

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COASTAL RESOURCES MANAGEMENT COUNCIL

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IN RE: SEMIMONTHLY MEETING

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Date: January 13, 2010
Time: 6:00 p.m.
Place: Administration Building
One Capitol Hill
Conference Room C
Providence, RI

MEMBERS PRESENT

- Michael Tikoian, Chairman
- Paul E. Lemont, Esquire, Vice Chairman
- Raymond Coia
- David Abedon
- Michael Sullivan
- Donald T. Gomez
- Bruce Dawson
- Robert Driscoll

Brian Goldman, Esquire, Legal Counsel

STAFF PRESENT

- Grover Fugate, Executive Director
- David Beutel, Aquaculture Coordinator
- Jeffrey Willis, CRMC Deputy Director
- Danni Goulet, CRMC Dredge Coordinator

ORIGINAL

IRONS & ASSOCIATES
CERTIFIED PROFESSIONAL STENOGRAPHERS
31 Harris Avenue
Portsmouth, Rhode Island 02831
(401) 683-1930

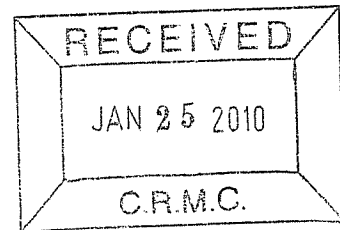
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I N D E X

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1 (COMMENCED AT 6:00 P.M.)

2 CHAIRMAN TIKOIAN: Can we bring the
3 Coastal Resources Management Council of January 13.
4 2010 to order.

5 During the course of the hearing this evening
6 an applicant may represent themselves or may be
7 represented by legal counsel. In the event that the
8 applicant is not present, the legal counsel must
9 have the authority to bind the applicant.

10 An attorney's comments during the course of a
11 presentation will not be considered evidence or
12 testimony before the Council and attorneys should
13 recognize that this is a quasi judicial body and
14 should act accordingly. All parties giving
15 testimony or statements this evening will be sworn.
16 Some applications on tonight's agenda may have
17 recommendations of approval by the Council staff and
18 there may not be anyone here objecting to these
19 applications. Prior to tonight's meeting, all of
20 the Council members have had an opportunity to
21 review those files, review the staff reports and
22 comments, all of which are part of the record. On
23 those applications the Council may after public
24 comment move for approval and, in fact, approve

1 those applications without the necessity of taking
2 any testimony. Approval of an application does not
3 mean you can start work tomorrow. You must wait
4 until you receive your Assent, an orange Assent
5 card.

6 The Assent is your permit from the Council
7 stating that you have the right to undertake the
8 activity in accordance with all of the conditions
9 placed on that Assent. The orange Assent card must
10 be placed in a conspicuous location on the site of
11 the activity during all times of construction.

12 At this time we'll entertain a motion to
13 approve the minutes of the prior meeting.

14 MR. COIA: So moved.

15 MR. SULLIVAN: Second.

16 CHAIRMAN TIKOIAN: Motion made and
17 seconded. Any discussion? Comments?

18 (NO RESPONSE)

19 CHAIRMAN TIKOIAN: All in favor
20 signify by saying aye?

21 (VOICE VOTE TAKEN)

22 (UNANIMOUS)

23 CHAIRMAN TIKOIAN: Opposed?

24 (NO RESPONSE)

1 CHAIRMAN TIKOIAN: So carried.
2 Subcommittee reports?

3 (NO RESPONSE)

4 CHAIRMAN TIKOIAN: No subcommittee
5 reports. Staff reports?

6 MR. FUGATE: Yes, Mr. Chairman,
7 there are a series of staff reports tonight and
8 they're noted on the agenda.

9 CHAIRMAN TIKOIAN: Mr. Fugate, are
10 you handling all of these in that order, or do you
11 have somebody?

12 MR. FUGATE: Actually, Mr. Goldman
13 is presenting, with myself, on the Weaver's Cove
14 project. Biosecurity Board is Mr. Beutel -- I'm
15 sorry, Mr. Willis. The aquaculture lease
16 transfer -- Jeff's got the rest of them. Jeff will
17 be handling all the others.

18 CHAIRMAN TIKOIAN: My pen went
19 around with the sign-in sheet. Grover, are you
20 ready?

21 MR. FUGATE: Sure. Do you want me
22 to start with the briefing?

23 MR. GOLDMAN: I'll start then,
24 Grover. I guess the Council had asked for just a

1 summary of the Weaver's Cove litigation. If this
2 was consummated, this would have been -- I think we
3 got the decision in October from the First Circuit
4 on the Weaver's Cove/LNG consistency litigation. I
5 think what you've got in front of you is, and I will
6 set the legal table for you and then you can ask, if
7 you have questions of staff as to how they handled
8 it. They were basically, from the CRMC side there
9 was essentially one significant issue, and that had
10 to do with whether or not, when the application and
11 consistency review were treated as one came into the
12 agency that it contained all the necessary data and
13 information such to make it a complete application
14 and then trigger the six-month consistency review
15 period. By way of background, the Federal CZMA and
16 the CFR's that accompany it require that when
17 someone files a -- when somebody comes in for a
18 consistency review, that once all the necessary data
19 and information is complete that the agency has, and
20 in this case it's actually Grover's the CRMC --
21 Grover's the consistency authority in this case,
22 they normally don't come to the Council, but that
23 the agency has six months in which to either
24 determine that the proposal is consistent with the

1 CRMC's regulations or to object on grounds that it
2 is not consistent. In the case of Weaver's Cove,
3 what happened, if you see what Danni Goulet passed
4 out, when the application came in, the staff took
5 the position that the application was not complete
6 and that it lacked necessary data and information,
7 and under the CFR you're supposed to notify the
8 applicant that within 30 days, if the application is
9 not complete, and that the consistency review will
10 not be undertaken. In this case there were three
11 issues that the staff took the position made the
12 application incomplete. The first one was that it
13 lacked stamped engineering, perhaps by a stamped
14 registered Rhode Island engineer; second, that a
15 prerequisite to the dredging permit was a water
16 quality cert from DEM; and, third, that under 300.9,
17 when you were going to dispose of dredge material at
18 an upland site, you had to provide approval from
19 that upland site, so, essentially, so we know where
20 it's going to go. What Weaver's Cove did, in the
21 first instance staff told them they did not have
22 engineered plans, and they remedied that within a
23 week or so. I think Danni -- they came with the
24 engineered plans, staff took the position that that

1 triggered, again, the 30-day period, and then Grover
2 made a determination that it lacked a water quality
3 cert, and, also, that the disposal for the dredge
4 material did not satisfy the criteria of Section
5 300.9, and that what Weaver's Cove said in their
6 application, and I am going to paraphrase, was that
7 we are going to dispose of the dredge material at an
8 upland site in Massachusetts, and, therefore, you
9 have no jurisdiction to review that, and, therefore,
10 we don't have to, because we're representing to you
11 that we're going to put the dredge material in a
12 site outside of Rhode Island, then you cannot
13 require us to tell you or provide you approval from
14 an upland facility as to where we're going to
15 dispose that because it's outside of the State.
16 And, I think Grover took the position that that was
17 not a proper interpretation of the regulations,
18 that, as he interpreted the regulations, that you
19 had to provide a site no matter where it was going
20 to be deposited, that if you were going to deposit
21 it in Maine, Massachusetts, Virginia or Connecticut,
22 you had to tell us where it was going to go so that
23 we did not run into the so-called "barge to nowhere"
24 scenario, where, as you may recall, there was a

1 trash barge that came from New York and it left New
2 York City and it was supposed to go to Virginia to
3 have the trash disposed of there and Virginia said
4 no and this barge was floating around for a while
5 trying to find out where to dispose of the trash and
6 it ended up going back to New York. So, that was
7 the position that the staff took and Grover took on
8 the application, and there was a little bit of a
9 back and forth, as you can see in the time line that
10 Danni has done for you. Ultimately, that was just a
11 position I think that Grover took, was that the
12 information incomplete, it was necessary data
13 information, therefore, the six-month clock didn't
14 trigger.

