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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2025

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Introduced By: Representatives Edwards, Cortvriend, Finkelman, Knight, Kislak, Fogarty, Shanley, Speakman, Tanzi, and Abney

Date Introduced: February 12, 2025

Referred To: House State Government & Elections

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 42-17.1-4 of the General Laws in Chapter 42-17.1 entitled  
2 "Department of Environmental Management" is hereby amended to read as follows:

3           **42-17.1-4. Divisions within department.**

4           Within the department of environmental management there are established the following  
5 divisions:

6           (1) A division of parks and recreation that shall carry out those functions of the department  
7 relating to the operation and maintenance of parks and recreation areas and the establishment and  
8 maintenance of such additional recreation areas as may from time to time be acquired and such  
9 other functions and duties as may, from time to time, be assigned by the director;

10          (2) A division of fish and wildlife management that shall carry out those functions of the  
11 department relating to the administration and management of hunting and freshwater fishing; the  
12 preservation of wetlands, marsh lands, freshwater lakes, streams, ponds, and wildlife; and such  
13 other related functions and duties as may be assigned by the director;

14          (3) A division of agriculture that shall carry out those functions of the department relating  
15 to agriculture, and such other functions and duties as may from time to time be assigned by the  
16 director, including, but not limited to, plant industry, farm viability, marketing and promotion,  
17 farmland ecology and protection, plant and animal health and quarantine, pesticides, mosquito  
18 abatement, pest survey and response, food policy and security, and, in collaboration with the

1 department of health, public health as it relates to farm production and direct marketing of farm  
2 products, and those agreed upon through memorandum of agreement with the department of health  
3 or other state agencies. The department of health shall continue to act as the lead agency for all  
4 public health issues in the state pursuant to chapter 1 of title 23. Nothing herein contained shall  
5 limit the department of health's statutory authority, nor shall any provision herein be construed as  
6 a limitation upon the statutory authority of the department of health granted to the department under  
7 title 23, nor shall any provision herein be construed to limit the authority of the department of  
8 environmental management to enter into memoranda of agreement with any governmental agency.  
9 The chief of the division of agriculture shall report directly to the director;

10 (4) A division of coastal resources that shall carry out those functions of the department  
11 relating to harbors and harbor lines, pilotage, flood control, shore development, construction of port  
12 facilities, and the registration of boats and such other functions and duties as may, from time to  
13 time, be assigned by the director, except that the division shall not be responsible for the functions  
14 of inspection of dams and reservoirs, approving plans for construction or improvement of dams,  
15 reservoirs, and other structures in non-tidal waters, and the operation of stream-gauging stations in  
16 cooperation with the United States Geological Survey, and provided, further, that the division and  
17 its staff shall be responsible through the director of environmental management to the coastal  
18 resources management council, and the chief and the staff of the division shall serve as staff to the  
19 council;

20 (5) A division of planning and development that shall carry out those functions of the  
21 department relating to planning, programming, acquisition of land, engineering studies, and such  
22 other studies, as the director may direct, and that shall work with the Rhode Island board of  
23 education, with educational institutions at all levels, and with the public in the dissemination of  
24 information and education relating to natural resources, and shall perform the publication and  
25 public relations functions of the department, the functions of inspection of dams and reservoirs,  
26 approving plans for construction or improvement of dams, reservoirs, and other structures in non-  
27 tidal waters, and the operation of stream-gauging stations in cooperation with the United States  
28 Geological Survey;

29 (6) A division of enforcement that shall enforce all of the laws and regulations of the  
30 department and the coastal resources management council, that shall cooperate with the other  
31 enforcement agencies of the state and its municipalities, and that shall administer all of the policing,  
32 enforcing, licensing, registration, and inspection functions of the department and such other  
33 functions and duties as may, from time to time, be assigned by the director;

34 (7) A division of forest environment that shall carry out those functions of the department

1 relating to the administration of forests and natural areas, including programs for utilization,  
2 conservation, forest fire protection, and improvements of these areas; assisting other agencies and  
3 local governments in urban programs relating to trees, forests, green belts, and environment and  
4 such other functions and duties as may, from time to time, be assigned by the director;

5 (8)(i) A division of boating safety that shall carry out those functions of the department  
6 relating to the development and administration of a coordinated, safe boating program in  
7 accordance with the Model Safe Boating Act of 1971 as approved by the National Association of  
8 State Boating Law Administrators.

9 (ii) Administration of the division of boating safety shall be the responsibility of the state  
10 boating law administrator whose duties shall include:

11 (A) The enforcement of all laws relating to the act; and

12 (B) The powers vested in the state boating law administrator and boating safety  
13 enforcement officer shall include the enforcement of laws, rules and regulations relating to  
14 "Regulation of Boats," chapter 22 of title 46 and shall also include the power to:

15 (I) Execute all warrants and search warrants for the violation of laws, rules, and regulations  
16 relating to the act.

17 (II) Serve subpoenas issued for the trial of all offenses hereunder.

18 (III) To carry firearms or other weapons, concealed or otherwise, in the course of, and in  
19 performance of, their duties under this chapter.

20 (IV) To arrest without warrant and on view any person found violating any law, rule, or  
21 regulation relating to the act; take that person before a court having jurisdiction for trial; detain that  
22 person in custody at the expense of the state until arraignment; and to make and execute complaints  
23 within any district to the justice or clerk of the court against any person for any of the offenses  
24 enumerated under the act committed within the district.

25 (V) Boating safety enforcement officers shall not be required to give surety for costs upon  
26 any complaint made by him or her.

27 (iii) The development and administration of a coordinated, safe boating program.

28 (iv) The establishment and enforcement of such rules and regulations as are deemed  
29 necessary to achieve the purposes of the Model Safe Boating Act as approved by the state boating  
30 law administrators.

31 (v) The state boating law administrator shall serve as the liaison to the United States Coast  
32 Guard; ~~and~~

33 (9) A division of marine fisheries management that shall carry out those functions of the  
34 department relating to the administration, management, and harvest of marine animal and plant

1 species found in Rhode Island marine waters, including, but not limited to: stock assessments of  
2 marine species; harvest of marine species regulated under a regional federal fisheries management  
3 plan; the review of aquaculture applications before the CRMC; a commercial fishing licensing  
4 program; fixing seasons, bag limits, size limits, possession limits, and methods of taking on any  
5 marine plant and animal species; and such other related functions and duties as may be assigned by  
6 the director; and

7 (10) A division of coastal resources management that shall carry out those functions of the  
8 department relating to dredging in tidal waters and as such, through the director of environmental  
9 management, shall have the duties and responsibilities set forth in chapter 23 of title 46.

10 SECTION 2. Section 46-1.1-1 of the General Laws in Chapter 46-1.1 entitled "Consistency  
11 of Interpretation" is hereby amended to read as follows:

12 **46-1.1-1. Consistency of interpretation with title 46, chapter 23.**

13 Sections 46-1-1, 46-1-2, 46-2-2, 46-2-4, 46-6-1, 46-6-2 and 46-6-6 shall be interpreted in  
14 a manner consistent with the designation of the division of coastal resources management ~~council~~  
15 within the department of environmental management, as the lead state agency for dredging as  
16 provided for in § 46-23-1(e).

17 SECTION 3. Section 46-6.1-5 of the General Laws in Chapter 46-6.1 entitled  
18 "Maintenance of Marine Waterways and Boating Facilities" is hereby amended to read as follows:

19 **46-6.1-5. Comprehensive plan for dredged material management.**

20 (a) The division of coastal resources management ~~council~~ shall prepare, adopt and  
21 maintain, pursuant to § 46-23-1(e), a comprehensive plan for dredged material management for  
22 dredging that takes place in the coastal zone. The plan shall include, among other matters:

- 23 (1) Coastal zone and upland areas that are deemed suitable, depending on the nature and  
24 characteristics of the dredged material, for the beneficial use and disposal of dredged material;  
25 (2) Approved sites and/or types of areas suitable for dewatering; and  
26 (3) Protocols for monitoring dredged material disposal sites in the coastal zone.

27 (b) The director shall by January 31, 2002, adopt by rule a list of upland sites and types of  
28 areas suitable for beneficial use and disposal of dredged materials, and shall adopt such revisions  
29 as may be necessary to the list no less frequently than biennially thereafter, which list shall be  
30 incorporated in the comprehensive plan for dredged material management.

31 SECTION 4. The title of Chapter 46-23 of the General Laws entitled "Coastal Resources  
32 Management Council" is hereby amended to read as follows:

33 ~~CHAPTER 46-23~~

34 ~~Coastal Resources Management Council~~

1 CHAPTER 46-23

2 DIVISION OF COASTAL RESOURCES MANAGEMENT

3 SECTION 5. Sections 46-23-1, 46-23-2, 46-23-4.1, 46-23-6, 46-23-6.1, 46-23-6.2, 46-23-  
4 7, 46-23-7.1, 46-23-7.2, 46-23-7.4, 46-23-7.5, 46-23-8, 46-23-9, 46-23-10, 46-23-11, 46-23-13, 46-  
5 23-14, 46-23-15, 46-23-15.1, 46-23-16, 46-23-18, 46-23-18.1, 46-23-18.2, 46-23-18.3, 46-23-18.4,  
6 46-23-18.5, 46-23-18.6, 46-23-20, 46-23-20.1, 46-23-20.2, 46-23-20.3, 46-23-20.4, 46-23-20.5,  
7 46-23-20.6, 46-23-21, 46-23-22, 46-23-23, 46-23-24, 46-23-25 and 46-23-26 of the General Laws  
8 in Chapter 46-23 entitled "Coastal Resources Management Council" are hereby amended to read  
9 as follows:

10 **46-23-1. Legislative findings.**

11 (a)(1) Under article 1, § 17 of the Rhode Island Constitution, the people shall continue to  
12 enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they  
13 have been heretofore entitled under the charter and usages of this state, including, but not limited  
14 to, fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and  
15 passage along the shore; and they shall be secure in their rights to use and enjoyment of the natural  
16 resources of the state with due regard for the preservation of their values; and it is the duty of the  
17 general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and  
18 other natural resources of the state, and to adopt all means necessary and proper by law to protect  
19 the natural environment of the people of the state by providing adequate resource planning for the  
20 control and regulation of the use of the natural resources of the state and for the preservation,  
21 regeneration, and restoration of the natural environment of the state.

22 (2) The general assembly recognizes and declares that the coastal resources of Rhode  
23 Island, a rich variety of natural, commercial, industrial, recreational, and aesthetic assets, are of  
24 immediate and potential value to the present and future development of this state; that unplanned  
25 or poorly planned development of this basic natural environment has already damaged or destroyed,  
26 or has the potential of damaging or destroying, the state's coastal resources, and has restricted the  
27 most efficient and beneficial utilization of these resources; that it shall be the policy of this state to  
28 preserve, protect, develop, and, where possible, restore the coastal resources of the state for this  
29 and succeeding generations through comprehensive and coordinated long range planning and  
30 management designed to produce the maximum benefit for society from these coastal resources;  
31 and that preservation and restoration of ecological systems shall be the primary guiding principle  
32 upon which environmental alteration of coastal resources will be measured, judged, and regulated.

