

2007 -- H 6266

LC02813

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT
COUNCIL

Introduced By: Representatives DeSimone, Kilmartin, E Coderre, O'Neill, and Petrarca

Date Introduced: April 10, 2007

Referred To: House Separation of Powers

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 46-23 of the General Laws entitled "Coastal Resources
2 Management Council" is hereby repealed in its entirety.

3 ~~CHAPTER 46-23~~

4 ~~Coastal Resources Management Council~~

5 ~~**46-23-1. Legislative findings.** -- (a) (1) Under article 1, section 17 of the Rhode Island~~
6 ~~Constitution, the people shall continue to enjoy and freely exercise all the rights of fishery, and~~
7 ~~the privileges of the shore, to which they have been heretofore entitled under the charter and~~
8 ~~usages of this state, including but not limited to fishing from the shore, the gathering of seaweed,~~
9 ~~leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their~~
10 ~~rights to use and enjoyment of the natural resources of the state with due regard for the~~
11 ~~preservation of their values; and it is the duty of the general assembly to provide for the~~
12 ~~conservation of the air, land, water, plant, animal, mineral and other natural resources of the state,~~
13 ~~and to adopt all means necessary and proper by law to protect the natural environment of the~~
14 ~~people of the state by providing adequate resource planning for the control and regulation of the~~
15 ~~use of the natural resources of the state and for the preservation, regeneration, and restoration of~~
16 ~~the natural environment of the state.~~

17 ~~-(2) The general assembly recognizes and declares that the coastal resources of Rhode~~
18 ~~Island, a rich variety of natural, commercial, industrial, recreational, and aesthetic assets, are of~~

1 ~~immediate and potential value to the present and future development of this state; that unplanned~~
2 ~~or poorly planned development of this basic natural environment has already damaged or~~
3 ~~destroyed, or has the potential of damaging or destroying, the state's coastal resources, and has~~
4 ~~restricted the most efficient and beneficial utilization of these resources; that it shall be the policy~~
5 ~~of this state to preserve, protect, develop, and, where possible, restore the coastal resources of the~~
6 ~~state for this and succeeding generations through comprehensive and coordinated long range~~
7 ~~planning and management designed to produce the maximum benefit for society from these~~
8 ~~coastal resources; and that preservation and restoration of ecological systems shall be the primary~~
9 ~~guiding principle upon which environmental alteration of coastal resources will be measured,~~
10 ~~judged, and regulated.~~

11 ~~-(b) (1) That effective implementation of these policies is essential to the social and~~
12 ~~economic well being of the people of Rhode Island because the sea and its adjacent lands are~~
13 ~~major sources of food and public recreation, because these resources are used by and for industry,~~
14 ~~transportation, waste disposal, and other purposes, and because the demands made on these~~
15 ~~resources are increasing in number, magnitude, and complexity; and that these policies are~~
16 ~~necessary to protect the public health, safety, and general welfare. Pursuant to 16 U.S.C. section~~
17 ~~1452 ("The Coastal Zone Management Act"), the General Assembly hereby directs the council~~
18 ~~(referred to as "CRMC") to exercise effectively its responsibilities in the coastal zone through the~~
19 ~~development and implementation of management programs to achieve wise use of the land and~~
20 ~~water resources of the coastal zone.~~

21 ~~-(2) Furthermore, that implementation of these policies is necessary in order to secure the~~
22 ~~rights of the people of Rhode Island to the use and enjoyment of the natural resources of the state~~
23 ~~with due regard for the preservation of their values, and in order to allow the general assembly to~~
24 ~~fulfill its duty to provide for the conservation of the air, land, water, plant, animal, mineral, and~~
25 ~~other natural resources of the state, and to adopt all means necessary and proper by law to protect~~
26 ~~the natural environment of the people of the state by providing adequate resource planning for the~~
27 ~~control and regulation of the use of the natural resources of the state and for the preservation,~~
28 ~~regeneration, and restoration of the natural environment of the state.~~

29 ~~-(c) That these policies can best be achieved through the creation of a coastal resources~~
30 ~~management council as the principal mechanism for management of the state's coastal resources.~~

31 ~~-(d) The general assembly recognizes and declares that maintenance dredging is required~~
32 ~~to remove natural silt accumulations; Rhode Island has not had a general maintenance dredging~~
33 ~~policy and programs for ports, port facilities, channels, harbors, public and private marinas and~~
34 ~~boating facilities, recreational facilities and habitat areas; other major coastal states have~~

1 ~~maintenance dredging policies and in water maintenance dredge disposal sites; as a result of the~~
2 ~~lack of a general maintenance dredging policy and program and as a result there has been (1) a~~
3 ~~decrease in the depth of the Providence Channel from forty four (44) feet in 1971 to twenty four~~
4 ~~(24) feet in 1996; (2) navigational restrictions on ocean going vessels through the state's~~
5 ~~waterways and channels; and (3) a decrease in the number of available slips and moorings at~~
6 ~~marinas throughout the state; and the lack of a maintenance dredging policy and programs have~~
7 ~~significant adverse environmental and economic effects on the state and therefore it is in the best~~
8 ~~interest of the state, the cities and towns of the state, and the citizens thereof for the state to have a~~
9 ~~general maintenance dredging policy and programs to resolve issues related to dredge~~
10 ~~maintenance and disposal and avoid future significant direct and indirect adverse impact on the~~
11 ~~environment and economy of the state.~~

12 ~~-(e) The coastal resources management council is hereby designated as the lead state~~
13 ~~agency for purposes of dredging in tidal waters and as such shall have the following duties and~~
14 ~~responsibilities:~~

15 ~~-(1) To coordinate the interest of the state with regard to dredging;~~

16 ~~-(2) To formulate and adopt a state policy with regard to dredging which integrates those~~
17 ~~interests;~~

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

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

22 ~~-(5) To develop, prepare, adopt pursuant to section 46-23-11, implement, and maintain a~~
23 ~~comprehensive plan for dredge material management; and~~

24 ~~-(6) To cooperate and coordinate with the departments of environmental management,~~
25 ~~transportation, administration, and health, and the economic development corporation in the~~
26 ~~conduct of these duties and responsibilities.~~

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

33 ~~-(2) Since its establishment in 1971, the CRMC has had the authority to manage and plan~~
34 ~~for the preservation of the coastal resources of the state including but not limited to submerged~~

1 ~~lands. The legislature hereby declares that, in light of the unique size, scope, and overall potential~~
2 ~~impact upon the environment of large scale filling projects involving twenty five (25) acres or~~
3 ~~more, any lease of tidal lands, or any license to use those lands, is subject to approval,~~
4 ~~disapproval, or conditional approval by the direct enactment of the general assembly by~~
5 ~~legislative action. CRMC shall review all requests for leases, licenses to use the land, and other~~
6 ~~authority to use the land made by any applicant prior to presentation of the request to the general~~
7 ~~assembly, and the CRMC shall make recommendations on the request to the general assembly.~~
8 ~~With the exception of any and all projects to fill land of twenty five (25) acres or more, the~~
9 ~~general assembly hereby recognizes and declares that the CRMC is delegated the sole and~~
10 ~~exclusive authority for the leasing of submerged and filled lands and giving licenses for the use of~~
11 ~~that land. Accordingly, the CRMC will develop, coordinate, and adopt a system for the leasing of~~
12 ~~submerged and filled lands, and licenses for the use of that land, and will ensure that all leases~~
13 ~~and licenses are consistent with the public trust. Nothing contained in this subsection negates,~~
14 ~~repeals, or alters the provisions, processes, and requirements for the leasing of submerged land~~
15 ~~for the conduct of aquaculture as set out under chapter 10 of title 20. Therefore, nothing in this~~
16 ~~chapter shall be construed to limit or impair the authority of the state, or any duly established~~
17 ~~agency of the state, to regulate filling or dredging affecting tidal lands owned by the state or any~~
18 ~~other entity, and nothing in this chapter shall be construed to limit or impair the obligation of the~~
19 ~~applicant to obtain all applicable regulatory approvals. Specifically, and without limiting the~~
20 ~~foregoing, nothing in this subsection negates, repeals, or alters the provisions, processes, and~~
21 ~~requirements for water quality certification contained in chapter 12 of this title.~~

22 ~~(3) Definitions.~~

23 ~~(i) "Filled land" means portions of tidal lands which have been rendered by the acts of~~
24 ~~man to be no longer subject to tidal action or beneath tidal waters.~~

25 ~~(ii) "Tidal Lands" means those lands that are below the mean high water.~~

26 ~~(iii) "Mean high water" means a line of contour representing the 18.6 year average as~~
27 ~~determined by the metonic cycle and/or its equivalent as evidenced by the records, tidal datum,~~
28 ~~and methodology of the United States coastal geodetic survey within the national oceanic and~~
29 ~~atmospheric administration.~~

30 ~~**46-23-2. Coastal resources management council created** ~~--- **Appointment of**~~~~
31 ~~**members.** ~~--- (a) There is hereby created the coastal resources management council.~~~~

32 ~~(1) The coastal resources management council shall consist of sixteen (16) members, two~~
33 ~~(2) of whom shall be members of the house of representatives, at least one of the members shall~~
34 ~~represent a coastal municipality, appointed by the speaker, two (2) of whom shall be members of~~

1 ~~the senate, each of whom shall represent a coastal municipality, appointed by the president of the~~
2 ~~senate, two (2) of whom shall be from the general public appointed by the speaker of the house~~
3 ~~for a term of two (2) years, two (2) of whom shall be from a coastal municipality appointed by the~~
4 ~~speaker of the house for a term of three (3) years.~~

5 ~~(2) In addition, four (4) of the members shall be appointed or elected officials of local~~
6 ~~government appointed by the governor, one of whom shall be from a municipality of less than~~
7 ~~twenty five thousand (25,000) population, appointed to serve until January 31, 1972, one of~~
8 ~~whom shall be from a coastal municipality of more than twenty five thousand (25,000)~~
9 ~~population appointed to serve until January 31, 1973, and one of whom shall be from a coastal~~
10 ~~municipality of less than twenty five thousand (25,000) population appointed to serve until~~
11 ~~January 31, 1974, and one of whom shall be from a coastal community of more than twenty five~~
12 ~~thousand (25,000) population appointed to serve until January 31, 1975, the populations are to be~~
13 ~~determined by the latest federal census; all members shall serve until their successors are~~
14 ~~appointed and qualified; during the month of January, the governor shall appoint a member to~~
15 ~~succeed the member whose term will then next expire for a term of four (4) years commencing on~~
16 ~~the first day of February then next following and until his or her successor is named and~~
17 ~~qualified; each municipal appointment shall cease if the appointed or elected official shall no~~
18 ~~longer hold or change the office which he or she held upon appointment, and further, each~~
19 ~~appointee shall be eligible to succeed him or herself.~~

20 ~~(3) Three (3) members shall be appointed by the governor from the public, with the~~
21 ~~advice and consent of the senate, one of whom shall serve until January 1, 1972, one of whom~~
22 ~~shall serve until January 1, 1973 and one of whom shall serve until January 1, 1974; the members~~
23 ~~and their successors shall represent a coastal community.~~

24 ~~(4) All members shall serve until their successors are appointed and qualified; during the~~
25 ~~month of January, the governor shall appoint, with advice and consent of senate, a member to~~
26 ~~succeed the members whose term will then next expire for a term of three (3) years commencing~~
27 ~~on the first day of February next following and until his or her successor is named and qualified.~~
28 ~~A member shall be eligible to succeed him or herself. No more than two (2) persons on the~~
29 ~~council shall be from the same community.~~

30 ~~(5) Appointments shall first be made by the governor, then by the president of the senate,~~
31 ~~and then by the speaker. The commissioner of the environmental protection branch or his or her~~
32 ~~designee within the department of environment shall serve ex officio. The ex officio member~~
33 ~~shall not be counted as serving from any particular community.~~

34 ~~(b) In addition to the foregoing voting members, the council shall include a varying~~

1 ~~number of other members who shall serve in an advisory capacity without the right to vote and~~
2 ~~who shall be invited to serve by either the governor or the voting members. These advisory~~
3 ~~members shall represent the federal agencies such as the navy, coast guard, corps of engineers,~~
4 ~~public health service, and the federal water pollution control administration, and such regional~~
5 ~~agencies as the New England river basins commission and the New England regional commission~~
6 ~~and any other group or interest not otherwise represented.~~

7 ~~(c) There shall be established a coastal resources advisory committee which committee,~~
8 ~~appointed by the executive director of the coastal resources management council, shall include,~~
9 ~~but not be limited to, representation from the following groups: one of whom shall be a~~
10 ~~representative of the University of Rhode Island Graduate School of Oceanography and the~~
11 ~~College of Resources Development, one of whom shall be a representative of the Sea Grant~~
12 ~~National College Program, one of whom shall be a representative of the army corps of engineers,~~
13 ~~one of whom shall be a representative of the federal environmental protection agency's~~
14 ~~Narragansett Bay laboratory, one of whom shall be a representative of the coastal resources~~
15 ~~management council, one of whom shall be the director of environmental management; one of~~
16 ~~whom shall be a member of the Rhode Island Marine Trade Association and one of whom shall~~
17 ~~be a representative of a regional environmental group. The council shall have the authority to~~
18 ~~appoint such additional members to said advisory committee as is deemed necessary or advisable~~
19 ~~by the advisory committee or the council. It shall be the responsibility of the committee to advise~~
20 ~~the coastal resources management council on environmental issues relating to dredging and~~
21 ~~permitting related thereto, including but not limited to those issues defined in sections 46-23-18.1~~
22 ~~—46-23-18.3, inclusive.~~

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

25 ~~**46-23-2.1. Members --- Term of office --- Vacancies.** --- (a) The term of office of the~~
26 ~~appointed members shall be three (3) years, only so long as the members shall remain eligible to~~
27 ~~serve on the council under the appointment authority.~~

28 ~~(b) The members are eligible to succeed themselves.~~

29 ~~(c) Elected or appointed municipal officials shall hold seats on the council, only so long~~
30 ~~as they remain in their elected or appointed office. Members of the senate and house shall serve at~~
31 ~~the pleasure of the appointing authority and shall not be subject to the provisions of subsection (b)~~
32 ~~of this section.~~

33 ~~(d) A vacancy other than by expiration shall be filled in the manner of the original~~
34 ~~appointment but only for the unexpired portion of the term. The appointing authority shall have~~

1 ~~the power to remove its appointee for just cause.~~

2 ~~**46-23-3. Oath of members.** -- Each appointed member of the council, before entering~~
3 ~~upon his or her duties, shall take an oath to administer the duties of his or her office faithfully and~~
4 ~~impartially, and the oath shall be filed in the office of the secretary of state.~~

5 ~~**46-23-4. Officers of the council -- Quorum and vote required for action.** -- The~~
6 ~~governor, upon the appointment of the appointed members of the council, shall select from the~~
7 ~~appointed members a chairperson and vice chairperson. The council shall thereupon select a~~
8 ~~secretary from among its membership or staff. The council may engage such staff, including legal~~
9 ~~counsel, as it deems necessary. A quorum shall consist of seven (7) members of the council. A~~
10 ~~majority vote of those present shall be required for action.~~

11 ~~**46-23-4.1. The commissioner of coastal resources management.** -- The council shall~~
12 ~~engage a commissioner of coastal resources management who shall be an employee of the council~~
13 ~~and who shall not be a member of the council. The commissioner shall coordinate and liaison~~
14 ~~with the director of the environment, and his or her staff shall be at the same staff level as the~~
15 ~~other commissioners and shall work directly with the other commissioners. The commissioner of~~
16 ~~coastal resources management shall be in the unclassified service. The duties and powers of the~~
17 ~~commissioner of coastal resources management shall be determined by the council. The council~~
18 ~~shall not engage a commissioner of coastal resources management for more than five (5) years;~~
19 ~~provided, however, that the council may renew its contract with the commissioner of coastal~~
20 ~~resources management.~~

