

## **TITLE 650 – COASTAL RESOURCES MANAGEMENT COUNCIL**

### **CHAPTER 20 – COASTAL MANAGEMENT PROGRAM**

#### **SUBCHAPTER 05 – OCEAN SPECIAL AREA MANAGEMENT PLAN**

##### **PART 2 - Ecology of the Ocean SAMP Region**

### **2.1 Authority**

- A. As authorized by the federal Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 through 1466) and R.I. Gen. Laws Chapter 46-23 the Coastal Resources Management Council may implement special area management plans.
- B. The regulations herein constitute a RICR regulatory component of the Ocean Special Area Management Plan (SAMP) Chapter 2 - Ecology of the Ocean SAMP Region, and must be read in conjunction with the other RICR regulatory components and chapters of the Ocean SAMP for the full context and understanding of the CRMC's findings and policies that form the basis and purpose of these regulations. The other RICR regulatory components and chapters of the Ocean SAMP should be employed in interpreting the regulations herein and R.I. Gen. Laws § 46-23-1, *et seq.*

### **2.2 Purpose**

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

### **2.3 Policies and Standards (formerly § 270)**

#### **2.3.1 General Policies (formerly § 270.1)**

- A. The Council recognizes that the preservation and restoration of ecological systems shall be the primary guiding principle upon which environmental alteration of coastal resources will be measured. Proposed activities shall be

designed to avoid impacts and, where unavoidable impacts may occur, those impacts shall be minimized and mitigated.

- B. As the Ocean SAMP is an extension and refinement of CRMC's policies for Type 4 Multipurpose Waters as described in the RICRMP, CRMC will encourage a balance among the diverse activities, both traditional and future water dependent uses, while preserving and restoring the ecological systems.
- C. The Council recognizes that while all fish habitat is important, spawning and nursery areas are especially critical in providing shelter for these species during the most vulnerable stages of their life cycles. The Council will ensure that proposed activities shall be designed to avoid impacts to these sensitive habitats, and where unavoidable impacts may occur, those impacts shall be minimized and mitigated. In addition, the Council will give consideration to habitat used by Species of Concern as defined by the NMFS Office of Protected Resources.
- D. Because the Ocean SAMP is located at the convergence of two eco-regions and therefore more susceptible to change, the Council will work with partner federal and state agencies, research institutions, and environmental organizations to carefully manage this area, especially as it relates to the projected effects of global climate change on this rich ecosystem.
- E. The Council shall appoint a standing Habitat Advisory Board (HAB) which shall provide advice to the Council on the ecological function, restoration and protection of the marine resources and habitats in the Ocean SAMP area and on the siting, construction, and operation of off shore development in the Ocean SAMP study area. The HAB shall also provide advice on scientific research and its application to the Ocean SAMP. The HAB is an advisory body to the Council and does not supplant any authority of any federal or state agency responsible for the conservation and restoration of marine habitats. The HAB 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.

### **2.3.2 Regulatory Standards (formerly § 270.2)**

- A. Ocean SAMP sea duck foraging habitats in water depths less than or equal to 20 meters [65.6 feet] (as shown in Figure 8 in § 11.10.3(B) of this Subchapter) are designated as Areas Designated for Preservation due to their ecological value and the significant role these foraging habitats play to avian species, and existing evidence suggesting the potential for permanent habitat loss as a result of offshore wind energy development. The current research regarding sea duck foraging areas indicates that this habitat is depth limited and generally contained within the 20 meter depth contour. It is likely there are discreet areas within this region that are prime feeding areas; however at present there is no long-term data set that would allow this determination. Thus, the entire area within the 20 meter contour is being protected as an Area Designated for Preservation until further research allows the Council and other agencies to make a more refined determination. For further information on Areas Designated for Preservation, see Part 11 of this Subchapter, The Policies of the Ocean SAMP.
- B. Glacial moraines are important habitat areas for a diversity of fish and other marine plants and animals because of their relative structural permanence and structural complexity. Glacial moraines create a unique bottom topography that allows for habitat diversity and complexity, which allows for species diversity in these areas and creates environments that exhibit some of the highest biodiversity within the entire Ocean SAMP area. The Council also recognizes that because glacial moraines contain valuable habitats for fish and other marine life they are also important to commercial and recreational fishermen. Accordingly, the Council shall designate glacial moraines as identified in Part 11 of this Subchapter, Figures 3 and 4 in § 11.10.2 of this Subchapter, as Areas of Particular Concern. For further information on Areas of Particular Concern, see Part 11 of this Subchapter, The Policies of the Ocean SAMP.
- C. The Council shall require, for large-scale projects, modeling of circulation and stratification to ensure that water flow patterns and velocities are not altered in ways that would lead to major ecosystem change. The current patterns that exist within the Ocean SAMP ecosystem play an important role in shaping ecosystem functions at all biological and ecological scales, and in shaping physical oceanographic process such as water column stratification.

- D. Biological resource assessments shall be conducted according to the procedures outlined in § 11.10.5 of this Subchapter, The Policies of the Ocean SAMP, and detailed in the Site Assessment Plan and the Construction and Operation Plan sections.
- E. The Council in coordination with the Joint Agency Working Group, as described in § 11.9.7 of this Subchapter, The Policies of the Ocean SAMP, shall determine requirements for monitoring prior to, during and post-construction. Specific biological monitoring requirements shall be determined on a project by project basis and may include but are not limited to the monitoring of:
1. Coastal processes and physical oceanography
  2. Underwater noise
  3. Benthic ecology
  4. Avian species
  5. Marine mammals
  6. Sea turtles
  7. Fish and fish habitat
- F. Any large-scale offshore development, as defined in § 11.3(H) of this Subchapter, shall require a meeting between the HAB, the applicant, and the Council staff to discuss potential marine resource and habitat-related issues such as, but not limited to, impacts to marine resource and habitats during construction and operation, project location, construction schedules, alternative locations, project minimization, measures to mitigate the potential impacts of proposed projects on habitats and marine resources, and the identification of important marine resource and habitat areas. For any state permit process for a Large-Scale Offshore Development, this meeting shall occur prior to submission of the state permit application. The Council cannot require a pre-application meeting for federal permit applications, but the Council strongly encourages applicants for any large-scale offshore development, as defined in § 11.3(H) of this Subchapter, in federal waters to meet with the HAB and the Council staff prior to the submission of a federal application, lease, license, or authorization. However, for federal permit applicants, a meeting with the HAB shall be necessary data and information required for federal consistency reviews for purposes of starting the CZMA 6-month review period for federal license or permit activities under 15 C.F.R. Part 930, Subpart D, and OCS Plans under 15 C.F.R. Part 930, Subpart E, pursuant to 15 C.F.R. § 930.58 (a)(2). Any necessary data and information shall be provided before the 6-month CZMA review period begins for a proposed project.

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