33 (b)(1) That effective implementation of these policies is essential to the social and  
34 economic well-being of the people of Rhode Island because the sea and its adjacent lands are major

1 sources of food and public recreation, because these resources are used by and for industry,  
2 transportation, waste disposal, and other purposes, and because the demands made on these  
3 resources are increasing in number, magnitude, and complexity; and that these policies are  
4 necessary to protect the public health, safety, and general welfare. Pursuant to 16 U.S.C. § 1452  
5 ("The Coastal Zone Management Act"), the general assembly hereby directs the [division of coastal](#)  
6 [resources management](#) ~~council~~ (referred to as "~~CRMC~~" "[DCRM](#)") to exercise effectively its  
7 responsibilities in the coastal zone through the development and implementation of management  
8 programs to achieve wise use of the land and water resources of the coastal zone.

9 (2) Furthermore, that implementation of these policies is necessary in order to secure the  
10 rights of the people of Rhode Island to the use and enjoyment of the natural resources of the state  
11 with due regard for the preservation of their values, and in order to allow the general assembly to  
12 fulfill its duty to provide for the conservation of the air, land, water, plant, animal, mineral, and  
13 other natural resources of the state, and to adopt all means necessary and proper by law to protect  
14 the natural environment of the people of the state by providing adequate resource planning for the  
15 control and regulation of the use of the natural resources of the state and for the preservation,  
16 regeneration, and restoration of the natural environment of the state.

17 (c) That these policies can best be achieved through the creation of a [division of](#) coastal  
18 resources management, [within the department of environmental management,](#) ~~council~~ as the  
19 principal mechanism for management of the state's coastal resources.

20 (d) The general assembly recognizes and declares that maintenance dredging is required to  
21 remove natural silt accumulations; Rhode Island has not had a general maintenance dredging policy  
22 and programs for ports, port facilities, channels, harbors, public and private marinas and boating  
23 facilities, recreational facilities and habitat areas; other major coastal states have maintenance  
24 dredging policies and in-water maintenance dredge disposal sites; as a result of the lack of a general  
25 maintenance dredging policy and program and as a result there has been:

26 (1) A decrease in the depth of the Providence Channel from forty-four (44) feet in 1971 to  
27 twenty-four (24) feet in 1996;

28 (2) Navigational restrictions on ocean going vessels through the state's waterways and  
29 channels; and

30 (3) A decrease in the number of available slips and moorings at marinas throughout the  
31 state; and the lack of a maintenance dredging policy and programs have significant adverse  
32 environmental and economic effects on the state and therefore it is in the best interest of the state,  
33 the cities and towns of the state, and the citizens thereof for the state to have a general maintenance  
34 dredging policy and programs to resolve issues related to dredge maintenance and disposal and

1 avoid future significant direct and indirect adverse impact on the environment and economy of the  
2 state.

3 (e) The [division of coastal resources management, within the department of environmental](#)  
4 [management, council](#) is hereby designated as the lead state agency for purposes of dredging in tidal  
5 waters and as such shall have the following duties and responsibilities:

6 (1) To coordinate the interest of the state with regard to dredging;

7 (2) To formulate and adopt a state policy with regard to dredging which integrates those  
8 interests;

9 (3) To cooperate with, negotiate, and to enter into agreements on behalf of the state with  
10 the federal government and with other public bodies and private parties with regard to dredging;

11 (4) To act as the initial and primary point of contact for all applications to the state for  
12 dredging projects in tidal waters;

13 (5) To develop, prepare, adopt pursuant to § 46-23-11, implement, and maintain a  
14 comprehensive plan for dredge material management; and

15 (6) To cooperate and coordinate with the departments of ~~environmental management,~~  
16 transportation, administration, and health, and the economic development corporation in the  
17 conduct of these duties and responsibilities.

18 (f)(1) The legislature recognizes that under Article I, § 17, the submerged lands of the state  
19 are impressed with a public trust and that the state is responsible for the protection of the public's  
20 interest in these lands. The state maintains title in fee to all soil within its boundaries that lies below  
21 the high water mark, and it holds that land in trust for the use of the public. In benefiting the public,  
22 the state preserves certain public rights which include, but are not limited to, fishery, commerce,  
23 and navigation in these waters and the submerged lands that they cover.

24 (2) Since its establishment in 1971, the CRMC has had the authority to manage and plan  
25 for the preservation of the coastal resources of the state including, but not limited to, submerged  
26 lands. [This authority is hereby transferred to the division of coastal resources management within](#)  
27 [the department of environmental management.](#) The legislature hereby declares that, in light of the  
28 unique size, scope, and overall potential impact upon the environment of large scale filling projects  
29 involving twenty-five (25) acres or more, any lease of tidal lands, or any license to use those lands,  
30 is subject to approval, disapproval, or conditional approval by the direct enactment of the general  
31 assembly by legislative action. The ~~CRMC~~ [DCRM](#) shall review all requests for leases, licenses to  
32 use the land, and other authority to use the land made by any applicant prior to presentation of the  
33 request to the general assembly, and the ~~CRMC~~ [DCRM](#) shall make recommendations on the request  
34 to the general assembly. With the exception of any and all projects to fill land of twenty-five (25)

1 acres or more, the general assembly hereby recognizes and declares that the ~~CRMC~~ DCRM is  
2 delegated the sole and exclusive authority for the leasing of submerged and filled lands and giving  
3 licenses for the use of that land. Accordingly, the ~~CRMC~~ DCRM will develop, coordinate, and  
4 adopt a system for the leasing of submerged and filled lands, and licenses for the use of that land,  
5 and will ensure that all leases and licenses are consistent with the public trust. Pursuant thereto, the  
6 ~~CRMC~~ DCRM shall impose a maximum fee of eighty thousand dollars (\$80,000) per annum for  
7 any transatlantic cable that makes landfall in Rhode Island. All such fees collected shall be  
8 deposited into the Bays, Rivers and Watersheds Fund, established pursuant to § 46-31-12.1, and  
9 shall be disbursed according to the purposes of that fund. Nothing contained in this subsection  
10 negates, repeals, or alters the provisions, processes, and requirements for the leasing of submerged  
11 land for the conduct of aquaculture as set out under chapter 10 of title 20. Therefore, nothing in this  
12 chapter shall be construed to limit or impair the authority of the state, or any duly established agency  
13 of the state, to regulate filling or dredging affecting tidal lands owned by the state or any other  
14 entity, and nothing in this chapter shall be construed to limit or impair the obligation of the applicant  
15 to obtain all applicable regulatory approvals. Specifically, and without limiting the foregoing,  
16 nothing in this subsection negates, repeals, or alters the provisions, processes, and requirements for  
17 water quality certification contained in chapter 12 of this title.

18 (3) Definitions. As used in this chapter the following words, unless the context clearly  
19 requires otherwise, shall have the following meanings:

20 (i) "Department" or "DEM" means the department of environmental management.

21 (ii) "Director" means the director of the department of environmental management, or their  
22 duly appointed agent, unless stated otherwise.

23 (iii) "Division" or "DCRM" means the division of coastal resources management.

24 ~~(iv)~~ (iv) "Filled land" means portions of tidal lands which have been rendered by the acts of  
25 man to be no longer subject to tidal action or beneath tidal waters.

26 ~~(v)~~ (v) "Mean high water" means a line of contour representing the 18.6 year average as  
27 determined by the metonic cycle and/or its equivalent as evidenced by the records, tidal datum, and  
28 methodology of the United States Coastal Geodetic Survey within the National Oceanic and  
29 Atmospheric Administration.

30 ~~(vi)~~ (vi) "Tidal Lands" means those lands that are below the mean high water.

31 ~~46-23-2. Coastal resources management council created — Appointment of members~~  
32 **Transfer of authority from coastal resources management council to the division of coastal**  
33 **resources management within the department of environmental management.**

34 ~~(a) There is hereby created the coastal resources management council. The coastal~~



1 ~~resources management council shall consist of ten (10) members. Nine (9) members shall be~~  
2 ~~appointed by the governor, with advice and consent of the senate, and one member shall serve ex~~  
3 ~~officio. All current appointments to the coastal resources management council made by the~~  
4 ~~governor with advice and consent of the senate are hereby validated and ratified and those~~  
5 ~~appointees shall serve for the remainder of their term.~~

6 ~~(1) Six (6) of the members shall be appointed or elected officials of local government: three~~  
7 ~~(3) of whom shall be appointed or elected officials in a municipality of fewer than twenty five~~  
8 ~~thousand (25,000) in population, three (3) of whom shall be appointed or elected officials in a~~  
9 ~~municipality of more than twenty five thousand (25,000) in population. The populations are to be~~  
10 ~~determined by the latest federal census. Elected or appointed municipal officials shall hold seats on~~  
11 ~~the council only so long as they remain in their elected or appointed office. Each municipal~~  
12 ~~appointment shall cease if the appointed or elected official shall no longer hold or change the office~~  
13 ~~which they held upon appointment. At least five (5) out of the six (6) appointed or elected members~~  
14 ~~must be appointed or elected in a coastal municipality. When the governor submits his or her~~  
15 ~~appointments to the senate for advice and consent, the governor shall specify the appointed or~~  
16 ~~elected office that each municipal appointment holds; the population of the municipality~~  
17 ~~represented; and the member being replaced.~~

18 ~~(2) Three (3) members shall be appointed by the governor from the public, with the advice~~  
19 ~~and consent of the senate, one of the public members and his or her successors shall reside in a~~  
20 ~~coastal municipality.~~

21 ~~(3) All members shall serve until their successors are appointed and qualified; during the~~  
22 ~~month of January, the governor shall appoint, with the advice and consent of the senate, a member~~  
23 ~~to succeed the members whose term will then next expire for a term of three (3) years commencing~~  
24 ~~on the first day of February next following and until their successor is named and qualified. A~~  
25 ~~member shall be eligible for successive appointments. No more than two (2) persons on the council~~  
26 ~~shall be from the same municipality. A vacancy other than by expiration shall be filled in the~~  
27 ~~manner of the original appointment but only for the unexpired portion of the term.~~

28 ~~(4) The director of the department of environmental management, or their designee, shall~~  
29 ~~serve ex officio. The ex officio member shall not be counted as serving from any particular~~  
30 ~~municipality.~~

31 ~~(b) In addition to the foregoing voting members, the council may include a varying number~~  
32 ~~of other members who may serve in an advisory capacity without the right to vote and who may be~~  
33 ~~invited to serve by either the governor or the voting members. These advisory members may~~  
34 ~~represent the federal agencies such as the navy, coast guard, corps of engineers, public health~~

