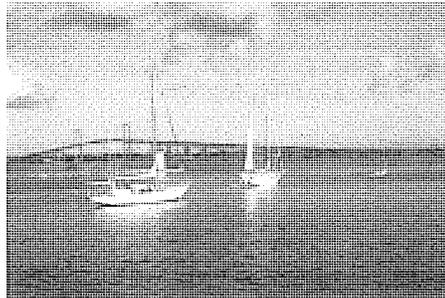
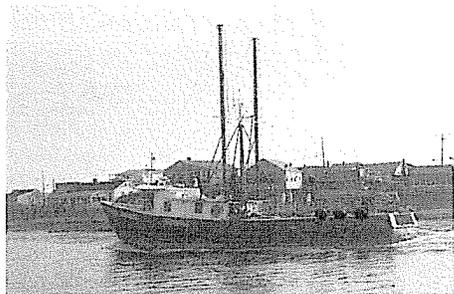


Final Evaluation Findings

Rhode Island Coastal Resources Management Program

June 2003 through October 2005



Office of Ocean and Coastal Resource Management
National Ocean Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

Rhode Island Coastal Resources Management Program
CZMA §312 Final Evaluation Findings

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I. EXECUTIVE SUMMARY

Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA's 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 the Rhode Island Coastal Resources Management Program (RICRMP) by the Rhode Island Coastal Resources Management Council (CRMC), the designated lead agency, for the period from June 2003 through October 2005.

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

The evaluation team documented a number of RICRMP's accomplishments during the review period. CRMC improved its staffing, and CRMC staff has continued to maintain a high level of performance as well as its reputation for technical expertise, integrity and responsiveness. The Council worked to promote and to improve public access in Rhode Island through the permitting process, the Rights-of-Way Program and the harbor management planning process. CRMC continued to provide leadership for two ongoing federal restoration projects, the South Coast Habitat Restoration Project and the Allin's Cove Habitat Restoration Project. The Council also significantly contributed to the development and administration of the Rhode Island Coastal and Estuarine Habitat Restoration Program. Working with its partners, the Council developed the Rhode Island Coastal and Estuarine Land Conservation Program Plan and submitted it to OCRM for approval. CRMC employed a variety of marina management measures to address increased recreational boating in Rhode Island and began a comprehensive revision of its marina regulations to address controversial expansion issues. The Council is developing a Greenwich Bay Suburban Buffer Zone Policy and an Urban Coastal Greenway Policy to address specific challenges that have been encountered during implementation of the Coastal Buffer Zone Program. CRMC completed and adopted the Greenwich Bay Special Area Management Plan (SAMP) and initiated the Metro Bay SAMP. The addition of a full-time Public Educator and Information Coordinator has significantly enhanced CRMC's education and outreach efforts. The Council also continued its leadership with regard to both dredging and aquaculture in Rhode Island.

The evaluation team also identified areas where RICRMP could be strengthened. OCRM's recommendations are in the forms of four Necessary Actions and five Program Suggestions. Necessary Actions focus on the need to submit program changes and to improve the program's performance reporting, permitting and public participation

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processes. Program Suggestions address the vacant Coastal Policy Coordinator position, SAMPs, the future role of the Council, and training for staff and Council members. In particular, 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 initiatives. 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. OCRM also 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.

II. PROGRAM REVIEW PROCEDURES

A. OVERVIEW

NOAA's Office of Ocean and Coastal Resource Management (OCRM) began its review of the Rhode Island Coastal Resources Management Program (RICRMP) in August 2005. The evaluation process involves four distinct components:

- An initial document review and identification of specific issues of particular concern;
- A 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 recommendations 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 Coastal Zone Management Act's (CZMA) implementing regulations and of the federally-approved RICRMP. Each Necessary Action must be implemented by the specified date.

Program Suggestions describe actions that OCRM believes would improve the program, but they are not currently mandatory. If no dates are indicated, the Coastal Resources Management Council (CRMC) is expected to address the recommendations by the time of the next regularly scheduled evaluation.

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

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

B. DOCUMENT REVIEW AND ISSUE DEVELOPMENT

The evaluation team reviewed a wide variety of documents prior to the site visit, including: (1) 2003 RICRMP §312 evaluation findings; (2) federally-approved Environmental Impact Statement and program documents; (3) financial assistance awards

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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 on discussions with OCRM, the evaluation team identified the following priority issues:

- RICRMP's major accomplishments during the review period;
- CRMC's effectiveness in permitting, monitoring and enforcing the core authorities that form the legal basis of RICRMP;
- Implementation of state and federal consistency authority;
- Implementation of CRMC's management procedures;
- Implementation of the Coastal Buffer Zone Program and regulations;
- Extent to which RICRMP is monitoring, reporting and submitting program changes to OCRM;
- Status of RICRMP grant tasks and reporting;
- RICRMP's coordination with other federal, state and local agencies and programs;
- Effectiveness of RICRMP's local technical assistance programs in assisting coastal communities through the local comprehensive plan review process, Special Area Management Plans and other available mechanisms;
- RICRMP's approach to emerging local and regional coastal management issues;
- RICRMP's advancement of the CZMA goals set out in §303(2).
- The manner in which the state has addressed the recommendations contained in the previous §312 evaluation findings released in 2003. RICRMP's assessment of how it has responded to each of the recommendations in the 2003 evaluation findings is located in Appendix B.

C. SITE VISIT TO RHODE ISLAND

Notification of the scheduled evaluation was sent to CRMC, relevant federal environmental agencies, members of Rhode Island's congressional delegation and regional newspapers. CRMC published notification of the evaluation and of the scheduled public meeting. In addition, a notice of OCRM's "Intent to Evaluate" was published in the *Federal Register* on September 28, 2005.

The site visit to Rhode Island was conducted on November 14-18, 2005. Ms. Rosemarie McKeeby, Evaluation Team Leader, OCRM National Policy and Evaluation Division; Mr. Bill O'Beirne, Atlantic States Team Leader, OCRM Coastal Programs Division; Ms. Betsy Nicholson, RICRMP Specialist, OCRM Coastal Programs Division; and Ms. Kathleen Leyden, Manager, Maine Coastal Program, formed the evaluation team.

During the course of the evaluation, the evaluation team interviewed CRMC members and staff, state legislators, representatives of federal, state and local government agencies, and members of academic institutions and interest groups involved with or affected by the RICRMP. Appendix C lists individuals contacted during this review.

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As required by the CZMA, OCRM held an advertised public meeting on November 17, 2005, at 7:30 p.m., in the Narragansett Bay Commission Board Room, 1 Service Road, Providence, Rhode Island. The meeting gave members of the general public the opportunity to express their opinions about the overall operation and management of RICRMP. Appendix D lists individuals who registered at the meeting. OCRM's response to written comments submitted during this review is summarized in Appendix E.

The evaluation team gratefully acknowledges the support of CRMC staff with site visit planning and logistics.

III. COASTAL MANAGEMENT PROGRAM DESCRIPTION

NOAA's Office of Ocean and Coastal Resource Management approved the Rhode Island Coastal Resources Management Program (RICRMP) in 1978. The Coastal Resources Management Council (CRMC) is designated as Rhode Island's lead coastal management agency. The CRMC is probably best known as a regulatory agency. The Council, composed of 16 members, operates with an Executive Director and a staff of approximately 25. The Governor, Senate Majority Leader and Speaker of the House appoint CRMC members for three-year terms. CRMC's enabling legislation requires that representation include coastal community members, state and local government officials, the general public and the Director of the Rhode Island Department of Environmental Management.¹ Others may be invited to serve in a non-voting, advisory capacity as warranted. In addition, during contested cases that involve a coastal town not represented on the CRMC, a Council member for that community is appointed to hear that particular case.

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. Coastal features include coastal beaches, barrier beaches and spits, coastal wetlands, coastal headlands, bluffs and cliffs, rocky shores, manmade shorelines and dunes. 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.² 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.

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. The six water types are:

- Type 1: conservation areas
- Type 2: low-intensity recreational and residential uses
- Type 3: high-intensity boating

¹ The Director of the Rhode Island Department of Environmental Management is an ex officio member of CRMC.

² 2,500 gallons per day or more.

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- Type 4: multipurpose waters
- Type 5: commercial and recreational harbors
- Type 6: industrial waterfronts and commercial navigation channels

Depending on the proposed activity, applicants must obtain one of four types of CRMC assents: a Finding of No Significant Impact (FONSI), Certification of Maintenance, Category A Assent, or Category B Assent. In general terms, FONSI are issued for minor activities that pose little or no threat to coastal resources. Certifications of Maintenance are issued for activities that do not significantly alter the permitted design, purpose and size of a structure. Category A activities include routine matters and types of construction or maintenance work that normally do not require review by the full Council. Category B activities generally include large, complex or contentious projects. However, Category B activities also include all dock and pier proposals.

With the exception of Category B and certain Category A applications, all assents are processed administratively by CRMC staff. Category B applications and Category A applications that cannot be approved at the staff level, either because a substantive objection to the proposed activity has been received or because the proposed activity does not meet the applicable policies and standards contained in the RICRMP, require a public hearing before the full Council. CRMC makes determinations on these assents and on other matters referred to it by subcommittees or staff. The CRMC's three standing subcommittees are Rights-of-Way, Docks, and Policy and Planning.

In addition to its regulatory functions, the CRMC engages in a variety of planning and management initiatives. Examples include coastal habitat restoration, special area management planning, dredging management, aquaculture enhancement and ocean management. Some efforts are initiated to address difficult issues before they escalate into larger problems. Other activities respond to concerns expressed to the Council by community groups, recreational organizations, trade groups, or other agencies.

IV. REVIEW FINDINGS, ACCOMPLISHMENTS AND RECOMMENDATIONS

A. OPERATIONS AND MANAGEMENT

1. Staff

Despite Rhode Island's persistent budget shortfalls, the Coastal Resources Management Council (CRMC) made progress in staffing during the review period. The Council worked with the Rhode Island Legislature to secure and fund a career civil service Public Educator and Information Coordinator. The Coordinator helps build support for particular issues and policies as well as support for the Rhode Island Coastal Resources Management Program (RICRMP) as a whole. At the time of the 2003 evaluation site visit, CRMC had recently added Deputy Director and Coastal Policy Analyst positions to the staff. However, the process of formalizing the positions through the state's personnel and administrative systems had yet to be completed, and neither position was permanent. During the current review period, CRMC completed the formalization process for the Deputy Director and Coastal Policy Analyst, and both positions are now permanent. The Deputy Director provides an intermediate supervisory level between the Executive Director and staff and also oversees permitting issues and habitat restoration projects. The Coastal Policy Analyst is primarily responsible for implementing, updating and coordinating policy initiatives within the CRMC's Special Area Management Plans (SAMP).

The CRMC staff is dedicated, knowledgeable, accessible and responsive. As noted in Section III of this document, CRMC has a relatively large jurisdiction. Thus, the regulations governing activities under that jurisdiction are necessarily complex. However, evaluation participants uniformly complimented the CRMC staff on their technical expertise and integrity. Staff consistently displays both the ability and willingness to explain the regulations to applicants and to provide science-based recommendations to Council members on permit applications. While managing heavy regulatory workloads, CRMC staff has continued to maintain a high level of performance.

