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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT
COUNCIL

Introduced By: Representatives Tanzi, Cortvriend, Handy, Spears, Henries, Boylan,
Fogarty, Kislak, and Bennett

Date Introduced: March 01, 2023

Referred To: House State Government & Elections

It is enacted by the General Assembly as follows:

1 SECTION 1. The title of Chapter 46-23 of the General Laws entitled "Coastal Resources
2 Management Council" is hereby amended to read as follows:

3 ~~CHAPTER 46-23~~

4 ~~Coastal Resources Management Council~~

5 CHAPTER 46-23

6 DEPARTMENT OF COASTAL RESOURCES

7 SECTION 2. Sections 46-23-1, 46-23-2, 46-23-4, 46-23-4.1, 46-23-6, 46-23-6.1, 46-23-
8 6.2, 46-23-7, 46-23-7.1, 46-23-7.2, 46-23-7.3, 46-23-7.4, 46-23-7.5, 46-23-8, 46-23-9, 46-23-10,
9 46-23-11, 46-23-13, 46-23-14, 46-23-15, 46-23-15.1, 46-23-16, 46-23-18, 46-23-18.1, 46-23-18.2,
10 46-23-18.3, 46-23-18.4, 46-23-18.5, 46-23-18.6, 46-23-20, 46-23-20.1, 46-23-20.2, 46-23-20.3,
11 46-23-20.4, 46-23-20.5, 46-23-20.6, 46-23-21, 46-23-22, 46-23-23, 46-23-24 and 46-23-25 of the
12 General Laws in Chapter 46-23 entitled "Coastal Resources Management Council" are hereby
13 amended to read as follows:

14 **46-23-1. Legislative findings.**

15 (a)(1) Under article 1, § 17 of the Rhode Island Constitution, the people shall continue to
16 enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they
17 have been heretofore entitled under the charter and usages of this state, including, but not limited
18 to, fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and

1 passage along the shore; and they shall be secure in their rights to use and enjoyment of the natural
2 resources of the state with due regard for the preservation of their values; and it is the duty of the
3 general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and
4 other natural resources of the state, and to adopt all means necessary and proper by law to protect
5 the natural environment of the people of the state by providing adequate resource planning for the
6 control and regulation of the use of the natural resources of the state and for the preservation,
7 regeneration, and restoration of the natural environment of the state.

8 (2) The general assembly recognizes and declares that the coastal resources of Rhode
9 Island, a rich variety of natural, commercial, industrial, recreational, and aesthetic assets, are of
10 immediate and potential value to the present and future development of this state; that unplanned
11 or poorly planned development of this basic natural environment has already damaged or destroyed,
12 or has the potential of damaging or destroying, the state's coastal resources, and has restricted the
13 most efficient and beneficial utilization of these resources; that it shall be the policy of this state to
14 preserve, protect, develop, and, where possible, restore the coastal resources of the state for this
15 and succeeding generations through comprehensive and coordinated long range planning and
16 management designed to produce the maximum benefit for society from these coastal resources;
17 and that preservation and restoration of ecological systems shall be the primary guiding principle
18 upon which environmental alteration of coastal resources will be measured, judged, and regulated.

19 (b)(1) That effective implementation of these policies is essential to the social and
20 economic well-being of the people of Rhode Island because the sea and its adjacent lands are major
21 sources of food and public recreation, because these resources are used by and for industry,
22 transportation, waste disposal, and other purposes, and because the demands made on these
23 resources are increasing in number, magnitude, and complexity; and that these policies are
24 necessary to protect the public health, safety, and general welfare. Pursuant to 16 U.S.C. § 1452
25 ("The Coastal Zone Management Act"), the general assembly hereby directs the ~~council~~ [department](#)
26 [of coastal resources](#) (referred to as "~~CRMC~~" [the "department"](#)) to exercise effectively its
27 responsibilities in the coastal zone through the development and implementation of management
28 programs to achieve wise use of the land and water resources of the coastal zone.

29 (2) Furthermore, that implementation of these policies is necessary in order to secure the
30 rights of the people of Rhode Island to the use and enjoyment of the natural resources of the state
31 with due regard for the preservation of their values, and in order to allow the general assembly to
32 fulfill its duty to provide for the conservation of the air, land, water, plant, animal, mineral, and
33 other natural resources of the state, and to adopt all means necessary and proper by law to protect
34 the natural environment of the people of the state by providing adequate resource planning for the

1 control and regulation of the use of the natural resources of the state and for the preservation,
2 regeneration, and restoration of the natural environment of the state.

3 (c) That these policies can best be achieved through the creation of a [department of](#) coastal
4 resources ~~management council~~ as the principal mechanism for management of the state's coastal
5 resources.

6 (d) The general assembly recognizes and declares that maintenance dredging is required to
7 remove natural silt accumulations; Rhode Island has ~~not had~~ a general maintenance dredging policy
8 and programs for ports, port facilities, channels, harbors, public and private marinas and boating
9 facilities, recreational facilities and habitat areas [and such programs should continue.](#); ~~other major~~
10 ~~coastal states have maintenance dredging policies and in water maintenance dredge disposal sites;~~
11 ~~as a result of the lack of a general maintenance dredging policy and program and as a result there~~
12 ~~has been:~~

13 ~~(1) A decrease in the depth of the Providence Channel from forty four (44) feet in 1971 to~~
14 ~~twenty four (24) feet in 1996;~~

15 ~~(2) Navigational restrictions on ocean going vessels through the state's waterways and~~
16 ~~channels; and~~

17 ~~(3) A decrease in the number of available slips and moorings at marinas throughout the~~
18 ~~state; and the lack of a maintenance dredging policy and programs have significant adverse~~
19 ~~environmental and economic effects on the state and therefore it is in the best interest of the state,~~
20 ~~the cities and towns of the state, and the citizens thereof for the state to have a general maintenance~~
21 ~~dredging policy and programs to resolve issues related to dredge maintenance and disposal and~~
22 ~~avoid future significant direct and indirect adverse impact on the environment and economy of the~~
23 ~~state.~~

24 (e) The [department of](#) coastal resources ~~management council~~ is hereby designated as the
25 lead state agency for purposes of dredging in tidal waters and as such shall have the following
26 duties and responsibilities:

27 (1) To coordinate the interest of the state with regard to dredging;

28 (2) To formulate and adopt a state policy with regard to dredging which integrates those
29 interests;

30 (3) To cooperate with, negotiate, and to enter into agreements on behalf of the state with
31 the federal government and with other public bodies and private parties with regard to dredging;

32 (4) To act as the initial and primary point of contact for all applications to the state for
33 dredging projects in tidal waters;

34 (5) To develop, prepare, adopt pursuant to § 46-23-11, implement, and maintain a

1 comprehensive plan for dredge material management; and

2 (6) To cooperate and coordinate with the departments of environmental management,
3 transportation, administration, and health, and the economic development corporation in the
4 conduct of these duties and responsibilities.

5 (f)(1) The legislature recognizes that under Article I, § 17, the submerged lands of the state
6 are impressed with a public trust and that the state is responsible for the protection of the public's
7 interest in these lands. The state maintains title in fee to all soil within its boundaries that lies below
8 the high water mark, and it holds that land in trust for the use of the public. In benefiting the public,
9 the state preserves certain public rights which include, but are not limited to, fishery, commerce,
10 and navigation in these waters and the submerged lands that they cover.

11 (2) All the powers and duties previously vested in the coastal resources management
12 council since ~~Since~~ its establishment in 1971, are hereby transferred to the department of coastal
13 resources ("department"). ~~the CRMC~~ The department has ~~had~~ the authority to manage and plan for
14 the preservation of the coastal resources of the state including, but not limited to, submerged lands.
15 The legislature hereby declares that, in light of the unique size, scope, and overall potential impact
16 upon the environment of large scale filling projects involving twenty-five (25) acres or more, any
17 lease of tidal lands, or any license to use those lands, is subject to approval, disapproval, or
18 conditional approval by the direct enactment of the general assembly by legislative action. The
19 ~~CRMC~~ department shall review all requests for leases, licenses to use the land, and other authority
20 to use the land made by any applicant prior to presentation of the request to the general assembly,
21 and the ~~CRMC~~ department shall make recommendations on the request to the general assembly.
22 With the exception of any and all projects to fill land of twenty-five (25) acres or more, the general
23 assembly hereby recognizes and declares that the ~~CRMC~~ department is delegated the sole and
24 exclusive authority for the leasing of submerged and filled lands and giving licenses for the use of
25 that land. Accordingly, the ~~CRMC~~ department shall forthwith will develop, coordinate, and adopt
26 a system for the leasing of submerged and filled lands, and licenses for the use of that land, and
27 will ensure that all leases and licenses are consistent with the public trust. Pursuant thereto, the
28 ~~CRMC~~ department shall impose a maximum fee of eighty thousand dollars (\$80,000) per annum
29 for any transatlantic cable that makes landfall in Rhode Island. All such fees collected shall be
30 deposited ~~into the Bays, Rivers and Watersheds Fund, established pursuant to § 46-31-12.1, and~~
31 ~~shall be disbursed according to the purposes of that fund~~ as general revenue. Nothing contained in
32 this subsection negates, repeals, or alters the provisions, processes, and requirements for the leasing
33 of submerged land for the conduct of aquaculture as set out under chapter 10 of title 20. Therefore,
34 nothing in this chapter shall be construed to limit or impair the authority of the state, or any duly

1 established agency of the state, to regulate filling or dredging affecting tidal lands owned by the
2 state or any other entity, and nothing in this chapter shall be construed to limit or impair the
3 obligation of the applicant to obtain all applicable regulatory approvals. Specifically, and without
4 limiting the foregoing, nothing in this subsection negates, repeals, or alters the provisions,
5 processes, and requirements for water quality certification contained in chapter 12 of this title.

6 (3) Definitions. As used in this chapter, the following words shall have the following
7 meanings, unless the context clearly requires otherwise:

8 (i) “Administrative penalty” means a monetary penalty not to exceed the civil penalty
9 specified by statute or, where not specified by statute, an amount not to exceed one thousand dollars
10 (\$1,000).

11 (ii) “Department,” or “director” means the director of the department coastal resources as
12 established herein or his or her duly authorized agent, unless stated otherwise.

13 ~~(iii)~~ (iii) “Filled land” means portions of tidal lands which have been rendered by the acts of
14 man to be no longer subject to tidal action or beneath tidal waters.

15 ~~(iv)~~ (iv) “Mean high water” means a line of contour representing the 18.6 year average as
16 determined by the metonic cycle and/or its equivalent as evidenced by the records, tidal datum, and
17 methodology of the United States Coastal Geodetic Survey within the National Oceanic and
18 Atmospheric Administration.

19 (v) “Person” means any agency or political subdivision of the state, any state, public or
20 private corporation or authority, individual, trust, firm, joint stock company, partnership,
21 association, or other entity or any group thereof or any officer, employee or agent thereof, any
22 individual, group of individuals, firm, corporation, association, partnership, or private or public
23 entity, including a district, county, city, town, or other governmental unit or agent thereof, and in
24 the case of a corporation, any individual having active and general supervision of the properties of
25 the corporation.

