAA funding for the CRMC should not support any policy that allows this to happen.

**OCRM’s Response:** The evaluation team thanks Mr. Duffy for his comments. According to the CRMC staff, in 1996 the permit was processed in two weeks to legalize an existing dock. However, in light of other information and the need to resolve an issue involving the dock that required a decision by the applicant, it took until 2007 to issue another permit.

A CZMA Section 312 programmatic evaluation cannot effectively review and address every individual action of the state coastal management program during the evaluation period, but instead must determine whether the combined actions of the CRMC are implementing Rhode Island’s approved coastal resources management program. Based on information available to the evaluation team, the permit situation Mr. Duffy discusses is an extremely unusual case in terms of the length of time it took to issue the permit assent. It is not indicative of the usual time frames for issuance of permits, but it does not appear to be in violation of the CRMC’s regulations. The CRMC staff has indicated it will make changes to the permit database so that

instances of permits where actions are beyond control of the CRMC will be officially noted as being ‘on hold.’ Whether the CRMC decides to make changes to its permit regulations as a result of this situation is a decision for the CRMC to make.

**Donald Pryor**  
**Providence, Rhode Island**

**Comments:** Mr. Pryor indicates that the CRMC has become recognized for being nimble and creative, but at the same time the program has major management difficulties, and performance outcomes are unclear. He says that during the evaluation period, the CRMC has significantly expanded its work but has devoted less effort to fulfilling its basic program requirements; has resolved few of the important and growing legal issues facing it; and continues to operate without all the openness and transparency required.

In terms of workload expansion, Mr. Brown notes that significant funding has come from non-CZMA sources for the Ocean SAMP work (\$5M from U.S. Department of Energy stimulus funds, \$3.2M from electric ratepayer surcharges, \$666K from a U.S. Army Corps of Engineers earmark, \$2.8M from the state, and \$1.2M in services from URI); and for restoration projects (\$3M from NOAA stimulus funds, \$1M from a NOAA earmark, and \$500K from a U.S. Army Corps of Engineers earmark). He says that none of these items have appeared on CRMC agendas and should be appropriately reviewed as the coastal resources management program is reviewed.

In terms of less effort devoted to basic program requirements, Mr. Brown indicates that: efforts to increase public access should be escalated; efforts to objectively assess coastal habitat protection and restoration needs and effectiveness should be developed; the Clean Marina Program has designated only three of the state’s marinas; and the CRMC has not reported on use of coastal nonpoint pollution control funding. He also makes some observations about efforts involving coastal hazards, permitting, federal consistency and how it may relate to the OCEAN SAMP and wind energy, and CRMC involvement in NROC.

In terms of legal issues facing the CRMC, Mr. Pryor discusses the composition of the CRMC after the separation of powers amendment and the shortage of council members; the issues in the Champlin’s, Williams, and Weaver’s Cove LNG court cases; questions about leasing of state submerged lands that are not yet addressed in the OCEAN SAMP; and the tense relations between the CRMC chair and executive director.

Finally, Mr. Pryor is concerned about what he views as the lack of openness and transparency in how the CRMC operates, particularly in development and adoption of SAMPs.

**OCRM’s Response:** The evaluation team thanks Mr. Pryor for his comments. With regard to the workload expansion and additional funding from non-CZMA sources, the evaluation team did consider and evaluate the projects and tasks for which this funding is being or was used. However, OCRM’s Section 312 programmatic evaluation is not a financial audit, and OCRM does not have the authority to evaluate the appropriateness of awarding this non-CZMA funding to the CRMC.

The CRMC's rights-of-way (ROW) program is discussed in these findings beginning on page 17, including several of Mr. Pryor's points about incomplete or incorrect information with which OCRM agrees. This program does not create new rights-of-way; it recognizes and designates existing public rights-of-way. Thus, Mr. Pryor's comparison of Rhode Island's number of newly *designated* ROW sites during this evaluation period to what he indicates is the average number of newly *created* public access sites by all state coastal management programs is not completely equitable. OCRM agrees with Mr. Pryor that the urban coastal greenway policy will help balance public access with other goals for working waterfront areas.

Mr. Pryor noted that performance measures associated with coastal habitat efforts at the national level are not adequate to assess the success or failure of this work and that all measures are reported in 'number of acres.' OCRM partnered with coastal management programs to develop a performance measurement system that provides flexibility and accommodates varying management structures and differing coastal priorities across coastal states. The national system identifies performance measures that are common to a majority of state coastal programs and seeks to measure the effectiveness of the entirety of coastal management programs in achieving CZMA objectives. This does not preclude any single coastal management program from identifying certain measures for which it may wish to collect data to measure the effectiveness of its own objectives, programs, and projects. OCRM is beginning to work with individual CMPs to establish some coastal program-specific goals, measures, and targets.

