

OCEAN SAMP CHAPTER 10. EXISTING STATUTES, REGULATIONS & POLICIES - COMMENTS & RESPONSES (as of 6/24/10)

Record #	Date	Name	Organization	Section	Comment	Response
226	1/27/2010	Allison Castellan	NOAA	1000	In addition, I noticed the summary does not include any discussion of FERC authorities. While the Ocean SAMP is largely driven by siting offshore wind facilities (under MMS jurisdiction), its my understanding the SAMP is intended to be a _comprehensive_ ocean plan. Hydrokentic projects may not be proposed off RI's coast right now, but in case they are in the future, it may be good to include FERC authorities under the Federal Power Act as part of this summary of existing state and federal statutes and regulations applicable within the Ocean SAMP planning area.	revised as suggested
227	1/27/2010	Allison Castellan	NOAA	1020	CZMZ is NOT a delegated authority to the states and it is bad precedent (for the state) to say so.deleted: are delegated the authority to deleted: projects or approvals This was replaced with: Federal agency activities or federal license or permit activities deleted: standards added: "federally approved" between state's and coastal zone management plan	revised as suggested
228	1/27/2010	Allison Castellan	NOAA	1020	Where's "significant" from?the term "direct" federal action should not be used – old terminology.deleted: determination deleted: significant deleted: ...are in, or can reasonably be expected to affect the use or resources of, the Rhode Island coastal zone. Additionally, significant projects that require certain federal licenses or permits receive certain federal funds, or are a direct action of a federal agency requires consistency review. This was replaced with : have reasonably foreseeable effects on any land or water use or natural resource of the Rhode Island coastal zone, regardless of whether the project or effect is within or outside the coastal zone.	revised as suggested
230	1/27/2010	Allison Castellan	NOAA	1030	Deleted: have the authority to review federal actions (projects or approvals) to ensure that such actions meet standards articulated in the enforceable provisions of an adopted state coastal zone management plan through a process called federal consistency review. Federal consistency review is required for significant projects that are in, or can reasonably be expected to affect the use of resources of the coastal zone. Additionally, significant projects that require certain federal licenses or permits, receive certain federal funds, or are a direct action of a federal agency require consistency review. This was replaced with: review federal actions (Federal agency activities or federal license or permit activities) to ensure that such actions meet enforceable policies articulated in the state's federally-approved coastal zone management plan through a process called federal consistency review. Federal consistency review is required for projects that have reasonably foreseeable effects on any land or water use or natural resource of the Rhode Island coastal zone, regardless of whether the project or effect is within or outside the coastal zone.	revised as suggested
231	1/27/2010	Allison Castellan	NOAA	1030	inserted ", including tribal historic and cultural resources. " after "affect historic properties"inserted "and cultural " between "on historic" and "properties"inserted" and resources" between "properties" and "and afford" in the same sentence as above.deleted: The NHPA may be applicable to offshore activities that cause National Historic Landmarks to suffer adverse visual effects. This was replaced with: , including consultation with State Historic Preservation Officers and Tribal Historic Preservation Officers. (This is in the final sentence)	revised as suggested
232	1/27/2010	Allison Castellan	NOAA	1000	This chapter needs to state up front that this section is not a description of State enforceable policies for the RI Ocean SAMP, but is a description of the most relevant State and Federal statutes.)	revised as suggested
233	1/29/2010	Edward LeBlanc	USCG	1030	I have only one substantive comment, regarding section 1030.10, U.S. Coast Guard Regulations. The sentence beginning "The USCG Reauthorization...." should be deleted. That Congressional requirement (to specify terms and conditions) was specific to Cape Wind only, and does not apply to any other wind farm proposals, i.e., will not apply to any of the RI wind farm proposals.	revised as suggested
234	1/29/2010	Edward LeBlanc	USCG	1000	there's an extra space between paragraph 1 and paragraph 2.	revised as suggested
235	1/29/2010	Edward LeBlanc	USCG	1010	I believe "State's" should read "States,"	revised as suggested
236	1/29/2010	Edward LeBlanc	USCG	1030	There's an extra space between Sections 1030.13 and 1030.14.	revised as suggested

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237	1/29/2010	Dennis Nixon	URI	1010	First sentence should read, "Jurisdiction over tidal waters in the United States is divided between the federal government and the states."The sentence beginning with "Although the federal..." should not have a period within the end of the quotation at the end of the sentence.	revised as suggested
238	1/29/2010	Dennis Nixon	URI	1010	Omit "and customs, fiscal, immigration, and sanitary laws fom the 3rd sentence. Place the period after "scientific research"□Final sentence should read, " In the contiguous zone, which extends from twelve (12) to twenty-four(24) nautical miles, the United States exercises its control over customs, fiscal, immigration, and sanitary laws (UNCLOS, Article 33).	revised as suggested