26 (vi) “Service” means service upon a corporation under this section shall be deemed to
27 include service upon both the corporation and upon the person having active and general
28 supervision of the properties of the corporation.

29 ~~(vii)~~ (vii) “Tidal Lands” means those lands that are below the mean high water.

30 ~~46-23-2. Coastal resources management council created—Appointment of members~~
31 ~~Department of coastal resources -- Transfer of responsibilities and citizen advisory~~
32 ~~committee.~~

33 ~~(a) There is hereby created the coastal resources management council. The coastal~~
34 ~~resources management council shall consist of ten (10) members. Nine (9) members shall be~~

1 ~~appointed by the governor, with advice and consent of the senate, and one member shall serve ex~~
2 ~~officio. All current appointments to the coastal resources management council made by the~~
3 ~~governor with advice and consent of the senate are hereby validated and ratified and those~~
4 ~~appointees shall serve for the remainder of their term.~~

5 (1) ~~Six (6) of the members shall be appointed or elected officials of local government: three~~
6 ~~(3) of whom shall be appointed or elected officials in a municipality of fewer than twenty five~~
7 ~~thousand (25,000) in population, three (3) of whom shall be appointed or elected officials in a~~
8 ~~municipality of more than twenty five thousand (25,000) in population. The populations are to be~~
9 ~~determined by the latest federal census. Elected or appointed municipal officials shall hold seats on~~
10 ~~the council only so long as they remain in their elected or appointed office. Each municipal~~
11 ~~appointment shall cease if the appointed or elected official shall no longer hold or change the office~~
12 ~~which they held upon appointment. At least five (5) out of the six (6) appointed or elected members~~
13 ~~must be appointed or elected in a coastal municipality. When the governor submits his or her~~
14 ~~appointments to the senate for advice and consent, the governor shall specify the appointed or~~
15 ~~elected office that each municipal appointment holds; the population of the municipality~~
16 ~~represented; and the member being replaced.~~

17 (2) ~~Three (3) members shall be appointed by the governor from the public, with the advice~~
18 ~~and consent of the senate, one of the public members and his or her successors shall reside in a~~
19 ~~coastal municipality.~~

20 (3) ~~All members shall serve until their successors are appointed and qualified; during the~~
21 ~~month of January, the governor shall appoint, with the advice and consent of the senate, a member~~
22 ~~to succeed the members whose term will then next expire for a term of three (3) years commencing~~
23 ~~on the first day of February next following and until their successor is named and qualified. A~~
24 ~~member shall be eligible for successive appointments. No more than two (2) persons on the council~~
25 ~~shall be from the same municipality. A vacancy other than by expiration shall be filled in the~~
26 ~~manner of the original appointment but only for the unexpired portion of the term.~~

27 (a) There is hereby established within the executive branch of the state government a
28 department of coastal resources. The head of the department shall be the director of the department
29 coastal resources who shall be in the unclassified service and who shall be appointed by the
30 governor, with the advice and consent of the senate, and shall serve at the pleasure of the governor.

31 (b) Whenever, in any general law, public law or regulation the words “coastal resources
32 management council”, the “council” or “CRMC” shall appear, the same shall be deemed to refer to
33 and to mean the “department of coastal resources.” Whenever, in any general law, public law or
34 regulation the words “chairman” or “chairperson of the coastal resources management council”

1 shall appear, the same shall be deemed to refer to and mean the “director of the department of
2 coastal resources”.

3 (c) The director of the department of coastal resources (“director”) assuming any duties
4 formerly imposed upon any other department, division, board, commission, or other agency shall
5 perform those duties, notwithstanding that those duties were formerly performed by a board,
6 council department, or a single officer. Any ruling, decision, or order made by the director with
7 regard to matters within the director's jurisdiction shall be subject to any existing right of appeal to
8 a court of competent jurisdiction.

9 (d) There is hereby established a citizens advisory committee for coastal resources
10 (“committee”). The role of the advisory committee is to provide the department with input on policy
11 initiatives and program improvements and the director shall schedule and hold public committee
12 meetings at least two (2) times per year.

13 (1) The committee shall consist of ten (10) members. Nine (9) members shall be appointed
14 by the governor and one member shall serve ex officio. Members of the committee shall be
15 knowledgeable in coastal law and/or policy and include members representing coastal, urban,
16 indigenous, and environmental justice communities. No two (2) members shall reside in the same
17 community; and

18 ~~(4)~~(2) The director of the department of environmental management, or their designee,
19 shall serve ex officio. The ex-officio member shall not be counted as serving from any particular
20 municipality.

21 ~~(b) In addition to the foregoing voting members, the council may include a varying number~~
22 ~~of other members who may serve in an advisory capacity without the right to vote and who may be~~
23 ~~invited to serve by either the governor or the voting members. These advisory members may~~
24 ~~represent the federal agencies such as the navy, coast guard, corps of engineers, public health~~
25 ~~service, and the Federal Water Pollution Control Administration, and such regional agencies as the~~
26 ~~New England River Basins Commission and the New England Regional Commission and any other~~
27 ~~group or interest not otherwise represented.~~

28 ~~(e)~~(e) ~~There may be established a coastal resources~~ The director may establish other
29 ~~advisory committee which committee~~ committees, ~~appointed by the executive director of the~~
30 ~~coastal resources management council,~~ which may include, but not be limited to, representation
31 from the following groups: ~~one of whom may be~~ a representative of the university of Rhode Island
32 graduate school of oceanography and the college of resources development, ~~one of whom may be~~
33 a representative of the Sea Grant National College Program, ~~one of whom may be~~ a representative
34 of the army corps of engineers, ~~one of whom may be~~ a representative of the federal environmental

1 protection agency's Narragansett Bay laboratory, ~~one of whom shall be~~ a representative of the
2 department of coastal resources ~~management council~~, ~~one of whom may be~~ the director of the
3 department of environmental management; ~~one of whom may be~~ a member of the Rhode Island
4 Marine Trade Association and ~~one of whom may be~~ a representative of a regional environmental
5 group. The ~~council~~ director shall have the authority to appoint ~~these additional~~ members to the
6 advisory ~~committee~~ committees, established pursuant to the provisions of this subsection, as is
7 deemed necessary or advisable by the ~~advisory committee or the council~~ director. It shall be the
8 responsibility of the ~~committee~~ committees to advise the ~~coastal resources management council~~
9 department on environmental issues relating to ~~dredging and permitting related thereto, including,~~
10 ~~but not limited to, those issues defined in §§ 46-23-18.1—46-23-18.3, inclusive~~ coastal programs.

11 ~~(d) The council shall have the authority to form committees of other advisory groups as~~
12 ~~needed from both its own members and others.~~

13 ~~**46-23-4. Officers of the council—Quorum and vote required for action**~~ **Attorneys**
14 **and employees of the department.**

15 ~~The governor shall select from the appointed members a chairperson and vice chairperson.~~
16 ~~The council shall thereupon select a secretary from among its membership or staff. The council~~
17 ~~may engage staff, including legal counsel, as it deems necessary. A quorum shall consist of six (6)~~
18 ~~members of the council. A majority vote of those present shall be required for action.~~

19 (a) Staff attorney. There is hereby created the position(s) of staff attorney to the director of
20 the department of coastal resources. The director is hereby empowered and directed to hire a staff
21 attorney(s) consistent with this section. The director shall have at least one full-time attorney-at-
22 law on staff. The staff attorney(s) shall be hired by and serve at the pleasure of the director and
23 shall serve in the unclassified service. The position of staff attorney(s) shall be a full-time and report
24 directly to the director. The staff attorney(s) shall be an attorney(s)-at-law and shall not otherwise
25 engage in the practice of law. The staff attorney(s) shall represent the director and staff on all
26 matters including representation at hearings.

27 (b) The director may engage staff, including legal counsel, as it deems necessary.

28 (c) Notwithstanding any other law to the contrary and upon the effective date of this
29 section, all employees of the coastal resources management council shall be transferred to the
30 department of coastal resources and retain civil service status, title, rate of pay and benefits.

31 ~~**46-23-4.1. The commissioner of coastal resources management**~~ **Coordination of**
32 **agencies.**

33 ~~The council shall engage a commissioner of coastal resources management who shall be~~
34 ~~an employee of the council and who shall not be a member of the council. The commissioner~~

1 director shall coordinate and liaison with the director of the department of environmental
2 management, and ~~his or her~~ director's staff shall be at the same staff level as the ~~other~~
3 ~~commissioners~~ staff at the department of environmental management and shall work directly with
4 each other. ~~the other commissioners. The commissioner of coastal resources management shall be~~
5 ~~in the unclassified service. The duties and powers of the commissioner of coastal resources~~
6 ~~management shall be determined by the council. The council shall not engage a commissioner of~~
7 ~~coastal resources management for more than five (5) years; provided, however, that the council~~
8 ~~may renew its contract with the commissioner of coastal resources management.~~

9 **46-23-6. Powers and duties — Rights-of-way Continuing authorities -- Powers and**
10 **duties -- Rights-of-way.**

11 All prior actions taken by the coastal resources management council including, but not
12 limited to, permits issued, enforcement actions taken, special area management plans, policies and
13 all duly promulgated regulations remain valid and enforceable by the department. In order to
14 properly manage coastal resources the ~~council has~~ department is empowered to exercise all the
15 functions, powers, and duties heretofore vested in the coastal resources management council,
16 including, but not limited to, the following powers and duties:

17 (1) Planning and management.

18 (i) The primary responsibility of the ~~council~~ department shall be the continuing planning
19 for and management of the resources of the state's coastal region. The ~~council~~ department shall be
20 able to make any studies of conditions, activities, or problems of the state's coastal region needed
21 to carry out its responsibilities.

22 (ii) The resources management process shall include the following basic phases:

23 (A) Identify all of the state's coastal resources, water, submerged land, air space, fin fish,
24 shellfish, minerals, physiographic features, and so forth.

25 (B) Evaluate these resources in terms of their quantity, quality, capability for use, and other
26 key characteristics.

27 (C) Determine the current and potential uses of each resource.

28 (D) Determine the current and potential problems of each resource.

29 (E) Formulate plans and programs for the management of each resource, identifying
30 permitted uses, locations, protection measures, and so forth.

31 (F) Carry out these resources management programs through implementing authority and
32 coordination of state, federal, local, and private activities.

33 (G) Formulation of standards where these do not exist, and reevaluation of existing
34 standards.

1 (H) To develop comprehensive programs for dredging in tidal waters and related beneficial
2 use, disposal, monitoring dewatering and transportation of dredge materials.

3 (I) To accept and administer loans and grants from the federal government and from other
4 sources, public or private, for the carrying out of any of its functions, which loans or grants shall
5 not be expended for other than the purposes for which provided.

6 (J) To encourage, participate in, or conduct studies, investigations, research, and
7 demonstrations relating to dredging, disposal of dredge materials and transportation thereof in the
8 tidal waters of the state as the ~~coastal resources management council~~ department may deem
9 advisable and necessary for the discharge of its duties under this chapter.