1 ~~service, and the Federal Water Pollution Control Administration, and such regional agencies as the~~  
2 ~~New England River Basins Commission and the New England Regional Commission and any other~~  
3 ~~group or interest not otherwise represented.~~

4 ~~(e) There may be established a coastal resources advisory committee which committee,~~  
5 ~~appointed by the executive director of the coastal resources management council, may include, but~~  
6 ~~not be limited to, representation from the following groups: one of whom may be a representative~~  
7 ~~of the university of Rhode Island graduate school of oceanography and the college of resources~~  
8 ~~development, one of whom may be a representative of the Sea Grant National College Program,~~  
9 ~~one of whom may be a representative of the army corps of engineers, one of whom may be a~~  
10 ~~representative of the federal environmental protection agency's Narragansett Bay laboratory, one~~  
11 ~~of whom shall be a representative of the coastal resources management council, one of whom may~~  
12 ~~be the director of the department of environmental management; one of whom may be a member~~  
13 ~~of the Rhode Island Marine Trade Association and one of whom may be a representative of a~~  
14 ~~regional environmental group. The council shall have the authority to appoint these additional~~  
15 ~~members to the advisory committee as is deemed necessary or advisable by the advisory committee~~  
16 ~~or the council. It shall be the responsibility of the committee to advise the coastal resources~~  
17 ~~management council on environmental issues relating to dredging and permitting related thereto,~~  
18 ~~including, but not limited to, those issues defined in §§ 46-23-18.1—46-23-18.3, inclusive.~~

19 ~~(d) The council shall have the authority to form committees of other advisory groups as~~  
20 ~~needed from both its own members and others.~~

21 (a) Whenever, in any general law, public law or regulation the words "coastal resources  
22 management council", the "council" or "CRMC" shall appear, the same shall be deemed to refer to  
23 and to mean the "division of coastal resources management." Whenever, in any general law, public  
24 law or regulation the words "chairman" or "chairperson of the coastal resources management  
25 council" shall appear, the same shall be deemed to refer to and mean the "director of the department  
26 of environmental management".

27 (b) The director of the department of environmental management ("director") assuming  
28 any duties formerly imposed upon any other department, division, board, commission, or other  
29 agency shall perform those duties, notwithstanding that those duties were formerly performed by a  
30 board, council, or a single officer. Any ruling, decision, or order formally made by the council with  
31 regard to matters within their jurisdiction shall be subject to any existing right of appeal to a court  
32 of competent jurisdiction.

33 ~~**46-23-4.1. Executive director of coastal resources management Assistant director of**~~  
34 ~~**the division of coastal resources management.**~~

1 The governor shall appoint, with the advice and consent of the senate, an ~~executive~~  
2 ~~assistant~~ director of the division of coastal resources management who shall be an ~~employee of the~~  
3 ~~council and who shall not be a member of the council. The executive director shall coordinate and~~  
4 ~~liaison with~~ assistant to the director of the department of environmental management, and the  
5 executive director's staff shall be at the same staff level as the other executive directors, and the  
6 executive director shall work directly with the other division leaders. The executive director of  
7 coastal resources management shall be in the unclassified service. The primary duty and  
8 responsibility of the executive director shall be to continue planning for and management of the  
9 resources of the state's coastal region.

10 **46-23-6. Powers and duties — Rights-of-way Continuing authorities – Powers and**  
11 **duties – Rights-of-way.**

12 All prior actions taken by the coastal resources management council including, but not  
13 limited to, permits issued, enforcement actions taken, special area management plans, policies and  
14 all duly promulgated regulations remain valid and enforceable by the department of environmental  
15 management. In order to properly manage coastal resources the ~~council has~~ division is empowered  
16 to exercise all the functions, powers, and duties heretofore vested in the coastal resources  
17 management council, subject to the authority of the department of environmental management,  
18 including, but not limited to, the following powers and duties:

19 (1) Planning and management.(i) The primary responsibility of the ~~council~~ division shall  
20 be the continuing planning for and management of the resources of the state's coastal region. The  
21 ~~council~~ division shall be able to make any studies of conditions, activities, or problems of the state's  
22 coastal region needed to carry out its responsibilities.

23 (ii) The resources management process shall include the following basic phases:

24 (A) Identify all of the state's coastal resources, water, submerged land, air space, fin fish,  
25 shellfish, minerals, physiographic features, and so forth.

26 (B) Evaluate these resources in terms of their quantity, quality, capability for use, and other  
27 key characteristics.

28 (C) Determine the current and potential uses of each resource.

29 (D) Determine the current and potential problems of each resource.

30 (E) Formulate plans and programs for the management of each resource, identifying  
31 permitted uses, locations, protection measures, and so forth.

32 (F) Carry out these resources management programs through implementing authority and  
33 coordination of state, federal, local, and private activities.

34 (G) Formulation of standards where these do not exist, and reevaluation of existing

1 standards.

2 (H) To develop comprehensive programs for dredging in tidal waters and related beneficial  
3 use, disposal, monitoring dewatering and transportation of dredge materials.

4 (I) To accept and administer loans and grants from the federal government and from other  
5 sources, public or private, for the carrying out of any of its functions, which loans or grants shall  
6 not be expended for other than the purposes for which provided.

7 (J) To encourage, participate in, or conduct studies, investigations, research, and  
8 demonstrations relating to dredging, disposal of dredge materials and transportation thereof in the  
9 tidal waters of the state as the ~~coastal resources management council~~ [division of coastal resources](#)  
10 [management](#) may deem advisable and necessary for the discharge of its duties under this chapter.

11 (K) To collect and disseminate information relating to dredging, disposal of dredge  
12 materials and transportation thereof within the tidal waters of the state.

13 (L) To work with the appropriate federal and state agencies to develop as provided for in  
14 this chapter and in chapter 6.1 of this title, a comprehensive plan for dredging in tidal waters and  
15 related beneficial use, disposal, monitoring dewatering and transportation of dredge materials.

16 (M) To apply for, accept and expend grants and bequests of funds, for the purpose of  
17 carrying out the lawful responsibilities of the ~~coastal resources management council~~ [division of](#)  
18 [coastal resources management](#).

19 (iii) An initial series of resources management activities shall be initiated through this basic  
20 process, then each phase shall continuously be recycled and used to modify the ~~council's~~ [division's](#)  
21 resources management programs and keep them current.

22 (iv) Planning and management programs shall be formulated in terms of the characteristics  
23 and needs of each resource or group of related resources. However, all plans and programs shall be  
24 developed around basic standards and criteria, including:

25 (A) The need and demand for various activities and their impact upon ecological systems.

26 (B) The degree of compatibility of various activities.

27 (C) The capability of coastal resources to support various activities.

28 (D) Water quality standards set by the director of the department of environmental  
29 management.

30 (E) Consideration of plans, studies, surveys, inventories, and so forth prepared by other  
31 public and private sources.

32 (F) Consideration of contiguous land uses and transportation facilities.

33 (G) Whenever possible consistency with the state guide plan.

34 (v) The ~~council~~ [division](#) shall prepare, adopt, administer, and cause to be implemented,

1 including specifically through its powers of coordination as set forth in subdivision (3) of this  
2 section, a marine resources development plan and such special area management plans as the  
3 ~~council~~ [division](#) may determine to be appropriate or desirable as follows:

4 (A) Marine resources development plan.

5 (I) The purpose of the marine resources development plan shall be to provide an integrated  
6 strategy for: (a) improving the health and functionality of Rhode Island's marine ecosystem; (b)  
7 providing for appropriate marine-related economic development; and (c) promoting the use and  
8 enjoyment of Rhode Island's marine resources by the people of the state.

9 (II) The marine resources development plan shall include specific goals and objectives  
10 necessary to accomplish its purposes, performance measures to determine progress toward  
11 achieving such goals and objectives, and an implementation program.

12 (III) The marine resources development plan shall be prepared in cooperation with the  
13 department of environmental management, the statewide planning program, and the commerce  
14 corporation, with the involvement of such other state agencies as may be appropriate, and with such  
15 technical support as may be necessary and appropriate from the Narragansett Bay Estuary Program,  
16 the Coastal Institute at the University of Rhode Island, and Rhode Island Sea Grant.

17 (IV) The plan shall be responsive to the requirements and principles of the federal coastal  
18 zone management act as amended, including, but not limited to, the expectations of the act for  
19 incorporating the federal Clean Water Act into coastal zone management programs.

20 (V) The marine resources development plan shall take into account local land use  
21 management responsibilities as provided for under title 45 and harbor management responsibilities,  
22 and the preparation of the plan shall include opportunities for involvement and/or comment by  
23 cities and towns.

24 (VI) The marine resources development plan shall be adopted by the ~~council~~ [division](#) in  
25 accordance with the provisions of this subsection by July 1, 2005, shall as appropriate incorporate  
26 the recommendations of the Governor's Narragansett Bay and Watershed Planning Commission,  
27 and shall be made consistent with systems level plans as appropriate, in order to effectuate the  
28 purposes of systems level planning. The ~~council~~ [division](#) shall update the marine resources  
29 development plan at least once every five (5) years.

30 (VII) The ~~council~~ [division](#) shall administer its programs, regulations, and implementation  
31 activities in a manner consistent with the marine resources development plan.

32 (VIII) The marine resources development plan and any updates thereto shall be adopted as  
33 appropriate as elements of the state guide plan pursuant to § 42-11-10.

34 (B) Special area management plans.

1 (I) The ~~council~~ division shall adopt such special area management plans as deemed  
2 necessary and desirable to provide for the integration and coordination of the protection of natural  
3 resources, the promotion of reasonable coastal-dependent economic growth, and the improved  
4 protection of life and property in the specific areas designated ~~council~~ by the department as  
5 requiring such integrated planning and coordination.

6 (II) The integrated planning and coordination herein specified shall include, but not be  
7 limited to, federal agencies, state agencies, boards, commissions, and corporations, including  
8 specifically the commerce corporation, and cities and towns, shall utilize to the extent appropriate  
9 and feasible the capacities of entities of higher education, including Rhode Island Sea Grant, and  
10 shall provide for the participation of advocacy groups, community-based organizations, and private  
11 persons.

12 (III) The ~~council~~ division shall administer its programs, regulations, and implementation  
13 activities in a manner consistent with special area management plans.

14 (IV) Special area management plans and any updates thereto shall be adopted as  
15 appropriate as elements of the state guide plan pursuant to § 42-11-10.

