



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

November 29, 2022

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

Dear Mr. Willis,

Thank you for the August 2, 2022, request for approval of changes to the Rhode Island Coastal Resources Management Program to incorporate the reformatted and revised Red Book (650-RICR-20-00-1) pursuant to the National Oceanic and Atmospheric Administration (NOAA) Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H.¹ (RI-2022-6). NOAA's Office for Coastal Management approves the request subject to the qualifications and exception below.

NOAA's regulations require that the state post this decision by the Office for Coastal Management for public notice.² The public notice should state that as of the date of this decision letter, the enforceable policies identified in the attached Table of Approved Changes shall be applicable in reviewing federal actions pursuant to the federal consistency requirements of the CZMA and its implementing regulations found at 15 C.F.R. part 930.³ Please send a copy of the public notice to the Office for Coastal Management for our records to close out this file.

PUBLIC AND FEDERAL AGENCY COMMENTS

The Office for Coastal Management did not receive any comments on this program change submission.

¹ This program change request was submitted under NOAA's revised CZMA program change regulations at 15 C.F.R. part 923, subpart H. The Office for Coastal Management's decision due date was September 1, 2022, subject to extension. The Office for Coastal Management extended its review of this program change request to November 30, 2022.

² 15 C.F.R. § 923.81(e)(5).

³ 15 C.F.R. § 923.81(f).

APPROVED CHANGES

See the attached Table of Approved Changes to the Rhode Island Coastal Resources Management Program.

QUALIFICATIONS AND EXCEPTION

As a standard qualification applying to all program changes, states may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or document, the referenced policy must be submitted to and approved by the Office for Coastal Management as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. No referenced policy may be applied for CZMA federal consistency review purposes unless that policy has been separately reviewed and approved as an enforceable policy by the Office for Coastal Management.

Within the approved enforceable policies are statements that encourage, recommend or offer guidance. These statements do not meet the standards for enforceable policies described at 15 C.F.R. § 923.84(b). Where such statements appear in a section approved as an enforceable policy, only those provisions that are legally binding under state law and meet the other criteria for enforceable policies specified at 15 C.F.R. § 923.84(b) may be applied in determining the consistency of a proposed federal action.

The Office for Coastal Management denies the request to approve additional Necessary Data and Information that must be submitted consistent with 15 C.F.R. § 930.58(a)(2). Necessary Data and Information is a term of art unique to the CZMA federal consistency regulations and means data and information that the state coastal management program must receive in order for a CZMA federal consistency review to commence. The intent of 15 C.F.R. § 930.58(a)(2) is to allow states to require applicants to submit essential information needed to start the CZMA review period. The intent is not to include all foreseeable information a state believes it will or might need during its consistency review. The CZMA Program Change Procedures at 15 C.F.R. § 923.83(a)(6) require that states shall describe any changes or additions to Necessary Data and Information approved by NOAA in accordance with 15 C.F.R. § 930.58 and explain why such information is necessary in order for the state to commence its federal consistency review period.

The Office for Coastal Management's initial review of this submission found that the CRMC had not provided an explanation as to why the information listed at 650-RICR-20-00-1.3.1(A)(1)(a)-(k) is necessary prior to the state commencing the state's CZMA review. The Office for Coastal Management requested that the CRMC provide analysis with its explanation.

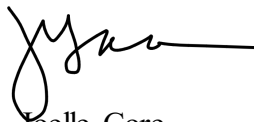
The analysis provided by the state argues that the proposed Necessary Data and Information are needed to determine the consistency of a proposed federal action, but fails to explain why the proposed Necessary Data and Information are needed before the state can commence its review.

Therefore, the CRMC has not met its burden established at 15 C.F.R. § 923.83(a)(6). The Office for Coastal Management is available to work with the CRMC to develop an approvable list of Necessary Data and Information.

The state prematurely codified the proposed Necessary Data and Information without approval or consultation with the Office for Coastal Management. The requirements at 650-RICR-20-00-1.3.1(A)(1)(a)-(k) are not approved and cannot be used to delay the start of the CZMA review process. The Rhode Island Code of Regulations should be corrected as soon as possible.

Thank you for your cooperation in this review. Please contact Allison Castellan at 202-596-5039 if you have any questions. For future correspondence regarding this program change submission and decision, please refer to the file number assigned to this action, RI-2022-6.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joelle Gore', with a horizontal line extending to the right.

Joelle Gore,
Chief Stewardship Division

Attachment: Table of Approved Changes RI-2022-6

RI-2022-6: Table of Approved Changes

With the qualifications and exceptions noted in the November 29, 2022, decision letter, the Office for Coastal Management has approved Title 650-RICR-Chapter 20 in its entirety for incorporation in the federally-approved Rhode Island Coastal Zone Management Program.

Legal citation	Title of policy, section, or other descriptor	Is the change new, revised, or deleted	Date effective in state MM/DD/YYYY	Enforceable policy Yes (Y) or No (N)	Enforceable mechanism citation
650-RICR-20-00-1	Red Book	revised (and reformatted)	05/13/2020	Generally Y <i>See exceptions noted below and explained in the approval letter</i>	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.1(B)	1.1.1 Authority and Purpose	new	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.2(A)	1.1.2 Definitions	revised	12/16/2018; 05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.3(C)(5)	1.1.3 Requirements for Applicants— Step three-What regulations apply?	new	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.3(D)(2)	1.1.3 Requirements for Applicants— Category A applications	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.4(A)	1.1.4 Alterations and Activities That Require an Assent from the Coastal Resources Management Council— Tidal Waters, shoreline features, and contiguous areas	revised	12/--/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.4(C)	1.1.4 Alterations and Activities That Require an Assent from the Coastal Resources Management Council— Critical coastal areas	revised	12/--/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.4(D)(3)(a)	1.1.4 Alterations and Activities That Require an Assent from the Coastal Resources Management Council— Freshwater wetlands in the vicinity of the coast (Prerequisites)	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.5(A)	1.1.5 Review Categories and Prohibited Activities in Tidal Waters and on Adjacent Shoreline Features—Table 1: Water Type matrices	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6

