



U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office for Coastal Management  
Silver Spring Metro Center, Building 4  
1305 East-West Highway  
Silver Spring, Maryland 20910

Grover Fugate, Executive Director  
Rhode Island Coastal Resources Management Council  
Oliver H. Stedman Government Center  
4808 Tower Hill Road, Suite 3  
Wakefield, RI 02879

DEC 7 2018

Dear Mr. Fugate:

Thank you for the Rhode Island Coastal Resource Management Council's (CRMC's) September 20, 2018, (received October 2, 2018)<sup>1</sup> request for approval of changes to the Rhode Island Coastal Resources Management Program (RICRMP). The proposed changes would add a new Geographic Location Description (GLD) in a portion of federal waters for authorizations related to offshore wind facilities and associated cables. You requested concurrence that these changes are routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 CFR part 923, subpart H, and the National Oceanic and Atmospheric Administration's (NOAA's) Office for Coastal Management's *Program Change Guidance (July 1996)*.

Based on our review of the submission, we concur that the new GLD and changes to Rhode Island's Federal Consistency List are RPCs and approve the changes as part of the federally-approved RICRMP. Please note that these changes will only take effect after notice of this approval is published pursuant to 15 CFR § 923.84(b)(4).<sup>2</sup> Please include in the public notice a description of the approved changes, and send a copy of the notice to the Office for Coastal Management for our records.

### **CHANGES APPROVED**

See the enclosed revised list of federal actions subject to CZMA review by the RICRMP, which includes the added GLD and activities within the added GLD subject to review by the RICRMP.

### **CLARIFICATION**

As a point of clarification, we note that the GLD we approve today (the 2018 GLD) is not an expansion of the existing GLD approved in 2011 (the 2011 GLD). The 2018 GLD is separate and distinct from the 2011 GLD. Unlike the 2011 GLD, within which a variety of federal actions are subject to CZMA review, only authorizations made by the Department of the Interior's Bureau of Ocean Energy Management (BOEM) for wind energy facilities and associated cables

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<sup>1</sup> In accordance with CZMA § 306(e), a decision on the request was originally due on November 1, 2018, subject to extension. The review was extended to December 7, 2018.

<sup>2</sup> See also the Office for Coastal Management's *Addendum to the July 1996 Program Change Guidance* (November 2013), <https://coast.noaa.gov/czm/consistency/policy/>.

are included for review within the 2018 GLD. The state has not requested under the 2018 GLD to review any activity, including activities associated with cables on federal submerged lands, authorized by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act. Activities, including cables on federal submerged lands, authorized by the Army Corps under Section 10 of the Rivers and Harbors Act, are included for review for the 2011 GLD.

There are no qualifications for this RPC.

### **PUBLIC AND FEDERAL AGENCY COMMENTS**

BOEM provided comments and suggested edits on the state's analysis to the CRMC. Although BOEM is supportive of these changes, BOEM disagreed with the RICRMP's characterization of BOEM's mitigation efforts and noted that the RICRMP's claim regarding BOEM's reliance on the RICRMP for its expertise in mitigation with the commercial fishing industry was inaccurate. The BOEM comments also stated that the CRMC analysis presumes certain impacts from offshore wind prior to conducting a full environmental impact statement. BOEM also stated that the CRMC may have enhanced its effects arguments by including areas within the 2018 GLD that are not being proposed for wind energy development.

The concerns BOEM notes in its comment letter do not affect the approvability of this RPC. While BOEM takes issue with how the RICRMP characterized BOEM's mitigation efforts and its relationship with the RICRMP regarding mitigation, the fact remains that the RICRMP has sufficiently demonstrated that the installation and operation of wind turbines throughout the 2018 GLD area may have reasonably foreseeable coastal effects on Rhode Island's commercial fishing industry.

The Office for Coastal Management did not receive any other comments during the public comment period regarding this program change.

Thank you for your cooperation in this review. Please contact Allison Castellan at (240) 533-0799 if you have any questions. For future correspondence regarding this program change, please refer to the file number assigned to this action, RI-2018-1.

