

RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Coastal Resources Management Council (CRMC)

RULE IDENTIFIER: 650-RICR-20-05-11

REGULATION TITLE: Coastal Resources Management Program – Ocean Special Area Management Plan – Chapter 11 - Policies of the Ocean SAMP

RULEMAKING ACTION: Direct Final

Direct Final: If no formal objection is received on or before **June 11, 2018**, the Coastal Resources Management Council will file the amendment without opportunity for public comment.

TYPE OF FILING: Amendment

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public Notice Date: May 11, 2018

End of Comment Period: June 11, 2018

SUMMARY OF PROPOSED RULE: In 2016, the legislature passed an amendment to R.I. Gen. Laws § 42-35-5(b) that required the Secretary of State to oversee the publication of an updated uniform code of state regulations. The purpose of this proposed rule is to reformat Chapter 11 – Policies of the Ocean SAMP of the Ocean Special Area Management Plan (SAMP) and codify the rules in accordance with the new uniform code of state regulations, called the Rhode Island Code of Regulations (“RICR”). There are no substantive changes to the existing regulations.

CRMC will concurrently issue a guidance document in accordance with R.I. Gen. Laws § 42-35-1(9) and 42-35-2.12, titled “Ocean SAMP guidance document”, to provide helpful information to assist with compliance with this regulation [650-RICR-20-05-11]. The Ocean SAMP guidance document contains the findings, scientific data and other information from the other chapters of the Ocean SAMP and can be found by accessing the CRMC’s guidance document index on the CRMC’s webpage [www.crmc.ri.gov] or the Secretary of State’s guidance document index.

In short, the proposed rule contains the regulatory components of Chapter 11 – Policies

of the Ocean SAMP, codified in the new RICR format required by the Secretary of State's new uniform code. Please note that all regulatory requirements and prohibitions remain in the proposed rule and will continue to be enforced.

COMMENTS INVITED: All interested parties are invited to submit written comments concerning the proposed regulations by **June 11, 2018** to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS: Mailing Address: Coastal Resources Management Council, Stedman Government Center, 4808 Tower Hill Road, Wakefield, RI 02879. ATTN: Grover J. Fugate, CRMC Executive Director.

Email Address: cstaff1@crmc.ri.gov

WHERE COMMENTS MAY BE INSPECTED: Mailing Address: Coastal Resources Management Council, Stedman Government Center, 4808 Tower Hill Road, Wakefield, RI 02879.

FOR FUTHER INFORMATION CONTACT: ATTN: James Boyd, Coastal Policy Analyst, Coastal Resources Management Council, Stedman Government Center, 4808 Tower Hill Road, Wakefield, RI 02879., Phone 401-783-3370; Email: jboyd@crmc.ri.gov

SUPPLEMENTARY INFORMATION: None

Authority for This Rulemaking: Rhode Island General Laws Chapter 46-23 and Coastal Zone Management Act 16 U.S.C. §§ 1451 through 1464

Regulatory Findings: In the development of the proposed adoption consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment: CRMC proposes to amend and reformat Chapter 11 – Policies of the Ocean SAMP contained within 650-RICR-20-05-11 as shown below to comply with the 2016 revisions to the Administrative Procedures Act. Additionally, the CRMC is amending the definition of “large-scale offshore developments” in § 11.3(H) of this Part to include outer continental shelf (OCS) exploration, development, and production plans to be consistent with existing CRMC authority to review such activities pursuant to the federal Coastal Zone Management Act (CZMA), 16 USC §§ 1451 through 1464, and the CZMA's implementing regulations at 15 C.F.R. Part 930. OCS

exploration, development, and production plans are a listed activity within the CRMC's Federal Consistency Manual for which the CRMC has existing federal consistency review authority. See: <https://coast.noaa.gov/czm/consistency/media/ri.pdf>.

The proposed amended regulations constitute the RICR regulatory Chapter 11 – Policies of the Ocean SAMP including the enforceable policies and standards. For additional context and full understanding of this Part, please reference the additional chapters and text of the federally-approved Ocean SAMP available on the CRMC web site (www.crmc.ri.gov) for further information, including all other federally-approved RICRMP plans. The additional chapters and text of the Ocean SAMP provide the CRMC's findings and scientific data that form the basis and purpose of this Part (See: "Ocean SAMP guidance document"). The other chapters of the Ocean SAMP should be employed in interpreting R.I. Gen. Laws § 46-23-1, *et seq.*

Electronic copies of the proposed rulemaking are available at the Secretary of State and CRMC's website at the following web addresses: <http://sos.ri.gov/ProposedRules/> and <http://www.crmc.ri.gov/>

650-RICR-20-05-11

TITLE 650 – COASTAL RESOURCES MANAGEMENT COUNCIL

CHAPTER 20 – COASTAL MANAGEMENT PROGRAM

SUBCHAPTER 05 – OCEAN SPECIAL AREA MANAGEMENT PLAN

PART 11 – Policies of the Ocean SAMP

11.1 Authority

- A. Pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 through 1466) and R.I. Gen. Laws Chapter 46-23 the Coastal Resources Management Council is authorized to develop and implement special area management plans.
- B. [The regulations herein constitute a RICR regulatory component of the Ocean Special Area Management Plan \(SAMP\) Chapter 11 - The Policies of the Ocean SAMP, and must be read in conjunction with the other RICR regulatory components and chapters of the Ocean SAMP for the full context and understanding of the CRMC's findings and policies that form the basis and purpose of these regulations. The other RICR regulatory components and chapters of the Ocean SAMP should be employed in interpreting the regulations herein and R.I. Gen. Laws § 46-23-1, et seq.](#)

11.2 Purpose

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

11.3 Definitions

- A. "Certified verification agent" or "CVA" means an independent third-party agent that shall use good engineering judgment and practices in conducting an independent assessment of the design, fabrication and installation of the facility.

- B. “Construction and operations plan” or “COP” means a plan that describes the applicant’s construction, operations, and conceptual decommissioning plans for a proposed facility, including the applicant’s project easement area.
- C. “Ecosystem based management” or “EMB” means an integrated approach to management that considers the entire ecosystem, including humans. The goal of EBM is to maintain an ecosystem in a healthy, productive and resilient condition that provides the services humans want and need.
- D. “Enforceable policy” means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.
- E. “Fishermen’s Advisory Board” or “FAB” means an advisory body to the Council that shall be comprised of up to eighteen (18) total members, to include the following:
 - 1. Up to two (2) members representing each of the following six Rhode Island fisheries: bottom trawling; scallop dredging; gillnetting; lobstering; party and charter boat fishing; and recreational angling; and
 - 2. Up to six (6) members, who are Massachusetts fishermen who fish in the Ocean SAMP area to include four commercial fishermen and two recreational fishermen.
- F. “Geographic location description” or “GLD” means a geographic area in federal waters, consistent with the Ocean SAMP study area, where certain federal agency activities, licenses, and permit activities pursuant to 15 C.F.R. Part 930 Subparts D and E will be subject to Rhode Island review under the Coastal Zone Management Act (CZMA) federal consistency provisions.
- G. “Habitat Advisory Board” or “HAB” means an advisory body to the Council that shall be comprised of nine members, five representing marine research institutions with experience in the Ocean SAMP study area and surrounding waters, and four representing environmental non-governmental organizations that maintain a focus on Rhode Island.
- H. “Large-scale offshore developments” means:
 - 1. offshore wind facilities (5 or more turbines within 2 km of each other, or 18 MW power generation);
 - 2. wave generation devices (2 or more devices, or 18 MW power generation);
 - 3. instream tidal or ocean current devices (2 or more devices, or 18 MW power generation);

- 4. offshore LNG platforms (1 or more);
 - 5. artificial reefs (1/2 acre footprint and at least 4 feet high); [and](#)
 - 6. [outer continental shelf \(OCS\) exploration, development, and production plans](#), except for projects of a public nature whose primary purpose is habitat enhancement.
- I. “Marine spatial planning” or “MSP” means the process by which ecosystem-based management is organized to produce desired outcomes in marine environments.
 - J. “Site assessment plan” or “SAP” means a pre-application plan that describes the activities and studies the applicant plans to perform for the characterization of the project site.

11.4 Introduction (formerly § 1100)

- A. The Rhode Island General Assembly mandates Rhode Island Coastal Resources Management Council (CRMC) to preserve, protect, develop, and where possible, restore the coastal resources of the state for this and succeeding generations through comprehensive and coordinated long range planning and management designed to produce the maximum benefit for society from these coastal resources; and that the preservation and restoration of ecological systems shall be the primary guiding principle upon which environmental alteration of coastal resources will be measured, judged and regulated [R.I. Gen. Laws § 46-23-1(a)(2)]. To more effectively carry out its mandate, the CRMC has established use categories for all state waters out to the three nautical mile boundary. The Rhode Island Coastal Resource Management Program (RICRMP) is a federally-approved coastal program under the federal Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*).
- B. The Ocean Special Area Management Plan (Ocean SAMP) is the regulatory, planning and adaptive management tool that CRMC is applying to uphold these regulatory responsibilities in the Ocean SAMP area. Using the best available science and working with well-informed and committed resource users, researchers, environmental and civic organizations, and local, state and federal government agencies, the Ocean SAMP provides a comprehensive understanding of this complex and rich ecosystem. The Ocean SAMP also documents how the people of this region have used and depended upon these offshore resources for subsistence, work and play, and how the natural wildlife such as fish, birds, marine mammals and sea turtles feed, spawn, reproduce, and migrate throughout this region, thriving on the rich habitats, microscopic organisms, and other natural resources. To fulfill the Council’s mandate, the Ocean SAMP lays out enforceable policies and recommendations to guide CRMC in promoting a balanced and comprehensive ecosystem-based

management approach to the development and protection of Rhode Island's ocean-based resources.

- C. The Ocean SAMP region lies at the convergence of two bio-geographic provinces - the Acadian to the north (Cape Cod to the Gulf of Maine) and the Virginian to the south (Cape Cod to Cape Hatteras). Due to this unique position, the Ocean SAMP area is more susceptible than other areas along the eastern seaboard to the effects of climate change. Cognizant of this fact, the CRMC integrates climate concerns and adaptation and mitigation responses into relevant policies and plans. CRMC believes that with advanced planning, together with energy conservation, the harm and costs associated with these potential impacts can be reduced and may be avoided.
- D. This Chapter presents how the Ocean SAMP builds upon CRMC's existing program as well as describes implementation mechanisms that support the application of the adaptive management approach. Section 11.9 of this Part presents all Ocean SAMP general policies, while § 11.10 of this Part integrates the regulatory standards into a regulatory process that ensures the Council's ability to uphold its mandatory requirements. To review both general policies and regulatory standards by topic area, please see that specific chapter. The general policies in § 11.9 of this Part are policies the CRMC applies through its various management and regulatory functions, but the general policies are not "enforceable policies" for purposes of the federal Coastal Zone Management Act (CZMA) federal consistency provision at 16 U.S.C. § 1456 and 15 C.F.R. Part 930. For CZMA federal consistency purposes the general policies are advisory only and cannot be used as the basis for a CRMC CZMA federal consistency concurrence or objection. However, for state permitting purposes, offshore developments proposed to be sited in state waters are bound by both the general policies in § 11.9 of this Part and regulatory standards in § 11.10 of this Part. The regulatory standards in § 11.10 of this Part are enforceable policies for purposes of the federal CZMA federal consistency provision pursuant to 16 U.S.C. § 1456 and 15 C.F.R. Part 930. For CZMA federal consistency purposes the regulatory standards, in addition to other applicable federally approved RICRMP enforceable policies, shall be used as the basis for a CRMC CZMA federal consistency concurrence or objection.
- E. States, generally, do not have jurisdiction in federal waters and the federal Coastal Zone Management Act (CZMA) does not confer such jurisdiction. Therefore, in order to meet CZMA requirements, state plans, enforceable policies, and Areas of Particular Concern (APCs) must only apply to areas of state jurisdiction. The Ocean SAMP is a planning and regulatory component for the State of Rhode Island and will be incorporated into the NOAA-approved Rhode Island Coastal Resource Management Program (RICRMP). As such, in order to meet the CZMA's definition of "enforceable policy" and NOAA's corresponding regulations, the Ocean SAMP only applies to state waters (out to 3 nautical miles). The enforceable policies, APCs and Areas Designated for

Preservation (ADPs) in a NOAA-approved Ocean SAMP will apply to activities in federal waters through the CZMA federal consistency provision.

- F. The Ocean SAMP includes maps of federal waters and identifies uses, resources and areas of federal waters. The data and maps pertaining to federal waters are not enforceable components of the Ocean SAMP. However, the data and maps contain a substantial amount of environmental, ecological, geologic, and human use information for state and federal waters. This information will be useful for environmental reviews (including reviews under the National Environmental Policy Act and coastal effects analyses under the CZMA), engineering issues (e.g., is the seafloor material compatible for a particular piece of equipment), and other planning and regulatory decisions. The CRMC may use the data and maps for federal waters to assess coastal effects, but Rhode Island's CZMA federal consistency concurrence or objection must be based on enforceable policies contained in the NOAA-approved RICRMP.

11.5 Building on CRMC's Existing Program (formerly § 1110)

- A. Ocean SAMP policies and recommendations build upon and refine the CRMC's existing Program and regulations presented in the Rhode Island Coastal Resources Management Plan (RICRMP). The policies, standards, and definitions contained in the RICRMP for Type 4 waters within the Ocean SAMP boundary, specifically from the mouth of Narragansett Bay seaward, between 500 feet offshore and the 3-nautical mile state water boundary, are hereby modified. In addition, §§ 00-1.3.1(C), 1.3.1(H) and 1.3.8 of this Chapter are hereby superseded for this Ocean SAMP region. Aquaculture projects of any size shall follow § 00-1.3.1(K) of this Chapter. Dredging and dredge disposal activities remain governed by § 00-1.3.1(I) of this Chapter. An approved Ocean SAMP by NOAA's Office for Coastal Management will confer federal consistency authority to the Council for a boundary extension in federal waters within the Ocean SAMP area. However, it should be noted that the Ocean SAMP boundary does not limit the zone for federal consistency, and the CRMC may still exercise its federal consistency authority over future activities which may be proposed in federal waters beyond the Ocean SAMP area.
- B. All federal consistency determinations for large-scale offshore developments, as defined in § 11.3(H) of this Part, will be concurred or objected to by the full Council after receiving a timely recommendation from the CRMC Executive Director.
- C. The Ocean SAMP policies for Type 4 waters require that CRMC accommodate and maintain a balance among the diverse activities, both traditional and future water dependent uses, while preserving and restoring the ecological systems. CRMC recognizes that large portions of Type 4 waters include important fishing grounds and fishery habitats, and shall protect such areas from alterations and activities that threaten the vitality of Rhode Island fisheries. Aquaculture leases shall be considered if the Council is satisfied there will be no significant adverse

impacts on the traditional fishery. In addition, CRMC shall work to promote the maintenance and improvement of good water quality within the Type 4 waters (§ 00-1.2.1(D) of this Chapter).

- D. The Ocean SAMP assists CRMC in upholding its mandate to preserve the state's coastal resources on submerged lands in accordance with the public trust. As stated in Article 1, § 17 of the Rhode Island Constitution, applicable statutes, and restated in the RICRMP, the state maintains title in fee to submerged lands below the high water mark, and holds these lands in trust for the use of the public, preserving public rights which include but are not limited to fishing, commerce, and navigation in these lands and waters. Rhode Island public trust resources are defined in RICRMP as the tangible physical, biological matter substance or systems, habitat or ecosystem contained on, in or beneath the tidal waters of the state, and also include intangible rights to use, access, or traverse tidal waters for traditional and evolving uses including but not limited to recreation, commerce, navigation, and fishing.
- E. As with the six existing Rhode Island SAMPs and CRMC's water type designations, CRMC implements the marine spatial planning (MSP) process to achieve ecosystem-based management (EBM) for the Ocean SAMP region. For the purposes of the Ocean SAMP, the CRMC adopts the definition of EBM as defined in § 11.3 of this Part. The goal of EBM is to maintain an ecosystem in a healthy, productive and resilient condition that provides the services humans want and need." Ecosystems are places and marine spatial planning (MSP) is the process by which ecosystem-based management is organized to produce desired outcomes in marine environments. Since 1983 the CRMC has applied MSP to achieve EBM along Rhode Island's coastline.

11.6 Ocean SAMP Goals and Principles (formerly § 1120)

- A. The process to both develop the Ocean SAMP as well as establish policies and regulations was guided by the following goals and principles. These goals and principles were developed in coordination with the Ocean SAMP researchers and the Ocean SAMP stakeholder group. For more information on the Ocean SAMP goals and principles and the Ocean SAMP stakeholder group see Chapter 1, Introduction.
- B. The Ocean SAMP Goals are to:
 - 1. Foster a properly functioning ecosystem that is both ecologically sound and economically beneficial;
 - 2. Promote and enhance existing uses;
 - 3. Encourage marine-based economic development that considers the aspirations of local communities and is consistent with and

complementary to the state's overall economic development, social, and environmental needs and goals; and

4. Build a framework for coordinated decision-making between state and federal management agencies.

C. The Ocean SAMP Principles are to:

1. Develop the Ocean SAMP document in a transparent manner;
2. Involve all stakeholders;
3. Honor existing activities;
4. Base all decisions on the best available science; and
5. Establish monitoring and evaluation that supports adaptive management.

11.7 Applying Adaptive Management to Implement the Ocean SAMP (formerly §1130)

- A. Since its inception in 1971, the CRMC has managed Rhode Island's coastal waters using an adaptive management approach. Adaptive management is a systematic process for continually improving management policies and practices by learning from the outcomes of previously employed policies and practices. Adaptive management requires careful implementation, monitoring, evaluation of results, and adjustment of objectives and practices. Adaptive management usually allows more reliable interpretation of results, and leads to more rapid learning and better management. To this end, CRMC will establish several mechanisms to ensure that the Ocean SAMP is implemented using this management approach.
- B. CRMC will develop and implement the Ocean SAMP science research agenda, in coordination with the Ocean SAMP researchers, federal, state, and local government and other parties, to improve management policies and practices. The Ocean SAMP science research agenda will allow CRMC to:
1. continue to learn about Rhode Island's offshore natural resources and human activities;
 2. better understand the potential effects of future development and other human impacts; and
 3. increase Rhode Island's understanding of the projected impacts of global climate change. To develop the science research agenda, the Council will put together an advisory group including scientists, partner federal and state agencies, environmental organizations, and users of the Ocean SAMP area. This group will help the Council to identify data gaps, short-

and long-term research priorities, potential partners, and potential funding sources.

- C. A progress assessment and monitoring process by CRMC will be established with the purpose of assessing progress towards achieving the Ocean SAMP goals, objectives, and principles. This process will record decisions, capture lessons learned, note achievements, and document policy and management adaptations. This process will be ongoing, available on the project web site, and formally reported to the public on a biannual basis.
- D. The Council will develop a work plan that will guide the proactive management of the Ocean SAMP region and implement the Ocean SAMP goals:
 - 1. foster a properly functioning ecosystem that is both ecologically sound and economically beneficial;
 - 2. promote and enhance existing uses;
 - 3. encourage marine-based economic development that meets the aspirations of local communities and is consistent with and complementary to the state's overall economic development, social, and environmental needs and goals; and
 - 4. build a framework for coordinated decision-making between state and federal management agencies. Major components of this work plan include the Ocean SAMP science research agenda, the progress assessment and monitoring process, stakeholder involvement and education, and implementation of Ocean SAMP policies and recommendations.
- E. Although the Ocean SAMP may be continually amended through an administrative process, the CRMC will conduct a major review of the Ocean SAMP document every five years from adoption. CRMC will implement this revision process using the principles honored during the development of the Ocean SAMP, including involving stakeholders and basing all decisions on the best available science. For more information on the Ocean SAMP principles, see Chapter 1, Introduction.
- F. The Council will establish a mechanism to ensure that the public continues to be engaged in the implementation of the Ocean SAMP. The Ocean SAMP public forum will be held biannually. The public forum will feature reports and discussions of the Ocean SAMP condition and use, note progress toward goals and objectives, and recognize contributions to implementing the Ocean SAMP. The forum will highlight projects underway, report on the progress assessment and monitoring process and science research agenda, including new research findings and updated global climate change projections, and provide opportunities for exchanging information, ideas, and strategies to strengthen implementation. The forum will address emerging issues and identify potential

Ocean SAMP revisions. The Council will use this information to prepare its work plan. The forum may be followed up by other Ocean SAMP meetings that provide continuing opportunities to discuss progress, focus on specific issues, and coordinate ongoing actions by member groups. The public forum will be supported by the Ocean SAMP website and information systems maintained by Rhode Island Sea Grant and CRMC.

