

The Ocean SAMP Adoption Process

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Rhode Island's Renewable Energy Standard, enacted in 2004, requires that 16% of the state's electrical power be supplied by renewable sources by the end of 2019. In response, the Rhode Island Coastal Resource Management Council (CRMC) proposed the creation of the Ocean Special Area Management Plan (Ocean SAMP) as a regulatory, planning, and adaptive management tool. As such, the Ocean SAMP sets out policies and recommendations for the protection and management of the state's natural wildlife and human activities (including offshore renewable energy), based on an extensive body of research.

The Ocean SAMP study area covers the width of the state and extends well beyond state jurisdiction, extending an additional 27 miles into federal waters. While the ultimate goal is to utilize and apply the Ocean SAMP to the entire study area, Rhode Island has direct authority only over state waters (3 miles out from shore). However, Rhode Island will take advantage of the federal consistency provisions within the Coastal Zone Management Act (CZMA) (16 USC SS 1451-1465) to extend the applicability of the Ocean SAMP to activities in federal waters and neighboring state waters as well. As described in NOAA's *Federal Consistency Overview* (2009) document:

Federal consistency is the CZMA provision that *federal actions* that have *reasonably foreseeable effects* on any land or water use or natural resource of the coastal zone should be consistent with the *enforceable policies* of a coastal state's federally approved.

There are four types of federal actions covered by the CZMA federal consistency provisions: (1) federal agency activities, (2) federal license or permit activities, (3) outer continental shelf (OCS) plans, and (4) federal assistance to state and local governments. Federal agency activities include activities and development projects performed by a federal agency, or a contractor for the benefit of a federal agency. Federal license or permit activities are those activities undertaken by non-federal actors requiring federal permits, licenses or other forms of federal approval.

To ensure approval and to satisfy CZMA procedural requirements, Rhode Island needs to break the Ocean SAMP adoption process down into several separate and distinct stages:

Step One: Formal Adoption of the Ocean SAMP into the State Coastal Plan

- CRMC Approval of the Ocean SAMP (October 2010)
- File the Ocean SAMP with Rhode Island Secretary of State
- National Oceanic and Atmospheric Administration (NOAA) Approval of the Ocean SAMP as a Programmatic Change to the RI Coastal Resources Management Program

Step Two: Extend Ocean SAMP Enforceable Policies to Federal Actions in Federal Waters through Geographic Location Description (GLD)

- CRMC Submits GLD Documentation to the NOAA Office of Ocean and Coastal Resource Management (OCRM)
- OCRM Approval of GLD (30 – 120 days)

Step Three: Coordination with Federal Agencies

- Continue Close Coordination with Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) through the Atlantic Governor’s Consortium (Ongoing)
- File the Ocean SAMP and establish an MOU for Renewable Energy Projects with FERC (6-8 months)

Step One: Formal Adoption of the Ocean SAMP into the State Coastal Plan

Before the Ocean SAMP may be utilized within federal waters, it must first become federally approved as part of the existing, federally-approved Rhode Island Coastal Resources Management Program (RICRMP), which applies to Rhode Island state waters. To do this, the Ocean SAMP must follow the same procedures as all other CRMC-approved SAMPs (Salt Ponds Region, Narrow River, Pawcatuck River, Metro Bay, Greenwich Bay, and Aquidneck Island). This includes working with the National Ocean and Atmospheric Administration’s (NOAA) Office of Coastal Resources Management (OCRM), as the CRMC does for all CZMA procedures and programmatic approvals. While the Ocean SAMP is a complex, comprehensive document, the result of significant state investment of time and money, it is still treated by NOAA as a programmatic change to the RICRMP. Now that the CRMC has approved the Ocean SAMP (October 19, 2010), it must be submitted to and approved by OCRM and filed with the Rhode Island Secretary of State.

The Ocean SAMP policies and standards include numerous “regulatory standards,” which, once federally approved, will be interpreted by OCRM as “enforceable policies.” Under the CZMA regulations, an enforceable policy is a state policy that is legally binding under state law and by which a state exerts control over federal actions and private coastal uses and resources and has been incorporated into that state’s federally approved coastal management plan. Because the CZMA does not give states direct authority over federal waters, a state enforceable policy is only directly enforceable in state waters. However, under the federal consistency provision of the CZMA, projects or activities in federal waters which are “federal actions” as described above may be reviewed for consistency with state enforceable policies such as those included in the Ocean SAMP.

