

RHODE ISLAND¹

State Authority for Marine Protection

Summary of State Authority

Various Rhode Island agencies have authority to protect marine areas. The Marine Fisheries Council may issue species-specific regulations and designate Shellfish and Marine Life Management Areas. The Coastal Resources Management Council has authority to create Special Area Management Plans, or SAMPs: the Ocean SAMP is a regulatory, planning, and adaptive management tool that classifies all of Rhode Island’s marine waters into six use categories; while the Narrow River and Salt Ponds Region SAMPs protect estuarine habitat through policies and regulations contained within the plans. Finally, the state Department of Environmental Management has cooperated with the U.S. Environmental Protection Agency to designate all of Rhode Island’s state waters as No Discharge Areas.

| | Shellfish and Marine Life Management Areas | Ocean SAMP | Narrow River SAMP | Salt Ponds Region SAMP | No Discharge Areas |
|---|--|---|---|--|--|
| Legal requirement | Allows designation of Shellfish and Marine Life Management Areas | Created the Ocean Special Area Management Plan | Created the Narrow River Special Area Management Plan | Created the Salt Ponds Region Special Area Management Plan | Allows designation of No Discharge Areas |
| Citation² | R.I. GEN. LAWS § 20-3-1 <i>et. seq.</i> (1981) | R.I. GEN. LAWS §§ 46-23 <i>et seq.</i> (1971) | R.I. GEN. LAWS §§ 46-23 <i>et seq.</i> (1971) | R.I. GEN. LAWS §§ 46-23 <i>et seq.</i> (1971) | 63 Fed. Reg. 42,633 (Aug. 10, 1998); 58 Fed. Reg. 31,202 (June 1, 1993) |
| Designation authority | Rhode Island Marine Fisheries Council | Rhode Island Coastal Resources Management Council | Rhode Island Coastal Resources Management Council | Rhode Island Coastal Resources Management Council | U.S. Environmental Protection Agency (after petition by Rhode Island Department of Environmental Management) |
| Management & enforcement authority | Rhode Island Marine Fisheries Council | Rhode Island Coastal Resources Management Council | Rhode Island Coastal Resources Management Council | Rhode Island Coastal Resources Management Council | Rhode Island Department of Environmental Management |
| Jurisdiction & boundaries | All state waters | All state waters | Estuaries, coastal lands, beaches and | Estuaries, coastal lands, beaches and | All state waters |

¹ This state chapter is part of a 23-state assessment of state and local authority for marine protection. It should be read in conjunction with the Executive Summary, Introduction and Methodology Chapters in order to fully understand the scope and approach. Other chapters are available at www.eli-ocean.org/mpa.

² The citation date provided is the earliest date of enactment and does not reflect subsequent amendments unless otherwise noted. The enactment date is meant to inform the reader of how long the protection authority has existed.

| | Shellfish and Marine Life Management Areas | Ocean SAMP | Narrow River SAMP | Salt Ponds Region SAMP | No Discharge Areas |
|------------------------|---|--|--|---|--------------------------|
| | | | dunes | dunes | |
| Prohibited uses | Rhode Island Marine Fisheries Council has authority to develop rules related to use | Recreational boating facilities, point source discharges, filling, and industrial or commercial structures not related to fishing and aquaculture are prohibited in Conservation Areas | Filling, removing, or grading on any wetland in the Narrow River watershed, including coastal wetlands | Filling and other alterations to coastal wetlands | Discharge of boat sewage |
| Permitted uses | None specified | None specified | None specified | None specified | None specified |

Rhode Island’s jurisdiction over its coastal waters extends three nautical miles seaward.³ The state defines its waters as “all surface waters including all waters of the territorial sea; tidewaters; all inland waters of any river, stream, brook, pond, or lake; and wetlands, as well as all groundwaters,”⁴ and it holds all submerged lands below the mean high-water line in public trust.⁵

