

In accordance with notice to members of the Rhode Island Coastal Resources Management Council's Ocean Special Area Management Plan (SAMP) subcommittee, a meeting of the subcommittee was held on Thursday, July 1 2010 at 5 p.m. at the University of Rhode Island (URI) Coastal Institute large conference room in Narragansett, R.I.

MEMBERS PRESENT

Michael M. Tikoian, Chairman
Paul Lemont
Don Gomez

STAFF PRESENT

Grover Fugate, CRMC Executive Director
Laura Ricketson-Dwyer, CRMC Public
Educator and Information Coordinator
Brian Goldman, CRMC Legal Counsel

Others present:

Jen McCann, URI CRC RISG; Kate Manning
Butler, URI CRC; Michelle Armsby, URI CRC;
Tiffany Smythe, URI CRC; Sam De Bow, URI;
Dennis Nixon, Associate Dean URI GSO;
Amber Neville, URI CRC; Wendy Waller, STB

Call to order. M. Tikoian called the meeting to order at 5:04 p.m.

Item 1. Approval of previous meeting minutes: The minutes were approved unanimously.

M. Tikoian announced that this would be the final meeting, but B. Goldman said that the new policies section and introduction hadn't been approved yet by the Subcommittee. G. Fugate reminded the members that the introduction was approved at the beginning of the SAMP process, and the policies section is comprised of policies from the existing chapters. B. Goldman asked why the comment period would begin on July 9 for the re-noticed fisheries and renewable energy chapters. J. McCann said that during the meeting she, G. Fugate, and M. Tikoian had the previous week, it was agreed that Chapters 5 and 8 would have an additional 30 days starting around July 9. B. Goldman questioned if the Subcommittee and Council had already voted on them. G. Fugate said that there were many revisions made to the chapters, so a re-notice was necessary. T. Smythe explained that the changes to the fisheries chapter included expanding a data set and expanding a small section. B. Goldman asked why the chapters couldn't go out to notice immediately. T. Smythe said that the public comment period ended the following day and that the team would be processing the comments. J. McCann said the team would need at least a week to respond to the comments on the chapter and then it could go out to notice. M. Tikoian reminded those present that on August 24 the Council will finalize four chapters. G. Fugate said that with the Introduction and new policies chapters, it will be five total. J. McCann said four of them had been on the agenda for the original July 13 and 14 Council meetings (which were rescheduled). M. Tikoian said he wanted to make sure everything was done procedurally correct in terms of when the chapters are supposed to be heard by the Council. G. Fugate said he didn't think the fisheries chapter needed to be re-noticed. B. Goldman asked what changes were made in response to, and G. Fugate said it was

new information largely and a few public comments – nothing substantial. B. Goldman said the issue he was concerned about was confusion over which version of the fisheries chapter was the latest one. G. Fugate said that it was a web site problem and that concerned the Ecology chapter, which has been re-noticed. B. Goldman asked for clarification on a possible re-notice date of July 9 for the Fisheries (chapter 5) and Renewable (chapter 8) chapters, and J. McCann said that was to give the team time to respond to any comments that might come in on both chapters. B. Goldman suggested going out to notice again on both 5 and 8 to be safe. J. McCann said that the goal is to read out the entire Ocean SAMP document on July 20 to the full Council, but the comment period for chapters 5 and 8 will not have concluded. J. McCann asked for guidance from the Subcommittee on this time issue. B. Goldman said he understood that all of the chapters would have been out to notice and the comment period complete by July 30. J. McCann said this cannot be the case with chapters being re-noticed. M. Tikoian commented that if the team does what B. Goldman suggests and re-notice chapters 5 and 8, it would take the SAMP past July 20 in the regulatory process. D. Gomez asked if the member discussed a 30-day round or extension at the last Council meeting, and M. Tikoian said both were discussed. D. Gomez said he thought only an extension was discussed. G. Fugate clarified that the Ecology chapter was re-noticed and that Fisheries and Renewable will likely be as well. P. Lemont asked when the revisions to the chapters would end, and if there would have to be multiple re-notices each time a change was made to a chapter. B. Goldman said that as long as all of the chapters are out on or before July 20, the SAMP is still on-track for the August 24 Council meeting. J. McCann said the time schedule only gives the team five days to respond to comments on the re-noticed chapters 5 and 8, but suggested another option would be to start the 30-day notice on the whole SAMP document on August 24. B. Goldman said no, and to keep the readout schedule to July 20. B. Goldman clarified that the final versions of the chapters should be the ones that go out to notice (or re-notice) and that any additional changes should be reflected in the memo that will go with the individual chapters to be heard at the public hearing on August 24. B. Goldman said there should be no more updated versions of Ocean SAMP chapters at that point – only memos with chapters detailing proposed changes. B. Goldman said that there is no formal 30-day public comment period unless a chapter hasn't been noticed before. The final 30 days is an intent of the Council's action on the SAMP document, he said. The meetings on August 24 and September 14 will be discussion and action by the Council, B. Goldman said. The August 24 meeting will be all of the chapters before the Council for final action, he said. Once the chapter goes out to notice, your role with the chapter is done, he told J. McCann. G. Fugate said that the team could suggest language changes in the memo as well. J. McCann said she would draft the final timeline for the Subcommittee and team's use, and said something similar would also go on the Ocean SAMP list serve. B. Goldman told the Subcommittee members that if the final chapters are going out to notice before the final meeting, they can be put online in final form before July 20. M. Tikoian commented that NOAA would like items like this filed earlier, and he and B. Goldman agree that the SAMP document be posted as early as possible. J. McCann said that the renewable and fisheries chapters will be done before July 12, and asked for the Subcommittee's guidance on the new policies and introduction chapters. B. Goldman said that the Subcommittee has not seen or voted on them, so both can be read out on July 20 as well,