11.8 Decision-making (formerly § 1140)

- A. In accordance with and pursuant to the provisions of R.I. Gen. Laws § 46-23-6, the Council shall engage in the following coordination activities. The intent of establishing these coordination mechanisms is to ensure appropriate engagement of the stakeholders, including the resources users and the state and federal government agencies. These coordination mechanisms, although described here, are more thoroughly described in the identified sections:
1. The Council shall work to the maximum extent practicable in coordination with the Ocean SAMP joint agency working group as defined in § 11.9.7(J) of this Part, a group facilitated by the Council and made up of appropriate federal and state agencies, to establish project specific requirements that shall be followed by the applicant during the construction, operation and decommissioning phases of an offshore development. For more information on the joint agency working group, see § 11.9.7(J) of this Part.
 2. The Council shall engage commercial and recreational fishermen in the Ocean SAMP decision-making process through the Fishermen's Advisory Board (FAB), as defined in § 11.3(E) of this Part. The FAB will provide the Council with advice on the potential adverse impacts of Offshore Development on commercial and recreational fishermen and fisheries activities, and on issues including, but not limited to, the evaluation and planning of project locations, arrangements, and alternatives; micro-siting (siting of individual wind turbines within a wind farm to identify the best site for each individual structures); access limitations; and measures to mitigate the potential impacts of such projects. For more information on the FAB, see § 11.9.4(H) of this Part.
 3. The Council shall work to minimize use conflicts and ensure marine safety and navigational access around and through offshore structures and developments and along cable routes during the construction, operation and decommissioning phases of offshore development, by establishing communication and coordination mechanisms between the Council, Federal and state agencies, resource users including fishermen's organizations, marine pilots, recreational boating organizations, and marine safety organizations. See §§ 11.9.4 through 11.9.7 of this Part for further information.

4. The Council shall convene a panel of scientists to advise on findings of current climate science for the region and the implications for Rhode Island's coastal and offshore regions, as well as the possible management ramifications. This information will allow the Council to proactively plan for and adapt to climate change impacts including, but not limited to, increased storminess, temperature change, and acidification in addition to accelerated sea level rise. For more information on the Science Advisory Panel for Climate Change, see § 11.9.2(C) of this Part.
5. The Council shall work to the maximum extent practicable with state and federal agencies, academic institutions, environmental organizations, and others to make sure it is using the best available science and modeling tools to inform the decision making process. Tools including the Technology Development Index (TDI) and the Ecological Value Map (EVM) will inform site selection of future development and help to understand where areas of greatest ecological value exist in the Ocean SAMP area to then determine appropriate sites suitable for preservation and/or future development. For more information on these tools, see Chapter 2, Ecology of the SAMP Region, and Part 8 of this Subchapter (Renewable Energy and Other Offshore Development).

11.9 General Policies (formerly § 1150)

- A. Ocean SAMP policies and regulatory standards represent actions the CRMC must take to uphold its regulatory responsibilities mandated to them by the Rhode Island General Assembly and the CZMA to achieve the Ocean SAMP goals and principles described in the Introduction Chapter. The "General Policies" in § 11.9 of this Part are policies the CRMC applies through its various management and regulatory functions, but the General Policies are not "enforceable policies" for purposes of the federal CZMA federal consistency provision (16 U.S.C. § 1456 and 15 C.F.R. Part 930). For CZMA federal consistency purposes the General Policies are advisory only and cannot be used as the basis for a CRMC CZMA federal consistency concurrence or objection. However, for state permitting purposes, offshore developments proposed to be sited in state waters are bound by both the General Policies (§ 11.9 of this Part) and Regulatory Standards (§ 11.10 of this Part) listed herein, The Policies of the Ocean SAMP. The "Regulatory Standards" in § 11.10 of this Part are enforceable policies for purposes of the federal CZMA federal consistency provision (16 U.S.C. § 1456 and 15 C.F.R. Part 930). For CZMA federal consistency purposes the Regulatory Standards, in addition to other applicable federally approved RICRMP enforceable policies, shall be used as the basis for a CRMC CZMA federal consistency concurrence or objection. Policies presented for cultural and historic resources, fisheries, recreation and tourism, and marine transportation promote and enhance existing uses and honor existing activities (§ 11.6(C)(3) of this Part). Ecology, global climate change, and other future uses information and policies provide a context for basing all decisions on the best available science, while fostering a properly functioning ecosystem that is both ecologically sound

and economically beneficial (§ 11.6(C)(4) of this Part). Renewable energy and offshore development policies and regulatory standards ensure there is a rigorous review for all ocean development so that the Council meets its public trust responsibilities. The Ocean SAMP also provides thoughtful direction to encourage marine-based economic development that meets the aspirations of local communities and is consistent with and complementary to the state's overall economic development, social, and environmental needs and goals (§ 11.6(B)(3) of this Part). All chapters work towards establishing frameworks to coordinate decision-making between state and federal management agencies and the people who use the Ocean SAMP region (§ 11.6(B)(4) of this Part), developing in a transparent manner (§ 11.6(C)(1) of this Part), and promoting adaptive management (§ 11.6(C)(5) of this Part). Ocean SAMP policies are all important to ensuring that the Ocean SAMP region is managed in a manner that both meets the needs of the people of Rhode Island, while protecting and restoring our natural environment for future generations.

- B. Section 11.9 of this Part presents all Ocean SAMP general policies, while § 11.10 of this Part integrates the regulatory standards into a regulatory process that ensures the Council's ability to uphold its mandatory requirements. To review both general policies and regulatory standards by topic area, please see these two sections.

11.9.1 Ecology (formerly § 1150.1)

- A. The Council recognizes that the preservation and restoration of ecological systems shall be the primary guiding principle upon which environmental alteration of coastal resources will be measured. Proposed activities shall be designed to avoid impacts and, where unavoidable impacts may occur those impacts shall be minimized and mitigated.
- B. As the Ocean SAMP is an extension and refinement of CRMC's policies for Type 4 multipurpose waters as described in § 00-1.2.1(D) of this Chapter, CRMC will encourage a balance among the diverse activities, both traditional and future water dependent uses, while preserving and restoring the ecological systems.
- C. The Council recognizes that while all fish habitat is important, spawning and nursery areas are especially critical in providing shelter for these species during the most vulnerable stages of their life cycles. The Council will ensure that proposed activities shall be designed to avoid impacts to these sensitive habitats, and, where unavoidable impacts may occur, those impacts shall be minimized and mitigated. In addition, the Council will give consideration to habitat used by species of concern as defined by the NMFS Office of Protected Resources.
- D. Because the Ocean SAMP is located at the convergence of two eco-regions and therefore more susceptible to change, the Council will work with partner federal and state agencies, research institutions, and environmental organizations to

carefully manage this area, especially as it relates to the projected effects of global climate change on this rich ecosystem.

- E. The Council shall appoint a standing Habitat Advisory Board (HAB) which shall provide advice to the Council on the ecological function, restoration and protection of the marine resources and habitats in the Ocean SAMP area and on the siting, construction, and operation of off shore development in the Ocean SAMP study area. The HAB shall also provide advice on scientific research and its application to the Ocean SAMP. The HAB is an advisory body to the Council and does not supplant any authority of any federal or state agency responsible for the conservation and restoration of marine habitats. The HAB [is defined in § 11.3\(G\) of this Part.](#) ~~shall be comprised of nine members, five representing marine research institutions with experience in the Ocean SAMP study area and surrounding waters, and four representing environmental non-governmental organizations that maintain a focus on Rhode Island.~~ HAB members shall serve four-year terms and shall serve no more than two consecutive terms. The Council shall provide to the HAB a semi-annual status report on Ocean SAMP area marine resources and habitat-related issues and adaptive management of projects in the Ocean SAMP planning area, including but not limited to: protection and restoration of marine resources and habitats, cumulative impacts, climate change, environmental review criteria, siting and performance standards, and marine resources and habitat mitigation and monitoring. The Council shall notify the HAB in writing concerning any project in the Ocean SAMP area. The HAB shall meet not less than semi-annually with the Fishermen's Advisory Board and on an as-needed basis to provide the Council with advice on protection and restoration of marine resources and habitats in the Ocean SAMP areas and potential adverse impacts on marine resources and habitat posed by proposed projects reviewed by the Council. The HAB may also meet regularly to discuss issues related to the latest science of ecosystem-based management in the marine environment and new information relevant to the management of the Ocean SAMP planning area. In addition the HAB may aid the Council and its staff in developing and implementing a research agenda. As new information becomes available and the scientific understanding of the Ocean SAMP planning area evolves, the HAB may identify new areas with unique or fragile physical features, important natural habitats, or areas of high natural productivity for designation by the Council as Areas of Particular Concern or Areas Designated for Preservation.

11.9.2 Global Climate Change (formerly § 1150.2)

- A. The Council recognizes that the changes brought by climate change are likely to result in alteration of the marine ecology and human uses affecting the Ocean SAMP area. The Council encourages energy conservation, mitigation of greenhouse gasses and adaptation approaches for management. The Council, therefore, supports the policy of increasing offshore renewable energy production in Rhode Island as a means of mitigating the potential effects of global climate change.

- B. The Council shall incorporate climate change planning and adaptation into policy and standards in all areas of its jurisdiction of the Ocean SAMP and its associated land-based infrastructure to proactively plan for and adapt to climate change impacts such as increased storminess and temperature change, in addition to accelerated sea level rise. For example, when evaluating Ocean SAMP area projects and uses, the Council will carefully consider how climate change could affect their future feasibility, safety and effectiveness. When evaluating new or intensified existing uses within the Ocean SAMP area, the Council will consider predicted impacts of climate change especially upon sensitive habitats, most notably spawning and nursery grounds, of particular importance to targeted species of finfish, shellfish and crustaceans.
- C. The Council will convene a panel of scientists, biannually, to advise on findings of current climate science for the region and the implications for Rhode Island's coastal and offshore regions, as well as the possible management ramifications. The horizon for evaluation and planning needs to include both the short term (10 years) and longer term (50 years). The Science Advisory Panel for Climate Change will provide the Council with expertise on the most current global climate change related science, monitoring, policy, and development design standards relevant to activities within its jurisdiction of the Ocean SAMP and its associated land-based infrastructure to proactively plan for and adapt to climate change impacts such as increased storminess, temperature change, and acidification in addition to accelerated sea level rise. The findings of this Science Advisory Panel will be forwarded on to the legislatively-appointed Rhode Island Climate Change Commission for their consideration.
- D. The Council will prohibit those land-based and offshore development projects which based on a sea level rise scenario analysis will threaten public safety or not perform as designed resulting in significant environmental impacts. The U.S. Army Corps of Engineers has developed and is implementing design and construction standards that consider impacts from sea level rise. These standards and other scenario analyses should be applied to determine sea level rise impacts.
- E. The Council supports the application of enhanced building standards in the design phase of rebuilding coastal infrastructure associated with the Ocean SAMP area, including port facilities, docks, and bridges that ships must clear when passing underneath.
- F. The Council supports the development of design standards for marine platforms that account for climate change projections on wind speed, storm intensity and frequency, and wave conditions and will work with the U.S. Bureau of Ocean Energy Management, Regulation and Enforcement, Department of Interior, Department of Energy, and the Army Corps of Engineers to develop a set of standards that can then be applied in Rhode Island projects. The Council will re-assess coastal infrastructure and seaworthy marine structure building standards periodically not only for sea level rise, but also for other climate changes

including more intense storms, increased wave action, and increased acidity in the sea.

- G. The Council supports public awareness and interpretation programs to increase public understanding of climate change and how it affects the ecology and uses of the Ocean SAMP area.

11.9.3 Cultural and Historic Resources (formerly § 1150.3)

- A. The Council recognizes the rich and historically significant history of human activity within and adjacent to the Ocean SAMP area. These numerous sites and properties, that are located both underwater and onshore, should be considered when evaluating future projects.
- B. The Council has a federal obligation as part of its responsibilities under the federal Coastal Zone Management Act to recognize the importance of cultural, historic, and tribal resources within the state's coastal zone, including Rhode Island state waters. It has a similar responsibility under the Rhode Island Historic Preservation Act. The Council will not permit activities that will significantly impact the state's cultural, historic and tribal resources.
- C. The Council will engage federal and state agencies, and the Narragansett Indian Tribe's Tribal Historic Preservation Office (THPO), when evaluating the impacts of proposed development on cultural and historic resources. The Rhode Island Historic Preservation and Heritage Commission (RIHPHC) is the State Historic Preservation Office (SHPO) for the state of Rhode Island, and is charged with developing historical property surveys for Rhode Island municipalities, reviewing projects that may impact cultural and historic resources, and regulating archaeological assessments on land and in state waters. For other tribes outside of Rhode Island that might be affected by a federal action it is the responsibility of the applicable federal agency to consult with affected tribes.
- D. Project reviews will follow the policies outlined in §§ 00-1.2.3 (Areas of Historic and Archaeological Significance) and 00-1.3.5 of this Chapter (Guidelines for the Protection and Enhancement of the Scenic Value of the Coastal Region) of the State of Rhode Island Coastal Resources Management Program, as amended (Subchapter 00 Part 1 of this Chapter). The standards for the identification of cultural resources and the assessment of potential effects on cultural resources will be in accordance with the National Historic Preservation Act Section 106 regulations, 36 C.F.R. Part 800, Protection of Historic Properties.
- E. Historic shipwrecks, archeological or historical sites located within Rhode Island's coastal zone are Areas of Particular Concern (APCs) for the Rhode Island coastal management program. Direct and indirect impacts to these resources must be avoided to the greatest extent possible. Other areas, not noted as APCs, may also have significant archeological sites that could be identified through the permit process. For example, the area at the south end of Block Island waters

within the 30 foot depth contour is known to have significant archeological resources. As a result, projects conducted in the Ocean SAMP area may have impacts to Rhode Island's underwater archaeological and historic resources.

- F. Archaeological surveys shall be required as part of the permitting process for projects which may pose a threat to Rhode Island's archaeological and historic resources. During the filing phase for state assent, projects needing archaeological surveys will be identified through the joint review process. The survey requirements will be coordinated with the SHPO and, if tribal resources are involved, with the Narragansett THPO.
- G. Areas of Particular Concern may require a buffer or setback distance to ensure that development projects avoid or minimize impacts to known or potential historic or archaeological sites. The buffer or setback distance during the permitting process will be determined by the SHPO and if tribal resources are involved, the Narragansett THPO.
- H. In addition to general Area of Particular Concern buffer/setback distances around shipwrecks or other submerged cultural resources, the Council reserves the right, based upon recommendations from RIHPHC, to establish protected areas around all submerged cultural resources which meet the criteria for listing on the National Register of Historic Places.
- I. Projects conducted in the Ocean SAMP area may have impacts that could potentially affect onshore archaeological, historic, or cultural resources. Archaeological and historical surveys may be required of projects which are reviewed by the joint agency review process. During the filing phase for state assent, projects needing such surveys will be identified and the survey requirement will be coordinated with the SHPO and if tribal resources are involved, with the Narragansett THPO.
- J. Guidelines for onshore archaeological assessments in the Ocean SAMP area can be obtained through the RIHPHC in their document, "Performance Standards and Guidelines for Archaeological Projects: Standards for Archaeological Survey" (RIHPHC 2007), or the lead federal agency responsible for reviewing the proposed development.

11.9.4 Commercial and Recreational Fisheries (formerly § 1150.4)

- A. The commercial and recreational fishing industries, and the habitats and biological resources of the ecosystem they are based on, are of vital economic, social, and cultural importance to Rhode Island's fishing ports and communities. Commercial and recreational fisheries are also of great importance to Rhode Island's economy and to the quality of life experienced by both residents and visitors. The Council finds that other uses of the Ocean SAMP area could potentially displace commercial or recreational fishing activities or have other adverse impacts on commercial and recreational fisheries.

- B. The Council recognizes that finfish, shellfish, and crustacean resources and related fishing activities are managed by a host of different agencies and regulatory bodies which have jurisdiction over different species and/or different parts of the SAMP area. Entities involved in managing fish and fisheries within the SAMP area include, but are not limited to, the Atlantic States Marine Fisheries Commission, the R.I. Department of Environmental Management, the R.I. Marine Fisheries Council, the NOAA National Marine Fisheries Service, the New England Fishery Management Council, and the Mid-Atlantic Fishery Management Council. The Council recognizes the jurisdiction of these organizations in fishery management and will work with these entities to protect fisheries resources. The Council will also work in coordination with these entities to protect priority habitat areas.
- C. The Council's policy is to protect commercial and recreational fisheries within the Ocean SAMP area from the adverse impacts of other uses, while supporting actions to make ongoing fishing practices more sustainable. It should be recognized that scientific knowledge of the impacts of fishing on habitats and fish populations will advance. Improvements in more sustainable gear technology, fishing practices, and management tools may improve the state of fisheries resources. A general goal of the Council is to constantly improve the health of the Ocean SAMP area ecosystem and the populations of fish and shellfish it provides. Cooperative research, utilizing the unique skills and expertise of the fishing community, will be a cornerstone to this goal.
- D. Commercial and recreational fisheries activities are dynamic, taking place at different places at different times of the year due to seasonal species migrations and other factors. The Council recognizes that fisheries are dynamic, shaped by these seasonal migrations as well as other factors including shifts in the regulatory environment, market demand, and global climate change. The Council further recognizes that the entire Ocean SAMP area is used by commercial and recreational fishermen employing different fishing methods and gear types. Changes in existing uses, intensification of uses, and new uses within the area could cause adverse impacts to these fisheries. Accordingly, the Council shall:
1. In consultation with the Fishermen's Advisory Board, as defined in § 11.3(E) of this Part, identify and evaluate prime fishing areas on an ongoing basis through an adaptive framework.
 2. Review any uses or activities that could disrupt commercial or recreational fisheries activities.
- E. The Council shall work together with the U.S. Coast Guard, the U.S. Navy, the U.S. Army Corps of Engineers, NOAA, fishermen's organizations, marine pilots, recreational boating organizations, and other marine safety organizations to promote safe navigation, fishing, and recreational boating activity around and through offshore structures and developments, and along cable routes, during the construction, operation, and decommissioning phases of such projects. The

Council will promote and support the education of all mariners regarding safe navigation around offshore structures and developments and along cable routes.