Sincerely,

GORE.JOELLE.YVO  
NNE.1365869282

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Joelle Y. Gore, Chief  
Stewardship Division

## **RHODE ISLAND'S LISTED FEDERAL ACTIONS**

**TABLE 1 – FEDERAL AGENCY ACTIVITIES**

A federal agency must submit to a coastal state a consistency determination or negative determination for any of the following activities when proposed by a federal agency. A consistency determination shall be submitted to the state whenever an activity proposed by a federal agency has reasonably foreseeable effects on coastal uses or resources of the Rhode Island coastal zone regardless of whether the activity is listed below or whether the activity occurs in the coastal zone.

### **Activities taking place within any coastal community**

- Filling, removing, or grading of shoreline features
- Residential, commercial, industrial, and recreational structures
- Recreational boating facilities
- Mooring and anchoring of houseboats and floating businesses
- Treatment of sewage and stormwater
- Construction of shoreline protection facilities
- Energy-related activities and structures
- Dredging and dredge material disposal
- Filling in tidal waters
- Aquaculture
- Mosquito Ditching
- Construction of public roadways, bridges, parking lots, railroad lines and airports
- Maintenance of structures
- Alterations to freshwater flows to tidal waters and water bodies and coastal ponds

### **Activities taking place anywhere within the state**

- Power generating plants (excluding facilities of less than a 40-megawatt capacity)
- Petroleum storage facilities (excluding storage facilities of less than 2,400-barrel capacity)
- Chemical or petroleum processing facilities
- Minerals extraction
- Sewage treatment and disposal facilities (excluding individual sewage disposal systems)
- Solid waste disposal facilities
- Desalination plants

### **Management Plans**

- Fisheries Management Plans developed under the Magnuson Fisheries Conservation and Management Act
- Oil Spill Response Plans

### **Miscellaneous Federal Agency Activities**

- Land acquisition, transfer and disposal
- Site selection plans for ocean disposal of dredged materials
- Revisions to Flood Insurance Study and National Flood Insurance maps

### **Department of Homeland Security -U.S. Coast Guard**

- Establishment of new or changes to existing anchorages pursuant to 33 U.S.C. § 471.
- Establishment of new or changes to existing vessel traffic services pursuant to 33 U.S.C. § 1223.

**TABLE 2 – FEDERAL LICENSE OR PERMIT ACTIVITIES (FL&P ACTIVITY)**  
(Revised December 2018)

A consistency certification is required for federal authorizations for the proposed activities listed below when the activities occur in the Rhode Island coastal zone. As indicated below, a consistency certification is also required for certain federal authorizations for activities proposed in two areas of federal waters designated as geographic location descriptions (GLD 2011 and GLD 2018).

*\*A consistency certification is required for these types of federal authorizations for activities proposed in the coastal zone and the GLD as approved in 2011.*

*\*\*A consistency certification is required for these types of federal authorizations for activities proposed in the coastal zone and both GLDs as approved in 2011 and 2018.*

**Department of Defense - Army Corp of Engineers**

- Permits for the disposal of dredged materials into the waters of the U.S., pursuant to the Federal Water Pollution Control Act (“Clean Water Act”), section 404 (33 U.S.C. § 1344).
- Permits for the construction of dams, dikes or ditches across navigable waters, or obstruction or alteration of navigable waters required under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §§ 401, 403).\*
- Permits and licenses to regulate transportation of dredged material for the purpose of dumping it in navigable waters pursuant to Sec. 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. §§ 1413, 1414) (“Ocean Dumping Act”).
- Permits authorizing artificial islands or fixed structures on the outer continental shelf pursuant to section 4(F) of the Outer Continental Shelf Lands Act and amendment (44 U.S.C. § 1333).\*
- Permits authorizing the temporary occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S. pursuant to section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 408).\*
- Approvals of plans for improvements made at private expense under Army Corps of Engineers supervision pursuant to the Rivers and Harbors Act of 1899 (33 U.S.C. § 565).\*

**Department of Homeland Security -U.S. Coast Guard**

- Approval of plans for the construction and modification of bridges, causeways over navigable waters pursuant to 33 U.S.C. §§ 401, 491 - 507 and 525 – 534\*
- Approvals of private aids to navigation pursuant to 14 U.S.C. § 83.