Accomplishment: CRMC worked with the Rhode Island Legislature to secure and fund a career civil service Public Educator and Information Coordinator. The Council also completed the formalization process for the Deputy Director and Coastal Policy Analyst, and both positions are now permanent. CRMC staff has continued to maintain a high level of performance as well as its reputation for technical expertise, integrity and responsiveness.

While the Office of Ocean and Coastal Resource Management (OCRM) commends CRMC for adding and formalizing several staff positions during the review period, the Council needs to address remaining staffing needs. For example, the former Coastal

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Policy Coordinator vacated that position to become the Deputy Director. The Coastal Policy Coordinator position remained vacant at the time of the evaluation site visit. The Coastal Policy Coordinator's responsibilities include staff oversight, policy and planning duties, grants management and performance reporting. While the position is vacant, the duties are added to other staff's already taxing workloads and are not executed sufficiently. The Coastal Policy Coordinator vacancy is hampering execution of critical program duties.

1. 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.

OCRM also encourages CRMC to conduct an assessment of potential future staffing needs and to plan accordingly. The number of permit reviews and enforcement visits required of staff is continually increasing, due in part to the Council's expanded jurisdiction resulting from new freshwater wetlands regulations. Thus, another permitting team consisting of a biologist and an engineer as well as additional enforcement staff may be required in the near future. It was also clear to the evaluation team that activities related to development and implementation of: (1) the Marine Resources Development Plan (MRDP); (2) prospective SAMPs; (3) training for staff and Council members; and (4) the Northeast Regional Ocean Council³ will place additional burdens on staff and could overload them. At a minimum, one "special projects" design team consisting of a planner and an engineer will likely be needed to manage the increased workload. If CRMC is unable to add any additional staff identified in its assessment, it should identify alternatives, such as looking to other state agencies for available expertise.

2. Council

As noted above, CRMC added staff during the review period. However, the Council itself has been operating with diminished capacity since 2004. The Council's enabling statute⁴ prescribes 16 council members, with two members from the Rhode Island House of Representatives and two members from the Rhode Island Senate. In 2004, the legislature passed a constitutional amendment regarding the separation of powers and various state boards, commissions and councils. Bodies that included legislators, including CRMC, were found to be in violation of the separation of powers clause and unconstitutional. In response, CRMC's four legislative members vacated their positions on the Council. Additionally, one of the 12 remaining members ran for office, was elected to the Rhode Island State House, and subsequently stepped down from the Council as well. The Governor nominated replacements for CRMC. However, an appeal to the Rhode Island Supreme Court requested a determination on whether particular entities are part of the executive branch or the legislative branch of government. Furthermore, the Rhode Island Senate did not approve the Governor's original nominations to CRMC, citing the need for legislation specifying the appointment process.

³ These items are discussed in greater detail throughout the findings.

⁴ RIGL 46-23 et seq.

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In 2005, the senate passed legislation that would have allowed the Governor to make more appointments to CRMC. However, the legislation did not address all of the house's concerns, and the nominations did not move forward. The vacancies remain unfilled, and the Council is functioning with 11 of 16, or approximately two-thirds, of its possible members.

The Council's diminished capacity does present some operational difficulties. For example, with only 11 of 16 members, at times it can be difficult for the Council to reach a quorum of seven members. OCRM acknowledges that the separation of powers amendment is wholly a state issue that is likely to be resolved only after a decision by the Rhode Island Superior Court. OCRM recommends that the state fill the Council's vacancies as soon as possible following the state's determination of how those vacancies can be filled.

3. Program Changes

When a coastal management program makes changes to its enforceable policies, it is required to submit the changes to OCRM for review and approval. This requirement ensures that changes are consistent with the federally-approved coastal management program. It also facilitates accurate application of federal consistency authority. Section 312 evaluations examine: (1) whether the coastal management program made changes to its program document during the review period, and (2) whether the program submitted changes to OCRM for processing as program amendments or routine program changes (RPCs). OCRM's regulations define amendments as substantial changes in one or more of the following coastal program areas:

- Uses subject to management;
- Special management areas;
- Boundaries;
- Authorities and organization; and
- Coordination, public involvement and the national interest.

An RPC is a further detailing of a coastal management program that does not result in substantial change to the program. In general, CRMC notifies OCRM when program changes are presented to the Council for consideration. However, CRMC has not submitted program changes to OCRM for processing as required. This is largely the result of the program's lack of a Coastal Policy Coordinator. While CRMC may regard submitting program changes as a minor, administrative matter, formal incorporation of program changes does have inherent value. Furthermore, such incorporation is a statutory requirement of the Coastal Zone Management Act (CZMA).

2. 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.

4. Grants Management

OCRM awards grants to federally-approved coastal management programs for operations and other activities. Annually, each program submits a grant application, or work proposal, to OCRM for review and approval. The proposals provide project descriptions and deliverables for each task that the program intends to undertake. In general, CRMC has satisfactorily managed its federal funding, achieved desired results from funded tasks and built upon established projects.

OCRM requires coastal management programs to submit semi-annual performance reports for each financial assistance award. Performance reports are important because they provide a consolidated source of information about progress on grant tasks. While CRMC submitted all its performance reports for the review period prior to the evaluation site visit, individual performance reports were not necessarily submitted on time during the review period. At least three previous evaluations have cited problems with the timeliness of CRMC's performance reporting. In addition to tardiness, the content of the CRMC's performance reports was lacking during the review period. OCRM reminds CRMC that its performance reports are required to: (1) report on assent approvals and denials; and (2) include written rationale that adheres to the RICRMP for assent decisions contrary to staff recommendations. The problems with CRMC's performance reports are another reflection of the lack of a Coastal Policy Coordinator.

3. 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.

B. PUBLIC ACCESS

CRMC continued to promote and to improve public access during the review period. One of the methods CRMC uses to secure public access is the permitting process. The Council requires applicants to demonstrate that proposed activities neither interfere with nor adversely affect existing public access. In cases where a proposed project would impact existing access to coastal resources, applicants are required to mitigate for the

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impacts. A second method the Council uses to enhance public access is its Rights-of-Way (ROW) program. Through a standing committee, CRMC conducts a continuous process of discovery and designation of all public ROWs to the state's tidal waters. The designation of a ROW involves extensive public hearings and confers a high degree of legal protection for public access. A designated ROW cannot be abandoned without the Council's approval. CRMC also uses the harbor management planning process to promote public access. Council-approved harbor management plans are required to include an access element that not only identifies potential access sites, but also incorporates site development and maintenance options.

Quonset Business Park

The Quonset Business Park is a 3,000-acre site composed of two former naval installations. Redevelopment plans for the park include a mixed-use facility with a range of industrial and office uses as well as open space and recreational areas. During the review period, CRMC worked with the Rhode Island Economic Development Corporation (EDC), Rhode Island Department of Transportation, U.S. Navy and Quonset Development Corporation to develop a comprehensive public access plan for the entire park. The plan, by describing appropriate public access locations prior to development, will reserve high-quality public access locations early in the planning process. The comprehensive nature of the plan also eliminates the need for many separate public access plan submissions for individual projects within the park.

Public Access Guide

In 1993, CRMC worked with the University of Rhode Island's Coastal Resources Center (CRC) to publish the first edition of "Public Access to the Rhode Island Coast." This popular guide catalogued selected public access sites and indicated the best uses for and facilities offered at each site. During the review period, the Council funded Rhode Island Sea Grant to update the guide. The revised guide is divided into six geographic regions. Each region is color-coded and has a map with sequentially numbered sites and a description of each public access site and its facilities. The guide lists officially-designated ROWs, parks, public beaches, wildlife refuges, historical sites and boat ramps.

Accomplishment: CRMC worked to promote and to improve public access in Rhode Island through the permitting process, the ROW Program and the harbor management planning process. The Council worked with its partners to develop a comprehensive public access plan for the Quonset Business Park. CRMC also updated its popular public access guide to Rhode Island's coastal waters.

C. COASTAL HABITAT

1. Resolution of Palazzolo v. Rhode Island

During the previous review period, Rhode Island's Attorney General argued the case of Palazzolo v. Rhode Island in the United States Supreme Court. The case stemmed from a lawsuit that Anthony Palazzolo filed against CRMC, claiming that its regulations deprived him of all economic use of his property. Palazzolo had sought several permits from CRMC to fill 18 acres of salt marsh and to develop a recreational beach facility. CRMC staff and legal counsel worked extensively with the Attorney General to prepare for the legal proceedings.

In 2001, the Supreme Court remanded the case back to the Rhode Island Superior Court to determine whether the denial of development permits to Palazzolo amounted to a taking. While the U.S. Supreme Court found that Palazzolo's claim was ripe for appeal, it left open the question of whether he could recover damages for a state denial of his proposed large-scale condominium complex on coastal wetlands. In 2005, the Rhode Island Superior Court determined that Palazzolo did not show a taking of private property without just compensation. The decision validated the Council's prohibition on wholesale filling of coastal wetlands and demonstrated that CRMC, through the application process, considered all relevant factors and made the appropriate decision. The successful conclusion of the Palazzolo case represents a major accomplishment for coastal wetlands management in Rhode Island.

2. Freshwater Wetlands Regulations

In 1996, amendments to CRMC's enabling legislation required the Council and the Rhode Island Department of Environmental Management (RIDEM) to divide authority over the management and protection of the state's freshwater wetlands through cooperative development of a jurisdictional line. Freshwater wetlands seaward of the jurisdictional line were to be considered "in the vicinity of the coast" and thus under the exclusive jurisdiction of CRMC. Freshwater wetlands inland of the jurisdictional line remained under the auspices of RIDEM with the exception of wetlands affected by an aquaculture project.

Following the establishment of the jurisdictional line, CRMC was required to develop a regulatory program for the management of freshwater wetlands under its authority. In response, CRMC adopted RIDEM's freshwater wetlands regulations to ensure consistency with the department's regulatory program. However, the Council did not undertake conforming changes to the RICRMP or to its management procedures at that time. In August 2005, as a result of a controversial CRMC vote in favor of an assent to

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build a house on a lot that was predominantly freshwater wetlands,⁵ the Council clarified its freshwater wetlands policies and regulations by revising appropriate sections of the RICRMP. The revisions⁶ incorporate: (1) definitions and classifications of freshwater wetlands, including tributary wetlands; (2) findings on the functions and values of freshwater wetlands; and (3) general policy that prohibits altering, filling, removing and grading freshwater wetlands, with limited exceptions.⁷ While the impetus for the revisions to the freshwater wetlands regulations was cause for concern, OCRM recognizes CRMC's ensuing effort to clarify and to strengthen its policies and regulations regarding freshwater wetlands in the vicinity of the coast. OCRM encourages CRMC to incorporate the new freshwater wetlands regulations into the RICRMP by submitting the regulations to OCRM as a program change.

