



Rhode Island House of Representatives

Special House Legislative Commission to Study the Effects and Procedures for the Reorganization of the Rhode Island Coastal Resources Management Council

Final Report

May 11, 2022

**Report Submitted to the
Rhode Island House of Representatives**

Table of Contents

Commission members.....	3
Executive Summary from Chairwoman Deborah Ruggiero.....	4
Background Information.....	5
Commission Findings.....	9
Commission Recommendations.....	10
Appendix A- Enabling Legislation.....	12
Appendix B – Commission Agendas, Presentations, and Meeting Videos.....	14
Appendix C – Written Testimony.....	17

Commission Members

Representative Deborah Ruggiero, Chair

Representative Arthur Handy, Vice Chair

Representative Lauren H. Carson

Representative Michael W. Chippendale

Topher Hamblett, Director of Advocacy, Save the Bay (Kendra Beaver – Designee)

Jamie Hainsworth, Town Administrator, Jamestown

William DePasquale Jr., Town Planner, Exeter

Joe Nicholson Jr., City Manager, Newport (Stephen Land – Designee)

John Marcantonio, CEO, Rhode Island Builders Association (David Baud- Designee)

Richard Hittinger, President, RI Saltwater Anglers Association

Michael McGiveney, President, RI Shellfishermen's Association

Paula Bontempi, Dean, URI Graduate School of Oceanography

Lawrence Taft, Executive Director, Audubon Society of Rhode Island

Sven Risom, Resident, Block Island

Nancy Letendre, Town Planner, Westerly

Executive Summary from Chairwoman Deborah Ruggiero

Dear Speaker Shekarchi,

I am pleased to submit to you this report by the Special Legislative Commission to Study the Effects and Procedures for the Reorganization of the Rhode Island Coastal Resources Management Council (CRMC).

CRMC was created by statute 50 years ago and was charged to preserve, protect, develop, and where possible, restore Rhode Island's coastal resources through comprehensive and long range planning to produce the maximum benefit for society. I submitted legislation for this commission because while CRMC's mission remains the same, the scope of its work has broadened and it was prudent to conduct an extensive study of the organization.

Pursuant to this legislation, 15 members of various backgrounds and professional experience were appointed to the commission. These members shared their own personal expertise and experiences and included executive directors of environmental groups including Save the Bay and the Audubon Society, town administrators, planning professionals, a town council member, the Dean of the University of Rhode Island Graduate School of Oceanography, a representative from the RI Builders Association, a member of the RI Saltwater Angler's association, and a member of the RI Shellfisherman's Association.

The Commission's first organizational meeting was on September 15, 2021 and it met 11 times over the next nine months to hear expert testimony from CRMC staff; Betsy Nicholson, North Regional Director for NOAA; Grover Fugate, former CRMC Executive Director; Anthony Afonso, the Governor's Chief of Staff and Terrance Gray, RI DEM Director. The Commission also accepted public testimony from 14 people and received over 100 submissions of written testimony.

This report is the culmination of the hearings and contains information presented by various stakeholders interested in improving CRMC. Given the complexity of the work of CRMC and its importance to our state, the Commission offers both short-term and long-term recommendations.

I am grateful to every member of the Commission for their willingness to share their expertise and take part in these discussions, and I look forward to working with them to implement these recommendations.

Sincerely,

Representative Deborah Ruggiero

Chairwomen

Background Information

CRMC Statute Enacted

The Coastal Management Resources Council (CRMC) was created by statute, R.I. Gen. Laws § 46-23, in 1971. During this time there was a growing recognition of the value of the coast and the fact that if it was not managed appropriately it would be irrevocably damaged. The coast was under pressure from both population growth and economic development and there were increasing and competing demands for its resources. There was a challenge balancing conflicting uses including industry, commerce, residential development, waste disposal, transportation, navigation, recreation, and commercial fishing.