21 ~~**46-23-5. Expenses of members.** -- (a) The members of the council and the chairperson~~
22 ~~shall not be compensated for their service on the board, but the members and chairperson shall be~~
23 ~~reimbursed for their actual expenses necessarily incurred in the performance of their duties.~~

24 ~~-(b) [Deleted by P.L. 2005, ch. 117, art. 21, section 34.]~~

25 ~~**46-23-6. Powers and duties -- Rights of way. [Effective until January 15, 2006.]** -- In~~
26 ~~order to properly manage coastal resources the council has the following powers and duties:~~

27 ~~-(1) Planning and management.~~

28 ~~-(i) The primary responsibility of the council shall be the continuing planning for and~~
29 ~~management of the resources of the state's coastal region. The council shall be able to make any~~
30 ~~studies of conditions, activities, or problems of the state's coastal region needed to carry out its~~
31 ~~responsibilities.~~

32 ~~-(ii) The resources management process shall include the following basic phases:~~

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

- 1 ~~-(B) Evaluate these resources in terms of their quantity, quality, capability for use, and~~
2 ~~other key characteristics.~~
- 3 ~~-(C) Determine the current and potential uses of each resource.~~
- 4 ~~-(D) Determine the current and potential problems of each resource.~~
- 5 ~~-(E) Formulate plans and programs for the management of each resource, identifying~~
6 ~~permitted uses, locations, protection measures, and so forth.~~
- 7 ~~-(F) Carry out these resources management programs through implementing authority and~~
8 ~~coordination of state, federal, local, and private activities.~~
- 9 ~~-(G) Formulation of standards where these do not exist, and reevaluation of existing~~
10 ~~standards.~~
- 11 ~~-(H) To develop comprehensive programs for dredging in tidal waters and related~~
12 ~~beneficial use, disposal, monitoring dewatering and transportation of dredge materials.~~
- 13 ~~-(I) To accept and administer loans and grants from the federal government and from~~
14 ~~other sources, public or private, for the carrying out of any of its functions, which loans or grants~~
15 ~~shall not be expended for other than the purposes for which provided.~~
- 16 ~~-(J) To encourage, participate in, or conduct studies, investigations, research, and~~
17 ~~demonstrations relating to dredging, disposal of dredge materials and transportation thereof in the~~
18 ~~tidal waters of the state as the coastal resources management council may deem advisable and~~
19 ~~necessary for the discharge of its duties under this chapter.~~
- 20 ~~-(K) To collect and disseminate information relating to dredging, disposal of dredge~~
21 ~~materials and transportation thereof within the tidal waters of the state.~~
- 22 ~~-(L) To work with the appropriate federal and state agencies to develop as provided for in~~
23 ~~this chapter and in chapter 6.1 of this title, a comprehensive plan for dredging in tidal waters and~~
24 ~~related beneficial use, disposal, monitoring dewatering and transportation of dredge materials.~~
- 25 ~~-(M) To apply for, accept and expend grants and bequests of funds, for the purpose of~~
26 ~~carrying out the lawful responsibilities of the coastal resources management council.~~
- 27 ~~-(iii) An initial series of resources management activities shall be initiated through this~~
28 ~~basic process, then each phase shall continuously be recycled and used to modify the council's~~
29 ~~resources management programs and keep them current.~~
- 30 ~~-(iv) Planning and management programs shall be formulated in terms of the~~
31 ~~characteristics and needs of each resource or group of related resources. However, all plans and~~
32 ~~programs shall be developed around basic standards and criteria, including:~~
- 33 ~~-(A) The need and demand for various activities and their impact upon ecological~~
34 ~~systems.~~

1 ~~-(B) The degree of compatibility of various activities.~~

2 ~~-(C) The capability of coastal resources to support various activities.~~

3 ~~-(D) Water quality standards set by the director of environmental management.~~

4 ~~-(E) Consideration of plans, studies, surveys, inventories, and so forth prepared by other~~

5 ~~public and private sources.~~

6 ~~-(F) Consideration of contiguous land uses and transportation facilities.~~

7 ~~-(G) Whenever possible consistency with the state guide plan.~~

8 ~~-(v) The council shall prepare, adopt, administer, and cause to be implemented, including~~

9 ~~specifically through its powers of coordination as set forth in subdivision 3 of this section, a~~

10 ~~marine resources development plan and such special area management plans as the council may~~

11 ~~determine to be appropriate or desirable as follows:~~

12 ~~-(A) Marine resources development plan.~~

13 ~~-(1) The purpose of the marine resources development plan shall be to provide an~~

14 ~~integrated strategy for: (a) improving the health and functionality of Rhode Island's marine~~

15 ~~ecosystem; (b) providing for appropriate marine related economic development; and (c)~~

16 ~~promoting the use and enjoyment of Rhode Island's marine resources by the people of the state.~~

17 ~~-(2) The marine resources development plan shall include specific goals and objectives~~

18 ~~necessary to accomplish its purposes, performance measures to determine progress toward~~

19 ~~achieving such goals and objectives, and an implementation program.~~

20 ~~-(3) The marine resources development plan shall be prepared in cooperation with the~~

21 ~~department of environmental management, the statewide planning program, and the economic~~

22 ~~development corporation, with the involvement of such other state agencies as may be~~

23 ~~appropriate, and with such technical support as may be necessary and appropriate from the~~

24 ~~Narragansett Bay Estuary Program, the Coastal Institute at the University of Rhode Island, and~~

25 ~~Rhode Island Sea Grant.~~

26 ~~-(4) The plan shall be responsive to the requirements and principles of the federal coastal~~

27 ~~zone management act as amended, including, but not limited to, the expectations of the act for~~

28 ~~incorporating the federal clean water act into coastal zone management programs.~~

29 ~~-(5) The marine resources development plan shall take into account local land use~~

30 ~~management responsibilities as provided for under title 45 and harbor management~~

31 ~~responsibilities, and the preparation of the plan shall include opportunities for involvement and/or~~

32 ~~comment by cities and towns.~~

33 ~~-(6) The marine resources development plan shall be adopted by the council in~~

34 ~~accordance with the provisions of this subsection by July 1, 2005, shall as appropriate incorporate~~

1 ~~the recommendations of the Governor's Narragansett Bay and Watershed Planning Commission,~~
2 ~~and shall be made consistent with systems level plans as appropriate, in order to effectuate the~~
3 ~~purposes of systems level planning. The council shall update the marine resources development~~
4 ~~plan at least once every five (5) years.~~

5 ~~(7) The council shall administer its programs, regulations, and implementation activities~~
6 ~~in a manner consistent with the marine resources development plan.~~

7 ~~(8) The marine resources development plan and any updates thereto shall be adopted as~~
8 ~~appropriate as elements of the state guide plan pursuant to section 42-11-10.~~

9 ~~(B) Special area management plans.~~

10 ~~(1) The council shall adopt such special area management plans as deemed necessary~~
11 ~~and desirable to provide for the integration and coordination of the protection of natural~~
12 ~~resources, the promotion of reasonable coastal dependent economic growth, and the improved~~
13 ~~protection of life and property in the specific areas designated council as requiring such integrated~~
14 ~~planning and coordination.~~

15 ~~(2) The integrated planning and coordination herein specified shall include, but not be~~
16 ~~limited to, federal agencies, state agencies, boards, commissions, and corporations, including~~
17 ~~specifically the economic development corporation, and cities and towns, shall utilize to the~~
18 ~~extent appropriate and feasible the capacities of entities of higher education, including Rhode~~
19 ~~Island Sea Grant, and shall provide for the participation of advocacy groups, community based~~
20 ~~organizations, and private persons.~~

21 ~~(3) The council shall administer its programs, regulations, and implementation activities~~
22 ~~in a manner consistent with special area management plans.~~

23 ~~(4) Special area management plans and any updates thereto shall be adopted as~~
24 ~~appropriate as elements of the state guide plan pursuant to section 42-11-10.~~

25 ~~(2) Implementation.~~

26 ~~(i) The council is authorized to formulate policies and plans and to adopt regulations~~
27 ~~necessary to implement its various management programs. With respect to such policies and~~
28 ~~plans which relate to matters where the coastal resources management council and the department~~
29 ~~of environmental management have concurrent jurisdiction and upon formulation of the plans and~~
30 ~~regulations, the council shall, prior to adoption, submit the proposed plans or regulations to the~~
31 ~~director of the environmental management for the director's review. The director shall review and~~
32 ~~submit comments to the council within thirty (30) days of submission to the director by the~~
33 ~~council. The comments of the director shall include findings with regard to the consistency of the~~
34 ~~policies, plans and/or regulations with the requirements of laws administered by the department.~~

1 ~~The council shall consider the director's comments prior to adoption of any such policies, plans or~~
2 ~~regulations and shall respond in writing to findings of the director with regard to the consistency~~
3 ~~of said policies, plans and/or regulations with the requirements of laws administered by the~~
4 ~~department.~~

5 ~~(ii) (A) The council shall have exclusive jurisdiction below mean high water for all~~
6 ~~development, operations, and dredging, consistent with the requirements of chapter 6.1 of this~~
7 ~~title and except as necessary for the department of environmental management to exercise its~~
8 ~~powers and duties and to fulfill its responsibilities pursuant to sections 42-17.1-2 and 42-17.1-24,~~
9 ~~and any person, firm, or governmental agency proposing any development or operation within,~~
10 ~~above, or beneath the tidal water below the mean high water mark, extending out to the extent of~~
11 ~~the state's jurisdiction in the territorial sea, shall be required to demonstrate that its proposal~~
12 ~~would not:~~

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

14 ~~(II) Make any area unsuitable for any uses or activities to which it is allocated by a~~
15 ~~resources management plan or program adopted by the council; or (III) Significantly damage the~~
16 ~~environment of the coastal region.~~

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

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

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

29 ~~(B) Chemical or petroleum processing, transfer, or storage.~~

30 ~~(C) Minerals extraction.~~

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

34 ~~(E) Coastal wetlands and all directly associated contiguous areas which are necessary to~~

1 ~~preserve the integrity of the wetlands including any freshwater wetlands located in the vicinity of~~
2 ~~the coast. The actual determination of freshwater wetlands located in coastal vicinities and under~~
3 ~~the jurisdiction of the coastal resources management council shall be designated on such maps~~
4 ~~that are agreed to in writing and made available for public use by the coastal resources~~
5 ~~management council and the director, department of environmental management, within three (3)~~
6 ~~months of [August 6, 1996]The CRMC shall have exclusive jurisdiction over the wetlands areas~~
7 ~~described in this section notwithstanding any provision of chapter 1, title 2 or any other provision~~
8 ~~except that the division of agriculture maintains jurisdiction over all farming consistent with~~
9 ~~section 2-1-22(i) and (j). Within six (6) months of [August 6, 1996]the council in cooperation~~
10 ~~with the director shall develop rules and regulations for the management and protection of~~
11 ~~freshwater wetlands, affected by an aquaculture project, outside of those freshwater wetlands~~
12 ~~located in the vicinity of the coast and under the exclusive jurisdiction of the director of the~~
13 ~~department of environmental management. For the purpose of this chapter, a "coastal wetland"~~
14 ~~shall mean any salt marsh bordering on the tidal waters of this state, whether or not the tidal~~
15 ~~waters reach the littoral areas through natural or artificial watercourses, and those uplands directly~~
16 ~~associated and contiguous thereto which are necessary to preserve the integrity of that marsh.~~
17 ~~Marshes shall include those areas upon which grow one or more of the following: smooth~~
18 ~~cordgrass (spartina alterniflora), salt meadow grass (spartina patens), spike grass (distichlis~~
19 ~~spicata), black rush (juncus gerardi), saltworts (salicornia spp.), sea lavender (limonium~~
20 ~~carolinianum), saltmarsh bulrushes (scirpus spp.), hightide bush (iva frutescens), tall reed~~
21 ~~(phragmites communis), tall cordgrass (spartina pectinata), broadleaf cattail (typha latifolia),~~
22 ~~narrowleaf cattail (typha angustifolia), spike rush (eleocharis rostellata), chairmaker's rush~~
23 ~~(scirpus americana), creeping bentgrass (agrostis palustris), sweet grass (hierochloa odorata), and~~
24 ~~wild rye (elymus virginicus).~~

25 ~~(F) Sewage treatment and disposal and solid waste disposal facilities.~~

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

30 ~~(3) Coordination.—The council has the following coordinating powers and duties:~~

31 ~~(i) Functioning as a binding arbitrator in any matter of dispute involving both the~~
32 ~~resources of the state's coastal region and the interests of two (2) or more municipalities or state~~
33 ~~agencies.~~

34 ~~(ii) Consulting and coordinating actions with local, state, regional, and federal agencies~~

1 ~~and private interests.~~

2 ~~(iii) Conducting or sponsoring coastal research.~~

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

4 ~~(v) Serving as the lead state agency and initial and primary point of contact for dredging~~
5 ~~activities in tidal waters and in that capacity, integrating and coordinating the plans and policies~~
6 ~~of other state agencies as they pertain to dredging in order to develop comprehensive programs~~
7 ~~for dredging as required by subparagraph (1)(ii)(H) of this section and chapter 6.1 of this title.~~

8 ~~The Rhode Island Resource Recovery Corporation prior to purchasing cover material for the state~~
9 ~~landfill shall first contact CRMC to see if there is a source of suitable dredged material available~~
10 ~~which shall be used in place of the purchase cover material. Other state agencies engaged in the~~
11 ~~process of dump closures shall also contact the CRMC to see if there is a source of suitable~~
12 ~~dredged material available, which shall be used in place of the purchase cover material. In~~
13 ~~addition, cities and towns may contact the CRMC prior to closing city or town controlled dump~~
14 ~~sites to see if there is a source of suitable dredge material available, which may be used in place~~
15 ~~of the purchase cover material.~~

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

18 ~~(4) Operations.—The council is authorized to exercise the following operating functions,~~
19 ~~which are essential to management of coastal resources:~~

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

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

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

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

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

30 ~~(5) Rights of way.~~

31 ~~(i) The council is responsible for the designation of all public rights of way to the tidal~~
32 ~~water areas of the state, and shall carry on a continuing discovery of appropriate public rights of~~
33 ~~way to the tidal water areas of the state.~~

34 ~~(ii) The council shall maintain a complete file of all official documents relating to the~~

1 ~~legal status of all public rights of way to the tidal water areas of the state.~~

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

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

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

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

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

15 ~~-(A) Land evidence records;~~

16 ~~-(B) The exercise of domain over the parcel such as maintenance, construction, or~~
17 ~~upkeep;~~

18 ~~-(C) The payment of taxes;~~

19 ~~-(D) The creation of a dedication;~~

20 ~~-(E) Public use;~~

21 ~~-(F) Any other public record or historical evidence such as maps and street indexes;~~

22 ~~-(G) Other evidence as set out in section 42-35-10.~~

23 ~~-(vii) A determination by the council that a parcel is a right of way shall be decided by~~
24 ~~substantial evidence.~~

25 ~~-(viii) The council shall be notified whenever by the judgment of the governing body of a~~
26 ~~coastal municipality, a public right of way to tidal water areas located in such municipality has~~
27 ~~ceased to be useful to the public, and such governing body proposes an order of abandonment of~~
28 ~~such public right of way. Said notice shall be given not less than sixty (60) days prior to the date~~
29 ~~of such abandonment.~~