- F. Discussions with the U.S. Coast Guard, the U.S. Department of Interior Bureau of Ocean Energy Management, Regulation, and Enforcement, and the U.S. Army Corps of Engineers have indicated that no vessel access restrictions are planned for the waters around and through offshore structures and developments, or along cable routes, except for those necessary for navigational safety. Commercial and recreational fishing and boating access around and through offshore structures and developments and along cable routes is a critical means of mitigating the potential adverse impacts of offshore structures on commercial and recreational fisheries and recreational boating. The Council endorses this approach and shall work to ensure that the waters surrounding offshore structures, developments, and cable routes remain open to commercial and recreational fishing, marine transportation, and recreational boating, except for navigational safety restrictions. The Council requests that federal agencies notify the Council as soon as is practicable of any federal action that may affect vessel access around and through offshore structures and developments and along cable routes. The Council will continue to monitor changes to navigational activities around and through offshore developments and along cable routes. Any changes affecting existing navigational activities may be subject to CZMA federal consistency review if the federal agency determines its activity will have reasonably foreseeable effects on the uses or resources of Rhode Island's coastal zone.
- G. The Council recognizes that commercial and recreational fishermen from other states, such as the neighboring states of Connecticut, New York, and Massachusetts, often fish in the Ocean SAMP area. The Council also recognizes that many fish species that are harvested in adjacent waters may rely on habitats and prey located within the Ocean SAMP area. Accordingly, the Council will work with neighboring states to ensure that Offshore Development and other uses of the Ocean SAMP area do not result in significant impacts to the fisheries resources or activities of other states.
- H. The Council shall appoint a standing Fishermen's Advisory Board (FAB) which shall provide advice to the Council on the siting and construction of other uses in marine waters. The FAB is an advisory body to the Council that is not intended to supplant any existing authority of any other federal or state agency responsible for the management of fisheries, including but not limited to the Marine Fisheries Council and its authorities set forth in R.I. Gen. Laws § 20-3-1 et seq. The FAB is defined in § 11.3(E) of this Part. ~~shall be comprised of up to eighteen (18) total members, to include the following: up to two (2) members representing each of the following six Rhode Island fisheries: bottom trawling; scallop dredging; gillnetting; lobstering; party and charter boat fishing; and recreational angling; and up to six (6) members, who are Massachusetts fishermen who fish in the Ocean SAMP area to include four commercial fishermen and two recreational fisherman.~~ When there are two members representing a fishing interest, only one

vote may be cast on behalf of that interest. If the two members representing that fishery cannot agree on their vote then there shall be no vote for that fishery for the item under consideration. In any vote on a matter, there shall be no more than 6 votes total for RI interests and no more than 3 votes total for MA interests. The FAB members may elect a chair and a vice-chair from amongst its members. In addition the FAB may establish rules governing its members such as a minimum number of meetings each member must attend to maintain standing as a member. FAB members shall serve four-year terms ~~and shall serve no more than two consecutive terms~~. The Council shall provide to the FAB a semi-annual status report on Ocean SAMP area fisheries related issues, including but not limited to those of which the Council is cognizant in its planning and regulatory activities, and shall notify the FAB in writing concerning any project in the Ocean SAMP area. The FAB shall meet not less than semi-annually with the Habitat Advisory Board and on an as-needed basis to provide the Council with advice on the potential adverse impacts of other uses on commercial and recreational fishermen and fisheries activities, and on issues including, but not limited to, the evaluation and planning of project locations, arrangements, and alternatives; micro-siting (siting of individual wind turbines within a wind farm to identify the best site for each individual structure); access limitations; and measures to mitigate the potential impacts of such projects on the fishery. In addition the FAB may aid the Council and its staff in developing and implementing a research agenda. As new information becomes available and the scientific understanding of the Ocean SAMP planning area evolves, the FAB may identify new areas with unique or fragile physical features, important natural habitats, or areas of high natural productivity for designation by the Council as Areas of Particular Concern or Areas Designated for Preservation.

11.9.5 Recreation and Tourism (formerly § 1150.5)

- A. The Council recognizes the economic, historic, and cultural value of marine recreation and tourism activities in the Ocean SAMP area to the state of Rhode Island. The Council's goal is to promote uses of the Ocean SAMP area that do not significantly interfere with marine recreation and tourism activities or values.
- B. When evaluating proposed offshore developments, the Council will carefully consider the potential impacts of such activities on marine recreation and tourism uses. Where it is determined that there is a significant impact, the Council may modify or deny activities that significantly detract from these uses.
- C. The Council will encourage and support uses of the Ocean SAMP area that enhance marine recreation and tourism activities.
- D. The Council recognizes that the waters south of Brenton Point and within the 3-nautical mile boundary surrounding Block Island are heavily-used recreational areas and are commonly used for organized sailboat races and other marine events. The Council encourages and supports the ongoing coordination of race and marine event organizers with the U.S. Coast Guard, the U.S. Navy, and the

commercial shipping community to facilitate safe recreational boating in and adjacent to these areas, which include charted shipping lanes and Navy restricted areas (see Ocean SAMP Chapter 7, Marine Transportation, Navigation, and Infrastructure). The Council shall consider these heavily-used recreational areas when evaluating offshore developments in this area. Where it is determined that there is a significant impact, the Council may suitably modify or deny activities that significantly detract from these uses. The Council also recognizes that much of this organized recreational activity is concentrated within the circular sailboat racing areas as depicted in Figure 6 in § 11.10.2(I) of this Part, and accordingly has designated these areas as Areas of Particular Concern. See § 11.10.2 of this Part for requirements associated with Areas of Particular Concern.

- E. See § 11.9.4 (E) of this Part for policy regarding safe navigation around and through offshore structures and developments and along cable routes.
- F. See § 11.9.4 (F) of this Part for policy regarding vessel access around and through offshore structures and developments and along cable routes.
- G. The Council recognizes that offshore wildlife viewing activities are reliant on the presence and visibility of marine and avian species which rely on benthic habitat, the availability of food, and other environmental factors. The Council shall consider these environmental factors when evaluating proposed offshore developments in these areas. Where it is determined that there is a significant impact, the Council may modify or deny activities that significantly detract from these uses.

11.9.6 Marine Transportation, Navigation and Infrastructure (formerly § 1150.6)

- A. The Council recognizes the importance of designated navigation areas, which include shipping lanes, precautionary areas, recommended vessel routes, pilot boarding areas, anchorages, military testing areas, and submarine transit lanes to marine transportation and navigation activities in the Ocean SAMP area. The Council also recognizes that these and other waters within the Ocean SAMP area are heavily used by numerous existing users who have adapted to each other with regard to their uses of ocean space. Any changes in the spatial use patterns of any one of these users will result in potential impacts to the other users. The Council will carefully consider the potential impacts of such changes on the marine transportation network. Changes to existing designated navigational areas proposed by the U.S. Coast Guard, NOAA, the R.I. Port Safety and Security Forums, or other entities could similarly impact existing uses. The Council requests that they be notified by any of these parties if any such changes are to be made to the transportation network so that they may work with those entities to achieve a proper balance among existing uses.
- B. The Council recognizes the economic, historic, and cultural value of marine transportation and navigation uses of the Ocean SAMP area to the state of

Rhode Island. The Council's goal is to promote uses of the Ocean SAMP area that do not significantly interfere with marine transportation and safe navigation within designated navigation areas, which include shipping lanes, precautionary areas, recommended vessel routes, pilot boarding areas, anchorages, military testing areas, and submarine transit lanes. See § 11.10.2 of this Part for discussion of navigation areas which have been designated as Areas of Particular Concern.

- C. The Council will encourage and support uses of the Ocean SAMP area that enhance marine transportation and safe navigation within designated navigation areas, which include shipping lanes, precautionary areas, recommended vessel routes, pilot boarding areas, anchorages, military testing areas, and submarine transit lanes.
- D. See § 11.9.4 (E) of this Part for policy regarding safe navigation around and through offshore structures and developments and along cable routes.
- E. See § 11.9.4 (F) of this Part for policy regarding vessel access around and through offshore structures and developments and along cable routes.

11.9.7 Offshore Renewable Energy and Other Offshore Development (formerly § 1150.7)

- A. The Council supports offshore development in the Ocean SAMP area that is consistent with the Ocean SAMP goals, which are to:
 - 1. Foster a properly functioning ecosystem that can be both ecologically effective and economically beneficial;
 - 2. Promote and enhance existing uses; and
 - 3. Encourage marine-based economic development that considers the aspirations of local communities and is consistent and complementary to the state's overall economic development needs and goals.
- B. The Council supports the policy of increasing renewable energy production in Rhode Island. The Council also recognizes:
 - 1. Offshore wind energy currently represents the greatest potential for utility-scale renewable energy generation in Rhode Island;
 - 2. Offshore renewable energy development is a means of mitigating the potential effects of global climate change;
 - 3. Offshore renewable energy development will diversify Rhode Island's energy portfolio;

4. Offshore renewable energy development will aid in meeting the goals set forth in Rhode Island's Renewable Energy Standard;
 5. Marine renewable energy has the potential to assist in the redevelopment of urban waterfronts and ports.
- C. The Council's support of offshore renewable energy development shall not be construed to endorse or justify any particular developer or particular offshore renewable energy proposal.
 - D. The Council may require the applicant to fund a program to mitigate the potential impacts of a proposed offshore development to natural resources and existing human uses. The mitigation program may be used to support restoration projects, additional monitoring, preservation, or research activities on the impacted resource or site.
 - E. To the greatest extent possible, offshore development structures and projects shall be made available to researchers for the investigation into the effects of large-scale installations on the marine environment, and to the extent practicable, educators for the purposes of educating the public.
 - F. The Council shall work in coordination with the U.S. Department of the Interior Bureau of Ocean Energy Management, Regulation and Enforcement to develop a seamless process for review and design approval of offshore wind energy facilities that is consistent across state and federal waters.
 - G. The Council shall work together with the U.S. Coast Guard, the U.S. Navy, the U.S. Army Corps of Engineers, NOAA, fishermen's organizations, marine pilots, recreational boating organizations, and other marine safety organizations to promote safe navigation, fishing, and recreational boating activity around and through offshore structures and developments, and along cable routes, during the construction, operation, and decommissioning phases of such projects. The Council will promote and support the education of all mariners regarding safe navigation around offshore structures and developments and along cable routes.
 - H. Discussions with the U.S. Coast Guard, the U.S. Department of Interior Bureau of Ocean Energy Management, Regulation, and Enforcement, and the U.S. Army Corps of Engineers have indicated that no vessel access restrictions are planned for the waters around and through offshore structures and developments, or along cable routes, except for those necessary for navigational safety. Commercial and recreational fishing and boating access around and through offshore structures and developments and along cable routes is a critical means of mitigating the potential adverse impacts of offshore structures on commercial and recreational fisheries and recreational boating. The Council endorses this approach and shall work to ensure that the waters surrounding offshore structures, developments, and cable routes remain open to commercial and recreational fishing, marine transportation, and recreational boating, except for

navigational safety restrictions. The Council requests that federal agencies notify the Council as soon as is practicable of any federal action that may affect vessel access around and through offshore structures and developments and along cable routes. The Council will continue to monitor changes to navigational activities around and through offshore developments and along cable routes. Any changes affecting existing navigational activities may be subject to CZMA federal consistency review if the federal agency determines its activity will have reasonably foreseeable effects on the uses or resources of Rhode Island's coastal zone.

- I. To coordinate the review process for offshore wind energy developments, the Council shall adopt consistent information requirements similar to the requirements of the U.S. Department of the Interior's Bureau of Ocean Energy Management, Regulation and Enforcement for offshore wind energy. All documentation required at the time of application shall be similar with the requirements followed by the U.S. Department of the Interior Bureau of Ocean Energy Management, Regulation and Enforcement when issuing renewable energy leases on the Outer Continental Shelf. For further details on these regulations see 30 C.F.R. §§ 285 et seq. The Council shall continue to monitor the federal review process and information requirements for any changes and will make adjustments to the Ocean SAMP policies accordingly.
- J. To the maximum extent practicable, the Council shall coordinate with the appropriate federal and state agencies to establish project specific requirements that shall be followed by the applicant during the pre-construction, construction, operation and decommissioning phases of an offshore development. To the maximum extent practicable, the Council shall work in coordination with a Joint Agency Working Group when establishing pre-construction survey and data requirements, monitoring requirements, protocols and mitigation measures for a proposed offshore development. State members of the Joint Agency Working Group shall coordinate with the Habitat Advisory Board and the Fishermen's Advisory Board and shall seek input from these Boards before establishing project specific requirements that shall be followed by the applicant for an offshore development. And, to the maximum extent practical, and consistent with the federal agency and tribal members' authorities, federal members of the Joint Agency Working Group, are strongly encouraged to coordinate with the Habitat Advisory Board and the Fishermen's Advisory Board. The Joint Agency Working Group shall comprise those state and federal agencies that have a regulatory responsibility related to the proposed project, as well as the Narragansett Indian Tribal Historic Preservation Office. The agency composition of this working group may differ depending on the proposed project, but will generally include the lead federal agency with primary jurisdiction over the proposed project and the CRMC. The pre-construction survey requirements outlined in § 8.5.2(F) of this Subchapter may be reduced for small- scale offshore developments as specified by the Joint Agency Working Group.

- K. The following are industry goals that projects should strive for. These are not required standards at this time but are targets project proponents should try to meet where possible to alleviate potential adverse impacts:
1. A goal for the wind farm applicant and operator is to have operational noise from wind turbines average less than or equal to 100 dB re 1 μ Pa² in any 1/3 octave band at a range of 100 meters at full power production.
 2. The applicant and manufacturer should endeavor to minimize the radiated airborne noise from the wind turbines.
 3. A monitoring system including acoustical, optical and other sensors should be established near these facilities to quantify the effects.

11.10 Regulatory Standards (formerly § 1160)

- A. This section contains all the regulatory standards outlined by the Ocean SAMP. The regulatory standards have been organized according to the following stages: application; design, fabrication and installation; pre-construction; construction and decommissioning and; monitoring. Section 11.10.1 of this Part, Overall Regulatory Standards, applies to all stages of development. The regulatory standards contained within all previous chapters of the Ocean SAMP document have been incorporated into this section based upon the applicable stage of development. The “Regulatory Standards” in § 11.10 of this Part are enforceable policies for purposes of the federal CZMA federal consistency provision (16 U.S.C. § 1456 and 15 C.F.R. Part 930). For CZMA federal consistency purposes the Regulatory Standards, in addition to other applicable federally approved RICRMP enforceable policies shall be used as the basis for a CRMC CZMA federal consistency concurrence or objection.
- B. The federal offshore renewable energy leasing process, and subsequent regulation of renewable energy projects located in federal waters, will remain under the jurisdiction of BOEM, in consultation and coordination with relevant federal agencies and affected state, local, and tribal officials, as per BOEM’s statutory authority at 43 U.S.C. 1337(p) and the regulations found at 30 C.F.R. 285.

11.10.1 Overall Regulatory Standards (formerly § 1160.1)

- A. All offshore developments regardless of size, including energy projects, which are proposed for or located within state waters of the Ocean SAMP area, are subject to the policies and standards outlined in §§ 11.9 and 11.10 of this Part (except, as noted above, § 11.9 of this Part shall not be used for CRMC concurrence or objection for CZMA federal consistency reviews). For the purposes of the Ocean SAMP, offshore developments are defined as:
1. Large-scale projects, such as:

- a. offshore wind facilities (5 or more turbines within 2 km of each other, or 18 MW power generation);
- b. wave generation devices (2 or more devices, or 18 MW power generation);
- c. instream tidal or ocean current devices (2 or more devices, or 18 MW power generation); ~~and~~
- d. offshore LNG platforms (1 or more); ~~and~~
- e. 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; ~~and~~
- f. outer continental shelf (OCS) exploration, development, and production plans.

- 2. Small-scale projects, defined as any projects that are smaller than the above thresholds;
- 3. Underwater cables;
- 4. Mining and extraction of minerals, including sand and gravel;
- 5. Aquaculture projects of any size, as defined and regulated in § 00-1.3.1(K) of this Chapter;
- 6. Dredging, as defined and regulated in § 00-1.3.1(I) of this Chapter; or
- 7. Other development as defined in Subchapter 00 Part 1 of this Chapter (RICRMP – Red Book) which is located from the mouth of Narragansett Bay seaward, in tidal waters between 500 feet offshore and the 3-nautical mile, state water boundary.

B. In assessing the natural resources and existing human uses present in state waters of the Ocean SAMP area, the Council finds that the most suitable area for offshore renewable energy development in the state waters of the Ocean SAMP area is the renewable energy zone depicted in Figure 1 in § 11.10.1(R) of this Part, below. The Council designates this area as Type 4E waters. In the Rhode Island Coastal Resources Management Program (Subchapter 00 Part 1 of this Chapter) these waters were previously designated as Type 4 (multipurpose) but are hereby modified to show that this is the preferred site for large scale renewable energy projects in state waters. The Council may approve offshore renewable energy development elsewhere in the Ocean SAMP area, within state waters, where it is determined to have no significant adverse impact on the natural resources or human uses of the Ocean SAMP area. Large-scale offshore developments shall avoid areas designated as Areas of Particular Concern

consistent with § 11.10.2 of this Part. No large-scale offshore renewable energy development shall be allowed in Areas Designated for Preservation consistent with § 11.10.3 of this Part.

- C. Offshore developments shall not have a significant adverse impact on the natural resources or existing human uses of the Rhode Island coastal zone, as described in the Ocean SAMP. In making the evaluation of the effect on human uses, the Council will determine, for example, if there is an overall net benefit to the Rhode Island marine economic sector from the development of the project or if there is an overall net loss. Where the Council determines that impacts on the natural resources or human uses of the Rhode Island coastal zone through the pre-construction, construction, operation, or decommissioning phases of a project constitute significant adverse effects not previously evaluated, the Council shall, through its permitting and enforcement authorities in state waters and through any subsequent CZMA federal consistency reviews, require that the applicant modify the proposal to avoid and/or mitigate the impacts or the Council shall deny the proposal.
- D. Any assent holder of an approved offshore development shall:
1. Design the project and conduct all activities in a manner that ensures safety and shall not cause undue harm or damage to natural resources, including their physical, chemical, and biological components to the extent practicable; and take measures to prevent unauthorized discharge of pollutants including marine trash and debris into the offshore environment.
 2. Submit requests, applications, plans, notices, modifications, and supplemental information to the Council as required;
 3. Follow up, in writing, any oral request or notification made by the Council, within three (3) business days;
 4. Comply with the terms, conditions, and provisions of all reports and notices submitted to the Council, and of all plans, revisions, and other Council approvals, as provided in § 11.10.5 of this Part.;
 5. Make all applicable payments on time;
 6. Conduct all activities authorized by the permit in a manner consistent with the provisions of this document, the Rhode Island Coastal Resources Management Program (Subchapter 00 Part 1 of this Chapter), and all relevant federal and state statutes, regulations and policies;
 7. Compile, retain, and make available to the Council within the time specified by the Council any information related to the site assessment, design, and operations of a project; and

8. Respond to requests from the Council in a timeframe specified by the Council.
- E. Any large-scale offshore development, as defined in § 11.3(F) of this Part, shall require a meeting between the Fisherman's Advisory Board (FAB), the applicant, and the Council staff to discuss potential fishery-related impacts, such as, but not limited to, project location, construction schedules, alternative locations, project minimization and identification of high fishing activity or habitat edges. For any state permit process for a large-scale offshore development this meeting shall occur prior to submission of the state permit application. The Council cannot require a pre-application meeting for federal permit applications, but the Council strongly encourages applicants for any large-scale offshore development, as defined in § 11.3(F) of this Part, in federal waters to meet with the FAB and the Council staff prior to the submission of a federal application, lease, license, or authorization. However, for federal permit applicants, a meeting with the FAB shall be necessary data and information required for federal consistency reviews for purposes of starting the CZMA 6-month review period for federal license or permit activities under 15 C.F.R. Part 930, Subpart D, and OCS Plans under 15 C.F.R. Part 930, Subpart E, pursuant to 15 C.F.R. § 930.58(a)(2). Any necessary data and information shall be provided before the 6-month CZMA review period begins for a proposed project.
- F. The Council shall prohibit any other uses or activities that would result in significant long-term negative impacts to Rhode Island's commercial or recreational fisheries. Long-term impacts are defined as those that affect more than one or two seasons.
- G. The Council shall require that the potential adverse impacts of offshore developments and other uses on commercial or recreational fisheries be evaluated, considered, and mitigated as described in § 11.10.1(H) of this Part.
- H. For the purposes of fisheries policies and standards as summarized in Ocean SAMP Chapter 5, Commercial and Recreational Fisheries, §§ 5.3.1 and 5.3.2 of this Subchapter, mitigation is defined as a process to make whole those fisheries user groups that are adversely affected by proposals to be undertaken, or undertaken projects, in the Ocean SAMP area. Mitigation measures shall be consistent with the purposes of duly adopted fisheries management plans, programs, strategies and regulations of the agencies and regulatory bodies with jurisdiction over fisheries in the Ocean SAMP area, including but not limited to those set forth above in § 11.9.4(B) of this Part. Mitigation shall not be designed or implemented in a manner that substantially diminishes the effectiveness of duly adopted fisheries management programs. Mitigation measures may include, but are not limited to, compensation, effort reduction, habitat preservation, restoration and construction, marketing, and infrastructure improvements. Where there are potential impacts associated with proposed projects, the need for mitigation shall be presumed. Negotiation of mitigation agreements shall be a necessary condition of any approval or permit of a project by the Council.