239	1/29/2010	Dennis Nixon	URI	1010	Add a comma after EEZ in the first line.	revised as suggested
240	1/29/2010	Dennis Nixon	URI	1020	Dependent in the last line is spelt incorrectly.	revised as suggested
241	2/1/2010	D. Mercier	NUWC DIVNPT	1010	In first sentence, replace "United State's" with "United States,"In fourth sentence, delete the period inside the quotation just before the parenthetical	revised as suggested
243	2/1/2010	D. Mercier	NUWC DIVNPT	1020	On first line, there should be two section symbols when a statutory reference is followed by "et seq." Note that seq. requires a period. This comment applies to other occurrences in the document as well.	revised as suggested
244	2/1/2010	Christopher Tompsett	NUWC DIVNPT	1020	Suggest using active voice in the last sentence, e.g. "The Council is authorized to adopt special area management plans ("SAMP's"), as necessary, to integrate and coordinate the protection of natural resources and promote reasonable coastal-dependant economic growth.	revised as suggested
245	2/1/2010	D. Mercier	NUWC DIVNPT	1020	In the first sentence, replace everything after "to ensure" with "such actions are consistent to the maximum extent practicable with the enforceable provisions of the state's adopted coastal zone management program through a process called federal consistency review."	not revised as suggested because incorporated comments from NOAA
246	2/1/2010	Christopher Tompsett	NUWC DIVNPT	1020	The requirement varies on the basis of the action. If it is a federal agency action (a direct federal action) the requirement is that it "shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs" (16 U.S.C. § 1456 (c)(1) and (2)). For federal license or permit activities (indirect federal action, 16 U.S.C. § 1456 (c)(3)(A) and (B)) and federal financial assistance activities (16 U.S.C. § 1456 (d)) must be fully consistent with the enforceable policies.The last sentence refers to a portion of RI law (R.I.G.L. §46-23-15 Federal grants and interstate cooperation.) which is not specific to Federal Consistency, it seems more that the CRMC is the designated coastal agency under the CZMA. Either explain further or move to another section.	not revised as suggested because incorporated comments from NOAA
247	2/1/2010	D. Mercier	NUWC DIVNPT	1020	In the first sentence, replace "determination" with "review" In the second sentence, insert a comma after "permits" On the last line, replace "requires" with "require"	revised as suggested
248	2/1/2010	D. Mercier	NUWC DIVNPT	1020	In the second sentence, replace "animal" with "animals"	revised as suggested
249	2/1/2010	Christopher Tompsett	NUWC DIVNPT	1020	The last half of this paragraph talks about CZMA federal consistency which has it's own section (1030.1) under RI Laws. Recommend discussing in one location and referring to the other.	revised as suggested
250	2/1/2010	Christopher Tompsett	NUWC DIVNPT	1030	From my experience it is not typical to prepare an EA first, then proceed to an EIS. Usually an agency has a fairly good idea whether the proposed action will have significant impacts or not and initiates an EIS from the start. I don't think that publication of EA availability and/or a FONSI in the Federal Register is typical; it would depend on the agency policy and/or the nature of the action. Public notice of an action affecting a small area may be accomplished through other methods such as publication in local newspapers or direct mailings to affected/interested parties.	revised as suggested
251	2/1/2010	D. Mercier	NUWC DIVNPT	1030	The last sentence is confusing; consider deleting it, or at the very least replace "also provides further" with "provides" In the last sentence why are these the only ESA species listed? If you do retain listing specific species they've split the northern right whale into North Atlantic right whale and North Pacific right whale species.	revised as suggested
252	2/3/2010	Susan Farrady	Roger Williams University Law School		Overall, this chapter is particularly acronym-heavy. Depending on how you use an index or glossary elsewhere in the document, it may be helpful to somewhere either in this chapter or elsewhere, an alphabetical listing of the statutes and agencies in this chapter	revised as suggested

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253	2/3/2010	Susan Farrady	Roger Williams University Law School	1010	first sentence should read "Within the United States, jurisdiction of . . ." instead of ". . . United State's jurisdiction . . ."	revised as suggested
254	2/3/2010	Susan Farrady	Roger Williams University Law School	1010	the discussion of jurisdiction: could be helpful to have a simple map delineating the different state and federal zones to accompany the textual description	revised as suggested
255	2/3/2010	Susan Farrady	Roger Williams University Law School	1020	The first sentence reads better to say "The primary responsibility of the CRMC is the continued management" sentence beginning "The Council is authorized . . ." re SAMPs, would be helpful to include a phrase re the implementing authority, i.e. "Using authority of the Coastal Zone Management Act, the Council is authorized . . ." and to cross reference the fuller discussion of this, i.e. "(see 1030.1 for complete information on the CZMA and SAMPs)" as well as the next section 1020.2 on consistency.	revised as suggested