30 ~~-(6) Pre-existing residential boating facilities.~~

31 ~~-(i) The council is hereby authorized and empowered to issue assent for pre-existing~~
32 ~~residential boating facilities constructed prior to January 1, 1985. These assents may be issued for~~
33 ~~pre-existing residential boating facilities, even though such facilities do not meet current~~
34 ~~standards and policies of the council, provided, however, that the council finds that such facilities~~

1 ~~do not pose any significant risk to the coastal resources of the state of Rhode Island and do not~~
2 ~~endanger human safety.~~

3 ~~(ii) In addition to the above criteria, the applicant shall provide clear and convincing~~
4 ~~evidence that:~~

5 ~~(A) The facility existed in substantially the same configuration as it now exists prior to~~
6 ~~January 1, 1985;~~

7 ~~(B) The facility is presently intact and functional; and~~

8 ~~(C) The facility presents no significant threat to the coastal resources of the state of~~
9 ~~Rhode Island or human safety.~~

10 ~~(iii) The applicant, to be eligible for this provision, shall apply no later than January 31,~~
11 ~~1999.~~

12 ~~(iv) The council is directed to develop rules and regulations necessary to implement this~~
13 ~~subdivision.~~

14 ~~(v) It is the specific intent of this subsection to require that all pre-existing residential~~
15 ~~boating facilities constructed on January 1, 1985 or thereafter conform to this chapter and the~~
16 ~~plans, rules and regulations of the council.~~

17 ~~(7) Lease of filled lands which were formerly tidal lands to riparian or littoral owners.~~

18 ~~(i) Any littoral or riparian owner in this state who desires to obtain a lease from the state~~
19 ~~of Rhode Island of any filled lands adjacent to his or her upland shall apply to the council, which~~
20 ~~may make the lease. Any littoral or riparian owner who wishes to obtain a lease of filled lands~~
21 ~~must obtain pre-approval, in the form of an assent, from the council. Any lease granted by the~~
22 ~~council shall continue the public's interest in the filled lands including but not limited to the rights~~
23 ~~of navigation, fishery, and commerce. The public trust in the lands shall continue and run~~
24 ~~concurrently with the leasing of the lands by the state to private individuals, corporations, or~~
25 ~~municipalities. Upon the granting of a lease by the council, those rights consistent with the public~~
26 ~~trust and secured by the lease shall vest in the lessee. The council may approve a lease of filled~~
27 ~~lands for an initial term of up to fifty (50) years, with, or without, a single option to renew for an~~
28 ~~additional term of up to fifty (50) years.~~

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

33 ~~(8) "Marinas" as defined in the coastal resources management program in effect as of~~
34 ~~June 1, 1997, are deemed to be one of the uses consistent with the public trust. Subdivision (7) is~~

1 ~~not applicable to: (i) any riparian owner on tidal waters in this state (and any successor in interest~~
2 ~~to the owner) which has an assent issued by the council to use any land under water in front of his~~
3 ~~or her lands as a marina, which assent was in effect on June 1, 1997; (ii) any alteration,~~
4 ~~expansion, or other activity at a marina (and any successor in interest) which has an assent issued~~
5 ~~by the council, which assent was in effect on June 1, 1997; and (iii) any renewal of assent to a~~
6 ~~marina (or successor in interest), which assent was issued by the council and in effect on June 1,~~
7 ~~1997.~~

8 ~~(9) "Recreational boating facilities" including marinas, launching ramps, and recreational~~
9 ~~mooring areas, as defined by and properly permitted by the council, are deemed to be one of the~~
10 ~~uses consistent with the public trust. Subdivision (7) is not applicable to: (i) any riparian owner~~
11 ~~on tidal waters in this state (and any successor in interest to the owner) which has an assent issued~~
12 ~~by the council to use any land under water in front of his or her lands as a recreational boating~~
13 ~~facility; any alteration, expansion or other activity at a recreational boating facility (and any~~
14 ~~successor in interest) which has an assent issued by the council, which assent was in effect as of~~
15 ~~June 1, 1997; and (ii) any renewal of assent to a recreational boating facility (or successor in~~
16 ~~interest), which assent was issued by the council and in effect on June 1, 1997.~~

17 ~~**46-23-6. Powers and duties -- Rights of way. [Effective January 15, 2006.]** In order~~
18 ~~to properly manage coastal resources the council has the following powers and duties:~~

19 ~~(1) Planning and management.~~

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

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

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

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

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

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

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

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

- 1 ~~-(G) Formulation of standards where these do not exist, and reevaluation of existing~~
2 ~~standards.~~
- 3 ~~-(H) To develop comprehensive programs for dredging in tidal waters and related~~
4 ~~beneficial use, disposal, monitoring dewatering and transportation of dredge materials.~~
- 5 ~~-(I) To accept and administer loans and grants from the federal government and from~~
6 ~~other sources, public or private, for the carrying out of any of its functions, which loans or grants~~
7 ~~shall not be expended for other than the purposes for which provided.~~
- 8 ~~-(J) To encourage, participate in, or conduct studies, investigations, research, and~~
9 ~~demonstrations relating to dredging, disposal of dredge materials and transportation thereof in the~~
10 ~~tidal waters of the state as the coastal resources management council may deem advisable and~~
11 ~~necessary for the discharge of its duties under this chapter.~~
- 12 ~~-(K) To collect and disseminate information relating to dredging, disposal of dredge~~
13 ~~materials and transportation thereof within the tidal waters of the state.~~
- 14 ~~-(L) To work with the appropriate federal and state agencies to develop as provided for in~~
15 ~~this chapter and in chapter 6.1 of this title, a comprehensive plan for dredging in tidal waters and~~
16 ~~related beneficial use, disposal, monitoring dewatering and transportation of dredge materials.~~
- 17 ~~-(M) To apply for, accept and expend grants and bequests of funds, for the purpose of~~
18 ~~carrying out the lawful responsibilities of the coastal resources management council.~~
- 19 ~~-(iii) An initial series of resources management activities shall be initiated through this~~
20 ~~basic process, then each phase shall continuously be recycled and used to modify the council's~~
21 ~~resources management programs and keep them current.~~
- 22 ~~-(iv) Planning and management programs shall be formulated in terms of the~~
23 ~~characteristics and needs of each resource or group of related resources. However, all plans and~~
24 ~~programs shall be developed around basic standards and criteria, including:~~
- 25 ~~-(A) The need and demand for various activities and their impact upon ecological~~
26 ~~systems.~~
- 27 ~~-(B) The degree of compatibility of various activities.~~
- 28 ~~-(C) The capability of coastal resources to support various activities.~~
- 29 ~~-(D) Water quality standards set by the director of environmental management.~~
- 30 ~~-(E) Consideration of plans, studies, surveys, inventories, and so forth prepared by other~~
31 ~~public and private sources.~~
- 32 ~~-(F) Consideration of contiguous land uses and transportation facilities.~~
- 33 ~~-(G) Whenever possible consistency with the state guide plan.~~
- 34 ~~-(v) The council shall prepare, adopt, administer, and cause to be implemented, including~~

1 specifically through its powers of coordination as set forth in subdivision (3) of this section, a
2 marine resources development plan and such special area management plans as the council may
3 determine to be appropriate or desirable as follows:

4 ~~(A) Marine resources development plan.~~

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

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

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

18 ~~(4) The plan shall be responsive to the requirements and principles of the federal coastal~~
19 ~~zone management act as amended, including, but not limited to, the expectations of the act for~~
20 ~~incorporating the federal clean water act into coastal zone management programs.~~

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

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

31 ~~(7) The council shall administer its programs, regulations, and implementation activities~~
32 ~~in a manner consistent with the marine resources development plan.~~

33 ~~(8) The marine resources development plan and any updates thereto shall be adopted as~~
34 ~~appropriate as elements of the state guide plan pursuant to section 42-11-10.~~

1 ~~(B) Special area management plans.~~

2 ~~(1) The council shall adopt such special area management plans as deemed necessary~~
3 ~~and desirable to provide for the integration and coordination of the protection of natural~~
4 ~~resources, the promotion of reasonable coastal dependent economic growth, and the improved~~
5 ~~protection of life and property in the specific areas designated council as requiring such integrated~~
6 ~~planning and coordination.~~

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

13 ~~(3) The council shall administer its programs, regulations, and implementation activities~~
14 ~~in a manner consistent with special area management plans.~~

15 ~~(4) Special area management plans and any updates thereto shall be adopted as~~
16 ~~appropriate as elements of the state guide plan pursuant to section 42-11-10.~~

17 ~~(2) Implementation.~~

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

31 ~~(ii) (A) The council shall have exclusive jurisdiction below mean high water for all~~
32 ~~development, operations, and dredging, consistent with the requirements of chapter 6.1 of this~~
33 ~~title and except as necessary for the department of environmental management to exercise its~~
34 ~~powers and duties and to fulfill its responsibilities pursuant to sections 42-17.1-2 and 42-17.1-24,~~

1 ~~and any person, firm, or governmental agency proposing any development or operation within,~~
2 ~~above, or beneath the tidal water below the mean high water mark, extending out to the extent of~~
3 ~~the state's jurisdiction in the territorial sea, shall be required to demonstrate that its proposal~~
4 ~~would not:~~

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

6 ~~(II) Make any area unsuitable for any uses or activities to which it is allocated by a~~
7 ~~resources management plan or program adopted by the council; or (III) Significantly damage the~~
8 ~~environment of the coastal region.~~

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

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

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

21 ~~(B) Chemical or petroleum processing, transfer, or storage.~~

22 ~~(C) Minerals extraction.~~

23 ~~(D) Shoreline protection facilities and physiological features, and all directly~~
24 ~~associated contiguous areas which are necessary to preserve the integrity of the facility and/or~~
25 ~~features.~~

26 ~~(E) Coastal wetlands and all directly associated contiguous areas which are necessary to~~
27 ~~preserve the integrity of the wetlands including any freshwater wetlands located in the vicinity of~~
28 ~~the coast. The actual determination of freshwater wetlands located in coastal vicinities and under~~
29 ~~the jurisdiction of the coastal resources management council shall be designated on such maps~~
30 ~~that are agreed to in writing and made available for public use by the coastal resources~~
31 ~~management council and the director, department of environmental management, within three (3)~~
32 ~~months of [August 6, 1996]The CRMC shall have exclusive jurisdiction over the wetlands areas~~
33 ~~described in this section notwithstanding any provision of chapter 1, title 2 or any other provision~~
34 ~~except that the division of agriculture maintains jurisdiction over all farming consistent with~~

1 ~~section 2-1-22(i) and (j). Within six (6) months of [August 6, 1996]the council in cooperation~~
2 ~~with the director shall develop rules and regulations for the management and protection of~~
3 ~~freshwater wetlands, affected by an aquaculture project, outside of those freshwater wetlands~~
4 ~~located in the vicinity of the coast and under the exclusive jurisdiction of the director of the~~
5 ~~department of environmental management. For the purpose of this chapter, a "coastal wetland"~~
6 ~~shall mean any salt marsh bordering on the tidal waters of this state, whether or not the tidal~~
7 ~~waters reach the littoral areas through natural or artificial watercourses, and those uplands directly~~
8 ~~associated and contiguous thereto which are necessary to preserve the integrity of that marsh.~~
9 ~~Marshes shall include those areas upon which grow one or more of the following: smooth~~
10 ~~cordgrass (spartina alterniflora), salt meadow grass (spartina patens), spike grass (distichlis~~
11 ~~spicata), black rush (juncus gerardi), saltworts (salicornia spp.), sea lavender (limonium~~
12 ~~carolinianum), saltmarsh bulrushes (scirpus spp.), hightide bush (iva frutescens), tall reed~~
13 ~~(phragmites communis), tall cordgrass (spartina pectinata), broadleaf cattail (typha latifolia),~~
14 ~~narrowleaf cattail (typha angustifolia), spike rush (eleocharis rostellata), chairmaker's rush~~
15 ~~(scirpus americana), creeping bentgrass (agrostis palustris), sweet grass (hierochloe odorata), and~~
16 ~~wild rye (etlymus virginicus).~~

17 ~~(F) Sewage treatment and disposal and solid waste disposal facilities.~~

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

22 ~~(3) Coordination.—The council has the following coordinating powers and duties:~~

23 ~~(i) Functioning as a binding arbitrator in any matter of dispute involving both the~~
24 ~~resources of the state's coastal region and the interests of two (2) or more municipalities or state~~
25 ~~agencies.~~

26 ~~(ii) Consulting and coordinating actions with local, state, regional, and federal agencies~~
27 ~~and private interests.~~

28 ~~(iii) Conducting or sponsoring coastal research.~~

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

30 ~~(v) Serving as the lead state agency and initial and primary point of contact for dredging~~
31 ~~activities in tidal waters and in that capacity, integrating and coordinating the plans and policies~~
32 ~~of other state agencies as they pertain to dredging in order to develop comprehensive programs~~
33 ~~for dredging as required by subparagraph (1)(ii)(H) of this section and chapter 6.1 of this title.~~

34 ~~The Rhode Island Resource Recovery Corporation prior to purchasing cover material for the state~~

1 ~~landfill shall first contact CRMC to see if there is a source of suitable dredged material available~~
2 ~~which shall be used in place of the purchase cover material. Other state agencies engaged in the~~
3 ~~process of dump closures shall also contact the CRMC to see if there is a source of suitable~~
4 ~~dredged material available, which shall be used in place of the purchase cover material. In~~
5 ~~addition, cities and towns may contact the CRMC prior to closing city or town controlled dump~~
6 ~~sites to see if there is a source of suitable dredge material available, which may be used in place~~
7 ~~of the purchase cover material.~~

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

10 ~~(4) Operations.—The council is authorized to exercise the following operating functions,~~
11 ~~which are essential to management of coastal resources:~~

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

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

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

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

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

22 ~~(vi) The council may require an owner or operator of a commercial wharf or pier of a~~
23 ~~marine commercial facility, as defined in 300.3 of the Rhode Island Coastal Resources~~
24 ~~Management Program, but not including those facilities defined in 300.4 of the Rhode Island~~
25 ~~Coastal Resources Management Program, and which is capable of offloading cargo, and is or will~~
26 ~~be subject to a new use or a significant intensification of an existing use, to demonstrate that the~~
27 ~~commercial wharf or pier is fit for that purpose. For the purposes of this subsection, a commercial~~
28 ~~wharf or pier shall mean a pier, bulkhead, wharf, docking facility, or underwater utilities. The~~
29 ~~council may order said owner or operator to provide an engineering certification to the council's~~
30 ~~satisfaction that the commercial wharf or pier is fit for the new use or intensification of an~~
31 ~~existing use. If the council determines that the commercial wharf or pier is not fit, it may order~~
32 ~~the owner or operator to undertake the necessary work to make the commercial wharf or pier safe,~~
33 ~~within a reasonable time frame. If the council determines that the commercial wharf or pier,~~
34 ~~because of its condition, is an immediate threat to public health and safety it may order the~~

1 ~~commercial wharf or pier closed until the necessary work to make the commercial wharf or pier~~
2 ~~safe has been performed and approved by the council. All work performed must conform to the~~
3 ~~council's management program. The council is also given the authority to develop regulations to~~
4 ~~carry out this provision and to impose administrative penalties of five thousand dollars (\$5,000)~~
5 ~~per day up to a maximum of twenty thousand dollars (\$20,000) consistent with section 46-23-7.1~~
6 ~~where there has been a violation of the orders under this provision.~~