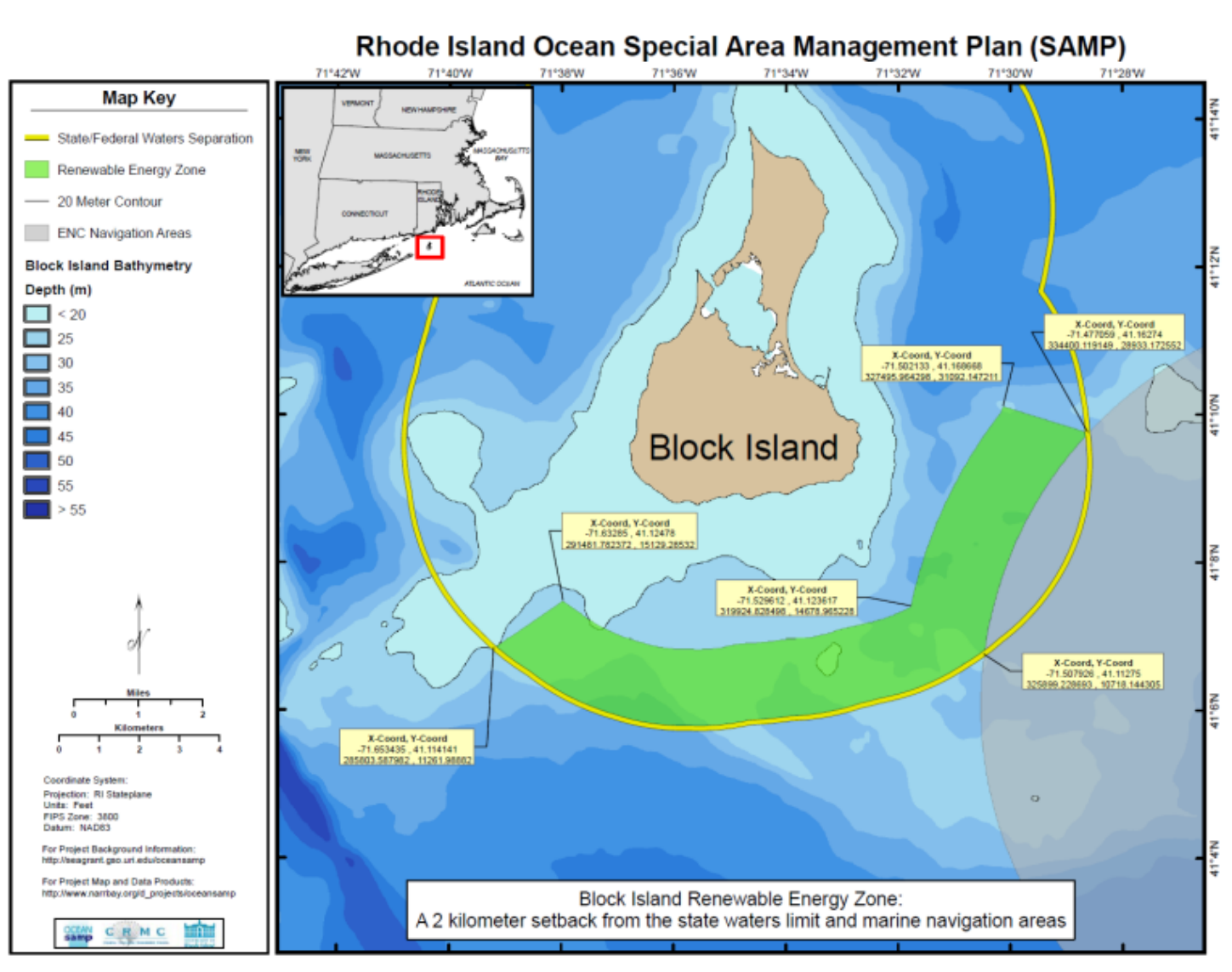
Mitigation shall be negotiated between the Council staff, the FAB, the project developer, and approved by the Council. The reasonable costs associated with the negotiation, which may include data collection and analysis, technical and financial analysis, and legal costs, shall be borne by the applicant. The applicant shall establish and maintain either an escrow account to cover said costs of this negotiation or such other mechanism as set forth in the permit or approval condition pertaining to mitigation. This policy shall apply to all large-scale offshore developments, underwater cables, and other projects as determined by the Council.

- I. The Council recognizes that moraine edges, as illustrated in Figures 3 and 4 in § 11.10.2 of this Part, are important to commercial and recreational fishermen. In addition to these mapped areas, the FAB may identify other edge areas that are important to fisheries within a proposed project location. The Council shall consider the potential adverse impacts of future activities or projects on these areas to Rhode Island's commercial and recreational fisheries. Where it is determined that there is a significant adverse impact, the Council will modify or deny activities that would impact these areas. In addition, the Council will require assent holders for offshore developments to employ micro-siting techniques in order to minimize the potential impacts of such projects on these edge areas.
- J. The finfish, shellfish, and crustacean species that are targeted by commercial and recreational fishermen rely on appropriate habitat at all stages of their life cycles. While all fish habitat is important, spawning and nursery areas are especially important in providing shelter for these species during the most vulnerable stages of their life cycles. The Council shall protect sensitive habitat areas where they have been identified through the Site Assessment Plan or Construction and Operation Plan review processes for offshore developments as described in § 11.10.5(C) of this Part.
- K. Any large-scale offshore development, as defined in § 11.10.1(A) of this Part, shall require a meeting between the HAB, the applicant, and the Council staff to discuss potential marine resource and habitat-related issues such as, but not limited to, impacts to marine resource and habitats during construction and operation, project location, construction schedules, alternative locations, project minimization, measures to mitigate the potential impacts of proposed projects on habitats and marine resources, and the identification of important marine resource and habitat areas. For any state permit process for a large-scale offshore development, this meeting shall occur prior to submission of the state permit application. The Council cannot require a pre-application meeting for federal permit applications, but the Council strongly encourages applicants for any large-scale offshore development, as defined in § 11.10.1(A) of this Part, in federal waters to meet with the HAB and the Council staff prior to the submission of a federal application, lease, license, or authorization. However, for federal permit applicants, a meeting with the HAB shall be necessary data and information required for federal consistency reviews for purposes of starting the CZMA 6-month review period for federal license or permit activities under 15

C.F.R. Part 930, Subpart D, and OCS Plans under 15 C.F.R. Part 930, Subpart E, pursuant to 15 C.F.R. § 930.58(a)(2). Any necessary data and information shall be provided before the 6-month CZMA review period begins for a proposed project.

- L. The potential impacts of a proposed project on cultural and historic resources will be evaluated in accordance with the National Historic Preservation Act and Antiquities Act, and the Rhode Island Historical Preservation Act and Antiquities Act as applicable. Depending on the project and the lead federal agency, the projects that may impact marine historical or archaeological resources identified through the joint agency review process shall require a marine archaeology assessment that documents actual or potential impacts the completed project will have on submerged cultural and historic resources.
- M. Guidelines for marine archaeology assessment in the Ocean SAMP area can be obtained through the RIHPHC in their document, "Performance Standards and Guidelines for Archaeological Projects: Standards for Archaeological Survey" (RIHPHC 2007), or the lead federal agency responsible for reviewing the proposed development.
- N. The potential non-physical impacts of a proposed project on cultural and historic resources shall be evaluated in accordance with 36 C.F.R. § 800.5, assessment of adverse effects, including the introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features. Depending on the project and the lead federal agency, the Ocean SAMP Interagency Working Group may require that a project undergo a visual impact assessment that evaluates the visual impact a completed project will have on onshore cultural and historic resources.
- O. A visual impact assessment may require the development of detailed visual simulations illustrating the completed project's visual relationship to onshore properties that are designated National Historic Landmarks, listed on the National Register of Historic Places, or determined to be eligible for listing on the National Register of Historic Places. Assessment of impacts to specific views from selected properties of interest may be required by relevant state and federal agencies to properly evaluate the impacts and determination of adverse effect of the project on onshore cultural or historical resources.
- P. A visual impact assessment may require description and images illustrating the potential impacts of the proposed project.
- Q. Guidelines for landscape and visual impact assessment in the Ocean SAMP area can be obtained through the lead federal agency responsible for reviewing the proposed development.

R. Figure 1: Renewable energy zone



11.10.2 Areas of Particular Concern (formerly § 1160.2)

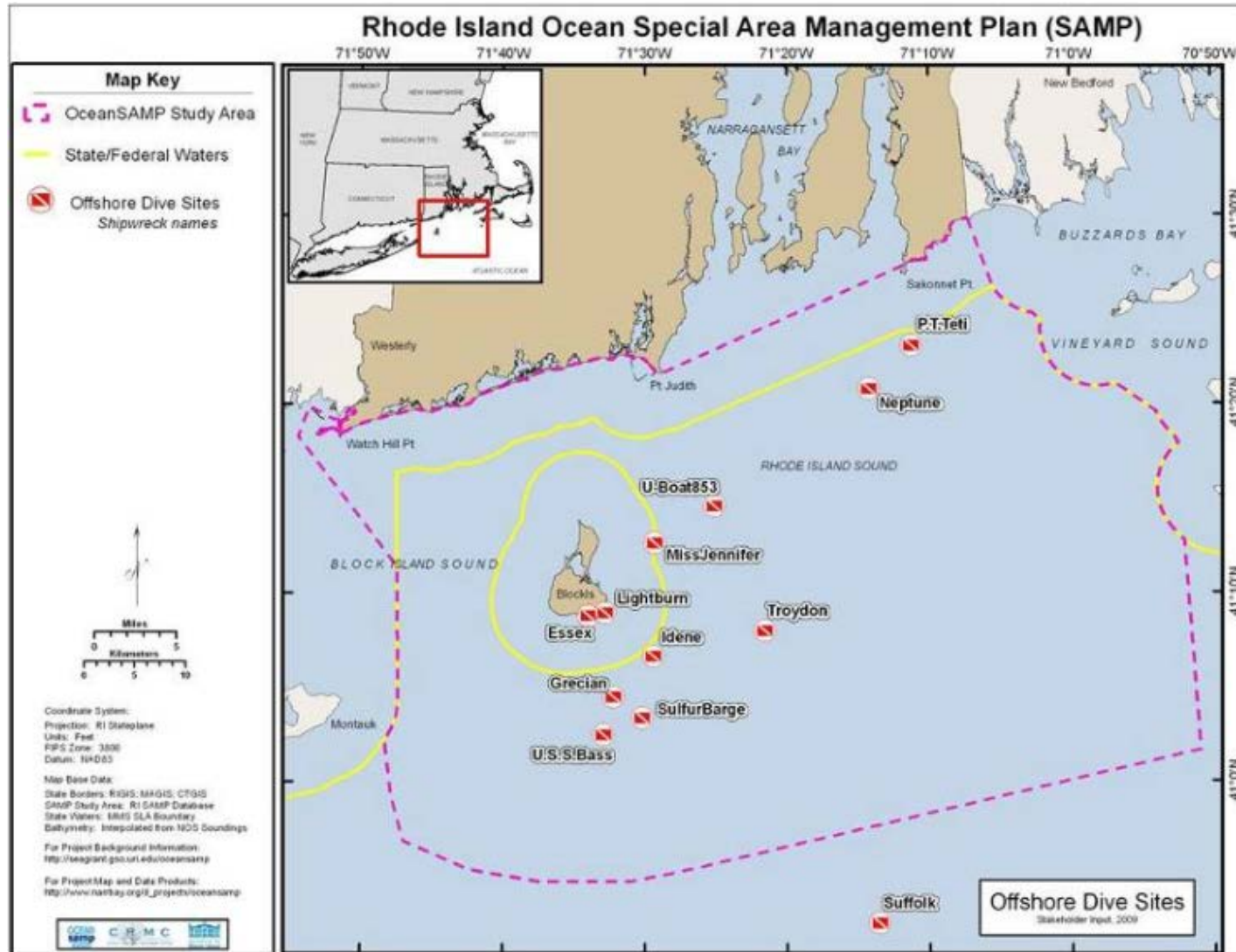
- A. Areas of Particular Concern (APCs) have been designated in state waters through the Ocean SAMP process with the goal of protecting areas that have high conservation value, cultural and historic value, or human use value from large-scale offshore development. These areas may be limited in their use by a particular regulatory agency (e.g., shipping lanes), or have inherent risk associated with them (e.g., unexploded ordnance locations), or have inherent natural value or value assigned by human interest (e.g., glacial moraines, historic shipwreck sites). Areas of Particular Concern have been designated by reviewing habitat data, cultural and historic features data, and human use data that has been developed and analyzed through the Ocean SAMP process. Currently designated Areas of Particular Concern are based on current knowledge and available datasets; additional Areas of Particular Concern may be identified by the Council in the future as new datasets are made available. Areas of Particular Concern may be elevated to Areas Designated for Preservation in the future if future studies show that Areas of Particular Concern cannot risk even low levels of large-scale offshore development within these areas. Areas of Particular Concern include:
1. Areas with unique or fragile physical features, or important natural habitats;
 2. Areas of high natural productivity;
 3. Areas with features of historical significance or cultural value;
 4. Areas of substantial recreational value;
 5. Areas important for navigation, transportation, military and other human uses; and
 6. Areas of high fishing activity.
- B. The Council has designated the areas listed below in § 11.10.2(C) of this Part in state waters as Areas of Particular Concern. All large-scale, small-scale, or other offshore development, or any portion of a proposed project, shall be presumptively excluded from APCs. This exclusion is rebuttable if the applicant can demonstrate by clear and convincing evidence that there are no practicable alternatives that are less damaging in areas outside of the APC, or that the proposed project will not result in a significant alteration to the values and resources of the APC. When evaluating a project proposal, the Council shall not consider cost as a factor when determining whether practicable alternatives exist. Applicants which successfully demonstrate that the presumptive exclusion does not apply to a proposed project because there are no practicable alternatives that are less damaging in areas outside of the APC must also demonstrate that all feasible efforts have been made to avoid damage to APC resources and values

and that there will be no significant alteration of the APC resources or values. Applicants successfully demonstrating that the presumptive exclusion does not apply because the proposed project will not result in a significant alteration to the values and resources of the APC must also demonstrate that all feasible efforts have been made to avoid damage to the APC resources and values. The Council may require a successful applicant to provide a mitigation plan that protects the ecosystem. The Council will permit underwater cables, only in certain categories of Areas of Particular Concern, as determined by the Council in coordination with the Joint Agency Working Group. The maps listed below in § 11.10.2(C) of this Part depicting Areas of Particular Concern may be superseded by more detailed, site-specific maps created with finer resolution data.

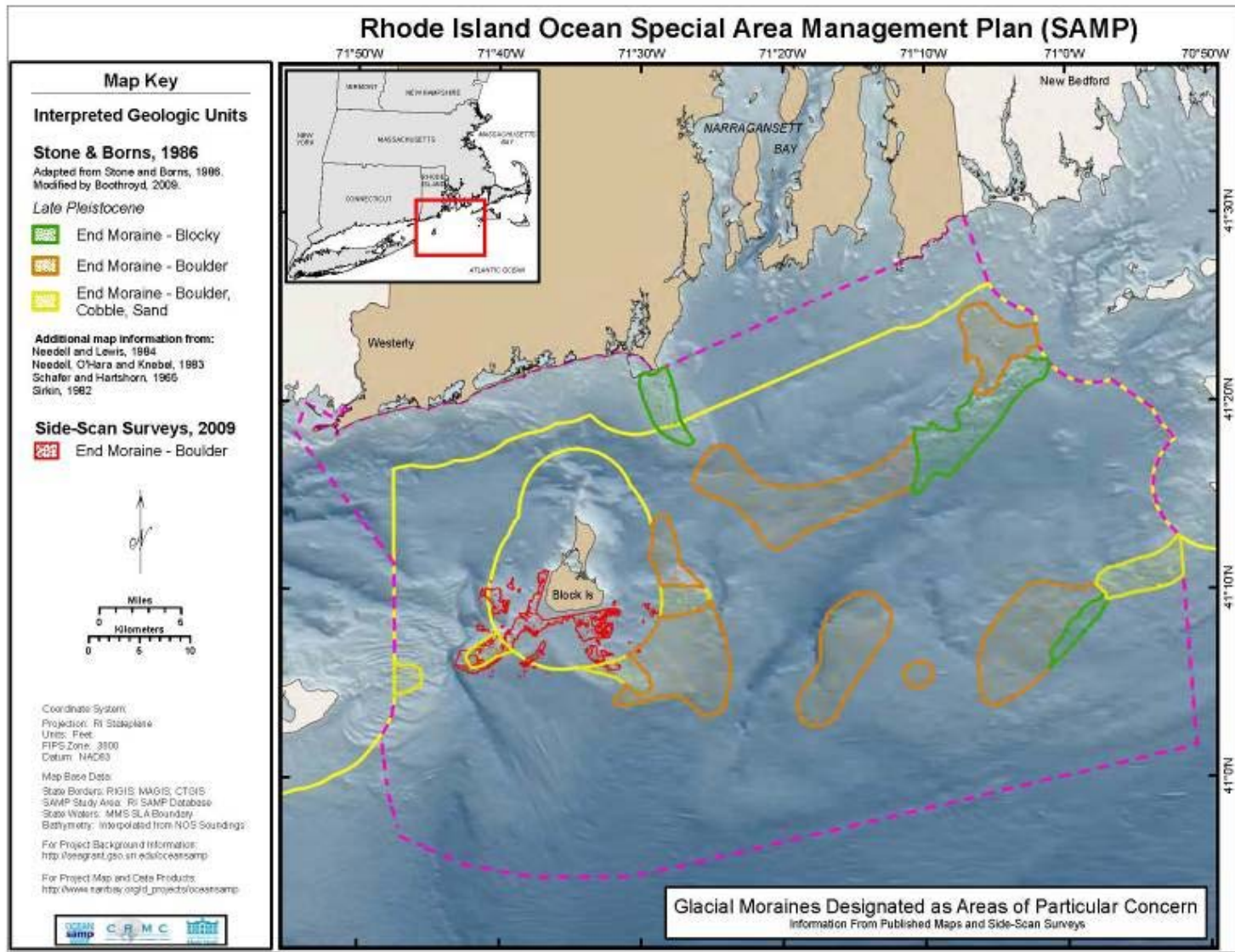
- C. Areas of particular concern that have been identified in the Ocean SAMP area in state waters are described as follows:
1. Historic shipwrecks, archeological or historical sites and their buffers as described in Ocean SAMP Chapter 4, Cultural and Historic Resources, Sections 440.1.1 through 440.1.4, are Areas of Particular Concern. For the latest list of these sites and their locations please refer to the Rhode Island State Historic Preservation and Heritage Commission.
 2. Offshore dive sites within the Ocean SAMP area, as shown in Figure 2 in § 11.10.2 of this Part, are designated Areas of Particular Concern. The Council recognizes that offshore dive sites, most of which are shipwrecks, are valuable recreational and cultural ocean assets and are important to sustaining Rhode Island's recreation and tourism economy.
 3. Glacial moraines are important habitat areas for a diversity of fish and other marine plants and animals because of their relative structural permanence and structural complexity. Glacial moraines create a unique bottom topography that allows for habitat diversity and complexity, which allows for species diversity in these areas and creates environments that exhibit some of the highest biodiversity within the entire Ocean SAMP area. The Council also recognizes that because glacial moraines contain valuable habitats for fish and other marine life, they are also important to commercial and recreational fishermen. Accordingly, the Council shall designate glacial moraines as identified in Figures 3 and 4 in § 11.10.2 of this Part as Areas of Particular Concern.
 4. Navigation, military, and infrastructure areas including: designated shipping lanes, precautionary areas, recommended vessel routes, ferry routes, dredge disposal sites, military testing areas, unexploded ordnance, pilot boarding areas, anchorages, and a coastal buffer of 1 km as depicted in Figure 5 in § 11.10.2 of this Part are designated as Areas of Particular Concern. The Council recognizes the importance of these areas to marine transportation, navigation and other activities in the Ocean SAMP area.