In the statute's legislative findings, the General Assembly recognized the importance of coastal zones and their value to both the present and future development of the state. It recognized that poorly planned development had already contributed to the destruction of the natural environment. Moving forward, the policy of the state would be to preserve, protect, develop, and where possible, restore the coastal resources through comprehensive and long range planning to produce the maximum benefit for society. The findings also stated that "preservation and restoration of the ecological systems shall be the primary guiding principles upon which environmental alteration of coastal resources will be measured, judged and regulated."

Coastal Zone Management Act

In 1972, one year after Rhode Island created CRMC, the Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451-1465, was enacted by Congress. CZMA created the Coastal Zone Management Program, a federal/state partnership approach to achieve coastal management goals which included efforts to:

- Protect natural resources
- Manage development in high hazard areas
- Give development priority to coastal dependent uses
- Provide public access for recreation
- Prioritize water-dependent uses

The National Oceanic and Atmospheric Administration (NOAA) administers the national program and supports state coastal programs. NOAA provides program development, technical and financial assistance and fosters national peer to peer sharing. NOAA conducts periodic reviews of state programs and must approve any program changes.

State programs are based on the requirements found in the CZMA, but also have the flexibility to design programs that meet each state's needs. State programs can be set up in a variety of ways as long as they meet CZMA statutory requirements which include:

- Establish coastal zone boundaries
- Define the types of land and water use subject to the program

- Identify authorities to manage uses
- Include policies that are enforceable
- Inventory and identify areas of particular concern using a science based process
- Incorporate public participation processes
- Consider national interests including navigation, energy and defense

State programs can be implemented either through a network of state agencies with one lead or through a single state agency. Most states have a network approach but Rhode Island, California, Connecticut and North Carolina all have a single state coastal agency. Rhode Island and California are the only states with a council structure.

Also, by participating in the program, states get federal consistency authority to comply with state enforceable policies. States have review authority of federal actions that have a reasonable foreseeable effect on the state's coastal zone. This includes:

- Direct actions such as building at the naval base
- Licensing activity
- Outer continental shelf plans including wind energy
- Federal funding to state and local authorities for certain activities

The state also gains access to federal dollars, at CRMC it is about a 1:1 match of federal to state dollars.

Current CRMC Structure

CRMC is an independent state regulatory agency administered by an appointed council empowered to make decisions on regulations and permits. The decision making process is conducted through regular public hearings.

The General Assembly enacted the current board structure in 2018. The changes were made to abide by the separation-of-powers amendment to the state constitution passed in 2004. Previously, the House and Senate had authority to appoint members to the CRMC Board.

The number of board members was reduced from sixteen to ten, including the Director of the Department of Environmental Management who serves ex-officio and nine others who are appointed by the Governor with the advice and consent of the Senate.

Appointed members serve three-year terms with no limits and include:

- Three from the general public, including at least one from a coastal community.
- Six are required to be an appointed or elected officials of local government, three from a municipality with a population of over 25,000 and three from a municipality with a population of under 25,000. At least five of the six elected or appointed members must be elected or appointed in a coastal municipality.
- No more than two people on the council from the same municipality

Since July 2021, the Council has just six voting members, plus the DEM Director. There are three vacancies, one from a community greater than 25,000, one from a community of less than 25,000 and one public member. Also, since that date, Raymond Coia has served as the Acting-Chair. All members of the current board must be present for a vote

because a quorum consists of six members (R.I. Gen. Laws § 46-23-4). All but one commission member are serving beyond their appointed terms. The membership includes:

	Term Expiration	Membership
Raymond Coia, Acting Chair	1/31/2020	Represents a coastal municipality over 25,000, Cranston
Donald Gomez	1/31/2020	Represents a coastal municipality under 25,000, Little Compton
Joy Montanaro	1/31/2016	Public Member from a coastal community, Cranston
Jerry Sahagian	1/31/2020	Public member from a coastal community, North Kingston
Patricia Reynolds	1/31/2020	Represents a Municipality over 25,000, Newport
Lindsay McGovern	1/31/2023	Represents a Coastal Community under 25,000, Narragansett
Terrance Gray, RIDEM (Ron Gagnon, designee)		DEM

CRMC Staff

There is a staff of thirty including engineers, environmental and geophysical scientists, policy analysts and support staff. This includes three enforcement staff for over 400 miles of shoreline. There is no fulltime attorney on staff; both staff and the council rely on legal services provided by contracted outside attorneys.