3. Habitat Restoration

CRMC works in a variety of ways to protect and to restore Rhode Island's coastal habitats. The South Coast Habitat Restoration Project's goal is to restore damaged habitats in the breachway tidal deltas of Ninigret, Cross Mills, Quonochontaug and Winnapaug Ponds. The final feasibility study and environmental assessment was completed in June 2002. Restoration involves dredging the breachways and tidal deltas to restore eelgrass and salt marsh and to restore fish passage in the salt pond tributaries leading to two ponds. CRMC worked with private property owners who will be affected by dredging activities in Ninigret Pond and by construction of the fish passage at Cross Mills Pond. The property owners were cooperative, and construction on the project began in fall 2004.

In 1959, the U.S. Army Corps of Engineers filled 11 acres of salt marsh in Allin's Cove and several mudflats on the south shore of the cove with dredged material from a nearby navigation project. The fill affected the velocity and daily tidal exchange of bay water and ultimately resulted in the replacement of native salt-marsh vegetation with the invasive common reed and led to increased erosion of the remaining marsh. The Allin's Cove Habitat Restoration Project will ultimately restore the degraded coastal wetlands and habitat with a healthy salt-marsh ecosystem by: (1) re-grading some of the area to an elevation suitable to encourage the growth of salt-marsh vegetation; (2) potentially

⁵ This incident is generally referred to as "Investco," the name of the corporation that owned the parcel of land proposed for construction. In July 2005, the Council, against a staff recommendation for denial, approved an assent for construction of a house on a lot that was predominantly freshwater wetlands. The decision was partly based on new information provided at the hearing. Reasons given by Council members for approving the project include: (1) the applicant had paid taxes on the property; and (2) the Town of Narragansett had approved the project. Critics noted that the decision: (1) was not in accordance with the Council's policy to protect wetlands; (2) contravened the philosophy, policy and positions argued in the Palazzolo case; and (3) could establish a very bad precedent. Council members responded that they were only implementing the existing freshwater wetlands rules, which, in their opinion, did not provide as much protection as the Council's tidal wetlands regulations. In August 2005, the Council Chair directed CRMC staff to revise the freshwater wetlands rules to make them more consistent with the tidal wetlands regulations. The Council subsequently adopted the new freshwater wetlands rules. The applicant has since abandoned his development plans and conveyed his property to the Town of Narragansett.

⁶ RICRMP regulations §100.4

⁷ In such cases, applicants must meet variance criteria and provide appropriate mitigation.

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restoring some of the open waters that existed prior to the filling; and (3) addressing erosion caused by the use of excavated material from the fill area to widen and stabilize the eroding shoreline. Construction on the project began in fall 2005. The Council continues to serve as the lead non-federal sponsor and provides a portion of the funding.

Restoration Trust Fund

Following the *North Cape* oil spill in 1996, Rhode Island passed the Oil Spill Prevention Administration and Response Act (OSPAR). As part of this law, an oil spill response fund was created through a five-cent fee on each barrel of petroleum products shipped into the state, along with any civil and criminal fines assessed. Under the law, the fund cannot exceed \$10 million.

In 2003, legislation created a Coastal and Estuarine Habitat Restoration Program and Trust Fund restricted solely to fund habitat restoration projects by amending OSPAR. Under the change, the trust fund received a legislative appropriation in fiscal year 2004 of \$250,000 from revenue generated via the OSPAR tax. The trust fund may also accept private donations and federal matching grants. The legislation tasked CRMC with creating the Coastal and Estuarine Habitat Restoration Program. The program was developed by a legislatively-identified Habitat Restoration Team, chaired by CRMC, RIDEM and Save the Bay. It incorporates: (1) a description of the state's coastal and estuarine habitats; (2) restoration goals; (3) an inventory of restoration projects; (4) a projected comprehensive budget and timeline; (5) funding sources; (6) an outreach element; and (7) provisions for updating the project inventory.

The initial \$250,000 was made available through a competitive grant process. Eligible applicants include cities and towns; any committee, board or commission chartered by a city or town; nonprofit corporations; civic groups; educational institutions; and state agencies. The projects ultimately were vetted through the Habitat Restoration Team and approved by CRMC. In 2004, legislation was amended to fund the Coastal and Estuarine Habitat Restoration Program in perpetuity in the amount of \$250,000 per year, beginning in fiscal year 2005. Several examples of the many projects funded during the review period include:

- Lonsdale Drive-in Wetlands Restoration Project
- Palmer Avenue Salt Marsh Restoration Project
- Habitat Restoration Issue of *Narragansett Bay Journal*
- Rhode Island Coastal Wetlands Inventory
- Kickemuit Reservoir Fish Ladder
- Seagrass Restoration Aquaculture Project
- Woonasquatucket River Feasibility Study
- Duck Cove Monitoring
- Fishway at Factory Brook
- Inventory of Degraded Wetlands for Future Mitigation

Accomplishment: CRMC continued to provide leadership for two ongoing federal restoration projects, the South Coast Habitat Restoration Project and the Allin's Cove Habitat Restoration Project. The Council also significantly contributed to the development and administration of the Rhode Island Coastal and Estuarine Habitat Restoration Program.

4. Land Acquisition

The Department of Commerce, Justice and State Appropriations Act of 2002⁸ directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program (CELCP) “for the purpose of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses.” CELCP gives priority to lands that can be effectively managed and protected and that have significant ecological value. Each coastal state that submits grant applications under CELCP must develop an OCRM-approved CELCP plan.

During the review period, CRMC coordinated with RIDEM, CRC, Rhode Island Sea Grant and other stakeholders to develop Rhode Island's CELCP Plan. At the time of the site visit, CRMC had submitted the plan to OCRM for review. The CELCP Plan's purpose is to assess Rhode Island's priority coastal and estuarine land conservation needs and to provide clear guidance to applicants for nominating coastal and estuarine conservation projects within the state. An OCRM-approved CELCP Plan will better position Rhode Island to acquire critical coastal and estuarine habitat by allowing the state to compete for federal CELCP funds.

The geographic boundary for Rhode Island's CELCP Plan includes all lands located within the 21 municipalities that abut the state's coastline along Narragansett Bay, Rhode Island and Block Island Sounds, and the tidal rivers that flow into those water bodies. The area within the boundary encompasses Rhode Island's entire coastal zone, represents 44 percent of the state's land area, and contains more than 70 percent of the state's population. The coastal environment within the boundary is experiencing a tremendous amount of development, and natural habitats and potential public access areas are being increasingly converted for residential and commercial use.

Accomplishment: Working with its partners, CRMC developed the Rhode Island CELCP Plan and submitted it to OCRM. The plan is a comprehensive and coordinated planning document that assesses Rhode Island's priority coastal and estuarine land conservation needs and provides clear guidance to applicants for nominating and selecting coastal and estuarine land conservation projects within Rhode Island.

⁸ Public Law 107-77.

D. WATER QUALITY

1. Marina Management

The popularity of recreational boating continues to grow in Rhode Island. As the demand for water recreation, boat ownership and the number of larger vessels that cannot be dry-stored has increased, so too has the demand for in-water slips. Additionally, a successful dredging project that improved access to Providence Harbor has resulted in more requests for new marina construction and existing marina expansion.⁹ Recent examples include a proposal to build a new, 1,500-slip marina in Portsmouth and a proposal to expand Champlin's Marina on Block Island.¹⁰ As a result, there is a perception that Rhode Island's coastal bays are becoming covered with marinas.

CRMC is tasked with balancing public access for coastal recreation, the demand for in-water slips and the protection of coastal ecological and aesthetic values. In response to the demand for additional in-water slips, CRMC employed several marina management measures during the review period. One such measure is "down zoning" certain embayments that would not be suitable for further marina development by changing the water type category from Type 3 (high intensity boating) to Type 2 (low intensity use) or to Type 1 (conservation areas). Neither new marina construction nor existing marina expansion is allowed in Type 1 and Type 2 waters. CRMC implemented "down zoning" through independent changes to RICRMP regulations and as part of the Greenwich Bay SAMP process.

At the time of the site visit, CRMC was in the process of revising its marina regulations. As explained to the evaluation team, the new regulations will establish marina zone perimeters around existing marinas. The regulations will focus on maximizing the efficiency of the marina zone perimeters through methods such as upland storage. Additionally, the regulations will require pre-application meetings for applicants interested in submitting marina proposals. Clean marina requirements also will be incorporated into the new regulations. Several stakeholders noted that they hoped that the Council would coordinate with them as the rules are finalized.

CRMC collaborated with RIDEM, CRC and Rhode Island Sea Grant through the Rhode Island Clean Marina Program to compile best management practices (BMPs) in a template for individual marina management plans. The Clean Marina Guidebook describes specific actions ranging from recycling oil filters to preparing for hazardous materials spills that marina owners can take to reduce pollution. CRMC selected one small, privately-owned marina and one large, commercial facility to pilot the BMPs in an effort to assure their broad applicability. Evaluating the experience of the pilot facilities, CRMC incorporated effective BMPs into a formal operations and management plan for Rhode Island marinas.

⁹ During the review period, CRMC received 17 requests for marina expansions and new marina construction.

¹⁰ The CRMC rejected the extremely controversial Champlin's Marina proposal on February 28, 2006. The decision was appealed.

Accomplishment: CRMC employed a variety of marina management measures to address increased recreational boating in Rhode Island. In order to balance the goals of providing access to recreation and protection of environmental and aesthetic resources, the Council “down zoned” water types in certain embayments, rendering them ineligible for new marina construction or existing marina expansion. The Council began a comprehensive revision of its marina regulations to address controversial expansion issues. CRMC also incorporated effective BMPs into a formal operations and management plan for Rhode Island marinas.

2. Coastal Buffer Zone Program

Managing the vegetative cover along the shoreline is an important element of the RICRMP. Natural vegetation has proven superior to lawn and landscaped areas in shoreline erosion control and absorption of pollutants, fertilizers and septic system leachate. Additional benefits of naturally vegetated buffer zones include: (1) preservation of water quality and habitat; (2) maintenance of a shoreline’s aesthetic qualities; (3) reduction of erosion and flooding; and (4) protection of historic and archaeological resources.

In 1994, CRC published “Vegetated Buffers in the Coastal Zone: A Summary Review and Bibliography.” The report, which synthesized the spectrum of buffer zone benefits and effectiveness, served as the foundation for the regulations that created Rhode Island’s Coastal Buffer Zone Program. The coastal buffer regulations require that applicants for new coastal construction or significant alterations to existing structures establish, “...a natural area adjacent to a shoreline feature that must be retained in, or restored to, a natural vegetative condition.”

The Coastal Buffer Zone Program has been cited as a national model and a good example of science-based management. At times, however, the program’s implementation has been challenging in Rhode Island, as it has been in many other coastal states. For example, the regulated community does not always understand the purpose and objectives of the buffer policy and holds several negative perceptions about the program. Such perceptions include:

- Implementation of the program is arbitrary;
- CRMC interpretation of the buffer zone policy is inflexible and does not consider certain site-specific realities; and
- Council members themselves do not understand the program’s objectives and are essentially revising the buffer policy on an ad hoc basis by granting assents rather than through RICRMP’s normal rule-making procedures.

In response to such perceptions and a recommendation in the 2003 final evaluation findings, CRMC began to reassess its buffer policies during the current review period.