Shellfish and Marine Life Management Areas

The Rhode Island Marine Fisheries Council (“RIMFC”), housed within the state Department of Environmental Management (“RIDEM”), has authority over the state’s marine species and may promulgate regulations governing the “opening and closing of areas within the coastal waters to the taking of any and all types of fish, lobsters, and shellfish.”⁶ With the advice of and in cooperation with the RIDEM Director, the Council may designate Shellfish and Marine Life Management Areas for the purpose of “enhancing the cultivation and growth of marine species, managing the harvest of marine species, facilitating the conduct by the Department of experiments in planting, cultivating, propagating, managing, and developing any and all kinds of marine life, and any other related purpose.”⁷

After designating a Management Area, RIMFC must promulgate any regulations necessary to protect the relevant species, including “exclusion or restriction of persons from the area or the prohibition of certain activities within the areas or other restrictions as it may deem necessary.”⁸ The Council’s governing regulations state that a Management Area may regulate the quantity, type, size, time, or manner of shellfish or finfish taking.⁹ RIMFC may also close an area to the taking of shellfish or finfish altogether.¹⁰

³ See Submerged Lands Act of 1953, 43 U.S.C. §§ 1301–1315.

⁴ R.I. GEN. LAWS § 46-12-1(23).

⁵ R.I. CONST. art. I, § 17.

⁶ R.I. GEN. LAWS § 20-3-2(5) (1981); see also R.I. CODE R. § 3.2, DEP’T OF ENVTL. MGMT., DIV. FISH & WILDLIFE, MARINE FISHERIES SECTION (hereinafter MARINE FISHERIES R.).

⁷ R.I. GEN. LAWS § 20-3-4; see also MARINE FISHERIES R. § 3.4. The Council’s regulations further explain that the Management Areas may be created “for any other purpose related to the protection, maintenance, and/or propagation of fisheries resources.” MARINE FISHERIES R. § 3.5.1.

⁸ R.I. GEN. LAWS § 20-3-4.

⁹ MARINE FISHERIES R. § 3.5.2.

Any designation may not extend more than five years, but it may be renewed at the end of its initial term.¹¹

For example, the Mill Gut Shellfish Management Area protects shellfish populations through seasonal closures. The area is closed until RIMFC reopens the area, “with the exception that between sunrise the second Wednesday in December and sunset, April 30 annually the area will be open for the harvesting of quahaugs, soft-shelled clams, mussels, and oysters in accordance with the [the regulation’s catch limits.]”¹²

In addition to RIMFC designations, Rhode Island also created the Menhaden Management Area by statute.¹³ This management area encompasses the entire Narragansett Bay and closed it to the taking of menhaden for fish meal reduction purposes by the use of purse seines; however, RIDEM has the authority to open areas in the Bay to purse seining.

Ocean SAMP

Rhode Island’s Coastal Resources Management Council (“RICRMC”), a management agency with regulatory functions, creates Rhode Island’s Special Area Management Plans (“SAMPs”) to protect the state’s coastal resources through comprehensive long-term planning and management.¹⁴ These Plans are part of the agency’s responsibilities under state and federal law.¹⁵ RICRMC’s authorizing statute declares that “preservation and restoration of ecological systems shall be the primary guiding principle upon which environmental alteration of coastal resources will be measured, judged, and regulated.”¹⁶

SAMPs aim to preserve, protect, and restore coastal resources while addressing a range of issues on a watershed scale in areas that are under intense development pressure.¹⁷ The Plans provide more stringent environmental controls in environmentally sensitive coastal areas or areas that experience heavy marine and coastal use. The decision-making process established by a SAMP is designed to be “appropriate to the management of the watershed as an ecosystem, specifically insuring consideration of long term cumulative impacts.”¹⁸

Approved by NOAA in 2011, Rhode Island’s Ocean SAMP is the regulatory, planning, and adaptive management tool that RICRMC applies in all of Rhode Island’s state waters, as well as some federal waters.¹⁹ The document includes maps, impact assessments, prescriptions and proscriptions; this data serves as the basis for evaluating individual project applications. Because NOAA approved the Ocean SAMP as part of Rhode Island’s Coastal Zone Management Program, the SAMP is now part of the

¹⁰ *Id.*

¹¹ *Id.* § 3.5.3. The regulations do not state whether a designation may be renewed at the end of subsequent terms.