5. Areas of high fishing activity as identified during the pre-application process by the Fishermen's Advisory Board, as defined in § 11.3(E) of this Part, may be designated by the Council as Areas of Particular Concern.
 6. Several heavily-used recreational boating and sailboat racing areas, as shown in Figure 6 in § 11.10.2 of this Part, are designated as Areas of Particular Concern. The Council recognizes that organized recreational boating and sailboat racing activities are concentrated in these particular areas, which are therefore important to sustaining Rhode Island's recreation and tourism economy.
 7. Naval fleet submarine transit lanes, as described in Ocean SAMP Chapter 7, Marine Transportation, Navigation, and Infrastructure Section 720.7, are designated as Areas of Particular Concern.
 8. Other Areas of Particular Concern may be identified during the pre-application review by state and federal agencies as areas of importance.
- D. Developers proposing projects for within the renewable energy zone as described in § 11.10.1(B) of this Part shall adhere to the requirements outlined in § 11.10.2 of this Part regarding Areas of Particular Concern in state waters, including any Areas of Particular Concern that overlap the renewable energy zone (see Figure 7 in § 11.10.2 of this Part).

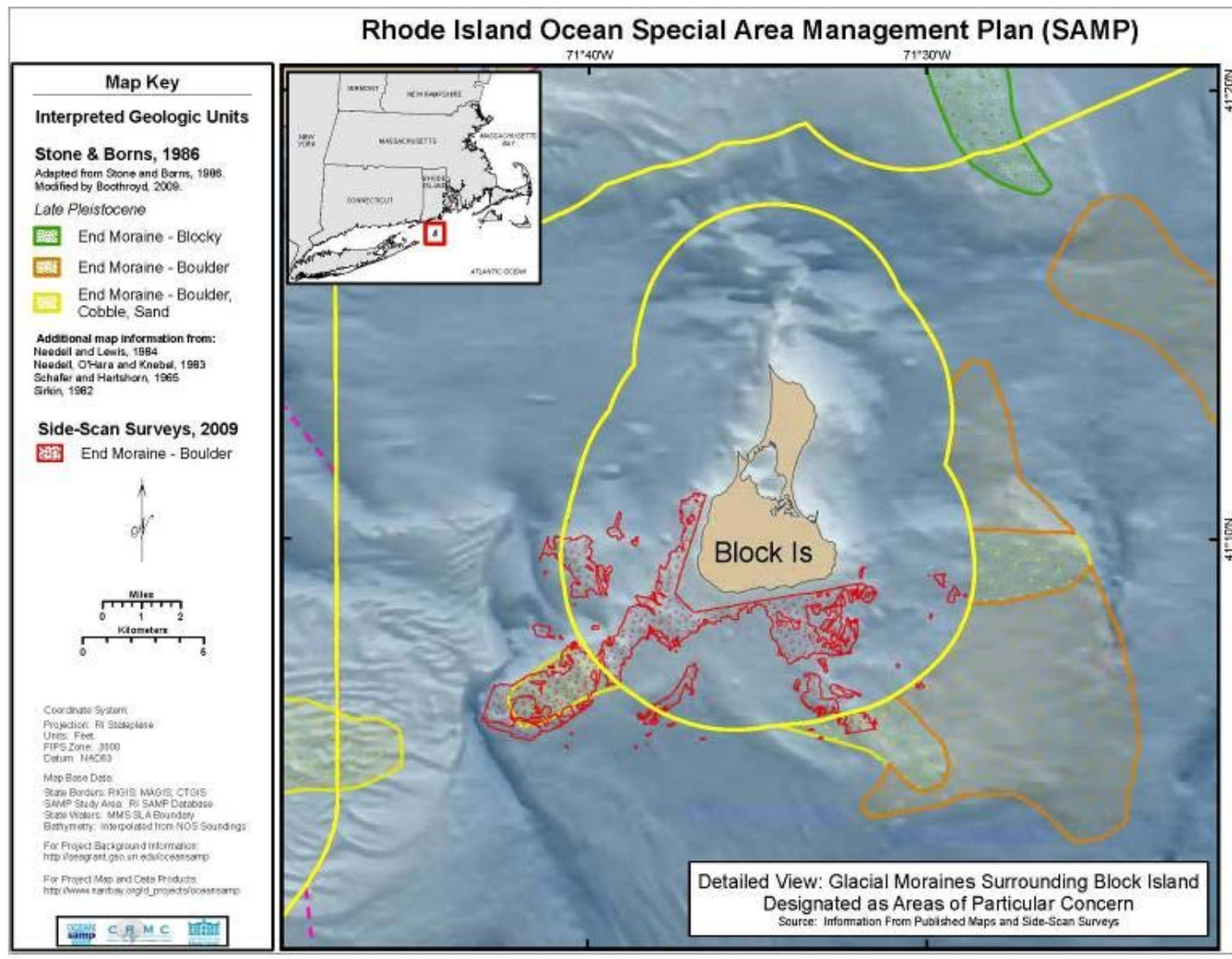
E. Figure 2: Offshore dive sites designated as Areas of Particular Concern in state waters



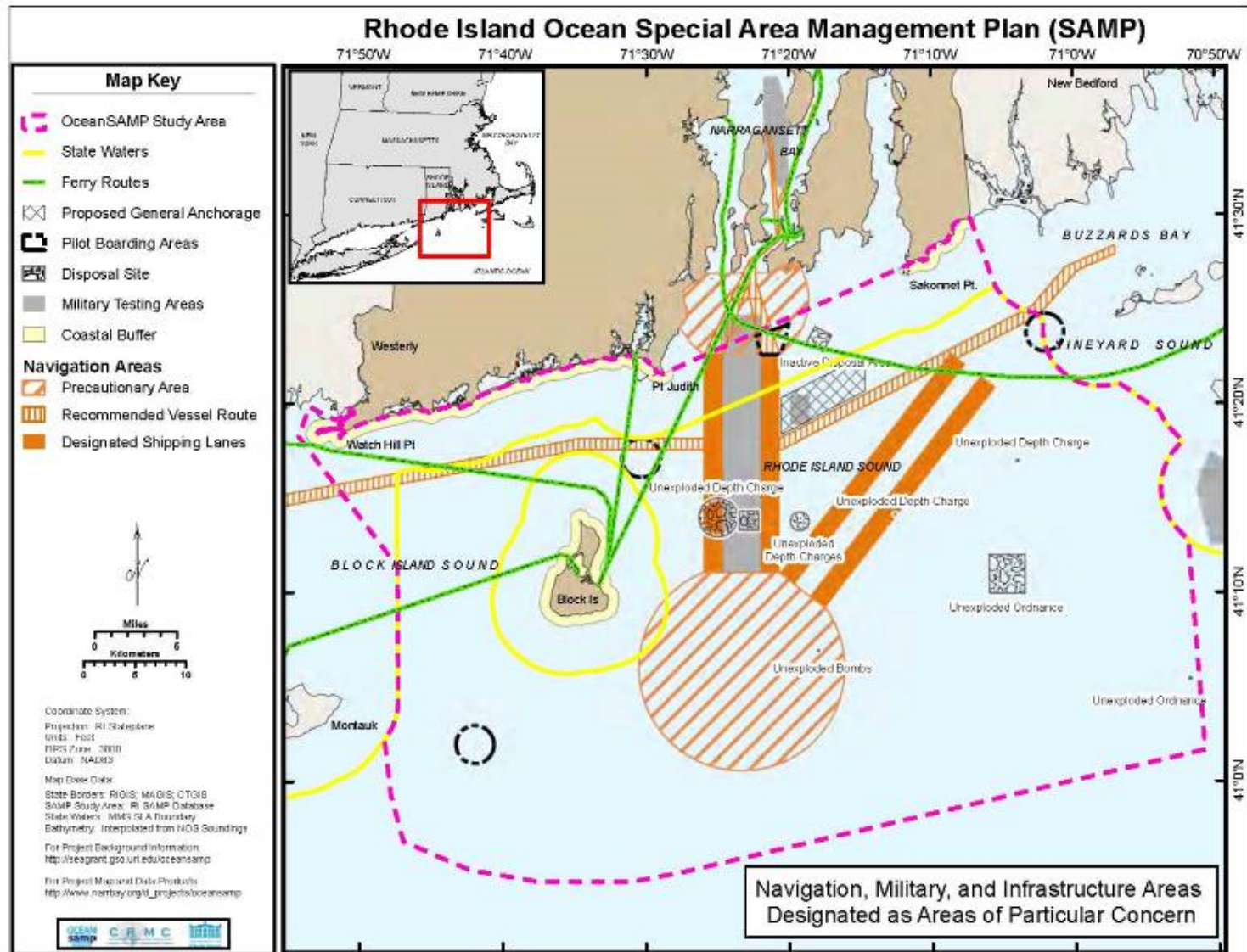
F. Figure 3: Glacial moraines designated as Areas of Particular Concern in state waters



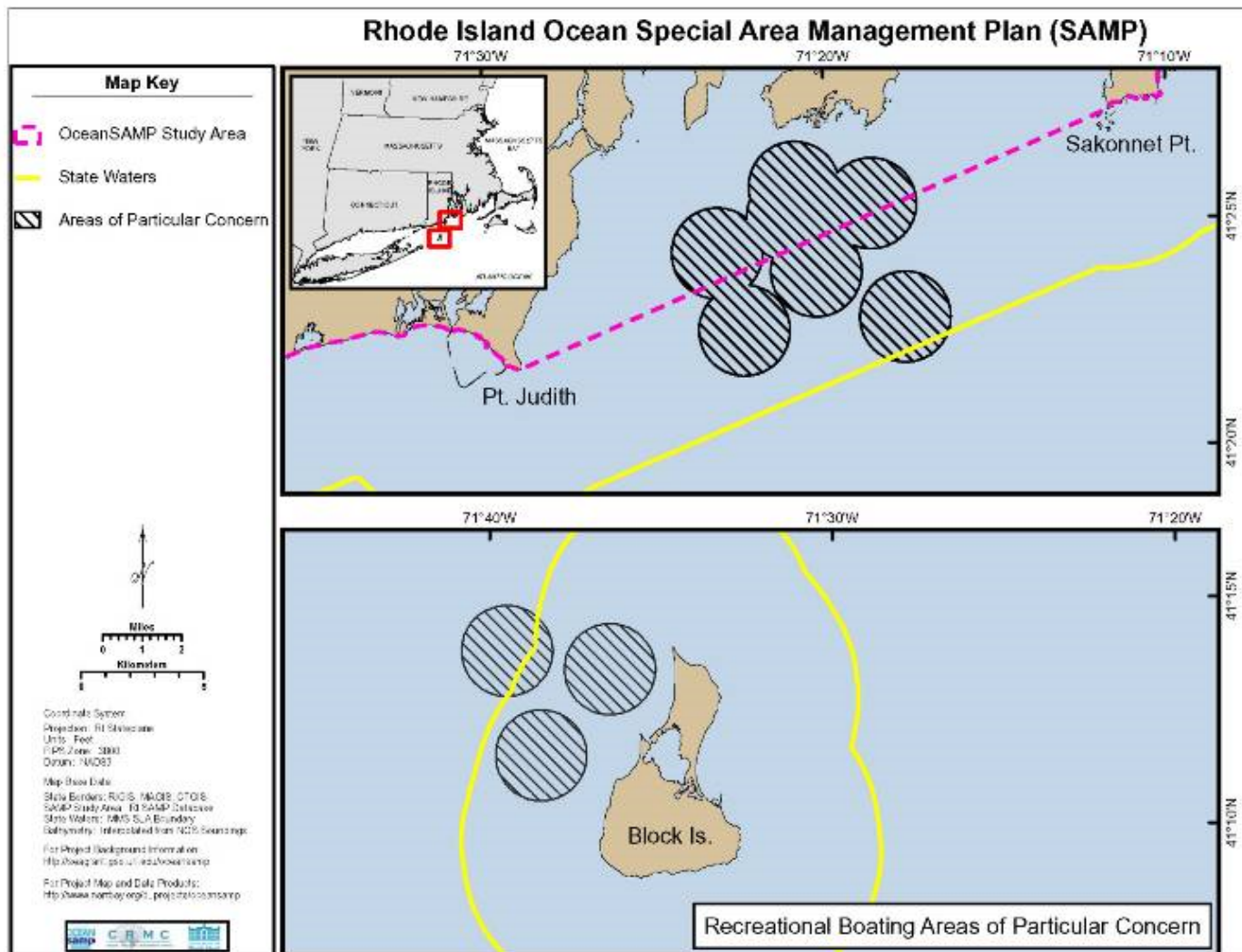
- G. Figure 4: Detailed view: Glacial moraines surrounding Block Island designated as Areas of Particular Concern in state waters



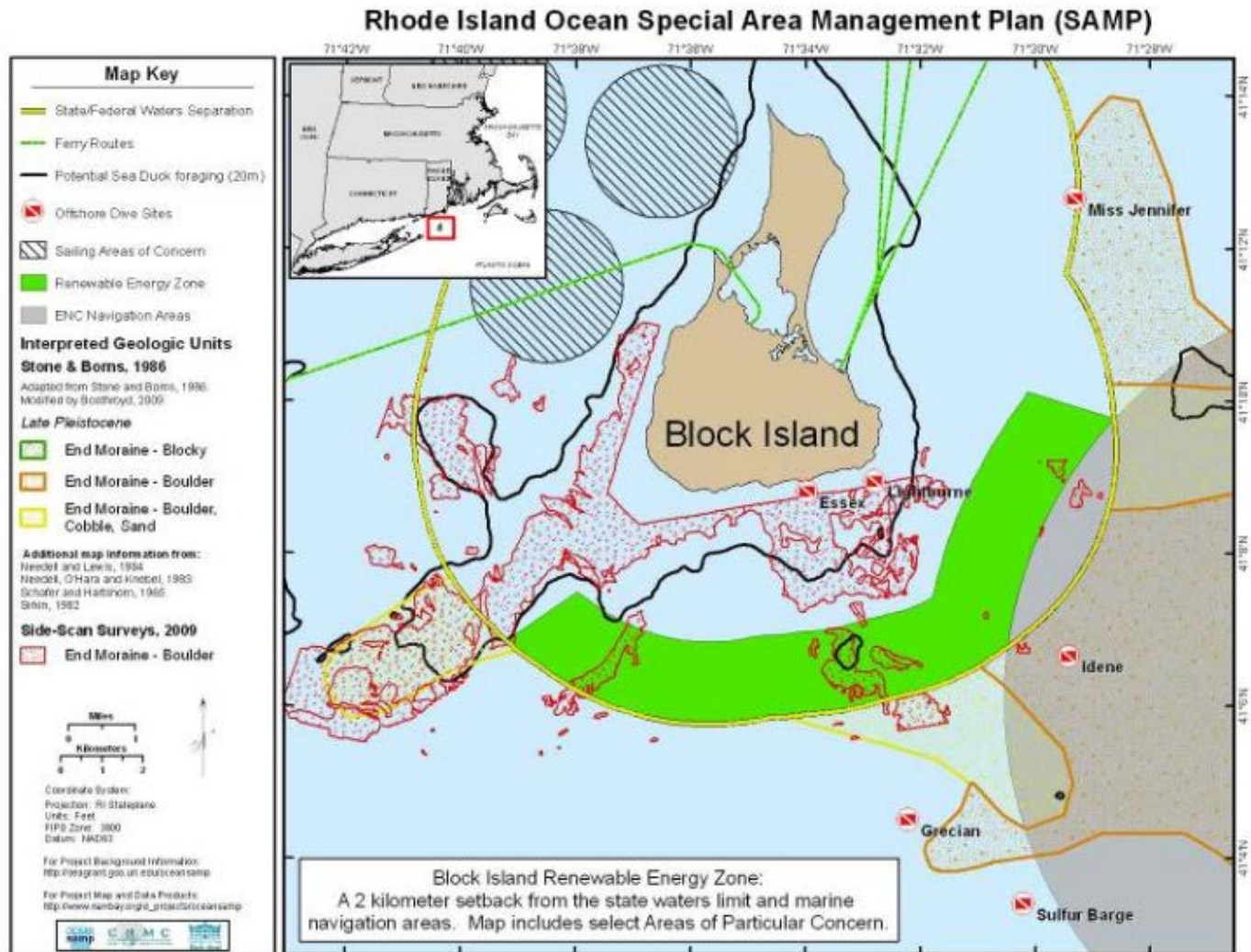
H. Figure 5: Navigation, military, and infrastructure areas designated as Areas of Particular Concern in state waters