7 ~~(5) Rights of way.~~

8 ~~(i) The council is responsible for the designation of all public rights of way to the tidal~~
9 ~~water areas of the state, and shall carry on a continuing discovery of appropriate public rights of~~
10 ~~way to the tidal water areas of the state.~~

11 ~~(ii) The council shall maintain a complete file of all official documents relating to the~~
12 ~~legal status of all public rights of way to the tidal water areas of the state.~~

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

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

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

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

24 ~~(vi) In designating rights of way, the council shall consider the following matters in~~
25 ~~making its designation:~~

26 ~~(A) Land evidence records;~~

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

29 ~~(C) The payment of taxes;~~

30 ~~(D) The creation of a dedication;~~

31 ~~(E) Public use;~~

32 ~~(F) Any other public record or historical evidence such as maps and street indexes;~~

33 ~~(G) Other evidence as set out in section 42-35-10.~~

34 ~~(vii) A determination by the council that a parcel is a right of way shall be decided by~~

1 ~~substantial evidence.~~

2 ~~-(viii) The council shall be notified whenever by the judgment of the governing body of a~~
3 ~~coastal municipality, a public right of way to tidal water areas located in such municipality has~~
4 ~~ceased to be useful to the public, and such governing body proposes an order of abandonment of~~
5 ~~such public right of way. Said notice shall be given not less than sixty (60) days prior to the date~~
6 ~~of such abandonment.~~

7 ~~-(6) Pre-existing residential boating facilities.~~

8 ~~-(i) The council is hereby authorized and empowered to issue assent for pre-existing~~
9 ~~residential boating facilities constructed prior to January 1, 1985. These assents may be issued for~~
10 ~~pre-existing residential boating facilities, even though such facilities do not meet current~~
11 ~~standards and policies of the council, provided, however, that the council finds that such facilities~~
12 ~~do not pose any significant risk to the coastal resources of the state of Rhode Island and do not~~
13 ~~endanger human safety.~~

14 ~~-(ii) In addition to the above criteria, the applicant shall provide clear and convincing~~
15 ~~evidence that:~~

16 ~~-(A) The facility existed in substantially the same configuration as it now exists prior to~~
17 ~~January 1, 1985;~~

18 ~~-(B) The facility is presently intact and functional; and~~

19 ~~-(C) The facility presents no significant threat to the coastal resources of the state of~~
20 ~~Rhode Island or human safety.~~

21 ~~-(iii) The applicant, to be eligible for this provision, shall apply no later than January 31,~~
22 ~~1999.~~

23 ~~-(iv) The council is directed to develop rules and regulations necessary to implement this~~
24 ~~subdivision.~~

25 ~~-(v) It is the specific intent of this subsection to require that all pre-existing residential~~
26 ~~boating facilities constructed on January 1, 1985 or thereafter conform to this chapter and the~~
27 ~~plans, rules and regulations of the council.~~

28 ~~-(7) Lease of filled lands which were formerly tidal lands to riparian or littoral owners.~~

29 ~~-(i) Any littoral or riparian owner in this state who desires to obtain a lease from the state~~
30 ~~of Rhode Island of any filled lands adjacent to his or her upland shall apply to the council, which~~
31 ~~may make the lease. Any littoral or riparian owner who wishes to obtain a lease of filled lands~~
32 ~~must obtain pre-approval, in the form of an assent, from the council. Any lease granted by the~~
33 ~~council shall continue the public's interest in the filled lands including but not limited to the rights~~
34 ~~of navigation, fishery, and commerce. The public trust in the lands shall continue and run~~

1 ~~concurrently with the leasing of the lands by the state to private individuals, corporations, or~~
2 ~~municipalities. Upon the granting of a lease by the council, those rights consistent with the public~~
3 ~~trust and secured by the lease shall vest in the lessee. The council may approve a lease of filled~~
4 ~~lands for an initial term of up to fifty (50) years, with, or without, a single option to renew for an~~
5 ~~additional term of up to fifty (50) years.~~

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

10 ~~(8) "Marinas" as defined in the coastal resources management program in effect as of~~
11 ~~June 1, 1997, are deemed to be one of the uses consistent with the public trust. Subdivision (7) is~~
12 ~~not applicable to: (i) any riparian owner on tidal waters in this state (and any successor in interest~~
13 ~~to the owner) which has an assent issued by the council to use any land under water in front of his~~
14 ~~or her lands as a marina, which assent was in effect on June 1, 1997; (ii) any alteration,~~
15 ~~expansion, or other activity at a marina (and any successor in interest) which has an assent issued~~
16 ~~by the council, which assent was in effect on June 1, 1997; and (iii) any renewal of assent to a~~
17 ~~marina (or successor in interest), which assent was issued by the council and in effect on June 1,~~
18 ~~1997.~~

19 ~~(9) "Recreational boating facilities" including marinas, launching ramps, and recreational~~
20 ~~mooring areas, as defined by and properly permitted by the council, are deemed to be one of the~~
21 ~~uses consistent with the public trust. Subdivision (7) is not applicable to: (i) any riparian owner~~
22 ~~on tidal waters in this state (and any successor in interest to the owner) which has an assent issued~~
23 ~~by the council to use any land under water in front of his or her lands as a recreational boating~~
24 ~~facility; any alteration, expansion or other activity at a recreational boating facility (and any~~
25 ~~successor in interest) which has an assent issued by the council, which assent was in effect as of~~
26 ~~June 1, 1997; and (ii) any renewal of assent to a recreational boating facility (or successor in~~
27 ~~interest), which assent was issued by the council and in effect on June 1, 1997.~~

28 ~~**46-23-6.1. Newport "cliff walk" -- Public right of way -- Legal studies.** -- The council~~
29 ~~is hereby directed to carry out any and all legal studies which it shall deem necessary in order to~~
30 ~~designate the Newport "cliff walk", so called, as a public right of way pursuant to section 46-23-~~
31 ~~6(5).~~

32 ~~**46-23-6.2. Abandonment of rights of way.** -- No city or town shall abandon a right of-~~
33 ~~way designated as such by the council unless the council approved the abandonment.~~

34 ~~**46-23-7. Violations.** -- (a) (1) In any instances wherein there is a violation of the coastal~~

1 ~~resources management program, or a violation of regulations or decisions of the council, the~~
2 ~~commissioner of coastal resources management shall have the power to order any person to cease~~
3 ~~and desist or to remedy any violation of any provisions of this chapter, or any rule, regulation,~~
4 ~~assent, order, or decision of the council whenever the commissioner of coastal resources~~
5 ~~management shall have reasonable grounds to believe that such violation has occurred.~~

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

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

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

19 ~~(c) The coastal resources management council shall discharge of record any notice filed~~
20 ~~pursuant to subsection (b) within thirty (30) days after the violation has been remedied.~~

21 **46-23-7.1. Administrative penalties.** ~~Any person who violates, or refuses or fails to~~
22 ~~obey, any notice or order issued pursuant to section 46-23-7(a); or any assent, order, or decision~~
23 ~~of the council, may be assessed an administrative penalty by the chairperson or executive director~~
24 ~~in accordance with the following:~~

25 ~~(1) The chairperson or executive director is authorized to assess an administrative~~
26 ~~penalty of not more than two thousand five hundred dollars (\$2,500) for each violation of this~~
27 ~~section, and is authorized to assess additional penalties of not more than five hundred dollars~~
28 ~~(\$500) for each day during which this violation continues after receipt of a cease and desist order~~
29 ~~from the council pursuant to section 46-23-7(a), but in no event shall the penalties in an aggregate~~
30 ~~equal or exceed ten thousand dollars (\$10,000). Prior to the assessment of a penalty under this~~
31 ~~subdivision, the property owner or person committing the violation shall be notified by certified~~
32 ~~mail or personal service that a penalty is being assessed. The notice shall include a reference to~~
33 ~~the section of the law, rule, regulation, assent, order, or permit condition violated; a concise~~
34 ~~statement of the facts alleged to constitute the violation; a statement of the amount of the~~

1 ~~administrative penalty assessed; and a statement of the party's right to an administrative hearing.~~

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

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

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

14 ~~**46-23-7.2. Proceedings for enforcement.** -- The superior court shall have jurisdiction to~~
15 ~~enforce the provisions of this chapter, the coastal resource management program, or any rule,~~
16 ~~regulation, assent, or order issued pursuant thereto. Proceedings under this section may follow the~~
17 ~~course of equity, and shall be instituted and prosecuted in the name of and at the direction of the~~
18 ~~chairperson and council by the attorney general or counsel designated by the council. Proceedings~~
19 ~~provided in this section shall be in addition to, and may be utilized in lieu of, other administrative~~
20 ~~or judicial proceedings authorized by this chapter.~~

21 ~~**46-23-7.3. Criminal penalties.** -- Any person who knowingly violates any provision of~~
22 ~~this chapter, the coastal resources management program, or any rule, regulation, assent, or order~~
23 ~~shall be guilty of a misdemeanor, and, upon conviction thereof shall be fined not more than five~~
24 ~~hundred dollars (\$500) or by imprisonment of not more than three (3) months or both; and each~~
25 ~~day the violation is continued or repeated shall be deemed a separate offense.~~

26 ~~**46-23-7.4. Penalty for blocking or posting of rights of way.** -- Any person who shall~~
27 ~~post or block any tidal water, public right of way, as designated by the council, shall be punished~~
28 ~~by a fine not exceeding five hundred dollars (\$500) or by imprisonment for not more than three~~
29 ~~(3) months or both; and each day the posting or blocking continues or is repeated shall be deemed~~
30 ~~a separate offense. The chairperson of the council, through council's legal counsel or the attorney~~
31 ~~general, may apply to any court of competent jurisdiction for an injunction to prevent the~~
32 ~~unlawful posting or blocking of any tidal water, public right of way.~~

33 ~~**46-23-7.5. Prosecution of criminal violations.** -- The chairperson and anyone~~
34 ~~designated by the chairperson, without being required to enter into any recognizance or to give~~

1 surety for cost, may institute proceedings in the name of the state. It shall be the duty of the
2 attorney general and/or the solicitor of the city or town in which the alleged violation has
3 occurred to conduct the prosecution of all the proceedings. The chairperson may delegate his or
4 her authority to bring prosecution by complaint and warrant to any law enforcement officials
5 authorized by law to bring complaints for the issuance of search or arrest warrants pursuant to
6 chapters 5 and 6 of title 12.

7 **46-23-8. Gifts, grants, and donations.** -- The council is authorized to receive any gifts,
8 grants, or donations made for any of the purposes of its program, which shall be deposited as
9 general revenues, and to disburse and administer the gifts, grants, or donations amounts
10 appropriated in accordance with the terms thereof. The council is authorized to receive any sums
11 provided by an applicant for use by the council in its hearing process, which shall be deposited as
12 general revenues, and to disburse and administer the general revenue amounts appropriated in
13 accordance with the rules and regulations promulgated by the council.

14 **46-23-9. Subpoena.** -- The council is hereby authorized and empowered to summon
15 witnesses and issue subpoenas in substantially the following form:

Se. To _____ of _____ greeting: You are hereby
required, in the name of the state of Rhode Island and Providence Plantations, to make your
appearance before the commission on _____ in the _____
city of _____ on the _____ day of _____ to give evidence of what you
know relative to a matter upon investigation by the commission on _____ and
produce and then and there have and give the following: Hereof fail not, as you will answer to
default under the penalty of the law in that behalf made and provided. Dated at _____
the _____ day of _____ in the year _____.

16 **46-23-10. Cooperation of departments.** -- All other departments and agencies and
17 bodies of state government are hereby authorized and directed to cooperate with and furnish such
18 information as the council shall require.

19 **46-23-11. Rules and regulations.** -- The rules and regulations promulgated by the
20 council shall be subject to the Administrative Procedures Act.

21 **46-23-12. Representation from coastal communities.** -- Upon the expiration of a term
22 of a member appointed by the governor, as an appointed or elected official of local government
23 from a coastal municipality as set out in section 46-23-2, the governor shall appoint an appointed
24 or elected official of a coastal municipality which, at the time of the governor's appointment, has
25 no appointed or ex officio representation on the council.

26 **46-23-13. Application and hearing fees.** -- The council shall be authorized to establish

1 reasonable fees for applications and hearings. All fees collected by the council, including fees
2 collected for leases, shall be deposited as general revenues. The state controller is hereby
3 authorized and directed to draw his or her orders upon the general treasurer for payment of such
4 sum or sums as may be necessary from time to time and upon receipt by him or her of duly
5 authenticated vouchers presented by the commissioner of coastal resources management.

6 ~~**46-23-14. Expert testimony.**~~ -- The council shall be authorized to engage its own expert
7 and outside consultants, and the council shall be empowered to use that testimony in making its
8 decisions.

9 ~~**46-23-15. Federal grants and interstate cooperation.**~~ -- The council is authorized to
10 accept any federal grants. It is further given the power to administer land and water use
11 regulations as necessary to fulfill their responsibilities under the Federal Coastal Zone
12 Management Act, 16 U.S.C. section 1451 et seq., and to acquire fee simple and less than fee
13 simple interests under any federal or state program. The council is authorized to coordinate and
14 cooperate with other states in furtherance of its purposes. The council may expend those grants
15 and appropriations. The coastal resources management council for the purposes of the federal
16 Coastal Zone Management Act, 16 U.S.C. section 1451 et seq., is the coastal zone agency under
17 sections 301 through 313 and sections 318 and 6217 of said act.

18 ~~**46-23-15.1. Coordination of harbor safety and enforcement patrols.**~~ -- Coastal
19 municipalities which share a common boundary along their public waters may enter into a
20 binding memorandum of agreement allowing for harbormasters and other officials charged with
21 enforcement of harbor management plan harbor ordinances from one coastal municipality to
22 enforce the harbor ordinances of the bordering coastal municipality upon the public waters of the
23 bordering coastal municipality when the coastal municipalities have harbor management plans
24 approved by the coastal resources management council and the memorandum of agreement is
25 approved by the respective town or city councils. This binding memorandum of agreement shall
26 specify how each coastal municipality is to receive any fines collected under this reciprocal
27 enforcement agreement and the jurisdiction in which any disputes arising out of this reciprocal
28 enforcement agreement shall be litigated.