¹² MARINE FISHERIES R. § 4.12.1.

¹³ R.I. GEN. LAWS §§ 20-4.1-1 to -3 (1996).

¹⁴ R.I. GEN. LAWS §§ 46-23-1 *et seq.* (1971).

¹⁵ Under state law, RICRMC has the authority to administer land and water regulations to fulfill the state’s responsibilities under the federal Coastal Zone Management Act. R.I. GEN. LAWS § 46-23-15; 16 U.S.C. § 1451.

¹⁶ *Id.* § 46-23-1(a)(2).

¹⁷ R.I. GEN. LAWS §§ 46-23 *et seq.* (1971).

¹⁸ R.I. COASTAL RES. MGMT. COUNCIL, RHODE ISLAND COASTAL AND ESTUARINE LAND CONSERVATION PLAN 14, <http://coastalmanagement.noaa.gov/mystate/docs/celclplanri.pdf>.

¹⁹ R.I. COASTAL RES. MGMT. COUNCIL, RHODE ISLAND OCEAN SPECIAL AREA MANAGEMENT PLAN (2010), http://www.crmc.ri.gov/samp_ocean/finalapproved/RI_Ocean_SAMP.pdf.

standard against which future federal actions are reviewed for consistency with state law. This gives the state substantial influence in addressing proposed activities in the marine environment.

The Rhode Island Coastal Resources Management Plan (Red Book) designates the waters of the state into six categories, with regulations varying from zone to zone:

Type 1: Conservation Areas. Included in this category are one or more of the following: (1) water areas that are within or adjacent to the boundaries of designated wildlife refuges and conservation areas, (2) water areas that have retained natural habitat or maintain scenic values of unique or unusual significance, and (3) water areas that are particularly unsuitable for structures due to their exposure to severe wave action, flooding, and erosion.²⁰

Type 2: Low Intensity Use. This category includes waters in areas with high scenic value that support low-intensity recreational and residential uses. These waters include seasonal mooring areas where good water quality and fish and wildlife habitat are maintained.²¹

Type 3: High Intensity Boating. This category includes intensely utilized water areas where recreational boating activities dominate and where the adjacent shorelines are developed as marinas, boatyards, and associated water-enhanced and water-dependent businesses.²²

Type 4: Multipurpose Waters. This category includes (1) large expanses of open water in Narragansett Bay and the Sounds which support a variety of commercial and recreational activities while maintaining good value as a fish and wildlife habitat; and (2) open waters adjacent to shorelines that could support water-dependent commercial, industrial, and/or high-intensity recreational activities.²³

The Ocean SAMP starts 500 feet offshore in Type 4 waters, and further designates these waters into Areas Designated for Preservation (ADPs) and Areas of Particular Concern (APCs). ADPs are set aside for preservation of their habitat value. APCs are areas of avoidance for a variety of reasons, including their habitat value. There is a rebuttable presumption that APCs must be avoided, but RICRMC may permit activity if the agency determines that a developer has provided sufficient evidence that the habitat will remain unaffected by the activity.²⁴

Type 5: Recreational and Commercial Harbors. These waters are adjacent to waterfront areas that support a variety of tourist, recreational, and commercial activities.²⁵

²⁰ R.I. COASTAL RES. MGMT. COUNCIL, RHODE ISLAND COASTAL RESOURCES MANAGEMENT PROGRAM § 200.1 (2012), <http://www.crmc.ri.gov/regulations/RICRMP.pdf>.

²¹ *Id.* § 200.2.

²² *Id.* § 200.3.

²³ *Id.* § 200.4.

²⁴ Email communication from RICRMC (Dec. 2, 2013).

²⁵ *Id.* § 200.5.