I. Figure 6: Recreational boating areas designated as Areas of Particular Concern in state waters



J. Figure 7: Areas of Particular Concern overlapping the Renewable Energy Zone in state waters

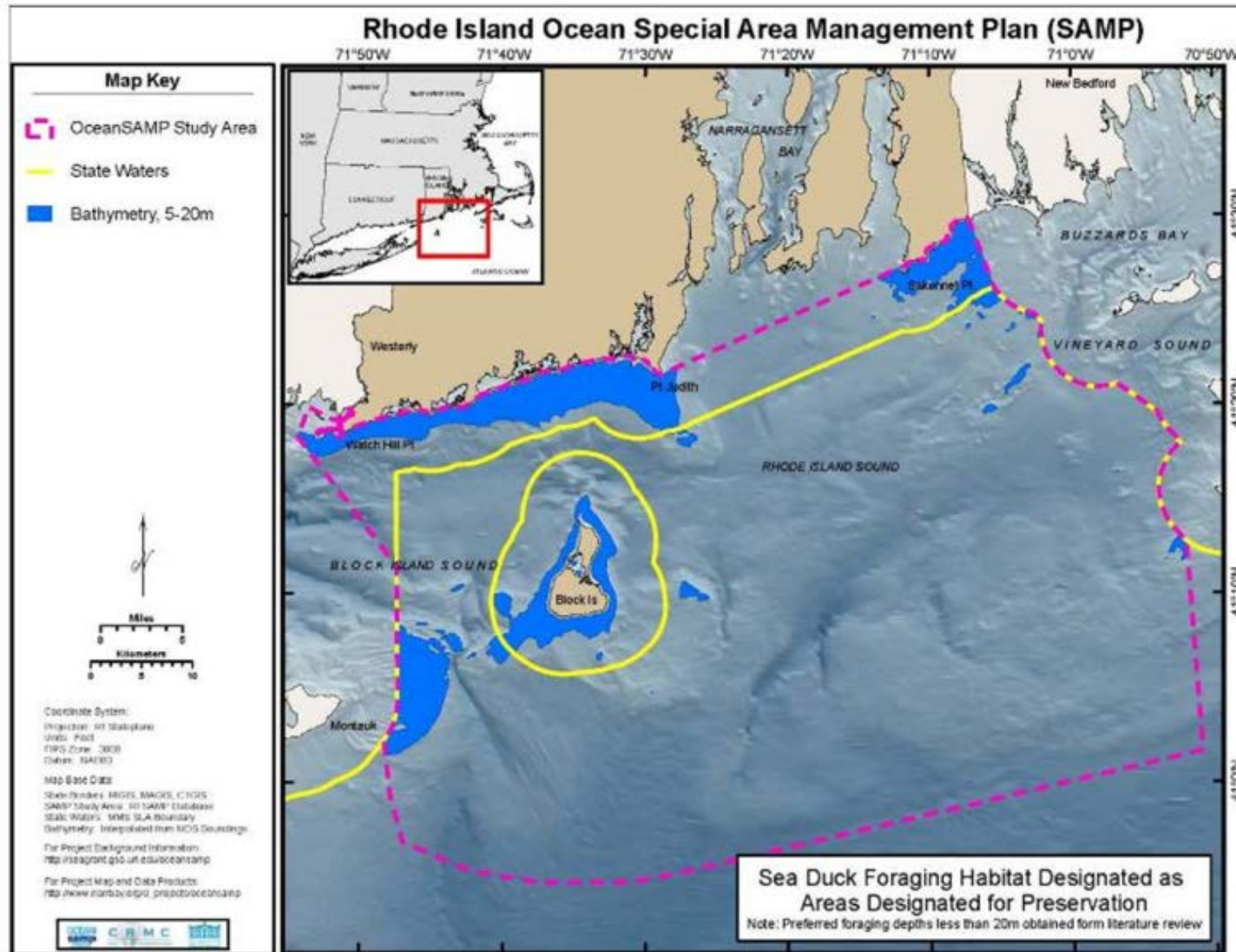


11.10.3 Prohibitions and Areas Designated for Preservation (formerly § 1160.3)

- A. Areas Designated for Preservation are designated in the Ocean SAMP area in state waters for the purpose of preserving them for their ecological value. Areas Designated for Preservation were identified by reviewing habitat and other ecological data and findings that have resulted from the Ocean SAMP process. Areas Designated for Preservation are afforded additional protection than Areas of Particular Concern (see § 11.10.2 of this Part) because of scientific evidence indicating that large-scale offshore development in these areas may result in significant habitat loss. The areas described in § 11.10.3 of this Part are designated as Areas Designated for Preservation. The Council shall prohibit any large-scale offshore development, mining and extraction of minerals, or other development that has been found to be in conflict with the intent and purpose of an Area Designated for Preservation. Underwater cables are exempt from this prohibition. Areas Designated for Preservation include:
1. Ocean SAMP sea duck foraging habitat in water depths less than or equal to 20 meters [65.6 feet] (as shown in Figure 8 in § 11.10.2 of this Part) are designated as Areas Designated for Preservation due to their ecological value and the significant role these foraging habitats play to avian species, and existing evidence suggesting the potential for permanent habitat loss as a result of offshore wind energy development. The current research regarding sea duck foraging areas indicates that this habitat is depth limited and generally contained within the 20 meter depth contour. It is likely there are discreet areas within this region that are prime feeding areas, however at present there is no long-term data set that would allow this determination. Thus, the entire area within the 20 meter contour is being protected as an Area Designated for Preservation until further research allows the Council and other agencies to make a more refined determination.
 2. The mining and extraction of minerals, including sand and gravel, from tidal waters and salt ponds is prohibited. This prohibition does not apply to dredging for navigation purposes, channel maintenance, habitat restoration, or beach replenishment for public purposes.
 3. The Council shall prohibit any offshore development in areas identified as Critical Habitat under the Endangered Species Act.
 4. Dredged material disposal, as defined and regulated in § 00-1.3.1(I) of this Chapter, is further limited in the Ocean SAMP area by the prohibition of dredged material disposal in the following Areas of Particular Concern as defined in § 11.10.2 of this Part: historic shipwrecks, archaeological, or historic sites; offshore dive sites; navigation, military, and infrastructure areas; and moraines. Beneficial reuse may be allowed in Areas

Designated for Preservation, whereas all other dredged material disposal is prohibited in those areas. All disposal of dredged material will be conducted in accordance with the U.S. EPA and U.S. Army Corps of Engineers' manual, Evaluation of Dredged Material Proposed for Ocean Disposal.

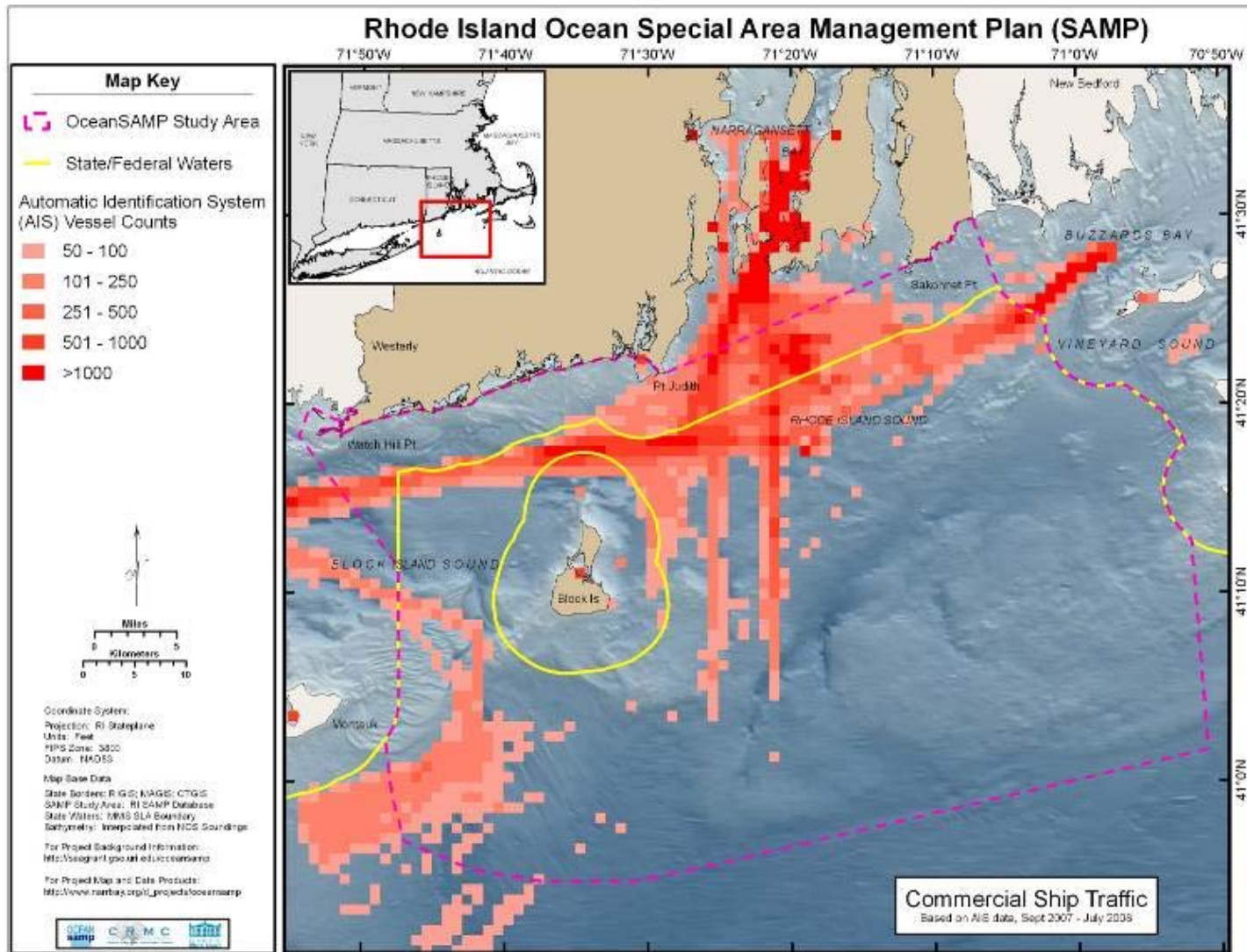
B. Figure 8: Sea duck foraging habitat designated as Areas Designated for Preservation in state waters



11.10.4 Other Areas (formerly § 1160.4)

- A. Large-scale projects or other development which is found to be a hazard to commercial navigation shall avoid areas of high intensity commercial marine traffic in state waters. Avoidance shall be the primary goal of these areas. Areas of high intensity commercial marine traffic are defined as having 50 or more vessel counts within a 1 km by 1 km grid, as shown in Figure 9 in § 11.10.2 of this Part.

B. Figure 9: Areas of high intensity commercial ship traffic in state waters.



11.10.5 Application Requirements (formerly § 1160.5)

- A. For the purposes of this document, the phrase “necessary data and information” shall refer to the necessary data and information required for federal consistency reviews for purposes of starting the Coastal Zone Management Act (CZMA) 6-month review period for federal license or permit activities under 15 C.F.R. Part 930, Subpart D, and OCS Plans under 15 C.F.R. Part 930, Subpart E, pursuant to 15 C.F.R. § 930.58(a)(2). Any necessary data and information shall be provided before the 6-month CZMA review period begins for a proposed project. It should be noted that other federal and state agencies may require other types of data or information as part of their review processes.
- B. For the purposes of this document, the following terms shall be defined as:
1. A site assessment plan (SAP) is defined as a pre-application plan that describes the activities and studies the applicant plans to perform for the characterization of the project site.
 2. A construction and operations plan (COP) is defined as a plan that describes the applicant’s construction, operations, and conceptual decommissioning plans for a proposed facility, including the applicant’s project easement area.
 3. A certified verification agent (CVA) is defined as an independent third-party agent that shall use good engineering judgment and practices in conducting an independent assessment of the design, fabrication and installation of the facility. The CVA should have licensed and qualified Professional Engineers on staff.
- C. Prior to construction, the following sections shall be considered necessary data and information and shall be required by the Council:
1. Site assessment plan – A SAP is a pre-application plan that describes the activities and studies (e.g., installation of meteorological towers, meteorological buoys) the applicant plans to perform for the characterization of the project site. Within the renewable energy zone, if an applicant applies within 2 years of CRMC’s adoption of the Ocean Special Area Management Plan they may elect to combine the SAP and construction and operation plan (COP) phase, but only within the renewable energy zone and only for 2 years after the adoption date. If an applicant elects to combine these two phases all requirements shall still be met. The SAP shall describe how the applicant shall conduct the resource assessment (e.g., meteorological and oceanographic data collection) or technology testing activities. The applicant shall receive the approval of the SAP by the Council. For projects within Type 4E waters (depicted in Figure 1 in § 11.10.1 of this Part), pre-construction data requirements may incorporate data generated by the Ocean SAMP provided the data was

collected within 2 years of the date of application, or where the Ocean SAMP data is determined to be current enough to meet the requirements of the Council in coordination with the Joint Agency Working Group. The applicant shall reference information and data discussed in the Ocean SAMP (including appendices and technical reports) in their SAP.

- a. The applicant's SAP shall include data from:
 - (1) Physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys); and
 - (2) Baseline environmental surveys (e.g., biological or archaeological surveys).
- b. The SAP shall demonstrate that the applicant has planned and is prepared to conduct the proposed site assessment activities in a manner that conforms to the applicant's responsibilities listed above in § 11.10.1(E) of this Part:
 - (1) Conforms to all applicable laws, regulations;
 - (2) Is safe;
 - (3) Does not unreasonably interfere with other existing uses of the state waters,
 - (4) Does not cause undue harm or damage to natural resources; life (including human and wildlife); the marine, coastal, or human environment; or sites, structures, or direct harm to objects of historical or archaeological significance;
 - (5) Uses best available and safest technology;
 - (6) Uses best management practices; and
 - (7) Uses properly trained personnel.
- c. The applicant shall also demonstrate that the site assessment activities shall collect the necessary data and information required for the applicant's COP, as described below in § 11.10.5(C)(2) of this Part.
- d. The applicant's SAP shall include the information described in Table 1 in § 11.10.5 of this Part, as applicable.

(1) Table 1: Contents of a site assessment plan.

Project information:	Including:
(1) Contact information	The name, address, e-mail address, and phone number of an authorized representative.
(2) The site assessment or technology testing concept.	A discussion of the objectives; description of the proposed activities, including the technology to be used; and proposed schedule from start to completion.
(4) Stipulations and compliance.	A description of the measures the applicant took, or shall take, to satisfy the conditions of any permit stipulations related to the applicant's proposed activities.
(5) A location.	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances located both offshore and onshore.
(6) General structural and project design, fabrication, and installation.	Information for each type of facility associated with the applicant's project.
(7) Deployment activities.	A description of the safety, prevention, and environmental protection features or measures that the applicant will use.
(8) The applicant's proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures the applicant shall take to avoid or minimize adverse effects and any potential incidental take, before the applicant conducts activities on the project site, and how the applicant shall mitigate environmental impacts from proposed activities, including a description of the measures to be used.
(9) Reference information.	Any document or published sources that the applicant cites as part of the plan. The applicant shall reference information and data discussed in the Ocean SAMP (including appendices and technical reports), other plans referenced in the Ocean SAMP, and other plans previously submitted by the applicant or that are otherwise readily

	available to the Council.
(10) Decommissioning and site clearance procedures.	A discussion of methodologies.
(11) Air quality information.	Information required for the Clean Air Act (42 U.S.C. § 7409) and implementing regulations
(12) A listing of all Federal, State, and local authorizations or approvals required to conduct site assessment activities on the project site.	A statement indicating whether such authorization or approval has been applied for or obtained.
(13) A list of agencies or persons with whom the applicant has communicated, or will communicate, regarding potential impacts associated with the proposed activities.	Contact information and issues discussed.
(14) Financial assurance information.	Statements attesting that the activities and facilities proposed in the applicant's SAP are or shall be covered by an appropriate performance bond or other Council approved security.
(15) Other information.	Additional information as requested by the Council in coordination with the Joint Agency Working Group

- e. The applicant's SAP shall provide the results of geophysical and geological surveys, hazards surveys, archaeological surveys (as required by the Council in coordination with the Joint Agency Working Group), and biological surveys outlined in Table 2 in § 11.10.5 of this Part (with the supporting data) in the applicant's SAP:

(1) Table 2: Necessary data and information to be provided in the site assessment plan.

Information.	Report contents.	Including.
(1) Geotechnical.	Reports from the geotechnical survey with supporting data.	A description of all relevant seabed and engineering information to allow for the design of the foundation of that facility. The applicant shall provide information to depths below which the underlying conditions shall not influence the integrity or performance of the structure. This could include a series of sampling locations (borings and <i>in situ</i> tests) as well as laboratory testing of soil samples.
(2) Shallow hazards.	The results from the shallow hazards survey with supporting data, if required.	A description of information sufficient to determine the presence of the following features and their likely effects on the proposed facility, including: (i) Shallow faults; (ii) Gas seeps or shallow gas; (iii) Slump blocks or slump sediments; (iv) Hydrates; and (v) Ice scour of seabed sediments.
(3) Archaeological resources.	The results from the archaeological survey with supporting data, if required.	(i) A description of the results and data from the archaeological survey; (ii) A description of the historic and prehistoric archaeological resources, as required by the National Historic Preservation Act and Antiquities Act (16 U.S.C. § 470 <i>et. seq.</i>), as amended, the Rhode Island Historical Preservation Act and Antiquities Act and §§ 00-1.2.3 and 00-1.3.5 of this Chapter, as applicable;

		(iii) For more information on the archeological surveys and assessments required see § 4.3 of this Subchapter.
(4) Geological survey.	The results from the geological survey with supporting data.	<p>A report that describes the results of a geological survey that includes descriptions of:</p> <ul style="list-style-type: none"> (i) Seismic activity at the proposed site; (ii) Fault zones; (iii) The possibility and effects of seabed subsidence; and (iv) The extent and geometry of faulting attenuation effects of geologic conditions near the site.
(5) Biological survey.	The results from the biological survey with supporting data.	A description of the results of a biological survey, including descriptions of the presence of live bottoms; hard bottoms; topographic features; and surveys of other marine resources such as fish populations (including migratory populations) not targeted by commercial or recreational fishing, marine mammals, sea turtles, and sea birds.
(6) Fish and fisheries survey	The results from the fish and fisheries survey with supporting data.	<p>A report that describes the results of:</p> <ul style="list-style-type: none"> (i) A biological assessment of commercially and recreationally targeted species. This assessment shall assess the relative abundance, distribution, and different life stages of these species at all four seasons of the year. This assessment shall comprise a series of surveys, employing survey equipment and methods that are appropriate for sampling finfish, shellfish, and crustacean species at the project's

		<p>proposed location. This assessment may include evaluation of survey data collected through an existing survey program, if data are available for the proposed site.</p> <p>(ii) An assessment of commercial and recreational fisheries effort, landings, and landings value. Assessment shall focus on the proposed project area and alternatives across all four seasons of the year must. Assessment may use existing fisheries monitoring data but shall be supplemented by interviews with commercial and recreational fishermen.</p> <p>(iii) For more information on these assessments see § 11.10.9(C) of this Part.</p>
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- f. The applicant shall submit a SAP that describes those resources, conditions, and activities listed in Table 3 in § 11.10.5 of this Part that could be affected by the applicant's proposed activities, or that could affect the activities proposed in the applicant's SAP, including but not limited to:

- (1) Table 3: Resource data and uses that shall be described in the site assessment plan.

Type of information	Including:
(1) Hazard information.	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality.	Turbidity and total suspended solids from construction.
(3) Biological resources.	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish (not targeted by commercial or recreational fishing), plankton, seagrasses, and plant life.
(4) Threatened or endangered species.	As required by the Endangered Species Act

	(ESA) of 1973 (16. U.S.C. § 1531 <i>et seq.</i>).
(5) Sensitive biological resources or habitats.	Essential fish habitat, refuges, preserves, Areas of Particular Concern, Areas Designated for Preservation, sanctuaries, rookeries, hard bottom habitat, and calving grounds; barrier islands, beaches, dunes, and wetlands.
(6) Archaeological and visual resources.	As required by the National Historic Preservation Act and Antiquities Act (16 U.S.C. 470 <i>et seq.</i>), as amended, the Rhode Island Historical Preservation Act and Antiquities Act and §§ 00-1.2.3 and 00-1.3.5 of this Chapter, as applicable.
(7) Social and economic resources.	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, minority and lower income groups, and view shed.
(8) Fisheries resources and uses	Commercially and recreationally targeted species, recreational and commercial fishing (including fishing seasons, location, and type), commercial and recreational fishing activities, effort, landings, and landings value.
(9) Coastal and marine uses.	Military activities, vessel traffic, and energy and non-energy mineral exploration or development.

- g. The Council shall review the applicant's SAP in coordination with the Joint Agency Working Group to determine if it contains the information necessary to conduct technical and environmental reviews and shall notify the applicant if the SAP lacks any necessary information.
- h. As appropriate, the Council shall coordinate and consult with relevant Federal and State agencies, and affected Indian tribes.
- i. Any large-scale offshore development, as defined above in § 11.10.1(A) of this Part, shall require a pre-application meeting between the FAB, the applicant, and the Council staff to discuss potential fishery-related impacts, such as, but not limited to, project location, construction schedules, alternative locations, and project

minimization. During the pre-application meeting for a large-scale offshore development, the FAB can also identify areas of high fishing activity or habitat edges to be considered during the review process.

- j. During the review process, the Council may request additional information if it is determined that the information provided is not sufficient to complete the review and approval process.
- k. Once the SAP is approved by the Council the applicant may begin conducting the activities approved in the SAP.
- l. Reporting requirements of the applicant under an approved SAP:
 - (1) Following the approval of a SAP, the applicant shall notify the Council in writing within 30 days of completing installation activities of any temporary measuring devices approved by the Council.
 - (2) The applicant shall prepare and submit to the Council a report semi-annually. The first report shall be due 6 months after work on the SAP begins; subsequent reports shall be submitted every 6 month thereafter until the SAP period is complete. The report shall summarize the applicant's site assessment activities and the results of those activities.
 - (3) The Council reserves the right to require additional environmental and technical studies, if it is found there is a critical area lacking or missing information.
- m. The applicant shall seek the Council's approval before conducting any activities not described in the approved SAP, describing in detail the type of activities the applicant proposes to conduct and the rationale for these activities. The Council shall determine whether the activities proposed are authorized by the applicant's existing SAP or require a revision to the applicant's SAP. The Council may request additional information from the applicant, if necessary, to make this determination.
- n. The Council shall periodically review the activities conducted under an approved SAP. The frequency and extent of the review shall be based on the significance of any changes in available information and on onshore or offshore conditions affecting, or affected by, the activities conducted under the applicant's SAP. If the review indicates that the SAP should be revised to meet the requirements of this part, the Council shall require the applicant to submit the needed revisions.

