

## COVER STORY

# Rhode Island's CRMC

WHAT THE AGENCY DOES, WHY WE NEED IT, AND WHY *IT* NEEDS REFORM



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The Rhode Island General Assembly created the Coastal Resources Management Council (CRMC) in 1972 “to preserve, protect, develop, and where possible, restore the coastal resources of the state [...]”

The law included a maxim that remains vital to the agency’s work to this day: “[T]he preservation and restoration of ecological systems shall be the primary guiding principle upon which environmental alteration of coastal resources shall be measured, judged and regulated.”

The CRMC’s record has been one of accomplishment and controversy. Its professional staff has elevated the agency as a national leader in coastal planning and management, but the agency’s structure—involving a politically-appointed volunteer council with decision-making authority—invites political interference and conflicts of interest, hindering efficacy and eroding public trust.

As the CRMC approaches its 50th year, it’s time to look at its role and examine the fundamental changes needed to make the agency more effective and accountable.

## A Unique Jurisdiction

The Ocean State is defined by a coastal ecology that includes salt marshes, barrier beaches, dunes and rocky shores. This coastal area is the foundation of an economy rooted in fishing and aquaculture, boating and shipbuilding, commercial shipping, real estate development, tourism and hospitality—sectors that depend on navigable channels and shore-based infrastructure like ports, marinas and restaurants.

With such demand on our coastal resources, Rhode Island needs a state agency to regulate their use. That’s why the CRMC exists. Without it, the state’s 19 coastal communities would fend for them-

selves under intense pressure from development proposals.

Created by the General Assembly to implement the federal Coastal Zone Management Act—a law administered by the National Oceanic and Atmospheric Administration—the CRMC is a planning and regulatory agency that oversees activity in Rhode Island’s coastal zone, an area stretching from 200 feet inland to three miles out to sea.

The agency establishes regulations that protect our coastal resources, and makes decisions on development within the coastal zone, including proposed docks, marinas, residential and commercial dwellings and aquaculture leases. The CRMC is the lead

state regulatory agency charged with reviewing offshore wind energy proposals, and it manages the state’s Estuarine Habitat Restoration Fund. Its staff of biologists, engineers, geologists and coastal planners creates powerful planning tools that predict climate change impacts on habitats and communities alike, as well as Special Area Management Plans (SAMPs) that ensure the pressures placed on high-demand locations, like Greenwich Bay and the Salt Ponds, are balanced in an ecologically-friendly way.

## Structural Flaws

When the General Assembly created the CRMC, they established a council for the agency. The council’s authority, role and management is an outlier among coastal resource management agencies throughout the country, and also opens the door for the CRMC to be overrun by politics and conflicts of interest.

Today’s 10-member council has the authority to make final decisions on major enforcement and permitting cases, including permits for marina expansions, dredging and more. The governor, with state Senate approval, appoints nine volunteer council members. The 10th member is a R.I. Department of Environmental Management representative.

Council members serve three-year terms, but face no term limits. (Today, some council members have served 19-, 17- and 14-year terms.) The only criteria for most members’ appointments is that they serve in a public position of a certain-sized coastal community. They are not required to have expertise in coastal matters. While the council often relies on the agency staff’s expert recommendations, its permitting decisions can, and sometimes do, directly contradict them.

While other state agencies have full-time, in-house attorneys dedicated ex-

## A Tale of Two Agencies

**The CRMC’s role is distinct from the R.I. Department of Environmental Management’s (RIDEM), the latter of which is charged with administering and enforcing various statutes including the federal Clean Water Act and Clean Air Act with directives from the Environmental Protection Agency.**

**The RIDEM also oversees state recreation areas, wildlife refuges, hunting and fishing, brownfield restoration, inland development proposals, and freshwater wetland alteration guidelines—though, the two agencies share responsibility for regulating freshwater wetlands in the coastal zone.**

clusively to representing the agency's interests, this council hires part-time lawyers from private practice firms to manage legal matters and provide advice during hearings. These attorneys are free to continue representing other clients and interests—a fact that raises serious concerns about potential conflicts of interest and outside influence. Furthermore, these same hired attorneys provide advice to staff on issues that may later come before the council, a potential conflict in itself.

Additionally, when an outside party appeals a CRMC decision, that party is represented by an attorney during the hearing, but CRMC staff have no representation. This arrangement starkly contrasts the practices of other administrative agencies, including the RIDEM, where hearings are run by a full-time, state-employed hearing officer, and staff are represented by an in-house attorney.

A politically appointed council, represented by attorneys with other clients, can be susceptible to political pressure. In the case of the CRMC, evidence of this dates back almost to its beginning.



*At hearings, like the one shown above, the CRMC council and staff review proposals pertaining to activity within the coastal zone. The proposals can include everything from the construction of docks and marinas, to dwellings and aquaculture leases.*

### A History of Controversy

Upon its founding, the agency's council had 16 members, half of whom were legislators, appointed by General Assembly leaders. With the "fox guarding the henhouse," council members could easily have traded permitting votes for their own political benefit, or on behalf of well-connected friends.