Type 6: Industrial Waterfronts and Commercial Navigation Channels. These water areas are extensively altered in order to accommodate commercial and industrial water-dependent and water-enhanced activities.²⁶

The Council administers the day-to-day operations of the Program. All developments²⁷ or operations within, above, or beneath the state's tidal waters, including lands along the shore,²⁸ require formal Council Assent.²⁹ Program regulations list prerequisites, policies, and standards that must be met for each type of water area.³⁰

Conservation Areas (Type 1) receive the highest level of protection. Recreational boating facilities, point source discharges, filling, and industrial or commercial structures not related to fishing and aquaculture are prohibited. For example, all dredging is prohibited in Conservation Areas (Type 1). However, in Multipurpose Waters (Type 4), maintenance dredging is permitted with Council Assent, and improvement dredging is permitted, after public notice and comment, with Council Assent.³¹ The Council or the public may object to a proposed activity or alteration with a substantive objection, through evidence that "demonstrates that the proposed activity or alteration has a potential for significant adverse impacts on . . . biological communities, including vegetation, shellfish and finfish resources, and wildlife habitat."³²

RICRMC engaged in a public outreach and approval process in drafting and finalizing the SAMP.³³ A stakeholder group was an essential part of the process and included representatives from the municipalities bordering the project area, the Narragansett Indian Tribe, fishermen's organizations, recreation and tourism interests, environmental organizations, marine trades, commercial interests, and others. Members of the public were also invited to attend meetings and issue comments on draft chapters of the SAMP.

Narrow River SAMP

The Narrow River SAMP describes the present state of the river ecosystem, characterizes the watershed, identifies relevant sources of pollution, and recommends specific actions to restore, protect and

²⁶ *Id.* § 200.6.

²⁷ Developments are defined as:

Any material change in the use of any structure or land or water body, including but not limited to any building mining, dredging, fillings, excavation, or drilling operation: alteration of the shore, rivers, streams, lakes or ponds: devegetation, demolition, deposition of fill, solid or liquid waste: construction, installation, reconstruction of a structure: a change in the type of class or use of land: or a material increase in the intensity of use.

Id. at Glossary.

²⁸ Shore areas include "those occurring on coastal features or within all directly associated contiguous areas which are necessary to preserve the integrity of coastal resources, or any portion of which extends onto the most inland shoreline feature or its 200 foot contiguous area, or as otherwise set out in the Coastal Resources Management Program." *Id.* at Guidelines for Applicants.

²⁹ *Id.*

³⁰ *Id.* at Table 1.

³¹ *Id.* at Table 1.

³² *Id.* § 110.3(A)(3)(c).

³³ R.I. Coastal Res. Mgmt. Council, Ocean SAMP Public Process and Stakeholders, <http://seagrant.gso.uri.edu/oceansamp/stakeholders.html> (last visited June 19, 2013).

preserve the Narrow River estuary.³⁴ The strategy of the SAMP is “to recognize how water quality, land-use, habitat, storm hazards and geology all interact on an ecosystem level to impact the health of the Narrow River.”³⁵

For example, SAMP regulations prohibit any disturbance of winter flounder spawning grounds during the December to May spawning season.³⁶ If a project in the watershed falls within the critical habitat of a species listed on RIDEM’s rare and endangered list, the federal list, or both, the Rhode Island Historical Preservation Commission (“RIHPC”) must be contacted to provide stipulations, recommendations, and/or comments to RICRMC before the Council issues a decision. The Council must also consider project impacts on waterfowl habitat, which includes their nutritional resources such as vegetation, shellfish, and fish. Finally, the SAMP prohibits filling, removing, or grading on any wetland in the Narrow River watershed, which includes coastal wetlands.³⁷

Salt Ponds Region SAMP

The goals of the Salt Ponds SAMP include “to preserve and enhance the diversity and abundance of fish, shellfish, and waterfowl . . . and to restore barrier beaches, salt marshes, and fish and wildlife habitats.”³⁸ The SAMP describes the present state of the ecosystem, characterizes the watershed, identifies relevant sources of pollution and recommends specific actions to restore, protect, and preserve the state’s coastal lagoons.

The regulations contained in the Salt Ponds Region SAMP are similar to those contained in the Narrow River SAMP. The disturbance of winter flounder spawning grounds is prohibited during the spawning season from December to May.³⁹ If a project in the watershed falls within the critical habitat of a species listed on RIDEM’s rare and endangered list, the federal list, or both, RIHPC must be contacted to provide stipulations, recommendations, and/or comments to RICRMC before the Council issues a decision. The Council must also consider project impacts on waterfowl habitat, which includes their nutritional resources such as vegetation, shellfish, and fish.