10 (K) To collect and disseminate information relating to dredging, disposal of dredge
11 materials and transportation thereof within the tidal waters of the state.

12 (L) To work with the appropriate federal and state agencies to develop as provided for in
13 this chapter and in chapter 6.1 of this title, a comprehensive plan for dredging in tidal waters and
14 related beneficial use, disposal, monitoring dewatering and transportation of dredge materials.

15 (M) To apply for, accept and expend grants and bequests of funds, for the purpose of
16 carrying out the lawful responsibilities of the ~~coastal resources management council~~ department.

17 (iii) An initial series of resources management activities shall be initiated through this basic
18 process, then each phase shall continuously be recycled and used to modify the ~~council's resources~~
19 ~~management~~ department programs and keep them current.

20 (iv) Planning and management programs shall be formulated in terms of the characteristics
21 and needs of each resource or group of related resources. However, all plans and programs shall be
22 developed around basic standards and criteria, including:

23 (A) The need and demand for various activities and their impact upon ecological systems.

24 (B) The degree of compatibility of various activities.

25 (C) The capability of coastal resources to support various activities.

26 (D) Water quality standards set by the director of the department of environmental
27 management.

28 (E) Consideration of plans, studies, surveys, inventories, and so forth prepared by other
29 public and private sources.

30 (F) Consideration of contiguous land uses and transportation facilities.

31 (G) Whenever possible consistency with the state guide plan.

32 (v) The ~~council~~ department shall prepare, adopt, administer, and cause to be implemented,
33 including specifically through its powers of coordination as set forth in subdivision (3) of this
34 section, a marine resources development plan and such special area management plans as the

1 ~~council~~ department may determine to be appropriate or desirable as follows:

2 (A) Marine resources development plan.

3 (I) The purpose of the marine resources development plan shall be to provide an integrated
4 strategy for: (a) improving the health and functionality of Rhode Island's marine ecosystem; (b)
5 providing for appropriate marine-related economic development; and (c) promoting the use and
6 enjoyment of Rhode Island's marine resources by the people of the state.

7 (II) The marine resources development plan shall include specific goals and objectives
8 necessary to accomplish its purposes, performance measures to determine progress toward
9 achieving such goals and objectives, and an implementation program.

10 (III) The marine resources development plan shall be prepared in cooperation with the
11 department of environmental management, the statewide planning program, and the commerce
12 corporation, with the involvement of such other state agencies as may be appropriate, and with such
13 technical support as may be necessary and appropriate from the Narragansett Bay Estuary Program,
14 the Coastal Institute at the University of Rhode Island, and Rhode Island Sea Grant.

15 (IV) The plan shall be responsive to the requirements and principles of the federal coastal
16 zone management act as amended, including, but not limited to, the expectations of the act for
17 incorporating the federal Clean Water Act into coastal zone management programs.

18 (V) The marine resources development plan shall take into account local land use
19 management responsibilities as provided for under title 45 and harbor management responsibilities,
20 and the preparation of the plan shall include opportunities for involvement and/or comment by
21 cities and towns.

22 (VI) The marine resources development plan shall be previously adopted by the council in
23 accordance with the provisions of this subsection by July 1, 2005, shall be adopted by the
24 department and shall as appropriate incorporate the recommendations of the Governor's
25 Narragansett Bay and Watershed Planning Commission, and shall be made consistent with systems
26 level plans as appropriate, in order to effectuate the purposes of systems level planning. The ~~council~~
27 department shall update the marine resources development plan at least once every five (5) years.

28 (VII) The ~~council~~ department shall administer its programs, regulations, and
29 implementation activities in a manner consistent with the marine resources development plan.

30 (VIII) The marine resources development plan and any updates thereto shall be adopted as
31 appropriate as elements of the state guide plan pursuant to § 42-11-10.

32 (B) Special area management plans.

33 (I) The ~~council~~ department shall adopt such special area management plans as deemed
34 necessary and desirable to provide for the integration and coordination of the protection of natural

1 resources, the promotion of reasonable coastal-dependent economic growth, and the improved
2 protection of life and property in the specific areas designated ~~council~~ [by the department](#) as
3 requiring such integrated planning and coordination.

4 (II) The integrated planning and coordination herein specified shall include, but not be
5 limited to, federal agencies, state agencies, boards, commissions, and corporations, including
6 specifically the commerce corporation, and cities and towns, shall utilize to the extent appropriate
7 and feasible the capacities of entities of higher education, including Rhode Island Sea Grant, and
8 shall provide for the participation of advocacy groups, community-based organizations, and private
9 persons.

10 (III) The ~~council~~ [department](#) shall administer its programs, regulations, and
11 implementation activities in a manner consistent with special area management plans.

12 (IV) Special area management plans and any updates thereto shall be adopted as
13 appropriate as elements of the state guide plan pursuant to § 42-11-10.

14 (2) Implementation.

15 (i) The ~~council~~ [department](#) is authorized to formulate policies and plans and to adopt
16 regulations necessary to implement its various management programs. With respect to such policies
17 and plans which relate to matters where the coastal resources management ~~council~~ [department](#) and
18 the department of environmental management have concurrent jurisdiction and upon formulation
19 of the plans and regulations, the ~~council~~ [department](#) shall, prior to adoption, submit the proposed
20 plans or regulations to the director of the department of environmental management for the
21 director's review. The director shall review and submit comments to the ~~council~~ [department](#) within
22 thirty (30) days of submission to the director by the ~~council~~ [department](#). The comments of the
23 director shall include findings with regard to the consistency of the policies, plans and/or
24 regulations with the requirements of laws administered by the department. The ~~council~~ [director of](#)
25 [the department of coastal resources](#) shall consider the director's comments prior to adoption of any
26 such policies, plans or regulations and shall respond in writing to findings of the director with
27 regard to the consistency of said policies, plans and/or regulations with the requirements of laws
28 administered by the department.

29 (ii)(A) The ~~council~~ [department](#) shall have exclusive jurisdiction below mean high water for
30 all development, operations, and dredging, consistent with the requirements of chapter 6.1 of this
31 title and except as necessary for the department of environmental management to exercise its
32 powers and duties and to fulfill its responsibilities pursuant to §§ 42-17.1-2 and 42-17.1-24, and
33 any person, firm, or governmental agency proposing any development or operation within, above,
34 or beneath the tidal water below the mean high water mark, extending out to the extent of the state's

1 jurisdiction in the territorial sea, shall be required to demonstrate that its proposal would not:

2 (I) Conflict with any resources management plan or program;

3 (II) Make any area unsuitable for any uses or activities to which it is allocated by a
4 resources management plan or program adopted by the ~~council~~ department; or

5 (III) Significantly damage the environment of the coastal region.

6 (B) The ~~council~~ department shall be authorized to approve, modify, set conditions for, or
7 reject any such proposal.

8 (iii) The authority of the ~~council~~ department over land areas (those areas above the mean
9 high water mark) shall be limited to two hundred feet (200') from the coastal physiographic feature
10 or to that necessary to carry out effective resources management programs. This shall be limited to
11 the authority to approve, modify, set conditions for, or reject the design, location, construction,
12 alteration, and operation of specified activities or land uses when these are related to a water area
13 under the agency's jurisdiction, regardless of their actual location. The ~~council's~~ department's
14 authority over these land uses and activities shall be limited to situations in which there is a
15 reasonable probability of conflict with a plan or program for resources management or damage to
16 the coastal environment. These uses and activities are:

17 (A) Power generating over forty (40) megawatts and desalination plants.

18 (B) Chemical or petroleum processing, transfer, or storage.

19 (C) Minerals extraction.

20 (D) Shoreline protection facilities and geographical features, and all directly associated
21 contiguous areas which are necessary to preserve the integrity of the facility and/or features.

22 (E) Coastal wetlands and all directly associated contiguous areas which are necessary to
23 preserve the integrity of the wetlands including any freshwater wetlands located in the vicinity of
24 the coast. The actual determination of freshwater wetlands located in coastal vicinities and under
25 the jurisdiction of the ~~coastal resources management council~~ department shall be designated on
26 such maps that are agreed to in writing and made available for public use by the ~~coastal resources~~
27 ~~management council~~ department and the director, and department of environmental management;
28 ~~within three (3) months of [August 6, 1996].~~ The ~~CRMC~~ department shall have exclusive
29 jurisdiction over the wetlands areas described in this section notwithstanding any provision of
30 chapter 1, title 2 or any other provision, except as provided in subsection (iv) of this section. ~~Within~~
31 ~~six (6) months of [August 6, 1996] the council~~ The department in cooperation with the director of
32 the department of environmental management shall ~~develop~~ maintain rules and regulations for the
33 management and protection of freshwater wetlands, affected by an aquaculture project, outside of
34 those freshwater wetlands located in the vicinity of the coast and under the exclusive jurisdiction

1 of the director of the department of environmental management. For the purpose of this chapter, a
2 “coastal wetland” means any salt marsh bordering on the tidal waters of this state, whether or not
3 the tidal waters reach the littoral areas through natural or artificial watercourses, and those uplands
4 directly associated and contiguous thereto which are necessary to preserve the integrity of that
5 marsh. Marshes shall include those areas upon which grow one or more of the following: smooth
6 cordgrass (*spartina alterniflora*), salt meadow grass (*spartina patens*), spike grass (*distichlis*
7 *spicata*), black rush (*juncus gerardi*), saltworts (*salicornia spp.*), sea lavender (*limonium*
8 *carolinianum*), saltmarsh bulrushes (*scirpus spp.*), hightide bush (*iva frutescens*), tall reed
9 (*phragmites communis*), tall cordgrass (*spartina pectinata*), broadleaf cattail (*typha latifolia*),
10 narrowleaf cattail (*typha angustifolia*), spike rush (*eleocharis rostellata*), chairmaker’s rush (*scirpus*
11 *americana*), creeping bentgrass (*agrostis palustris*), sweet grass (*hierochloa odorata*), and wild rye
12 (*etlymus virginicus*).

13 (F) Sewage treatment and disposal and solid waste disposal facilities.

14 (G) Beneficial use, dewatering, and disposal of dredged material of marine origins, where
15 such activities take place within two hundred feet (200') of mean high water or a coastal
16 physiographic feature, or where there is a reasonable probability of conflict with a plan or program
17 for resources management or damage to the coastal environment.

18 (iv) Notwithstanding the provisions of subsections (ii) and (iii) above, the department of
19 environmental management shall maintain jurisdiction over the administration of chapter 1, title 2,
20 including permitting of freshwater wetlands alterations and enforcement, with respect to all
21 agricultural activities undertaken by a farmer, as that term is defined in § 2-1-22(j), wherever
22 located; provided, however, that with respect to activities located partially or completely within
23 two hundred feet (200') of the coastal physiographic feature, the department shall exercise
24 jurisdiction in consultation with the ~~council~~ [department](#).