16 (2) Implementation. (i) The ~~council~~ department of environmental management is  
17 authorized to formulate policies and plans and to adopt regulations necessary to implement its  
18 various management programs. With respect to such policies and plans ~~which relate to matters~~  
19 ~~where the coastal resources management council and the department of environmental management~~  
20 ~~have concurrent jurisdiction~~ and upon formulation of the plans and regulations, the ~~council~~ division  
21 shall, prior to adoption, submit the proposed plans or regulations to the director of the department  
22 of environmental management for the director's review. The director shall review and submit  
23 comments to the ~~council~~ division within thirty (30) days of submission to the director by the ~~council~~  
24 division. The comments of the director shall include findings with regard to the consistency of the  
25 policies, plans and/or regulations with the requirements of laws administered by the department of  
26 environmental management. The ~~council~~ division shall consider the director's comments prior to  
27 adoption of any such policies, plans or regulations and shall respond in writing to findings of the  
28 director with regard to the consistency of said policies, plans and/or regulations with the  
29 requirements of laws administered by the department.

30 (ii)(A) The ~~council~~ division shall have ~~exclusive~~ jurisdiction below mean high water for  
31 all development, operations, and dredging, consistent with the requirements of chapter 6.1 of this  
32 title and ~~except as necessary for~~ consistent with the department of environmental management to  
33 exercise its powers and duties, ~~and to fulfill its responsibilities pursuant to §§ 42-17.1-2 and 42-~~  
34 ~~17.1-24, and any~~ Any person, firm, or governmental agency proposing any development or

1 operation within, above, or beneath the tidal water below the mean high water mark, extending out  
2 to the extent of the state's jurisdiction in the territorial sea, shall be required to demonstrate that its  
3 proposal would not:

4 (I) Conflict with any resources management plan or program;

5 (II) Make any area unsuitable for any uses or activities to which it is allocated by a  
6 resources management plan or program adopted by the ~~council~~ [department of environmental](#)  
7 [management](#); or

8 (III) Significantly damage the environment of the coastal region.

9 (B) The ~~council~~ [division, under the jurisdiction of the department of environmental](#)  
10 [management](#), shall be authorized to approve, modify, set conditions for, or reject any such proposal.

11 (iii) The authority of the ~~council~~ [division](#) over land areas (those areas above the mean high  
12 water mark) shall be limited to two hundred feet (200') from the coastal physiographic feature or  
13 to that necessary to carry out effective resources management programs. This shall be limited to  
14 the authority to approve, modify, set conditions for, or reject the design, location, construction,  
15 alteration, and operation of specified activities or land uses when these are related to a water area  
16 under the agency's jurisdiction, regardless of their actual location. The ~~council's~~ [division's](#) authority  
17 over these land uses and activities shall be limited to situations in which there is a reasonable  
18 probability of conflict with a plan or program for resources management or damage to the coastal  
19 environment. These uses and activities are:

20 (A) Power generating over forty (40) megawatts and desalination plants.

21 (B) Chemical or petroleum processing, transfer, or storage.

22 (C) Minerals extraction.

23 (D) Shoreline protection facilities and geographical features, and all directly associated  
24 contiguous areas which are necessary to preserve the integrity of the facility and/or features.

25 (E) Coastal wetlands and all directly associated contiguous areas which are necessary to  
26 preserve the integrity of the wetlands including any freshwater wetlands located in the vicinity of  
27 the coast. The actual determination of freshwater wetlands located in coastal vicinities and under  
28 the jurisdiction of the ~~coastal resources management council~~ [division of coastal resources](#)  
29 [management](#) shall be designated on such maps that are agreed to in writing and made available for  
30 public use by the ~~coastal resources management council~~ [division of coastal resources management](#)  
31 and the director, department of environmental management, within three (3) months of [August 6,  
32 1996]. The ~~CRMC~~ [DCRM](#) shall have exclusive jurisdiction over the wetlands areas described in  
33 this section notwithstanding any provision of chapter 1, title 2 or any other provision, except as  
34 provided in subsection (iv) of this section. ~~Within six (6) months of [August 6, 1996] the council~~



1 [The division](#) in cooperation with the director shall develop [and maintain](#) rules and regulations for  
2 the management and protection of freshwater wetlands, affected by an aquaculture project, outside  
3 of those freshwater wetlands located in the vicinity of the coast and under the exclusive jurisdiction  
4 of the director of the department of environmental management. For the purpose of this chapter, a  
5 "*coastal wetland*" means any salt marsh bordering on the tidal waters of this state, whether or not  
6 the tidal waters reach the littoral areas through natural or artificial watercourses, and those uplands  
7 directly associated and contiguous thereto which are necessary to preserve the integrity of that  
8 marsh. Marshes shall include those areas upon which grow one or more of the following: smooth  
9 cordgrass (*spartina alterniflora*), salt meadow grass (*spartina patens*), spike grass (*distichlis*  
10 *spicata*), black rush (*juncus gerardi*), saltworts (*salicornia spp.*), sea lavender (*limonium*  
11 *carolinianum*), saltmarsh bulrushes (*scirpus spp.*), hightide bush (*iva frutescens*), tall reed  
12 (*phragmites communis*), tall cordgrass (*spartina pectinata*), broadleaf cattail (*typha latifolia*),  
13 narrowleaf cattail (*typha angustifolia*), spike rush (*eleocharis rostellata*), chairmaker's rush (*scirpus*  
14 *amercana*), creeping bentgrass (*agrostis palustris*), sweet grass (*hierochloe odorata*), and wild rye  
15 (*etlymus virginicus*).

16 (F) Sewage treatment and disposal and solid waste disposal facilities.

17 (G) Beneficial use, dewatering, and disposal of dredged material of marine origins, where  
18 such activities take place within two hundred feet (200') of mean high water or a coastal  
19 physiographic feature, or where there is a reasonable probability of conflict with a plan or program  
20 for resources management or damage to the coastal environment.

21 (iv) Notwithstanding the provisions of subsections (ii) and (iii) above, the department of  
22 environmental management shall maintain jurisdiction over the administration of chapter 1, title 2,  
23 including permitting of freshwater wetlands alterations and enforcement, with respect to all  
24 agricultural activities undertaken by a farmer, as that term is defined in § 2-1-22(j), wherever  
25 located; provided, however, that with respect to activities located partially or completely within  
26 two hundred feet (200') of the coastal physiographic feature, the department shall exercise  
27 jurisdiction in consultation with the ~~council~~ [division](#).

28 (3) Coordination. The ~~council~~ [division, under the jurisdiction of the department of](#)  
29 [environmental management](#), has the following coordinating powers and duties:

30 (i) Functioning as a binding arbitrator in any matter of dispute involving both the resources  
31 of the state's coastal region and the interests of two (2) or more municipalities or state agencies.

32 (ii) Consulting and coordinating actions with local, state, regional, and federal agencies  
33 and private interests.

34 (iii) Conducting or sponsoring coastal research.



1 (iv) Advising the governor, the general assembly, and the public on coastal matters.

2 (v) Serving as the lead state agency and initial ~~and primary~~ point of contact for dredging  
3 activities in tidal waters and in that capacity, integrating and coordinating the plans and policies of  
4 other state agencies as they pertain to dredging in order to develop comprehensive programs for  
5 dredging as required by subparagraph (1)(ii)(H) of this section and chapter 6.1 of this title. The  
6 Rhode Island resource recovery corporation prior to purchasing cover material for the state landfill  
7 shall first contact the ~~CRMC~~ [DCRM](#) to see if there is a source of suitable dredged material available  
8 which shall be used in place of the purchase cover material. Other state agencies engaged in the  
9 process of dump closures shall also contact the ~~CRMC~~ [DCRM](#) to see if there is a source of suitable  
10 dredged material available, which shall be used in place of the purchase cover material. In addition,  
11 cities and towns may contact the ~~CRMC~~ [DCRM](#) prior to closing city or town controlled dump sites  
12 to see if there is a source of suitable dredge material available, which may be used in place of the  
13 purchase cover material.

14 (vi) Acting as the state's representative to all bodies public and private on all coastal and  
15 aquaculture related matters.

16 (4) Operations. The ~~council~~ [division, under the jurisdiction of the department of](#)  
17 [environmental management](#), is authorized to exercise the following operating functions, which are  
18 essential to management of coastal resources:

19 (i) Issue, modify, or deny permits for any work in, above, or beneath the areas under its  
20 jurisdiction, including conduct of any form of aquaculture.

21 (ii) Issue, modify, or deny permits for dredging, filling, or any other physical alteration of  
22 coastal wetlands and all directly related contiguous areas which are necessary to preserve the  
23 integrity of the wetlands, including, but not limited to, the transportation and disposal of dredge  
24 materials in the tidal waters.

25 (iii) Grant licenses, permits, and easements for the use of coastal resources which are held  
26 in trust by the state for all its citizens, and impose fees for private use of these resources.

27 (iv) Determining the need for and establishing pierhead, bulkhead, and harbor lines.

28 (v) Enforcing and implementing riparian rights in the tidal waters after judicial decisions.

29 (vi) The ~~council~~ [division](#) may require an owner or operator of a commercial wharf or pier  
30 of a marine commercial facility, as defined in 300.3 of the Rhode Island coastal resources  
31 management program, but not including those facilities defined in 300.4 of the Rhode Island coastal  
32 resources management program, and which is capable of offloading cargo, and is or will be subject  
33 to a new use or a significant intensification of an existing use, to demonstrate that the commercial  
34 wharf or pier is fit for that purpose. For the purposes of this subsection, a "*commercial wharf or*

1 *pier*" means a pier, bulkhead, wharf, docking facility, or underwater utilities. The ~~council~~ [division](#)  
2 may order said owner or operator to provide an engineering certification to the ~~council's~~ [division's](#)  
3 satisfaction that the commercial wharf or pier is fit for the new use or intensification of an existing  
4 use. If the ~~council~~ [division](#) determines that the commercial wharf or pier is not fit, it may order the  
5 owner or operator to undertake the necessary work to make the commercial wharf or pier safe,  
6 within a reasonable time frame. If the ~~council~~ [division](#) determines that the commercial wharf or  
7 pier, because of its condition, is an immediate threat to public health and safety it may order the  
8 commercial wharf or pier closed until the necessary work to make the commercial wharf or pier  
9 safe has been performed and approved by the ~~council~~ [division](#). All work performed must conform  
10 to the council's management program. The ~~council is also given~~ [department of environmental](#)  
11 [management shall have](#) the authority to develop regulations to carry out this provision and to  
12 impose administrative penalties of five thousand dollars (\$5,000) per day up to a maximum of  
13 twenty thousand dollars (\$20,000) consistent with § 46-23-7.1 where there has been a violation of  
14 the orders under this provision.

15 (5) Rights-of-way. (i) The ~~council~~ [division](#) is responsible for the designation of all public  
16 rights-of-way to the tidal water areas of the state, and shall carry on a continuing discovery of  
17 appropriate public rights-of-way to the tidal water areas of the state.

18 (ii) The ~~council~~ [division](#) shall maintain a complete file of all official documents relating to  
19 the legal status of all public rights-of-way to the tidal water areas of the state.