Additionally, if CRMC permitting staff determines that submerged aquatic vegetation is present, the applicant may be required to provide further information on the project’s likely impact, as well as mitigation of impacts.⁴⁰ Finally, altering coastal wetlands is prohibited in the region.⁴¹

No Discharge Areas

All coastal waters in Rhode Island have been classified as a “No Discharge Area” since August 10, 1998.⁴² The Clean Water Act allows states to prohibit all boat sewage discharges by creating No Discharge Areas (“NDAs”) if the state—through RIDEM in this instance—provides evidence to the U.S. Environmental Protection Agency that its coastal waters require greater protection than current legal protections

³⁴ R.I. COASTAL RES. MGMT. COUNCIL, THE NARROW RIVE SPECIAL AREA MANAGEMENT PLAN § 100 (1999), <http://sos.ri.gov/documents/archives/regdocs/released/pdf/CRMC/6820.pdf>.

³⁵ *Id.*

³⁶ *Id.* § 940(B).

³⁷ *Id.* § 940(C).

³⁸ R.I. COASTAL RES. MGMT. COUNCIL, RHODE ISLAND’S SALT POND REGION: A SPECIAL AREA MANAGEMENT PLAN § 130(C) (1999), http://www.crmc.ri.gov/regulations/SAMP_SaltPond.pdf.

³⁹ *Id.* § 940(C).

⁴⁰ *Id.*

⁴¹ *Id.* § 940(D).

⁴² Rhode Island Marine Sanitation Device Standard; Notice of Determination, 63 Fed. Reg. 42,633 (Aug. 10, 1998); Rhode Island Marine Sanitation Device Standard; Notice of Determination, 58 Fed. Reg. 31,202 (June 1, 1993).

afford. The discharge of all boat sewage is prohibited in these areas, including raw sewage and sewage treated by an approved marine sanitation device. NDAs do not restrict the discharge of gray water.

Other Authorities

Freedom to Fish and Marine Conservation Act

Enacted in 2003, Rhode Island’s Freedom to Fish and Marine Conservation Act creates a hurdle to instituting fisheries management measures—including closures of marine areas to fishing. The law requires that “such measures [] be developed in response to specific conservation or restoration needs, be based on the best currently available scientific information, and emanate from an open management and regulatory process, incorporating full input from all affected stakeholders.”⁴³ The state may not close marine waters to commercial or recreational fishing, unless the closure is:

- (1) Deemed necessary in order to protect, manage or restore marine fish, shellfish, crustaceans, and associated marine habitats or other marine resources, protect public health or safety, or address some other public purpose;
- (2) Based on the best currently available scientific information; and
- (3) developed via public review and stakeholder input through chapter 35 of title 42 and other applicable state law, and with the advice of the marine fisheries council; except where the director deems it necessary to institute a closure via emergency rule, in which case the regulation must meet the standards set forth by chapter 35 of title 42 and have an effective period of not more than one hundred twenty (120) days.⁴⁴

Further, once the original justification for the closure ceases to exist, the area must be reopened,⁴⁵ and RIDEM must include an evaluation of any closures identified as significant by RIMFC in its annual report.⁴⁶

Evaluation of State Authorities⁴⁷

| FACTORS | Shellfish and Marine Life Management Areas | Ocean SAMP | Narrow River SAMP | Salt Ponds Region SAMP | No Discharge Areas |
|--------------------|--|---|---|---|--------------------|
| Legal Regime | ★★★★ | ★★★★ | ★★★★ | ★★★★ | ★★★★ |
| | Regulatory | Planning (with some regulatory functions) | Planning (with some regulatory functions) | Planning (with some regulatory functions) | Regulatory |
| Ocean Jurisdiction | ★★★★ | ★★★★ | ★★ | ★★ | ★★★★ |
| | All marine waters | All marine waters | Estuarine | Estuarine | All marine waters |
| Durability | ★★ | ★★★★ | ★★★★ | ★★★★ | ★★ |
| | Indeterminate | Adaptive management | Adaptive management | Adaptive management | Indeterminate |

⁴³ R.I. GEN. LAWS § 20-3.2-2(g) (2003).