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Greenwich Bay Suburban Buffer Zones

One area where CRMC is reconsidering its existing Coastal Buffer Zone Program is Rhode Island's suburbs. Very little "new" development of pristine land occurs in the suburbs. Instead, there is a great deal of redevelopment, which triggers a requirement to create a 150-foot buffer zone where none previously existed. Many suburban lots undergoing redevelopment are quite small, and applicants encounter significant difficulty with the buffer zone requirement. As part of the Greenwich Bay SAMP, CRMC is developing a suburban coastal buffer provision. The provision would relax the existing buffer requirement within several specific geographic areas around Greenwich Bay, but it would do so in a manner that retains some of the buffer's benefits. At the time of the site visit, CRMC expected to propose the Greenwich Bay Suburban Buffer Zone Policy in 2006.

Urban Coastal Greenway Policy

CRMC is also attempting to design rules that would make it easier for cities to pursue redevelopment of underused urban areas to spur economic growth while protecting important coastal resources and habitats. In the metropolitan Providence area, redevelopment often occurs on brownfields. Redevelopment of such underutilized areas is desirable because: (1) it makes better use of degraded sites while incorporating environmental improvements; (2) it provides additional public access; and (3) it eases development pressure on "greener" areas. However, the remediation costs associated with redeveloping brownfields are very high. Therefore, any redevelopment project must be of sufficient density in order to be economically viable. In many cases, CRMC's buffer zone setbacks preclude achievement of the necessary density, thus inadvertently hampering redevelopment.

Recognizing this issue, CRMC is revising its buffer zone policy for urbanized areas in need of redevelopment through the Metro Bay SAMP. The Council is moving away from a fixed setback standard in urban areas to a performance standard. The goal of the new urban coastal greenway policy is to retain the primary benefits of buffer zones, such as improved water quality, habitat and public access, while allowing redevelopment to occur. The new policy will require vegetative plantings, stormwater control and treatment, public accessways and compensation for lost habitat value in certain cases. At the time of the site visit, CRMC expected to propose the Urban Coastal Greenway Policy in 2006.

Accomplishment: CRMC initiated a thorough review of its coastal buffer zone policy. The Council is developing a Greenwich Bay Suburban Buffer Zone Policy and an Urban Coastal Greenway Policy to address specific challenges that have been encountered during implementation of the Coastal Buffer Zone Program.

E. COASTAL HAZARDS

Erosion is a significant coastal hazard in Rhode Island. Increasingly, storms and other events have focused attention on the nature of the state's shoreline, which is highly prone to erosion and starved for sediment. Given the degree of damage associated with the use of structural shoreline protection, Rhode Island has concluded that beach replenishment is one of the few options still available for maintaining its beaches and safeguarding existing development.

CRMC supported an investigation to: (1) identify potential sources of sand on the shoreface¹¹ for beach replenishment, (2) quantify the movement of sand on the shoreface, and (3) design beach replenishment technical guidelines. The Council made several program changes to the RICRMP based on the results of the study. Changes included a framework for developing a sustainable beach and dune replacement strategy, new beach replenishment policies, and regulations and recommendations for municipalities and other state agencies involved in beach replenishment issues. The project also comprised the development of geographic information system techniques that incorporated information on beach, dune and shoreface dynamics in a way that was useful for revising and implementing regulations and managing the shoreline.

The evaluation team saw an example of the problems caused by erosion during a visit to Matunuck, Rhode Island. In Matunuck, landowners between two historic revetments are experiencing severe erosion that has left their houses on the verge of falling into the water. The residents have tried to place hard structures in front of their property, but, as noted above, this solution is neither the best available option nor legal. A beach renourishment project is planned for the area, but it may not be in time to prevent erosion from claiming the structures between the jetties. In such situations, CRMC might consider allowing "temporary structures," such as geotubes, to be placed in front of the affected houses until a beach renourishment project commences. CRMC should consider developing rules governing the use of temporary erosion control structures so that their use will not be abused.

F. COASTAL DEPENDENT USES AND COMMUNITY DEVELOPMENT

1. Special Area Management Plans

CRMC continues its role as a leader in special area management planning. The strategy behind the development of a SAMP is to recognize how water quality, land use, habitat, storm hazards and geology all interact to impact the health of an area. Coastal resource managers often employ SAMPs to address problems in a specific region that have not been resolved by existing local, state and federal policies. During the review period, CRMC worked closely with CRC to complete the Greenwich Bay SAMP and to begin development of the Metro Bay SAMP. CRC is a key partner of the Council and served as the research lead for both the Greenwich Bay and Metro Bay SAMPs.

¹¹ Seaward of the intertidal zone.

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Greenwich Bay SAMP

Greenwich Bay is an estuary with five protected coves that comprise five square miles of shallow water. The highly-productive bay has traditionally provided area residents with food, transportation, trade and recreation. Not surprisingly, Greenwich Bay is affected by multiple use conflicts. Water quality and habitat degradation result from failing septic systems, illegal sewer hookups that tie directly into storm drains, fertilizer and pesticide runoff from lawns, marina and recreational boating activities, dredging and dredged material disposal.

In August 2003, a large fish kill in Greenwich Bay highlighted the need to address the many factors affecting water quality in the bay and essentially served as a catalyst for SAMP development. CRMC contracted with CRC and Rhode Island Sea Grant to develop the Greenwich Bay SAMP in coordination with Warwick, East Greenwich, government agencies, community organizations and concerned citizens. The SAMP describes the present status of the bay, characterizes its watershed, identifies sources of pollution, and recommends steps to help the state government work with local communities to restore, protect, and balance uses of the bay. The Plan has five key goals:

- Develop leaders and stewards to coordinate and implement actions that protect the unique resources of Greenwich Bay;
- Improve Greenwich Bay's water quality so that it is a safe place to fish and swim;
- Maintain high-quality fish and wildlife habitat in the Greenwich Bay watershed;
- Improve recreational opportunities on Greenwich Bay and its shoreline; and
- Enhance water-dependent economic development on Greenwich Bay and its shoreline to maintain the area's unique sense of place.

Adopted in May 2005, the final Greenwich Bay SAMP employs an ecosystem approach to protecting and restoring the bay's water quality and habitats. The Plan also integrates policy to preserve boating and shellfishing, both important economic activities that depend on Greenwich Bay. Major accomplishments of the Greenwich Bay SAMP include: (1) addressing marina proliferation issues through water type "down zoning;" (2) providing the impetus for localities to sewer several neighborhoods; and (3) contributing to the determination that nutrient over-enrichment in Greenwich Bay was largely the result of publicly-owned treatment works rather than runoff.

During the site visit, the evaluation team met with planners from the City of Warwick who expressed gratitude to CRMC for developing the Greenwich Bay SAMP in an inclusive manner. The city intends to incorporate the SAMP into its comprehensive plan and to use it as a basis for expanding its zoning requirements. The city also plans to adopt the SAMP's buffer policies. The Warwick planners noted that they appreciated the SAMP's flexible approach to buffer remediation through the use of performance standards.

The Greenwich Bay SAMP represents somewhat of a departure from previous SAMPS in that while it has resulted in several significant policies enacted at the state and local

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levels, much of the SAMP resembles more of an action plan. Previous SAMPs in Rhode Island tended to focus more on the development of policies that were incorporated into CRMP regulations or local ordinances. The development of action plans certainly has inherent value. However, the evaluation team was concerned that unless staff is dedicated to ensure implementation of the recommended actions or adoption of policies into CRMP regulations and local ordinances, it might be difficult for the plan to achieve “on-the-ground” results.

4. 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.

Metro Bay SAMP

Narragansett Bay's largest urban waterfront consists of approximately 24 miles of shoreline bordering the cities of Cranston, East Providence, Providence and Pawtucket. Historically, the area was heavily industrialized. However, in recent years the region has suffered a loss of economic activity and has become largely underutilized. The four cities are endeavoring to reverse this trend by: (1) improving the waterfront's economic, social and environmental resources; (2) attracting developers with more predictable and efficient permitting processes; and (3) providing recreational opportunities and access to the water. During the review period, CRMC and the cities began developing the Metro Bay SAMP in order to provide a functional framework for environmentally- and economically-sensitive redevelopment of the waterfront.

The Metro Bay SAMP will update and expand the Providence Harbor SAMP.¹² A unique aspect of the Metro Bay SAMP is that it is the first SAMP to address waterfront development in a highly-urbanized setting. Within the SAMP boundary, the plan will refine specific coastal policy standards to provide flexibility while achieving the overall policy objective. CRMC's effort to develop an Urban Coastal Greenway Policy¹³ is a good example of this approach. Additionally, the SAMP will address several coastal hazards issues as they relate to redevelopment in the area. For example, participants in the SAMP process will develop more accurate area flood maps that account for changes in the physiography of the upper Bay, such as port-related fill and its effects on storm surge height.

CRMC has strived to engage all appropriate stakeholders in the Metro Bay SAMP process. For example, the City of Providence's Planning Director cited inclusion of an area developer during discussions of potential buffer policy revisions as an example of involving key partners from the beginning. Counterpart agencies and organizations such as Sea Grant and RIDEM have contributed significantly to the SAMP. Additionally,

¹² The 1983 Providence Harbor SAMP was CRMC's first SAMP.

¹³ See Section IV-D-2.

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CRMC created the Metro Bay Partnership to act as a vehicle for public input to the SAMP. The Partnership is similar to a Citizen's Advisory Committee, and its meetings are open to all interested parties. CRMC also has an active Metro Bay SAMP website¹⁴ that provides an overall summary of the SAMP effort, a calendar of events, a work plan, links, and a description of key issues. Approximately 200 people use the Metro Bay Listserve, a mechanism that further facilitates communication.

Accomplishment: CRMC completed and adopted the Greenwich Bay SAMP and initiated the Metro Bay SAMP. Working with its partners, CRMC has used SAMPs as a tool for refining state-wide coastal policy in specific geographic areas. The resulting policies are not only more effective and better coordinated, but they also facilitate consistent and predictable decision-making at all levels of government.

2. Marine Resources Development Plan

Rhode Island has embarked on a major initiative to provide an integrated strategy for: (1) improving the health and functionality of Rhode Island's marine ecosystem; (2) providing for appropriate marine-related economic development; and (3) promoting the use and enjoyment of Rhode Island's marine resources by the people of the state. Building on the work of the Bay Trust Study Commission,¹⁵ the Rhode Island Legislature amended the RICRMP's enabling legislation in 2005 by including a requirement for the CRMC to develop the MRDP. The legislation contains three key findings: (1) collaboration among Rhode Island agencies related to coastal management and development could be improved; (2) there is insufficient integration among the policies and actions of CRMC, RIDEM, EDC and the Rhode Island Department of Administration; and (3) there is a need for proactive planning to ensure a vibrant and sustainable coastal economy.

As described in the legislation, the MRDP must contain specific goals and objectives, performance measures and an implementation program. The plan is to be prepared in cooperation with relevant state agencies and programs and must consider local land use and harbor management responsibilities. Additionally, preparation of the MRDP must include opportunities for public involvement and review. The legislation also calls for the MRDP to incorporate input from the Governor's Narragansett Bay and Watershed Planning Commission and to be consistent with systems-level plans as appropriate. Once CRMC adopts the MRDP, it must administer its programs, regulations and implementation activities in a manner consistent with the plan. The MRDP, as well as any updates, will be adopted as elements of the Rhode Island State Guide Plan. Finally, the Plan is to be updated at least once every five years.