15 Before I get to litigation, do you want to get
16 into that, Grover?

17 MR. FUGATE: Yes. When the
18 application came in, you'll notice from the
19 chronology here, and you will see it quite clearly,
20 they applied for both a Category B and a Fed Con.
21 Both of those applications, when you read the
22 Federal Consistency Manual, were both processed in
23 the same fashion. Because the Category B
24 application requirements, there is a prerequisite,

1 which means that we cannot even accept the
2 application until they have certain documents in
3 their hands. They did not have those documents in
4 their hands which were, they had to show us, because
5 we've had situations before, for instance, where
6 dredge material is going to Connecticut and other
7 places. We require those applicants to provide a
8 letter from the facility receiving that, that
9 they're capable of receiving it, and, yes, they have
10 approved it for their transfer to those areas. It's
11 been done in the past. It is not an unusual
12 requirement. When that came in and they were
13 lacking that, we couldn't even under our regulations
14 accept the application for processing, and that's
15 the stance we were in, and you can see from the
16 chronology, they played us out for almost two years,
17 saying they were going to get us the material, then
18 they said -- they were questioned whether they
19 needed it, back and forth to the point that after
20 two years they finally said, we're not going to give
21 you the material, and, by the way, Federal
22 consistency is presumed now. So, it was a situation
23 where there was a prerequisite in place, we could
24 not accept the application, and they, again, if you

1 look at the chronology, you will see that they
2 played that out for almost two years before they
3 finally took the position that Federal consistency
4 was presumed at that point, and that's how we ended
5 up in the appeal in the Courts.

6 MR. GOLDMAN: Just so you
7 understand, under the Federal statute, it
8 specifically says that if within the six-month
9 period of a complete application being submitted, if
10 the State does not either concur or object to the
11 consistency certification, then consistency is
12 presumed, the caveat being, though, that it had to
13 be a complete application with necessary data and
14 information, and there's a whole body of case law
15 out there of litigation on consistency review where
16 when people have not submitted the necessary data
17 and information, the clock doesn't start. So, we
18 sort of reached the stalemate where Grover and the
19 staff took the position that this was necessary data
20 and information, the applicant said it wasn't, the
21 time period went by, I guess there were discussions
22 they changed legal counsel and decided to take a,
23 therefore, aggressive position. They filed suit in
24 Federal District Court and alleged that the

1 six-month clock had run because the information was
2 not necessary, the data was not necessary data and
3 information, and then added a second claim which
4 they had never raised before, which was that
5 Category B review was preempted by the Natural Gas,
6 and, therefore, we could not assert State authority
7 over the -- State permitting authority over this
8 project. The only authority we had was consistency
9 review. I think the thought was, on the staff side
10 and on Grover's side, that even if the, you know,
11 the six-month clock had run, because they filed for
12 a Category B application, there was no requirement
13 that anything take place in that six-month period
14 under the Category B application. When they brought
15 the suit in Federal Court, they raised this new
16 defense of, well, you can't require us, we're
17 withdrawing our Category B application because we're
18 taking the position now that Federal law preempts
19 the State authority. So, it went through. We
20 litigated it, obviously. The Attorney General was
21 involved in the case as lead counsel. They got into
22 a lot of State sovereignty arguments and the
23 preemption argument and we focused on the necessary
24 data and information argument. The District Court,

1 they construed our staff with DEM staff in terms of
2 what constituted an approved upland facility, and
3 I'll just read to you the Section 300.9. It says,
4 "When disposal is proposed for approved upland
5 facilities, the applicant shall provide a letter of
6 acceptance from that facility unless the disposal is
7 approved from the Central Landfill." We took the
8 position that approved upland facility meant
9 anywhere. We need to know where this dredge
10 material is going to go. You can't just say I'm
11 going to put it somewhere outside of Rhode Island,
12 and we just, you know, and we would be required to
13 accept that. That was the position that Grover
14 interpreted in the regulation and that we took in
15 the litigation. The District Court took our statute
16 and the DEM statute as it relates to dredging and
17 said that, essentially, DEM defined approved upland
18 facility as an approved upland facility in Rhode
19 Island, and, therefore, that definition of approved
20 upland facility should be applied to CRMC, and,
21 therefore, because the material was meant to be
22 placed out of State, that we could not require them
23 to get an approval from an out-of-State facility,
24 therefore, our interpretation of our regulation is

1 erroneous as a matter of law, therefore, it was not
2 necessary data and information to process the
3 application, therefore, the six months commenced
4 back in August when they had filed it, and that the
5 six months had expired, and that the presumption of
6 consistency was, therefore, conclusive. That went
7 up to the First Circuit on all the same issues that
8 we raised below and the First Circuit agreed with
9 the District Court. So, that's just sort of a where
10 we were.

11 Grover, do you want to add anything to that?

12 MR. FUGATE: I think if it is pretty
13 well evident that when the application came in they
14 applied for both, and the way the Fed Con works is
15 that when you apply for both, the process is a
16 simultaneous track. Not knowing that we didn't have
17 the Category B authority until after the courts
18 ruled against us, we were under the assumption that
19 prerequisites applied, which means we couldn't
20 accept the application for processing, period, until
21 they were in place. So, the Court, obviously,
22 disagreed that we should even have prerequisites in
23 those areas.

24 MR. GOLDMAN: If I can, one more

1 thing, Mr. Chairman. The interesting thing with the
2 argument, which I think frustrated myself and the
3 Attorney General's office, was Weaver's Cove argued
4 that the dredging in Rhode Island was not part of --
5 well, first they said -- they had two arguments,
6 which I always termed as the "you can't have your
7 cake and eat it, too" argument. They would say that
8 even though the proposal for Weaver's Cove had
9 changed, the dredging in Rhode Island had changed,
10 and, therefore, the dredging in Rhode Island had not
11 changed, even though the rest of the proposal had
12 changed, but because the dredging was integral to
13 the proposed project, it was all part of the one LNG
14 project, and, therefore, the Federal law preempted
15 State authority because the dredging was part of the
16 overall project. We then argued, well, okay, if the
17 dredging is part of the overall project and you've
18 now changed the overall project, then we should get
19 to review the overall project again because you've
20 now changed the application, and then they came back
21 with the argument and said, well, no, the dredging
22 is separate and apart from the actual project, it's
23 located in Rhode Island, it's really not integral to
24 the project, and, therefore, nothing in the dredging

1 has changed, and I guess I never quite understood,
2 and I still don't, how the Court could reconcile
3 that. If it is part of the overall project, then
4 when the project changed we should get a consistency
5 review over it. If it's not integral to the
6 project, then it should come in under Category E and
7 Federal preemption shouldn't apply. So, that's a
8 question that's out there that, it's sort of an
9 aberration in the case, but it is the First Circuit
10 and that's what they decided, so.

11 MR. FUGATE: There was another
12 element and twist that they ignored, too, when the
13 decision went through.

14 As Brian indicated, when they first came in
15 for the application what they intended to do with
16 the dredge materials was essentially build a
17 107-foot glass wall out of the dredge material
18 around the site. By the time -- and that's what
19 they actually applied to us for. By the time it
20 started to get through the process, they said, oh,
21 no, we're changing this to an in-water disposal off
22 of Rhode Island. We said, that's a significant
23 change, and they said it wasn't a significant
24 change, and, by the way, consistency is still

1 presumed. So, even though they made that change in
2 their disposal site, they still were arguing that we
3 had no right to review the change and the issue,
4 too.

5 MR. GOLDMAN: Under the Federal
6 regulations, when there's a substantial change in
7 the application, that triggers a new consistency
8 review. They got around that, obviously, in the
9 First Circuit. So, what it means now is that, for
10 the dredge part of the project, which is all we were
11 ever looking at, that our consistency is presumed,
12 but there's still, Grover, another hurdle of permits
13 that we have to go through. I think DEM could be
14 the hero in this thing.

15 MR. FUGATE: I think there's, at
16 this point, 17 different litigation pieces that are
17 out there relative to this project, so.