**Environmental Protection Agency**

- NPDES (National Pollution Discharge Elimination System) permits and other permits for Federal installations, discharges in contiguous zones and ocean waters, sludge runoff and aquaculture permits pursuant to §§ 401, 402, 403, 405, and 318 of the Federal Water Pollution Control Act of 1972 (“Clean Water Act”) (33 U.S.C. §§ 1341, 1342, 1343, and 1328).\*
- Permits and authorization for underground injections pursuant to section 1421 of the Safe Drinking Water Act (42 U.S.C. Chapter 82).
- Permit sources and waivers of compliance allowing extensions of time to meet air

- quality standards under section 112(c)(1) of the Clean Air Act of 1972, as amended.
- Exemptions granted under the Clean Air Act for stationary sources.
- Permits required under the Resource Conservation and Recovery Act of 1980 and its amendments for facilities that store, treat or dispose hazardous wastes.
- Permits required pursuant to section 405 of Clean Air Act of 1972, as amended.
- Permits for the transportation of dumping material other than dredged material in navigable waters pursuant to section 102 of the Marine Protection, Research and Sanctuaries Act of 1972.
- Aquaculture pursuant to section 318 of the Marine Protection, Research and Sanctuaries Act of 1972.\*

### **Department of the Interior**

- Permits and licenses for drilling and mining and related facilities on public lands.
- Permits required for pipelines crossing federal lands, including OCS lands, and associated activities pursuant to the OCS Lands Act (43 U.S.C. § 1334) as well as 43 U.S.C. § 931(c).\*
- Permits to drill, rights-of-use, rights-of-way, and easements for construction and maintenance of pipelines, gathering and flow lines and associated structures pursuant to 43 U.S.C. § 1334, explorations and development plans, and any other permits or authorizations granted for activities described in detail in OCS exploration, development, and production plans.\*
- Endangered species permits pursuant to the Endangered Species Act (16 U.S.C. § 1539).
- Permits related to the taking of marine mammals pursuant to the Marine Mammals Protection Act (16 U.S.C. § 1361-1407).
- Permits for the granting of outer continental shelf corridor rights-of-way (43 U.S.C. § 931(c)).
- Issuance or approval of leases, permits, easements, rights-of-way, exploration plans, development plans, production plans, and other authorizations, as appropriate, pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. § 1331 et. seq.) as amended by the Energy Policy Act of 2005 (42 U.S.C. § 15801 et. seq.) for the construction, operation, maintenance and/or support activities related to OCS energy development.\*
  - i. Any offshore wind facilities of a permanent nature, regardless of size,\*\* and
  - ii. Underwater cables.\*\*

### **Nuclear Regulatory Commission**

- Permits and approvals related to the construction and operation of commercial nuclear reactors pursuant to the Atomic Energy Act of 1954 (including de-licensing activities).

### **Department of Energy, Federal Energy Regulatory Commission:**

- Licenses, renewals, and amendments to licenses for non-Federal hydroelectric projects and primary transmission lines under sections 3 (11), 4 (e) and 15 of the Federal Power Act (16 U.S.C. §§ 796 (11), 797, and 808).\*
- Orders for interconnection of electric transmission facilities under section 202 (b) of the Federal Power Act (16 U.S.C. §§ 824 (a) (b)).\*
- Certificates for the construction and operation of interstate natural gas pipeline facilities, including both pipelines and terminal facilities, under section 7 (c) of the

- Natural Gas Act (15 U.S.C. § 717 f(c)).\*
- Permission and approval for the abandonment of natural gas pipelines under section 7 (b) of the Natural Gas Act (15 U.S.C. § 717 f (b)).\*
  - Permits related to the regulation of gas pipelines and the licensing of import or export of gas pursuant to the Natural Gas Act (15 U.S.C. §§ 717, 717(b)).\*