During the site visit, the evaluation team met with Rhode Island legislative staff who noted that the MRDP effort's intent is to encourage CRMC to depart from its traditional

¹⁴ <http://seagrant.gso.uri.edu/metrosamp/>

¹⁵ The Commission's final report is available at http://www.rilin.state.ri.us/gen_assembly/baytrust/documents/FinalReport.doc.

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regulatory approach by taking a more proactive and collaborative planning approach to the development of marine resources. It is envisioned that SAMPs will be the primary implementation mechanism for the MRDP. The initiative will expand the Council's SAMP work into sustainable development and coastal community design.

In September 2005, CRMC, in conjunction with CRC, Rhode Island Sea Grant, the Rhode Island Economic Policy Council and the Rhode Island Senate Policy Office, issued a draft MRDP.¹⁶ The plan provides a vision of the possibilities for Rhode Island's coast and a strategy for achieving the vision. The MRDP is intended to reflect new roles for CRMC in planning, policy development and coordination, and "design of the coastal economy." Significant components of the MRDP include:

- Re-evaluating and potentially shifting the emphasis of the Council's role from permitting to planning and design;
- Enhancing smart growth concepts in coastal policy, with an emphasis on growth centers, parks and greenways;
- Increasing involvement of CRMC in waterfront revitalization, brownfields redevelopment, and harbor management plan updates;
- Emphasizing monitoring and performance measurement within CRMC;
- Enhancing fishery habitat protection and restoration; and
- Establishing several "mega-watersheds" or "economic sub-regions" as focal points for planning.

In the evaluation team's assessment, the MRDP is an extremely ambitious and far-reaching plan to address marine resource development comprehensively. The MRDP will attempt to achieve its goals by redirecting, in part, the mission of CRMC. While very supportive of the MRDP's fundamental concepts and goals, the evaluation team is concerned about the implementation of the plan. The MRDP will add considerably to CRMC's existing responsibilities with requirements to: (1) develop new SAMPs; (2) provide significant new technical assistance to communities; (3) develop monitoring, performance measurement and reporting systems; and (4) update approximately 20 harbor management plans. However, there is no apparent increase in resources to accompany the new responsibilities and workload. CRMC will likely need additional staff, such as a "special projects design team" with appropriate expertise in land-use planning, community design and economics, to carry out the ambitious planning program envisioned by the MRDP and other emerging initiatives. While improving expertise and capabilities and reallocating work to create efficiencies is desirable, such actions alone seem insufficient to the tasks at hand. The work envisioned in the MRDP requires priorities, timelines and new resources, including staff. It will not serve the people of Rhode Island to have a sterling plan if it cannot be implemented. Most of the evaluation participants were supportive of the MRDP concept and viewed the plan as an excellent opportunity either to enhance the CRMC or to encourage it to consider a new focus.

¹⁶ Subsequent to the evaluation site visit, the final MRDP was released on January 10, 2006. See http://www.crmc.state.ri.us/projects/mrdp/MRDP_Final_Jan10.pdf.

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During evaluation discussions about the MRDP as well as the Council's permitting role, many participants raised the issue of reassessing the long-term role of the Council. As described in this document, recent legislation has conveyed additional planning and policy development authority and coordination responsibilities to CRMC. However, the Council, which had its primary roles established 30 years ago, currently spends much of its time on permitting. For example, a state legislative report found that between 2002 and 2004, 26 percent of the applications that came before the Council were dock related, while only 16 percent involved policy decisions. Many of those interviewed were of the opinion that the Council's time would be more effectively spent addressing policy issues and emerging initiatives such as the MRDP. Given the Council's recently added planning and policy development authority, it appears to be an opportune time to re-evaluate the role of the Council. Several of those interviewed during the evaluation suggested that the Council might shift its primary emphasis from issuing permits to coastal planning and policy development and coordination. Evaluation participants also suggested several ways that such a shift might be accomplished. For example, the Category A assent process could be expanded to encompass all routine dock and pier applications. The Council could also establish a permitting subcommittee that would hear applications while retaining the full Council for planning and policy.¹⁷ Another suggested option was to delegate the majority of coastal permitting administration to the CRMC Executive Director and staff. Under such an alternative, the Council would serve in an oversight or adjudicatory capacity.

5. 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 initiatives. 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.

G. GOVERNMENT COORDINATION AND DECISION-MAKING

1. Federal Consistency, Permitting and Enforcement

Federal Consistency

The CZMA's federal consistency provision is a major incentive for states to join the National Coastal Management Program. It is also a powerful tool that states use to manage coastal uses and resources and to facilitate cooperation and coordination with federal agencies. The provision requires that federal agency activities that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone must be consistent to the maximum extent practicable with the enforceable policies of a state's federally-approved coastal management program. Federal consistency

¹⁷ Such action would effectively reverse the current situation in which the full Council hears assent applications while a subcommittee addresses planning and policy.

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reviews are the responsibility of a coastal management program's lead state agency. During the review period, CRMC implemented its state and federal consistency authority in accordance with RICRMP procedures and the requirements of CZMA §307.

Permitting

As noted in Section III of this document, depending on the proposed activity, applicants must obtain one of four types of CRMC assents: a Finding of No Significant Impact (FONSI), Certification of Maintenance, Category A Assent, or Category B Assent. In general terms, FONSIs are issued for minor activities that pose little or no threat to coastal resources. Certifications of Maintenance are issued for activities that do not significantly alter the assented design, purpose and size of a structure. Category A activities include routine matters and types of construction or maintenance work that normally do not require review by the full Council. Category B activities generally include large, complex and/or contentious projects. However, Category B activities also include all dock and pier proposals.

With the exception of Category B and certain Category A applications, all assents are processed administratively by CRMC staff. Category B applications and Category A applications that cannot be approved at the staff level, either 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 RICRMP, require a public hearing before the full Council. CRMC makes determinations on these assents.

CRMC permitting staff consistently provides sound, science-based recommendations to Council members on permit applications. However, several evaluation participants noted that, at times, staff presentations before the full Council on contested cases could be improved with greater clarity and confidence. It appeared to the evaluation team that such improvements could be achieved by providing staff with regular guidance and training on how to present their recommendations most effectively. For example, CRMC's Legal Counsel could institute routine preparatory meetings with staff prior to their giving testimony. Additionally, guidance might include checklists or templates for staff to ensure that they highlight critical issues when testifying.

6. 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.

During the 2003 evaluation, concerns about the Council's implementation of certain regulatory aspects of the RICRMP resulted in several recommendations. One suggestion was that CRMC staff conducts training sessions with individual or small groups of Council members to familiarize or to refresh them with the regulations that apply to

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assent applications. In response, CRMC staff offered training for Council members several times during the current review period. Unfortunately, as a result of lack of interest and the voluntary nature of the exercise, not all Council members participated in the training.

Moreover, it appears that Council members are still in need of training as described in the 2003 final evaluation findings. Council decisions could be more consistent. The evaluation team heard from many interview subjects¹⁸ that Council members do not always have an adequate understanding of the RICRMP's policies and regulatory objectives. Based on discussions during the evaluation site visit and a review of the transcript from the Investco application hearing, the evaluation team agrees that Council members are not always fully cognizant of all of CRMC's complex policies, regulations and management procedures. In some instances, Council members may be confused regarding which policies and standards apply to proposed actions. For example, one of the rationales for approving the Investco assent was that the Town of Narragansett had granted the local permits – a criterion that is not considered under the existing rules. While inconsistency in Council permitting decisions is not systematic, it needs to be addressed.

At the end of the current review period, the Council began to respond to the need for training. In August 2005, the CRMC Chairman requested that CRC: (1) conduct an assessment of training needs both for Council members and staff; and (2) develop and provide a training program to Council members and staff to build their capacity and expertise. The Chairman's request to CRC was a positive step. However, even the best training cannot be effective unless it is attended. OCRM acknowledges that attending training may be difficult for Council members – they do not hold paid positions, and they already take time from their busy schedules to serve on the Council. However, agreeing to serve on the Council imposes an obligation on Council members to ensure effective implementation of the RICRMP. Additionally, the regulatory nature of the RICRMP is highly complex, and the potential consequences of misinformed permitting decisions are significant. Therefore, training for Council members should be mandatory. Council members who do not attend training should not be allowed to vote on Council assents.

7. 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.

Another recommendation generated by the 2003 evaluation was a Necessary Action requiring the Council to follow its adopted management procedures in the conduct of its meetings. While not pervasive, the evaluation team did hear of an instance where

¹⁸ Including several Council members themselves.

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management procedures were not followed. In the highly-publicized and controversial Investco hearing, the Council deviated from its management procedures regarding the acceptance and use of new information from applicants. The management procedures require applicants to provide the Council with any new information¹⁹ regarding the application at least five days prior to the meeting at which the application is to be discussed. The intent of the procedure is to allow staff a reasonable amount of time to evaluate new information and to respond or to amend their decisions as necessary. However, during the Council discussion of the Investco application, new information regarding a culvert rerouting was presented. A staff member noted that the culvert location was a critical issue in the review and that he had not previously seen the rerouting information. The Council Vice Chairman asked if the hearing should be delayed until staff had a chance to review the new information, and the Executive Director noted the management procedures' requirement that new information must be presented to staff five days prior to the Council hearing. However, the hearing continued, with the Council voting four to three in favor of the application.

Additionally, the 2003 evaluation findings included a Necessary Action directing the Council to revise its management procedures to provide clarity for the public and guidance to the Council by specifying the role of staff recommendations in the Council's decision-making process. Another Necessary Action noted that, "when the Council issues assents for projects, the assents themselves or other publicly available documentation should indicate the rationale for specific conditions and actions. The rationale must conform to CRMC's regulations regarding issuance of variances." The issue behind these Necessary Actions was not that Council, at times, makes decisions contrary to staff recommendations. The Council clearly has the prerogative to do so. Instead, the issue was the Council's failure to provide clear, compelling justification at Council meetings for such decisions denoting how the final decision upholds CRMC's regulations regarding variances.

To assess progress on this issue during the current review period, the evaluation team specifically requested a summary describing how often Council decisions contradicted staff recommendations on assents before the Council. Approximately six percent of CRMC decisions on all assents before the Council contravened staff recommendations during the review period. The evaluation team also asked the CRMC Legal Counsel for five examples of Council findings, including three where the final decision went against staff recommendation. While the Council does produce findings for its decisions following Council meetings, the rationale given for the Investco decision²⁰ and discussions with evaluation participants indicate that the Council does not always provide justification based on the approved RICRMP for decisions contrary to staff recommendations at Council meetings. Furthermore, the findings produced after Council meetings are fairly general. For example, "the Council finds that the proposed request for a variance will not result in significant adverse environmental impacts or use conflicts." While the Council findings are important, they do not provide rationale as to how the Council arrived at its decisions. This underscores the need for the Council consistently to

¹⁹ Information that was not provided prior to the staff report.