but added that if the chapters are not ready, don't put them out. Rushing to get chapters out if changes still need to be made is not ideal, he said. The Subcommittee discusses the next possible meeting date. B. Goldman said that if the Subcommittee meets July 19 and there are changes to the chapters, would it be ready for the next night's Council meeting? M. Armsby said the changes could be made on the 19th and prepared for the 20th. The Subcommittee planned the next meeting for July 19 at 4 p.m. B Goldman asked for clarification that everything would be out in final form after July 20. J. McCann said yes. G. Fugate said that three chapters will go before the Council for a vote on August 24. B. Goldman added that the entire document would also be before the Council that night, and there would be another hearing on September 14 to continue that if needed.

Item 2. Updates: Financial: K. Manning Butler gave the Subcommittee a brief financial update. Total expenditures for all project work from May 1, 2010 to May 31, 2010 were \$316,465, of which \$254,460 was from EDC funding and \$62,006 was from DOE funding. Total invoices submitted by URI to date for all project activities were \$4,922,977, of which \$4,643,154 was submitted to EDC and \$279,823 was submitted for the DOE. Payments received from EDC to-date were \$4,274,515 leaving an outstanding balance of \$368,638. Total project activity through May 31, 2010, including encumbrances not invoiced, was \$5,667,427. M. Tikoian asked for confirmation that there is approximately \$1 million left and it will be spend; he also asked if the university would come in under-budget. K. Manning Butler explained that all of the monies have been allotted to be spent, with some residual funds for document production and processing to be finished by December. There was some discussion on items being invoiced versus being spent, and the deadline for researchers to submit invoices. K. Manning Butler said that researchers have a month from the end of their work to submit invoices, and that this is a term of their agreement with URI for the SAMP. M. Tikoian asked what the final agreement date or cut-off date was. K. Manning Butler said that if they have a subcontract ending December, it would be end of January. J. McCann said for instance, for Accounts, it's January 31. G. Fugate said the only exception is the SVI work and those researchers have an extension from DOE. J. McCann said that DOE has end date of 2011. G. Fugate said he wanted to be clear that some scientific work is still going on. Motion to approve the financial report to be submitted made by P. Lemont and seconded by D. Gomez. It passed unanimously.

G. Fugate provided the Subcommittee with an update. There was no change to the avian, marine mammal studies, he said. The Atlantic Governor's Consortium is also the same. The NROC work plan update has been accepted and now the regional effort to incorporate marine spatial planning on a regional level is ongoing, G. Fugate said. The northeast region could get \$7-8 million for marine spatial planning, he said. The new policies chapter of the SAMP is in draft form and will come out with the introduction, G. Fugate said. NMFS is still waiting for the DWW data for the Block Island cable data. M. Tikoian asked if any updates could be expected in the areas where none currently exist. G. Fugate said that studies are going on now and DWW is obligated by the federal agencies (NMFS) to collect data for three years. They're still collecting the data, so there is no change on the status of what's appearing in the data at this time, he said. The mammal report was reviewed and accepted, so it's part of SAMP document. G. Fugate said that the goal of the updates is to cover SAMP topics and application matters for the

proposed Block Island project. G. Fugate said he tried to include other things on periphery in the interest of keeping the Subcommittee updated.

