



State of Rhode Island and Providence Plantations
COASTAL RESOURCES MANAGEMENT COUNCIL
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
(401) 783-3370

Michael M. Tikoian
Chairman

Grover J. Fugate
Executive Director

April 29, 2011

Coastal Resources Management Council
Chairman Michael M. Tikoian
Stedman Government Center- Suite 3
4808 Tower Hill Road
Wakefield, RI 02879-1900

Dear Chairman Tikoian:

Below please find a detailed summary of proposed changes for the Ocean Special Area Management Plan. These changes are in addition to the proposed changes presented in the memos dated March 2, 2011 and April 27th, 2011. The **bold** text represents changes that have been made since the March 2nd, 2011 and April 27th, 2011 memos of proposed changes. All proposed changes listed here are suggested in response to comments received from interested parties during the public comment period that closed on April 11, 2011. We submit these to you for your review.

Chapter 2, Ecology

- 1. We propose the removal of the last two sentences of the "Habitat Advisory Board" policy, Section 270.1 (General Policies) new #5 as listed in the April 27th, 2011 memo as it is redundant with Chapter 2, Section 270.2 (Regulatory Standards) #6. The proposed changes are as follows:**

“5. 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 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. ~~The Council strongly encourages applicants for any Large Scale Offshore Development, as defined in Section 1160.1.1, in federal waters to meet with the HAB and the Council staff prior to the submission of an application, lease, license, or authorization 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, and measures to mitigate the potential impacts of proposed projects on habitats and marine resources. During the pre-application meeting for a Large Scale Offshore Development, the HAB can also identify important marine resource and habitat areas.”~~”

2. If the Council approves this change, similar changes will also need to be made in Chapter 11, section 1150.1 (General Policies) #5. The proposed changes are as follows:

“5. 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 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. ~~The Council strongly encourages applicants for any Large Scale Offshore Development, as defined in Section 1160.1.1, in federal waters to meet with the HAB and the Council staff prior to the submission of an application, lease, license, or authorization 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, and measures to mitigate the potential impacts of proposed projects on habitats and marine resources. During the pre-application meeting for a Large Scale Offshore Development, the HAB can also identify important marine resource and habitat areas.~~”

- 3. We propose the removal of the word “pre-application” from the first sentence of the “Habitat Advisory Board” (HAB) policy, Chapter 2, Section 270.2 (Regulatory Standards) #6 as it may be misleading since the Council cannot require a pre-application meeting for federal permit applications. The proposed changes are as follows:**

~~“6. 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 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.~~ Any Large-Scale Offshore Development, as defined in Chapter 11 in section 1160.1.1, shall require a pre-application 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, and measures to mitigate the potential impacts of proposed projects on habitats and marine resources. During the pre-application meeting for a Large Scale Offshore Development, the HAB can also identify 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 Section 1160.1.1, 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 and the meeting 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. ~~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.”~~

- 4. If the Council approves the aforementioned change, similar changes will also need to be made in Chapter 8, section 860.2.1 #12 and Chapter 11, section 1160.1 new #11. The proposed changes are as follows:**

Chapter 8, section 860.2.1 (Regulatory Standards, which are Enforceable Polices) new #11

~~12-11. 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 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. Any Large-Scale Offshore Development, as defined in Chapter 11 in section 1160.1.1, shall require a pre-application 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, and measures to mitigate the potential impacts of proposed projects on habitats and marine resources. During the pre-application meeting for a Large Scale Offshore Development, the HAB can also identify 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 Section 1160.1.1, 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 and the meeting 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. ~~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.”~~

Chapter 11, section 1160.1 (Overall Regulatory Standards) new #11

11. 12. ~~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 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. Any Large-Scale Offshore Development, as defined in Chapter 11 in section 1160.1.1, shall require a pre-application 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, and measures to mitigate the potential impacts of proposed projects on habitats and marine~~

resources, ~~During the pre-application meeting for a Large-Scale Offshore Development, the HAB can also identify 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 Section 1160.1.1, 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 and the meeting 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. 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.”

Chapter 3, Cultural Resources:

- 5. We propose the following change to Chapter 4, Cultural and Historic Resources section 440 #3 to spell out Rhode Island instead of using RI and replace “will be” with “is” to better reflect that it currently is the responsibility of the applicable federal agency to consult with affected tribes. The proposed changes are as follows:**

“3.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 RI Rhode Island that might be affected by a federal action it will be is the responsibility of the applicable federal agency to consult with affected tribes.”