20 (iii)(A) The ~~council~~ [department of environmental management](#) has the power to designate  
21 for acquisition and development, and posting, and all other functions of any other department for  
22 tidal rights-of-way and land for tidal rights-of-way, parking facilities, and other council related  
23 purposes.

24 (B) Further, the ~~council~~ [division](#) has the power to develop and prescribe a standard sign to  
25 be used by the cities and towns to mark designated rights-of-way.

26 (iv) In conjunction with this subdivision, every state department controlling state-owned  
27 land close to or adjacent to discovered rights-of-way is authorized to set out the land, or so much  
28 of the land that may be deemed necessary for public parking.

29 (v) No use of land for public parking shall conflict with existing or intended use of the land,  
30 and no improvement shall be undertaken by any state agency until detailed plans have been  
31 submitted to and approved by the governing body of the local municipality.

32 (vi) In designating rights-of-way, the ~~council~~ [division](#) shall consider the following matters  
33 in making its designation:

34 (A) Land evidence records;

- 1 (B) The exercise of domain over the parcel such as maintenance, construction, or upkeep;
- 2 (C) The payment of taxes;
- 3 (D) The creation of a dedication;
- 4 (E) Public use;
- 5 (F) Any other public record or historical evidence such as maps and street indexes;
- 6 (G) Other evidence as set out in § 42-35-10.

7 (vii) A determination by the ~~council~~ [division](#) that a parcel is a right-of-way shall be decided  
8 by substantial evidence.

9 (viii) The ~~council~~ [division](#) shall be notified whenever by the judgment of the governing  
10 body of a coastal municipality, a public right-of-way to tidal water areas located in such  
11 municipality has ceased to be useful to the public, and such governing body proposes an order of  
12 abandonment of such public right-of-way. Said notice shall be given not less than sixty (60) days  
13 prior to the date of such abandonment.

14 (6) Pre-existing residential boating facilities. (i) The ~~council~~ [division, under the jurisdiction](#)  
15 [of the department of environmental management](#), is hereby authorized and empowered to issue  
16 assent for pre-existing residential boating facilities constructed prior to January 1, 1985. These  
17 assents may be issued for pre-existing residential boating facilities, even though such facilities do  
18 not meet current standards and policies of the ~~council~~ [division](#); provided, however, that the ~~council~~  
19 [division](#) finds that such facilities do not pose any significant risk to the coastal resources of the state  
20 of Rhode Island and do not endanger human safety.

21 (ii) In addition to the above criteria, the applicant shall provide clear and convincing  
22 evidence that:

23 (A) The facility existed in substantially the same configuration as it now exists prior to  
24 January 1, 1985;

25 (B) The facility is presently intact and functional; and

26 (C) The facility presents no significant threat to the coastal resources of the state of Rhode  
27 Island or human safety.

28 (iii) The applicant, to be eligible for this provision, shall apply no later than January 31,  
29 1999.

30 (iv) The ~~council~~ [division](#) is directed to develop rules and regulations necessary to  
31 implement this subdivision.

32 (v) It is the specific intent of this subsection to require that all pre-existing residential  
33 boating facilities constructed on January 1, 1985, or thereafter conform to this chapter and the plans,  
34 rules and regulations of the council.

1 (7) Lease of filled lands which were formerly tidal lands to riparian or littoral owners. (i)  
2 Any littoral or riparian owner in this state who desires to obtain a lease from the state of Rhode  
3 Island of any filled lands adjacent to his or her upland shall apply to the ~~council~~ [division](#), which  
4 may make the lease. Any littoral or riparian owner who wishes to obtain a lease of filled lands must  
5 obtain pre-approval, in the form of an assent, from the ~~council~~ [division](#). Any lease granted by the  
6 ~~council~~ [division](#) shall continue the public's interest in the filled lands including, but not limited to,  
7 the rights of navigation, fishery, and commerce. The public trust in the lands shall continue and run  
8 concurrently with the leasing of the lands by the state to private individuals, corporations, or  
9 municipalities. Upon the granting of a lease by the ~~council~~ [division](#), those rights consistent with the  
10 public trust and secured by the lease shall vest in the lessee. The ~~council~~ [division](#) may approve a  
11 lease of filled lands for an initial term of up to fifty (50) years, with, or without, a single option to  
12 renew for an additional term of up to fifty (50) years.

13 (ii) The lessor of the lease, at any time, for cause, may by express act cancel and annul any  
14 lease previously made to the riparian owner when it determines that the use of the lands is violating  
15 the terms of the lease or is inconsistent with the public trust, and upon cancellation the lands, and  
16 rights in the land so leased, shall revert to the state.

17 (8) "*Marinas*" as defined in the coastal resources management program in effect as of June  
18 1, 1997, are deemed to be one of the uses consistent with the public trust. ~~Subdivision (7)~~  
19 [Subsection \(7\) of this section](#) is not applicable to:

20 (i) Any riparian owner on tidal waters in this state (and any successor in interest to the  
21 owner) which has an assent issued by the ~~council~~ [division](#) to use any land under water in front of  
22 his or her lands as a marina, which assent was in effect on June 1, 1997;

23 (ii) Any alteration, expansion, or other activity at a marina (and any successor in interest)  
24 which has an assent issued by the council, which assent was in effect on June 1, 1997; and

25 (iii) Any renewal of assent to a marina (or successor in interest), which assent was issued  
26 by the council and in effect on June 1, 1997.

27 (9) "*Recreational boating facilities*" including marinas, launching ramps, and recreational  
28 mooring areas, as defined by and properly permitted by the ~~council~~ [division](#), are deemed to be one  
29 of the uses consistent with the public trust. ~~Subdivision (7)~~ [Subsection \(7\) of this section](#) is not  
30 applicable to:

31 (i) Any riparian owner on tidal waters in this state (and any successor in interest to the  
32 owner) which has an assent issued by the council to use any land under water in front of his or her  
33 lands as a recreational boating facility; any alteration, expansion or other activity at a recreational  
34 boating facility (and any successor in interest) which has an assent issued by the council, which

1 assent was in effect as of June 1, 1997; and

2 (ii) Any renewal of assent to a recreational boating facility (or successor in interest), which  
3 assent was issued by the ~~council~~ [division](#) and in effect on June 1, 1997.

4 **46-23-6.1. Newport "cliff walk" — Public right-of-way — Legal studies.**

5 The ~~council~~ [division](#) is hereby directed to carry out any and all legal studies which it shall  
6 deem necessary in order to designate the Newport "cliff walk", so called, as a public right-of-way  
7 pursuant to § 46-23-6(5).

8 **46-23-6.2. Abandonment of rights-of-way.**

9 No city or town shall abandon a right-of-way designated as such by the ~~council~~ [division](#)  
10 unless the ~~council~~ [division](#) approved the abandonment.

11 **46-23-7. Violations.**

12 (a)(1) In any instances wherein there is a violation of the coastal resources management  
13 program, or a violation of regulations or decisions of the ~~council~~ [division of coastal resources](#)  
14 [management](#), the ~~commissioner of coastal resources management~~ [director of the department of](#)  
15 [environmental management](#) shall have the power to order any person to cease and desist or to  
16 remedy any violation of any provisions of this chapter, or any rule, regulation, assent, order, or  
17 decision of the ~~council~~ [division](#) whenever the ~~commissioner of coastal resources management~~  
18 [director of the department of environmental management](#) shall have reasonable grounds to believe  
19 that such violation has occurred.

20 (2) ~~Council~~ [Division](#) staff, conservation officers within the department of environmental  
21 management, and state and municipal police shall be empowered to issue written cease and desist  
22 orders in any instance where activity is being conducted which constitutes a violation of any  
23 provisions of this chapter, or any rule, regulation, assent, order, or decision of the ~~council~~ [division](#).

24 (3) Conservation officers within the department of environmental management, ~~council~~  
25 [division](#) staff, and state and municipal police shall have authority to apply to a court of competent  
26 jurisdiction for a warrant to enter on private land to investigate possible violations of this chapter;  
27 provided, that they have reasonable grounds to believe that a violation has been committed, is being  
28 committed, or is about to be committed.

29 (b) Any order or notice issued pursuant to subsection (a) shall be eligible for recordation  
30 under chapter 13 of title 34, and shall be recorded in the land evidence records in the city/town  
31 wherein the property subject to the order is located, and any subsequent transferee of the property  
32 shall be responsible for complying with the requirements of the order and notice.

33 (c) The ~~coastal resources management council~~ [division of coastal resources management](#)  
34 shall discharge of record any notice filed pursuant to subsection (b) within thirty (30) days after the

1 violation has been remedied.

2 **46-23-7.1. Administrative penalties.**

3 Any person who violates, or refuses or fails to obey, any notice or order issued pursuant to  
4 § 46-23-7(a); or any assent, order, or decision of the ~~council~~ [division](#), may be assessed an  
5 administrative penalty by the ~~chairperson or executive~~ director in accordance with the following:

6 (1) The ~~chairperson or executive~~ director is authorized to assess an administrative penalty  
7 of not more than ten thousand dollars (\$10,000) for each violation of this section, and is authorized  
8 to assess additional penalties of not more than one thousand (\$1,000) for each day during which  
9 this violation continues after receipt of a cease-and-desist order from the ~~council~~ [division](#) pursuant  
10 to § 46-23-7(a), but in no event shall the penalties in aggregate exceed fifty thousand dollars  
11 (\$50,000). Prior to the assessment of a penalty under this ~~subdivision~~ [subsection](#), the property  
12 owner or person committing the violation shall be notified by certified mail or personal service that  
13 a penalty is being assessed. The notice shall include a reference to the section of the law, rule,  
14 regulation, assent, order, or permit condition violated; a concise statement of the facts alleged to  
15 constitute the violation; a statement of the amount of the administrative penalty assessed; and a  
16 statement of the party's right to an administrative hearing.

17 (2) The party shall have twenty-one (21) days from receipt of the notice within which to  
18 deliver to the ~~council~~ [division](#) a written request for a hearing. This request shall specify in detail  
19 the statements contested by the party. The ~~executive~~ director shall designate a person to act as  
20 hearing officer. If no hearing is requested, then after the expiration of the twenty-one (21) day  
21 period, the ~~council~~ [division](#) shall issue a final order assessing the penalty specified in the notice.  
22 The penalty is due when the final order is issued. If the party shall request a hearing, any additional  
23 daily penalty shall not commence to accrue until the ~~council~~ [director](#) issues a final order.

24 (3) If a violation is found to have occurred, the ~~council~~ [director](#) may issue a final order  
25 assessing not more than the amount of the penalty specified in the notice. The penalty is due when  
26 the final order is issued.

27 (4) The party may within thirty (30) days appeal the final order, of fine assessed by the  
28 ~~council~~ [director](#) to the superior court which shall hear the assessment of the fine de novo.