256	2/3/2010	Susan Farrady	Roger Williams University Law School	1030	2nd sentence starting "The CZMA . . ." suggest for ease of reading and visually separating the important SAMP authority bit from the consistency bit by indenting the lengthy quote from the CZMA re SAMP authority, beginning with "to encourage . . . decision making." Also cross reference this section back to 1020.1 and 1020.2 as mentioned above.	partially revised as suggested
257	2/3/2010	Susan Farrady	Roger Williams University Law School	1030	Suggest incorporating 1030.2.5 into 1030.2.3 midway sentence starting "The program . . ." to read "The MMS program takes a project from initial leasing through final decommissioning, and details site assessment, construction, . . . etc." Rewrite current last sentence in 1030.2.3 starting "Leases will issue . . ." because is awkward and vague, and should also refer to RUEs and ROWs mentioned in 1030.2.4. Suggest rewriting and including very brief information from the MMS guidelines http://www.mms.gov/offshore/RenewableEnergy/PDFs/REnGuidebook_03August2009_3_.pdf , p. 14, on what competitive and noncompetitive means, ex: "Leases, easements and ROWs will be initially offered on a competitive basis; if there is no competitive interest, MMS will utilize a defined noncompetitive process."	not revised as suggested, utilized comments from MMS
258	2/3/2010	Susan Farrady	Roger Williams University Law School	1030	Suggest a new number 1030.2.5 after 1030.2.4 on leasing, break out the leasing sentences from 1030.2.3, sentence starting "The regulations state that . . ." to the sentence ending ". . . in the lease."	not revised as suggested
259	2/3/2010	Susan Farrady	Roger Williams University Law School	1030	Suggest rewriting/reordering sentences to be a bit lay-friendlier and lay out the NEPA process more clearly: "The National Environmental Policy Act . . . permitting actions. Federal agencies are required to apply NEPA at the earliest possible time . . . etc., according to regulations issued by the President's Council on Environmental Quality (CEQ). NEPA sets up a system for . . . agencies. Typically, a federal agency. . . EA, which is a document briefly describing a project and its impact on the environment. . . mitigation. When an EIS is required, one federal agency is usually designated as the "lead" agency to prepare the EIS. . . . considered."	not revised as suggested
260	2/3/2010	Susan Farrady	Roger Williams University Law School	1030	Suggest reordering the sentences here to lead off with "The US Army Corps of Engineers implements both the Rivers and Harbors Act, and Section 404 of the Clean Water Act" then continue with rest of paragraph, striking the sentence about the Corps in the middle.	not revised as suggested, utilized comments made by ACOE
261	2/3/2010	Susan Farrady	Roger Williams University Law School	1030	Suggest inserting 'standard' or 'regulation' after ". . . Objects Affecting Navigable Airspace (15 CFR 77) standard/regulation was adopted."	not revised as suggested
262	2/3/2010	Susan Farady	Roger Williams University Law School	1030	last sentence "Even before . . . federal agencies." Federal should be lowercase.	revised as suggested

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Record #	Date	Name	Organization	Section	Comment	Response
263	2/3/2010	Wendy Waller	Save The Bay		The chapter feels like it jumps around and would be confusing to follow for someone not as familiar with the multitude of laws, agencies, etc, particularly those that are similar in both fed & state jurisdiction or specifically delegated (CWA). My suggestion would be to do the federal side first and then have the section on state laws & regulations. Perhaps some type of diagram showing the relationships would be helpful as well. The content is very good and the NOAA comments presented at the Stakeholder meeting should clarify and expound on some of my concerns from my previous comments. Save The Bay also supports Dave Beutel's request to include more on fisheries management (i.e. Interstate Fisheries Council).	not revised as suggested
264	2/3/2010	Erin Trager	Minerals Management Service	1030	Last sentence should read: Leases should be issued on a competitive basis unless it is determined there is no competitive interest.	revised as suggested
265	2/3/2010	Erin Trager	Minerals Management Service	1030	The paragraph would sound better with the following edits: The EAct also called for the Secretary to issue regulations necessary to carry out section 388. Following the agreement discussed above, MMS issued a final renewable energy framework in the Federal Register on April 22, 2009 (30 CFR Parts 250, 285, and 290). The MMS regulations establish a program to issue leases for the siting and construction of renewable energy projects on the OCS. The program takes a "cradle to grave approach," considering from an initial leasing stage through the decommissioning stage at the project's end. The regulations state that MMS may issue commercial and limited leases. Commercial leases "would convey the access and operational rights necessary to produce, sell and deliver power." Limited leases "will convey access and operational rights for activities on the OCS that support the production of energy, but do not result in the production of electricity or other energy project for sale, distribution, or other commercial use exceeding a limit specified in the lease." Leases will be issued on a competitive basis unless it has been determined that there is competitive interest..	revised as suggested