- o. The applicant may keep approved facilities (such as meteorological towers) installed during the SAP period in place during the time that the Council reviews the applicant's COP for approval. Note: Structures in state waters shall require separate authorizations outside the SAP process.
 - p. The applicant is not required to initiate the decommissioning process for facilities that are authorized to remain in place under the applicant's approved COP. If, following the technical and environmental review of the applicant's submitted COP, the Council determines that such facilities may not remain in place the applicant shall initiate the decommissioning process.
 - q. The Executive Director on behalf of the Council will be responsible for reviewing and approving study designs conducted as part of the necessary data and information contained in the SAP. The Executive Director shall seek the advice of the FAB and HAB in setting out the study designs to be completed in the SAP. The Executive Director shall also brief the Ocean SAMP Subcommittee on each study design as it is being considered. Any applicant that initiated, conducted and/or completed site assessment studies or surveying activities prior to the adoption of the policies set forth in the SAMP, shall demonstrate that the studies were done in accordance with federal protocols for such studies or in the alternative, to the Council's satisfaction that the completed studies were conducted with approval from the Executive Director and in accordance with §§ 11.10.5(A), 11.10.5(C)(2), 11.10.5(C)(3) and 11.10.5(C)(4) of this Part.
- 2. Construction and operations plan (COP) - The COP describes the applicant's construction, operations, and conceptual decommissioning plans for the proposed facility, including the applicant's project easement area.
 - a. The applicant's COP shall describe all planned facilities that the applicant shall construct and use for the applicant's project, including onshore and support facilities and all anticipated project easements.
 - b. The applicant's COP shall describe all proposed activities including the applicant's proposed construction activities, commercial operations, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities.
 - c. The applicant shall receive the Council's approval of the COP before the applicant can begin any of the approved activities on the applicant's project site, lease or easement.

- d. The COP shall demonstrate that the applicant has planned and is prepared to conduct the proposed activities in a manner that:
- (1) Conforms to all applicable laws, implementing regulations.
 - (2) Is safe;
 - (3) Does not unreasonably interfere with other uses of state waters;
 - (4) Does not cause undue harm or damage to natural resources; life (including human and wildlife); the marine, coastal, or human environment; or direct impact to sites, structures, or objects of historical or archaeological significance;
 - (5) Uses best available and safest technology;
 - (6) Uses best management practices; and
 - (7) Uses properly trained personnel.
- e. The applicant's COP shall include the following project-specific information, as applicable.

- (1) Table 4: Contents of the construction and operations plan.

Project information:	Including:
(1) Contact information	The name, address, e-mail address, and phone number of an authorized representative.
(2) Designation of operator, if applicable	
(3) The construction and operation concept	A discussion of the objectives, description of the proposed activities, tentative schedule from start to completion, and plans for phased development.
(4) A location	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances located both offshore and onshore, including all anchor/mooring data.
(5) General structural and project design, fabrication, and installation	Information for each type of structure associated with the project and, unless the Council provides otherwise, how the applicant shall use a CVA to review and verify each stage of the project.

(6) All cables and pipelines, including cables on project easements	Location, design and installation methods, testing, maintenance, repair, safety devices, exterior corrosion protection, inspections, and decommissioning. The applicant shall prior to construction also include location of all cable crossings and appropriate clearance from the owners of existing cables.
(7) A description of the deployment activities	Safety, prevention, and environmental protection features or measures that the applicant shall use.
(8) A list of solid and liquid wastes generated	Disposal methods and locations.
(9) A list of chemical products used (if stored volume exceeds Environmental Protection Agency (EPA) Reportable Quantities)	A list of chemical products used; the volume stored on location; their treatment, discharge, or disposal methods used; and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that shall be transferred each time.
(10) Decommissioning and site clearance procedures	A discussion of general concepts and methodologies.
(11) A list of all federal, state, and local authorizations, approvals, or permits that are required to conduct the proposed activities, including commercial operations	A list of all federal, state, and local authorizations, approvals, or permits that are required to conduct the proposed activities, including commercial operations. In addition, a statement indicating whether the applicant has applied for or obtained such authorizations, approvals, or permits.
(12) The applicant's proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts	A description of the measures the applicant shall take to avoid or minimize adverse effects and any potential incidental take before conducting activities on the project site, and how the applicant shall minimize environmental impacts from proposed activities, including a description of the measures.
(13) Information the applicant incorporates by reference	A list of the documents referenced and the actual document if requested.
(14) A list of agencies and persons with whom the applicant has communicated, or with whom the applicant shall communicate, regarding	Contact information, issues discussed and the actual document if requested

potential impacts associated with the proposed activities	
(15) Reference	Contact information
(16) Financial assurance	Statements attesting that the activities and facilities proposed in the applicant's COP are or shall be covered by an appropriate bond or security, as required by § 11.10.7(B) of this Part.
(17) CVA nominations	CVA nominations for reports required.
(18) Construction schedule.	A reasonable schedule of construction activity showing significant milestones leading to the commencement of commercial operations.
(19) Air quality information.	Information required for the Clean Air Act (42 U.S.C. § 7409) and implementing regulations.
(20) Other information	Additional information as required by the Council.

- f. The applicant's COP shall include the following information and surveys for the proposed site(s) of the applicant's facility or facilities:

- (1) Table 5: Necessary data and information to be provided in the construction and operations plan.

Information:	Report contents:	Including:
(1) Shallow hazards	The results of the shallow hazards survey with supporting data, if required.	Information sufficient to determine the presence of the following features and their likely effects on the proposed facility, including: (i) Shallow faults; (ii) Gas seeps or shallow gas; (iii) Slump blocks or slump sediments; (iv) Hydrates; or (v) Ice scour of seabed sediments.
(2) Geological survey relevant to the siting and design of the	The results of the geological survey with supporting data.	Assessment of: (i) Seismic activity at the proposed site;

facility		<p>(ii) Fault zones;</p> <p>(iii) The possibility and effects of seabed subsidence; and</p> <p>(iv) The extent and geometry of faulting attenuation effects of geologic conditions near the site.</p>
(3) Biological survey	The results of the biological survey with supporting data.	A description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, and topographic features, and surveys of other marine resources such as fish populations (including migratory populations) not targeted by commercial or recreational fishing, marine mammals, sea turtles, and sea birds.
(4) Fish and fisheries survey	The results from the fish and fisheries survey with supporting data.	<p>A report that describes the results of:</p> <p>(i) A biological assessment of commercially and recreationally targeted species. This assessment shall assess the relative abundance, distribution, and different life stages of these species at all four seasons of the year. This assessment shall comprise a series of surveys, employing survey equipment and methods that are appropriate for sampling finfish, shellfish, and crustacean species at the project's proposed location. This assessment may include evaluation of survey data collected through an existing survey program, if data are available for the proposed site.</p> <p>(ii) An assessment of commercial and recreational fisheries effort, landings, and landings value. Assessment shall focus on the proposed project area and alternatives across all four seasons</p>

		<p>of the year must. Assessment may use existing fisheries monitoring data but shall be supplemented by interviews with commercial and recreational fishermen.</p> <p>(iii) For more information on these assessments see § 11.10.9(C) of this Part.</p>
(5) Geotechnical survey	<p>The results of any sediment testing program with supporting data, the various field and laboratory tests employed, and the applicability of these methods as they pertain to the quality of the samples, the type of sediment, and the anticipated design application. The applicant shall explain how the engineering properties of each sediment stratum affect the design of the facility. In the explanation, the applicant shall describe the uncertainties inherent in the overall testing program, and the reliability and applicability of each method.</p>	<p>(i) The results of a testing program used to investigate the stratigraphic and engineering properties of the sediment that may affect the foundations or anchoring systems of the proposed facility.</p> <p>(ii) The results of adequate in situ testing, boring, and sampling at each foundation location, to examine all important sediment and rock strata to determine its strength classification, deformation properties, and dynamic characteristics. A minimum of one boring shall be taken per turbine planned, and the boring shall be taken within 50 feet of the final location of the turbine.</p> <p>(iii) The results of a minimum of one deep boring (with soil sampling and testing) at each edge of the project area and within the project area as needed to determine the vertical and lateral variation in seabed conditions and to provide the relevant geotechnical data required for design.</p>

(6) Archaeological and visual resources, if required	The results of the archaeological resource survey with supporting data.	A description of the historic and prehistoric archaeological resources, as required by the National Historic Preservation Act and Antiquities Act (16 U.S.C. § 470 et. seq.), as amended, the Rhode Island Historical Preservation Act and Antiquities Act and §§ 00-1.2.3 and 00-1.3.5 of this Chapter, as applicable.
(7) Overall site investigation	An overall site investigation report for the proposed facility that integrates the findings of the shallow hazards surveys and geologic surveys, and, if required, the subsurface surveys with supporting data.	An analysis of the potential for: <ul style="list-style-type: none"> (i) Scouring of the seabed; (ii) Hydraulic instability; (iii) The occurrence of sand waves; (iv) Instability of slopes at the facility location; (v) Liquefaction, or possible reduction of sediment strength due to increased pore pressures; (vi) Cyclic loading; (vii) Lateral loading; (viii) Dynamic loading; (ix) Settlements and displacements; (x) Plastic deformation and formation collapse mechanisms; and (xi) Sediment reactions on the facility foundations or anchoring systems.

- g. The applicant's COP shall describe those resources, conditions, and activities listed in Table 6 in § 11.10.5 of this Part that could be affected by the applicant's proposed activities, or that could affect the activities proposed in the applicant's COP, including:

- (1) Table 6: Resources, conditions and activities that shall be described in the construction and operations plan.

Type of Information:	Including:
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(1) Hazard information and sea level rise	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards. Provide an analysis of historic and project (medium and high) rates of sea level rise and shall at minimum assess the risks for each alternative on public safety and environmental impacts resulting from the project (see Ocean SAMP Chapter 3, Section 350.2 for more information).
(2) Water quality and circulation	Turbidity and total suspended solids from construction. Modeling of circulation and stratification to ensure that water flow patterns and velocities are not altered in ways that would lead to major ecosystem change.
(3) Biological resources	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish not targeted by commercial or recreational fishing, plankton, seagrasses, and plant life.
(4) Threatened or endangered species	As defined by the ESA (16 U.S.C. § 1531 <i>et seq.</i>)
(5) Sensitive biological resources or habitats	Essential fish habitat, refuges, preserves, Areas of Particular Concern, sanctuaries, rookeries, hard bottom habitat, barrier islands, beaches, dunes, and wetlands.
(6) Fisheries resources and uses	Commercially and recreationally targeted species, recreational and commercial fishing (including fishing seasons, location, and type), commercial and recreational fishing activities, effort, landings, and landings value.
(6) Archaeological resources	As required by the NHPA (16 U.S.C. § 470 <i>et seq.</i>), as amended.
(7) Social and economic resources	As determined by the Council in coordination with the Joint Agency Working Group.
(8) Coastal and marine uses	Military activities, vessel traffic, and energy and non-energy mineral exploration or development.

- h. The applicant shall submit an oil spill response plan per the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*

- i. The applicant shall submit the applicant's Safety Management System, the contents of which are described below:
 - (1) How the applicant plans to ensure the safety of personnel or anyone on or near the facility;
 - (2) Remote monitoring, control and shut down capabilities;
 - (3) Emergency response procedures;
 - (4) Fire suppression equipment (if needed);
 - (5) How and when the safety management system shall be implemented and tested; and
 - (6) How the applicant shall ensure personnel who operate the facility are properly trained.
- j. The Council shall review the applicant's COP and the information provided to determine if it contains all the required information necessary to conduct the project's technical and environmental reviews. The Council shall notify the applicant if the applicant's COP lacks any necessary information.
- k. As appropriate, the Council shall coordinate and consult with relevant Federal, State, and local agencies, the FAB and affected Indian tribes.
- l. During the review process, the Council may request additional information if it is determined that the information provided is not sufficient to complete the review and approval process. If the applicant fails to provide the requested information, the Council may disapprove the applicant's COP.
- m. Upon completion of the technical and environmental reviews and other reviews required, the Council may approve, disapprove, or approve with modifications the applicant's COP.
- n. In the applicant's COP, the applicant may request development of the project area in phases. In support of the applicant's request, the applicant shall provide details as to what portions of the site shall be initially developed for commercial operations and what portions of the site shall be reserved for subsequent phased development.
- o. If the application and COP is approved, prior to construction the applicant shall submit to the Council for approval the documents listed below:

- (1) Facility design report - The applicant's facility design report provides specific details of the design of any facilities, including cables and pipelines that are outlined in the applicant's approved SAP or COP. The applicant's facility design report shall demonstrate that the applicant's design conforms to the applicant's responsibilities listed in § 11.10.6 of this Part. The applicant shall include the following items in the applicant's facility design report:

(AA) Table 7: Contents of the facility design report.

Required documents:	Required contents:	Other requirements:
(1) Cover letter	(i) Proposed facility designations; (ii) The type of facility	The applicant shall submit four (4) paper copies and one (1) electronic copy.
(2) Location	(i) Latitude and longitude coordinates, Universal Mercator grid-system coordinates, state plane coordinates in the Lambert or Transverse Mercator Projection System; (ii) These coordinates shall be based on the NAD (North American Datum) 83 datum plane coordinate system; and (iii) The location of any proposed project easement.	The applicant's plat shall be drawn to a scale of 1 inch equals 100 feet and include the coordinates of the project site, and boundary lines. The applicant shall submit four (4) paper copies and one (1) electronic copy.
(3) Front, Side, and Plan View drawings	(i) Facility dimensions and orientation; (ii) Elevations relative to mean lower low water (MLLW); and (iii) Pile sizes and penetration.	The applicant's drawing sizes shall not exceed 11" x 17". The applicant shall submit four (4) paper copies and one (1) electronic copy.
(4) Complete set of structural drawings	The approved for construction fabrication drawings should be submitted, including, e.g., (i) Cathodic protection systems; (ii) Jacket design; (iii) Pile foundations;	The applicant's drawing sizes shall not exceed 11" x 17". The applicant shall submit four (4) paper copies and one (1) electronic copy.

	<p>(iv) Mooring and tethering systems;</p> <p>(v) Foundations and anchoring systems; and</p> <p>(vi) Associated cable and pipeline designs.</p>	
(5) Summary of environmental data used for design	<p>A summary of the environmental data used in the design or analysis of the facility. Examples of relevant data include information on:</p> <p>(i) Extreme weather;</p> <p>(ii) Seafloor conditions; and</p> <p>(iii) Waves, wind, currents, tides, temperature, sea level rise projections, snow and ice effects, marine growth, and water depth.</p>	The applicant shall submit four (4) paper copies and one (1) electronic copy. If the applicant submitted these data as part of the SAP or COP, the applicant may reference the plan.
(6) Summary of the engineering design data	<p>(i) Loading information (e.g., live, dead, environmental);</p> <p>(ii) Structural information (e.g., design-life; material types; cathode protection systems; design criteria; fatigue life; jacket design; deck design; production component design; foundation pilings and templates, and mooring or tethering systems; fabrication or installation guidelines);</p> <p>(iii) Location of foundation boreholes and foundation piles; and</p> <p>(iv) Foundation information (e.g., soil stability, design criteria).</p>	The applicant shall submit four (4) paper copies and one (1) electronic copy.
(7) A complete set of design calculations	Self-explanatory.	The applicant shall submit four (4) paper copies and one (1) electronic copy.
(8) Project-specific studies	All studies pertinent to facility design or installation, (e.g.,	The applicant shall submit four (4) paper copies and

used in the facility design or installation	oceanographic and soil reports)	one (1) electronic copy.
(9) Description of the loads imposed on the facility	(i) Loads imposed by jacket; (ii) Turbines; (iii) Transition pieces; (iv) Foundations, foundation pilings and templates, and anchoring systems; and (v) Mooring or tethering systems.	The applicant shall submit four (4) paper copies and one (1) electronic copy.
(10) Geotechnical report	A list of all data from borings and recommended design parameters.	The applicant shall submit four (4) paper copies and one (1) electronic copy.

- (2) For any floating facility, the applicant's design shall meet the requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity). The design shall also consider:
 - (AA) foundations, foundation pilings and templates, and anchoring systems; and
 - (BB) mooring or tethering systems.
- (3) The applicant is required to use a certified verified agent (CVA). The facility design report shall include two paper copies of the following certification statement: "The design of this structure has been certified by a Council approved CVA to be in accordance with accepted engineering practices and the approved SAP, or COP as appropriate. The certified design and as-built plans and specifications shall be on file at (given location)."
- (4) Fabrication and installation report - The applicant's fabrication and installation report shall describe how the applicant's facilities shall be fabricated and installed in accordance with the design criteria identified in the facility design report; the applicant's approved SAP or COP; and generally accepted industry standards and practices. The applicant's fabrication and installation report shall demonstrate how the applicant's facilities shall be fabricated and installed in a manner that conforms to the applicant's responsibilities listed in § 11.10.6 of this Part. The applicant

shall include the following items in the applicant's fabrication and installation report:

(AA) Table 8: Contents of the fabrication and installation report.

Required documents:	Required contents:	Other requirements:
(1) Cover letter	(i) Proposed facility designation; (ii) Area, name, and block number; and (iii) The type of facility	The applicant shall submit four (4) paper copies and one (1) electronic copy.
(2) Schedule	Fabrication and installation.	The applicant shall submit four (4) paper copies and one (1) electronic copy.
(3) Fabrication information	The industry standards the applicant shall use to ensure the facilities are fabricated to the design criteria identified in the facility design report.	The applicant shall submit four (4) paper copies and one (1) electronic copy.
(4) Installation process information	Details associated with the deployment activities, equipment, and materials, including offshore and onshore equipment and support, and anchoring and mooring permits.	The applicant shall submit four (4) paper copies and one (1) electronic copy.
(5) Federal, State, and local permits (e.g., EPA, Army Corps of Engineers)	Either one (1) copy of the permit or information on the status of the application.	The applicant shall submit four (4) paper copies and one (1) electronic copy.
(6) Environmental information	(i) Water discharge; (ii) Waste disposal; (iii) Vessel information; and (iv) Onshore waste	The applicant shall submit four (4) paper copies and one (1) electronic copy. If the applicant submitted these data as part of the SAP or COP, the applicant

	receiving treatment or disposal facilities.	may reference the plan.
(7) Project easement	Design of any cables, pipelines, or facilities. Information on burial methods and vessels.	The applicant shall submit four (4) paper copies and one (1) electronic copy.

- (5) A CVA report shall include the following: a fabrication and installation report which shall include four paper copies of the following certification statement: "The fabrication and installation of this structure has been certified by a Council approved CVA to be in accordance with accepted engineering practices and the approved SAP or COP as appropriate."
- p. Based on the Council's environmental and technical reviews, if approved, the Council may specify terms and conditions to be incorporated into any approval the Council may issue. The applicant shall submit a certification of compliance annually (or another frequency as determined by the Council) with certain terms and conditions which may include:
 - (1) Summary reports that show compliance with the terms and conditions which require certification; and
 - (2) A statement identifying and describing any mitigation measures and monitoring methods, and their effectiveness. If the applicant identified measures that were not effective, then the applicant shall make recommendations for new mitigation measures or monitoring methods.
 - q. After the applicant's COP, facility design report, and fabrication and installation report is approved, and the Council has issued a permit and lease for the project site, construction shall begin by the date given in the construction schedule included as a part of the approved COP, unless the Council approves a deviation from the applicant's schedule.
 - r. The applicant shall seek approval from the Council in writing before conducting any activities not described in the applicant's approved COP. The application shall describe in detail the type of activities the applicant proposes to conduct. The Council shall determine whether the activities the applicant proposes are authorized by the applicant's existing COP or require a revision to the applicant's COP. The Council may request additional information from the applicant, if necessary, to make this determination.

