



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**COASTAL RESOURCES MANAGEMENT COUNCIL**

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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 Friday, April 5, 2013 at 9 a.m. at the council chambers of the Narragansett Town Hall, 25 Fifth Avenue, Narragansett, RI.

**MEMBERS PRESENT**

Anne Maxwell Livingston, Chair  
Don Gomez  
David Abedon  
Tony Affigne  
Paul Lemont

**STAFF PRESENT**

Grover Fugate, CRMC Executive Director  
Brian Goldman, Esq., CRMC Legal Counsel

**OTHERS PRESENT**

Terence Tierney, Esq.  
Robin Main, Esq.

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**Call to order.** A. Livingston called the meeting to order.

**Item 1. Approval of previous meeting minutes** – P. Lemont made a motion to approve; D. Gomez seconded. The motion carried unanimously.

**Item 2. Discussion of public comments received, motions and objections (ruling on motions to intervene)** – B. Goldman told the subcommittee that a package was put together with outstanding motions: to confirm contested case and then motions to intervene. The first item is the Deepwater Wind motion to confirm this is a contested case; then Deepwater Wind's objection to the motion to intervene; B. Goldman reviewed all of the motions before the Subcommittee.

B. Goldman told the subcommittee, regarding the request to affirm contested case standing, that it's a procedural issue as to whether this is a contested case. The CRMC is treating it that way, he said, so there was no need for a vote. The Subcommittee agreed.

B. Goldman introduced the first motion to intervene as the American Alliance of Fishermen and their Communities. He read the legal standard for standing as an intervenor. T. Tierney introduced himself and for the record stated that his clients objected to any consideration of the Deepwater Wind applications because the developer had agreed to pay the application fee, but as of the meeting, still had not paid. R. Main, attorney for Deepwater, objected.

T. Tierney spoke about the other proposed intervenors and their backgrounds. He also argued against a number of the comments in the Deepwater Omnibus Opposition to Motions to Intervene, and argued that the potential intervenors have legal claim to the status. T. Tierney discussed the issues raised in their motions: arguments of flicker from the wind turbines, de-valuation of property, a number of federal issues that CRMC also has input on, such as birds and whales, impacts to Narragansett and Block Island beaches, possible historic impacts, and impacts to public trust resources. His clients have a right to submit testimony and ask questions through cross-examination, he said, and added that a denial of our right to intervene will only result in appeals in the court and the slowing down of the process.

R. Main responded to T. Tierney's assertions, commenting that because it will be the first project of its kind in Rhode Island, there will and should be extensive public comment. Deepwater Wind wants an open process, she said, but also wants the Council to follow the standards and law that govern. R. Main told the Subcommittee that in order to grant intervenor status, the intervenor must have something in common with the process, not just the generalized public. The issues raised by T. Tierney, she said, are appropriate for public comment, but not for issuing status. R. Main described the arguments made by T. Tierney and explained her dissent with them.

G. Fugate told the Subcommittee, just for the record, that the CRMC had received notice from the town of New Shoreham, reserving their right to intervene if the other intervenors had been granted status.

Tina Jackson, representing the American Alliance of Fishermen, spoke briefly to refute the claims of Deepwater Wind in opposition to her and the alliance seeking intervenor status. She told the Subcommittee that the revocation of their charter, as Deepwater said made them unable to file a proper motion, was a simple matter of paying \$25 to be reinstated. American citizens own the public trust waters much before the state, T. Jackson said, adding that there is no study that proves marine resources will return to the turbine locations in a short amount of time, and that it's undue harm to the fishing industry. Proposed mitigation by Deepwater will be inadequate, she said. Chair Livingston asked if T. Jackson is an attorney, and T. Jackson said she is not. Chair Livingston informed her that she could not then represent herself and the alliance. T. Jackson could provide public comment, but not testimony, Chair Livingston said. R. Main added that non-profits must be represented by counsel, and cited case law.