²⁰ See description of the Investco hearing in footnote number five.

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provide clear rationale that adheres to the RICRMP for decisions contrary to staff recommendations in a structured discussion at Council meetings.

8. 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.

Enforcement

While effective and transparent permitting is critical to the success of each coastal management program, sufficient enforcement is equally important. It is critical that appropriate staff monitor development and other projects to ensure that the responsible parties: (1) have obtained all requisite permits; and (2) are adhering to all permit conditions. During the review period, CRMC adequately implemented its enforcement program. Enforcement staff is responsive and timely, despite increased workloads. Staff also developed a new database that cross-references permitting and enforcement information. When fully developed, the database will allow staff to access all relevant information and site plans from the field and will be made available to the public.

2. Education, Outreach and Public Participation

During the review period, CRMC worked to increase public awareness of its activities and services. As noted in Section IV-A-1, the Council hired a Public Educator and Information Coordinator, a major accomplishment. A new position within the CRMC, the Public Educator and Information Coordinator handles media relations and press releases,²¹ public education and outreach, and agency events. She also develops the Council's quarterly newsletter, *Coastal Features*, which describes recent program developments, legislative updates and news.

CRMC has improved a series of issue-based fact sheets and handouts that address a range of coastal issues. The Council also has worked with Rhode Island Sea Grant and CRC to produce publications of mutual interest. Such publications include the best-selling guidebook, "Public Access to the Rhode Island Coast," the award-winning Coastweeks Calendar, "Vegetated Buffers in the Coastal Zone: A Summary Review and Bibliography," and "Greenwich Bay: An Ecological History."²²

²¹ <http://www.crmc.state.ri.us/news/index.html>.

²² <http://www.crmc.state.ri.us/pubs/index.html>.

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The CRMC's website²³ is a very important outreach tool. Launched in 2002, the website provides information about the Council, meeting agendas, project descriptions, downloadable publications and links to other state and federal agencies. The website also supplies permit application forms and a searchable application and permit database. At the time of the site visit, CRMC planned to upgrade the website by including information about: (1) deed restrictions and easements granted by the Council; and (2) public access and ROW sites.

Educating the public about the RICRMP, particularly its regulatory aspects, is critical to CRMC's effectiveness. The highly regulatory nature of the RICRMP does not leave interaction with the CRMC as an option for some people, but rather a requirement. Educating such individuals about the details of the assent application process is very important. However, there is also a need to educate them and the general public about the reasons for such regulations. Enforcement action may result from a failure to understand why a regulation is needed as much as from a failure to comply with the procedural aspects of the regulatory process. With more information and education, public compliance may increase without additional enforcement. Recognizing this, the Public Educator and Information Coordinator expressed interest in improving the understanding of buffer management and regulations among developers and the public.

Accomplishment: The addition of a full-time Public Educator and Information Coordinator has significantly enhanced CRMC's education and outreach efforts. Outreach mechanisms such as the Council's website, press releases, fact sheets and other publications improved significantly.

Clearly, the education and outreach efforts described above are vital to increasing public awareness and support for coastal management decision-making, policy development and implementation. However, meaningful public participation in the program is equally important. During the site visit, the evaluation team repeatedly received oral and written comments about the public participation aspects of the RICRMP. Concerns ranged from a lack of adequate and timely public notice for CRMC meetings and activities, including the evaluation public meeting, to insufficient opportunity for and consideration of public comments on rulemaking, planning documents and other Council products. CRMC must take action to improve opportunities for public participation in the RICRMP. The Public Educator and Information Coordinator should be integrally involved in such efforts.

²³ <http://www.crmc.state.ri.us/>.

9. 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.

3. Rhode Island Bays, Rivers and Watersheds Coordination Team

In 2005, Rhode Island passed legislation establishing the Rhode Island Bays, Rivers and Watersheds Coordination Team. The team is composed of senior managers from CRMC, RIDEM, EDC, Department of Administration, Water Resources Board, Rivers Council and the Narragansett Bay Commission. Specifically, the legislation charges the team with developing a “systems-level plan” to better coordinate the functions, programs and regulations that address the full range of issues pertaining to the state’s bays, rivers and watersheds. The plan is defined as “an interagency ecosystem-based plan for the bays, rivers and watersheds” that:

- Establishes overall goals and priorities for the management, preservation, and restoration of bays, rivers, and watersheds and the promotion of sustainable economic development;
- Sets forth a strategy for attaining goals that delineate specific responsibilities among agencies;
- Identifies funding sources and a timetable for attaining goals;
- Provides an estimate of the total projected cost of implementing the plan including capital improvements; and
- Guides a strategy for a monitoring program to evaluate progress in implementing the plan and to provide the information necessary to adapt the plan in response to changing conditions.

At the time of the evaluation site visit, the Rhode Island Bays, Rivers and Watersheds Coordination Team had met several times, but changing chairmanship had slowed the team’s progress. Subsequently, the state appointed a Chairman and planned to move forward with coordination of member agencies and common state priorities. The CRMC is viewed as an important component of this internal coordination effort. The evaluation team hopes that CRMC will use its membership on the team as an opportunity to inform and to work with its partners on policy and planning efforts.

4. Dredging and Dredged Material Disposal

CRMC has continued its leadership in statewide dredging and disposal planning. The Council’s dredging accomplishments began during the previous review period with the

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hiring of a licensed professional civil engineer to serve as a full-time Dredging Coordinator. The Coordinator provides a single, knowledgeable contact to work with federal and state agencies and various stakeholder and citizen groups. Additionally, in 2003, maintenance dredging of the Providence River channel and harbor was initiated for the first time in more than 25 years.

The designation of dredged material disposal sites remains a critical issue. During the current evaluation period, CRMC moved forward with work on a long-term Dredged Material Management Plan. While the Council made progress on confined aquatic disposal cells, it continues to work with its partners to identify alternative disposal sites. The option of using a dredged material disposal site outside Narragansett Bay is very expensive due to the costs of materials testing and transportation.

A wetlands restoration effort at the Sachuest National Wildlife Refuge is a good example of a successful project that provided CRMC with an alternative disposal option. Dredged material from a marina complex was barged to the site to help recreate salt marsh habitat. The Council incorporated its experience with the project into its management of dredged material disposal for salt marsh restoration. Additionally, CRMC coordinated Rhode Island's efforts regarding designation of a long-term dredged material disposal site in conjunction with the U.S. Environmental Protection Agency's Regional Disposal Site Study Initiative. The site received federal approval, and the Council now has a long-term, offshore disposal site for dredged material.

During the review period, the Rhode Island Legislature passed a bill that directed EDC to identify a suitable location for disposal and potential processing of dredged material. CRMC worked extensively with EDC to secure a place: (1) central to areas in need of dredging; and (2) close enough to shore to minimize the logistical difficulties of transporting the material to the site. Staff identified such a location at the Quonset Point industrial site, which is owned and managed by EDC. However, EDC voiced several concerns with the location and notified its partners that it will continue to seek a solution that does not compromise potential uses of the Quonset Point complex.

Accomplishment: CRMC continued its leadership with regard to dredging issues in Rhode Island. The Council maintained progress on dredging and dredged material disposal by closely coordinating with its partners and other critical stakeholders to ensure that necessary dredging for navigation and recreational boating occurred in an efficient and environmentally-conscious manner.

5. Ocean Management

As the result of an initiative by the Governor of Rhode Island, the New England Governors and Eastern Canadian Premiers signed a resolution to create a Northeast Regional Ocean Council in August 2005. The Council's purpose is to: (1) facilitate the development of more coordinated and collaborative regional goals and priorities and improve responses to regional issues; and (2) work directly with the President's Council

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of Advisors on Ocean Policy to communicate regional needs at the U.S. level and better address issues of national importance in the Northeast on the implementation of the U.S. Ocean Action Plan.

The evaluation team met with the Governor's policy staff to discuss the new Council. Staff noted that while Rhode Island had taken a leadership role in initiating the Council, its form and function would be collectively determined by the member states. Staff indicated that RIDEM would serve as the lead for Rhode Island's contribution to the Council, but that they envisioned significant roles for CRMC and other relevant state agencies and organizations.

At the time of the site visit, the first scoping meeting for the Northeast Regional Ocean Council was scheduled for January 2006. The six New England states and nine federal agencies²⁴ had been invited to the meeting to discuss the focus and governance of the Council. The Governor's policy staff indicated that, following the initial meeting, Rhode Island would work with the other New England states to refine recommendations on several regional issues for presentation at the meeting of the New England Governors and Eastern Canadian Premiers in May 2006.

OCRM encourages Rhode Island to ensure that the RICRMP is closely involved in the discussions and efforts related to the Northeast Regional Ocean Council.

6. Aquaculture

Historically, aquaculture in Rhode Island has been limited to shellfish. Even in 2003, a relatively "good" year, the farm-gate value of Rhode Island aquacultured shellfish was only \$556,000. This value is quite small in comparison to other New England states that have farm-gate values of nearly \$200 million for both shellfish and finfish. Although CRMC does not use CZMA §309 funds to address aquaculture, it uses CZMA §306 monies to fund a full-time staff person who serves as the state's Aquaculture Coordinator. In 2002, as a result of the efforts of Rhode Island Senator Reed, the state received significant federal funding²⁵ to expand its aquaculture industry. CRMC signed a memorandum of understanding with Rhode Island Sea Grant, the University of Rhode Island, and Roger Williams University to manage the Rhode Island Aquaculture Initiative (RIAI). The Aquaculture Coordinator serves as the Initiative's manager and Executive Committee Chair. The Executive Committee comprises government officials, researchers, industry representatives and other experts and was formed to oversee the administration of the Initiative.

The major components of the RIAI reflect a university focus on research and technological development as well as an industry emphasis on application. A key element is support for applied research to address industry priorities, including: (1)

²⁴ National Oceanic and Atmospheric Administration, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Department of Energy, U.S. Department of the Interior, U.S. Department of Agriculture, U.S. Coast Guard, Department of Defense-Navy and the National Science Foundation.

²⁵ \$1.5 million.

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cultivation of alternative species; (2) development of monitoring and marketing innovations; (3) evaluation of environmental and economic impacts; and (4) enhancement of comprehensive ocean-mapping efforts. Funds have been awarded for both multiyear research grants and mini-grants through a competitive process. For example, a three-year grant provided funds for CRMC, academic interests and commercial fishing interests to test the economic feasibility of public-benefit aquaculture.²⁶

During the review period, the RIAI approved funding for an innovative project designed to develop a freshwater finfish aquaculture industry in the state. The project will pair traditional farmers with extension personnel at University of Rhode Island and Roger Williams University to begin culturing freshwater fishes. The local U.S. Department of Agriculture Farm Services Agency and the RIDEM Division of Agriculture are participating in the project as well. At the time of the site visit, six farmers had volunteered as potential participants. Initial funding will be used to establish two farm-based nursery projects for fingerlings. Subsequent resources will fund grow-out facilities and a marketing program.

In addition to having a comparatively small aquaculture industry, Rhode Island lacks commercial production in the marine biosciences. Acknowledging this fact, the RIAI served as principal investigator on a study exploring the feasibility of a Rhode Island Marine Technology and Aquaculture Center (MTAC). The purpose of an MTAC would be to attract and support start-up marine biotechnology and aquaculture companies in Rhode Island. The final report outlines the rationale and potential for development of the Center.