**Department of Transportation, Maritime Administration**

- Permits and licenses for offshore LNG terminals and other deep water port facilities issued by MARAD pursuant to sections 4 and 5 of the Deepwater Port Act of 1974, as amended (33 U.S.C. § 1501).\*

## GEOGRAPHIC LOCATION DESCRIPTION (2011)

Rhode Island's 2011 GLD for federal waters includes the area described and evaluated as part of the Rhode Island Ocean Special Area Management Plan (SAMP). This area includes the federal portions of Block Island Sound and Rhode Island Sound as well as portions of the Atlantic Ocean (*see* Figure 1 below). Specifically, the 2011 GLD is a polygon starting from the seaward limit of Rhode Island state jurisdiction at 3 nm from the shoreline and extending seaward to 30nm from the mainland, and approximately 45nm wide between the seaward boundaries with Massachusetts and Connecticut. The western edge of the 2011 GLD starts off at a point southeast of Watch Hill Point at [-71.7918916, 41.2730533] and follows the Rhode Island/ Connecticut and Rhode Island/New York waters border South-Southwest to [-71.8053126, 41.0368549], then extends out into federal waters South-Southeast to [-71.7830932, 40.9476722]. The southern edge starts at this point, follows an arc out to [-71.5169896, 40.9122479], and then follows a line East to [-70.8489868, 41.0276451] in federal waters. The eastern edge starts at this point and then follows a line North to the Massachusetts state waters boundary at [-70.8669827, 41.2127751], then follows the Massachusetts state/federal seaward boundary to the seaward extent of the Rhode Island/Massachusetts boundary at [-71.0910046, 41.4370765]. *See* Figure 1 below for a precise map of the 2011 GLD. If the precise location of a project within the 2011 GLD is of concern, the CRMC has on file the thousands of geographic coordinates that are the basis for the 2011 GLD boundary, and can make these available on a project by project basis.