⁴⁴ *Id.* § 20-3.2-3(a).

⁴⁵ *Id.* § 20-3.2-3(b).

⁴⁶ *Id.* § 20-3.2-3(c).

⁴⁷ For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.

| FACTORS | Shellfish and Marine Life Management Areas | Ocean SAMP | Narrow River SAMP | Salt Ponds Region SAMP | No Discharge Areas |
|---|--|--|--|--|---|
| Consistency | ★★★★ Authorizes year-round protection | ★★★★ Authorizes year-round protection | ★★★★ Authorizes year-round protection | ★★★★ Authorizes year-round protection | ★★★★★ Mandates year-round protection |
| Habitat | ★★★★ Habitat protection goal | ★★★★ Habitat protection goal | ★★★★ Habitat protection goal | ★★★★ Habitat protection goal | ★★★ Byproduct is habitat protection |
| Sector | ★ Authorizes single-sector protection | ★★★★ Authorizes multi-sector protection | ★★★★ Authorizes multi-sector protection | ★★★★ Authorizes multi-sector protection | ★★★★★ Mandates multi-sector protection |
| Enforcement | ★★★★★ Grants RIMFC authority to enforce chapter & arrest offenders or issue citations | ★★ Some MPA-specific enforcement | ★★ Some MPA-specific enforcement | ★★ Some MPA-specific enforcement | ★★★ Some MPA-specific enforcement |
| Extent (Scope) | ★★★★★ Multi-site, potential expansion | ★★★★★ All state waters | ★ Single site, no expansion mechanism | ★ Single site, no expansion mechanism | ★★★★★ Multi-site, potential expansion |
| Process for designation or expansion | ★★ No MPA-specific public process | ★★★★ Plan developed through specific public process | ★★ No MPA-specific public process | ★★ No MPA-specific public process | ★★★ No MPA-specific public process |

Local Authority for Marine Protection

Summary of Local Authorities

Local governments in Rhode Island have only limited authority to protect coastal habitat through land acquisitions.

| | Land Acquisition |
|---|--|
| Legal requirement | Authority to fund land acquisition |
| Citation⁴⁸ | R.I. GEN. LAWS § 42-17.1-1 <i>et seq.</i> (1956) |
| Designation authority | Local governments |
| Management & enforcement authority | Local governments |
| Jurisdiction & boundaries | Coastal lands, beaches and dunes |
| Prohibited uses | None specified |
| Permitted uses | None specified |

⁴⁸The citation date provided is the earliest date of enactment and does not reflect subsequent amendments unless otherwise noted. The enactment date is meant to inform the reader of how long the protection authority has existed.

Land Acquisition

RIDEM is authorized to administer Open Space, Recreation, Bay, and Watershed Protection Bonds, in the form of general obligation bonds, refunding bonds or temporary notes.⁴⁹ A portion of these funds is dedicated for use by municipalities, local land trusts, conservation commissions, and environmental non-profit organizations to provide grants on a matching basis for open space preservation.⁵⁰

Evaluation of Local Authorities

| FACTORS | Land Acquisition |
|------------------------------|--|
| Legal Regime | Incentive-based ★★ |
| Ocean Jurisdiction | Beach, tidal only ★ |
| Durability | Indeterminate ★★ |
| Consistency | Indeterminate ★★ |
| Habitat | Habitat protection goal ★★★ |
| Sector | Managed |
| Enforcement | Voluntary, with assistance/ incentives |
| Extent (scope) | Shoreland-by-shoreland, local management ★ |
| Process for expansion | No MPA-specific public process ★★★ |

⁴⁹ R.I. GEN. LAWS § 42-17.1-1 *et seq.* (1956).

⁵⁰ R.I. CODE R. § 3(B), DEP’T OF ENVTL. MGMT., ENVT;. MGMT. 2000 OPEN SPACE BOND AUTHORIZATION.