25 (3) Coordination. The ~~council~~ [department](#) has the following coordinating powers and
26 duties:

27 (i) Functioning as a binding arbitrator in any matter of dispute involving both the resources
28 of the state’s coastal region and the interests of two (2) or more municipalities or state agencies.

29 (ii) Consulting and coordinating actions with local, state, regional, and federal agencies
30 and private interests.

31 (iii) Conducting or sponsoring coastal research.

32 (iv) Advising the governor, the general assembly, and the public on coastal matters.

33 (v) Serving as the lead state agency and initial and primary point of contact for dredging
34 activities in tidal waters and in that capacity, integrating and coordinating the plans and policies of

1 other state agencies as they pertain to dredging in order to develop comprehensive programs for
2 dredging as required by subparagraph (1)(ii)(H) of this section and chapter 6.1 of this title. The
3 Rhode Island resource recovery corporation prior to purchasing cover material for the state landfill
4 shall first contact the ~~CRMC~~ [department](#) to see if there is a source of suitable dredged material
5 available which shall be used in place of the purchase cover material. Other state agencies engaged
6 in the process of dump closures shall also contact the ~~CRMC~~ [department](#) to see if there is a source
7 of suitable dredged material available, which shall be used in place of the purchase cover material.
8 In addition, cities and towns may contact the ~~CRMC~~ [department](#) prior to closing city or town
9 controlled dump sites to see if there is a source of suitable dredge material available, which may be
10 used in place of the purchase cover material.

11 (vi) Acting as the state's representative to all bodies public and private on all coastal and
12 aquaculture related matters.

13 (4) Operations. The ~~council~~ [department](#) is authorized to exercise the following operating
14 functions, which are essential to management of coastal resources:

15 (i) Issue, modify, or deny permits for any work in, above, or beneath the areas under its
16 jurisdiction, including conduct of any form of aquaculture.

17 (ii) Issue, modify, or deny permits for dredging, filling, or any other physical alteration of
18 coastal wetlands and all directly related contiguous areas which are necessary to preserve the
19 integrity of the wetlands, including, but not limited to, the transportation and disposal of dredge
20 materials in the tidal waters.

21 (iii) Grant licenses, permits, and easements for the use of coastal resources which are held
22 in trust by the state for all its citizens, and impose fees for private use of these resources.

23 (iv) Determining the need for and establishing pierhead, bulkhead, and harbor lines.

24 (v) Enforcing and implementing riparian rights in the tidal waters after judicial decisions.

25 (vi) The ~~council~~ [department](#) may require an owner or operator of a commercial wharf or
26 pier of a marine commercial facility, as defined in 300.3 of the Rhode Island coastal resources
27 management program, but not including those facilities defined in 300.4 of the Rhode Island coastal
28 resources management program, and which is capable of offloading cargo, and is or will be subject
29 to a new use or a significant intensification of an existing use, to demonstrate that the commercial
30 wharf or pier is fit for that purpose. For the purposes of this subsection, a "*commercial wharf or*
31 *pier*" means a pier, bulkhead, wharf, docking facility, or underwater utilities. The ~~council~~
32 [department](#) may order said owner or operator to provide an engineering certification to the ~~council's~~
33 [department's](#) satisfaction that the commercial wharf or pier is fit for the new use or intensification
34 of an existing use. If the ~~council~~ [department](#) determines that the commercial wharf or pier is not fit,

1 it may order the owner or operator to undertake the necessary work to make the commercial wharf
2 or pier safe, within a reasonable time frame. If the ~~council~~ department determines that the
3 commercial wharf or pier, because of its condition, is an immediate threat to public health and safety
4 it may order the commercial wharf or pier closed until the necessary work to make the commercial
5 wharf or pier safe has been performed and approved by the ~~council~~ department. All work performed
6 must conform to the ~~council's~~ department's management program. The ~~council~~ department is also
7 given the authority to develop regulations to carry out this provision and to impose administrative
8 penalties of five thousand dollars (\$5,000) per day up to a maximum of twenty thousand dollars
9 (\$20,000) consistent with § 46-23-7.1 where there has been a violation of the orders under this
10 provision.

11 (5) Rights-of-way.

12 (i) The ~~coastal resources management council~~ department is responsible for the designation
13 of all public rights-of-way to the tidal water areas of the state, and shall carry on a continuing
14 discovery of appropriate public rights-of-way to the tidal water areas of the state.

15 (ii) The ~~coastal resources management council~~ department shall maintain a complete file
16 of all official documents relating to the legal status of all public rights-of-way to the tidal water
17 areas of the state.

18 (iii)(A) The ~~council~~ department has the power to designate for acquisition and
19 development, and posting, and all other functions of any other department for tidal rights-of-way
20 and land for tidal rights-of-way, parking facilities, and other council related purposes.

21 (B) Further, the ~~council~~ department has the power to develop and prescribe a standard sign
22 to be used by the cities and towns to mark designated rights-of-way.

23 (iv) In conjunction with this subdivision, every state department controlling state-owned
24 land close to or adjacent to discovered rights-of-way is authorized to set out the land, or so much
25 of the land that may be deemed necessary for public parking.

26 (v) No use of land for public parking shall conflict with existing or intended use of the land,
27 and no improvement shall be undertaken by any state agency until detailed plans have been
28 submitted to and approved by the governing body of the local municipality.

29 (vi) In designating rights-of-way, the ~~council~~ department shall consider the following
30 matters in making its designation:

31 (A) Land evidence records;

32 (B) The exercise of domain over the parcel such as maintenance, construction, or upkeep;

33 (C) The payment of taxes;

34 (D) The creation of a dedication;

- 1 (E) Public use;
- 2 (F) Any other public record or historical evidence such as maps and street indexes;
- 3 (G) Other evidence as set out in § 42-35-10.
- 4 (vii) A determination by the ~~council~~ [department](#) that a parcel is a right-of-way shall be
5 decided by substantial evidence.
- 6 (viii) The ~~council~~ [department](#) shall be notified whenever by the judgment of the governing
7 body of a coastal municipality, a public right-of-way to tidal water areas located in such
8 municipality has ceased to be useful to the public, and such governing body proposes an order of
9 abandonment of such public right-of-way. Said notice shall be given not less than sixty (60) days
10 prior to the date of such abandonment.
- 11 (6) Pre-existing residential boating facilities.
- 12 (i) The ~~council~~ [department](#) is hereby authorized and empowered to issue assent for pre-
13 existing residential boating facilities constructed prior to January 1, 1985. These assents may be
14 issued for pre-existing residential boating facilities, even though such facilities do not meet current
15 standards and policies of the ~~council~~ [department](#); provided, however, that the ~~council~~ [department](#)
16 finds that such facilities do not pose any significant risk to the coastal resources of the state of
17 Rhode Island and do not endanger human safety.
- 18 (ii) In addition to the above criteria, the applicant shall provide clear and convincing
19 evidence that:
- 20 (A) The facility existed in substantially the same configuration as it now exists prior to
21 January 1, 1985;
- 22 (B) The facility is presently intact and functional; and
- 23 (C) The facility presents no significant threat to the coastal resources of the state of Rhode
24 Island or human safety.
- 25 (iii) The applicant, to be eligible for this provision, shall apply no later than January 31,
26 1999.
- 27 (iv) The ~~council~~ [department](#) is directed to develop rules and regulations necessary to
28 implement this subdivision.
- 29 (v) It is the specific intent of this subsection to require that all pre-existing residential
30 boating facilities constructed on January 1, 1985, or thereafter conform to this chapter and the plans,
31 rules and regulations of the ~~council~~ [department](#).
- 32 (7) Lease of filled lands which were formerly tidal lands to riparian or littoral owners.
- 33 (i) Any littoral or riparian owner in this state who desires to obtain a lease from the state
34 of Rhode Island of any filled lands adjacent to his or her upland shall apply to the ~~council~~

1 [department](#), which may make the lease. Any littoral or riparian owner who wishes to obtain a lease
2 of filled lands must obtain pre-approval, in the form of an assent, from the ~~council~~ [department](#). Any
3 lease granted by the ~~council~~ [department](#) shall continue the public's interest in the filled lands
4 including, but not limited to, the rights of navigation, fishery, and commerce. The public trust in
5 the lands shall continue and run concurrently with the leasing of the lands by the state to private
6 individuals, corporations, or municipalities. Upon the granting of a lease by the ~~council~~ [department](#),
7 those rights consistent with the public trust and secured by the lease shall vest in the lessee. The
8 ~~council~~ [department](#) may approve a lease of filled lands for an initial term of up to fifty (50) years,
9 with, or without, a single option to renew for an additional term of up to fifty (50) years.

10 (ii) The lessor of the lease, at any time, for cause, may by express act cancel and annul any
11 lease previously made to the riparian owner when it determines that the use of the lands is violating
12 the terms of the lease or is inconsistent with the public trust, and upon cancellation the lands, and
13 rights in the land so leased, shall revert to the state.

14 (8) "*Marinas*" as defined in the coastal resources management program in effect as of June
15 1, 1997, are deemed to be one of the uses consistent with the public trust. Subdivision (7) is not
16 applicable to:

17 (i) Any riparian owner on tidal waters in this state (and any successor in interest to the
18 owner) which has an assent [which was previously](#) issued by the council ("[council](#)" [refers to the](#)
19 [predecessor to the department, the coastal resources management council](#)) to use any land under
20 water in front of his or her lands as a marina, which assent was in effect on June 1, 1997;

21 (ii) Any alteration, expansion, or other activity at a marina (and any successor in interest)
22 which has an assent [previously](#) issued by the council, which assent was in effect on June 1, 1997;
23 and

24 (iii) Any renewal of assent to a marina (or successor in interest), which assent was
25 [previously](#) issued by the council and in effect on June 1, 1997.

26 (9) "*Recreational boating facilities*" including marinas, launching ramps, and recreational
27 mooring areas, as defined by and properly permitted by the ~~council~~ [department](#), are deemed to be
28 one of the uses consistent with the public trust. Subdivision (7) is not applicable to:

29 (i) Any riparian owner on tidal waters in this state (and any successor in interest to the
30 owner) which has an assent [previously](#) issued by the council to use any land under water in front
31 of his or her lands as a recreational boating facility; any alteration, expansion or other activity at a
32 recreational boating facility (and any successor in interest) which has an assent issued by the
33 council, which assent was in effect as of June 1, 1997; and

34 (ii) Any renewal of assent to a recreational boating facility (or successor in interest), which

1 assent was previously issued by the council and in effect on June 1, 1997.

2 **46-23-6.1. Newport “cliff walk” — Public right-of-way — Legal studies.**

3 The ~~council~~ department is hereby directed to carry out any and all legal studies which it
4 shall deem necessary in order to designate the Newport “cliff walk”, so called, as a public right-of-
5 way pursuant to § 46-23-6(5).

6 **46-23-6.2. Abandonment of rights-of-way.**

7 No city or town shall abandon a right-of-way designated as such by the ~~council~~ department
8 unless the ~~council~~ department approved the abandonment.