Item 4. Renewable Energy policies: The Subcommittee reviewed the policy section of the renewable chapter (beginning with Section 860) and provided suggested changes. B. Goldman referenced Section 860.1, #1 (iii) – “...meets the aspirations of local communities...” and asked why the language was worded that way. M. Armsby said the language was taken from the Introduction. B. Goldman said that the CRMC has had litigation where the Council preempts municipal jurisdiction below Mean High Water and said he was concerned this might cede back some hard-won authority. P. Lemont said he thinks it is important to consider local communities in CRMC decisions, and saw the language as a positive thing. B. Goldman suggested the wording “considers” and P. Lemont agreed. B. Goldman referred to 860.1 #3 and suggested clarifying this language. G. Fugate suggested adding “for the jurisdictional area of SAMP only.” G. Fugate also said that wording will be added that dredging would remain under the dredging section of the RICRMP. We also want to clarify that this applies from mouth of the Bay, out, G. Fugate said. M. Armsby said that under 860.2.1 (page 4) under Overall Regulatory Standards #1 (vi), there is language describing the jurisdictional area of the SAMP. G. Fugate suggested adding “located from mouth of the bay seaward” to 860.2.1.1(vi). G. Fugate added that the team is recommending the chapter also be re-named to “Renewable Energy and Other Offshore Development.” B. Goldman asked for clarification on 860.1 #4 (page 1) that addresses human uses. G. Fugate said it was to demonstrate that human uses and natural resources are important to coastal areas; for example, fisheries. B. Goldman said it could be a kayak, and added that significant is a big word. M. Armsby said the wording was taken from other places within the Ocean SAMP and that it was meant to be an overarching policy that has language found in other places. M. Armsby suggested “...existing human uses that have been described in the Ocean SAMP.” B. Goldman agreed and suggested that 860.1.5 also include the language ‘existing human uses’. B. Goldman cited 860.1 #7 (page 2) with regard to coordination with MMS, and questioned using the word “shall” and if “...where appropriate” should be added to all references of coordination with MMS. M. Armsby said the policy is meant to express the Council’s interest in working with MMS to develop a consistent process. G. Fugate said the reference was an attempt to consider that MMS is currently getting pressure to enter into cooperative agreements with states. After discussion, it was decided that the language of 860.1.7 would be left as is, with the only change being updating all references to the Minerals Management Service to the Bureau of Ocean Energy Management, Regulation, and Enforcement. Goldman cited 860.2.1 #1 item (e) (page 4) and questioned the language “publicly supported.” G. Fugate said it means “projects of a public nature,” and that wording change was agreed upon. For example, G. Fugate said, if someone wanted to sink a barge or ship (a private entity), it would have to meet the standards outlined in this section, and the only exception would be projects of a public nature whose primary purpose is habitat enhancement. B. Goldman asked if “figure or field error” notices in the document had been fixed. T. Smythe said yes. B. Goldman cited 860.2.1 #3 (page 6) regarding the review similar to MMS, and asked the Subcommittee if it should be specific or general. G. Fugate said the attempt was to explain where the format of the regulatory standards originated from and that the MMS

regulations were the basis for the state standards. B. Goldman suggested adding the double §§ and et seq. at the end of 860.2.1. #3. On the same page, 860.2.1 #4, regarding the Joint Agency Working Group, B. Goldman suggested adding “to maximum extent practicable” to the beginning of the first two sentences. B. Goldman suggested changing “Council” to “Council staff” under 860.2.1 #6 (page 7), four lines from the bottom. On the same page (860.2.1) #7, B. Goldman suggested deleting “or that would destroy;” it’s a hard standard to quantify, he said. He also suggested adding “negative” before impacts in the same sentence. B. Goldman cited 860.2.2 #2 (page 8) and said the citation of the other section of the chapter should read 860.2.2.3, and not 860.2.2.4. In addition, within 860.2.2 #2 (page 8), B. Goldman asked what “...or Other Offshore Development, as required” meant. M. Armsby said that the term Other Offshore Developments may include many different types of projects and that some Other Offshore Developments may be required to avoid Areas of Particular Concern, whereas others may not, so the language ‘as required’ is an attempt to express that. B. Goldman said he would work with the team to reword the passage in #2 beginning with “Any Large-Scale, Small-Scale, or Other Offshore Development, as required” to make it clearer. B. Goldman cited 860.2.2 #2 (page 9) and suggested adding “as determined by the Council in coordination with the Joint Agency Working Group” at the end of the passage. B. Goldman cited 860.2.2 #3 (v) (top of page 17) and asked if the standard should be written as “will be designated” or just “may be?” G. Fugate said the Fisheries Advisory Board was going to identify these areas of activity and said it was lifted from the fisheries chapter. B. Goldman agreed to leave it as-written. B. Goldman cited 860.2.3 #1 (page 20) and suggested the following changes: substitute “in” for “for” in the first sentence; change “area” to “areas;” and in item (i), change “as an Area Designated...” to “is an Area Designated...” G. Fugate suggested for 860.2.3 #2 (page 22) that the sentence begin with “The mining and extraction,” and that the reference to Section 300.3 of the RICRMP be deleted since it had already been mentioned in 860.1. #3. B. Goldman cited 860.2.5 #3 (page 25) and suggested using “Council” instead of “Council or designee” throughout Section 860 to be consistent. In the same item, he suggested revising the sentence “...or where the Ocean SAMP data is determined to be current enough to meet the requirements of the Joint Agency Working Group” to “... or where the Ocean SAMP data is determined to be current enough to meet the requirements of the Council in coordination with the Joint Agency Working Group.” B. Goldman asked if NOAA would consider everything after #1 on that page as necessary data and information. M. Armsby referred him to #3 on the page which stated “Prior to construction, the following necessary data and information shall be required...” B. Goldman suggested adding “...*the following sections shall be considered* necessary data and information *and* shall be required by the Council.” B. Goldman cited 860.2.4 #3(i) item g (page 30) and suggested that “designee” be deleted and that “coordination” should be used instead of “conjunction.” B. Goldman also suggested that in 860.2.4 #3(i) on the same page “Council” should be “Council staff.” B. Goldman suggested all references to “Council or designee” be changed to “Council.” Under Table 8.44 Contents of the Construction and Operations Plan (page 33), B. Goldman suggested that under #7, the wording “*The applicant shall...*” be added. A typo in #13 in that same table should be corrected, he said. In answer to B. Goldman, G. Fugate said he would check the other pages to make sure language exists stating that the CVA reports to the Council but that the applicant must pay for the CVA. B. Goldman