Accomplishment: CRMC continued its leadership with regard to the development and expansion of aquaculture in Rhode Island. The Council contributed its time and expertise to innovative projects that advanced the RIAI.

²⁶ Public-benefit aquaculture is a relatively common practice for replenishing natural shellfish resources in which towns operate small seasonal hatcheries to produce shellfish seed for planting in adjacent coastal waters.

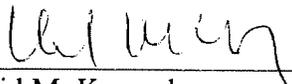
V. CONCLUSION

For the reasons stated herein, I find that Rhode Island is adhering to the programmatic requirements of the Coastal Zone Management Act and its implementing regulations in the operation of its federally-approved Rhode Island Coastal Resources Management Program (RICRMP).

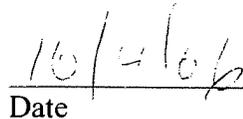
RICRMP has made notable progress in the following areas: staffing, public access, habitat restoration, land acquisition, marina management, Coastal Buffer Zone Program, Special Area Management Plans, education and outreach, dredging and aquaculture.

These evaluation findings also contain nine recommendations. The recommendations are in the form of four Necessary Actions and five Program Suggestions. The state must address the Necessary Actions by the dates indicated. The 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 Appendix A.

This is a programmatic evaluation of RICRMP that may have implications regarding the state's financial assistance awards. However, it does not make any judgment on or replace any financial audits.



David M. Kennedy
Director, Office of Ocean and
Coastal Resource Management



Date

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VI. APPENDICES

Appendix A. Summary of Accomplishments and Recommendations

The evaluation team documented a number of RICRMP’s accomplishments during the review period. These include:

| Issue Area | Accomplishment |
|-----------------------------|--|
| Staff | CRMC worked with the Rhode Island Legislature to secure and fund a career civil service Public Educator and Information Coordinator. The Council also completed the formalization process for the Deputy Director and Coastal Policy Analyst, and both positions are now permanent. CRMC staff has continued to maintain a high level of performance as well as its reputation for technical expertise, integrity and responsiveness. |
| Public Access | CRMC worked to promote and to improve public access in Rhode Island through the permitting process, the ROW Program and the harbor management planning process. The Council worked with its partners to develop a comprehensive public access plan for the Quonset Business Park. CRMC also updated its popular public access guide to Rhode Island’s coastal waters. |
| Habitat Restoration | CRMC continued to provide leadership for two ongoing federal restoration projects, the South Coast Habitat Restoration Project and the Allin’s Cove Habitat Restoration Project. The Council also significantly contributed to the development and administration of the Rhode Island Coastal and Estuarine Habitat Restoration Program. |
| Land Acquisition | Working with its partners, CRMC developed the Rhode Island CELCP Plan and submitted it to OCRM. The plan is a comprehensive and coordinated planning document that assesses Rhode Island’s priority coastal and estuarine land conservation needs and provides clear guidance to applicants for nominating and selecting coastal and estuarine land conservation projects within Rhode Island. |
| Marina Management | CRMC employed a variety of marina management measures to address increased recreational boating in Rhode Island. In order to balance the goals of providing access to recreation and protection of environmental and aesthetic resources, the Council “down zoned” water types in certain embayments, rendering them ineligible for new marina construction or existing marina expansion. The Council began a comprehensive revision of its marina regulations to address controversial expansion issues. CRMC also incorporated effective BMPs into a formal operations and management plan for Rhode Island marinas. |
| Coastal Buffer Zone Program | CRMC initiated a thorough review of its coastal buffer zone policy. The Council is developing a Greenwich Bay Suburban Buffer Zone Policy and an Urban Coastal Greenway Policy to address specific challenges that have been encountered during implementation of the Coastal Buffer Zone Program. |

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| Special Area Management Plans | CRMC completed and adopted the Greenwich Bay SAMP and initiated the Metro Bay SAMP. Working with its partners, CRMC has used SAMPs as a tool for refining state-wide coastal policy in specific geographic areas. The resulting policies are not only more effective and better coordinated, but they also facilitate consistent and predictable decision-making at all levels of government. |
| Education, Outreach and Public Participation | The addition of a full-time Public Educator and Information Coordinator has significantly enhanced CRMC's education and outreach efforts. Outreach mechanisms such as the Council's website, press releases, fact sheets and other publications improved significantly. |
| Dredging | CRMC continued its leadership with regard to dredging issues in Rhode Island. The Council maintained progress on dredging and dredged material disposal by closely coordinating with its partners and other critical stakeholders to ensure that necessary dredging for navigation and recreational boating occurred in an efficient and environmentally-conscious manner. |
| Aquaculture | CRMC continued its leadership with regard to the development and expansion of aquaculture in Rhode Island. The Council contributed its time and expertise to innovative projects that advanced the RIAI. |

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

| Issue Area | Recommendation |
|-------------------|--|
| Staff | #1. PS: OCRM urges CRMC to fill the Coastal Policy Coordinator position with a competent, qualified individual within one year of receipt of final evaluation findings. |
| Program Changes | #2: NA: 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. |
| Grants Management | #3. NA: 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. |

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| Special Area Management Plans | #4. PS: 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. |
| Marine Resources Development Plan | #5. PS: 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 initiatives. 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. |
| Federal Consistency, Permitting and Enforcement | #6. PS: 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. |
| Federal Consistency, Permitting and Enforcement | #7. PS: 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. |
| Federal Consistency, Permitting and Enforcement | #8. NA: 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. |

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|---|--|
| Education, Outreach and Public Participation | #9. NA: 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. |
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Appendix B. RICRMP Response to 2003 Evaluation Findings

#1. Necessary Action: The CRMC must work with the State Legislature to justify, secure, and fund a career civil service public outreach and education position. This should be completed during the 2004 state legislative session.

Completed as instructed. New FTE has been hired.

#2. Necessary Action: The process to formalize the deputy director and coastal policy analyst positions must be completed and the positions both be made permanent state FTEs within the CRMC. This should be completed within one year of the date of this final evaluation findings document.

Completed as instructed.

#3. Necessary Action: Development of Council meeting agendas and conduct of Council meetings must follow adopted Council procedures as articulated in the "CRMC Management Procedures." This pertains to the public comment process, the order that the Council hears applications, and other relevant issues. The CRMC Management Procedures must address the order in which the Council hears applications. Within six months of the date of the Final Evaluation Findings, CRMC must review the "CRMC Management Procedures" and provide to OCRM a summary of proposed changes needed to meet the intent of this Necessary Action. The CRMC should consult with OCRM before making final changes to the Management Procedures.

Every two weeks the Chairman and the Executive Director meet to discuss the list of applications that are ready for full Council action. Within their review, they sort and select those applications for placement on a semi-monthly agenda so as to maximize the time of review that is available to the Council. This process has been in place for some time. The subcommittee also discussed more detailed approaches that could further the existing process and meet the intent of this Necessary Action. Solutions include: the recognition that applications which have received a favorable recommendation from staff and no objections during the public notice period be given priority agenda placement status; recognition of the limitations of applications that are recommended for denial by staff or which have received objections during the public notice period due to the length of discussion by Council members, staff and interested parties, and limit the number of such applications to one or two per agenda; and, introduce an extra semi-monthly meeting when a backlog of applications appears.

The subcommittee also noted that some of the applications need more immediate attention and that they should be recognized as such so that they are scheduled in a timely fashion. These types of applications include Rhode Island Department of Transportation projects and Special Exception applications with previously advertised hearing dates.

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As to scheduling applications for hearings that have not yet completed the 30 day public comment period, we may schedule applications prior to this period, but are doing so conditionally, i.e. approval is contingent upon receiving no adverse comments. This is done to address critical timing issues such as federal funding disbursements and Department of Transportation project planning, for example.

#4. Necessary Action: Complete applications (including staff reports) for CRMC assents for projects that include coastal buffers must be submitted to the OCRM Coastal Programs Division at the same time they are sent to Council members before each meeting. When the Council issues assents for the projects, the assents themselves or other publicly available documentation should indicate the rationale for specific conditions and actions. The rationale must conform to the CRMC's regulations regarding issuance of variances. CRMC's cooperative agreement semi-annual performance reports on permit activity that are submitted to OCRM must summarize the number of assent applications involving buffer issues and how many of those assents were issued with conditions different than those recommended by staff. It is also suggested that the Council discuss whether it is satisfied with its current vegetated buffer policies and regulations, or whether it wishes to reconsider them.

Applications have been submitted to OCRM.

#5. Necessary Action: In conjunction with the Necessary Action under "Section 2. CRMC's Management Procedures," the Council's "Management Procedures" should be revised to provide clarity for the public and guidance to Council by specifying the role of staff recommendations in the Council's decision-making process.

While the subcommittee discussed the development of said guidance, it realizes that any guidance/procedures for specifying the role of staff recommendations in the Council's decision-making process will need to be balanced with factors that the Council must adhere to that may result in not following staff recommendations, such as the fact that since the Council acts as a semi-judicial body when making decisions, it hears applications in a fact-finding mode: at this time, the Council may uncover additional information that could affect an application's final decision that was not available to staff through the normal and typical application review.

#6. Program Suggestion: To the extent that staff time is available and working with the University of Rhode Island Sea Grant and/or other local experts, Council staff should conduct "training" sessions with individual or small (2-3) groups of Council members to familiarize or refresh them with the regulations that apply to assent applications. The length and content should be devised by staff, but these training sessions should be longer and more detailed than a briefing session. OCRM will assist with this initiative by identifying outside experts or providing other support as necessary.

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The Council will be undertaking this suggestion during FY06/07.

#7. Program Suggestion: The CRMC should reconvene the subgroup on submerged aquatic vegetation/eelgrass. The subgroup should recommend appropriate policy changes, taking into account the previous work of the subgroup and recommendations made by "Save The Bay." In addition, the CRMC's cooperative agreement semi-annual performance reports on permit activity must summarize the number of assent applications involving submerged aquatic vegetation issues, how many included staff recommendations to address the issue, and how many of those assents were issued with conditions different than those recommended by staff.

The staff met with Save The Bay, and while recent meetings have not been held, all have agreed to move the "survey" issue to formalization.

#8. Program Suggestion: The CRMC should work with the Rhode Island Legislature to establish a dedicated account for monies collected through the leasing of submerged lands (as well as other permitting fees), and should then develop regulations, a fee structure, and an implementation plan to address submerged lands leases. The CRMC should also consider its staffing need for the development and implementation of a submerged lands leasing program. OCRM will provide examples of lease programs in other coastal states, as requested.

The Council has begun to assess lease fees for the transfer of lighthouse properties to private owners. Talks are ongoing with the Rhode Island Marine Trades Association, the major group to be affected by such a program.

#9. Necessary Action: The CRMC must submit all overdue performance reports within six months of the date of these final evaluation findings. All performance reports, both those currently overdue and future reports, must include summary reports of programmatic progress being made to meet coastal management objectives through the use of state matching funds. Beginning with the first performance report due following the date of issuance of these final evaluation findings, reports must be submitted by the deadlines specified in the performance reporting guidelines attachment provided with each cooperative agreement award or provided by OCRM staff.