9 **46-23-7. Violations.**

10 (a) ~~(1)~~ In any instances wherein there is a violation of the coastal resources management
11 program, or a violation of regulations or decisions of the ~~council~~ department, the commissioner of
12 coastal resources management shall have the power to order any person to cease and desist or to
13 remedy any violation of any provisions of this chapter, or any rule, regulation, assent, order, or
14 decision of the ~~council~~ department whenever the ~~commissioner~~ director of coastal resources
15 ~~management~~ shall have reasonable grounds to believe that such violation has occurred. The director
16 shall have the power and duty to give notice of an alleged violation of law to the person responsible
17 thereof whenever the director determines that there are reasonable grounds to believe that there is
18 a violation of any provision of law within the director's jurisdiction or of any rule or regulation
19 adopted pursuant to authority granted to the director. Nothing in this chapter shall limit the authority
20 of the attorney general to prosecute offenders as required by law.

21 (b) The notice pursuant to subsection (a) of this section shall provide for a time within
22 which the alleged violation shall be remedied, and shall inform the person to whom it is directed
23 that a written request for a hearing on the alleged violation may be filed with the director within
24 twenty (20) days after service of the notice. The notice will be deemed properly served upon a
25 person if a copy thereof is served on the person personally; or sent by registered or certified mail
26 to the person's last known address; or if the person is served with notice by any other method of
27 service now or hereafter authorized in a civil action under the laws of this state. If no written request
28 for a hearing is made to the director within twenty (20) days of the service of notice, the notice
29 shall automatically become a compliance order;

30 (c) Whenever the director determines that there exists a violation of any law, rule, or
31 regulation within the director's jurisdiction that requires immediate action to protect the
32 environment, the director may, without prior notice of violation or hearing, issue an immediate-
33 compliance order stating the existence of the violation and the action the director deems necessary.
34 The compliance order shall become effective immediately upon service or within such time as is

1 specified by the director in such order. No request for a hearing on an immediate-compliance order
2 may be made;

3 (d) Any immediate-compliance order issued pursuant to subsection (c) of this section
4 without notice and prior hearing shall be effective for no longer than forty-five (45) days; provided,
5 however, that for good cause shown, the order may be extended one additional period not exceeding
6 forty-five (45) days;

7 (e) The director may, at their director's discretion and for the purposes of timely and
8 effective resolution and return to compliance, cite a person for alleged noncompliance through the
9 issuance of an expedited citation in accordance with § 46-23-7.1;

10 (f) If a person upon whom a notice of violation has been served under the provisions of this
11 section or if a person aggrieved by any such notice of violation requests a hearing before the director
12 within twenty (20) days of the service of notice of violation, the director shall set a time and place
13 for the hearing, and shall give the person requesting that hearing at least five (5) days' written
14 notice thereof. After the hearing, the director may make findings of fact and shall sustain, modify,
15 or withdraw the notice of violation. If the director sustains or modifies the notice, that decision
16 shall be deemed a compliance order and shall be served upon the person responsible in any manner
17 provided for the service of the notice in this section;

18 (g) A compliance order issued pursuant to the provisions of this section shall state a time
19 within which the violation shall be remedied, and the original time specified in the notice of
20 violation shall be extended to the time set in the order;

21 (h) Whenever a compliance order has become effective, whether automatically where no
22 hearing has been requested, where an immediate-compliance order has been issued, or upon
23 decision following a hearing, the director may institute a proceeding for an injunction or other
24 equitable relief in the superior court of the state for enforcement of the compliance order and for
25 appropriate temporary relief, and in that proceeding, the correctness of a compliance order shall be
26 presumed and the person attacking the order shall bear the burden of proving error in the
27 compliance order, except that the director shall bear the burden of proving in the proceeding the
28 correctness of an immediate-compliance order. The remedy provided for in this section shall be
29 cumulative and not exclusive and shall be in addition to remedies relating to the removal or
30 abatement of nuisances or any other remedies provided by law;

31 (i) Any party aggrieved by a final judgment of the superior court may, within thirty (30)
32 days from the date of entry of such judgment, petition the supreme court for a writ of certiorari to
33 review any questions of law. The petition shall set forth the errors claimed. Upon the filing of the
34 petition with the clerk of the supreme court, the supreme court may, if it sees fit, issue its writ of

1 certiorari;

2 (j) The director may impose administrative penalties in accordance with the provisions of
3 § 46-23-7.1 and direct that such penalties be deposited as general revenue.

4 ~~(2)(k) Council Department~~ staff, ~~conservation and law enforcement~~ officers within the
5 department of environmental management, and state and municipal police shall be empowered to
6 issue written cease and desist orders in any instance where activity is being conducted which
7 constitutes a violation of any provisions of this chapter, or any rule, regulation, assent, order, or
8 decision of the ~~council department~~.

9 ~~(3)(l) Conservation Law enforcement~~ officers within the department of environmental
10 management, ~~council department~~ staff, and state and municipal police shall have authority to apply
11 to a court of competent jurisdiction for a warrant to enter on private land to investigate possible
12 violations of this chapter; provided, that they have reasonable grounds to believe that a violation
13 has been committed, is being committed, or is about to be committed.

14 ~~(b)(m)~~ Any order or notice issued pursuant to subsection (a) shall be eligible for recordation
15 under chapter 13 of title 34, and shall be recorded in the land evidence records in the city/town
16 wherein the property subject to the order is located, and any subsequent transferee of the property
17 shall be responsible for complying with the requirements of the order and notice.

18 ~~(e)(n)~~ The ~~coastal resources management council department~~ shall file a discharge ~~of~~
19 ~~record in the land evidence records~~ any notice filed pursuant to subsection (b) within thirty (30)
20 days after the violation has been remedied.

21 **46-23-7.1. Administrative penalties Administrative penalties -- Authority to access.**

22 (a) Any person who violates, or refuses or fails to obey, any notice or order issued pursuant
23 to § 46-23-7(a); or any assent, order, or decision of the council department, regulations or law
24 which the director has the authority to enforce, including any license or approval issued or adopted
25 by the director may be assessed an administrative penalty by the ~~chairperson or executive~~ director
26 ~~in accordance with the following:~~

27 ~~(1) The chairperson or executive director is authorized to assess an administrative penalty~~
28 ~~of not more than ten thousand dollars (\$10,000) for each violation of this section, and is authorized~~
29 ~~to assess additional penalties of not more than one thousand (\$1,000) for each day during which~~
30 ~~this violation continues after receipt of a notice of violation, immediate-compliance order or cease-~~
31 ~~and-desist order from the council pursuant to § 46-23-7(a), but in no event shall the penalties in~~
32 ~~aggregate exceed fifty thousand dollars (\$50,000). Prior to the assessment of a penalty under this~~
33 ~~subdivision, the property owner or person committing the violation shall be notified by certified~~
34 ~~mail or personal service that a penalty is being assessed. The notice shall include a reference to the~~

1 ~~section of the law, rule, regulation, assent, order, or permit condition violated; a concise statement~~
2 ~~of the facts alleged to constitute the violation; a statement of the amount of the administrative~~
3 ~~penalty assessed; and a statement of the party's right to an administrative hearing.~~

4 ~~(2) The party shall have twenty one (21) days from receipt of the notice within which to~~
5 ~~deliver to the council a written request for a hearing. This request shall specify in detail the~~
6 ~~statements contested by the party. The executive director shall designate a person to act as hearing~~
7 ~~officer. If no hearing is requested, then after the expiration of the twenty one (21) day period, the~~
8 ~~council shall issue a final order assessing the penalty specified in the notice. The penalty is due~~
9 ~~when the final order is issued. If the party shall request a hearing, any additional daily penalty shall~~
10 ~~not commence to accrue until the council issues a final order.~~

11 ~~(3) If a violation is found to have occurred, the council may issue a final order assessing~~
12 ~~not more than the amount of the penalty specified in the notice. The penalty is due when the final~~
13 ~~order is issued.~~

14 ~~(4) The party may within thirty (30) days appeal the final order, of fine assessed by the~~
15 ~~council to the superior court which shall hear the assessment of the fine de novo.~~

16 (b) Notice of violation and assessment of penalty.

17 (1) Whenever the director seeks to assess an administrative penalty on any person, the
18 director shall cause to be served upon the person, either by service, in hand, or by certified mail,
19 return receipt requested, a written notice of its intent to assess an administrative penalty that shall
20 include:

21 (i) A concise statement of the alleged act or omission for which the administrative penalty
22 is sought to be assessed;

23 (ii) Each law, rule, regulation, order, permit, license, or approval that has not been complied
24 with as a result of the alleged act or omission;

25 (iii) The amount that the director seeks to assess as an administrative penalty for each
26 alleged act or omission;

27 (iv) A statement of the person's right to an adjudicatory hearing on the proposed
28 assessment;

29 (v) The requirements the person shall comply with to avoid being deemed to have waived
30 the right to an adjudicatory hearing; and

31 (vi) The manner of payment thereof if the person elects to pay the penalty and waive an
32 adjudicatory hearing.

33 (2) After written notice of noncompliance or intent to assess an administrative penalty has
34 been given, each day thereafter during which the noncompliance occurs or continues shall

1 constitute a separate offense and shall be subject to a separate administrative penalty if reasonable
2 efforts have not been made to promptly come into compliance.

3 (3) For purposes of timely and effective resolution and return to compliance, the director
4 may cite a person for alleged noncompliance through the issuance of an expedited citation, which
5 may include assessment of penalties up to five thousand dollars (\$5,000). Each expedited citation
6 shall include a concise statement of the alleged act or omission that constitutes noncompliance and
7 each law, rule, regulation, order, permit, license, or approval that has not been complied with; and
8 that person alleged to be in noncompliance shall have the right at any time to opt out of the alleged
9 expedited citation process. Failure to respond to an expedited citation shall be deemed as exercising
10 the right to opt out. An expedited citation shall not take effect without the voluntary agreement of
11 the person alleged to be in noncompliance. Expedited citations issued under this section without
12 notice and prior hearing shall be effective no longer than sixty (60) days from the date of receipt
13 by the person alleged to be in noncompliance. In the event that the alleged noncompliance and
14 penalty is unresolved and the expedited citation expires, the director retains the right to issue a
15 separate notice of violation and order and penalty, subject to appeal pursuant to § 46-23-6.2. A
16 person issued an expedited citation shall have the right at any time during the sixty (60) day
17 expedited citation process to request that the director issue a separate notice of violation and order
18 and penalty, subject to appeal pursuant to § 46-23-7.

19 (4) Whenever the director seeks to assess an administrative penalty on any person other
20 than through an expedited citation issued pursuant to § 46-23-7.1(c), the person shall have the right
21 to an adjudicatory hearing under chapter 35 of this title, the provisions of which shall apply except
22 when they are inconsistent with the provisions of this chapter.

23 (5) A person shall be deemed to have waived the person's right to an adjudicatory hearing
24 unless, within twenty (20) days of the date of the director's notice that the director seeks to assess
25 an administrative penalty, the person files with the director a written statement denying the
26 occurrence of any of the acts or omissions alleged by the director in the notice, or asserting that the
27 money amount of the proposed administrative penalty is excessive. In any adjudicatory hearing
28 authorized pursuant to chapter 35 of this title, the director shall, by a preponderance of the evidence,
29 prove the occurrence of each act or omission alleged by the director.