cited 860.2.6 #1 item (x.)(a.) and asked if there are changes to the fabrication and installation procedures or design specifications, if the Council should be informed by the CVA of that as well, in addition to the applicant. G. Fugate said the Council would first get a conceptual plan on turbine layout and design as part of the COP process, and if the COP is approved, then detailed design, installation and fabrication plans would be developed using a CVA. G. Fugate said there could be many changes during the actual fabrication and installation process, so the language states that if the CVA and design engineer agree to modify the original design, the Council has to be notified. G. Fugate said the Council might not want to be involved in such technical discussions. M. Tikoian agreed, but was concerned over significant changes. G. Fugate said there would be a report to the Council on the final design that would outline any changes. B. Goldman asked if agreed upon changes would be reflected and G. Fugate said yes. M. Tikoian said it appeared from the language written in 860.2.6 #1 item (x.)(a.) as if a modification would happen, the CVA finds it and asks if it's okay. M. Tikoian suggested adding wording to the effect of "if the CVA accepts the modification." D. Gomez for clarification on the notification process in the event of design changes. G. Fugate said that the CVA monitors the installation of the project, and that the proposed language states that during the process they have to make sure it's been done according to the design. B. Goldman suggested that 860.2.6 #1 item (x.)(a.) be changed to read "...the CVA shall inform the applicant and Council..." and that 860.2.6 #1 item (x.)(b.) be deleted. B. Goldman cited 860.2.7 #1 (page 48) and suggested changing the language to "...for any *assignment or transfer* of the permit..." be added. After discussion on the timeframe for 860.2.7.#2 concerning the performance bond, the Subcommittee agreed to changing the last sentence to read "The Council shall review the bond amount initially and every three years thereafter to ensure the amount is sufficient." B. Goldman cited 860.2.8 # 7 item (iii) (page 54) and after discussion, the Subcommittee decided to keep location of the discovery confidential. B. Goldman cited #9 on the same page and suggested adding "...by the *Council, in coordination with* the Joint Agency..." B. Goldman cited 860.2.9 #1 (page 55) for the same language: "...in coordination with the Joint Agency..." M. Tikoian commented that Section 860.2.2 #2 and #3 are the only two sections that need to be reworked. B. Goldman suggested the Subcommittee approve it as amended and that he would work with the team on the rewording on those items. P. Lemont made a motion to approve the chapter; D. Gomez seconded. The motion passed unanimously. J. McCann asked the Subcommittee for guidance on any changes that are a result of comments received the next day. B. Goldman said he would discuss it with the team and suggested a meeting between him, J. McCann, G. Fugate and M. Tikoian to keep the versions as close as possible. B. Goldman told J. McCann any additional comments could go before the Council. J. McCann said the environmental groups would be presenting comments the following day. B. Goldman said those comments can be addressed on August 24 in a memo. G. Fugate said some of the comments might be negated by revisions and the re-notice.

The meeting adjourned at 7 p.m.

Respectfully Submitted,

Laura Ricketson-Dwyer

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