As governors and legislators established a tradition of appointing and reappointing inexpert council members, a series of controversial council decisions in the 1970s and 1980s—most notably the 1984 approval of the Atlantic Beach Hotel on a fragile coastal feature in Middle-

town that smacked of political influence—laid bare the politics of the council. In 2013, the council again bucked staff recommendations by approving the construction of a private residence on Money Pond in Narragansett, granting several variances that impacted fragile coastal features. The case ultimately went to the Supreme Court, as the house's footprint encroached onto the adjacent Rose Nulman Park property and had to be relocated.

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***"The CRMC is the lead state regulatory agency charged with reviewing offshore wind energy proposals."***





The tradition of questionable decision-making continued in 2021. Just as then-Governor Raimondo proposed reappointing several long-serving council members who had no relevant expertise—and as Save The Bay urged the state Senate to reject all reappointments, save that of Jennifer Cervenka, an experienced environmental attorney—another controversy erupted around the proposed expansion of Champlin's Marina on Block Island's Great Salt Pond. At issue was a so-called "mediation" negotiated between the council and Champlin's that would allow the expansion of the marina—a move that would overturn a previous council decision to deny the expansion.

The mediation process took place without involving the parties that had intervened in the case, including the Town of New Shoreham, the Committee for the Great Salt Pond, the Block Island Land Trust, the Block Island Conservancy and the Conservation Law Foundation, all of which had spent the previous 17 years opposing and defeating the expansion proposal. R.I. Attorney General Peter Neronha and the intervenors called foul, urging the R.I. Supreme Court to reject the request to enter the mediation agreement. The Court agreed.



*LEFT: A history of controversy has followed the CRMC almost since its founding, as the council has repeatedly voted for outcomes that run counter to the agency's purpose. This excerpt from a 1984 Save The Bay newsletter outlines one historical effort to restructure the agency and remedy its structural issues. Today, Save The Bay is calling for a different set of reforms.*

## Advocating for Reform

While Save The Bay recognizes the executive director and staff's expertise and effective coastal management, we've spent over 30 years advocating for structural change to the CRMC council. Working alongside other groups, our advocacy has removed legislators from the council, improved procedures, and led to a training requirement for council members. However, our work is far from over.

**We are calling for a complete reform of the CRMC into an executive agency named the Department of Coastal Resources.** Our complete list of reforms, below, would put an end to the issues that have kept the agency from best serving Narragansett Bay and Rhode Island once and for all:

### Abolish the Council

**Today:** The politically appointed body, whose members are not required to have expertise, wields the power to shape R.I.'s coastal environment for generations.

**Reform:** Abolish the council structure.



**Why?** This reform will reduce political influence within the agency, enable transparency and accountability, and build public trust.

### Establish an Executive Branch Agency, the Department of Coastal Resources

**Today:** The CRMC has a problematic structure that prevents the agency from fulfilling its goals effectively. The executive director reports to a politically appointed council whose members are not required to have expertise.

**Reform:** As an executive branch agency, the executive director will be appointed by the Governor with state Senate approval, serve in the Governor's cabinet, and be subject to the current term of the executive director.

**Why?** Given the importance of R.I.'s coastal resources, the director should be fully responsible for implementing the coastal program, report directly to the Governor and coordinate with other cabinet-level agency heads to address climate change and other cross-cutting issues.

### Establish New Procedures

**Today:** Some permitting and enforcement decisions rest with politically appointed council members.

**Reform:** All final agency decisions, including permitting and enforcement, will rest with the director with the support of the in-house attorney and staff. Appeals of decisions will be adjudicated by independent

hearing officers and the CRMC staff will be represented by counsel at the hearings.

**Why?** This reform will reduce political pressure, while increasing predictability of, and public confidence in, agency decisions.

### Hire Full-Time Dedicated Legal Counsel(s)

**Today:** The council hires private attorneys to assist the staff and represent the council in administrative hearings. The attorneys have other clients, and may have conflicts with agency business.

**Reform:** The director will hire a full-time, in-house attorney with experience in environmental and coastal law. As with other agencies, the attorney shall not represent other clients.

**Why?** The director, agency staff, and the public would be better served by attorneys fully focused on the agency's mission and who are able to improve their expertise by working exclusively on CRMC issues. This change will also eliminate concerns around conflicts, perceived or otherwise.

### Create a Means for Community Input

**Reform:** Following the creation of the Department of Coastal Resources, create a Citizens Advisory Council.

**Reasoning:** The CAC would serve an advisory role for the executive director on major policy initiatives and make

recommendations for the improvement of the coastal program. The CAC would have 12 members appointed by the Governor for three-year terms. Its membership would include:

- 7 members of the general public, including at least three from environmental justice communities as designated by the RIDEM, and one from an indigenous, coastal community.
- 5 members who represent coastal municipalities as employees or appointees to municipal boards.

These reforms must be made to make sure the agency's ability to fulfill its role free from political pressure and conflict. As climate change continues to put our coastal resources at ever greater risk, we must ensure that the government agencies charged with protecting them are operating optimally and ethically. As the people's voice for Narragansett Bay, Save The Bay is determined to see these changes through. ■

*The CRMC regulates the activities that take place in Rhode Island's coastal zone—an area that includes both sandy and rocky shoreline habitats (far left and above), as well as the coastal waters that serve as the foundation of many of the state's key industries, including fishing and shellfishing (below).*