30 (6) If a person waives his or her right to an adjudicatory hearing, the proposed
31 administrative penalty shall be a final agency order immediately upon the waiver. The director may
32 institute a proceeding for an injunction or other equitable relief in the superior court for Providence
33 county for enforcement of the final administrative penalty as a final agency order.

34 (c) Judicial review.

1 If an administrative penalty is assessed at the conclusion of an adjudicatory hearing, the
2 administrative penalty shall be final upon the expiration of thirty (30) days if no action for judicial
3 review of the decision is commenced pursuant to § 46-23-20.4.

4 (d) Determination of administrative penalty.

5 (1) In determining the amount of each administrative penalty, the director shall include,
6 but not be limited to, the following to the extent practicable in his or her considerations:

7 (2) The actual and potential impact on public health, safety and welfare and the
8 environment of the failure to comply;

9 (3) The actual and potential damages suffered, and actual or potential costs incurred, by
10 the director, or by any other person;

11 (4) Whether the person being assessed the administrative penalty took steps to prevent
12 noncompliance, to promptly come into compliance and to remedy and mitigate whatever harm
13 might have been done as a result of such noncompliance;

14 (5) Whether the person being assessed the administrative penalty has previously failed to
15 comply with any rule, regulation, order, permit, license, or approval issued or adopted by the
16 director, or any law which the director has the authority or responsibility to enforce;

17 (6) Making compliance less costly than noncompliance;

18 (7) Deterring future noncompliance;

19 (8) The financial condition of the person being assessed the administrative penalty;

20 (9) The amount necessary to eliminate the economic advantage of noncompliance
21 including, but not limited to, the financial advantage acquired over competitors from the
22 noncompliance;

23 (10) Whether the failure to comply was intentional, willful, or knowing and not the result
24 of error;

25 (11) Any amount specified by state and/or federal statute for a similar violation or failure
26 to comply;

27 (12) Any other factor(s) that may be relevant in determining the amount of a penalty;
28 provided that, the other factors shall be set forth in the written notice of assessment of the penalty;
29 and

30 (e) The public interest.

31 (1) Limitations on amount of penalty. The administrative penalty shall be not more than
32 one thousand dollars (\$1,000) for each violation or failure to comply unless a different amount is
33 authorized by statute as a civil penalty for the subject violation. Each and every occurrence and/or
34 day during which the violation or failure to comply is repeated shall constitute a separate and

1 distinct violation.

2 (2) Rules and regulations. No administrative penalty shall be assessed by the director
3 pursuant to this chapter until the director has promulgated rules and regulations for assessing
4 administrative penalties. Notwithstanding the foregoing, penalties may be imposed within one
5 hundred and twenty (120) days of the effective date of this section prior to promulgation of penalty
6 regulations.

7 **46-23-7.2. Proceedings for enforcement.**

8 The superior court shall have jurisdiction to enforce the provisions of this chapter, the
9 coastal resource management program, or any rule, regulation, assent, or order issued pursuant
10 thereto. Proceedings under this section may follow the course of equity, and shall be instituted and
11 prosecuted in the name of and at the direction of the ~~chairperson and council~~ director by the attorney
12 general or counsel designated by the ~~council~~ director. Proceedings provided in this section shall be
13 in addition to, and may be utilized in lieu of, other administrative or judicial proceedings authorized
14 by this chapter.

15 **46-23-7.3. Criminal penalties.**

16 Any person who knowingly violates any provision of this chapter, the director of the coastal
17 resources ~~management program~~ department, or any rule, regulation, assent, or order shall be guilty
18 of a misdemeanor, and, upon conviction thereof shall be fined not more than one thousand dollars
19 (\$1,000) or by imprisonment of not more than three (3) months or both; and each day the violation
20 is continued or repeated shall be deemed a separate offense.

21 **46-23-7.4. Penalty for blocking or posting of rights-of-way.**

22 Any person who shall post or block any tidal water, public right-of-way, as designated by
23 the ~~council~~ department, shall be punished by a fine not exceeding one thousand dollars (\$1,000) or
24 by imprisonment for not more than three (3) months or both; and each day the posting or blocking
25 continues or is repeated shall be deemed a separate offense. The ~~chairperson of the council~~
26 department, through ~~council's~~ the department's legal counsel or the attorney general, may apply to
27 any court of competent jurisdiction for an injunction to prevent the unlawful posting or blocking of
28 any tidal water, public right-of-way.

29 **46-23-7.5. Prosecution of criminal violations.**

30 The ~~chairperson and anyone designated by the chairperson~~ director, without being required
31 to enter into any recognizance or to give surety for cost, may institute proceedings in the name of
32 the state. It shall be the duty of the attorney general and/or the solicitor of the city or town in which
33 the alleged violation has occurred to conduct the prosecution of all the proceedings. The
34 ~~chairperson~~ director may delegate his or her authority to bring prosecution by complaint and

1 warrant to any law enforcement officials authorized by law to bring complaints for the issuance of
2 search or arrest warrants pursuant to chapters 5 and 6 of title 12.

3 **46-23-8. Gifts, grants, and donations.**

4 The ~~council~~ [department](#) is authorized to receive any gifts, grants, or donations made for
5 any of the purposes of its program, which shall be deposited as general revenues, and to disburse
6 and administer the gifts, grants, or donations amounts appropriated in accordance with the terms
7 thereof. The ~~council~~ [department](#) is authorized to receive any sums provided by an applicant for use
8 by the ~~council~~ [department](#) in its hearing process, which shall be deposited as general revenues, and
9 to disburse and administer the general revenue amounts appropriated in accordance with the rules
10 and regulations promulgated by the ~~council~~ [department](#).

11 **46-23-9. Subpoena.**

12 The ~~council~~ [department](#) is hereby authorized and empowered to summon witnesses and
13 issue subpoenas in substantially the following form:

14 Sc.

15 To _____ of _____ greeting:

16 You are hereby required, in the name of the state of Rhode Island, to make your appearance
17 before the commission on _____ in the _____
18 city of _____ on the _____ day of _____ to give
19 evidence of what you know relative to a matter upon investigation by the commission on
20 _____ and produce and then and there have and give the
21 following:

22 Hereof fail not, as you will answer to default under the penalty of the law in that behalf
23 made and provided.

24 Dated at _____ the _____ day of _____ in the
25 year _____.

26 **46-23-10. Cooperation of departments.**

27 All other departments and agencies and bodies of state government are hereby authorized
28 and directed to cooperate with and furnish such information as the ~~council~~ [department](#) shall require.

29 **46-23-11. Rules and regulations.**

30 The rules and regulations promulgated by the ~~council~~ [department](#) shall be subject to the
31 Administrative Procedures Act ([chapter 35 of title 42](#)).

32 **46-23-13. Application and hearing fees.**

33 The ~~council~~ [department](#) shall be authorized to establish reasonable fees for applications
34 and hearings. All fees collected by the ~~council~~ [department](#), including fees collected for leases, shall

1 be deposited as general revenues. The state controller is hereby authorized and directed to draw his
2 or her orders upon the general treasurer for payment of such sum or sums as may be necessary from
3 time to time and upon receipt by him or her of duly authenticated vouchers presented by the
4 ~~commissioner~~ director of coastal resources ~~management~~.

5 **46-23-14. Expert testimony.**

6 The ~~council~~ department shall be authorized to engage its own expert and outside
7 consultants, and the ~~council~~ department shall be empowered to use that testimony in making its
8 decisions.

9 **46-23-15. Federal grants and interstate cooperation.**

10 The ~~council~~ department is authorized to accept any federal grants. It is further given the
11 power to administer land and water use regulations as necessary to fulfill their responsibilities under
12 the Federal Coastal Zone Management Act, 16 U.S.C. § 1451 et seq., and to acquire fee simple and
13 less than fee simple interests under any federal or state program. The ~~council~~ department is
14 authorized to coordinate and cooperate with other states in furtherance of its purposes. The ~~council~~
15 department may expend those grants and appropriations. The ~~coastal resources management~~
16 ~~council~~ department for the purposes of the federal Coastal Zone Management Act, 16 U.S.C. §
17 1451 et seq., is the coastal zone agency under §§ 301 through 313 and §§ 318 and 6217 of said act.

18 **46-23-15.1. Coordination of harbor safety and enforcement patrols.**

19 Coastal municipalities which share a common boundary along their public waters may
20 enter into a binding memorandum of agreement allowing for harbormasters and other officials
21 charged with enforcement of harbor management plan harbor ordinances from one coastal
22 municipality to enforce the harbor ordinances of the bordering coastal municipality upon the public
23 waters of the bordering coastal municipality when the coastal municipalities have harbor
24 management plans approved by the coastal resources management ~~council~~ department and the
25 memorandum of agreement is approved by the respective town or city ~~councils~~ departments. This
26 binding memorandum of agreement shall specify how each coastal municipality is to receive any
27 fines collected under this reciprocal enforcement agreement and the jurisdiction in which any
28 disputes arising out of this reciprocal enforcement agreement shall be litigated.

29 **46-23-16. Length of permits, licenses, and easements.**

30 The ~~council~~ department is authorized to grant permits, licenses, and easements for any term
31 of years or in perpetuity. Permits, licenses, or easements which are issued by the ~~council~~ department
32 for the filling of the submerged or submersible lands of the state of Rhode Island remain subject to
33 the public trust, and no title is conveyed by such documents. All such permits, licenses, and
34 easements shall clearly state that no title is being conveyed. Permits, licenses or easements issued

1 by the ~~council~~ [department](#) are valid only with the conditions and stipulation under which they are
2 granted and imply no guarantee of renewal. The initial application or an application for renewal
3 may be subject to denial or modification. If an application is granted, said permit, license and
4 easement may be subject to revocation and/or modification for failure to comply with the conditions
5 and stipulations under which the same was issued or for other good cause. ~~The division of coastal~~
6 ~~resources of the department of environmental management shall transfer all of the records and files~~
7 ~~of the former division of harbours and rivers to the council.~~

8 **46-23-18. Prohibited activities.**

9 (a) No person, either as principal, agent or servant nor any firm, corporation, or any other
10 entity shall, without a permit issued by the [department of](#) coastal resources ~~management council~~,
11 construct a marina within two thousand feet (2000') of a shellfish management area as defined by
12 rules and regulations of the department of environmental management. Such permit shall include
13 any permit required under subsection (b).

14 (b) No person, either as principal, agent, or servant, or any firm, corporation or any other
15 entity, shall, within the tidal waters of the state, conduct or cause to conduct dredging,
16 transportation and/or disposal of dredge materials without a permit issued by the ~~coastal resources~~
17 ~~management council~~ [department](#), a water quality certification issued by the department of
18 environmental management pursuant to chapter 12 of this title and any permit required by the army
19 corps of engineers. In addition, no person, either as principal, agent, or servant, nor any firm,
20 corporation or any other entity, shall dispose of dredge materials other than in tidal waters without
21 any permit, approval or certification that may otherwise be required.