It should be noted that during the hearing process commission members and witnesses, including Betsy Nicholson, North Regional Director of NOAA, repeatedly praised the staff for their expertise and professionalism. She stated that CRMC's Ocean SAMP and Beach SAMP are national examples of excellent coastal planning.

Hearing Officer

R.I. Gen. Laws § 46-23-20.1 state that the Governor, with the advice and consent of the senate, shall appoint two hearing officers who shall not otherwise practice law while holding office. A CRMC hearing officer has never been appointed. In the past there have been volunteer hearing officers that have heard enforcement cases.

Currently in the absence of a hearing officer, the process for a contested permit application or enforcement action is as follows: First, the staff writes a recommendation

and then the council hears the case and makes the decision either accepting the staff's recommendation, adding qualifications or rejecting it. The Council attorney then writes the decision including findings of fact and conclusions of law.

Aquaculture

CRMC is the lead agency for aquaculture permitting by statute, R.I. Gen. Laws § 20-10-3. The aquaculture industry has grown over time since the first project was approved in 1988. According to testimony from Katie Martin of the Ocean State Cooperative, there are over 40 farms supporting 200 workers. In 2019, Rhode Island aquaculturists produced a \$6 million oyster harvest. The expansion has led to use conflicts with commercial shellfisherman, recreational anglers, coastal property owners, sailors and other recreational users.

CRMC is working on the Narragansett Bay Special Area Management Plan (SAMP) to develop policies and standards for aquaculture projects within Narragansett Bay and the Sakonnet River and the siting of submerged cables within state waters. The Bay SAMP is in process and CRMC has conducted over 24 public meetings since March of 2021. CRMC is working with stakeholders to:

- Address notification issues
- Develop Gear Guidelines
- Review application forms and requirements
- Develop an aquaculture constraints map to be integrated into the regulatory program

OffShore Wind

The Coastal Zone Management Act requires the federal government to comply with a state's federally approved Coastal Management Program when taking actions (direct federal action or issuing federal licenses and permits) that are likely to affect a state's coastal resources. This provision allows for CRMC to review offshore wind permits.

In preparation for the development of offshore wind, CRMC developed the Ocean SAMP. The goal of the SAMP was to support the development of offshore wind projects to meet renewable energy goals while protecting the state's resources including coastal users and commercial fisherman. The Ocean SAMP was approved by the council in 2010 and the federal government in 2011.

Since the Ocean SAMP was approved, Rhode Island has become the site of the first offshore wind development in the nation. There are three projects currently under review and two more will be starting the review process soon. As part of the review process there is an extensive ecological impact study and an economic analysis and public hearings.

Commission Findings

Based on its study of the Coastal Resources Management Council, expert testimony, commentary from the public, and discussions by its members, the Commission has reached the following findings:

- The Coastal Resources Management Council (CRMC) was created in 1971 by the General Assembly to preserve, protect, develop, and, where possible, restore Rhode Island's coastal resources for this and succeeding generations through comprehensive and coordinated long-range planning and management designed to produce the maximum benefit for society. Additionally, CRMC was created under the principle that preservation and restoration of ecological systems shall be the primary guide upon which environmental alteration of coastal resources will be measured, judged, and regulated. Now, fifty years later, the founding principles still hold true, but the scope of work at the Council has increased dramatically. Rhode Island is the home of the nation's first offshore wind farm and there are proposals for multiple large-scale projects off of our state's shores. Aquaculture is a growing industry and it is creating some use conflicts within the state's waters. Also, the Council must now plan for climate change and its impact on Rhode Island's shores.
- The Commission members, expert witnesses, and the public repeatedly praised CRMC staff for their expertise and professionalism. Betsy Nicholson, Regional Director of NOAA, stated in her testimony that CRMC is a well-functioning program and is a national leader in ocean planning and hazard resilience, particularly through its Ocean and Beach SAMP. In its latest review of CRMC, NOAA recommended only one necessary action: to develop a new permit data base by March 31, 2024, and there is funding in the budget to complete this.
- The Council, by statute, has ten members, nine of whom are appointed by the Governor and the DEM Director. Currently there are only six appointed members and all but one of them have expired appointments.
- R.I. Gen. Laws § 46-23-20.1 states the Governor shall appoint, with the advice and consent of the Senate, two hearing officers who shall be devoted full-time to these administrative duties and shall not otherwise practice law. CRMC has never had a full-time hearing officer on staff. CRMC has relied on volunteer hearing officers to hear contested enforcement cases.
- CRMC is charged with enforcing all of its permits, including aquaculture permits. CRMC currently has three enforcement staff to cover more than 400 miles of shoreline.
- The Coastal Resource Management Program, the "Red Book" (650-RICR-20-00-1), does not necessarily reflect the large public investment in conservation land in coastal areas from the federal, state, and non-profit sectors. The regulations also are not up to date on the current uses in local harbors.

Commission Recommendations

The CRMC Study Commission reached the following short-term and long-term recommendations based on its study of the Coastal Resources Management Council, expert testimony, commentary from the public, and discussions by its members. All programmatic changes to CRMC will need to be reviewed and approved by NOAA and any legislation will need to pass both the House and Senate and be signed by the Governor.

SHORT-TERM RECOMMENDATIONS: The General Assembly by statutory enactment, should:

1. Continue the present CRMC Council structure with the following changes:
 - a. Limit Council members to three three-year terms
 - b. No municipality shall be represented by more than one Council member
 - c. Include one representative from an urban community and one from a non-coastal community.
 - d. The Governor and Senate, through advice and consent, shall give due consideration to qualifications of public members, including ocean engineering, coastal planning, marine science and marine industry.
 - e. The Governor and Senate, through advice and consent, shall give due consideration to qualification for members that are elected or appointed officials, including holding a position on a planning or zoning board.
 - f. It is recommended that open seats are appointed within six months of a vacancy.
2. Include a requirement for a full-time staff attorney using the current CRMC legal budget.
3. Fund a full-time hearing officer pursuant to 46-23-20.1 to hear both contested permit and enforcement cases.
4. The CRMC Council shall conduct a public review and update of its regulations, the "Red Book," at least every five years.
5. Require all aquaculture permit applicants to notify the public through a local newspaper advertisement and other social media and to hold a public forum in the community with municipal leaders to answer questions and define the scope of the project before a permit is granted by CRMC.
6. Require all aquaculture permit holders to label aquaculture equipment and implement a fine of \$2,500 for failing to label equipment or failing to retrieve loose equipment.
7. Empower Harbormasters to enforce aquaculture CRMC permits.

LONG-TERM RECOMMENDATIONS: The following issues were discussed by the members of the CRMC Study Commission during the hearing process. All programmatic changes to CRMC will need to be reviewed and approved by NOAA and any legislation will need to pass both the House and Senate and be signed by the Governor.