266	2/3/2010	Erin Trager	Minerals Management Service	1030	Replace "rights-of-way (ROW)" with "right-of-way (ROW)"	revised as suggested
267	2/3/2010	Erin Trager	Minerals Management Service	1030	We recommend adding the following new item #2 in this section: <input type="checkbox"/> 2. For renewable energy projects sited in Federal waters as authorized by 30 CFR Part 285, the MMS will prepare a consistency determination for the lease sale and site assessment activities for commercial leases issued competitively (30 CFR 285.612). For commercial leases issued by the MMS on a noncompetitive basis, consistency will be determined by 15 CFR 930, Subpart D, whereby the applicant must furnish the required consistency certification and associated documented to CRMC and MMS concurrently.	revised as suggested
268	2/5/2010	Wendy Waller	Save The Bay	1010	Because the regulatory field is so large in this case, Save The Bay suggests adding a paragraph in §1010.1 describing the link between the Federal CZMA and the State CRMP and specifically noting RI has an approved plan. While most of us understand that, it is not evident in the draft chapter.	not revised as suggested

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269	2/5/2010	Wendy Waller	Save The Bay	1010	As a result of increasing pressures of over-development on the nation's coastal resources, Congress enacted The Coastal Zone Management Act (CZMA) of 1972 which established a voluntary program giving coastal states the funding and opportunity to develop and implement plans to manage their own coastal resources. To encourage participation, the Act makes federal financial assistance available to any coastal state or territory, including those on the Great Lakes, willing to develop and implement a comprehensive coastal management program. The Secretary of Commerce delegated the administration of the CZMA to the National Oceanic and Atmospheric Administration (NOAA). The Office of Ocean and Coastal Resource Management (OCRM) administers the individual state programs. OCRM has established a flexible framework that enables states to develop strategies that meet their specific needs within their state governmental structure. In addition to resource protection, the CZMA specifies that coastal states may manage coastal development by giving states the authority to review federal projects, federally financed projects, and projects receiving federal licenses and permits, to ensure that they abide by state laws, regulations, and policies. A state with an OCRM-approved program can deny or restrict any development that is inconsistent with its coastal zone management program. Rhode Island was one of the first states in the nation to create a coastal resources management program. 16 U.S.C. § 1452 (1972), as amended through P.L. 104-150, The Coastal Zone Protection Act of 1996.	not revised as suggested
270	2/5/2010	Wendy Waller	Save The Bay	1020	Funding and management opportunities are not the only incentives the CZMA provides for states to voluntarily implement their own coastal management program. §307 of the CZMA (16 USC § 1456), called the federal consistency provision, is a powerful tool allowing states to review federal projects, federally financed projects, and projects receiving federal licenses and permits, to ensure that they abide by state laws, regulations, and policies, creating a balance between state programs and federal activities. Rhode Island's approved coastal zone for federal consistency purposes includes the area encompassed by the state's seaward boundary (three miles) to the inland boundaries of the state's twenty one coastal communities. See RI CRMP §400. Federal consistency is a method of ensuring greater protection of coastal uses and resources, as well as facilitating cooperation and coordination between the State and federal agencies.	not revised as suggested
271	2/8/2010	Ames Colt	RIDEM	1030	What is not stated in the draft is that the EPA specifically preserves the State's role in the siting process and the State's jurisdiction of the potential sites.	revised as suggested
272	2/8/2010	Ames Colt	RIDEM	1030	It would be beneficial to mention the following subsections of the EPA Act in future drafts of this chapter: `` (7) Coordination and consultation with affected state and local governments.—The Secretary shall provide for coordination and consultation with the Governor of any State or the executive of any local government that may be affected by a lease, easement, or right-of-way under this subsection. `` (9) Effect of subsection.— Nothing in this subsection displaces, supersedes, limits, or modifies the jurisdiction, responsibility, or authority of any Federal or State agency under any other Federal law. (e) State Claims to Jurisdiction Over Submerged Lands.— Nothing in this section shall be construed to alter, limit, or modify any claim of any State to any jurisdiction over, or any right, title, or interest in, any submerged lands.	not revised as suggested
273	2/8/2010	Ames Colt	RIDEM	1030	Additionally, the Magnuson-Stevens Fishery Conservation and Management Act (the "Magnuson Act") is referenced in the draft. This statute would implicate, inter alia, the potential impact of the project on a fisheries management plan developed to address the sustainability of an individual over-fished species. Yet the draft is silent as to the connection between the recital of the scope of the Magnuson Act and project review process and evaluation requirements that it would potentially impose upon CRMC and other federal and state permitting authorities.	not revised as suggested