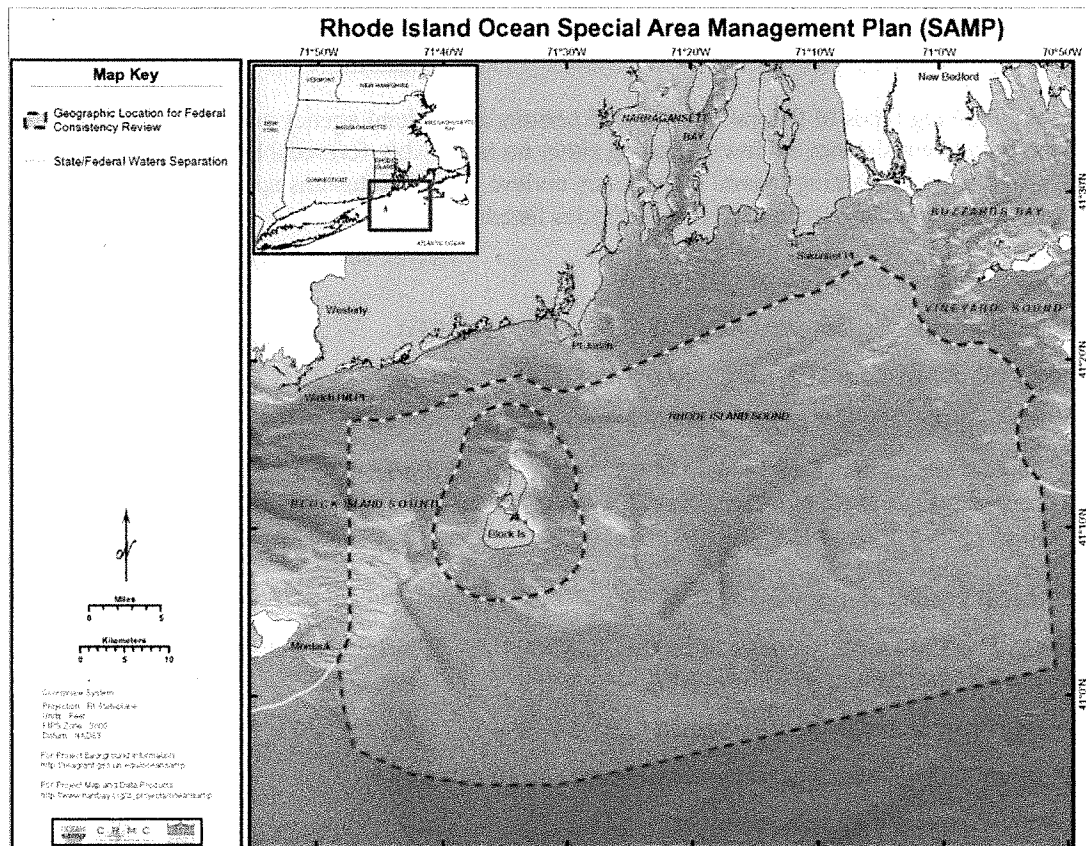


Figure 1. Boundary for the 2011 Geographic Location Description.

### **Thresholds and Exclusions:**

Federal consistency review of federal license or permit activities is *only* sought for the following type of projects proposed for the GLD. The following thresholds apply to all of the licenses and permits listed in Table 2:

- i. any offshore wind facilities, wave generation device(s), and tidal or ocean current device(s) of a permanent nature, regardless of size;
- ii. offshore LNG platforms (1 or more);
- iii. artificial reefs (1/2 acre footprint and at least 4 feet high), except for projects of a public nature whose primary purpose is habitat enhancement
- iv. Underwater cables;
- v. Mining and extraction of minerals, including sand and gravel;
- vi. Aquaculture projects of any size;
- vii. Dredged material disposal; and
- viii. Meteorological towers deployed in lease blocks within the Area of Mutual Interest (AMI area) between Rhode Island and Massachusetts where mobile gear fishing activity is prevalent (OCS lease blocks 6816, 6817, 6864, 6865, 6866, 6867, 6914, 6915, 6916, 6964, 6965, 6966, 6967, 6968, 7014, 7015, 7016, 7017, 7018, 7019, 7020, 7021, 7064, 7065, 7066, 7067, 7068, 7069, 7070, 7071, 7114, 7115, 7116, and 7117; see Figure 2).

In addition, the following types of federal licenses and permits and federal agency activities shall be *excluded* from federal consistency review as having either no reasonably foreseeable coastal effect or insignificant effects not warranting federal consistency review. These exclusions apply to all of the federal licenses and permits and federal agency activities listed in Table 1 and 2:

#### **Excluded federal licenses and permits:**

1. Regattas and marine parades pursuant to 33 C.F.R. § 100 (USCG).
2. Establishment of private aids to navigation.
3. Scientific sampling (benthic, pelagic, and water column).
4. Meteorological towers deployed in lease blocks within the AMI area where mobile gear fishing is not prevalent (OCS lease blocks 6764, 6765, 6766, 6814, 6815, 6917, 6918, 6919, 6969, 6970, and 6971; see Figure 2).

#### **Excluded federal agency activities:**

1. Regulated navigation areas pursuant to 33 C.F.R. § 110 (USCG), excluding changes to vessel traffic services pursuant to 33 U.S.C. § 1223.
2. Drawbridge operation regulations pursuant to 33 C.F.R. § 117 (USCG).
3. Establishment and maintenance of public (federal) aids to navigation.
4. Surface and submerged military activities.
5. Temporary speed zones or navigation modifications due to marine mammals.