29 ~~**46-23-16. Length of permits, licenses, and easements.**~~ -- The council is authorized to
30 grant permits, licenses, and easements for any term of years or in perpetuity. Permits, licenses, or
31 easements which are issued by the council for the filling of the submerged or submersible lands
32 of the state of Rhode Island remain subject to the public trust, and no title is conveyed by such
33 documents. All such permits, licenses, and easements shall clearly state that no title is being
34 conveyed. Permits, licenses or easements issued by the council are valid only with the conditions

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

8 ~~**46-23-17. Annual progress report on rights of way.** -- Within ninety (90) days after the~~
9 ~~end of each fiscal year, the council shall submit a written progress report on the development of~~
10 ~~public rights of way to the tidal water areas of the state, to the state planning council, the~~
11 ~~department of environmental management, and the joint committee on the environment, for~~
12 ~~review, evaluation, and recommendation of the program's suitability, relevance to the recreation~~
13 ~~element of the state guide plan, and impact on the natural resources of the state. The report shall~~
14 ~~also provide detailed records of expenditures and a proposed schedule of future projects.~~

15 ~~**46-23-18. Prohibited activities.** -- (a) No person, either as principal, agent or servant nor~~
16 ~~any firm, corporation, or any other entity shall, without a permit issued by the coastal resources~~
17 ~~management council, construct a marina within two thousand feet (2000') of a shellfish~~
18 ~~management area as defined by rules and regulations of the department of environmental~~
19 ~~management. Such permit shall include any permit required under subsection (b).~~

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

28 ~~**46-23-18.1. Permitting.** -- (a) Any person, either as principal, agent, or servant, or any~~
29 ~~firm, corporation or any other entity desiring to conduct any activity or activities specified in~~
30 ~~section 46-23-18 shall file an application for a permit with the coastal resources management~~
31 ~~council upon forms furnished by coastal resources management council.~~

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

33 ~~(c) The applicant shall bear the burden of proving that the activity or activities specified~~
34 ~~in the application will cause no significant adverse impact upon the environment or natural~~

1 ~~resources of the state, and the coastal resources management council shall be empowered to deny~~
2 ~~the application if the applicant does not demonstrate, in addition to other requirements of this~~
3 ~~chapter, that the activity or activities will not (i) significantly adversely affect any shellfish~~
4 ~~management area as designated by the department of environmental management or the marine~~
5 ~~fisheries council; (ii) be in a significant conflict with the marine ecology within or adjacent to the~~
6 ~~state's territorial waters, or (iii) significantly harm or destroy existing fishing grounds.~~

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

11 ~~(e) In determining whether an applicant has met the burden of proof under subsection~~
12 ~~(c), the coastal resources management council shall apply standards that conform with the federal~~
13 ~~environmental protection agency's applicable standards and guidelines for the management of~~
14 ~~dredge materials, including but not limited to, the federal environmental protection agency's rules,~~
15 ~~regulations and guidelines for deviating from said standards.~~

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

19 ~~**46-23-18.2. Rules and regulations.** -- The council, upon recommendation by the coastal~~
20 ~~resources advisory committee, shall issue reasonable rules and regulations governing the~~
21 ~~dredging, transporting and disposal of all dredge materials in accordance with this chapter.~~

22 ~~**46-23-18.3. Sites for disposal of spoil from dredge operations, selection.** -- (a) The~~
23 ~~council, upon recommendation of the coastal resources advisory committee, on or before the first~~
24 ~~day of January, 1999 and periodically thereafter as necessary, shall consistent with the~~
25 ~~comprehensive programs required in section 46-23-6(1)(ii)(H) identify and establish one or more~~
26 ~~in-water disposal sites to be used for the purpose of disposal of dredge materials from marinas~~
27 ~~and yacht clubs.~~

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

33 ~~**46-23-18.4. Enforcement.** -- The provisions of sections 46-23-18 through 46-23-18.3~~
34 ~~shall be enforced by the coastal resources management council. Nothing herein shall be deemed~~

1 ~~to abrogate the department of environmental management's authority to enforce its water quality~~
2 ~~standards adopted pursuant to section 46-12-3(7) or (24).~~

3 ~~**46-23-3-18.5. Fees for disposal.** --- The council is authorized to impose a fee of not less~~
4 ~~than eleven dollars and sixty five cents (\$11.65) per cubic yard for the disposal of dredge~~
5 ~~materials at the sites established by the council pursuant to section 46-23-18.3, with eleven~~
6 ~~dollars and sixty five cents (\$11.65) being deposited into the general fund. The amount of the fee~~
7 ~~established by the council pursuant to the section shall be reviewed by the council on an annual~~
8 ~~basis and revised as the council deems necessary, but in no event shall the fee be set at an amount~~
9 ~~less than eleven dollars and sixty five cents (\$11.65) per cubic yard of material.~~

10 ~~**46-23-3-18.6. Coastal Resources Management Council Dredge Fund.** --- There is~~
11 ~~hereby created a separate fund to be held by the coastal resources management council to be~~
12 ~~known as the dredge fund. Any amount charged above the eleven dollars and sixty five cents~~
13 ~~(\$11.65) must be deposited into the fund and shall not be deposited into the general fund of the~~
14 ~~state, but shall be kept by the general treasurer of the state in a separate fund for the coastal~~
15 ~~resources management council, and shall be paid out by the treasurer upon the order of the~~
16 ~~council, without the necessity of appropriation or re-appropriation by the general assembly. Funds~~
17 ~~must be used to create additional dredging and disposal options.~~

18 ~~**46-23-19. [Repealed.]** ---~~

19 ~~**46-23-20. Administrative hearings.** --- All contested cases, all contested enforcement~~
20 ~~proceedings, and all contested administrative fines shall be heard by the administrative hearing~~
21 ~~officers, or by subcommittees as provided in section 46-23-20.1, pursuant to the regulations~~
22 ~~promulgated by the council, provided, however, that no proceeding and hearing prior to the~~
23 ~~appointment of the hearing officers shall be subject to the provisions of this section.~~
24 ~~Notwithstanding the foregoing, the commissioner of coastal resources management shall be~~
25 ~~authorized, in his or her discretion, to resolve contested licensing and enforcement proceedings~~
26 ~~through informal disposition pursuant to regulations promulgated by the council.~~

27 ~~**46-23-20.1. Hearing officers -- Appointment -- Compensation -- Subcommittee.** --- (a)~~
28 ~~The governor, with the advice and consent of the senate, shall appoint two (2) hearing officers~~
29 ~~who shall be attorneys at law, who, prior to their appointment, shall have practiced law for a~~
30 ~~period of not less than five (5) years for a term of five (5) years, provided, however, that the~~
31 ~~initial appointments shall be as follows: One hearing officer shall be appointed for a term of three~~
32 ~~(3) years and one hearing officer shall be appointed for a term of five (5) years. The appointees~~
33 ~~shall be addressed as hearing officers.~~

34 ~~(b) The governor shall designate one of the hearing officers as chief hearing officer. The~~

1 ~~hearing officers shall hear proceedings as provided by this section, and the council, with the~~
2 ~~assistance of the chief hearing officer, may promulgate such rules and regulations as shall be~~
3 ~~necessary or desirable to effect the purposes of this section.~~

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

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

8 ~~(e) Whenever the chairperson of the coastal resources management council or, in the~~
9 ~~absence of the chairperson, the commissioner of coastal resources makes a finding that the~~
10 ~~hearing officers are otherwise engaged and unable to hear a matter in a timely fashion, he or she~~
11 ~~may appoint a subcommittee which will act as hearing officers in any contested case coming~~
12 ~~before the council. The subcommittee shall consist of at least one member, provided, however,~~
13 ~~that in all contested cases an additional member shall be a resident of the coastal community~~
14 ~~affected. The city or town council of each coastal community shall, at the beginning of its term of~~
15 ~~office, appoint a resident of that city or town to serve as an alternate member of the aforesaid~~
16 ~~subcommittee should there be no existing member of the coastal resources management council~~
17 ~~from that city or town available to serve on the subcommittee. Any member of the subcommittee~~
18 ~~actively engaged in hearing a case shall continue to hear the case, even though his or her term~~
19 ~~may have expired, until the case is concluded and a vote taken thereon. Hearings before~~
20 ~~subcommittees shall be subject to all rules of practice and procedure as govern hearings before~~
21 ~~hearing officers.~~

22 ~~**46-23-20.2. Clerk.** --- The commissioner of coastal resources or his or her designee shall~~
23 ~~serve as clerk to the hearing officers. The clerk shall have general charge of the office, keep a full~~
24 ~~record of proceedings, file and preserve all documents and papers, prepare such papers and~~
25 ~~notices as may be required, and perform such other duties as required. The commissioner shall~~
26 ~~have the power to issue subpoenas for witnesses and documents and to administer oaths in all~~
27 ~~cases before any hearing officer or pertaining to the duties of his or her office.~~

28 ~~**46-23-20.3. Prehearing procedure.** --- (a) Prior to the commencement of any hearing, the~~
29 ~~hearing officer may in his or her discretion direct the parties or their attorneys to appear before~~
30 ~~him or her for such conferences as shall be necessary. At the conferences, the hearing officer may~~
31 ~~order any party to file, prior to the commencement of any formal hearing, exhibits that the party~~
32 ~~intends to use in the hearing, and the names and addresses of witnesses that the party intends to~~
33 ~~produce in its direct case, together with a short statement of the testimony of each witness.~~
34 ~~Following entry of an order, a party shall not be permitted, except in the discretion of the hearing~~

1 ~~officer, to introduce into evidence, in the party's direct case, exhibits which are not filed in~~
2 ~~accordance with the order. At the conference, the hearing officer may designate a date before~~
3 ~~which he or she requires any party to specify what issues are conceded, and further proof of~~
4 ~~conceded issues shall not be required. The hearing officer shall also require the parties to simplify~~
5 ~~the issues, to consider admissions of fact and of documents which will avoid unnecessary proof,~~
6 ~~and to limit the number of expert witnesses. The hearing officer shall enter an order reciting the~~
7 ~~concessions and agreements made by the parties, and shall enter an order on such other matters as~~
8 ~~are pertinent to the conduct of the hearing, and unless modified, the hearing shall be conducted by~~
9 ~~the order.~~

10 ~~(b) The hearing officer may also order the parties to file, prior to the commencement of~~
11 ~~any hearing, the testimony of any or all of their respective witnesses, and to submit the testimony~~
12 ~~to the hearing officer and the opposing party or the opposing counsel by such date as the hearing~~
13 ~~officer shall determine. The witness shall testify under oath, and all of the testimony shall be in a~~
14 ~~question and answer format. Save for good cause shown, said testimony shall be the direct~~
15 ~~examination of the witness, provided, however, that the witness shall be available at the hearing~~
16 ~~for cross examination by the opposing party or opposing counsel.~~

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

22 ~~**46-23-20.4. Hearings -- Orders.**~~ (a) ~~Subject to the provisions of this chapter, every~~
23 ~~hearing for the adjudication of a violation or for a contested matter shall be held before a hearing~~
24 ~~officer or a subcommittee. The chief hearing officer shall assign a hearing officer to each matter~~
25 ~~not assigned to a subcommittee. After due consideration of the evidence and arguments, the~~
26 ~~hearing officer shall make written proposed findings of fact and proposed conclusions of law~~
27 ~~which shall be made public when submitted to the council for review. The council may, in its~~
28 ~~discretion, adopt, modify, or reject the findings of fact and/or conclusions of law provided,~~
29 ~~however, that any modification or rejection of the proposed findings of fact or conclusions of law~~
30 ~~shall be in writing and shall state the rationales therefor.~~

31 ~~(b) The director of the department of the environment and the coastal resources~~
32 ~~management council shall promulgate such rules and regulations, not inconsistent with law, as to~~
33 ~~assure uniformity of proceedings as applicable.~~

34 ~~**46-23-20.5. Ex parte consultations.**~~ ~~Council members shall have no communication~~

1 directly or indirectly, with a hearing officer relating to any issue of fact or of law on any matter
2 then pending before the hearing officer.

3 ~~**46-23-20.6. Oaths -- Subpoenas -- Powers of hearing officers.**~~ The hearing officers
4 are hereby severally authorized and empowered to administer oaths, and the hearing officers, in
5 all cases of every nature pending before them, are hereby authorized and empowered to summon
6 and examine witnesses and to compel the production and examination of papers, books, accounts,
7 documents, records, certificates and other legal evidence that may be necessary or proper for the
8 determination and decision of any question before or the discharge of any duty required by law of
9 the hearing officer. All subpoenas and subpoena duces tecum shall be signed by a hearing officer
10 or the commissioner of coastal resources, and shall be served as subpoenas are served in civil
11 cases in the superior court; and witnesses so subpoenaed shall be entitled to the same fees for
12 attendance and travel as are provided for witnesses in civil cases in the superior court. In cases of
13 contumacy or refusal to obey the command of the subpoena so issued, the superior court shall
14 have jurisdiction upon application of the council with proof by affidavit of the fact, to issue a rule
15 or order returnable, in not less than two (2) nor more than five (5) days, directing the person to
16 show cause why he or she should not be adjudged in contempt. Upon return of such order, the
17 justice, before whom the matter is brought for hearing, shall examine under oath the person, and
18 the person shall be given an opportunity to be heard, and if the justice shall determine that the
19 person has refused without reasonable cause or legal excuse to be examined or to answer legal or
20 pertinent questions, he or she may impose a fine upon the offender or forthwith commit the
21 offender to the adult correctional institution, there to remain until he or she submits to do the act
22 which he or she was so required to do, or is discharged according to law.

23 ~~**46-23-21. Notice of permit -- Recordation.**~~ A notice of permit shall be eligible for
24 recordation under chapter 13 of title 34 as determined by the executive director, and shall be
25 recorded at the expense of the applicant in the land evidence records of the city or town where the
26 property subject to permit is located, and any subsequent transferee of the property shall be
27 responsible for complying with the terms and conditions of the permit. The clerk of the various
28 cities and towns shall record any orders, findings, or decisions of the council at no expense to the
29 council.

30 ~~**46-23-22. Solid waste disposal licenses -- Hearings.**~~ The chairperson of the coastal
31 resources management council and the commissioner of the environmental protection branch of
32 the department of environmental management shall coordinate concurrent hearings on solid waste
33 disposal license applications, provided, however, that the chairperson and the commissioner of
34 the environmental protection branch of the department of the environment may designate a

1 ~~hearing officer or subcommittee to hear all matters pertaining to the application and, provided~~
2 ~~further, that the hearing officer may be from the department of the environment, the coastal~~
3 ~~resources management council hearing officer, a subcommittee, or an ad hoc hearing officer. The~~
4 ~~commissioner of coastal resources management with the approval of the chairperson may waive~~
5 ~~jurisdiction in those instances where the commissioner finds that there is no substantive coastal~~
6 ~~resources issue or that another agency or branch has adjudicated or addressed the issue.~~

7 ~~**46-23-23. Municipal comprehension plan consideration.** --- The coastal resources~~
8 ~~management council shall conform to the requirements of the Comprehensive Planning and Land~~
9 ~~Use Regulation Act, section 45-22.2.~~

10 ~~**46-23-24. Lien on property.** --- The executive director may record the notice of fee or~~
11 ~~final order of fine as a lien on the subject property in the land evidence records of the town or city~~
12 ~~in which said property is located. Recordation of said fee or final order of fine shall be the only~~
13 ~~manner by which said lien may be perfected against the subject property.~~

14 SECTION 2. Title 46 of the General Laws entitled "WATERS AND NAVIGATION" is
15 hereby amended by adding thereto the following chapter:

16 CHAPTER 23.3

17 COASTAL RESOURCES MANAGEMENT COUNCIL

18 **46-23.3-1. Legislative findings.** -- (a) (1) Under article 1, section 17 of the Rhode Island
19 Constitution, the people shall continue to enjoy and freely exercise all the rights of fishery, and
20 the privileges of the shore, to which they have been heretofore entitled under the charter and
21 usages of this state, including but not limited to fishing from the shore, the gathering of seaweed,
22 leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their
23 rights to use and enjoyment of the natural resources of the state with due regard for the
24 preservation of their values; and it is the duty of the general assembly to provide for the
25 conservation of the air, land, water, plant, animal, mineral and other natural resources of the state,
26 and to adopt all means necessary and proper by law to protect the natural environment of the
27 people of the state by providing adequate resource planning for the control and regulation of the
28 use of the natural resources of the state and for the preservation, regeneration, and restoration of
29 the natural environment of the state.