STATE CZM CHANGE REQUEST TABLE

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650-RICR-20-00-1.1.5(D)	1.1.5 Review Categories and Prohibited Activities in Tidal Waters and on Adjacent Shoreline Features—Figure 1: Rhode Island’s territorial sea and 2011 geographic location description (GLD boundary)	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.6(E)(2), (3) and (4)	1.1.6 Applications for Category A and Category B Council Assents— Category A applications	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.6(F)(2)	1.1.6 Applications for Category A and Category B Council Assents— Category B applications	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.6(H)(2)	1.1.6 Applications for Category A and Category B Council Assents— Findings of no significant impact	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.6(I)	1.1.6 Applications for Category A and Category B Council Assents—Coastal hazard analysis application requirements	revised	12/16/2018; 05/13/2020	Y	Rhode Island General Laws § 46-23-6
650-RICR-20-00-1.1.7(A)	1.1.7 Variances	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.8	1.1.8 Special Exceptions	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.9	1.1.9 Setbacks	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6

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650-RICR-20-00-1.1.10(A)(4)	1.1.10 Climate Change and Sea Level Rise	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.11(D)	1.1.11 Coastal Buffer Zones— Buffer management and maintenance	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.11(E)	1.1.11 Coastal Buffer Zones – Prohibitions	new	12/15/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.12(E)(1)	1.1.12 Fees	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.13(C)	1.1.13 Violations and Enforcement Actions	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.1.14	1.1.14 Emergency Assents	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.2.2(A)(1)(d)(13)	1.2.2 Shoreline Features—Coastal Beaches (Policies)	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.2.2(C)(1)(a)	1.2.2 Shoreline Features—Coastal Wetlands (Policies)	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.2.2(C)(2)(b), (c) and (e)	1.2.2 Shoreline Features—Coastal Wetlands (Prohibitions)	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.2.2(F)	1.2.2 Shoreline Features—Manmade Shorelines (Policies)	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(A) NOT APPROVED. See [date] decision letter.	1.3.1 Activities Under Council Jurisdiction—Category B Requirements.	revised	12/16/2018	N	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(B)(1)(a)	1.3.1 Activities Under Council Jurisdiction—Filling, removing, or grading of shoreline features	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(C)(4)(b)	1.3.1 Activities Under Council Jurisdiction—Residential, commercial, industrial, and recreational structures	new	12/16/2018	Y	Rhode Island General Laws § 46-23- 6

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650-RICR-20-00-1.3.1(D)(3)(h)	1.3.1 Activities Under Council Jurisdiction—Recreational Boating	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(D)(5)(c)(3)	1.3.1 Activities Under Council Jurisdiction—Recreational Boating (Marina Prerequisites)	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(D)(7)(b)	1.3.1 Activities Under Council Jurisdiction—Recreational Boating (Prohibitions)	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(D)(11)	1.3.1 Activities Under Council Jurisdiction—Recreational Boating (Residential and limited recreational docks, piers, and floats standards)	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(D)(12)(g)	1.3.1 Activities Under Council Jurisdiction—Recreational Boating (Residential and limited recreational docks with excessive fetch standards)	deleted	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(F)(1)(h)	1.3.1 Activities Under Council Jurisdiction—Treatment of sewage and stormwater (Policies)	new	12/16/2018; 05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(F)(4)	1.3.1 Activities Under Council Jurisdiction—Treatment of sewage and stormwater (Standards)	revised	12/16/2018; 05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(G)	1.3.1 Activities Under Council Jurisdiction—Shoreline protection	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(H)	1.3.1 Activities Under Council Jurisdiction—Energy-related activities and structures	revised	12/16/2018; 05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(I)	1.3.1 Activities Under Council Jurisdiction—Dredging and dredged material disposal	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6

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650-RICR-20-00-1.3.1(J)	1.3.1 Activities Under Council Jurisdiction—Filling in tidal waters	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(K)	1.3.1 Activities Under Council Jurisdiction--Aquaculture	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(N)(1)(j)	1.3.1 Activities Under Council Jurisdiction—Maintenance of structures	new	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(O)	1.3.1 Activities Under Council Jurisdiction—Municipal harbor regulations	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(P)(4)(a)	1.3.1 Activities Under Council Jurisdiction—Boat lift and float lift systems (Standards)	revised	05/13/2020	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(Q)(4)(k)	1.3.1 Activities Under Council Jurisdiction—Wetlands walkover structures (Standards)	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.1(R)(3)(d)	1.3.1 Activities Under Council Jurisdiction—Submerged aquatic vegetation and aquatic habitats of particular concern (Standards)	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.3(C)(1)	1.3.3 Inland Activities and Alterations that are Subject to Council Permitting—Additional Category B requirements	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.4(A)(4)(f)&(g)	1.3.4 Activities Located Within Critical Coastal Areas—Policies	new	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.3.6(C)	1.3.6 Protection and Enhancement of Public Access to the Shore—Policies for the development of public access plans	revised	12/16/2018	Y	Rhode Island General Laws § 46-23- 6
650-RICR-20-00-1.5	1.5 Public and Governmental Participation	new	12/--/2018	N	Rhode Island General Laws § 46-23- 6