18 CHAIRMAN TIKOIAN: Questions.

19 VICE CHAIRMAN LEMONT: I have a
20 question.

21 CHAIRMAN TIKOIAN: Mr. Lemont.

22 VICE CHAIRMAN LEMONT: I had
23 requested this discussion held because in reading
24 the article, it appeared in The Journal, and I'm

1 glad to see we have a report here this morning, it
2 struck me that one could have the impression that
3 CRMC was asleep at the wheel, that things were in
4 progress now to forge ahead for the LNG tank, even
5 though the publicity over the last few years has
6 been mainly adverse to that project, and I wanted to
7 make sure, make sure it was understood that CRMC was
8 not asleep at the wheel, that this was a very
9 difficult issue involving a lot of legal theory that
10 still is out there to be resolved. So, I hope
11 everybody understands that. Mr. Chairman, you and I
12 have talked about it, that, you know, it is easy to
13 conclude that we weren't doing our job, and I think
14 it's clear to state that not only were we doing our
15 job, but it's a very complex job that has a lot more
16 twists and turns before it's ever resolved.

17 MR. FUGATE: This case was also
18 actually written up in "The Energy Law Review," in
19 that it's unique in that it was the first case where
20 you had a non-Federal entity coming in and using
21 Federal preemption as an argument for its ability to
22 be able to go through. So, you have a private
23 party, essentially, saying that they were an arm of
24 the Federal Government, being able to push this

1 application through, only on a Federal consistency
2 basis and not a Category B, and so, as such, it was
3 the first case to actually test that, where a
4 private entity could act and get Federal preemption,
5 and so it was written up in "The Law Energy Journal"
6 because of that issue.

7 MR. GOLDMAN: Mr. Chairman, we
8 worked very closely with the Massachusetts Attorney
9 General on this case in coordinating the defense,
10 and because it had a lot of overlap with some of the
11 defenses that they were utilizing as well, and, you
12 know, they participated in moot courts with us, and
13 we were not alone in thinking our interpretation of
14 the regulation was correct, and I think that it's
15 given to move Mass off into a different direction,
16 but they were very actively involved in this
17 litigation as well.

18 MR. FUGATE: There is, in fact, a
19 very similar piece of legislation that's now going
20 on in the State of Washington relative to a wave
21 energy project that FERET granted a license to,
22 making it subject to the Federal Consistency Act,
23 like they did in this case, and that act is working
24 its way up to the Supreme Court now, because they're

1 taking the position that Federal consistency, you
2 can't make it a condition, you have to go through
3 the process. As part of the Federal permitting you
4 just can't make it conditional on a Federal permit,
5 so.

6 CHAIRMAN TIKOIAN: Any other
7 questions?

8 (NO RESPONSE)

9 CHAIRMAN TIKOIAN: Well, thank you.
10 Gentlemen, thank you. Mr. Beutel, Biosecurity
11 Board.

12 MR. BEUTEL: Mr. Chairman, I will
13 handle that. The Biosecurity Board, there is a memo
14 in front of the Council seeking the Council's
15 approval of the members that were designated to be
16 on the Biosecurity Board. The Biosecurity Board is
17 part of the aquaculture staff 20-10, and the names
18 and their affiliations are laid out in front of you
19 just seeking Council concurrence of that membership.

20 MR. SULLIVAN: Move concurrence.

21 MR. DAWSON: Second.

22 CHAIRMAN TIKOIAN: Motion made and
23 second. Any discussion?

24 (NO RESPONSE)

1 CHAIRMAN TIKOIAN: All in favor
2 signify by saying aye?

3 (VOICE VOTE TAKEN)

4 (UNANIMOUS)

5 CHAIRMAN TIKOIAN: Opposed?

6 (NO RESPONSE)

7 CHAIRMAN TIKOIAN: So carried.

8 MR. SULLIVAN: Just quickly,
9 Mr. McGiverny is on one of the advisory council
10 panels to the Marine Fisheries Council but is not a
11 full member of. He may be representing it, but he
12 is not a member of the Council, but has been a long
13 member of the board. It should stay that way.

14 CHAIRMAN TIKOIAN: Any other
15 discussion?

16 (NO RESPONSE)

17 CHAIRMAN TIKOIAN: Motion made and
18 seconded. Any discussion?

19 (NO RESPONSE)

20 CHAIRMAN TIKOIAN: Hearing none, all
21 in favor signify by saying aye?

22 (VOICE VOTE TAKEN)

23 (UNANIMOUS)

24 CHAIRMAN TIKOIAN: Opposed?

1 (NO RESPONSE)

2 CHAIRMAN TIKOIAN: So carried.

3 Thank you, Mr. Beutel.

4 MR. WILLIS: Just to inform the
5 Council that, as per Section 300.11, we had an
6 aquaculture lease transfer for Assent 2002-03-044
7 from Chris Warfel to Chris Littlefield, all
8 stipulations, all requirements of the assent will
9 remain intact for that transfer. It's just to
10 report out to the Council, to let the Council know
11 that that occurred.

12 And, imminent peril, as per Section 180 of the
13 program, this is on the Council's agenda to let you
14 know that at the request -- actually, it's at the
15 request of Narragansett Electric, there is a typo,
16 it should be City of Pawtucket, for Assent Number
17 2009-12-015, the request was for an emergency permit
18 because of an explus of sheen materials leaking out
19 of the coastal feature into the Seekonk River. It
20 appeared to have been petroleum hydrocarbons of some
21 sort that needed to be mitigated very quickly. So,
22 based on a determination that there was a threat to
23 public health and safety, as well as causing an
24 adverse environmental impact, a decision was made to

1 invoke Section 180 and issue an imminent peril
2 assent.

3 CHAIRMAN TIKOIAN: Any questions on
4 that?

5 (NO RESPONSE)

6 First application, Sun Farm Oysters,
7 2009-206-087. Are they present?

8 MR. WARFEL: Yes. Chris Warfel.

9 CHAIRMAN TIKOIAN: Anyone here
10 present that wishes to speak for or opposed to that
11 that application?

12 (NO RESPONSE)

13 CHAIRMAN TIKOIAN: Hearing none.
14 Who is going to handle one?

15 MR. FUGATE: Dave.

16 CHAIRMAN TIKOIAN: Let me see for
17 the second 2009-09-0034, Margin Street Marine. Are
18 they present?

19 MR. DENONCOURT: Yes.

20 CHAIRMAN TIKOIAN: Who's going to be
21 the spokesman for that application?

22 MR. DENONCOURT: Brian Denoncourt.
23 I am one of the co-owners.

24 CHAIRMAN TIKOIAN: Anyone here wish

1 to speak for or opposed to that?

2 (NO RESPONSE)

3 CHAIRMAN TIKOIAN: Okay. Dave.

4 MR. BEUTEL: The Sun Farm
5 application is a modest expansion of an existing
6 three-acre lease in Trims Pond on Block Island, and
7 I know the agenda says it's 0.56 acres, but I
8 corrected that in the report and it's actually half
9 of that, as it is a triangle of 150 feet per side,
10 adjacent to the existing three-acre lease.

11 We had numerous meetings with the Town of New
12 Shoreham, the Block Island Shellfish Commission, the
13 Rhode Island Marine Fisheries Council and Shellfish
14 Advisory Panel. None of those groups had an
15 objection.

16 Rhode Island DEM Fish & Wildlife have an
17 objection, in that they were assuming that the
18 five percent carrying capacity would be exceeded.
19 That's one of the new regulations we had talked
20 about in previous months. The stance that we've
21 taken is that the whole Great Pond, Great Salt Pond
22 system is one and that it doesn't begin to approach
23 the five percent carrying capacity.

24 CHAIRMAN TIKOIAN: Do you know where

1 you're at, Dave, if you were to measure up to the
2 five percent, do you know where you stand?

3 MR. BEUTEL: It's about 1.6. The
4 other objection that DEM had, and which really was a
5 suggestion, was that future aquaculture leases in
6 Block Island go only in waters that are not
7 seasonally closed, so waters that are open all year
8 long. The current leased areas, all of the current
9 leased areas in Block Island, except for one, are in
10 seasonally closed areas. The three acres in Trims
11 Pond and the expansion are in seasonally closed
12 waters.