30 (2) The general assembly recognizes and declares that the coastal resources of Rhode
31 Island, a rich variety of natural, commercial, industrial, recreational, and aesthetic assets, are of
32 immediate and potential value to the present and future development of this state; that unplanned
33 or poorly planned development of this basic natural environment has already damaged or
34 destroyed, or has the potential of damaging or destroying, the state's coastal resources, and has

1 restricted the most efficient and beneficial utilization of these resources; that it shall be the policy
2 of this state to preserve, protect, develop, and, where possible, restore the coastal resources of the
3 state for this and succeeding generations through comprehensive and coordinated long range
4 planning and management designed to produce the maximum benefit for society from these
5 coastal resources; and that preservation and restoration of ecological systems shall be the primary
6 guiding principle upon which environmental alteration of coastal resources will be measured,
7 judged, and regulated.

8 (b) (1) That effective implementation of these policies is essential to the social and
9 economic well-being of the people of Rhode Island because the sea and its adjacent lands are
10 major sources of food and public recreation, because these resources are used by and for industry,
11 transportation, waste disposal, and other purposes, and because the demands made on these
12 resources are increasing in number, magnitude, and complexity; and that these policies are
13 necessary to protect the public health, safety, and general welfare. Pursuant to 16 U.S.C. section
14 1452 ("The Coastal Zone Management Act"), the General Assembly hereby directs the council
15 (referred to as "CRMC") to exercise effectively its responsibilities in the coastal zone through the
16 development and implementation of management programs to achieve wise use of the land and
17 water resources of the coastal zone.

18 (2) Furthermore, that implementation of these policies is necessary in order to secure the
19 rights of the people of Rhode Island to the use and enjoyment of the natural resources of the state
20 with due regard for the preservation of their values, and in order to allow the general assembly to
21 fulfill its duty to provide for the conservation of the air, land, water, plant, animal, mineral, and
22 other natural resources of the state, and to adopt all means necessary and proper by law to protect
23 the natural environment of the people of the state by providing adequate resource planning for the
24 control and regulation of the use of the natural resources of the state and for the preservation,
25 regeneration, and restoration of the natural environment of the state.

26 (c) That these policies can best be achieved through the creation of a coastal resources
27 management council as the principal mechanism for management of the state's coastal resources.

28 (d) The general assembly recognizes and declares that maintenance dredging is required
29 to remove natural silt accumulations; Rhode Island has not had a general maintenance dredging
30 policy and programs for ports, port facilities, channels, harbors, public and private marinas and
31 boating facilities, recreational facilities and habitat areas; other major coastal states have
32 maintenance dredging policies and in-water maintenance dredge disposal sites; as a result of the
33 lack of a general maintenance dredging policy and program and as a result there has been (1) a
34 decrease in the depth of the Providence Channel from forty-four (44) feet in 1971 to twenty-four

1 (24) feet in 1996; (2) navigational restrictions on ocean going vessels through the state's
2 waterways and channels; and (3) a decrease in the number of available slips and moorings at
3 marinas throughout the state; and the lack of a maintenance dredging policy and programs have
4 significant adverse environmental and economic effects on the state and therefore it is in the best
5 interest of the state, the cities and towns of the state, and the citizens thereof for the state to have a
6 general maintenance dredging policy and programs to resolve issues related to dredge
7 maintenance and disposal and avoid future significant direct and indirect adverse impact on the
8 environment and economy of the state.

9 (e) The coastal resources management council is hereby designated as the lead state
10 agency for purposes of dredging in tidal waters and as such shall have the following duties and
11 responsibilities:

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

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

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

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

19 (5) To develop, prepare, adopt pursuant to section 46-23-11, implement, and maintain a
20 comprehensive plan for dredge material management; and

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

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

30 (2) Since its establishment in 1971, the CRMC has had the authority to manage and plan
31 for the preservation of the coastal resources of the state including but not limited to submerged
32 lands. The legislature hereby declares that, in light of the unique size, scope, and overall potential
33 impact upon the environment of large scale filling projects involving twenty-five (25) acres or
34 more, any lease of tidal lands, or any license to use those lands, is subject to approval,

1 disapproval, or conditional approval by the direct enactment of the general assembly by
2 legislative action. CRMC shall review all requests for leases, licenses to use the land, and other
3 authority to use the land made by any applicant prior to presentation of the request to the general
4 assembly, and the CRMC shall make recommendations on the request to the general assembly.
5 With the exception of any and all projects to fill land of twenty-five (25) acres or more, the
6 general assembly hereby recognizes and declares that the CRMC is delegated the sole and
7 exclusive authority for the leasing of submerged and filled lands and giving licenses for the use of
8 that land. Accordingly, the CRMC will develop, coordinate, and adopt a system for the leasing of
9 submerged and filled lands, and licenses for the use of that land, and will ensure that all leases
10 and licenses are consistent with the public trust. Nothing contained in this subsection negates,
11 repeals, or alters the provisions, processes, and requirements for the leasing of submerged land
12 for the conduct of aquaculture as set out under chapter 10 of title 20. Therefore, nothing in this
13 chapter shall be construed to limit or impair the authority of the state, or any duly established
14 agency of the state, to regulate filling or dredging affecting tidal lands owned by the state or any
15 other entity, and nothing in this chapter shall be construed to limit or impair the obligation of the
16 applicant to obtain all applicable regulatory approvals. Specifically, and without limiting the
17 foregoing, nothing in this subsection negates, repeals, or alters the provisions, processes, and
18 requirements for water quality certification contained in chapter 12 of this title.

19 (3) Definitions.

20 (i) "Filled land" means portions of tidal lands which have been rendered by the acts of
21 man to be no longer subject to tidal action or beneath tidal waters.

22 (ii) "Tidal Lands" means those lands that are below the mean high water.

23 (iii) "Mean high water" means a line of contour representing the 18.6 year average as
24 determined by the metonic cycle and/or its equivalent as evidenced by the records, tidal datum,
25 and methodology of the United States coastal geodetic survey within the national oceanic and
26 atmospheric administration.

27 **46-23.3-2. Coastal resources management council created -- Appointment of**
28 **members. -- (a) There is hereby created the coastal resources management council.**

29 (1) The coastal resources management council shall consist of sixteen (16) members, two
30 (2) of whom shall be members of the house of representatives, at least one of the members shall
31 represent a coastal municipality, appointed by the speaker, two (2) of whom shall be members of
32 the senate, each of whom shall represent a coastal municipality, appointed by the president of the
33 senate, two (2) of whom shall be from the general public appointed by the speaker of the house
34 for a term of two (2) years, two (2) of whom shall be from a coastal municipality appointed by the

1 speaker of the house for a term of three (3) years.

2 (2) In addition, four (4) of the members shall be appointed or elected officials of local
3 government appointed by the governor, one of whom shall be from a municipality of less than
4 twenty-five thousand (25,000) population, appointed to serve until January 31, 1972, one of
5 whom shall be from a coastal municipality of more than twenty-five thousand (25,000)
6 population appointed to serve until January 31, 1973, and one of whom shall be from a coastal
7 municipality of less than twenty-five thousand (25,000) population appointed to serve until
8 January 31, 1974, and one of whom shall be from a coastal community of more than twenty-five
9 thousand (25,000) population appointed to serve until January 31, 1975, the populations are to be
10 determined by the latest federal census; all members shall serve until their successors are
11 appointed and qualified; during the month of January, the governor shall appoint a member to
12 succeed the member whose term will then next expire for a term of four (4) years commencing on
13 the first day of February then next following and until his or her successor is named and
14 qualified; each municipal appointment shall cease if the appointed or elected official shall no
15 longer hold or change the office which he or she held upon appointment, and further, each
16 appointee shall be eligible to succeed him or herself.

17 (3) Three (3) members shall be appointed by the governor from the public, with the
18 advice and consent of the senate, one of whom shall serve until January 1, 1972, one of whom
19 shall serve until January 1, 1973 and one of whom shall serve until January 1, 1974; the members
20 and their successors shall represent a coastal community.

21 (4) All members shall serve until their successors are appointed and qualified; during the
22 month of January, the governor shall appoint, with advice and consent of senate, a member to
23 succeed the members whose term will then next expire for a term of three (3) years commencing
24 on the first day of February next following and until his or her successor is named and qualified.
25 A member shall be eligible to succeed him or herself. No more than two (2) persons on the
26 council shall be from the same community.

27 (5) Appointments shall first be made by the governor, then by the president of the senate,
28 and then by the speaker. The commissioner of the environmental protection branch or his or her
29 designee within the department of environment shall serve ex officio. The ex-officio member
30 shall not be counted as serving from any particular community.

31 (b) In addition to the foregoing voting members, the council shall include a varying
32 number of other members who shall serve in an advisory capacity without the right to vote and
33 who shall be invited to serve by either the governor or the voting members. These advisory
34 members shall represent the federal agencies such as the navy, coast guard, corps of engineers,

1 public health service, and the federal water pollution control administration, and such regional
2 agencies as the New England river basins commission and the New England regional commission
3 and any other group or interest not otherwise represented.

4 (c) There shall be established a coastal resources advisory committee which committee,
5 appointed by the executive director of the coastal resources management council, shall include,
6 but not be limited to, representation from the following groups: one of whom shall be a
7 representative of the University of Rhode Island Graduate School of Oceanography and the
8 College of Resources Development, one of whom shall be a representative of the Sea Grant
9 National College Program, one of whom shall be a representative of the army corps of engineers,
10 one of whom shall be a representative of the federal environmental protection agency's
11 Narragansett Bay laboratory, one of whom shall be a representative of the coastal resources
12 management council, one of whom shall be the director of environmental management; one of
13 whom shall be a member of the Rhode Island Marine Trade Association and one of whom shall
14 be a representative of a regional environmental group. The council shall have the authority to
15 appoint such additional members to said advisory committee as is deemed necessary or advisable
16 by the advisory committee or the council. It shall be the responsibility of the committee to advise
17 the coastal resources management council on environmental issues relating to dredging and
18 permitting related thereto, including but not limited to those issues defined in sections 46-23-18.1
19 -- 46-23-18.3, inclusive.

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

22 **46-23.3-2.1. Members -- Term of office -- Vacancies.** -- (a) The term of office of the
23 appointed members shall be three (3) years, only so long as the members shall remain eligible to
24 serve on the council under the appointment authority.

25 (b) The members are eligible to succeed themselves.

26 (c) Elected or appointed municipal officials shall hold seats on the council, only so long
27 as they remain in their elected or appointed office. Members of the senate and house shall serve at
28 the pleasure of the appointing authority and shall not be subject to the provisions of subsection (b)
29 of this section.

30 (d) A vacancy other than by expiration shall be filled in the manner of the original
31 appointment but only for the unexpired portion of the term. The appointing authority shall have
32 the power to remove its appointee for just cause.

33 **46-23.3-3. Oath of members.** -- Each appointed member of the council, before entering
34 upon his or her duties, shall take an oath to administer the duties of his or her office faithfully and

1 impartially, and the oath shall be filed in the office of the secretary of state.

2 **46-23.3-4. Officers of the council -- Quorum and vote required for action. --** The
3 governor, upon the appointment of the appointed members of the council, shall select from the
4 appointed members a chairperson and vice chairperson. The council shall thereupon select a
5 secretary from among its membership or staff. The council may engage such staff, including legal
6 counsel, as it deems necessary. A quorum shall consist of seven (7) members of the council. A
7 majority vote of those present shall be required for action.

8 **46-23.3-4.1. The commissioner of coastal resources management. --** The council shall
9 engage a commissioner of coastal resources management who shall be an employee of the council
10 and who shall not be a member of the council. The commissioner shall coordinate and liaison
11 with the director of the environment, and his or her staff shall be at the same staff level as the
12 other commissioners and shall work directly with the other commissioners. The commissioner of
13 coastal resources management shall be in the unclassified service. The duties and powers of the
14 commissioner of coastal resources management shall be determined by the council. The council
15 shall not engage a commissioner of coastal resources management for more than five (5) years;
16 provided, however, that the council may renew its contract with the commissioner of coastal
17 resources management.

18 **46-23.3-5. Expenses of members. --** (a) The members of the council and the chairperson
19 shall not be compensated for their service on the board, but the members and chairperson shall be
20 reimbursed for their actual expenses necessarily incurred in the performance of their duties.

21 **46-23.3-6. Powers and duties -- Rights-of-way. --** In order to properly manage coastal
22 resources the council has the following powers and duties:

23 (1) Planning and management.

24 (i) The primary responsibility of the council shall be the continuing planning for and
25 management of the resources of the state's coastal region. The council shall be able to make any
26 studies of conditions, activities, or problems of the state's coastal region needed to carry out its
27 responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (D) Water quality standards set by the director of environmental management.

34 (E) Consideration of plans, studies, surveys, inventories, and so forth prepared by other

1 public and private sources.

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

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

4 (v) The council shall prepare, adopt, administer, and cause to be implemented, including
5 specifically through its powers of coordination as set forth in subdivision (3) of this section, a
6 marine resources development plan and such special area management plans as the council may
7 determine to be appropriate or desirable as follows:

8 (A) Marine resources development plan.

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

13 (2) The marine resources development plan shall include specific goals and objectives
14 necessary to accomplish its purposes, performance measures to determine progress toward
15 achieving such goals and objectives, and an implementation program.

16 (3) The marine resources development plan shall be prepared in cooperation with the
17 department of environmental management, the statewide planning program, and the economic
18 development corporation, with the involvement of such other state agencies as may be
19 appropriate, and with such technical support as may be necessary and appropriate from the
20 Narragansett Bay Estuary Program, the Coastal Institute at the University of Rhode Island, and
21 Rhode Island Sea Grant.

22 (4) The plan shall be responsive to the requirements and principles of the federal coastal
23 zone management act as amended, including, but not limited to, the expectations of the act for
24 incorporating the federal clean water act into coastal zone management programs.

25 (5) The marine resources development plan shall take into account local land use
26 management responsibilities as provided for under title 45 and harbor management
27 responsibilities, and the preparation of the plan shall include opportunities for involvement and/or
28 comment by cities and towns.

29 (6) The marine resources development plan shall be adopted by the council in
30 accordance with the provisions of this subsection by July 1, 2005, shall as appropriate incorporate
31 the recommendations of the Governor's Narragansett Bay and Watershed Planning Commission,
32 and shall be made consistent with systems level plans as appropriate, in order to effectuate the
33 purposes of systems level planning. The council shall update the marine resources development
34 plan at least once every five (5) years.

1 (7) The council shall administer its programs, regulations, and implementation activities
2 in a manner consistent with the marine resources development plan.

3 (8) The marine resources development plan and any updates thereto shall be adopted as
4 appropriate as elements of the state guide plan pursuant to section 42-11-10.

5 (B) Special area management plans.

6 (1) The council shall adopt such special area management plans as deemed necessary
7 and desirable to provide for the integration and coordination of the protection of natural
8 resources, the promotion of reasonable coastal-dependent economic growth, and the improved
9 protection of life and property in the specific areas designated council as requiring such integrated
10 planning and coordination.

11 (2) The integrated planning and coordination herein specified shall include, but not be
12 limited to, federal agencies, state agencies, boards, commissions, and corporations, including
13 specifically the economic development corporation, and cities and towns, shall utilize to the
14 extent appropriate and feasible the capacities of entities of higher education, including Rhode
15 Island Sea Grant, and shall provide for the participation of advocacy groups, community-based
16 organizations, and private persons.

17 (3) The council shall administer its programs, regulations, and implementation activities
18 in a manner consistent with special area management plans.

19 (4) Special area management plans and any updates thereto shall be adopted as
20 appropriate as elements of the state guide plan pursuant to section 42-11-10.

21 (2) Implementation.