6. Temporary federal mooring or anchorage areas, excluding permanent such changes pursuant to 33 U.S.C. § 471.

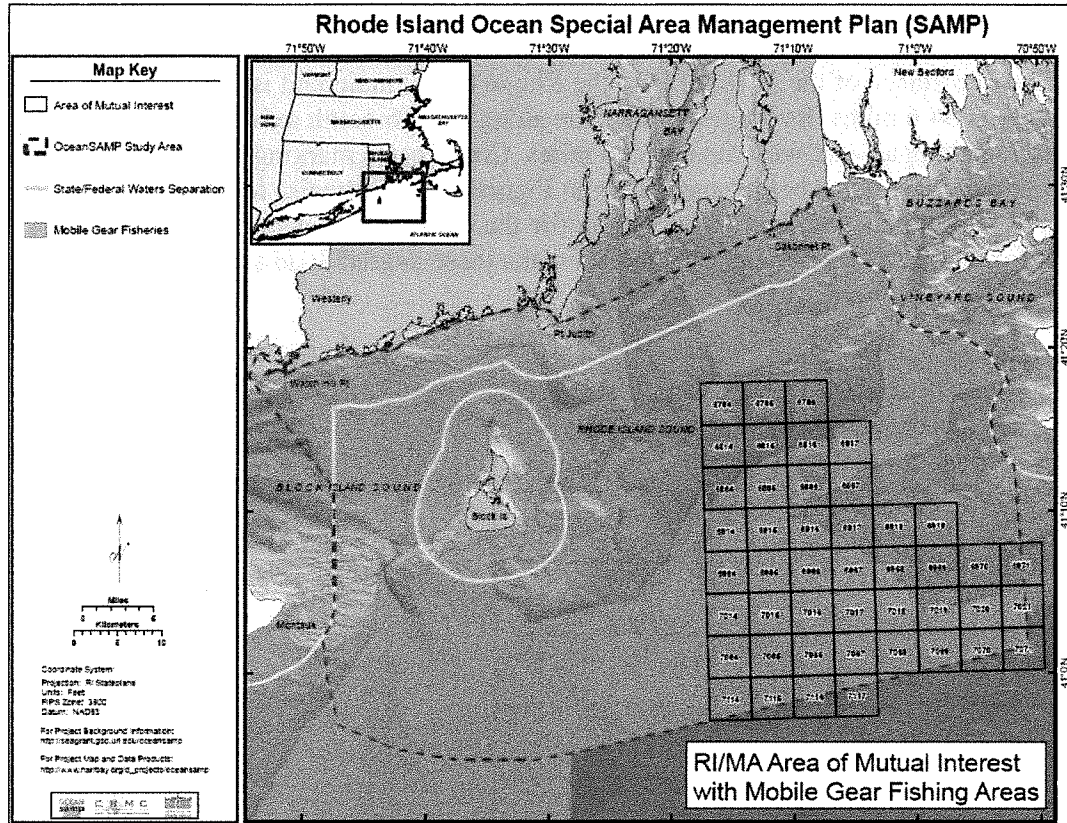


Figure 2. Mobile Gear Fishing Areas in the Area of Mutual Interest Between Rhode Island and Massachusetts.

### Geographic Location Description (2018)

Rhode Island’s 2018 GLD includes an area of federal waters that is contiguous with Rhode Island’s existing 2011 GLD as shown in Figure 3. This area encompasses 797 square miles of the Atlantic Ocean in federal waters south of Martha’s Vineyard and includes BOEM OCS Lease Blocks OCS-A 0500 and OCS-A 0501 (Bay State Wind and Vineyard Wind, respectively). The 2018 GLD’s northernmost limit is the seaward extent of Massachusetts state jurisdiction (3 miles offshore). The closest distance of the 2018 GLD to the Rhode Island mainland is 23.2 miles and the furthest distance is 54.6 miles. Its longest dimension along a north-south axis is 36.5 miles, and its longest dimension along an east-west axis is 33.6 miles. Coordinates marking key points around the boundary’s perimeter are listed below and shown in Figure 3. If the precise location of a project within the 2018 GLD is of concern, the CRMC has on file the thousands of geographic coordinates that are the basis for the 2018 GLD boundary, and can make these available on a project by project basis.