22 **46-23-18.1. Permitting.**

23 (a) Any person, either as principal, agent, or servant, or any firm, corporation or any other
24 entity desiring to conduct any activity or activities specified in § 46-23-18 shall file an application
25 for a permit with the ~~coastal resources management council~~ [department](#) upon forms furnished by
26 ~~coastal resources management council~~ [the department](#).

27 (b) A hearing shall be held on the application within thirty (30) days of filing.

28 (c) The applicant shall bear the burden of proving that the activity or activities specified in
29 the application will cause no significant adverse impact upon the environment or natural resources
30 of the state, and the ~~coastal resources management council~~ [department](#) shall be empowered to deny
31 the application if the applicant does not demonstrate, in addition to other requirements of this
32 chapter, that the activity or activities will not:

33 (i) Significantly adversely affect any shellfish management area as designated by the
34 department of environmental management or the marine fisheries council;

1 (ii) Be in a significant conflict with the marine ecology within or adjacent to the state's
2 territorial waters; or

3 (iii) Significantly harm or destroy existing fishing grounds.

4 (d) With respect to an application seeking a permit from the ~~coastal resources management~~
5 ~~council~~ department to conduct or cause to conduct dredging, transportation and/or disposal of
6 dredge material, the applicant shall also satisfy the ~~council~~ department that the proposal in the
7 application is consistent with a comprehensive program developed pursuant to § 46-23-6(1)(ii)(H).

8 (e) In determining whether an applicant has met the burden of proof under subsection (c),
9 the ~~coastal resources management council~~ department shall apply standards that conform with the
10 federal Environmental Protection Agency's applicable standards and guidelines for the
11 management of dredge materials, including, but not limited to, the federal Environmental
12 Protection Agency's rules, regulations and guidelines for deviating from said standards.

13 (f) The applicant shall, at least three (3) days before commencing any dredging, give
14 written notice to the ~~coastal resources management council~~ department of the intent to commence
15 the activities specified in the permit.

16 **46-23-18.2. Rules and regulations.**

17 The ~~council, upon recommendation by the coastal resources advisory committee,~~
18 department shall issue reasonable rules and regulations governing the dredging, transporting and
19 disposal of all dredge materials in accordance with this chapter.

20 **46-23-18.3. Sites for disposal of spoil from dredge operations, selection.**

21 (a) The ~~council, upon recommendation of the coastal resources advisory committee, on or~~
22 ~~before the first day of January, 1999 and~~ department shall, ~~periodically thereafter~~ as necessary,
23 ~~shall~~ consistent with the comprehensive programs required in § 46-23-6(1)(ii)(H), identify and
24 establish one or more in-water disposal sites to be used for the purpose of disposal of dredge
25 materials from marinas and yacht clubs.

26 (b) The ~~council, upon recommendation of the coastal resources advisory committee, on or~~
27 ~~before the first day of January, 2002 and~~ department shall, periodically ~~thereafter~~ as necessary,
28 ~~shall~~ and consistent with the comprehensive programs required in § 46-23-6(1)(ii)(H), identify and
29 establish one or more in-water disposal sites to be used for the purpose of disposal of dredge
30 materials from all sources not otherwise delineated in (a) above.

31 **46-23-18.4. Enforcement.**

32 The provisions of ~~§§ 46-23-18 through 46-23-18.3~~ this chapter shall be enforced by the
33 ~~coastal resources management council~~ department. Nothing herein shall be deemed to abrogate the
34 department of environmental management's authority to enforce its water quality standards adopted

1 pursuant to § 46-12-3(7) or (24).

2 **46-23-18.5. Fees for disposal.**

3 The ~~council~~ department is authorized to impose a fee of not less than eleven dollars and
4 sixty-five cents (\$11.65) per cubic yard for the disposal of dredge materials at the sites established
5 by the ~~council~~ department pursuant to § 46-23-18.3, with eleven dollars and sixty-five cents
6 (\$11.65) being deposited into the general fund. The amount of the fee established by the ~~council~~
7 department pursuant to the section shall be reviewed by the ~~council~~ department on an annual basis
8 and revised as the ~~council~~ department deems necessary, but in no event shall the fee be set at an
9 amount less than eleven dollars and sixty-five cents (\$11.65) per cubic yard of material.

10 **46-23-18.6. ~~Coastal Resources Management Council Dredge Fund~~ Department of**
11 **coastal resources dredge fund.**

12 There is hereby created a separate fund to be held by the ~~coastal resources management~~
13 ~~council~~ department to be known as the dredge fund. Any amount charged above the eleven dollars
14 and sixty-five cents (\$11.65) must be deposited into the fund and shall not be deposited into the
15 general fund of the state, but shall be kept by the general treasurer of the state in a separate fund
16 for the ~~coastal resources management council~~ department, and shall be paid out by the treasurer
17 upon the order of the ~~council~~ director, without the necessity of appropriation or re-appropriation by
18 the general assembly. Funds must be used to create additional dredging and disposal options.

19 **46-23-20. Administrative hearings.**

20 All contested cases, all contested enforcement proceedings, and all contested
21 administrative fines shall be heard by ~~the an~~ administrative hearing ~~officers, or by subcommittees~~
22 officer as provided in § 46-23-20.1, ~~pursuant to the regulations promulgated by the council;~~
23 ~~provided, however, that no proceeding and hearing prior to the appointment of the hearing officers~~
24 ~~shall be subject to the provisions of this section.~~ Notwithstanding the foregoing, the ~~commissioner~~
25 ~~of coastal resources management~~ director shall be authorized, in ~~his or her~~ the director's discretion,
26 to resolve contested licensing and enforcement proceedings through informal disposition pursuant
27 to regulations promulgated by the ~~council~~ department.

28 **46-23-20.1. Hearing officers — Appointment — Compensation — Subcommittee.**

29 (a) The governor, with the advice and consent of the senate, shall appoint ~~two (2) hearing~~
30 ~~officers~~ at least one hearing officer who shall be attorneys-at-law, who, prior to their appointment,
31 shall have practiced law for a period of not less than five (5) years for a term of five (5) years;
32 provided, however, that the initial appointments shall be as follows: one hearing officer shall be
33 appointed for a term of ~~three (3)~~ five (5) years and ~~one~~ if a second hearing officer ~~shall be is~~
34 appointed then the appointment shall be for a term of ~~five (5)~~ three (3) years. The appointees shall

1 be addressed as hearing officers.

2 (b) ~~The~~ If multiple hearing officers are appointed, the governor shall designate one of the
3 hearing officers as chief hearing officer. The hearing officers shall hear proceedings as provided
4 by this section, and the ~~council~~ department, with the assistance of the chief hearing officer, may
5 promulgate such rules and regulations as shall be necessary or desirable and consistent with the
6 administrative adjudication regulations to effect the purposes of this section.

7 (c) A hearing officer shall be devoted full time to these administrative duties, and shall not
8 otherwise practice law while holding office nor be a partner nor an associate of any person in the
9 practice of law.

10 (d) Compensation for hearing officers shall be determined by the unclassified pay board.

11 (e) ~~Whenever the chairperson of the coastal resources management council or, in the~~
12 ~~absence of the chairperson, the commissioner of coastal resources makes a finding that the hearing~~
13 ~~officers are otherwise engaged and unable to hear a matter in a timely fashion, he or she may~~
14 ~~appoint a subcommittee which will act as hearing officers in any contested case coming before the~~
15 ~~council. The subcommittee shall consist of at least one member; provided, however, that in all~~
16 ~~contested cases an additional member shall be a resident of the coastal community affected. The~~
17 ~~city or town council of each coastal community shall, at the beginning of its term of office, appoint~~
18 ~~a resident of that city or town to serve as an alternate member of the aforesaid subcommittee should~~
19 ~~there be no existing member of the coastal resources management council from that city or town~~
20 ~~available to serve on the subcommittee. Any member of the subcommittee actively engaged in~~
21 ~~hearing a case shall continue to hear the case, even though his or her term may have expired, until~~
22 ~~the case is concluded and a vote taken thereon. Hearings before subcommittees shall be subject to~~
23 ~~all rules of practice and procedure as govern hearings before hearing officers. Notwithstanding any~~
24 other law to the contrary, if a hearing officer is not appointed, confirmed and engaged within sixty
25 (60) days of the effective date of this section, or the position of hearing office is vacant for more
26 than sixty (60) days, the director shall hire a hearing officer, who shall be in the unclassified service,
27 for a term of five (5) years and shall meet the requirements set forth in subsections (c) and (d) of
28 this section.

29 (f) If at least one hearing officer has been appointed, confirmed and engaged or hired by
30 the director and is unable to hear a matter in a timely manner as required by law, the director may
31 hire a hearing officer employed by the state in such capacity, who shall have practiced law for a
32 period of not less than five (5) years and meets the requirements set forth in subsection (c) of this
33 section to adjudicate pending contested cases.

34 **46-23-20.2. Clerk.**

1 The ~~commissioner~~ director of the department of coastal resources or his or her designee
2 shall serve as clerk to the hearing officers. The clerk shall have general charge of the office, keep
3 a full record of proceedings, file and preserve all documents and papers, prepare such papers and
4 notices as may be required, and perform such other duties as required. The ~~commissioner~~ director
5 shall have the power to issue subpoenas for witnesses and documents and to administer oaths in all
6 cases before any hearing officer or pertaining to the duties of his or her office.

7 **46-23-20.3. Prehearing procedure.**

8 (a) Prior to the commencement of any hearing, the hearing officer may in his or her
9 discretion direct the parties or their attorneys to appear before him or her for such conferences as
10 shall be necessary. At the conferences, the hearing officer may order any party to file, prior to the
11 commencement of any formal hearing, exhibits that the party intends to use in the hearing, and the
12 names and addresses of witnesses that the party intends to produce in its direct case, together with
13 a short statement of the testimony of each witness. Following entry of an order, a party shall not be
14 permitted, except in the discretion of the hearing officer, to introduce into evidence, in the party's
15 direct case, exhibits which are not filed in accordance with the order. At the conference, the hearing
16 officer may designate a date before which he or she requires any party to specify what issues are
17 conceded, and further proof of conceded issues shall not be required. The hearing officer shall also
18 require the parties to simplify the issues, to consider admissions of fact and of documents which
19 will avoid unnecessary proof, and to limit the number of expert witnesses. The hearing officer shall
20 enter an order reciting the concessions and agreements made by the parties, and shall enter an order
21 on such other matters as are pertinent to the conduct of the hearing, and unless modified, the hearing
22 shall be conducted by the order.

23 (b) The hearing officer may also order the parties to file, prior to the commencement of
24 any hearing, the testimony of any or all of their respective witnesses, and to submit the testimony
25 to the hearing officer and the opposing party or the opposing counsel by such date as the hearing
26 officer shall determine. The witness shall testify under oath, and all of the testimony shall be in a
27 question and answer format. Save for good cause shown, said testimony shall be the direct
28 examination of the witness; provided, however, that the witness shall be available at the hearing
29 for cross-examination by the opposing party or opposing counsel.