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274	2/8/2010	Ames Colt	RIDEM	1000	Based upon this initial review of the EPA, and the Magnuson Act, and the relevance and importance of statutory provisions not discussed in the summaries of these two federal statutes, RIDEM believes that this draft's key limitation in general is that it merely offers a recital of the statutes that may potentially impact the decision making process without either suggesting the specific connection of these laws to the proposal or providing the standard that would be applied in the application of the statutes to future development or use expansion proposals that will come before CRMC and/or other state and federal permitting authorities. These limitations mean that this draft does not in RIDEM's view fulfill its stated intent of "provid[ing] a summary of the relevant statutory and regulatory environment" (draft Section 1000), particularly with regard to the "associated regulatory provisions that policy direction for, and regulation and management of, these ocean resources and uses" (draft Section 1000). Therefore, RIDEM recommends that future drafts of this chapter provide more complete analyses of the relevant federal and state, analyses the relevance of these laws on the proposed siting of renewable energy, and other types of resource development projects, in the Ocean SAMP area.	partially revised as suggested
275	2/8/2010	Ames Colt	RIDEM	1000	During this brief technical review portion of the OSAMP chapter draft review process, RIDEM is not able to provide such expanded revisions of each of the summaries of the individual statutes it is most familiar with and that may govern the process by which a wind turbine power generation project, or other types of ocean resource development projects, would be sited. RIDEM offers, however, to work with the OSAMP team and other legal authorities such as the RI Attorney General's office on developing the statutory analyses necessary to strengthen this draft and hence help the Ocean SAMP meet the goal of.	partially revised as suggested
276	2/8/2010	Ames Colt	RIDEM	1000	In addition, the draft is silent on the provisions of RIGL 46-31, which creates and specifies the planning scope and responsibilities of the RI Bays, Rivers, and Watersheds Coordination Team (BRWCT). This silence is notable given that the Narragansett Bay Estuary Program is identified in the draft, and because of the following statutory provisions: The BRWCT is required to prepare a "systems-level plan" (SLP) (RIGL 46-31-5). "The systems-level plan shall establish overall goals and priorities for the management, preservation, and restoration of the state's bays, rivers, and watersheds, and the promotion of sustainable economic development of the water cluster." (RIGL 46-31-5 (b)) "Bays' shall mean the estuaries including Narragansett Bay, Mount Hope Bay, Greenwich Bay, Little Narragansett Bay, the coastal ponds, Sakonnet River, and Rhode Island territorial waters that extend seaward three geographical miles from the shoreline including the area around Block Island." (RIGL 46-31-2(4)) (emphasis added.) Therefore, RIDEM respectfully requests that a paragraph summarizing the mission and planning mandate of the BRWCT be added.	revised as suggested
277	2/8/2010	Ames Colt	RIDEM	1010	first line: replace "tidal" with "maritime".	not revised as suggested
278	2/8/2010	Ames Colt	RIDEM	1020	Add the phrase "including the state's marine waters", after the phrase "in the state".	partially revised as suggested
279	3/10/2010	Richard E. Greenwood, Ph.D.	Rhode Island Historical Preservation & Heritage Commission	1020	This section needs to include two state acts governing cultural (historic and archaeological) resources in areas of state jurisdiction. The first is the Rhode Island Historical Preservation Act (R.I.G.L.42.45-5: Powers and Duties). The second is the Rhode Island Antiquities Act (R.I.G.L.42.45.1-2 Purpose of Chapter, 42.45.1-4 Property and Investigative Rights of State, 42.45.1-5 Responsibility for administration of programs – Rules and regulations – Permission to conduct recovery operation – Title to recovered objects.)	partially revised as suggested
281	3/10/2010	Ames Colt	RIDEM	1010	In addition, the draft is silent on the provisions of RIGL 46-31, which creates and specifies the planning jurisdiction and responsibilities of the RI Bays, Rivers, and Watersheds Coordination Team (BRWCT). This silence is particularly notable given that the Narragansett Bay Estuary Program (NBEP) is identified in the draft and because of the following statutory provisions. The Feb. 25 version of the chapter remains silent on the BRWCT and its planning jurisdiction. On behalf of the BRWCT, I respectfully request that the BRWCT be cited in the chapter. RIDEM respectfully requests that the lead author(s) of this draft contact Ames Colt, chair of the BRWCT, to discuss appropriate summary language on the BRWCT.	revised as suggested