T. Affigne asked if, in the motions to intervene, T. Tierney submitted citations for any scientific studies to specifically address neurological impacts from turbines and flicker as far offshore as these. T. Tierney said no, because it's not required. T. Affigne asked him if, in the motions, T. Tierney cited any studies from the real estate industry or any academic studies that quantify impacts to properties close to turbines offshore. T. Tierney answered that proposed intervenor J. Ives might have in his motion and to the extent they did not, T. Tierney said he and his clients are prepared to provide them. T. Affigne asked if more than one of T. Tierney's clients represent similar potential harms; and if any of the harms duplicated in the motions. T. Tierney said he didn't believe so, other than the Ives'. T. Affigne asked whether the same issue crop up in any of the motions, like visual impacts. T. Tierney answered yes. T. Affigne asked if any of the proposed intervenors live on Block Island full time. T. Tierney answered that he wasn't sure, but that it didn't matter. T. Affigne asked if T. Tierney was familiar with CRMC in relation to other federal agencies, and asked him to explain the overlap. T. Tierney discussed federal consistency, concurrent jurisdiction, and added that his point was that the CRMC does have dealings with federal issues at some level.

T. Affigne commented that much of what T. Tierney said is nearly identical to the letters of support and opposition to this project. T. Affigne said that he does not believe that the proposed intervenors have demonstrated a particularized harm that is injurious and not shared with many others, and which drives beyond conjectural. T. Tierney responded that he and his clients had the right to challenge that there would be no impact.

***P. Lemont made a motion that, based upon the evidence presented, none of the individual proposed intervenors rose to the level and that they all be denied. T. Affigne seconded the motion.*** Chair Livingston asked for clarification on whether each should be voted on or all together. B. Goldman said that if there is dissention among the Subcommittee members, then it would be best to vote on them separately. P. Lemont said he made the motion because they were so similar. If the motion fails, we can do them separately, he said.

D. Gomez commented that all of the motions to intervene concerned a few issues: flicker, birds and property. The bird studies in my opinion are fodder for general public input. The flicker issue is null, he said – the proposed turbines would be far away, and he said he didn't see how they'd have an effect.

Public trust was brought up a few times, he said, and the Ocean SAMP addresses that in terms of the development area. D. Gomez said he had some concerns about the perceived drop in property values. P. Lemont commented that this process is going to allow great public discourse, and suggested public comment sessions be scheduled for that purpose. P. Lemont acknowledged those wishing to intervene, but suggested to grant them that status would be to create another roadblock in the process.

T. Affigne said this was why he wanted the studies and evidence – to quantify the impact. T. Affigne said he was willing to entertain the possibility that five turbines 2.5 miles offshore might have an impact, but that he didn't think they rose to the level of intervenor status. Not having that status does not mean you lose the right to participate and bring your experts and give comment, T. Affigne said. It just means you cannot cross examine, he added.

Chair Livingston said she was going to support P. Lemont's motion and felt strongly that the Ocean SAMP, the whole point of it, was to answer some of these questions, and that she hoped to consistently vote to support the SAMP. ***She then called for a vote. The motion to deny the individual motions to intervene passed unanimously. Chair Livingston then asked for a motion related to the alliance's standing. P. Lemont made a motion to deny intervenor status, and it was seconded by D. Abedon. The motion passed unanimously.*** Chair Livingston commented that the Conservation Law Foundation conditional motion was only on the assumption that the others were granted, as was the town's. Kim Gaffett from the Town of New Shoreham said they had already submitted comments and are monitoring the process.

Chair Livingston said the final agenda item was next steps.

R. Main said she wanted clarification on the motions to intervene.

An audience member stood and wanted to comment, and was upset that the public was not given the opportunity. Another audience member wanted to know if anyone would have been given the right as intervenor status. Chair Livingston said possibly. The audience member continued to comment on her concerns that there was no protection afforded interested parties if they did not get intervenor status. Chair Livingston said that she appreciated the passion of those in attendance, but said this meeting was not the proper place. ***Chair Livingston said she was going to have to adjourn the meeting, and that the subcommittee would consider next steps at a later date. P. Lemont moved the motion. D. Abedon seconded the motion. The meeting adjourned at 11:13 a.m.***

Respectfully Submitted,

Laura Dwyer