- 6. If the Council approves the aforementioned change, a similar change must be made to Chapter 11, 1150.3 (General Polices) #3. The proposed changes are as follows:**

“3.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 RI Rhode Island that might be affected by a federal action it ~~will be~~ is the responsibility of the applicable federal agency to consult with affected tribes.

Chapter 5, Commercial and Recreational Fisheries:

- 7. We propose the removal of the last two sentences of the “Fishermen’s Advisory Board” policy, Chapter 5, Section 560.1 (General Policies) new #8 as listed in the April 27th, 2011 memo as it is redundant with Chapter 5, Section 560.2 (Regulatory Standards, which are Enforceable Policies), revised #1. The proposed changes are as follows:**

“8. 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.G.L. 20-3-1 et. seq. The FAB shall be comprised of nine members, one representing each of the following six Rhode Island fisheries: bottom trawling; scallop dredging; gillnetting; lobstering; party and charter boat fishing; and recreational angling; and three members, including two commercial fishermen and one recreational fisherman, who are Massachusetts fishermen who fish in the Ocean SAMP area. 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. ~~The Council strongly encourages applicants for any Large Scale Offshore Development, as defined in Section 1160.1.1, in federal waters to meet with the FAB and the Council staff prior to the submission of an application, lease, license, or authorization 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.”~~

8. If the Council approves the aforementioned change, a similar change must be made to Chapter 11, Section 1150.4 (General Polices) #8. The proposed change are as follows:

~~8. 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.G.L. 20-3-1 et. seq. The FAB shall be comprised of nine members, one representing each of the following six Rhode Island fisheries: bottom trawling; scallop dredging; gillnetting; lobstering; party and charter boat fishing; and recreational angling; and three members, including two commercial fishermen and one recreational fisherman, who are Massachusetts fishermen who fish in the Ocean SAMP area. 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. The Council strongly encourages applicants for any Large Scale Offshore Development, as defined in Section 1160.1.1, in federal waters to meet with the FAB and the Council staff prior to the submission of an application, lease, license, or authorization 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.”~~

9. We propose the deletion of the word “pre-application” from the first sentence of Chapter 5, Section 560.2 (Regulatory Standards, which are Enforceable Policies), revised #1 as it may be misleading since the Council cannot require a pre-application meeting for federal permit applications. The proposed changes are as follows:

~~“1. 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.G.L. 20-3-1 et. seq. The FAB shall be comprised of nine members, one representing each of the following six Rhode Island fisheries: bottom trawling; scallop dredging; gillnetting; lobstering; party and charter boat fishing; and recreational angling; and three members, including two commercial fishermen and one recreational fisherman, who are Massachusetts fishermen who fish in the Ocean SAMP area. FAB members shall serve four year terms and will 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 will 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. Any Large-Scale Offshore Development, as defined above in section 1160.1.1, shall require a pre-application 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, and project minimization and identification. During the pre-application meeting for Large Scale Offshore Development, the FAB can also identify areas 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. and the meeting 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 Section 1160.1.1, 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. ~~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.”~~”~~

10. If the Council approves the aforementioned change, similar changes will also need to be made in Chapter 8 Section 860.2.1 new #5 and Chapter 11, section 1160.1 (Overall Regulatory Standards) new #5. The proposed changes are as follows:

Chapter 8 Section 860.2.1 (Regulatory Standards, which are Enforceable Policies) new #5

~~“5. 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.G.L. 20-3-1 et. seq. The FAB shall be comprised of nine members, one representing each of the following six Rhode Island fisheries: bottom trawling; scallop dredging; gillnetting; lobstering; party and charter boat fishing; and recreational angling; and three members, including two commercial fishermen and one recreational fisherman, who are Massachusetts fishermen who fish in the Ocean SAMP area. FAB members shall serve four-year terms and will 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 will 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. Any Large-Scale Offshore Development, as defined above in section 1160.1.1, shall require a pre-application 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, and project minimization and identification. During the pre-application meeting for Large-Scale Offshore Development, the FAB can also identify areas 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. and the meeting 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 Section 1160.1.1, 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. ~~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.”~~

Chapter 11, section 1160.1 (Overall Regulatory Standards) new #5.

~~“5. 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.G.L. 20-3-1 et. seq. The FAB shall be comprised of nine members, one representing each of the following six Rhode Island fisheries: bottom trawling; scallop dredging; gillnetting; lobstering; party and charter boat fishing; and recreational angling; and three members, including two commercial fishermen and one recreational fisherman, who are Massachusetts fishermen who fish in the Ocean SAMP area. FAB members shall serve four-year terms and will 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 will 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. Any Large-Scale Offshore Development, as defined ~~above~~ in section 1160.1.1, shall require a pre-application 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, ~~and~~ project minimization and identification. During the pre-application meeting for Large-Scale Offshore Development, the FAB can also identify areas 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. and the meeting 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 Section 1160.1.1, 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. ~~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.”