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

1 (ii) (A) The council shall have exclusive jurisdiction below mean high water for all
2 development, operations, and dredging, consistent with the requirements of chapter 6.1 of this
3 title and except as necessary for the department of environmental management to exercise its
4 powers and duties and to fulfill its responsibilities pursuant to sections 42-17.1-2 and 42-17.1-24,
5 and any person, firm, or governmental agency proposing any development or operation within,
6 above, or beneath the tidal water below the mean high water mark, extending out to the extent of
7 the state's jurisdiction in the territorial sea, shall be required to demonstrate that its proposal
8 would not:

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

10 (II) Make any area unsuitable for any uses or activities to which it is allocated by a
11 resources management plan or program adopted by the council; or (III) Significantly damage the
12 environment of the coastal region.

13 (B) The council shall be authorized to approve, modify, set conditions for, or reject any
14 such proposal.

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

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

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

26 (C) Minerals extraction.

27 (D) Shoreline protection facilities and physiological features, and all directly
28 associated contiguous areas which are necessary to preserve the integrity of the facility and/or
29 features.

30 (E) Coastal wetlands and all directly associated contiguous areas which are necessary to
31 preserve the integrity of the wetlands including any freshwater wetlands located in the vicinity of
32 the coast. The actual determination of freshwater wetlands located in coastal vicinities and under
33 the jurisdiction of the coastal resources management council shall be designated on such maps
34 that are agreed to in writing and made available for public use by the coastal resources

1 management council and the director, department of environmental management, within three (3)
2 months of [August 6, 1996]The CRMC shall have exclusive jurisdiction over the wetlands areas
3 described in this section notwithstanding any provision of chapter 1, title 2 or any other provision
4 except that the division of agriculture maintains jurisdiction over all farming consistent with
5 section 2-1-22(i) and (j). Within six (6) months of [August 6, 1996]the council in cooperation
6 with the director shall develop rules and regulations for the management and protection of
7 freshwater wetlands, affected by an aquaculture project, outside of those freshwater wetlands
8 located in the vicinity of the coast and under the exclusive jurisdiction of the director of the
9 department of environmental management. For the purpose of this chapter, a "coastal wetland"
10 shall mean any salt marsh bordering on the tidal waters of this state, whether or not the tidal
11 waters reach the littoral areas through natural or artificial watercourses, and those uplands directly
12 associated and contiguous thereto which are necessary to preserve the integrity of that marsh.
13 Marshes shall include those areas upon which grow one or more of the following: smooth
14 cordgrass (spartina alterniflora), salt meadow grass (spartina patens), spike grass (distichlis
15 spicata), black rush (juncus gerardi), saltworts (salicornia spp.), sea lavender (limonium
16 carolinianum), saltmarsh bulrushes (scirpus spp.), hightide bush (iva frutescens), tall reed
17 (phragmites communis), tall cordgrass (spartina pectinata), broadleaf cattail (typha latifolia),
18 narrowleaf cattail (typha angustifolia), spike rush (eleocharis rostellata), chairmaker's rush
19 (scirpus americana), creeping bentgrass (agrostis palustris), sweet grass (hierochloe odorata), and
20 wild rye (etlymus virginicus).

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

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

26 (3) Coordination. - The council has the following coordinating powers and duties:

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

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

32 (iii) Conducting or sponsoring coastal research.

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

34 (v) Serving as the lead state agency and initial and primary point of contact for dredging

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

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

14 (4) Operations. - The council is authorized to exercise the following operating functions,
15 which are essential to management of coastal resources:

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

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

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

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

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

26 (vi) The council may require an owner or operator of a commercial wharf or pier of a
27 marine commercial facility, as defined in 300.3 of the Rhode Island Coastal Resources
28 Management Program, but not including those facilities defined in 300.4 of the Rhode Island
29 Coastal Resources Management Program, and which is capable of offloading cargo, and is or will
30 be subject to a new use or a significant intensification of an existing use, to demonstrate that the
31 commercial wharf or pier is fit for that purpose. For the purposes of this subsection, a commercial
32 wharf or pier shall mean a pier, bulkhead, wharf, docking facility, or underwater utilities. The
33 council may order said owner or operator to provide an engineering certification to the council's
34 satisfaction that the commercial wharf or pier is fit for the new use or intensification of an

1 existing use. If the council determines that the commercial wharf or pier is not fit, it may order
2 the owner or operator to undertake the necessary work to make the commercial wharf or pier safe,
3 within a reasonable time frame. If the council determines that the commercial wharf or pier,
4 because of its condition, is an immediate threat to public health and safety it may order the
5 commercial wharf or pier closed until the necessary work to make the commercial wharf or pier
6 safe has been performed and approved by the council. All work performed must conform to the
7 council's management program. The council is also given the authority to develop regulations to
8 carry out this provision and to impose administrative penalties of five thousand dollars (\$5,000)
9 per day up to a maximum of twenty thousand dollars (\$20,000) consistent with section 46-23-7.1
10 where there has been a violation of the orders under this provision.

11 (5) Rights-of-way.

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

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

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

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

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

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

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

30 (A) Land evidence records;

31 (B) The exercise of domain over the parcel such as maintenance, construction, or
32 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 section 42-35-10.
4 (vii) A determination by the council that a parcel is a right-of-way shall be decided by
5 substantial evidence.
6 (viii) The council shall be notified whenever by the judgment of the governing body of a
7 coastal municipality, a public right-of-way to tidal water areas located in such municipality has
8 ceased to be useful to the public, and such governing body proposes an order of abandonment of
9 such public right-of-way. Said notice shall be given not less than sixty (60) days prior to the date
10 of such abandonment.
11 (6) Pre-existing residential boating facilities.
12 (i) The council is hereby authorized and empowered to issue assent for pre-existing
13 residential boating facilities constructed prior to January 1, 1985. These assents may be issued for
14 pre-existing residential boating facilities, even though such facilities do not meet current
15 standards and policies of the council, provided, however, that the council finds that such facilities
16 do not pose any significant risk to the coastal resources of the state of Rhode Island and do not
17 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
24 Rhode 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 is directed to develop rules and regulations necessary to implement this
28 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
31 plans, rules and regulations of the council.
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, which

1 may make the lease. Any littoral or riparian owner who wishes to obtain a lease of filled lands
2 must obtain pre-approval, in the form of an assent, from the council. Any lease granted by the
3 council shall continue the public's interest in the filled lands including but not limited to the rights
4 of navigation, fishery, and commerce. The public trust in the lands shall continue and run
5 concurrently with the leasing of the lands by the state to private individuals, corporations, or
6 municipalities. Upon the granting of a lease by the council, those rights consistent with the public
7 trust and secured by the lease shall vest in the lessee. The council may approve a lease of filled
8 lands for an initial term of up to fifty (50) years, with, or without, a single option to renew for an
9 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
11 any lease previously made to the riparian owner when it determines that the use of the lands is
12 violating the terms of the lease or is inconsistent with the public trust, and upon cancellation the
13 lands, and 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
15 June 1, 1997, are deemed to be one of the uses consistent with the public trust. Subdivision (7) is
16 not applicable to: (i) any riparian owner on tidal waters in this state (and any successor in interest
17 to the owner) which has an assent issued by the council to use any land under water in front of his
18 or her lands as a marina, which assent was in effect on June 1, 1997; (ii) any alteration,
19 expansion, or other activity at a marina (and any successor in interest) which has an assent issued
20 by the council, which assent was in effect on June 1, 1997; and (iii) any renewal of assent to a
21 marina (or successor in interest), which assent was issued by the council and in effect on June 1,
22 1997.

23 (9) "Recreational boating facilities" including marinas, launching ramps, and recreational
24 mooring areas, as defined by and properly permitted by the council, are deemed to be one of the
25 uses consistent with the public trust. Subdivision (7) is not applicable to: (i) any riparian owner
26 on tidal waters in this state (and any successor in interest to the owner) which has an assent issued
27 by the council to use any land under water in front of his or her lands as a recreational boating
28 facility; any alteration, expansion or other activity at a recreational boating facility (and any
29 successor in interest) which has an assent issued by the council, which assent was in effect as of
30 June 1, 1997; and (ii) any renewal of assent to a recreational boating facility (or successor in
31 interest), which assent was issued by the council and in effect on June 1, 1997.

32 **46-23.3-6.1. Newport "cliff walk" -- Public right-of-way -- Legal studies. -- The**
33 **council is hereby directed to carry out any and all legal studies which it shall deem necessary in**
34 **order to designate the Newport "cliff walk", so called, as a public right-of-way pursuant to section**

1 46-23-6(5).

2 **46-23.3-6.2. Abandonment of rights-of-way.** -- No city or town shall abandon a right-
3 of-way designated as such by the council unless the council approved the abandonment.

4 **46-23.3-7. Violations.** -- (a) (1) In any instances wherein there is a violation of the
5 coastal resources management program, or a violation of regulations or decisions of the council,
6 the commissioner of coastal resources management shall have the power to order any person to
7 cease and desist or to remedy any violation of any provisions of this chapter, or any rule,
8 regulation, assent, order, or decision of the council whenever the commissioner of coastal
9 resources management shall have reasonable grounds to believe that such violation has occurred.

10 (2) Council staff, conservation officers within the department of environment, and state
11 and municipal police shall be empowered to issue written cease and desist orders in any instance
12 where activity is being conducted which constitutes a violation of any provisions of this chapter,
13 or any rule, regulation, assent, order, or decision of the council.

14 (3) Conservation officers within the department of environment, council staff, and state
15 and municipal police shall have authority to apply to a court of competent jurisdiction for a
16 warrant to enter on private land to investigate possible violations of this chapter; provided that
17 they have reasonable grounds to believe that a violation has been committed, is being committed,
18 or is about to be committed.

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

23 (c) The coastal resources management council shall discharge of record any notice filed
24 pursuant to subsection (b) within thirty (30) days after the violation has been remedied.

25 **46-23.3-7.1. Administrative penalties.** -- Any person who violates, or refuses or fails to
26 obey, any notice or order issued pursuant to section 46-23-7(a); or any assent, order, or decision
27 of the council, may be assessed an administrative penalty by the chairperson or executive director
28 in accordance with the following:

29 (1) The chairperson or executive director is authorized to assess an administrative
30 penalty of not more than two thousand five hundred dollars (\$2,500) for each violation of this
31 section, and is authorized to assess additional penalties of not more than five hundred dollars
32 (\$500) for each day during which this violation continues after receipt of a cease and desist order
33 from the council pursuant to section 46-23-7(a), but in no event shall the penalties in an aggregate
34 equal or exceed ten thousand dollars (\$10,000). Prior to the assessment of a penalty under this

1 subdivision, the property owner or person committing the violation shall be notified by certified
2 mail or personal service that a penalty is being assessed. The notice shall include a reference to
3 the section of the law, rule, regulation, assent, order, or permit condition violated; a concise
4 statement of the facts alleged to constitute the violation; a statement of the amount of the
5 administrative penalty assessed; and a statement of the party's right to an administrative hearing.

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

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

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

18 **46-23.3-7.2. Proceedings for enforcement.** -- The superior court shall have jurisdiction
19 to enforce the provisions of this chapter, the coastal resource management program, or any rule,
20 regulation, assent, or order issued pursuant thereto. Proceedings under this section may follow the
21 course of equity, and shall be instituted and prosecuted in the name of and at the direction of the
22 chairperson and council by the attorney general or counsel designated by the council. Proceedings
23 provided in this section shall be in addition to, and may be utilized in lieu of, other administrative
24 or judicial proceedings authorized by this chapter.

25 **46-23.3-7.3. Criminal penalties.** -- Any person who knowingly violates any provision of
26 this chapter, the coastal resources management program, or any rule, regulation, assent, or order
27 shall be guilty of a misdemeanor, and, upon conviction thereof shall be fined not more than five
28 hundred dollars (\$500) or by imprisonment of not more than three (3) months or both; and each
29 day the violation is continued or repeated shall be deemed a separate offense.

30 **46-23.3-7.4. Penalty for blocking or posting of rights -of-way.** -- Any person who shall
31 post or block any tidal water, public right-of-way, as designated by the council, shall be punished
32 by a fine not exceeding five hundred dollars (\$500) or by imprisonment for not more than three
33 (3) months or both; and each day the posting or blocking continues or is repeated shall be deemed
34 a separate offense. The chairperson of the council, through council's legal counsel or the attorney

1 general, may apply to any court of competent jurisdiction for an injunction to prevent the
2 unlawful posting or blocking of any tidal water, public right-of-way.

3 **46-23.3-7.5. Prosecution of criminal violations.** -- The chairperson and anyone
4 designated by the chairperson, without being required to enter into any recognizance or to give
5 surety for cost, may institute proceedings in the name of the state. It shall be the duty of the
6 attorney general and/or the solicitor of the city or town in which the alleged violation has
7 occurred to conduct the prosecution of all the proceedings. The chairperson may delegate his or
8 her authority to bring prosecution by complaint and warrant to any law enforcement officials
9 authorized by law to bring complaints for the issuance of search or arrest warrants pursuant to
10 chapters 5 and 6 of title 12.

11 **46-23.3-8. Gifts, grants, and donations.** -- The council is authorized to receive any gifts,
12 grants, or donations made for any of the purposes of its program, which shall be deposited as
13 general revenues, and to disburse and administer the gifts, grants, or donations amounts
14 appropriated in accordance with the terms thereof. The council is authorized to receive any sums
15 provided by an applicant for use by the council in its hearing process, which shall be deposited as
16 general revenues, and to disburse and administer the general revenue amounts appropriated in
17 accordance with the rules and regulations promulgated by the council.

18 **46-23.3-9. Subpoena.** -- The council is hereby authorized and empowered to summon
19 witnesses and issue subpoenas in substantially the following form:

20 Sc. To _____ of _____ greeting: You are hereby
21 required, in the name of the state of Rhode Island and Providence Plantations, to make your
22 appearance before the commission on _____ in the _____
23 city of _____ on the _____ day of _____ to give evidence of what you
24 know relative to a matter upon investigation by the commission on _____ and
25 produce and then and there have and give the following: Hereof fail not, as you will answer to
26 default under the penalty of the law in that behalf made and provided. Dated at _____
27 the _____ day of _____ in the year _____.

28 **46-23.3-10. Cooperation of departments.** -- All other departments and agencies and
29 bodies of state government are hereby authorized and directed to cooperate with and furnish such
30 information as the council shall require.

31 **46-23.3-11. Rules and regulations.** -- The rules and regulations promulgated by the
32 council shall be subject to the Administrative Procedures Act.

33 **46-23.3-12. Representation from coastal communities.** -- Upon the expiration of a term
34 of a member appointed by the governor, as an appointed or elected official of local government

1 from a coastal municipality as set out in section 46-23-2, the governor shall appoint an appointed
2 or elected official of a coastal municipality which, at the time of the governor's appointment, has
3 no appointed or ex officio representation on the council.

4 **46-23.3-13. Application and hearing fees.** -- The council shall be authorized to establish
5 reasonable fees for applications and hearings. All fees collected by the council, including fees
6 collected for leases, shall be deposited as general revenues. The state controller is hereby
7 authorized and directed to draw his or her orders upon the general treasurer for payment of such
8 sum or sums as may be necessary from time to time and upon receipt by him or her of duly
9 authenticated vouchers presented by the commissioner of coastal resources management.

10 **46-23.3-14. Expert testimony.** -- The council shall be authorized to engage its own
11 expert and outside consultants, and the council shall be empowered to use that testimony in
12 making its decisions.