The CRMC Study Commission recommends that the Legislature consider the following long-term recommendations:

1. Empower the Executive Director to make all permitting decisions, and require all appeals to be heard by a hearing officer, similar to the process at the Department of Environmental Management. Change the CRMC from an empowered council to an advisory council.
2. Have the Governor appoint the Executive Director to a term of six years with the advice and consent of the Senate and having the Executive Director report directly to the Governor, not the Council.
3. Explore making the local municipality a party to CRMC issued permits and consider other options to increase a local authority's ability to enforce land-based zoning violations (ie, misuse of docks, neglected equipment).
4. Separate advocacy of aquaculture and permitting/enforcement into two departments. Perhaps move advocacy to the Department of Environmental Management, since it handles Marine Fisheries, and keep permitting with CRMC.
5. Review permitting procedures in coastal zones so that they are better coordinated for the applicant. Determine if there can be better coordination between local zoning officials, the Department of Environmental Management and CRMC.

Appendix A Enabling Legislation 2021 H 6252

2021 -- H 6252

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R E S O U R C E S M A N A G E M E N T C O U N C I L (C R M C)

Introduced By: Representatives Ruggiero, Azzinaro, Abney, Carson, Speakman, Cortvriend, Knight, and McEntee

Date Introduced: April 16, 2021

Referred To: House State Government & Elections

WHEREAS, The Coastal Resources Management Council is a management agency with the regulatory functions “whose primary responsibility is for the preservation, protection, development and where possible the restoration of the coastal areas of the state, which extends out to the extent of the state’s jurisdiction in the territorial sea, via the authority given in state law and through implantation of its integrated and comprehensive coastal management plans”; and

WHEREAS, A reorganization of the CRMC and its operations and management procedures could provide increased efficiencies, opportunities, and protection of our coastal resources; now, therefore be it

RESOLVED, That a special legislative commission be and the same is hereby created consisting of fifteen (15) members; five (5) of whom shall be members of the House of Representatives, not more than three (3) from the same political party, to be appointed by the Speaker of the House; one of whom shall be the Executive Director of Save the Bay, or designee; one of whom shall be the Town Administrator of Jamestown, or designee; one of whom shall be the Chair of the Warwick Planning Committee, or designee; one of whom shall be the City Manager of Newport, or designee; one of whom shall be President of R.I. Shell Fisherman’s Association, or designee; one of whom shall be a member of the R.I. Saltwater Angler’s Association, to be appointed by

the Speaker of the House; one of whom shall be the Dean of the University of Rhode Island Graduate School of Oceanography, or designee; one of whom shall be the Executive Director of the Audubon Society of Rhode Island, or designee; and two (2) of whom shall be a members of the general public, to be appointed by the Speaker of the House.

In lieu of any appointment of the legislature to a permanent advisory commission, a legislative study commission, or any commission created by a General Assembly resolution, the appointing authority may appoint a member of the general public to serve in lieu of a legislator provided that the majority leader or minority leader of the political party which is entitled to the appointment consents to the appointment of the member of the general public.

The purpose of said commission shall be to make a comprehensive study of, and provide recommendations for, the reorganization of the Rhode Island Coastal Resources Management Council.

Forthwith upon passage of this resolution, the members of the commission shall meet at the call of the Speaker of the House and organize. The Speaker of the House shall select one member to serve as chairperson of the commission.

Vacancies in said commission shall be filled in like manner of the original appointment.

The membership of said commission shall receive no compensation for their services.

All departments and agencies of the state shall furnish information, advice, documentary, and otherwise to said commission and its agents as is deemed necessary or desirable by the commission to facilitate the purposes of this resolution.

The Speaker of the House is authorized and directed to provide suitable quarters for said commission; and be it further

RESOLVED, That the commission shall report its findings and recommendations to the General Assembly on or before April 1, 2022, and said commission shall expire on May 15, 2022.