Chapter 8, Renewable Energy and Other Offshore Development

- 11. Revise Chapter 8 section 860.2.1 (Overall Regulatory Standards, which are Enforceable Policies) #3 as shown in the April 27th, 2011 memo to use the word “impact” rather than “effect” and to remove the phrase “not previously evaluated” to better convey the intended meaning of the policy. The changes proposed changes are as follows :**

“~~4.3.~~ Offshore Developments ~~proposed to be sited in state waters~~ shall not have a significant adverse ~~impact effect~~ on the natural resources or existing human uses of the Rhode Island coastal zone, as described in the Ocean SAMP. ~~Offshore developments proposed to be sited in federal waters are subject to the licensing federal agencies’ legal authorities and the enforceable policies of the federally approved RICRMP through the CZMA Federal Consistency authority. Offshore Developments are bound by all the applicable provisions listed in Chapter 11, The Policies of the Ocean SAMP For purposes of CZMA federal consistency reviews of federal license or permit applications for Offshore Developments proposed to be sited in state waters, the state only applies the Section 1160 regulatory standards. However, for State permitting purposes, Offshore Developments proposed to be sited in State waters are bound by both the General Policies (1150) and Regulatory Standards (1160) listed in Chapter 11, The Policies of the Ocean SAMP.~~ Where the Council determines that impacts effects on the natural resources or human uses of the ~~SAMP area~~Rhode Island coastal zone through the pre-construction, construction, operation, or decommissioning phases of a project constitute significant adverse ~~impacts 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 effects or the Council shall deny the proposal.”

- 12. If the Council approves the aforementioned change, the same change must be made in Chapter 11, section 1160.1 (Overall Regulatory Standards, which are Enforceable Polices) #3. The proposed changes are as follows:**

“~~4.3.~~ Offshore Developments ~~proposed to be sited in state waters~~ shall not have a significant adverse impact effect on the natural resources or existing human uses of the Rhode Island coastal zone, as described in the Ocean SAMP. ~~Offshore developments proposed to be sited in federal waters are subject to the licensing federal agencies’ legal authorities and the enforceable policies of the federally approved RICRMP through the CZMA Federal Consistency authority. Offshore Developments are bound by all the applicable provisions listed in Chapter 11, The Policies of the Ocean SAMP For purposes of CZMA federal consistency reviews of~~

~~federal license or permit applications for Offshore Developments proposed to be sited in state waters, the state only applies the Section 1160 regulatory standards. However, for State permitting purposes, Offshore Developments proposed to be sited in State waters are bound by both the General Policies (1150) and Regulatory Standards (1160) listed in Chapter 11, The Policies of the Ocean SAMP.~~ Where the Council determines that **impacts_effects** on the natural resources or human uses of the ~~SAMP area~~ Rhode Island coastal zone through the pre-construction, construction, operation, or decommissioning phases of a project constitute significant adverse ~~impacts_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_effects** or the Council shall deny the proposal.”

13. We propose the following revision to Chapter 8, Section 860.1 (General Policies) new #12 as listed in the April 27th, 2011 memo, to clarify that the Joint agency Working Group will coordinate to the maximum extent practicable with the Habitat Advisory Board and Fishermen’s Advisory Board consistent with federal agency and tribal members’ authorities. The proposed addition is as follows:

“12. 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. To the maximum extent practicable, **and consistent with federal agency and tribal members’ authorities**, the Joint Agency Working Group shall 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 Section 860.2.5.1(i) may be reduced for small- scale offshore developments as specified by the Joint Agency Working Group.”

14. If the Council approves the aforementioned change, the same change must be made to Chapter 11, Section 1150.7 (General Policies) new #9 as follows:

9. ~~10.~~ 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. To the maximum extent practicable, and consistent with federal agency and tribal members' authorities, the Joint Agency Working Group shall 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 Section 860.2.5.1(i) may be reduced for small- scale offshore developments as specified by the Joint Agency Working Group."

Chapter 11: The Policies of the Ocean SAMP

15. We propose the following technical revision to Section 1100 #5. The proposed change is as follows:

"5. 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, ~~and~~ 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."

Thank you for your consideration.

Sincerely,



Grover Fugate