29 **46-23-7.2. Proceedings for enforcement.**

30 The superior court shall have jurisdiction to enforce the provisions of this chapter, the  
31 coastal resource management program, or any rule, regulation, assent, or order issued pursuant  
32 thereto. Proceedings under this section may follow the course of equity, and shall be instituted and  
33 prosecuted in the name of and at the direction of the ~~chairperson~~ [director of environmental](#)  
34 [management](#) and ~~council~~ by the attorney general or counsel designated by the ~~council~~ [director](#).

1 Proceedings provided in this section shall be in addition to, and may be utilized in lieu of, other  
2 administrative or judicial proceedings authorized by this chapter.

3 **46-23-7.4. Penalty for blocking or posting of rights-of-way.**

4 Any person who shall post or block any tidal water, public right-of-way, as designated by  
5 the ~~council~~ division, shall be punished by a fine not exceeding one thousand dollars (\$1,000) or by  
6 imprisonment for not more than three (3) months or both; and each day the posting or blocking  
7 continues or is repeated shall be deemed a separate offense. The ~~chairperson of the council~~ director  
8 of the department of environmental management, through ~~council's~~ the department's legal counsel  
9 or the attorney general, may apply to any court of competent jurisdiction for an injunction to prevent  
10 the unlawful posting or blocking of any tidal water, public right-of-way.

11 **46-23-7.5. Prosecution of criminal violations.**

12 The ~~chairperson~~ director of the department of environmental management and anyone  
13 designated by the ~~chairperson~~ director, without being required to enter into any recognizance or to  
14 give surety for cost, may institute proceedings in the name of the state. It shall be the duty of the  
15 attorney general and/or the solicitor of the city or town in which the alleged violation has occurred  
16 to conduct the prosecution of all the proceedings. The ~~chairperson~~ director may delegate his or her  
17 authority to bring prosecution by complaint and warrant to any law enforcement officials authorized  
18 by law to bring complaints for the issuance of search or arrest warrants pursuant to chapters 5 and  
19 6 of title 12.

20 **46-23-8. Gifts, grants, and donations.**

21 The ~~council~~ division is authorized to receive any gifts, grants, or donations made for any  
22 of the purposes of its program, which shall be deposited as general revenues, and to disburse and  
23 administer the gifts, grants, or donations amounts appropriated in accordance with the terms  
24 thereof. The ~~council~~ division is authorized to receive any sums provided by an applicant for use by  
25 the ~~council~~ division in its hearing process, which shall be deposited as general revenues, and to  
26 disburse and administer the general revenue amounts appropriated in accordance with the rules and  
27 regulations promulgated by the ~~council~~ department of environmental management.

28 **46-23-9. Subpoena.**

29 The ~~council~~ department of environmental management is hereby authorized and  
30 empowered to summon witnesses and issue subpoenas in substantially the following form:

31 Sc.

32 To \_\_\_\_\_ of \_\_\_\_\_ greeting:

33 You are hereby required, in the name of the state of Rhode Island, to make your appearance  
34 before the ~~commission~~ division of coastal resources management on \_\_\_\_\_



1 in the \_\_\_\_\_ city of \_\_\_\_\_ on the  
2 \_\_\_\_\_ day of \_\_\_\_\_ to give evidence of what you know  
3 relative to a matter upon investigation by the ~~commission~~ [division of coastal resources management](#)  
4 on \_\_\_\_\_ and produce and then and there have and give the  
5 following:

6 Hereof fail not, as you will answer to default under the penalty of the law in that behalf  
7 made and provided.

8 Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ in the  
9 year \_\_\_\_\_

10 **46-23-10. Cooperation of departments.**

11 All other departments and agencies and bodies of state government are hereby authorized  
12 and directed to cooperate with and furnish such information as the ~~council~~ [division of coastal](#)  
13 [resources management within the department of environmental management](#), shall require.

14 **46-23-11. Rules and regulations.**

15 The rules and regulations promulgated by the ~~council~~ [department of environmental](#)  
16 [management for the division of coastal resources management](#), shall be subject to the  
17 Administrative Procedures Act.

18 **46-23-13. Application and hearing fees.**

19 The ~~council~~ [department of environmental management](#) shall be authorized to establish  
20 reasonable fees for applications and hearings. All fees collected by the ~~council~~ [department](#),  
21 including fees collected for leases, shall be deposited as general revenues. The state controller is  
22 hereby authorized and directed to draw his or her orders upon the general treasurer for payment of  
23 such sum or sums as may be necessary from time to time and upon receipt by him or her of duly  
24 authenticated vouchers presented by the ~~commissioner of coastal resources management~~ [director](#)  
25 [of the department of environmental management for the division of coastal resources management](#).

26 **46-23-14. Expert testimony.**

27 The ~~council~~ [division](#) shall be authorized to engage its own expert and outside consultants,  
28 and the ~~council~~ [division](#) shall be empowered to use that testimony in making its decisions.

29 **46-23-15. Federal grants and interstate cooperation.**

30 The ~~council~~ [division](#) is authorized to accept any federal grants. It is further given the power  
31 to administer land and water use regulations as necessary to fulfill their responsibilities under the  
32 Federal Coastal Zone Management Act, 16 U.S.C. § 1451 et seq., and to acquire fee simple and  
33 less than fee simple interests under any federal or state program. The ~~council~~ [division](#) is authorized  
34 to coordinate and cooperate with other states in furtherance of its purposes. The ~~council~~ [division](#)



1 may expend those grants and appropriations. The ~~coastal resources management council~~ [division](#)  
2 [of coastal resources management within the department of environmental management](#), for the  
3 purposes of the federal Coastal Zone Management Act, 16 U.S.C. § 1451 et seq., is the coastal zone  
4 agency under §§ 301 through 313 and §§ 318 and 6217 of said act.

5 **46-23-15.1. Coordination of harbor safety and enforcement patrols.**

6 Coastal municipalities which share a common boundary along their public waters may  
7 enter into a binding memorandum of agreement allowing for harbor masters and other officials  
8 charged with enforcement of harbor management plan harbor ordinances from one coastal  
9 municipality to enforce the harbor ordinances of the bordering coastal municipality upon the public  
10 waters of the bordering coastal municipality when the coastal municipalities have harbor  
11 management plans approved by the ~~coastal resources management council~~ [division of coastal](#)  
12 [resources management](#) and the memorandum of agreement is approved by the respective town or  
13 city councils. This binding memorandum of agreement shall specify how each coastal municipality  
14 is to receive any fines collected under this reciprocal enforcement agreement and the jurisdiction  
15 in which any disputes arising out of this reciprocal enforcement agreement shall be litigated.

16 **46-23-16. Length of permits, licenses, and easements.**

17 The ~~council~~ [division](#) is authorized to grant permits, licenses, and easements for any term  
18 of years or in perpetuity. Permits, licenses, or easements which are issued by the ~~council~~ [division](#)  
19 for the filling of the submerged or submersible lands of the state of Rhode Island remain subject to  
20 the public trust, and no title is conveyed by such documents. All such permits, licenses, and  
21 easements shall clearly state that no title is being conveyed. Permits, licenses or easements issued  
22 by the ~~council~~ [division](#) are valid only with the conditions and stipulation under which they are  
23 granted and imply no guarantee of renewal. The initial application or an application for renewal  
24 may be subject to denial or modification. If an application is granted, said permit, license and  
25 easement may be subject to revocation and/or modification for failure to comply with the conditions  
26 and stipulations under which the same was issued or for other good cause. The ~~division of~~ coastal  
27 resources [management council](#) ~~of the department of environmental management~~ shall transfer all  
28 of the records and files of the former division of harbours and rivers [and all records of the coastal](#)  
29 [resources management council](#) to the ~~council~~ [department of environmental management](#).

30 **46-23-18. Prohibited activities.**

31 (a) No person, either as principal, agent or servant nor any firm, corporation, or any other  
32 entity shall, without a permit issued by the ~~coastal resources management council~~ [division of](#)  
33 [coastal resources management](#), construct a marina within two thousand feet (2000') of a shellfish  
34 management area as defined by rules and regulations of the department of environmental

1 management. Such permit shall include any permit required under subsection (b).

2 (b) No person, either as principal, agent, or servant, or any firm, corporation or any other  
3 entity, shall, within the tidal waters of the state, conduct or cause to conduct dredging,  
4 transportation and/or disposal of dredge materials without a permit issued by the ~~coastal resources~~  
5 ~~management council~~ division of coastal resources management, a water quality certification issued  
6 by the department of environmental management pursuant to chapter 12 of this title and any permit  
7 required by the army corps of engineers. In addition, no person, either as principal, agent, or servant,  
8 nor any firm, corporation or any other entity, shall dispose of dredge materials other than in tidal  
9 waters without any permit, approval or certification that may otherwise be required.

10 **46-23-18.1. Permitting.**

11 (a) Any person, either as principal, agent, or servant, or any firm, corporation or any other  
12 entity desiring to conduct any activity or activities specified in § 46-23-18 shall file an application  
13 for a permit with the ~~coastal resources management council~~ division of coastal resources  
14 management upon forms furnished by ~~coastal resources management council~~ the division of coastal  
15 resources management.

16 (b) A hearing shall be held on the application within thirty (30) days of filing.

17 (c) The applicant shall bear the burden of proving that the activity or activities specified in  
18 the application will cause no significant adverse impact upon the environment or natural resources  
19 of the state, and the ~~coastal resources management council~~ division of coastal resources  
20 management within the department of environmental management shall be empowered to deny the  
21 application if the applicant does not demonstrate, in addition to other requirements of this chapter,  
22 that the activity or activities will not:

23 (i) Significantly adversely affect any shellfish management area as designated by the  
24 department of environmental management or the marine fisheries council;

25 (ii) Be in a significant conflict with the marine ecology within or adjacent to the state's  
26 territorial waters; or

27 (iii) Significantly harm or destroy existing fishing grounds.

28 (d) With respect to an application seeking a permit from the ~~coastal resources management~~  
29 ~~council~~ division of coastal resources management to conduct or cause to conduct dredging,  
30 transportation and/or disposal of dredge material, the applicant shall also satisfy the ~~council~~  
31 division that the proposal in the application is consistent with a comprehensive program developed  
32 pursuant to § 46-23-6(1)(ii)(H).

33 (e) In determining whether an applicant has met the burden of proof under subsection (c),  
34 the ~~coastal resources management council~~ division of coastal resources management shall apply

1 standards that conform with the federal Environmental Protection Agency's applicable standards  
2 and guidelines for the management of dredge materials, including, but not limited to, the federal  
3 Environmental Protection Agency's rules, regulations and guidelines for deviating from said  
4 standards.

5 (f) The applicant shall, at least three (3) days before commencing any dredging, give  
6 written notice to the ~~coastal resources management council~~ [division of coastal resources](#)  
7 [management](#) of the intent to commence the activities specified in the permit.