In terms of water quality concerns raised by Mr. Pryor, participation in the Rhode Island Clean Marina Program is voluntary, so an increase in the number of marinas designated is not entirely under the control of the CRMC. The national CZMA performance measurement system to which Mr. Pryor refers in several different issue areas in his comments was designed to collect data for performance measures that many, but not all, coastal management programs collect. The CRMC is not required to provide funding support for volunteer and community water quality efforts and thus does not collect data related to that. The CRMC does report on its use of any CZMA funds awarded for its coastal nonpoint pollution control program, but it is reported under CZMA Section 310 funding (implementation of the nonpoint program), not under Section 6217 funding (development of the nonpoint program). Because all state coastal programs have developed their nonpoint programs, Section 6217 funding is no longer available to any program.

The evaluation findings discuss some of the legal issues Mr. Pryor raises in his comments. These findings include a Necessary Action requiring that, absent any action during the 2010 legislative session by the Rhode Island General Assembly to address the structure of the Coastal Resources Management Council or Program, additional members must be appointed to the CRMC. The findings also discuss the tense relationship between the CRMC chair and executive director as well as the major court cases Mr. Pryor's comments mention.

Finally, Mr. Pryor's comments about the lack of openness and transparency in how the CRMC operates, particularly in development and adoption of the Ocean SAMPs was echoed by some people with whom the evaluation team met, while others were very pleased with what they viewed as an open and transparent process. OCRM has discussed those opposing views on p. 26 of these findings under the "Ocean SAMP" section.

**David T. Faria, President**

**Citizens for Clean Air and Reclaiming our Environment (CCARE of Rhode Island)**

**Comments:** On behalf of CCARE of Rhode Island, Mr. Faria has provided a wide range of information to document what he believes is ongoing selective enforcement by the CRMC; the lack of ethics in Rhode Island in the executive, legislative, and judicial branches of state government as well as at local government levels, and by attorneys; and misconduct by the Rhode Island Supreme Court from as early as 1986.

More specifically, Mr. David Faria has provided a variety of documents relating to property owned by Mr. Faria's brother, Anthony, and his wife, Dorothy. Mr. Anthony Faria bought a small piece of property adjacent to the Oyster House Marina, which Mr. Anthony Faria and his wife own. The small piece of property had a vertical sea wall in disrepair, so Mr. Faria began to repair the wall. Because the CRMC had not issued a permit for the repair work, Mr. Faria began to remove the wall and was again stopped because he had no permit. The roof on the Oyster House Marina was in need of repair, but he was unable to repair it because no work could be done on property for which a notice of violation or cease and desist order has been issued. Mr. Faria contends that the Oyster House Marina is owned by his corporation, while the adjacent property with the failing sea wall is owned by him personally. Therefore, this is not a single larger piece of property but two separate properties.

The roof has now been repaired, although damage was done to the Marina building before the repairs could be made. Mr. David Faria provided information that he contends shows similar property situations where permits were issued after the fact, but he has not been able to obtain an after-the-fact permit. According to Mr. Faria, this represents selective enforcement on the part of the CRMC. The sea wall is still at issue.

**OCRM's Response:** The evaluation team thanks Mr. Faria for his comments. NOAA, the NOAA Office of Ocean and Coastal Resource Management, and this evaluation of the CRMC required by the federal Coastal Zone Management Act are not authorized, nor is it appropriate, to address issues of ethics and judicial misconduct in Rhode Island.

The issues involving Anthony and Dorothy Faria's property(ies) and permits, cease and desist orders, and notices of violation have gone on for over five years, and the Farias have spent significant money on attorney's fees during this time. A CZMA Section 312 programmatic evaluation cannot effectively review and address every individual action of the state coastal management program during the evaluation period, but instead must determine whether the combined actions of the CRMC are implementing Rhode Island's approved coastal resources management program. Many of the examples of 'selective enforcement' cited by Mr. Faria occurred before the period covered by this evaluation and were not reviewed by this evaluation team. Although the Farias are unhappy with the treatment they have received from the CRMC, OCRM suggests they attempt to work with CRMC staff to resolve the situation. The evaluation team will provide David Faria's comments and other information to the CRMC for their review.