30 (c) The ~~council~~ department, with the assistance of the chief hearing officer, shall
31 promulgate, by regulation, such other prehearing procedures and/or hearing procedures as deemed
32 necessary, including the use of portions of the superior court civil rules of discovery where such
33 are not inconsistent with the applicable provisions of the Administrative Procedures Act, chapter
34 35 of title 42.

1 **46-23-20.4. Hearings — Orders.**

2 (a) Subject to the provisions of this chapter, every hearing for the adjudication of a violation
3 or for a contested matter shall be held before a hearing officer ~~or a subcommittee~~. The chief hearing
4 officer shall assign a hearing officer to each matter ~~not assigned to a subcommittee~~. After due
5 consideration of the evidence and arguments, the hearing officer shall make written proposed
6 findings of fact and proposed conclusions of law which shall be made public when submitted to the
7 ~~council~~ department for review. The ~~council~~ department may, in its discretion, adopt, modify, or
8 reject the findings of fact and/or conclusions of law; provided, however, that any modification or
9 rejection of the proposed findings of fact or conclusions of law shall be in writing and shall state
10 the rationales therefor.

11 (b) The director of the department of environmental management and the director of the
12 department of coastal resources ~~management council~~ shall promulgate such rules and regulations,
13 not inconsistent with law, as to assure uniformity of proceedings as applicable.

14 **46-23-20.5. Ex parte consultations.**

15 ~~Council members~~ The department shall have no communication directly or indirectly, with
16 a hearing officer relating to any issue of fact or of law on any matter then pending before the hearing
17 officer.

18 **46-23-20.6. Oaths — Subpoenas — Powers of hearing officers.**

19 The hearing officers are hereby severally authorized and empowered to administer oaths,
20 and the hearing officers, in all cases of every nature pending before them, are hereby authorized
21 and empowered to summon and examine witnesses and to compel the production and examination
22 of papers, books, accounts, documents, records, certificates and other legal evidence that may be
23 necessary or proper for the determination and decision of any question before or the discharge of
24 any duty required by law of the hearing officer. All subpoenas and subpoena duces tecum shall be
25 signed by a hearing officer or the ~~commissioner of coastal resources~~ director, and shall be served
26 as subpoenas are served in civil cases in the superior court; and witnesses so subpoenaed shall be
27 entitled to the same fees for attendance and travel as are provided for witnesses in civil cases in the
28 superior court. In cases of contumacy or refusal to obey the command of the subpoena so issued,
29 the superior court shall have jurisdiction upon application of the ~~council~~ department with proof by
30 affidavit of the fact, to issue a rule or order returnable, in not less than two (2) nor more than five
31 (5) days, directing the person to show cause why he or she should not be adjudged in contempt.
32 Upon return of such order, the justice, before whom the matter is brought for hearing, shall examine
33 under oath the person, and the person shall be given an opportunity to be heard, and if the justice
34 shall determine that the person has refused without reasonable cause or legal excuse to be examined

1 or to answer legal or pertinent questions, he or she may impose a fine upon the offender or forthwith
2 commit the offender to the adult correctional institutions, there to remain until he or she submits to
3 do the act which he or she was so required to do, or is discharged according to law.

4 **46-23-21. Notice of permit — Recordation.**

5 A notice of permit shall be eligible for recordation under chapter 13 of title 34 as
6 determined by the ~~executive~~ director, and shall be recorded at the expense of the applicant in the
7 land evidence records of the city or town where the property subject to permit is located, and any
8 subsequent transferee of the property shall be responsible for complying with the terms and
9 conditions of the permit. The clerk of the various cities and towns shall record any orders, findings,
10 or decisions of the ~~council~~ department at no expense to the ~~council~~ department.

11 **46-23-22. Solid waste disposal licenses — Hearings.**

12 The ~~chairperson~~ director of the department of coastal resources ~~management council~~ and
13 the ~~commissioner of the environmental protection branch~~ director of the department of
14 environmental management shall coordinate concurrent hearings on solid waste disposal license
15 applications; provided, however, that the ~~chairperson and the commissioner of the environmental~~
16 ~~protection branch of the department of environmental management~~ director may designate a
17 hearing officer or subcommittee to hear all matters pertaining to the application and; provided
18 further, that the hearing officer may be from the department of environmental management, or the
19 department of coastal resources ~~management council hearing officer, a subcommittee,~~ or an ad hoc
20 hearing officer. The ~~commissioner~~ director of coastal resources ~~management with the approval of~~
21 ~~the chairperson~~ may waive jurisdiction in those instances where the ~~commissioner~~ director finds
22 that there is no substantive coastal resources issue or that another agency or branch has adjudicated
23 or addressed the issue.

24 **46-23-23. Municipal comprehension plan consideration.**

25 The coastal resources ~~management council~~ department shall conform to the requirements
26 of the Comprehensive Planning and Land Use Regulation Act, § 45-22.2.

27 **46-23-24. Lien on property.**

28 The ~~executive~~ director may record the notice of fee or final order of fine as a lien on the
29 subject property in the land evidence records of the town or city in which said property is located.
30 Recordation of said fee or final order of fine shall be the only manner by which said lien may be
31 perfected against the subject property.

32 **46-23-25. Issuance of beach vehicle registration permits.**

33 (a) The department of coastal resources ~~management council~~ may issue beach vehicle
34 registration permits in accordance with § 31-8-1.1 of the general laws and adopt regulations that

1 the ~~council~~ [department](#) deems necessary to carry out the provisions of this section. The ~~council~~
2 [department](#) may appoint responsible citizens or corporations of the state, engaged in operating
3 sporting goods stores to act as agents with authority to issue permits in the manner and under the
4 conditions as set forth below. Before an appointment shall occur, that citizen or corporation of the
5 state shall deliver to the ~~council~~ [department](#) a bond with a surety company authorized to do business
6 in the state of Rhode Island. The requirements and conditions of the bond shall be established by
7 the regulations.

8 (b) Any person or corporation appointed by the ~~council~~ [department](#) as provided in section
9 (a) above shall, upon the application of any person entitled to receive a permit under this chapter
10 and upon payment of the specified permit fee, register and issue to the person a beach vehicle
11 registration permit in the form prescribed and furnished by the ~~council~~ [department](#). The permit shall
12 bear the name, place of residence, and signature of the registrant, and the vehicle make, model,
13 year, and license plate number and shall authorize the registrant to own and operate a beach vehicle
14 in the state of Rhode Island during those seasons and in those manners and according to those
15 conditions as shall be provided by regulations established by the ~~council~~ [department](#).

16 SECTION 3. Chapter 46-23 of the General Laws entitled "Coastal Resources Management
17 Council" is hereby amended by adding thereto the following sections:

18 **46-23-6.4. Uniform appeal period established. right to adjudicatory hearing.**

19 All requests for an adjudicatory hearing with the department shall be in writing and shall
20 be filed with the department or clerk within twenty (20) calendar days of receipt of the contested
21 agency action for all enforcement actions, including appeal of an administrative penalty. All license
22 and permit appeals shall be filed with the director of the department of coastal resources within
23 thirty (30) calendar days of receipt of the contested agency action. Every notice of contested agency
24 action shall provide notice of the twenty (20) day or thirty (30) day appeal period and of the
25 procedures for filing an appeal. The time and manner of filing established in this chapter are
26 mandatory and jurisdictional.

27 **46-23-26. Severability.**

28 If any provision of this chapter or the application thereof to any person or circumstances is
29 held invalid, that invalidity shall not affect other provisions or applications of the chapter, which
30 shall be given effect without the invalid provision or application, and to this end the provisions of
31 this chapter are declared to be severable.

32 SECTION 4. Sections 46-23-2.1, 46-23-5, 46-23-6.3 and 46-23-12 of the General Laws in
33 Chapter 46-23 entitled "Coastal Resources Management Council" are hereby repealed.

34 ~~**46-23-2.1. Members — Term of office — Vacancies.**~~

1 ~~(a) The term of office of the appointed members shall be three (3) years, only so long as~~
2 ~~the members shall remain eligible to serve on the council under the appointment authority.~~

3 ~~(b) The members are eligible for successive appointments.~~

4 ~~(c) Elected or appointed municipal officials shall hold seats on the council, only so long as~~
5 ~~they remain in their elected or appointed office.~~

6 ~~(d) A vacancy other than by expiration shall be filled in the manner of the original~~
7 ~~appointment but only for the unexpired portion of the term. The governor shall have the power to~~
8 ~~remove his or her appointee for just cause.~~

9 ~~**46-23-5. Expenses of members.**~~

10 ~~(a) The members of the council and the chairperson shall not be compensated for their~~
11 ~~service on the board, but the members and chairperson shall be reimbursed for their actual expenses~~
12 ~~necessarily incurred in the performance of their duties.~~

13 ~~(b) [Deleted by P.L. 2005, ch. 117, art. 21, § 34.]~~

14 ~~**46-23-6.3. Tolling of expiration periods.**~~

15 ~~(a) Notwithstanding any other provision set forth in this chapter, all periods pertaining to~~
16 ~~the expiration of any approval or permit issued pursuant to any state statute or any regulation~~
17 ~~promulgated thereto pertaining to the development of property shall be tolled until June 30, 2016.~~
18 ~~For the purposes of this section, "tolling" means the suspension or temporary stopping of the~~
19 ~~running of the applicable permit or approval period.~~

20 ~~(b) Said tolling need not be recorded in the land evidence records to be valid, however, a~~
21 ~~notice of the tolling must be posted in the municipal planning department and near the land evidence~~
22 ~~records.~~

23 ~~(c) The tolling shall apply only to approvals or permits in effect on November 9, 2009, and~~
24 ~~those issued between November 9, 2009, and June 30, 2016, and shall not revive expired approvals~~
25 ~~or permits.~~

26 ~~(d) The expiration dates for all permits and approvals issued before the tolling period began~~
27 ~~will be recalculated as of July 1, 2016, by adding thereto the number of days between November~~
28 ~~9, 2009, and the day on which the permit or approval would otherwise have expired. The expiration~~
29 ~~dates for all permits and approvals issued during the tolling period will be recalculated as of July~~
30 ~~1, 2016, by adding thereto the number of days between the day the permit or approval was issued~~
31 ~~and the day the permit or approval otherwise would have expired.~~

32 ~~**46-23-12. Representation from coastal communities.**~~

33 ~~Upon the expiration of a term of a member appointed by the governor, as an appointed or~~
34 ~~elected official of local government from a coastal municipality as set out in § 46-23-2, the governor~~

1 ~~shall appoint an appointed or elected official of a coastal municipality which, at the time of the~~
2 ~~governor's appointment, has no appointed or ex officio representation on the council.~~

3 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT
COUNCIL

- 1 This act would replace the coastal resources management council with a state department
- 2 of coastal resources and transfers all of the powers and duties between the two (2) authorities.
- 3 This act would take effect upon passage.

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