Step Two: Adopt a Geographic Location Description (GLD) to Apply the Ocean SAMP to Federal Actions in Federal Waters

While formal adoption of the Ocean SAMP into the RICRMP would give CRMC the authority to review federal actions in federal waters for consistency with Ocean SAMP enforceable policies, the burden would remain on CRMC to continuously monitor federal actions such as license or permit activities in federal waters off the coast of Rhode Island, and to evaluate such actions on a case-by-case basis. Under this scenario, once aware of a potentially objectionable federal action,

CRMC would have to notify the applicant, the relevant Federal agency, and OCRM that it intended to review the activity. CRMC must also prove that the project may have reasonably foreseeable coastal effects so that it can seek approval and permission from OCRM to exercise consistency authority. Even if CRMC obtained the necessary permission to exercise federal consistency review, there is still the risk that OCRM will find that the federal activity has no **reasonably foreseeable effect** on the coastal zone or alternatively, that the project is too far along and the federal agency will not be required to submit to federal consistency review.

A more desirable option is to shift the burden and require federal agencies to be obligated to inform states when their actions in federal waters may have a reasonably foreseeable coastal effect. This would mean that CRMC would no longer need to be aware of federal on a case-by-case basis. CRMC is pursuing this option for the Ocean SAMP by requesting a Geographic Location Description (GLD) to their coastal program. A Geographic Location Description includes a description of an area outside of the state's coastal zone as well as a list of federal licenses and permits which may have coastal effects. This would extend the state's authority to exercise its federal consistency over a wide range of federal actions occurring within a geographically defined area of federal waters (in this case, the Ocean SAMP area).

As explained above, the CZMA identifies four types of federal actions: (1) federal agency activities, (2) federal license or permit activities, (3) OCS plans, and (4) federal assistance to state and local governments. A GLD is not applicable for federal activities, the first category of federal actions, because the federal agency is required to determine if it will have a reasonably foreseeable effect on state coastal resources or uses and must inform the state regardless of whether it occurs in state or federal waters. However, the GLD is an important tool for states to obtain consistency review over the second category, federal license or permit activities.

The standard for the CZMA's "effects test" is whether there is any reasonable foreseeable effect on any coastal use or resource resulting from a federal action. The CZMA considers not only environmental effects, but also effects on coastal uses. The state has the burden of explicitly explaining how a particular federal action will have a reasonably foreseeable coastal effect on the state. The burden for determining or demonstrating effects is greater the further removed an action takes place outside the state's coastal zone.

Therefore, in order to obtain a GLD for the Ocean SAMP area, CRMC must first provide OCRM with a list of specific federal licenses or permits (not federal activities) for which it is seeking federal consistency review authority. CRMC must then describe a specific geographic location within federal waters and explicitly show that the listed federal actions will have reasonably foreseeable coastal effects in the state. The information gathered by the Ocean SAMP process will provide strong evidence to justify both the state's interest in federal waters within the SAMP area as well as the likely effects that listed federal licenses or permits could have on Rhode Island's coastal resources.

Once OCRM approves the GLD, the state's authority to review the listed federal actions in the Ocean SAMP area for federal consistency is automatic and the burden is on the federal agencies to inform the state of all federal actions that could have a reasonable foreseeable effect on Rhode

Island's coastal resources. In addition, CRMC will not have to respond to each federal activity on a case-by-case basis.

Step Three: Coordination with Federal Agencies

For renewable energy projects, Rhode Island will establish formal agreements with key federal agencies in addition to gaining federal approval of the Ocean SAMP by NOAA OCRM. In particular, formal agreements will be entered into with the Bureau of Ocean Enforcement and Management (BOEM) (formally MMS), the lead federal agency for leasing OCS lands for offshore renewable energy projects, and the Federal Energy Regulatory Commission (FERC), which issues licenses for hydrokinetic projects.

Continue Close Coordination with BOEM through the Atlantic Governor's Consortium:

Throughout the Ocean SAMP process, CRMC has closely coordinated with BOEM to share scientific information and identify mechanisms to appropriately streamline the offshore renewable energy development regulatory process. BOEM, through the Atlantic Governor's Consortium, recognizes Rhode Island as a leader in offshore renewable energy siting. Rhode Island has presented a pilot project to demonstrate the benefits of Marine Spatial Planning in shortening the permitting process for wind farm development. The typical time frame for a BOEM approval as cited in BOEM's regulations is 7-10 years. Because of the work of the Ocean SAMP, BOEM is poised to enter into a process that would shorten the time frame down to as little as 24 months. It will also enhance the necessary coordination and keep CRMC on a level playing field with BOEM during all phases of the offshore wind development process.

File the Ocean SAMP and Develop an MOU for Renewable Energy Projects with FERC:

CRMC will formally file the Ocean SAMP document with the Federal Energy Regulatory Commission (FERC) so that the Ocean SAMP may serve as a comprehensive plan and be taken into account by FERC in the review and permitting of renewable energy projects within the purview of FERC. A Memorandum of Understanding (MOU) with FERC will also be established to ensure coordination and to formally recognize that the Ocean SAMP will be taken into account by FERC for the review of renewable energy projects.