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282	3/10/2010	Ames Colt	RIDEM	1010	The BRWCT is required to prepare a "systems-level plan" (SLP) (RIGL 46-31-5). "The systems-level plan shall establish overall goals and priorities for the management, preservation, and restoration of the state's bays, rivers, and watersheds, and the promotion of sustainable economic development of the water cluster." (RIGL 46-31-5 (b))	revised as suggested
283	3/10/2010	Ames Colt	RIDEM	1010	"Bays' shall mean the estuaries including Narragansett Bay, Mount Hope Bay, Greenwich Bay, Little Narragansett Bay, the coastal ponds, Sakonnet River, and Rhode Island territorial waters that extend seaward three geographical miles from the shoreline including the area around Block Island." (RIGL 46-31-2(4)) (emphasis added.)	partially revised as suggested
284	3/10/2010	Ames Colt	RIDEM	1010	Additionally, with reference the Narragansett Bay CCMP, work is underway by RI Statewide Planning, the BRWCT, and the NBEP to revise the SLP so that it may fulfill the planning mandate of the NBEP. And, as part of future revisions to the State Guide Plan, the 1992 NB CCMP is slated for removal from the RI State Guide Plan.	partially revised as suggested
280	3/10/2010	Dave Beutel	CRMC	1020	Existing fisheries management plans (FMP) are part of the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council and New England Fishery Management Council combined effort to manage fisheries within the SAMP and beyond. The Rhode Island Department of Environmental Management (DEM) Division of Fish and Wildlife works with the fishing industry, by using the FMPs to keep Rhode Island in compliance with the rebuilding strategies. Seasons, quotas, daily landing limits, and modifications thereof are important pieces of the role of DEM. Explaining the process involved would clarify questions that have arisen concerning fisheries management in the SAMP area.	partially revised as suggested
286	3/12/2010	Michael S. Riccio	U.S. Army Corps of Engineers, New England District	1030	1030.6 Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act 2. Section 404 of the CWA (33 CFR 323) prohibits discharges of dredged or fill material into waters of the United States, including wetlands without a permit from the USACE. Waters of the United States include those waters and their tributaries, adjacent wetlands, and other waters or wetlands where degradation or destruction could affect interstate or foreign commerce. Section 404 of the CWA defines the landward limit of jurisdiction as the high tide line in tidal waters and the ordinary high water mark in non-tidal waters. When adjacent wetlands are present, the limit of jurisdiction extends to the limit of the wetland. Coincident with the state's jurisdictional limit, USACE regulates section 404 activities seaward to 3 miles.	revised as suggested.
287	3/22/2010	Allison Castellan	NOAA		In addition, I noticed the summary does not include any discussion of FERC authorities. While the Ocean SAMP is largely driven by siting offshore wind facilities (under MMS jurisdiction), its my understanding the SAMP is intended to be a _comprehensive_ ocean plan. Hydrokentic projects may not be proposed off RI's coast right now, but in case they are in the future, it may be good to include FERC authorities under the Federal Power Act as part of this summary of existing state and federal statutes and regulations applicable within the Ocean SAMP planning area.	revised as suggested
1243	6/1/2010	Donald Pryor	Brown		The table of contents does not list any section on policies or recommendations or other items which could appropriately be adopted through a rule-making process.	No response required because this chapter is merely an overview chapter with no applicable policies
1244	6/1/2010	Donald Pryor	Brown	1030	The CZMA (16 USC 1452) does not establish authority for states to prepare SAMPS. The CZM program is voluntary. Federal statutes set requirements should states choose to participate. Some authority in state statutes should be referenced.	Reference is made in the document to CRMC's SAMP authority
1367	6/23/2010	Tricia Jedele	Conservation Law Foundation		The Public Trust Doctrine provides that the public has a legal interest in navigation, commerce, preservation for scientific study, aesthetic value, ecological services, and future generations. The purpose of the public trust doctrine is to keep government or private use of land from eroding these essential rights. The necessity of the doctrine was first recognized by ancient Greek philosophers, codified in the 2nd century Institutes and Journal of Gaius, and embedded in English common law. Champlin's Realty Associates, L.P. v. Tillson, 823 A.2d 1162, 1166 (R.I. 2003). The King was vested with title to the tidal lands but it was subject to the public's right to fish and navigate those waters (jus publicum). Shively v. Bowlby, 152 U.S. 1, 11-12 (1894). After the American Revolution, the title subject to public rights was vested in the each of the thirteen original states, including Rhode Island. Champlin's, Id. The State of Rhode Island codified the public trust doctrine in Art I § 17 of the State Constitution. Therein, the public is granted the right to use and enjoy the state's Coastal resources. The principle	Revised in part as suggested

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1368	6/23/2010	Tricia Jedele	Conservation Law Foundation		The Deepwater Ports Act directs the Secretary of Transportation to set forth and enforce policies regarding fixed or floating manmade structures (other than vessels) located beyond the territorial sea that are use for transportation, storage, or handling of oil. Specifically, the Secretary has the duty to manage deepwater ports in a manner that prevents pollution and mitigates the damage of spills.	This act was incorporated in earlier draft however, due to previous comments it was deleted