13 The Town of New Shoreham has directed all
14 aquaculture to be in both Trims Pond and Harbor
15 Pond, so that suggestion by DEM was not an open
16 option at this time.

17 So, given the lack of objections from the
18 majority of the groups, staff recommends approval of
19 this application.

20 CHAIRMAN TIKOIAN: Does the
21 applicant wish to make any comments on this? You
22 don't have to. I am just asking if you want to.

23 MR. WARFEL: No, not at this time.

24 VICE CHAIRMAN LEMONT: Mr. Chairman,

1 based on upon the statements of staff and reading
2 the report, I move that the application be approved.

3 MR. COIA: Second.

4 CHAIRMAN TIKOIAN: Motion made and
5 seconded. Any discussion? Comments? Questions?

6 MR. SULLIVAN: Comment.

7 CHAIRMAN TIKOIAN: Director.

8 MR. SULLIVAN: Mr. Beutel
9 characterized DEM as opposition. I think you would
10 find that the staff expressed concern that this
11 expansion would exceed, or potentially exceed the
12 biological carrying capacity and offered a concern
13 there. They also suggested that, if approved, that
14 a targeted water quality monitoring program be
15 developed and instituted prior to, as a conditional
16 of, you know, that would reflect or have the ability
17 to reflect some of the changes in their concerns.
18 Based on my staff's assessment, I would be required
19 to oppose the expansion unconditionally.

20 CHAIRMAN TIKOIAN: Any other
21 comments or questions?

22 (NO RESPONSE)

23 CHAIRMAN TIKOIAN: Hearing none, all
24 in favor signify by saying aye?

1 (VOICE VOTE TAKEN)

2 (UNANIMOUS)

3 CHAIRMAN TIKOIAN: Opposed?

4 (NO RESPONSE)

5 CHAIRMAN TIKOIAN: The motion
6 carries. 2009-09-034.

7 MR. GOULET: Mr. Chairman, this is
8 for a new 25-slip marina with approximately
9 3,000-square foot marina support building that will
10 have offices, sanitary facilities, 30 parking
11 spaces, as well as about 5,000 cubic yards of
12 dredging that will support the new marina. This
13 process -- this particular application, the
14 applicant went through the PD process that we've
15 instituted for new marinas. They took it very
16 seriously. There are about three iterations that
17 they went through. We worked with them, modified
18 the dredging footprint to satisfy the biological
19 concerns. We worked on, if we had concerns about
20 drainage, had concerns about their wall, they were
21 very amenable to all of the staff's concerns and
22 suggestions, and, so, based on that and the fact
23 that it complied with all but one requirement of
24 300.4, they're asking for a variance for pumpouts,

1 that all new marinas are required to have a pumpout.
2 They do have letters from two adjacent facilities
3 that they say they have a capacity to pump out the
4 25 vessels. It's also targeted for small, large
5 vessels, most of them are unlikely to have marine
6 heads on them anyway. So, the staff, both
7 biological and engineering staff, has recommended
8 approval.

9 MR. SULLIVAN: DEM issued the dredge
10 permit in December and I would move approval.

11 CHAIRMAN TIKOIAN: Is there a
12 second?

13 VICE CHAIRMAN LEMONT: Second.

14 CHAIRMAN TIKOIAN: Same offer to the
15 applicant, did you want to make any comment? Again,
16 you don't have to.

17 MR. DENONCOURT: I'm just here to
18 answer questions.

19 CHAIRMAN TIKOIAN: Any discussion?
20 Comments?

21 (NO RESPONSE)

22 CHAIRMAN TIKOIAN: Hearing none, all
23 in favor signify by saying aye?

24 (VOICE VOTE TAKEN)

1 (UNANIMOUS)

2 CHAIRMAN TIKOIAN: Opposed?

3 (NO RESPONSE)

4 CHAIRMAN TIKOIAN: So carried. The
5 Ocean Special Area Management Plan. Oh, so, with
6 that, we will open up the public hearing. I guess
7 there will be a presentation.

8 MR. FUGATE: Mr. Chairman, Michele
9 Armsby, as part of the SAMP planning team with CRMC.
10 Sea Grant is going to give a presentation. Just for
11 the Council's information and so you realize that
12 this process is a fairly extensive process to begin
13 with, but I will describe it for the Council who
14 aren't intimately familiar with it.

15 Essentially, the staff, which are writing
16 these chapters, have had extensive contacts with all
17 the stakeholders that have been identified that have
18 an interest in these areas. There is a lot of
19 face-to-face meetings that occur between the staff
20 and stakeholders trying to garner information and to
21 go through that process. As they do that, they are
22 charged to write the chapter and again send it back
23 out to these individuals to make sure the
24 information that they have been given hasn't been

1 misquoted or misrepresented in any fashion. After
2 that process has been complete, it then goes through
3 each subcommittee, or each chapter comes back for a
4 review by myself and Jen McCann, as the two
5 principal people looking at this project, to okay to
6 go to the Technical Advisory Committee. Once that
7 is okay to go to the Technical Advisory Committee,
8 there is a Technical Advisory Committee that is for
9 each chapter, because the expertise differs,
10 obviously, based on chapter to chapter, and these
11 are technical experts in their area that will review
12 the material that's in that chapter. That went
13 through that process. After the Technical Advisory
14 Committee has approved it, it comes back to the
15 stakeholder group, who then also has a public
16 comment period to review the chapter. In a broader
17 context all of the stakeholders get to review that
18 process. After it's been through the stakeholder
19 process and approved by -- or -- we essentially try
20 to reach consensus or make changes in those, then it
21 goes to the Ocean SAMP subcommittee. Once the
22 subcommittee reviews the chapter and approves it, it
23 then goes out for a workshop and public comment. We
24 did have a public workshop on this chapter. There

1 was one person that showed up only to see if there
2 were going to be any changes. He had absolutely no
3 comment, and so there was -- actually, you would
4 have had a transcript if there was any comment
5 rendered at that, but there was no comment rendered
6 at the public workshop. There were some comments
7 received during the public comment period, and after
8 Michele gets through with her presentation, we'll go
9 through those comments and show you how we have
10 addressed it and what her recommended changes are.
11 But, the point of this was to show you that there's
12 been a very extensive process that each chapter is
13 going through right now, front loading this so that
14 the public and other entities have a very good
15 chance to review all of this. There are a series of
16 points that they can input, and what we're now
17 anticipating is that if the Council approves this
18 chapter tonight, we will hold it at this point, not
19 go forward to the Secretary of State's office with
20 this until all of the chapters have gotten to this
21 stage where they've had a hearing and the full
22 Council approves it. Once all those chapters have
23 been through that, then the full Council will hold
24 another hearing on all those chapters and offer

1 people to, again, render comment on all the previous
2 chapters that they've been through, because there
3 was concern on being able to look at all the
4 chapters and how they integrate. So, that's the
5 process that we're going through now and that's the
6 stage we're at.

7 Michele is, the work that she had done along
8 with Tiffany with this is incredible. A lot of this
9 is all new data that never existed before that they
10 gathered and now put through the chapter. With
11 that, I'll turn it over to Michele.

12 MS. ARMSBY: Hello. I'm Michele
13 Armsby, and together with my colleague Tiffany
14 Smythe we've been working on the Ocean SAMP, First
15 Chapter.

16 We have handed out tonight a copy of the
17 revised chapter with all of the changes made to it,
18 along with a memo and all of the public comments
19 received during the formal comment period, and, so,
20 after the presentation those are the documents that
21 we will be going through. Like I said, Tiffany
22 Smythe and I have been working on this project. She
23 was unable to be here tonight. But, we worked very
24 hard on drafting this chapter. We've gotten a lot

1 of input from stakeholders from around the State.
2 And, as Grover was saying, we created a lot of new
3 data. One point I should make before getting into
4 our findings is that there were a lot of topics that
5 deal with recreation and tourism, but also deal with
6 other topics that will be discussed in other
7 chapters of the Ocean SAMP. So, throughout the
8 chapter we really tried to make a distinction of
9 what topics would be discussed, and other chapters,
10 and referred appropriately to those chapters.