#### 8 **46-23-18.2. Rules and regulations.**

9 The ~~council~~ [department of environmental management](#), upon recommendation by the  
10 ~~coastal resources advisory committee~~ [division of coastal resources management](#), shall issue  
11 reasonable rules and regulations governing the dredging, transporting and disposal of all dredge  
12 materials in accordance with this chapter.

#### 13 **46-23-18.3. Sites for disposal of spoil from dredge operations, selection.**

14 (a) The ~~council~~ [department of environmental management](#), upon recommendation of the  
15 ~~coastal resources advisory committee~~ [division of coastal resources management](#), on or before the  
16 first day of January, 1999 and periodically thereafter as necessary, shall consistent with the  
17 comprehensive programs required in § 46-23-6(1)(ii)(H) identify and establish one or more in-  
18 water disposal sites to be used for the purpose of disposal of dredge materials from marinas and  
19 yacht clubs.

20 (b) The ~~council~~ [department of environmental management](#), upon recommendation of the  
21 ~~coastal resources advisory committee~~ [division of coastal resources management](#), on or before the  
22 first day of January, 2002 and periodically thereafter as necessary, shall consistent with the  
23 comprehensive programs required in § 46-23-6(1)(ii)(H) identify and establish one or more in-  
24 water disposal sites to be used for the purpose of disposal of dredge materials from all sources not  
25 otherwise delineated in (a) above.

#### 26 **46-23-18.4. Enforcement.**

27 The provisions of §§ 46-23-18 through 46-23-18.3 shall be enforced by the ~~coastal~~  
28 ~~resources management council~~ [division of coastal resources management](#). Nothing herein shall be  
29 deemed to abrogate the department of environmental management's authority to enforce its water  
30 quality standards adopted pursuant to [this chapter and](#) § 46-12-3(7) or (24).

#### 31 **46-23-18.5. Fees for disposal.**

32 The ~~council~~ [division](#) is authorized to impose a fee of not less than eleven dollars and sixty-  
33 five cents (\$11.65) per cubic yard for the disposal of dredge materials at the sites established by the  
34 ~~council~~ [division](#) pursuant to § 46-23-18.3, with eleven dollars and sixty-five cents (\$11.65) being

1 deposited into the general fund. The amount of the fee established by the ~~council~~ [division](#) pursuant  
2 to the section shall be reviewed by the ~~council~~ [division](#) on an annual basis and revised as the council  
3 deems necessary, but in no event shall the fee be set at an amount less than eleven dollars and sixty-  
4 five cents (\$11.65) per cubic yard of material.

5 **46-23-18.6. Coastal Resources Management Council Dredge Fund Division of coastal**  
6 **resources management dredge fund.**

7 There is hereby created a separate fund to be held by the ~~coastal resources management~~  
8 ~~council~~ [division of coastal resources management](#) to be known as the dredge fund. Any amount  
9 charged above the eleven dollars and sixty-five cents (\$11.65) must be deposited into the fund and  
10 shall not be deposited into the general fund of the state, but shall be kept by the general treasurer  
11 of the state in a separate fund for the ~~coastal resources management council~~ [division of coastal](#)  
12 [resources management](#), and shall be paid out by the treasurer upon the ~~order~~ [request](#) of the ~~council~~  
13 [division](#), without the necessity of appropriation or re-appropriation by the general assembly. Funds  
14 must be used to create additional dredging and disposal options.

15 **46-23-20. Administrative hearings.**

16 All contested cases, all contested enforcement proceedings, and all contested  
17 administrative fines shall be heard by the administrative hearing officers, or by subcommittees as  
18 provided in § 46-23-20.1, pursuant to the regulations promulgated by the ~~council~~ [department of](#)  
19 [environmental management](#); provided, however, that no proceeding and hearing prior to the  
20 appointment of the hearing officers shall be subject to the provisions of this section.  
21 Notwithstanding the foregoing, the ~~commissioner of coastal resources management~~ [director of the](#)  
22 [department of environmental management](#) shall be authorized, in his or her discretion, to resolve  
23 contested licensing and enforcement proceedings through informal disposition pursuant to  
24 regulations promulgated by the ~~council~~ [department of environmental management](#).

25 **46-23-20.1. ~~Hearing officers — Appointment — Compensation — Subcommittee~~**  
26 **Hearing officers — Appointment — Compensation.**

27 (a) The governor, with the advice and consent of the senate, shall appoint two (2) hearing  
28 officers who shall be attorneys-at-law, who, prior to their appointment, shall have practiced law for  
29 a period of not less than five (5) years for a term of five (5) years; provided, however, that the initial  
30 appointments shall be as follows: one hearing officer shall be appointed for a term of three (3) years  
31 and one hearing officer shall be appointed for a term of five (5) years. The appointees shall be  
32 addressed as hearing officers.

33 (b) The governor shall designate one of the hearing officers as chief hearing officer. The  
34 hearing officers shall hear proceedings as provided by this section, and the ~~council~~ [director of the](#)

1 [department of environmental management](#), with the assistance of the chief hearing officer, may  
2 promulgate such rules and regulations as shall be necessary or desirable to effect the purposes of  
3 this section.

4 (c) A hearing officer shall be devoted full time to these administrative duties, and shall not  
5 otherwise practice law while holding office nor be a partner nor an associate of any person in the  
6 practice of law.

7 (d) Compensation for hearing officers shall be determined by the unclassified pay board.

8 (e) Whenever the ~~chairperson of the coastal resources management council or, in the~~  
9 ~~absence of the chairperson, the commissioner of coastal resources~~ [director of the department of](#)  
10 [environmental management](#) makes a finding that the hearing officers are otherwise engaged and  
11 unable to hear a matter in a timely fashion, he or she may appoint a subcommittee which will act  
12 as hearing officers in any contested case coming before the ~~council~~ [division of coastal resources](#)  
13 [management](#). The subcommittee shall consist of at least one member; provided, however, that in  
14 all contested cases an additional member shall be a resident of the coastal community affected. The  
15 city or town council of each coastal community shall, at the beginning of its term of office, appoint  
16 a resident of that city or town to serve as an alternate member of the aforesaid subcommittee ~~should~~  
17 ~~there be no existing member of the coastal resources management council from that city or town~~  
18 ~~available to serve on the subcommittee~~. Any member of the subcommittee actively engaged in  
19 hearing a case shall continue to hear the case, even though his or her term may have expired, until  
20 the case is concluded and a vote taken thereon. Hearings before subcommittees shall be subject to  
21 all rules of practice and procedure as govern hearings before hearing officers.

22 **46-23-20.2. Clerk.**

23 ~~The commissioner of coastal resources or his or her designee shall~~ [The director of the](#)  
24 [department of environmental management shall employ one individual to](#) serve as clerk to the  
25 hearing officers. The clerk shall have general charge of the office, keep a full record of proceedings,  
26 file and preserve all documents and papers, prepare such papers and notices as may be required,  
27 and perform such other duties as required. The ~~commissioner~~ [director of the department of](#)  
28 [environmental management](#) shall have the power to issue subpoenas for witnesses and documents  
29 and to administer oaths in all cases before any hearing officer or pertaining to the duties of his or  
30 her office.

31 **46-23-20.3. Prehearing procedure.**

32 (a) Prior to the commencement of any hearing, the hearing officer may in his or her  
33 discretion direct the parties or their attorneys to appear before him or her for such conferences as  
34 shall be necessary. At the conferences, the hearing officer may order any party to file, prior to the

1 commencement of any formal hearing, exhibits that the party intends to use in the hearing, and the  
2 names and addresses of witnesses that the party intends to produce in its direct case, together with  
3 a short statement of the testimony of each witness. Following entry of an order, a party shall not be  
4 permitted, except in the discretion of the hearing officer, to introduce into evidence, in the party's  
5 direct case, exhibits which are not filed in accordance with the order. At the conference, the hearing  
6 officer may designate a date before which he or she requires any party to specify what issues are  
7 conceded, and further proof of conceded issues shall not be required. The hearing officer shall also  
8 require the parties to simplify the issues, to consider admissions of fact and of documents which  
9 will avoid unnecessary proof, and to limit the number of expert witnesses. The hearing officer shall  
10 enter an order reciting the concessions and agreements made by the parties, and shall enter an order  
11 on such other matters as are pertinent to the conduct of the hearing, and unless modified, the hearing  
12 shall be conducted by the order.

13 (b) The hearing officer may also order the parties to file, prior to the commencement of  
14 any hearing, the testimony of any or all of their respective witnesses, and to submit the testimony  
15 to the hearing officer and the opposing party or the opposing counsel by such date as the hearing  
16 officer shall determine. The witness shall testify under oath, and all of the testimony shall be in a  
17 question and answer format. Save for good cause shown, said testimony shall be the direct  
18 examination of the witness; provided, however, that the witness shall be available at the hearing  
19 for cross-examination by the opposing party or opposing counsel.

20 (c) The ~~council~~ [division](#), with the assistance of the chief hearing officer, shall promulgate,  
21 by regulation, such other prehearing procedures and/or hearing procedures as deemed necessary,  
22 including the use of portions of the superior court civil rules of discovery where such are not  
23 inconsistent with the applicable provisions of the Administrative Procedures Act, chapter 35 of title  
24 42.

25 **46-23-20.4. Hearings — Orders.**

26 (a) Subject to the provisions of this chapter, every hearing for the adjudication of a violation  
27 or for a contested matter shall be held before a hearing officer or a subcommittee. The chief hearing  
28 officer shall assign a hearing officer to each matter not assigned to a subcommittee. After due  
29 consideration of the evidence and arguments, the hearing officer shall make written proposed  
30 findings of fact and proposed conclusions of law which shall be made public when submitted to the  
31 ~~council~~ [division](#) for review. The ~~council~~ [division](#) may, in its discretion, adopt, modify, or reject the  
32 findings of fact and/or conclusions of law; provided, however, that any modification or rejection  
33 of the proposed findings of fact or conclusions of law shall be in writing and shall state the  
34 rationales therefor.

1 (b) The director of the department of environmental management and the ~~coastal resources~~  
2 ~~management council~~ division of coastal resources management shall promulgate such rules and  
3 regulations, not inconsistent with law, as to assure uniformity of proceedings as applicable.

4 **46-23-20.5. Ex parte consultations.**

5 ~~Council members~~ Employees of the division of coastal resources management shall have  
6 no communication directly or indirectly, with a hearing officer relating to any issue of fact or of  
7 law on any matter then pending before the hearing officer.