#### Coordinates for 2018 GLD

<b>Coordinates in decimal degrees for the thirteen (13) red points shown in Figure 3</b>	
-70.8669701 41.2126455	-70.4300000 41.2660000
-70.4289022 41.0960287	-70.3717621 41.0967233
-70.3701911 41.0210765	-70.7198643 40.7461532
-70.7482793 40.7457261	-70.7508329 40.8429731
-71.0069121 40.8388010	-71.0026895 40.6983530
-71.0452743 40.6976061	-71.0543644 40.9924959
-70.8489868 41.0276451	

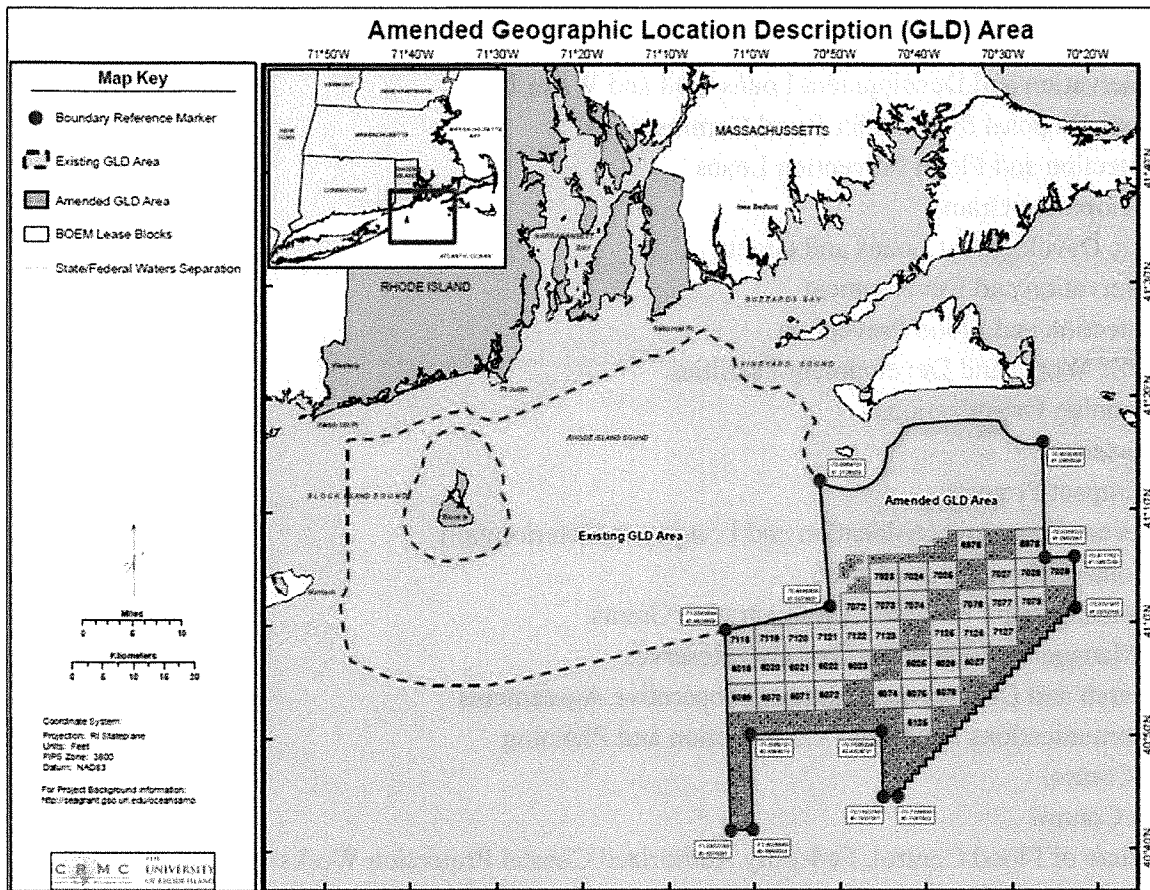


Figure 3. Boundary for the 2018 Geographic Location Description. The 2018 GLD is gray-shaded and includes BOEM OCS Lease Blocks shown in context with Rhode Island’s existing 2011 GLD.