11 In drafting the draft chapter, we really tried
12 to make it clear that this Ocean SAMP document was
13 focused on the offshore environment and that it did
14 not include any upland areas or Narragansett Bay,
15 and so for this chapter the focus is really on
16 water-based recreation and tourism activities, and
17 we only talk about the upland and coastal areas as
18 they relate to facilities that help to facilitate
19 water-based uses of the area.

20 Three of our major findings were that, first,
21 there are many popular and economically valuable
22 recreation and tourism uses of the SAMP area and
23 that many of these uses rely on key parts of the
24 SAMP area that are used intensely. These areas and

1 uses can be -- should be considered when evaluating
2 future projects, and so these three findings are
3 really what we based the recommended policies and
4 standards within the chapter from.

5 I'll just briefly go over the methodology we
6 used in drafting the chapter.

7 First, we reviewed a number of key documents.
8 Past SAMP documents that have been written in Rhode
9 Island, as well as some offshore documents, like the
10 Cape Wind environmental impact statement, the
11 Mineral Management Service, Regulatory Program on
12 Off-shore Wind, as well as the Massachusetts Ocean
13 Plan.

14 After reviewing those documents we identified
15 and contacted a number of key stakeholders within
16 the State and worked with them on gaining new
17 information about recreation and tourism in this
18 State.

19 We initially contacted about 25 different
20 organizations, and worked closely with about 15 or
21 16 different organizations. Those organizations
22 included the Rhode Island Marine Trades Association,
23 the Rhode Island State Yachting Committee, the US
24 Coast Guard, DEM, and so on. We then performed a

1 detailed literature review in search for the best
2 available data, and then for data that wasn't
3 currently available we created it using stakeholder
4 input, and we created new GIS day layers and a
5 series of maps, which I will be showing you tonight.

6 So, getting into the findings that we found.
7 First, when you're talking about recreation and
8 tourism in the SAMP area, you're really talking
9 about recreational boating, and so if you are out in
10 the SAMP area, you're on a boat, and if you're on a
11 boat in the SAMP area recreating, you are doing a
12 number of activities, fishing, engaging in sailboat
13 racing, cruising or transiting between different
14 destinations, offshore diving, or offshore wildlife
15 viewing, like whale watching or bird watching. So,
16 recreational fishing is a key use of the SAMP area,
17 and it's, we decided that, rather than focusing on
18 that in this chapter, that it should be dealt with
19 in the fisheries chapter of the Ocean SAMP,
20 primarily because recreational and commercial
21 fishermen target many of the same species and it can
22 be not easy to distinguish between recreational and
23 commercial fisheries. So, we do reference
24 recreational fishing in the chapter, but really just

1 to reference that it will be discussed in greater
2 detail in the fisheries chapter.

3 So, moving on to sailboat racing. We created
4 a series of maps. This first map is depicting buoy
5 racing. There were two types of sailboat racing
6 that occur in the SAMP area. There's distance
7 racing and buoy racing, and buoy racing is just like
8 it sounds, a series of buoys are placed, and the
9 sailors must navigate around them in the race area.
10 So, this map depicts the buoy racing areas within
11 the SAMP region. This is new data that we created
12 based on finding all of the buoy races that occur in
13 the SAMP area and then finding spacial information
14 on them from sailing instructions, and, also, the US
15 Coast Guard. So, as you can see, there are two main
16 areas where buoy racing events occur, outside of
17 Newport and around Block Island. So, a really
18 popular buoy racing event you might have heard of is
19 Block Island Race Week.

20 The second type of sailboat racing is distance
21 racing, and this occurs between distant points.
22 Sailboat distance racing can range from days in
23 length to many months. A popular distance sailboat
24 race is the Newport to Bermuda race or the Newport

1 to Block Island race, and so, this, again, was data
2 that we created by creating a list of all the
3 distance sailboat races in the SAMP area and then
4 using sailing instructions and data from the US
5 Coast Guard to create this map.

6 Cruising is another activity that recreational
7 boaters engage in, and, again, cruising is meant to
8 mean transiting between destinations. This isn't an
9 organized activity like yacht racing, and, so, this
10 map was created nearly to represent some of the
11 common transiting or cruising areas within the SAMP
12 area. This was created, again, from new data that
13 we gained from stakeholder input.

14 Offshore diving on dive charter boats is
15 another popular recreational activity that occurs.
16 This map we created from input from dive charter
17 boat captains. Most of these sites are shipwrecks
18 that occur within the SAMP area, and then there is a
19 potential dive site area that the dive charter boat
20 captains plan on using in the future that may
21 contain some rafts in that area.

22 MR. FUGATE: I should also point out
23 that many of these would be dealt with in another
24 chapter because not only are they recreational

1 features but many of these are also historic
2 features, so they would all be recognized as
3 historic shipwrecks for Section 106 purposes.

4 MS. ARMSBY: The last recreational
5 boating activity is offshore wildlife viewing, like
6 whale watching, bird watching, as we learned shark
7 cave diving. So, this map was created again based
8 on interviews with stakeholders and charter boat
9 captains, and these are the different areas used for
10 those activities.

11 In addition to recreational boating, the
12 recreation and tourism chapter also deals with
13 cruise ship tourism, primarily because cruise ships
14 frequently pass through the SAMP area, and it's one
15 of the main offshore tourism uses of the SAMP area.
16 These cruise ship tourism activities rely on the
17 scenic quality of the SAMP area. Currently, there
18 are eleven different cruiseline companies that
19 transit into Newport, and in 2009 there were over 50
20 scheduled visits. In 2008 those cruise ships
21 brought in over 68,000 passengers, which generated
22 millions of dollars of coastal economic activity.

23 So, as I mentioned, the focus of the chapter
24 is really primarily on the offshore water-based

1 uses, but we do discuss shore-based recreation,
2 primarily because activities, like swimming, surfing
3 and beach going, as well as infrastructure, like
4 marinas and boat ramps, really help to facilitate
5 the use of the SAMP area, especially boat-based
6 activities in relation to marinas and boat ramps.
7 So, again, we created a series of maps to
8 characterize these shore-based activities and
9 facilities. This first one is a map of all the
10 public access points, state beach, conservation
11 areas, parks and open space. This data we did not
12 create. We used pre-existing State data from the
13 RIGIS database.

14 A second map we created was a map of all
15 scenic areas. These are areas that DEM has
16 designated as having a distinctive or noteworthy use
17 gate. So, we mapped all of those scenic areas that
18 were directly adjacent to the SAMP boundary.

19 And, lastly, we created a map showing all the
20 marinas and boat ramps that were directly adjacent
21 to the SAMP boundary. Again, we did this because
22 these facilities are necessary for a lot of the
23 boat-based activities that occurred.

24 We also included in the draft chapter a

1 detailed section of the value of marine recreation
2 and coastal tourism within the SAMP area. We
3 describe in detail the economic value of the tourism
4 and hospitality industry as a whole, as well as the
5 economic impact of recreational boaters, sailing
6 events and cruise ship passengers to the State and
7 also to different coastal communities.

8 We also included a brief discussion of
9 nonmarket values, such as the aesthetic value, or
10 the educational and cultural value that these
11 activities play to residents and also to visitors
12 alike.

13 So, based on those findings, we recommended a
14 number of policies and standards that recognize and
15 address the value of marine recreation and tourism,
16 the high intensity boat usage areas, the site
17 specific features, like dive sites, within the SAMP
18 area, navigational, safety and boating access
19 concerns, as well as off-shore marine construction.
20 So, the policies and standards kind of fall within
21 those general categories.

22 As Grover mentioned, this draft chapter has
23 gone through a series of reviews by many different
24 groups. After we completed the chapter, it was

1 reviewed by a Technical Advisory Committee, and for
2 the recreation and tourism chapter these are the
3 organizations that comprise the Technical Advisory
4 Committee. We received their comments and
5 incorporated them, and then the chapter went on for
6 an informal public review by the Ocean SAMP
7 Stakeholders, and then following that the formal
8 public comment period, which just ended.