1369	6/23/2010	Tricia Jedele	Conservation Law Foundation		The Ocean Thermal Energy Act amends the Merchant Marine Act of 1936. Its provisions create licensing standards that dictate the location, construction, and operation of ocean thermal conversion facilities and plant ships. The Act also creates rules for monitoring and license review for renewal or termination.	This act was incorporated in earlier draft however, due to previous comments it was deleted
1370	6/23/2010	Tricia Jedele	Conservation Law Foundation		The Zoning Enabling Act provides that zoning regulations should be in accordance with a comprehensive plan and focus on a list of enumerated goals. Some of these goals include providing for a range of uses and intensities of use appropriate to the character of the city or town and reflecting current and expected future needs; orderly growth and development which recognizes, among other things, the dynamic nature of coastal and freshwater ponds, the shoreline, and freshwater and coastal wetlands, and the values of unique or valuable natural resources and natural features; the control, protection, and/or abatement of air, water, groundwater, and noise pollution, and soil erosion and sedimentation, the protection of the natural, historic, cultural, and scenic character of the city or town or areas in the municipality. The Act also requires that zoning promotes public health, safety, and general welfare; safety from fire, flood, and other natural or unnatural disasters.	Not revised as suggested. CRMC has exclusive jurisdiction below mean high water
1371	6/23/2010	Tricia Jedele	Conservation Law Foundation	1010	The second sentence of this paragraph provides that the Submerged Lands Act "gives states jurisdiction out to 3 nautical miles," but §1301(a)(2) of the Submerged Lands Act actually gives states jurisdiction from the mean high tide line out to three (3) nautical miles. As such, the language here should be changed to reflect the inland boundary as well as the seaward boundary. The fourth sentence should be divided into two separate sentences: one that addresses the authority of the state and one that address the authorities of the federal government. This separation will help to portray the importance of the state and the federal roles respectively. The sentence on federal authority should mention the fact that the federal government has authority over flood control in order to be consistent with the provisions of 43 U.S.C. §1311(d).	Partially revised as suggested
1372	6/23/2010	Tricia Jedele	Conservation Law Foundation	1010	The reference to Article 22 in the third sentence should be to Article 21 instead. CLF also suggests that this section mention that Article 21 gives the United States authority to regulate customs, fiscal matters, immigration, and sanitation in the territorial sea.	Revised as suggested
1373	6/23/2010	Tricia Jedele	Conservation Law Foundation	1010	We suggest that the mention of "installation of structures" be accompanied by reference to Article 56 "jurisdiction" with regard to protection and preservation of the environment in order to provide a more complete and accurate statement of the UNCLOS provision.	Not revised as suggested
1374	6/23/2010	Tricia Jedele	Conservation Law Foundation	1010	CLF suggests changing the last sentence from "As amended by the 2005 Energy Policy Act (P.L. 109-58), the OCSLA also gives the Secretary the power to authorize alternative energy projects on the OCS" to "As amended by the 2005 Energy Policy Act (PL 109-58, section 388), the OCSLA also gives the Sectary the power to authorize alternative energy projects on the OCS, subject to the authority of (1) the Secretary of the Army to prevent any obstruction of navigation, and (2) the Secretary of the Department in which the Coast Guard is operating to safeguard life and property at sea." Failure to do so may create the appearance that more power lies with the Secretary than the statute allows.	Not revised as suggested, This section was written with the input from the ACOE and the Coast Guard who administers these acts
1375	6/23/2010	Tricia Jedele	Conservation Law Foundation	1020	CLF suggests adding the other three of the eight criteria listed for energy siting: using low levels of high quality drinking water (R.I.G.L. §42-98-2(8)(iii)), using existing energy facilities and sites (R.I.G.L. §42-98-2(8)(iv)), and dual fuel capacity (R.I.G.L. §42-98-2(8)(viii)). This is a more complete statement of the law and avoids the appearance that the few listed factors are of superior importance to the unlisted factors. We also suggest adding the following to the end of the second sentence: "but excluding waste to energy facilities" (R.I.G.L. §42-98-3(d)). We believe that failure to do so appears to give more power to the siting board that the statute allows.	Partially revised as suggested

OCEAN SAMP CHAPTER 10. EXISTING STATUTES, REGULATIONS & POLICIES - COMMENTS & RESPONSES (as of 6/24/10)

Record #	Date	Name	Organization	Section	Comment	Response