**Thresholds and Exclusions:**

Federal consistency review of federal license or permit activities is *only* sought for the following activities proposed within the 2018 GLD that are permitted by BOEM – no authorizations by other federal agencies are included. The following thresholds apply to the BOEM licenses and permits listed in Table 2:

- i. Any offshore wind facilities of a permanent nature, regardless of size,\*\* and
- ii. Underwater cables.\*\*

The CRMC will exclude federal consistency review for floating meteorological buoys only (e.g., Fugro SEAWATCH Wind LiDAR metocean buoy) within the 2018 GLD.

### TABLE 3 – FEDERAL ASSISTANCE

Resource Conservation and Development Loans Soil and Water Loans  
Water and Waste Disposal Systems for Rural Communities  
Watershed Protection and Flood Prevention Loans  
Industrial Development Grants  
Rural Economic Development Loans and Grants  
Resource Conservation and Development  
Watershed Protection and Flood Prevention  
Grants for Public Works and Development Facilities  
Support for Planning Organizations  
Technical Assistance  
Public Works Impact Projects  
Sudden and Severe Economic Dislocation and Long-term Deterioration  
Inter-jurisdictional Fisheries Act of 1986  
Coastal Zone Management Program Administrative Grants  
Coastal Zone Management Estuarine Research Reserves  
Fisheries Research and Development Grants/Cooperative Agreements  
Public Telecommunications Facilities - Construction and Planning  
Aquatic Plant Control  
Beach Erosion Control  
Emergency Rehab of Flood Control, Federally Authorized Coastal Protection Works  
Flood Plain Management Services  
Protection of Essential Highways, Highway-Bridge Approaches, and Public Works  
Flood Control Projects  
Navigation Projects  
Snagging and Clearing for Flood Control  
Protecting, Clearing and Straightening Channels  
Planning Assistance to States  
Emergency Advanced Measures for Flood Prevention  
Joint Military/Community Comprehensive Land Use Plans  
Housing Development Grants  
Anadromous Fish Conservation  
Sport Fish Restoration  
Wildlife Restoration  
Endangered Species Conservation  
National Water Resources Research Program  
Historic Preservation Fund Grants-in-Aid  
Outdoor Recreation - Acquisition, Development and Planning  
Disposal of Federal Surplus Real Estate Property for Parks, Recreation and Historic Monuments  
Airport Improvement Program  
Highway Planning and Construction  
Development and Promotion of Ports and Intermodal Transportation  
Construction Grants for Wastewater Treatment Works

Water Pollution Control - State and Interstate Program Support  
Water Quality Management Planning  
Business and Industrial Loans  
Emergency Community Water Assistance Grants  
Cooperative Forestry Assistance  
State and Local Economic Development Planning  
Mortgage Insurance, Rental and Cooperative Housing for Moderate Income and Elderly, Market Interest Rate  
Mortgage Insurance, Rental Housing for the Elderly, Urban Renewal Areas  
Public Indian Housing  
Public Indian Housing, Comprehensive Improvement Assistance Program  
Urban Mass Transportation Capital Improvement Grants, Capital and Operating Assistance Formula Grants  
Public Transportation for Non-urbanized Areas  
State Underground Water Source Protection  
Water Pollution Control, Lake Restoration Cooperative Agreements  
Environmental Protection Consolidated Grants-Program Support  
Consolidated Pesticides Compliance Monitoring and Program Cooperative Agreement  
Toxic Substance Compliance Monitoring Program  
Hazardous Waste Management State Program Support  
State Underground Storage Tanks Program  
Underground Storage Tanks Trust  
Solid Waste Management Assistance  
Pollution Prevention Incentives for States  
Conservation Reserve Program  
Cooperative Extension Service  
Sea Grant Support  
Marine Sanctuary Program  
Military Construction, Army National Guard  
Military Base Re-Use Studies and Community Planning  
Surplus Property Utilization  
Community Development Block Grants/Entitlement Grants and State's Program  
Rental Housing Rehabilitation  
Indian Loans and Grants-Economic Development  
Environmental Contaminants  
Boating Safety Financial Assistance  
Disposal of Federal Surplus Real Estate Property  
Priorities and Allocations for Energy Programs and Projects  
Nuclear Waste Disposal Siting  
Environmental Restoration