9 So, in addition to those technical advisors
10 who have expertise in recreation and tourism, the
11 chapter has also been distributed and reviewed by
12 these different Federal and State agencies.

13 So, that concludes my presentation. I'm happy
14 to go through the changes to the chapter or address
15 the comments specifically, whatever you would
16 prefer.

17 MR. FUGATE: There is one thing I
18 should just point out. Actually, several things.

19 First of all, as you noted, if you look at
20 that list there, the tribe has been included as part
21 of the review process. Under Section 106 of the
22 National Historic & Antiquities Act, the tribe has
23 to be part of the review process. This is a
24 critical mistake that was made in Massachusetts,

1 both in their Mass Ocean Plan and for Cape Wind. As
2 you probably heard today, Secretary Salazar was in
3 Massachusetts today trying to mediate a dispute
4 between tribes in Massachusetts because they weren't
5 involved in the process. We brought the tribe in
6 from the very beginning. In addition, they will
7 also be writing their oral history as part of the
8 historic section, so they will actually be having
9 formal input into this planning process.

10 There is another major significant change in
11 this, is that the Mass Ocean Plan, if you look at
12 their chapters relative to this topic, it's five
13 paragraphs. This chapter is approximately 62 pages
14 long. That will show you the difference between the
15 two efforts. In addition, Mass only went out
16 three miles offshore and they stayed 1,500 feet
17 offshore. So, they took a very narrow area, and
18 although they are claiming they're first in the
19 nation, we did the entire three-mile area all the
20 way up to the shoreline back in 1983. So, 26 years
21 ago we were first with the first marine spacial
22 plan. So, there are significant differences between
23 these efforts, which the Feds are looking at this as
24 being the model to follow.

1 In addition, because the stakeholders are
2 helping us write the chapter, there is a heavy
3 public involvement throughout the process. In
4 Massachusetts, again, it is a difference because
5 they went, had these listening sessions, went off,
6 wrote the plan, and they came out at the end with
7 public input and they've been trying to deal with
8 that issue. They did not involve the Federal
9 agencies, nor the Federal agencies have been with us
10 right from the start before we even started the
11 plan, helping us devise the research schedule and
12 all the rest of it. So, there are significant
13 differences that give this plan and this process a
14 much better advantage than the Massachusetts
15 process, which, again, if you look at, in what's
16 going on at the National Ocean Policy Committee, is
17 they're now watching Rhode Island and hoping to use
18 this as the model to go forward on.

19 So, what we're doing in these chapters, just,
20 again, for the edification of Council members that
21 haven't been through us with the process, is that we
22 have Federal consistency authority over three miles.
23 Beyond that, we can request on a project-by-project
24 basis, but we do not have blanket authority over

1 this area. By showing the interrelationships
2 between the uses in these waters, these offshore
3 waters, because this land goes out 30 miles, showing
4 the interrelationship between those Federal waters
5 and our coastal zone, which these chapters are now
6 documenting, it gives us the ability then to go into
7 NOAA and say, our geographical area we want
8 redefined now to that red boundary area, and we
9 capture 30 miles out for Federal consistency
10 purposes, so it gives us a much better position for
11 the State to be in to comment on all Federal
12 activities within those areas, not just the three
13 mile limit or on a case-by-case basis. Even if we
14 were to capture something on a case-by-case basis,
15 we had no data, no policies, nothing out there that
16 would even exert to be able to influence any Federal
17 decision in that area. Now we will have the
18 information, we will have the database, and it will
19 also become, not only part of the Federal
20 consistency process but it gets forwarded on to
21 FERET, because FERET will recognize this as a
22 planning tool and incorporate into their planning
23 process, it also become part of the MMS process, not
24 only for the request for interest, the EIS, but it's

1 also incorporated wherein their -- they have a
2 marine cadaster program, but it's called a multiple
3 purpose marine cadaster, which all the data gets
4 imported in the Federal cadaster and recognized at
5 that point.

6 So, there are a number advantages that we have
7 by doing this and it puts us a leg up on many other
8 programs.

9 So, with that, I'll let Michele go through the
10 changes. During the public comment period, the only
11 thing I'll say is that you'll notice the changes,
12 most of them, if not, all of them are technical.
13 They're very small changes. There were no
14 substantive comments that were received other than
15 these technical changes. There were some additions
16 to data. As individuals now realize the importance
17 of the SAMP, they were adding data to the
18 information that we have been given, so most of it
19 is an additional data that they were giving us in
20 recognition to that, or small changes.

21 MS. ARMSBY: We received comments
22 from four people during the formal public comment
23 period, from the Town of New Shoreham, the Block
24 Island Tourism Council, the Rhode Island Bays,

1 Rivers & Watershed Team, and the Rhode Island Party
2 and Charter Boat Association. And, as Grover said,
3 most of the changes that have been identified in
4 this document are really additions, clarifications
5 to statements and, for the most part, are really
6 just minor changes.

7 CHAIRMAN TIKOIAN: Michele, can I
8 ask you, was that before the subcommittee adopted it
9 or after?

10 MS. ARMSBY: These are changes made
11 after the subcommittee.

12 CHAIRMAN TIKOIAN: After the
13 subcommittee. Okay.

14 MR. FUGATE: After the subcommittee
15 approves it and the full Council approved it to go
16 out to public notice, these were the changes we
17 received during the public notice period, during the
18 formal rule making process.

19 CHAIRMAN TIKOIAN: It went out for
20 workshop, too, right?

21 MR. FUGATE: It did not go out for a
22 workshop. As I said, only one person showed up, he
23 said, there's no changes, I have no comment, so
24 there was no comment during the workshop.

1 CHAIRMAN TIKOIAN: Okay. Well,
2 then, how many are there, roughly?

3 MS. ARMSBY: There's maybe --

4 CHAIRMAN TIKOIAN: If there were
5 incidental changes, unless the Council -- I know
6 we've had a chance to look at them, if they are
7 incidental changes, I don't think we need, if we
8 reviewed them, but if there's something of
9 significance that you think we should, because I
10 know we've gone through -- three or four of us have
11 already gone through this once, unless Council
12 members have a question on the specific.

13 MR. FUGATE: I would just note,
14 Mr. Chairman, that the changes appear in red in the
15 text. They are following in word, this track
16 changes format, but you'll see the changes that are
17 in the Council's document and are appearing as red,
18 so.

19 CHAIRMAN TIKOIAN: Okay. Does
20 anything stick out in your mind that you think we
21 should be talking about?

22 MS. ARMSBY: No. As Grover
23 mentioned, everything that was really just further
24 information, additional, just to kind of add more

1 data, more information. There weren't any
2 substantial changes. There were no changes to the
3 policies. It was merely just adding. Adding them.

4 MR. FUGATE: What the SAMP planning
5 staff did is they -- the three maps that are
6 changed, they show you both the before and after, so
7 that you can see the changes that were made.

8 MR. GOMEZ: How are we tracking the
9 changes? Will this be on the Sea Grant website
10 that's being used?

11 MR. FUGATE: Yes.

12 MR. GOMEZ: Does it have a revision
13 number? How do I know which revision?

14 MR. FUGATE: Well, right now, Don,
15 if the full Council approves this chapter tonight it
16 will be held, so it will be on the website as being
17 approved by the Council, but not forwarded to the
18 Secretary of State's Office.

19 MR. GOMEZ: I understand that. But,
20 there's already something there, right, the
21 recreational?

22 MR. FUGATE: There is. It went out
23 to public notice, and then if the Council approves
24 this tonight, they will then have the approved

1 chapter on the website.

2 MR. GOMEZ: Are they both going to
3 be there?

4 MR. FUGATE: Yes.

5 MR. GOMEZ: And they will be --

6 MR. FUGATE: Yes.

7 MR. GOMEZ: The revision number or
8 something will tell me.

9 MR. FUGATE: The planning staff have
10 done great detail in tracking throughout the entire
11 process, the comments that we received and how each
12 one was responded to. So, there is a matrices that
13 follows this.