13 **46-23.3-15. Federal grants and interstate cooperation.** -- The council is authorized to
14 accept any federal grants. It is further given the power to administer land and water use
15 regulations as necessary to fulfill their responsibilities under the Federal Coastal Zone
16 Management Act, 16 U.S.C. section 1451 et seq., and to acquire fee simple and less than fee
17 simple interests under any federal or state program. The council is authorized to coordinate and
18 cooperate with other states in furtherance of its purposes. The council may expend those grants
19 and appropriations. The coastal resources management council for the purposes of the federal
20 Coastal Zone Management Act, 16 U.S.C. section 1451 et seq., is the coastal zone agency under
21 sections 301 through 313 and sections 318 and 6217 of said act.

22 **46-23.3-15.1. Coordination of harbor safety and enforcement patrols.** -- Coastal
23 municipalities which share a common boundary along their public waters may enter into a
24 binding memorandum of agreement allowing for harbormasters and other officials charged with
25 enforcement of harbor management plan harbor ordinances from one coastal municipality to
26 enforce the harbor ordinances of the bordering coastal municipality upon the public waters of the
27 bordering coastal municipality when the coastal municipalities have harbor management plans
28 approved by the coastal resources management council and the memorandum of agreement is
29 approved by the respective town or city councils. This binding memorandum of agreement shall
30 specify how each coastal municipality is to receive any fines collected under this reciprocal
31 enforcement agreement and the jurisdiction in which any disputes arising out of this reciprocal
32 enforcement agreement shall be litigated.

33 **46-23.3-16. Length of permits, licenses, and easements.** -- The council is authorized to
34 grant permits, licenses, and easements for any term of years or in perpetuity. Permits, licenses, or

1 easements which are issued by the council for the filling of the submerged or submersible lands
2 of the state of Rhode Island remain subject to the public trust, and no title is conveyed by such
3 documents. All such permits, licenses, and easements shall clearly state that no title is being
4 conveyed. Permits, licenses or easements issued by the council are valid only with the conditions
5 and stipulation under which they are granted and imply no guarantee of renewal. The initial
6 application or an application for renewal may be subject to denial or modification. If an
7 application is granted, said permit, license and easement may be subject to revocation and/or
8 modification for failure to comply with the conditions and stipulations under which the same was
9 issued or for other good cause. The division of coastal resources of the department of the
10 environment shall transfer all of the records and files of the former division of harbours and rivers
11 to the council.

12 **46-23.3-17. Annual progress report on rights-of-way.** -- Within ninety (90) days after
13 the end of each fiscal year, the council shall submit a written progress report on the development
14 of public rights-of-way to the tidal water areas of the state, to the state planning council, the
15 department of environmental management, and the joint committee on the environment, for
16 review, evaluation, and recommendation of the program's suitability, relevance to the recreation
17 element of the state guide plan, and impact on the natural resources of the state. The report shall
18 also provide detailed records of expenditures and a proposed schedule of future projects.

19 **46-23.3-18. Prohibited activities.** -- (a) No person, either as principal, agent or servant
20 nor any firm, corporation, or any other entity shall, without a permit issued by the coastal
21 resources management council, construct a marina within two thousand feet (2000') of a shellfish
22 management area as defined by rules and regulations of the department of environmental
23 management. Such permit shall include any permit required under subsection (b).

24 (b) No person, either as principal, agent, or servant, or any firm, corporation or any other
25 entity, shall, within the tidal waters of the state, conduct or cause to conduct dredging,
26 transportation and/or disposal of dredge materials without a permit issued by the coastal resources
27 management council, a water quality certification issued by the department of environmental
28 management pursuant to chapter 12 of this title and any permit required by the army corps of
29 engineers. In addition, no person, either as principal, agent, or servant, nor any firm, corporation
30 or any other entity, shall dispose of dredge materials other than in tidal waters without any permit,
31 approval or certification that may otherwise be required.

32 **46-23.3-18.1. Permitting.** -- (a) Any person, either as principal, agent, or servant, or any
33 firm, corporation or any other entity desiring to conduct any activity or activities specified in
34 section 46-23-18 shall file an application for a permit with the coastal resources management

1 council upon forms furnished by coastal resources management council.

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

3 (c) The applicant shall bear the burden of proving that the activity or activities specified
4 in the application will cause no significant adverse impact upon the environment or natural
5 resources of the state, and the coastal resources management council shall be empowered to deny
6 the application if the applicant does not demonstrate, in addition to other requirements of this
7 chapter, that the activity or activities will not (i) significantly adversely affect any shellfish
8 management area as designated by the department of environmental management or the marine
9 fisheries council; (ii) be in a significant conflict with the marine ecology within or adjacent to the
10 state's territorial waters, or (iii) significantly harm or destroy existing fishing grounds.

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

15 (e) In determining whether an applicant has met the burden of proof under subsection
16 (c), the coastal resources management council shall apply standards that conform with the federal
17 environmental protection agency's applicable standards and guidelines for the management of
18 dredge materials, including but not limited to, the federal environmental protection agency's rules,
19 regulations and guidelines for deviating from said standards.

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

23 **46-23.3-18.2. Rules and regulations. --** The council, upon recommendation by the
24 coastal resources advisory committee, shall issue reasonable rules and regulations governing the
25 dredging, transporting and disposal of all dredge materials in accordance with this chapter.

26 **46-23.3-18.3. Sites for disposal of spoil from dredge operations, selection. --** (a) The
27 council, upon recommendation of the coastal resources advisory committee, on or before the first
28 day of January, 1999 and periodically thereafter as necessary, shall consistent with the
29 comprehensive programs required in section 46-23-6(1)(ii)(H) identify and establish one or more
30 in-water disposal sites to be used for the purpose of disposal of dredge materials from marinas
31 and yacht clubs.

32 (b) The council, upon recommendation of the coastal resources advisory committee, on
33 or before the first day of January, 2002 and periodically thereafter as necessary, shall consistent
34 with the comprehensive programs required in section 46-23-6(1)(ii)(H) identify and establish one

1 or more in-water disposal sites to be used for the purpose of disposal of dredge materials from all
2 sources not otherwise delineated in (a) above.

3 **46-23-3-18.4. Enforcement.** -- The provisions of sections 46-23-18 through 46-23-18.3
4 shall be enforced by the coastal resources management council. Nothing herein shall be deemed
5 to abrogate the department of environmental management's authority to enforce its water quality
6 standards adopted pursuant to section 46-12-3(7) or (24).

7 **46-23-3-18.5. Fees for disposal.** -- The council is authorized to impose a fee of not less
8 than eleven dollars and sixty-five cents (\$11.65) per cubic yard for the disposal of dredge
9 materials at the sites established by the council pursuant to section 46-23-18.3, with eleven
10 dollars and sixty-five cents (\$11.65) being deposited into the general fund. The amount of the fee
11 established by the council pursuant to the section shall be reviewed by the council on an annual
12 basis and revised as the council deems necessary, but in no event shall the fee be set at an amount
13 less than eleven dollars and sixty-five cents (\$11.65) per cubic yard of material.

14 **46-23-3-18.6. Coastal Resources Management Council Dredge Fund.** -- There is
15 hereby created a separate fund to be held by the coastal resources management council to be
16 known as the dredge fund. Any amount charged above the eleven dollars and sixty-five cents
17 (\$11.65) must be deposited into the fund and shall not be deposited into the general fund of the
18 state, but shall be kept by the general treasurer of the state in a separate fund for the coastal
19 resources management council, and shall be paid out by the treasurer upon the order of the
20 council, without the necessity of appropriation or re-appropriation by the general assembly. Funds
21 must be used to create additional dredging and disposal options.

22 **46-23-3-20. Administrative hearings.** -- All contested cases, all contested enforcement
23 proceedings, and all contested administrative fines shall be heard by the administrative hearing
24 officers, or by subcommittees as provided in section 46-23-20.1, pursuant to the regulations
25 promulgated by the council, provided, however, that no proceeding and hearing prior to the
26 appointment of the hearing officers shall be subject to the provisions of this section.
27 Notwithstanding the foregoing, the commissioner of coastal resources management shall be
28 authorized, in his or her discretion, to resolve contested licensing and enforcement proceedings
29 through informal disposition pursuant to regulations promulgated by the council.

30 **46-23-3-20.1. Hearing officers -- Appointment -- Compensation -- Subcommittee.** --
31 (a) The governor, with the advice and consent of the senate, shall appoint two (2) hearing officers
32 who shall be attorneys-at-law, who, prior to their appointment, shall have practiced law for a
33 period of not less than five (5) years for a term of five (5) years, provided, however, that the
34 initial appointments shall be as follows: One hearing officer shall be appointed for a term of three

1 (3) years and one hearing officer shall be appointed for a term of five (5) years. The appointees
2 shall be addressed as hearing officers.

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

7 (c) A hearing officer shall be devoted full time to these administrative duties, and shall
8 not otherwise practice law while holding office nor be a partner nor an associate of any person in
9 the 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
13 hearing officers are otherwise engaged and unable to hear a matter in a timely fashion, he or she
14 may appoint a subcommittee which will act as hearing officers in any contested case coming
15 before the council. The subcommittee shall consist of at least one member, provided, however,
16 that in all contested cases an additional member shall be a resident of the coastal community
17 affected. The city or town council of each coastal community shall, at the beginning of its term of
18 office, appoint a resident of that city or town to serve as an alternate member of the aforesaid
19 subcommittee should there be no existing member of the coastal resources management council
20 from that city or town available to serve on the subcommittee. Any member of the subcommittee
21 actively engaged in hearing a case shall continue to hear the case, even though his or her term
22 may have expired, until the case is concluded and a vote taken thereon. Hearings before
23 subcommittees shall be subject to all rules of practice and procedure as govern hearings before
24 hearing officers.

25 **46-23.3-20.2. Clerk. --** The commissioner of coastal resources or his or her designee
26 shall serve as clerk to the hearing officers. The clerk shall have general charge of the office, keep
27 a full record of proceedings, file and preserve all documents and papers, prepare such papers and
28 notices as may be required, and perform such other duties as required. The commissioner shall
29 have the power to issue subpoenas for witnesses and documents and to administer oaths in all
30 cases before any hearing officer or pertaining to the duties of his or her office.

31 **46-23.3-20.3. Prehearing procedure. --** (a) Prior to the commencement of any hearing,
32 the hearing officer may in his or her discretion direct the parties or their attorneys to appear
33 before him or her for such conferences as shall be necessary. At the conferences, the hearing
34 officer may order any party to file, prior to the commencement of any formal hearing, exhibits

1 that the party intends to use in the hearing, and the names and addresses of witnesses that the
2 party intends to produce in its direct case, together with a short statement of the testimony of each
3 witness. Following entry of an order, a party shall not be permitted, except in the discretion of the
4 hearing officer, to introduce into evidence, in the party's direct case, exhibits which are not filed
5 in accordance with the order. At the conference, the hearing officer may designate a date before
6 which he or she requires any party to specify what issues are conceded, and further proof of
7 conceded issues shall not be required. The hearing officer shall also require the parties to simplify
8 the issues, to consider admissions of fact and of documents which will avoid unnecessary proof,
9 and to limit the number of expert witnesses. The hearing officer shall enter an order reciting the
10 concessions and agreements made by the parties, and shall enter an order on such other matters as
11 are pertinent to the conduct of the hearing, and unless modified, the hearing shall be conducted by
12 the order.

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

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

25 **46-23.3-20.4. Hearings -- Orders. --** (a) Subject to the provisions of this chapter, every
26 hearing for the adjudication of a violation or for a contested matter shall be held before a hearing
27 officer or a subcommittee. The chief hearing officer shall assign a hearing officer to each matter
28 not assigned to a subcommittee. After due consideration of the evidence and arguments, the
29 hearing officer shall make written proposed findings of fact and proposed conclusions of law
30 which shall be made public when submitted to the council for review. The council may, in its
31 discretion, adopt, modify, or reject the findings of fact and/or conclusions of law provided,
32 however, that any modification or rejection of the proposed findings of fact or conclusions of law
33 shall be in writing and shall state the rationales therefor.

34 (b) The director of the department of the environment and the coastal resources

1 management council shall promulgate such rules and regulations, not inconsistent with law, as to
2 assure uniformity of proceedings as applicable.

3 **46-23.3-20.5. Ex parte consultations. --** Council members shall have no communication
4 directly or indirectly, with a hearing officer relating to any issue of fact or of law on any matter
5 then pending before the hearing officer.

6 **46-23.3-20.6. Oaths -- Subpoenas -- Powers of hearing officers. --** The hearing officers
7 are hereby severally authorized and empowered to administer oaths, and the hearing officers, in
8 all cases of every nature pending before them, are hereby authorized and empowered to summon
9 and examine witnesses and to compel the production and examination of papers, books, accounts,
10 documents, records, certificates and other legal evidence that may be necessary or proper for the
11 determination and decision of any question before or the discharge of any duty required by law of
12 the hearing officer. All subpoenas and subpoena duces tecum shall be signed by a hearing officer
13 or the commissioner of coastal resources, and shall be served as subpoenas are served in civil
14 cases in the superior court; and witnesses so subpoenaed shall be entitled to the same fees for
15 attendance and travel as are provided for witnesses in civil cases in the superior court. In cases of
16 contumacy or refusal to obey the command of the subpoena so issued, the superior court shall
17 have jurisdiction upon application of the council with proof by affidavit of the fact, to issue a rule
18 or order returnable, in not less than two (2) nor more than five (5) days, directing the person to
19 show cause why he or she should not be adjudged in contempt. Upon return of such order, the
20 justice, before whom the matter is brought for hearing, shall examine under oath the person, and
21 the person shall be given an opportunity to be heard, and if the justice shall determine that the
22 person has refused without reasonable cause or legal excuse to be examined or to answer legal or
23 pertinent questions, he or she may impose a fine upon the offender or forthwith commit the
24 offender to the adult correctional institution, there to remain until he or she submits to do the act
25 which he or she was so required to do, or is discharged according to law.

26 **46-23.3-21. Notice of permit -- Recordation. --** A notice of permit shall be eligible for
27 recordation under chapter 13 of title 34 as determined by the executive director, and shall be
28 recorded at the expense of the applicant in the land evidence records of the city or town where the
29 property subject to permit is located, and any subsequent transferee of the property shall be
30 responsible for complying with the terms and conditions of the permit. The clerk of the various
31 cities and towns shall record any orders, findings, or decisions of the council at no expense to the
32 council.

33 **46-23.3-22. Solid waste disposal licenses -- Hearings. --** The chairperson of the coastal
34 resources management council and the commissioner of the environmental protection branch of

1 the department of environmental management shall coordinate concurrent hearings on solid waste
2 disposal license applications, provided, however, that the chairperson and the commissioner of
3 the environmental protection branch of the department of the environment may designate a
4 hearing officer or subcommittee to hear all matters pertaining to the application and, provided
5 further, that the hearing officer may be from the department of the environment, the coastal
6 resources management council hearing officer, a subcommittee, or an ad hoc hearing officer. The
7 commissioner of coastal resources management with the approval of the chairperson may waive
8 jurisdiction in those instances where the commissioner finds that there is no substantive coastal
9 resources issue or that another agency or branch has adjudicated or addressed the issue.

10 **46-23.3-23. Municipal comprehension plan consideration.** -- The coastal resources
11 management council shall conform to the requirements of the Comprehensive Planning and Land
12 Use Regulation Act, section 45-22.2.

13 **46-23.3-24. Lien on property.** -- The executive director may record the notice of fee or
14 final order of fine as a lien on the subject property in the land evidence records of the town or city
15 in which said property is located. Recordation of said fee or final order of fine shall be the only
16 manner by which said lien may be perfected against the subject property.

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

=====
LC02813
=====

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

- 1 This act would reestablish the authority of the coastal resources management council.
- 2 This act would take effect upon passage.

=====
LC02813
=====