2021 -- H 6252

===== LC002700

Appendix B- Commission Agendas, Presentation, and Meeting Videos

September 15, 2021

Election of the Chair and Introduction of the Members and Roundtable Discussion

Members Elected Representative Ruggiero as Chairwoman and Representative Arthur Handy and Vice-Chair

Agenda: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2021-9-15%20CRMC%20agenda.pdf>

Meeting Notes: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2021-9-15%20CRMCnotes.pdf>

October 6, 2021

Overview of CRMC: Presentation by Jeffrey Willis, Executive Director and James Boyd, Deputy Director of CRMC

Agenda: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2021-10-6-agenda.pdf>

Meeting Notes: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2021-10-6%20CRMC%20Commission%20notes.pdf>

Presentation: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2021-10-6%20FINAL%20-%20CRMC%20101.pdf>

November 10, 2021

Narragansett Bay SAMP: Presentation by Jeffrey Willis, Executive Director and James Boyd, Deputy Director of CRMC

Agenda: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2021-11-10%20CRMC%20agenda.pdf>

Presentation: https://www.rilegislature.gov/commissions/coremaco/commdocs/2021-11-10%20House%20CRMC%20Re-Org%20AQUA_updated_11921.pdf

Meeting Notes: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2021-11-10%20CRMC%20notes.pdf>

November 18, 2021

Continuation of the Discussions and Questions on the Presentation from the October 6, 2021 Meeting

Agenda: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2021-11-18%20CRMC%20agenda.pdf>

Meeting Notes: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2021-11-18%20CRMC%20%20notes.pdf>

December 9, 2021

Presentation by Betsy Nicholson, North Regional Director, The National Oceanic and Atmospheric Administration (NOAA)

Agenda <https://www.rilegislature.gov/commissions/coremaco/commdocs/2021-12-9%20CRMC%20agenda.pdf>

Meeting Notes: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2022-12-9%20CRMC%20notes.docx.pdf>

January 19, 2022

Public Testimony Focused on Suggestions for Future Improvements to The Organization and Procedures of CRMC

Public testimony included: Mathew Behan, Owner, Behan Family Farms; Robert Rheault, East Coast Growers Association; Michael Woods, New England Back Country Hunters; Katie Martin, Ocean State Shellfish Cooperative; Steve Ahlquist, Uprise RI; Jim O'Neil, former member of South Kingstown Town Council; Michael Rubin, Friends of the Waterfront; Deb Hagan, RI Coastal Advocacy Coalition; Liz Mendez, Tiverton Resident; Kenny Mendez, Tiverton Resident

Agenda: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2022-1-19%20CRMC%20agenda.pdf>

Meeting Notes: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2022-1-19%20CRMC%20notes.pdf>

February 22, 2022

Presentation by Antonio Afonso, Chief of Staff, Office of the Governor on the Administration's Vision for the Future of CRMC Including The Council's Strengths and Weaknesses.

Agenda: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2022-2-22%20CRMC%20agenda.pdf>

Meeting Notes: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2022-2-22%20CRMC%20notes.docx.pdf>

March 17, 2022

Presentation by Terrance Gray, Acting Director, Department of Environmental Management on DEM's Role in Coastal Issues and How the Department Coordinates with the Coastal Resources Management Council.

Agenda: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2022-3-17%20CRMC%20Agenda.pdf>

Meeting Notes: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2022-3-17%20CRMC%20notes.pdf>

April 5, 2022

Discussion on Findings by the Commission Members

Agenda: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2022-4-5%20Agenda%20CRMC.pdf>

Meeting Notes: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2022-4-5%20CRMC%20notes.pdf>

April 28, 2022

Continuation of Discussion on Findings by the Commission Members

Agenda: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2022-4-28%20CRMC%20agenda.pdf>

Meeting Notes: <https://www.rilegislature.gov/commissions/coremaco/commdocs/2022-4-28%20CRMC%20notes.pdf>

Appendix C Written Testimony

All written testimony submitted to the committee can be found at:

https://www.rilegislature.gov/commissions/coremaco/Pages/hmaterials.aspx?Paged=TRUE&PagedPrev=TRUE&p_SortBehavior=0&p_ID=101&PageFirstRow=61&&View={42F0549B-9B0D-4AE3-B449-65D1DF6BBE4B}