14 MR. GOMEZ: You have a history?

15 MR. FUGATE: Yes. The matrices for
16 this chapter is probably 30 or 40 pages, comments
17 received all the way through the process, not just
18 during the public, so we can track all the way back,
19 if somebody said they made a comment back in the
20 stakeholder process, we can track that comment and
21 we know how we treated it.

22 MR. GOMEZ: Where does that reside?

23 MR. FUGATE: It's on the website.

24 MR. GOMEZ: It is on the website,

1 too.

2 MS. ARMSBY: In your packet for
3 tonight is the matrix that has all of the comments
4 received during the formal public comment period as
5 well as the response by the Ocean SAMP team as to
6 how the document was changed.

7 CHAIRMAN TIKOIAN: Do you have a
8 copy of the plan that we adopted that have all the
9 steps of approval?

10 MR. FUGATE: I don't have it here
11 with me, Mr. Chairman, but we can e-mail it to all
12 the Council members.

13 CHAIRMAN TIKOIAN: Just, as just a
14 brief, we had the subcommittee had a hearing on
15 adopting a procedure on how the chapters were going
16 to be adopted over the period of time of the SAMP,
17 and, as a result of that, and I know there was an
18 article in the paper, it gave the public, I guess
19 three or four bites at the apple on reviewing this
20 chapter and, obviously, this is, I am going to say
21 next to the last step because they have one more
22 shot when we adopt this at the end, is that correct?

23 MS. ARMSBY: Yes.

24 MR. GOLDMAN: Mr. Chairman, that

1 chart, if you go to the SAMP website, one of the
2 very first things is public comment. It says,
3 "Public comment procedure." It's one of the very
4 first windows you can open.

5 CHAIRMAN TIKOIAN: Thanks. We'll
6 preserve this. But, can I pass this around so that
7 the members can see it. But, you know, I want to
8 thank you. Like, I know you had offered to do this
9 from the last subcommittee, but I consider this a
10 historic moment that, Michele, you're the one who
11 presented the very first chapter of the Ocean SAMP
12 in Rhode Island, Coastal Resources Management
13 Council. I know how hard you and your colleagues
14 worked on this. That was a great presentation that
15 night. Thank you for coming tonight.

16 MS. ARMSBY: Thank you.

17 CHAIRMAN TIKOIAN: Any other public
18 comment before we close the public comment?

19 MR. SULLIVAN: Question. Grover, in
20 that I, to Don's point, is the adopted one going to
21 be left in the track changes format, or are you
22 going to accept that?

23 MR. FUGATE: That's up to the
24 Council. If they want it left in that format, we

1 can do that.

2 MR. SULLIVAN: I think it helps some
3 people at this point, and I think certainly they all
4 ought to be, you know, put in the final format prior
5 to submission, but I think people looking at it,
6 trying to determine change, it would be good to see
7 that staff had heard and responded to things.

8 MR. FUGATE: Fine, Director. We
9 have no problem with that.

10 MR. SULLIVAN: Well, that's a
11 suggestion. Then, Grover, if you would, because I
12 don't see it, you commented on the Narragansett
13 tribal input, and did you mean that with regard to
14 recreation and tourism, or the historical, another
15 artifact?

16 MR. FUGATE: They have been brought
17 in as part of the Federal process. They are treated
18 under the Federal process as a Sovereign nation, and
19 so they review as if they are a Federal partner, and
20 throughout the entire document, all the technical
21 reviews, they have asked to be brought in on several
22 of the chapters even before they're written to help
23 with the research and structure the research that's
24 being done, particularly the geological information.

1 One of the areas that we have to cover under Section
2 106 is the paleo reconstruction of the preglacial
3 retreat, and where those populations might have
4 been, reconstructing the landscape and then using
5 the sensitivity model to analyze whether there is
6 any areas that we have to potentially focus in and
7 do more intensive archaeological surveys. The
8 Narragansetts are helping us with that, in the
9 interpretation of the paleo archaeological
10 reconstruction of the environment. They are also
11 helping us with structuring all the geophysical and
12 geotechnical studies that are done, so that we might
13 be able to capture any artifacts that might be
14 there, and so they're advising us throughout the
15 process. They're also part of the technical chapter
16 reviews for all of the individual biota, for
17 instance, they are asked to participate in that.

18 In the process, under Section 106, we had a
19 meeting with the Army Corps and the Narragansetts
20 have said that they will reach out to the Wampanaug
21 and also reach out to bring them into the Section
22 106 process, and the Army Corps would reach out to
23 the Mashantucket Peugeots, so that the entire tribal
24 nations in these areas, they will have an

1 opportunity to be part of the process and comment as
2 we go forward. As I indicated, the MMS process and
3 the Mass Ocean Plan process shortcircuited those and
4 they're having problems as a result of that.
5 Section 106 is very much process oriented.

6 MR. SULLIVAN: Your comment was with
7 regard to, that they'd offer to help staff or to
8 result to getting a recording in print format of
9 some of their very rich oral history to be a
10 phenomenal achievement?

11 MR. FUGATE: It would be the first
12 time that it appears in any document like this of
13 this nature, which is another reason the Federal
14 Ocean Policy Task Force is looking at this. It's
15 the first time that the tribe has actually been
16 asked to participate in any of this and be part of
17 this, and the Federal Government in particular, OCRM
18 and NOAA, have commended us on this and really
19 reached out to help us with their process because
20 this 106 consultation, as we're now seeing, is
21 extremely important.

22 MR. SULLIVAN: I think there is -- I
23 don't know for sure that they've been recognized,
24 but there is an appeal, or was Archidiaconate, which

1 is an off-shoot of the Peugeots, I might affirm that
2 one or not, but that would be a phenomenal
3 achievement. Thank you, Mr. Chairman.

4 CHAIRMAN TIKOIAN: Ms. Marks.

5 MS. MARKS: Yes, this a public
6 hearing.

7 CHAIRMAN TIKOIAN: Yes.

8 MS. MARKS: Right. So, I just
9 wanted to comment. My name is Eugenia Marks. I am
10 the Policy director at the Audubon Society of Rhode
11 Island. I have been a part of the stakeholder
12 process. I wanted to thank the Council and the
13 staff for their working on making this a very open
14 and public process, and I have already commented and
15 suggestions have been responded to. I just wanted
16 to make a clarification on the issue about
17 land-based birds on Block Island, which draw
18 tourists an extended tourism period on Block Island
19 into the first part of October, that those land
20 birds get there over water, over the airspace and
21 the particular pattern is that these birds are
22 flying off course, come over water, they fly at
23 night, at dawn, they find themselves over water and
24 look for the first landfall, which is Block Island,

1 they land on the south shore and travel through the
2 island to the north and then take off the north
3 point, going back over towards the mainland, to
4 continue their southerly migration, and so, I
5 understand, one, that this will be considered under
6 the ecology chapter, but just as it pertains to
7 tourism, the birds need to get there to draw the
8 tourists, and so I just wanted to make that comment.
9 And, again, thank you all very much for this process
10 in spacial planning.

11 CHAIRMAN TIKOIAN: Thank you,
12 Ms. Marks, and thank you for the compliment. Any
13 other questions? Names.

14 MR. COLT: Hi. My name is Ames
15 Colt. I'm the chair of the Bays, Rivers &
16 Watersheds Coordination Team, but I'm speaking here
17 simply as a citizen of Rhode Island, and I've been
18 following this process closely, have submitted
19 written comments. I am extremely supportive of this
20 whole effort. We are at the frontier of ocean
21 planning for good reasons; and, hence, it is our
22 responsibility collectively as a State and a
23 community of managers to do the best we can, and,
24 so, whatever I say is only to help the process

1 along. I have looked at the first two chapters that
2 are out in public in detail. I like very much the
3 comprehensive nature of the information that's been
4 collected and put in one place. This is a great
5 inventory of the resources and activities of this
6 area. As Chapter 1 draft states, this is a first
7 step in a dynamic ocean management planning
8 endeavor. We will have continued work to do once
9 the SAMP Plan is done. I think that's absolutely
10 the right approach. The approach of the SAMP
11 document overall, as it's taking shape, is very
12 broad in scope and intent. We're not just talking
13 about planning for certain activities. We are
14 trying to develop and show the world how to do ocean
15 management planning, marine spacial planning.
16 Hence, there is a lot of efforts in the writing of
17 these chapters to avoid getting into the specifics
18 of wind farm development, which everybody knows is
19 what we're very interested in in the near future.
20 So, we still have a lot of challenges, and I'm
21 talking to you now as a Council because I still
22 think you're going to have to wrestle out a number
23 of issues as to the scope and purpose of this plan
24 and how it will continue to evolve over time.