8 **46-23-20.6. Oaths — Subpoenas — Powers of hearing officers.**

9 The hearing officers are hereby severally authorized and empowered to administer oaths,  
10 and the hearing officers, in all cases of every nature pending before them, are hereby authorized  
11 and empowered to summon and examine witnesses and to compel the production and examination  
12 of papers, books, accounts, documents, records, certificates and other legal evidence that may be  
13 necessary or proper for the determination and decision of any question before or the discharge of  
14 any duty required by law of the hearing officer. All subpoenas and subpoena duces tecum shall be  
15 signed by a hearing officer ~~or the commissioner of coastal resources~~ and the director of the  
16 department of environmental management, and shall be served as subpoenas are served in civil  
17 cases in the superior court; and witnesses so subpoenaed shall be entitled to the same fees for  
18 attendance and travel as are provided for witnesses in civil cases in the superior court. In cases of  
19 contumacy or refusal to obey the command of the subpoena so issued, the superior court shall have  
20 jurisdiction upon application of the ~~council~~ division with proof by affidavit of the fact, to issue a  
21 rule or order returnable, in not less than two (2) nor more than five (5) days, directing the person to  
22 show cause why he or she should not be adjudged in contempt. Upon return of such order, the  
23 justice, before whom the matter is brought for hearing, shall examine under oath the person, and  
24 the person shall be given an opportunity to be heard, and if the justice shall determine that the  
25 person has refused without reasonable cause or legal excuse to be examined or to answer legal or  
26 pertinent questions, he or she may impose a fine upon the offender or forthwith commit the offender  
27 to the adult correctional institutions, there to remain until he or she submits to do the act which he  
28 or she was so required to do, or is discharged according to law.

29 **46-23-21. Notice of permit — Recordation.**

30 A notice of permit shall be eligible for recordation under chapter 13 of title 34 as  
31 determined by the ~~executive~~ director, and shall be recorded at the expense of the applicant in the  
32 land evidence records of the city or town where the property subject to permit is located, and any  
33 subsequent transferee of the property shall be responsible for complying with the terms and  
34 conditions of the permit. The clerk of the various cities and towns shall record any orders, findings,



1 or decisions of the ~~council~~ [division](#) at no expense to the ~~council~~ [division](#).

2 **46-23-22. Solid waste disposal licenses — Hearings.**

3 The ~~chairperson~~ [clerk](#) of the [division of](#) coastal resources management ~~council~~ and the  
4 commissioner of the environmental protection branch of the department of environmental  
5 management shall coordinate concurrent hearings on solid waste disposal license applications;  
6 provided, however, that the chairperson and the commissioner of the environmental protection  
7 branch of the department of environmental management may designate a hearing officer or  
8 subcommittee to hear all matters pertaining to the application and; provided further, that the hearing  
9 officer may be from the department of environmental management, the ~~coastal resources~~  
10 ~~management council~~ [division of coastal resources management](#) hearing officer, a subcommittee, or  
11 an ad hoc hearing officer. The ~~commissioner of coastal resources management~~ [hearing officer](#) with  
12 the approval of the ~~chairperson~~ [director of the department of environmental management](#), may  
13 waive jurisdiction in those instances where the ~~commissioner~~ [hearing officer](#) finds that there is no  
14 substantive coastal resources issue or that another agency or branch has adjudicated or addressed  
15 the issue.

16 **46-23-23. Municipal comprehension plan consideration.**

17 The ~~coastal resources management council~~ [division of coastal resources management](#) shall  
18 conform to the requirements of the Comprehensive Planning and Land Use Regulation Act, § 45-  
19 22.2.

20 **46-23-24. Lien on property.**

21 The ~~executive~~ director may record the notice of fee or final order of fine as a lien on the  
22 subject property in the land evidence records of the town or city in which said property is located.  
23 Recordation of said fee or final order of fine shall be the only manner by which said lien may be  
24 perfected against the subject property.

25 **46-23-25. Issuance of beach vehicle registration permits.**

26 (a) The ~~coastal resources management council~~ [division of coastal resources management](#)  
27 may issue beach vehicle registration permits in accordance with § 31-8-1.1 of the general laws and  
28 adopt regulations that the ~~council~~ [division](#) deems necessary to carry out the provisions of this  
29 section. The ~~council~~ [division](#) may appoint responsible citizens or corporations of the state, engaged  
30 in operating sporting goods stores to act as agents with authority to issue permits in the manner and  
31 under the conditions as set forth below. Before an appointment shall occur, that citizen or  
32 corporation of the state shall deliver to the ~~council~~ [division](#) a bond with a surety company  
33 authorized to do business in the state of Rhode Island. The requirements and conditions of the bond  
34 shall be established by the regulations.



1 (b) Any person or corporation appointed by the ~~council~~ [division](#) as provided in section (a)  
2 above shall, upon the application of any person entitled to receive a permit under this chapter and  
3 upon payment of the specified permit fee, register and issue to the person a beach vehicle  
4 registration permit in the form prescribed and furnished by the council. The permit shall bear the  
5 name, place of residence, and signature of the registrant, and the vehicle make, model, year, and  
6 license plate number and shall authorize the registrant to own and operate a beach vehicle in the  
7 state of Rhode Island during those seasons and in those manners and according to those conditions  
8 as shall be provided by regulations established by the ~~council~~ [division](#).

9 **46-23-26. The public's rights and privileges of the shore.**

10 (a) The public's rights and privileges of the shore are established by Article I, Sections 16  
11 and 17 of the Rhode Island Constitution.

12 (b) For purposes of this chapter, the "recognizable high tide line" means a line or mark left  
13 upon tidal flats, beaches, or along shore objects that indicates the intersection of the land with the  
14 water's surface level at the maximum height reached by a rising tide. The recognizable high tide  
15 line may be determined by a line of seaweed, oil or scum along shore objects, a more or less  
16 continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or  
17 characteristics, or other suitable means that delineate the general height reached by the water's  
18 surface level at a rising tide. If there is more than one line of seaweed, oil, scum, fine shell, or  
19 debris, then the recognizable high tide line means the most seaward line. In the absence of residue  
20 seaweed or other evidence, the recognizable high tide line means the wet line on a sandy or rocky  
21 beach. The line encompasses the water's surface level at spring high tides and other high tides that  
22 occur with periodic frequency, but does not include the water's surface level at storm surges in  
23 which there is a departure from the normal or predicted reach of the water's surface level due to the  
24 piling up of water against a coast by strong winds, such as those accompanying a hurricane or other  
25 intense storms.

26 (c) Notwithstanding any provision of the general laws to the contrary, the public's rights  
27 and privileges of the shore may be exercised, where shore exists, on wet sand or dry sand or rocky  
28 beach, up to ten feet (10') landward of the recognizable high tide line; provided, however, that the  
29 public's rights and privileges of the shore shall not be afforded where no passable shore exists, nor  
30 on land above the vegetation line, or on lawns, rocky cliffs, sea walls, or other legally constructed  
31 shoreline infrastructure. Further, no entitlement is hereby created for the public to use amenities  
32 privately owned by other persons or entities, including, but not limited to: cabanas, decks, and  
33 beach chairs.

34 (d) Any landowner whose property abuts the shore shall, with respect to the public's

1 exercise of rights and privileges of the shore as defined in this chapter, be afforded the liability  
2 limitations pursuant to chapter 6 of title 32.

3 (e) The ~~coastal resources management council (CRMC) in collaboration~~ division of coastal  
4 resources management with the approval of the department of environmental management (~~DEM~~),  
5 shall develop and disseminate information to educate the public and property owners about the  
6 rights set out in this section.

7 (f) The ~~CRMC in collaboration~~ division of coastal resources management with the ~~DEM~~  
8 approval of the department of environmental management, and the attorney general, shall  
9 determine appropriate language and signage details for use at shoreline locations.

10 SECTION 6. Chapter 46-23 of the General Laws entitled "Coastal Resources Management  
11 Council" is hereby amended by adding thereto the following sections:

12 **46-23-1.1. Transfer of authority from coastal resources management council.**

13 Wherever in any general or public law there is authority assigned to the coastal resources  
14 management council, this authority shall be transferred to the division of coastal resources  
15 management within the department of environmental management.

16 **46-23-27. Severability.**

17 If any provision of this chapter or the application thereof to any person or circumstances is  
18 held invalid, that invalidity shall not affect other provisions or applications of the chapter, which  
19 can be given effect without the invalid provision or application, and to this end the provisions of  
20 this chapter are declared to be severable.

21 **46-23-28. Effective date.**

22 (a) Within thirty (30) business days of the date of passage of this chapter, the department  
23 of environmental management shall put out for notice and comment revisions of its coastal  
24 resources management program (referred to as "red book") and management procedures in order  
25 to implement the programmatic change from the council to the division.

26 (b) Within seven (7) days of promulgation of the revised coastal resources management  
27 program (referred to as "red book") and management procedures, the department shall submit a  
28 coastal zone management act program change request to the National Oceanic and Atmospheric  
29 Administration (NOAA) for the approval of the amendments to this statute and the management  
30 procedures. The remaining sections of this statute shall take effect upon NOAA's approval.

31 SECTION 7. Sections 46-23-2.1, 46-23-3, 46-23-4 and 46-23-5 of the General Laws in  
32 Chapter 46-23 entitled "Coastal Resources Management Council" are hereby repealed.

33 ~~**46-23-2.1. Members—Term of office—Vacancies.**~~

34 ~~(a) The term of office of the appointed members shall be three (3) years, only so long as~~

1 ~~the members shall remain eligible to serve on the council under the appointment authority.~~

2 ~~(b) The members are eligible for successive appointments.~~

3 ~~(c) Elected or appointed municipal officials shall hold seats on the council, only so long as~~  
4 ~~they remain in their elected or appointed office.~~

5 ~~(d) A vacancy other than by expiration shall be filled in the manner of the original~~  
6 ~~appointment but only for the unexpired portion of the term. The governor shall have the power to~~  
7 ~~remove his or her appointee for just cause.~~

8 **46-23-3. Oath of members.**

9 ~~Each appointed member of the council, before entering upon his or her duties, shall take~~  
10 ~~an oath to administer the duties of his or her office faithfully and impartially, and the oath shall be~~  
11 ~~filed in the office of the secretary of state.~~

12 **46-23-4. Officers of the council—Quorum and vote required for action.**

13 ~~The governor shall select from the appointed members a chairperson and vice chairperson.~~  
14 ~~The council shall thereupon select a secretary from among its membership or staff. The council~~  
15 ~~may engage staff, including legal counsel, as it deems necessary. A quorum shall consist of six (6)~~  
16 ~~members of the council. A majority vote of those present shall be required for action.~~

17 **46-23-5. Expenses of members.**

18 ~~(a) The members of the council and the chairperson shall not be compensated for their~~  
19 ~~service on the board, but the members and chairperson shall be reimbursed for their actual expenses~~  
20 ~~necessarily incurred in the performance of their duties.~~

21 ~~(b) [Deleted by P.L. 2005, ch. 117, art. 21, § 34.]~~

22 SECTION 8. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

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1           This act would replace the coastal resources management council with a newly created  
2 division of coastal resources management, a state entity within the department of environmental  
3 management (DEM). In addition, this act would transfer all authority to the DEM with duties and  
4 responsibilities to be carried out by the division of coastal resources management.

5           This act would take effect upon passage.

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