- s. The Council shall periodically review the activities conducted under an approved COP. The frequency and extent of the review shall be based on the significance of any changes in available information, and on onshore or offshore conditions affecting, or affected by, the activities conducted under the applicant's COP. If the review indicates that the COP should be revised, the Council may require the applicant to submit the needed revisions.
- t. The applicant shall notify the Council, within 5 business days, any time the applicant ceases commercial operations, without an approved suspension, under the applicant's approved COP. If the applicant ceases commercial operations for an indefinite period which extends longer than 6 months, the Council may cancel the applicant's lease, and the applicant shall initiate the decommissioning process.
- u. The applicant shall notify the Council in writing of the following events, within the time periods provided:
 - (1) No later than ten (10) days after commencing activities associated with the placement of facilities on the lease area under a fabrication and installation report.
 - (2) No later than ten (10) days after completion of construction and installation activities under a fabrication and installation report.
 - (3) At least seven (7) days before commencing commercial operations.
- v. The applicant may commence commercial operations within thirty (30) days after the CVA has submitted to the Council the final fabrication and installation report.
- w. The applicant shall submit a project modification and repair report to the Council, demonstrating that all major repairs and modifications to a project conform to accepted engineering practices.
 - (1) A major repair is a corrective action involving structural members affecting the structural integrity of a portion of or all the facility.
 - (2) A major modification is an alteration involving structural members affecting the structural integrity of a portion of or all the facility.

- (3) The report must also identify the location of all records pertaining to the major repairs or major modifications.
- (4) The Council may require the applicant to use a CVA for project modifications and repairs.

11.10.6 Design, Fabrication and Installation Standards (formerly § 1160.6)

A. Certified verification agent - The certified verification agent (CVA) shall use good engineering judgment and practices in conducting an independent assessment of the design, fabrication and installation of the facility. The CVA shall certify in the facility design report to the Council that the facility is designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location. The CVA is paid for by the applicant, but is approved and reports to the Council.

- 1. The applicant shall use a CVA to review and certify the facility design report, the fabrication and installation report, and the project modifications and repairs report. The applicant shall use a CVA to:
 - a. Ensure that the applicant's facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the facility design report and fabrication and installation report;
 - b. Ensure that repairs and major modifications are completed in conformance with accepted engineering practices; and
 - c. Provide the Council immediate reports of all incidents that affect the design, fabrication, and installation of the project and its components.
- 2. Nominating a CVA for Council approval- The applicant shall nominate a CVA for the Council approval. The applicant shall specify whether the nomination is for the facility design report, fabrication and installation report, modification and repair report, or for any combination of these.
 - a. For each CVA that the applicant nominates, the applicant shall submit to the Council a list of documents they shall forward to the CVA and a qualification statement that includes the following:
 - (1) Previous experience in third-party verification or experience in the design, fabrication, installation, or major modification of offshore energy facilities;
 - (2) Technical capabilities of the individual or the primary staff for the specific project;
 - (3) Size and type of organization or corporation;

- (4) In-house availability of, or access to, appropriate technology (including computer programs, hardware, and testing materials and equipment);
 - (5) Ability to perform the CVA functions for the specific project considering current commitments;
 - (6) Previous experience with the Council requirements and procedures, if any; and
 - (7) The level of work to be performed by the CVA.
- 3. Individuals or organizations acting as CVAs shall not function in any capacity that shall create a conflict of interest, or the appearance of a conflict of interest.
- 4. The verification shall be conducted by or under the direct supervision of registered professional engineers.
- 5. The Council shall approve or disapprove the applicant's CVA prior to construction.
- 6. The applicant shall nominate a new CVA for the Council approval if the previously approved CVA:
 - a. Is no longer able to serve in a CVA capacity for the project; or
 - b. No longer meets the requirements for a CVA set forth in this subpart.
- 7. The CVA shall conduct an independent assessment of all proposed:
 - a. Planning criteria;
 - b. Operational requirements;
 - c. Environmental loading data;
 - d. Load determinations;
 - e. Stress analyses;
 - f. Material designations;
 - g. Soil and foundation conditions;
 - h. Safety factors; and
 - i. Other pertinent parameters of the proposed design.

8. For any floating facility, the CVA shall ensure that any requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity), have been met. The CVA shall also consider:
 - a. Foundations;
 - b. Foundation pilings and templates, and
 - c. Anchoring systems.
9. The CVA shall do all of the following:
 - a. Use good engineering judgment and practice in conducting an independent assessment of the fabrication and installation activities;
 - b. Monitor the fabrication and installation of the facility;
 - c. Make periodic onsite inspections while fabrication is in progress and verify the items required by § 11.10.6(A)(11) of this Part;
 - d. Make periodic onsite inspections while installation is in progress and satisfy the requirements of § 11.10.6(A)(12) of this Part; and
 - e. Certify in a report that project components are fabricated and installed in accordance with accepted engineering practices; the applicant's approved COP or SAP; and the fabrication and installation report.
 - (1) The report shall also identify the location of all records pertaining to fabrication and installation.
 - (2) The applicant may commence commercial operations or other approved activities thirty (30) days after the Council receives that certification report, unless the Council notifies the applicant within that time period of its objections to the certification report.
10. The CVA shall monitor the fabrication and installation of the facility to ensure that it has been built and installed according to the facility design report and fabrication and Installation Report.
 - a. If the CVA finds that fabrication and installation procedures have been changed or design specifications have been modified, the CVA shall inform the applicant and the Council.
11. The CVA shall make periodic onsite inspections while fabrication is in progress and shall verify the following items, as appropriate:

- a. Quality control by lessee (or grant holder) and builder;
 - b. Fabrication site facilities;
 - c. Material quality and identification methods;
 - d. Fabrication procedures specified in the fabrication and installation report, and adherence to such procedures;
 - e. Welder and welding procedure qualification and identification;
 - f. Adherence to structural tolerances specified;
 - g. Nondestructive examination requirements and evaluation results of the specified examinations;
 - h. Destructive testing requirements and results;
 - i. Repair procedures;
 - j. Installation of corrosion protection systems and splash-zone protection;
 - k. Erection procedures to ensure that overstressing of structural members does not occur;
 - l. Alignment procedures;
 - m. Dimensional check of the overall structure, including any turrets, turret and- hull interfaces, any mooring line and chain and riser tensioning line segments; and
 - n. Status of quality-control records at various stages of fabrication.
12. The CVA shall make periodic onsite inspections while installation is in progress and shall, as appropriate, verify, witness, survey, or check, the installation items required by this section. The CVA shall verify, as appropriate, all of the following:
- a. Load out and initial flotation procedures;
 - b. Towing operation procedures to the specified location, and review the towing records;
 - c. Launching and uprighting activities;
 - d. Submergence activities;
 - e. Pile or anchor installations;

- f. Installation of mooring and tethering systems;
 - g. Transition pieces, support structures, and component installations; and
 - h. Installation at the approved location according to the facility design report and the fabrication and installation report.
- 13. For a fixed or floating facility, the CVA shall verify that proper procedures were used during the following:
 - a. The loadout of the transition pieces and support structures, piles, or structures from each fabrication site; and
 - b. The actual installation of the facility or major modification and the related installation activities.
- 14. For a floating facility, the CVA shall verify that proper procedures were used during the following:
 - a. The loadout of the facility;
 - b. The installation of foundation pilings and templates, and anchoring systems.
- 15. The CVA shall conduct an onsite survey of the facility after transportation to the approved location.
- 16. The CVA shall spot-check the equipment, procedures, and recordkeeping as necessary to determine compliance with the applicable documents incorporated by reference and the regulations under this part.
- 17. The CVA shall prepare and submit to the applicant and the Council all reports required by this subpart. The CVA shall also submit interim reports to the applicant and the Council, as requested by the Council. The CVA shall submit one electronic copy and four paper copies of each final report to the Council. In each report, the CVA shall:
 - a. Give details of how, by whom, and when the CVA activities were conducted;
 - b. Describe the CVA's activities during the verification process;
 - c. Summarize the CVA's findings; and
 - d. Provide any additional comments that the CVA deems necessary.

18. Until the Council releases the applicant's financial assurance under § 11.10.7(B) of this Part, the applicant shall compile, retain, and make available to the Council representatives, all of the following:
 - a. The as-built drawings;
 - b. The design assumptions and analyses;
 - c. A summary of the fabrication and installation examination records;
 - d. Results from the required inspections and assessments;
 - e. Records of repairs not covered in the inspection report submitted.
19. The applicant shall record and retain the original material test results of all primary structural materials during all stages of construction until the Council releases the applicant's financial assurance under § 11.10.7(B) of this Part. Primary material is material that, should it fail, would lead to a significant reduction in facility safety, structural reliability, or operating capabilities. Items such as steel brackets, deck stiffeners and secondary braces or beams would not generally be considered primary structural members (or materials).
20. The applicant shall provide the Council with the location of these records in the certification statement.
21. The Council may hire its own CVA agent to review the work of the applicants CVA. The applicant shall be responsible for the cost of the Council's CVA. The Council's CVA shall perform those duties as assigned by the Council.

11.10.7 Pre-Construction Standards (formerly § 1160.7)

- A. The Council may issue a permit for a period of up to fifty (50) years to construct and operate an offshore development. A lease shall be issued at the start of the construction phase and payment shall commence at the end of the construction phase. Lease payments shall be due when the project becomes operational. Lease renewal shall be submitted five (5) years before the end of the lease term. Council approval shall be required for any assignment or transfer of the permit or lease. This provision shall not apply to aquaculture permitting. Aquaculture permitting and leasing are governed by the provisions of R.I. Gen. Laws Chapter 20-10 and § 00-1.3.1(K) of this Chapter.
- B. Prior to construction, the assent holder shall post a performance bond sufficient to ensure removal of all structures at the end of the lease and restore the site. The Council shall review the bond amount initially and every three (3) years thereafter to ensure the amount is sufficient.

- C. Prior to construction, the assent holder shall show compliance with all federal and state agency requirements, which may include but are not limited to the requirements of the following agencies: the Rhode Island Coastal Resources Management Council, the Rhode Island Department of Environmental Management, the Rhode Island Energy Facilities Siting Board, the Rhode Island Historical Preservation and Heritage Commission, U.S. Department of the Interior Bureau of Ocean Energy Management, Army Corps of Engineers, National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency.
- D. The Council shall consult with the U.S. Coast Guard, the U.S. Navy, marine pilots, the Fishermen's Advisory Board as defined in § 11.3(E) of this Part, fishermen's organizations, and recreational boating organizations when scheduling offshore marine construction or dredging activities. Where it is determined that there is a significant conflict with season-limited commercial or recreational fishing activities, recreational boating activities or scheduled events, or other navigation uses, the Council shall modify or deny activities to minimize conflict with these uses.
- E. The Council shall require the assent holder to provide for communication with commercial and recreational fishermen, mariners, and recreational boaters regarding offshore marine construction or dredging activities. Communication shall be facilitated through a project website and shall complement standard U.S. Coast Guard procedures such as Notices to Mariners for notifying mariners of obstructions to navigation.
- F. For all large-scale offshore developments, underwater cables, and other development projects as determined by the Council, the assent holder shall designate and fund a third-party fisheries liaison. The fisheries liaison must be knowledgeable about fisheries and shall facilitate direct communication between commercial and recreational fishermen and the project developer. Commercial and recreational fishermen shall have regular contact with and direct access to the fisheries liaison throughout all stages of an offshore development (pre-construction; construction; operation; and decommissioning).
- G. Where possible, offshore developments should be designed in a configuration to minimize adverse impacts on other user groups, which include but are not limited to: recreational boaters and fishermen, commercial fishermen, commercial ship operators, or other vessel operators in the project area. Configurations which may minimize adverse impacts on vessel traffic include, but are not limited to, the incorporation of a traffic lane through a development to facilitate safe and direct navigation through, rather than around, an offshore development
- H. Any assent holder of an approved offshore development shall work with the Council when designing the proposed facility to incorporate where possible mooring mechanisms to allow safe public use of the areas surrounding the installed turbine or other structure.

- I. The facility shall be designed in a manner that minimizes adverse impacts to navigation. As part of its application package, the project applicant shall submit a navigation risk assessment under the U.S. Coast Guard's Navigation and Vessel Inspection Circular 02-07, "Guidance on the Coast Guard's Roles and Responsibilities for Offshore Renewable Energy Installations."
- J. Applications for projects proposed to be sited in state waters pursuant to the Ocean SAMP shall not have a significant impact on marine transportation, navigation, and existing infrastructure. Where the Council, in consultation with the U.S. Coast Guard, the U.S. Navy, NOAA, the U.S. Bureau of Ocean Energy Management, Regulation and Enforcement, the U.S. Army Corps of Engineers, marine pilots, the R.I. Port Safety and Security Forums, or other entities, as applicable, determines that such an impact on marine transportation, navigation, and existing infrastructure is unacceptable, the Council shall require that the applicant modify the proposal or the Council shall deny the proposal. For the purposes of marine transportation policies and standards as summarized in Ocean SAMP Chapter 7, impacts will be evaluated according to the same criteria used by the U.S. Coast Guard, as follows; these criteria shall not be construed to apply to any other Ocean SAMP chapters or policies:
 - 1. Negligible: No measurable impacts.
 - 2. Minor: Adverse impacts to the affected activity could be avoided with proper mitigation; or impacts would not disrupt the normal or routine functions of the affected activity or community; or once the impacting agent is eliminated, the affected activity would return to a condition with no measurable effects from the proposed action without any mitigation.
 - 3. Moderate: Impacts to the affected activity are unavoidable; and proper mitigation would reduce impacts substantially during the life of the proposed action; or the affected activity would have to adjust somewhat to account for disruptions due to impacts of the proposed action; or once the impacting agent is eliminated, the affected activity would return to a condition with no measurable effects from the proposed action if proper remedial action is taken.
 - 4. Major: Impacts to the affected activity are unavoidable; proper mitigation would reduce impacts somewhat during the life of the proposed action; the affected activity would experience unavoidable disruptions to a degree beyond what is normally acceptable; and once the impacting agent is eliminated, the affected activity may retain measurable effects of the proposed action indefinitely, even if remedial action is taken.
- K. Prior to construction, the Applicant shall provide a letter from the U.S. Coast Guard showing it meets all applicable U.S. Coast Guard standards.

11.10.8 Standards for Construction Activities (formerly § 1160.8)

- A. The assent holder shall use the best available technology and techniques to minimize impacts to the natural resources and existing human uses in the project area.
- B. The Council shall require the use of an environmental inspector to monitor construction activities. The environmental inspector shall be a private, third-party entity that is hired by the assent holder, but is approved and reports to the Council. The environmental inspector shall possess all appropriate qualifications as determined by the Council. This inspector service may be part of the CVA requirements.
- C. Installation techniques for all construction activities should be chosen to minimize sediment disturbance. Jet plowing and horizontal directional drilling in nearshore areas shall be required in the installation of underwater transmission cables. Other technologies may be used provided the applicant can demonstrate they are as effective, or more effective, than these techniques in minimizing sediment disturbance.
- D. All construction activities shall comply with the policies and standards outlined in the Rhode Island Coastal Resources Management Program (RICRMP), as well as the regulations of other relevant state and federal agencies.
- E. The applicant shall conduct all activities on the applicant's permit under this part in a manner that conforms with the applicant's responsibilities in § 11.10.1(E) of this Part, and using:
 - 1. Trained personnel; and
 - 2. Technologies, precautions, and techniques that shall not cause undue harm or damage to natural resources, including their physical, atmospheric, chemical and biological components.
- F. The assent holder shall be required to use the best available technology and techniques to mitigate any associated adverse impacts of offshore renewable energy development.
 - 1. As required, the applicant shall submit to the Council:
 - a. Measures designed to avoid or minimize adverse effects and any potential incidental take of endangered or threatened species as well as all marine mammals;
 - b. Measures designed to avoid likely adverse modification or destruction of designated critical habitat of such endangered or threatened species; and

- c. The applicant's agreement to monitor for the incidental take of the species and adverse effects on the critical habitat, and provide the results of the monitoring to the Council as required; and
- G. If the assent holder, the assent holder's subcontractors, or any agent acting on the assent holder's behalf discovers a potential archaeological resource while conducting construction activities or any other activity related to the Assent Holder's project, the applicant shall:
 - 1. Immediately halt all seafloor disturbing activities within the area of the discovery;
 - 2. Notify the Council of the discovery within 24 hours; and
 - 3. Keep the location of the discovery confidential and not take any action that may adversely affect the archaeological resource until the Council has made an evaluation and instructed the applicant on how to proceed.
 - a. The Council may require the assent holder to conduct additional investigations to determine if the resource is eligible for listing in the National Register of Historic Places under 36 C.F.R. 60.4. The Council shall do this if:
 - (1) The site has been impacted by the assent holder's project activities; or
 - (2) Impacts to the site or to the area of potential effect cannot be avoided.
 - b. If the Council incurs costs in protecting the resource, under section 110(g) of the NHPA, the Council may charge the applicant reasonable costs for carrying out preservation responsibilities.
- H. Post construction, the assent holder shall provide a side scan sonar survey of the entire construction site to verify that there is no post construction debris left at the project site. These side-scan sonar survey results shall be filed with the Council within ninety (90) days of the end of the construction period. The results of this side-scan survey shall be verified by a third-party reviewer, who shall be hired by the assent holder but who is pre-approved by and reports to the Council.
- I. All pile-driving or drilling activities shall comply with any mandatory best management practices established by the Council in coordination with the Joint Agency Working Group and which are incorporated into the RICRMP.
- J. The Council may require the assent holder to hire a CVA to perform periodic inspections of the structure(s) during the life of those structure(s). The CVA shall work for and be responsible to the council.

11.10.9 Monitoring Requirements (formerly § 1160.9)

- A. The Council in coordination with the Joint Agency Working Group, as described in § 11.9.7(J) of this Part, shall determine requirements for monitoring prior to, during, and post construction. Specific monitoring requirements shall be determined on a project-by-project basis and may include but are not limited to the monitoring of:
1. Coastal processes and physical oceanography
 2. Underwater noise
 3. Benthic ecology
 4. Avian species
 5. Marine mammals
 6. Sea turtles
 7. Fish and fish habitat
 8. Commercial and recreational fishing
 9. Recreation and tourism
 10. Marine transportation, navigation and existing infrastructure
 11. Cultural and historic resources
- B. The Council shall require where appropriate that project developers perform systematic observations of recreational boating intensity at the project area at least three times: pre-construction; during construction; and post-construction. Observations may be made while conducting other field work or aerial surveys and may include either visual surveys or analysis of aerial photography or video photography. The Council shall require where appropriate that observations capture both weekdays and weekends and reflect high-activity periods including the July 4th holiday weekend and the week in June when Block Island Race Week takes place. The quantitative results of such observations, including raw boat counts and average number of vessels per day, will be provided to the Council.
- C. The items listed below shall be required for all offshore developments:
1. A biological assessment of commercially and recreationally targeted species shall be required within the project area for all offshore developments. This assessment shall assess the relative abundance, distribution, and different life stages of these species at all four seasons of

the year. This assessment shall comprise a series of surveys, employing survey equipment and methods that are appropriate for sampling finfish, shellfish, and crustacean species at the project's proposed location. Such an assessment shall be performed at least four times: pre-construction (to assess baseline conditions); during construction; and at two different intervals during operation (i.e. one (1) year after construction and then post-construction). At each time this assessment must capture all four seasons of the year. This assessment may include evaluation of survey data collected through an existing survey program, if data are available for the proposed site. The Council will not require this assessment for proposed projects within the renewable energy zone that are proposed within two (2) years of the adoption of the Ocean SAMP.

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

D. The Council in coordination with the Joint Agency Working Group may also require facility and infrastructure monitoring requirements that may include but are not limited to:

1. Post construction monitoring including regular visual inspection of inner array cables and the primary export cable to ensure proper burial, foundation and substructure inspection.

11.11 Appendix 1 - Overview of offshore development permitting process in state waters