1 For example, we do have a comprehensive
2 cataloging of recreational boating, shoreside
3 recreational facilities in this chapter, but we
4 don't see a lot of discussion about the risks and
5 potential impacts of the development and operation
6 of large fixed structures on recreational
7 activities. And, again, I understand why we don't
8 want to necessarily get into something that would be
9 addressed in the impact assessment, but we all know
10 where we're going with this, at least in the short
11 term, and I think we need to talk a little bit more
12 about how much of the discussion of potential
13 impacts should be in this plan, and, hence,
14 recommended policies to deal with them.

15 For example, again, if we move forward with
16 utility-scale wind farm development, we know there
17 are going to be intensive marine construction
18 operations ongoing that will be tied directly to
19 Rhode Island-based shoreside facilities, but we
20 haven't talked a lot here yet about how bay
21 activities would be effected by those activities.
22 You have to set a boundary. We didn't include the
23 bay, there are good reasons for that, but that
24 doesn't get you away from the boundary problem of

1 east passage, west passage activities potentially
2 being impacted by a lot of boat traffic being
3 generated by construction. I'm not saying what you
4 should do. I am saying we have got to think about
5 this more as the chapters develop.

6 Section 660, Recreational and Tourism Policies
7 and Standards. Very broad. Lots of encourages and
8 supports versus mandatory requirements. And, you
9 know, I can't say that you should go a lot further
10 than that, but this is where potentially some
11 additional guidance can be put that will structure
12 the impact assessments, the impact statement
13 developments that will follow.

14 I would suggest specifically in the standards,
15 number three, "Prior to project development, the
16 Council recommends that project developers perform
17 systematic observations of recreational boating
18 intensity." Absolutely. Call the maps of the race
19 courses and the cruising lines straight lines.
20 Powerboats may do that. Sailboats definitely don't,
21 okay. Am I saying change the maps, no, because you
22 are going to get into a lot of fuzziness. But I am
23 saying, the way sailors actually use this area makes
24 that need for systematic observations of boating

1 activity in these areas very important. So, I would
2 suggest you say, "shall perform these systematic
3 observations," okay. That kind of strengthening of
4 various policies and standards in this chapter and
5 forthcoming chapters, I would suggest is the purview
6 of this Council and something you should put some
7 time in considering, either through your
8 subcommittee or in these large deliberations. Thank
9 you.

10 MR. FUGATE: Mr. Chairman, if I can
11 respond to both of these issues. First of all,
12 there is an estate plan for State water. This plan
13 is really not meant to deal with those issues, so we
14 do already have mapped out, user set, water typeset,
15 regulation set, forwarded to State waters. Federal
16 waters, we do not have jurisdiction over, so we
17 cannot say words like "shall" in Federal waters
18 until we get that Federal consistent authority which
19 we have to apply to the Federal Government to do.
20 The other issue is, on the renewable energy side, we
21 thought about whether we should incorporate all of
22 the potential impacts in each individual chapter
23 dealing with renewable energy. It was felt at the
24 time, and I think we still stand by that, that it

1 was better to aggregate all those potential impacts
2 in renewable energy chapters, specifically dealing
3 with wind energy, and all those issues will be dealt
4 with in that chapter relative to each of these
5 specific areas. You can either scatter them about
6 like a shotgun through the chapters where people
7 might have difficulty trying to find those before we
8 aggregate them in one chapter. It was chosen to
9 aggregate them in one chapter, so people can go
10 directly to that chapter, pull it out, so people
11 would know what would be expected in the renewable
12 energy.

13 CHAIRMAN TIKOIAN: Any comments?

14 Michele, do you have any last comments?

15 MS. ARMSBY: No.

16 CHAIRMAN TIKOIAN: Motions? Are
17 there any other public comments?

18 (NO RESPONSE)

19 CHAIRMAN TIKOIAN: Close the public
20 hearing and entertain a motion to approve this.

21 MR. COIA: Move to approve.

22 CHAIRMAN TIKOIAN: Motion made
23 and --

24 MR. DAWSON: Second.

1 CHAIRMAN TIKOIAN: -- seconded to
2 adopt the first chapter of the Rhode Island Ocean
3 SAMP, Chapter 6, Recreation and Tourism. Any
4 discussion?

5 MR. COIA: I just want to comment
6 and say that was a very good presentation. Thank
7 you.

8 CHAIRMAN TIKOIAN: I know a lot of
9 work goes into this. It's been a very strong team
10 effort, and I, also, would like to thank my fellow
11 Council members for all of their support towards
12 developing and adopting this plan and moving
13 forward.

14 So, at this time we'll call a vote. All in
15 favor signify by saying aye?

16 (VOICE VOTE TAKEN)

17 (UNANIMOUS)

18 CHAIRMAN TIKOIAN: Opposed?

19 (NO RESPONSE)

20 CHAIRMAN TIKOIAN: So carried.

21 Thank you very much. Two-minute recess until
22 Mr. Lemont comes back.

23 (BRIEF PAUSE)

24 CHAIRMAN TIKOIAN: Can we bring the

1 Council meeting back to order.

2 First order of business, any questions on
3 either the Category A or Category B list?

4 (NO RESPONSE)

5 CHAIRMAN TIKOIAN: Hearing none, the
6 next order of business is executive session. Mr.
7 Goldman.

8 MR. GOLDMAN: You can move first.

9 VICE CHAIRMAN LEMONT: Mr. Chairman,
10 I move that under the appropriate laws of the State
11 of Rhode Island, and the Chapter and the cite is
12 42-46-5(a)1, that we move into executive session for
13 the discussion of personnel.

14 CHAIRMAN TIKOIAN: Is there a
15 second?

16 MR. COIA: Second it.

17 CHAIRMAN TIKOIAN: We need a vote.
18 Roll call vote, please.

19 MR. GOLDMAN: Director?

20 MR. SULLIVAN: Aye.

21 MR. GOLDMAN: Mr. Abedon?

22 MR. ABEDON: Yes.

23 MR. GOLDMAN: Mr. Dawson?

24 MR. DAWSON: Aye.

1 MR. GOLDMAN: Mr. Gomez?

2 MR. GOMEZ: Yes.

3 MR. GOLDMAN: Mr. Coia?

4 MR. COIA: Yes.

5 MR. GOLDMAN: Mr. Driscoll?

6 MR. DRISCOLL: Yes.

7 MR. GOLDMAN: Mr. Lemont?

8 VICE CHAIRMAN LEMONT: Yes.

9 MR. GOLDMAN: Mr. Chairman?

10 CHAIRMAN TIKOIAN: Yes.

11 MR. GOLDMAN: Mr. Chairman, before
12 we go into executive session on the personnel issue,
13 I want to state for the record that pursuant to the
14 Open Meetings Act, the personnel to be discussed
15 have been notified in writing of this intention and
16 indicated to me that they do not desire the meeting
17 be open to the public, so it is a closed meeting, so
18 everybody has got to leave the room.

19 (HEARING ADJOURNED AT 7:25 P.M.)

20

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C E R T I F I C A T E

I, Rebecca J. Forte, a Notary Public in and for the State of Rhode Island, hereby certify that the foregoing pages are a true and accurate record of my stenographic notes that were reduced to print through computer-aided transcription.

In witness whereof, I hereunto set my hand this 22nd day of January, 2010.

Rebecca J. Forte 

REBECCA J. FORTE, NOTARY PUBLIC

My Commission (RI) Expires on 7/15/13

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