1376	6/23/2010	Tricia Jedele	Conservation Law Foundation	1030	CLF notes that the first sentence needs to be corrected for proper punctuation. CLF suggests that the last sentence be changed to read as follows: "The purpose of an EIS is to ensure that environmental consequences are considered comprehensively even though NEPA does not direct an agency to choose any particular course of action once they have been properly examined." We believe that this statement is more consistent with the legislative intent of NEPA than the current language.	Not revised as suggested <input type="checkbox"/>
1377	6/23/2010	Tricia Jedele	Conservation Law Foundation	1030	CLF suggests separating the Marine Mammal Protection Act and the Federal Endangered Species Act into different sections. Each are separate authorities and deserving of an individual section due to their significance and relevance in the SAMP area.	Not revised as suggested
1378	6/23/2010	Tricia Jedele	Conservation Law Foundation	1030	CLF suggests separating the Rivers and Harbors Act and the Clean Water Act into different sections. Each are separate authorities and are deserving of an individual section due to their significance and relevance in the SAMP area.	Partially revised as suggested, this section was written by the Army Corp of Engineers which is the agency with jurisdiction over the statutes
1379	6/23/2010	Tricia Jedele	Conservation Law Foundation	1030	CLF suggests the following changes to this section: "Conserve and manage" corresponds with the language used throughout the statute better than "manage" alone. For example, the purposes of the Magnuson-Stevens Act (16 U.S.C. §§ 1801, et seq. are to conserve and manage the fishery resources of the United States; conserve and manage the U.S. anadromous species and continental shelf fishery resources; support the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species; manage (rather than promote) domestic, commercial and recreational fishing under sound conservation and management principles, etc... Optimum yield and essential fish habitat are critical terms for managing the SAMP area and should be defined here. The definition of "optimal yield" should reflect the statutory definition inasmuch as maximum benefit to the nation must also take into account the need to protect marine ecosystems. Essential Fish Habitat as used in this section should be defined. Essential Fish Habitat areas are waters and substrates necessary for spawning	Not revised as suggested
1380	6/23/2010	Tricia Jedele	Conservation Law Foundation	1030	CLF suggests deleting the final sentence of the paragraph. It simply restates the preceding sentence.	Not revised as suggested
1381	6/23/2010	Tricia Jedele	Conservation Law Foundation	1030	We suggest changing "practical" to "practicable" (line 7 on page 11) in accordance with the original language of the Executive Order. The two terms may have different connotations.	Revised as suggested
1382	6/23/2010	Tricia Jedele	Conservation Law Foundation	1030	We suggest deleting the final sentence of this paragraph. It is unwise to say that the relationship between NEP and SAMP is limited if the SAMP is to be used as a management tool in the long term. While it may be true that SAMP does not focus on Narragansett Bay CCMP, it is also true that new areas within the SAMP may come within the NEP purview in the future. The SAMP should reflect this possibility and avoid dismissing areas of law that might prove to be essential for successful SAMP area management.	Not revised as suggested
1383	6/23/2010	Tricia Jedele	Conservation Law Foundation	1030	CLF suggests changing the last two sentences of 1030.17 to read as follows: Specifically, FERC's authority over projects within the Rhode Island territorial seas extending three (3) nautical miles from the coastal low-water line consists of the power to license hydrokinetic power generation facilities and electric transmission lines from any energy project passing through those waters. FERC's authority over the projects three miles or further from shore, on the outer continental shelf ("OCS") consists of the power to license hydrokinetic power generation facilities only, as limited by an agreement with the Minerals Management Service ("MMS"). MMS retains exclusive jurisdiction not only to lease OCS lands and rights-of-way for energy projects, but over energy production and transmission from non-hydrokinetic projects (DOI-FERC MOU, April 9, 2009). We believe this change makes the relationship between FERC and MMS authority clearer to the reader. This important distinction should be more understandable.	Not revised as suggested

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Record #	Date	Name	Organization	Section	Comment	Response
1405	6/24/2010	Michael S. Riccio	USACE New England	1030	1030.6 Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act 2. Section 404 of the CWA (33 CFR 323) prohibits discharges of dredged or fill material into waters of the United States, including wetlands without a permit from the USACE. Waters of the United States include those waters and their tributaries, adjacent wetlands, and other waters or wetlands where degradation or destruction could affect interstate or foreign commerce. Section 404 of the CWA defines the landward limit of jurisdiction as the high tide line in tidal waters and the ordinary high water mark in non-tidal waters. When adjacent wetlands are present, the limit of jurisdiction extends to the limit of the wetland. Coincident with the state's jurisdictional limit, USACE regulates section 404 activities seaward to 3 miles.	revised as suggested