Completed as instructed. All reports up-to-date.

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Appendix C. People and Institutions Contacted

State of Rhode Island Representatives

| Name | Title | Affiliation |
|---------------------|---|---------------------------------|
| David Alves | Aquaculture Coordinator | CRMC |
| Ken Anderson | Supervising Civil Engineer | CRMC |
| Greg Baribault | Engineering Technician | CRMC |
| James Boyd | Coastal Policy Analyst | CRMC |
| Michael Deveau | Engineering Technician | CRMC |
| Sean Feeley | Environmental Scientist | CRMC |
| Janet Freedman | Coastal Geologist | CRMC |
| Grover Fugate | Executive Director | CRMC |
| Brian Goldman | Legal Counsel | CRMC |
| Dan Goulet | Dredging Coordinator | CRMC |
| Brian Harrington | Environmental Scientist | CRMC |
| Megan Higgins | Coastal Policy Analyst | CRMC |
| Richard Lucia | Principal Civil Engineer | CRMC |
| Tom Madeiros | Principal Civil Engineer | CRMC |
| Laura Miguel | Senior Environmental Scientist | CRMC |
| Dave Reis | Supervising Environmental Scientist | CRMC |
| Laura Ricketson | Public Educator and Information Coordinator | CRMC |
| Amy Silva | Environmental Scientist | CRMC |
| Tracy Silvia | Senior Environmental Scientist | CRMC |
| Michael Tikoian | Chair | CRMC |
| Jeff Willis | Deputy Director | CRMC |
| | | |
| Bob Ballou | Chief of Staff | RIDEM |
| Russ Chateaufneuf | | RIDEM Office of Water Resources |
| Terrence Maguire | Acting Assistant Director | RIDEM |
| W. Michael Sullivan | Director | RIDEM |
| | | |
| Pamela Pogue | State Floodplain Manager | EMA |
| | | |
| Mark Adelman | | Office of Governor Carcieri |
| Timothy Costa | Director of Policy | Office of Governor Carcieri |
| | | |
| Kelly Mahoney | | Rhode Island Senate |
| Kenneth Payne | Policy Director | Rhode Island Senate |

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Local Government Representatives

| Name | Title | Affiliation |
|--------------------|-------------------|-------------------------|
| William DePasquale | Planner | City of Warwick |
| Jeanne Boyle | Planning Director | City of East Providence |

Academic Representatives

| Name | Title | Affiliation |
|------------------|--------------------|------------------------------|
| Jennifer McCann | Program Leader | URI Coastal Resources Center |
| Sunshine Menezes | Research Associate | URI Coastal Resources Center |

Nongovernmental Organization Representatives

| Name | Title | Affiliation |
|----------------|---------------------------------|--------------------|
| Jane Austin | Director of Policy and Advocacy | Save The Bay |
| Curt Spaulding | Executive Director | Save The Bay |
| John Torgan | Narragansett Bay Keeper | Save The Bay |

Industry Representatives

| Name | Title | Affiliation |
|------------------|--------------|------------------------------|
| Michael Keyworth | | RI Marine Trades Association |
| Ken Kubic | | RI Marine Trades Association |
| Chris Ruhling | | RI Marine Trades Association |

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Appendix D. People Attending the Public Meeting

| Name | Affiliation |
|-------------------|----------------------------------|
| Jane Austin | Save The Bay |
| Cynthia Giles | Conservation Law Foundation |
| Neill Gray | CRMC |
| Paul Lemont | CRMC |
| Don Pryor | Brown University |
| Sandra Whitehouse | Rhode Island House Policy Office |

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Appendix E. OCRM's Response to Written Comments

OCRM received three sets of written comments regarding the Rhode Island Coastal Resources Management Program. Each set of comments is summarized below and followed by OCRM's response.

**B. Sachau
Florham Park, New Jersey**

Comment: In response to OCRM's "intent to evaluate" notice that appeared in the *Federal Register* on September 28, 2005, the commenter writes that it is strange that OCRM "would be concentrating on estuarine protection in Rhode Island when it is clear that the Gulf Coast is under water and needs complete estuarine protection from development." The commenter concludes by asking why OCRM is in Rhode Island in these times.

Response: As described in these findings, the Coastal Zone Management Act of 1972, as amended, requires OCRM to conduct periodic performance reviews or evaluations of all 34 federally-approved coastal management programs. OCRM works cooperatively with each coastal management program to schedule its periodic evaluation. A number of factors contribute to the scheduling decision, including the date of the last evaluation, the nature of recommendations contained in the last evaluation, the scheduling preferences of state coastal management program staff, and the availability of OCRM evaluation and program specialist staff. OCRM and RICRMP worked together to schedule the evaluation described in these findings.

Evaluating coastal programs is only one component of the work that OCRM performs under the Coastal Zone Management Act. The National Coastal Zone Management Program encourages coastal states and territories to work in partnership with the federal government to effectively manage the nation's coasts. It is the only program of its kind to address coastal issues in a comprehensive, integrated way. By leveraging federal and state matching funds, the program gives states the flexibility to design a program that accommodates their unique coastal challenges and legal framework. All of the Gulf Coast states have federally-approved coastal management programs, and OCRM worked closely with its state partners to provide additional support and technical assistance in the aftermath of the 2005 hurricanes.

**Representative Eileen Naughton
Rhode Island State House of Representatives
Providence, Rhode Island**

Comment: *2003 Evaluation Follow-up – Staffing Needs.* Representative Naughton notes that the Rhode Island Legislature has provided for both of the critical staffing needs identified in the 2003 final evaluation findings.

Response: This accomplishment is noted in Section IV-A-1 of these findings.

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Comment: *2003 Evaluation Follow-up – CRMC’s Management Procedures.* The 2003 final evaluation findings noted that applications were “not necessarily placed on the agenda in the order that each becomes ready for consideration.” Representative Naughton writes that several of her constituents have indicated that this is an ongoing problem.

Response: The 2003 final evaluation findings included the following Necessary Action:

Necessary Action: Development of Council meeting agendas and conduct of Council meetings must follow adopted Council procedures as articulated in the “CRMC Management Procedures.” This pertains to the public comment process, the order that the Council hears applications, and other relevant issues. The CRMC Management Procedures must address the order in which the Council hears applications. Within six months of the date of the Final Evaluation Findings, CRMC must review the “CRMC Management Procedures” and provide to OCRM a summary of proposed changes needed to meet the intent of this Necessary Action. The CRMC should consult with OCRM before making final changes to the Management Procedures.

The CRMC’s response to this Necessary Action is included in Appendix B of this document. The Council “discussed more detailed approaches that could further the existing process and meet the intent of this Necessary Action.” It is not clear whether these discussions yielded any tangible results, and these evaluation findings reflect Representative Naughton’s concerns in Section IV-G-1.

Comment: *2003 Evaluation Follow-up – Implementation of Coastal Buffer Zone Program and Regulations and Role of Staff Recommendations.* Representative Naughton writes that one of the Necessary Actions from the previous evaluation required the CRMC to revise its Management Procedures “to provide clarity for the public and guidance to Council by specifying the role of staff recommendations in the Council’s decision-making process.” She notes that there have been a number of cases where CRMC ignored staff recommendations and cites the Investco decision as the most prominent example.

Response: In addition to the Necessary Action summarized in Representative Naughton’s comments, another 2003 Necessary Action noted that, “when the Council issues assents for projects, the assents themselves or other publicly available documentation should indicate the rationale for specific conditions and actions. The rationale must conform to CRMC’s regulations regarding issuance of variances.” The issue behind these Necessary Actions was not that Council, at times, makes decisions contrary to staff recommendations. The Council clearly has the prerogative to do so. Instead, the issue was the Council’s failure to provide clear, compelling justification for such decisions denoting how the final decision upholds CRMC’s regulations regarding variances. Section IV-G-1 of these findings reflects such concerns and provide several recommendations to address this issue.

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Comment: *2003 Evaluation Follow-up – Training Sessions.* Representative Naughton writes that the use of training sessions was also suggested by the 2003 review team to familiarize the Council with its regulations. She notes that although the legislation did not pass for the reorganization of the CRMC (required based on the passage of the separation of powers constitutional amendment), the concept of mandatory training sessions for members of boards, commissions of councils has been added to the other boards that have already been reorganized.

Response: A discussion of the CRMC’s need for training is included in Section IV-G-1 of these findings.

Comment: *New Legislative Mandates – Marine Resources Development Plan (MRDP).* Representative Naughton provided her formal comments that she submitted to CRMC during the public comment period on the MRDP. Her two main concerns are: (1) the goals are not specific and are not supported by adequate performance measures or implementation programs; and (2) the MRDP as drafted includes goals that encroach on the statutory authority of other agencies.

Response: A discussion of the MRDP is found in Section IV-F-2 of these findings. In response to Representative Naughton’s concerns, the CRMC notes that the MRDP relies on individual Special Area Management Plans (SAMPs) to set targets and goals. Additionally, the Council notes that SAMPs are inherently integrated management tools that: (1) account for existing authorities; and (2) develop management strategies to ensure efficiency in carrying out the plan’s objectives.

Comment: *New Legislative Mandates – The Coordination Team.* Representative Naughton writes that the Coordination Team was created after the work of the Bay Trust Study Commission recognized the need for the CRMC to coordinate better with the other state entities that are charged with protecting the environment and promoting sustainable economic development. She notes that the team has made significant progress particularly in the area of coordinating environmental monitoring programs and establishing a program that will interface environmental monitoring with economic monitoring of businesses. Representative Naughton concludes that CRMC staff members have been active and helpful participants in the work of the team.

Response: No response necessary.

Comment: *The Future of the CRMC.* Representative Naughton writes that the passage of legislation during the 2004 session gave the CRMC additional planning and policy development authority. She notes that in the past, the Council has spent a great deal of time on applications – especially dock applications – that could be reviewed by staff. Representative Naughton concludes that that the CRMC should consider authorizing staff to decide the majority of dock applications, thus allowing the Council to spend more time on planning and policy.

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Response: Representative Naughton's comments are reflected in the discussion of the potential long-term role of the CRMC in Section IV-F-2 of these findings.

Donald Pryor
Brown University
Providence, Rhode Island

Comment: *Improve Openness and Transparency.* Mr. Pryor has concerns about the openness and transparency of the CRMC. He provides two pages of specific examples related to the Greenwich Bay SAMP, Metro Bay SAMP and Marine Resources Development Plan to illustrate his concerns.

Response: The evaluation team has shared Mr. Pryor's specific concerns regarding openness and transparency of the CRMC with the state. A discussion of the need to improve public participation in the RICRMP is included in Section IV-G-2 of these findings.

Comment: *Clarify Authorities, Responsibilities and Expectations.* Mr. Pryor also provides two pages of specific examples relating to management plans, performance measures, plan adoption and contracts to illustrate his perspective that CRMC authorities, responsibilities and expectations require clarification.

Response: The evaluation team has shared Mr. Pryor's specific concerns regarding the CRMC's authorities, responsibilities and expectations with the state.