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Via E-Mail Only

October 25, 2024

ATTN: Michael Migliori
Lead Evaluator
NOAA Office for Coastal Management
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RE: Comment Regarding Operation and Implementation of the Rhode Island Coastal Resources Management Counsel

Dear Mr. Migliori:

The Rhode Island Office of the Attorney General regularly appears before the Coastal Resource Management Council (the Council) and defends State agency administrative actions related to Council decisions. Based on these experiences, the Attorney General's Office is positioned to provide comments on the operation and implementation of the Council.

I. The Council's Structure and Lack of Adherence to Administrative Processes Has Led to Administrative Disaster.

The Rhode Island Coastal Resources Management Program is comprised of a staff of experts overseen by a politically-appointed Council of nine volunteer members plus one *ex officio* member. This structure has resulted in significant and all-too-frequent conflict between expert staff recommendations and the ultimate decisions of the Council, mistakes in administrative procedures that have resulted in lawsuits, and a Council that interferes with staff enforcement efforts.

That is not to say that Rhode Island's Coastal Resources Management Program is a failure. The Council's regulations and legal authorities are strong. The CRMC staff who handle the day-to-day management and enforcement of those laws work effectively and provide comprehensive recommendations to the Council. However, the Council's

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political appointees have in many instances undermined these programmatic bright spots.

As just one example, in a case involving a requested marina expansion for mega-yachts in a sensitive tidal area of Block Island, CRMC's reliance on private counsel and their own under-resourced contested case processes resulted in the hired counsel entering into a backroom mediation without the town of Block Island or other intervenors present – even when the Council's prior decision to deny the expansion had been upheld by a trial court. Ultimately, the Council attempted to enter into a mediated settlement that reversed the already-affirmed CRMC denial without addressing any of the 94 or so reasons that CRMC had previously denied it (conflicting uses, environmental impacts, navigational issues, etc.). Only after the Attorney General's Office intervened and appealed the mediated resolution, the Supreme Court of Rhode Island overturned it and restored the denial. *See Champlin's Realty Assocs. v. Coastal Res. Mgmt. Council*, 283 A.3d 451, 460 (R.I. 2022). In sum, extraordinary State resources had to be brought to bear to correct an easily-avoidable administrative disaster generated solely by the improper actions of the Council and attorney for the Council.

II. The Council Has Undermined the Public's Trust and Staff's Enforcement Efforts.

Indeed, misadventures like this are the expected result of having a Council constituted like Rhode Island's. The Council is made up of political appointees who do not have technical or environmental expertise. Oftentimes the weight of their considerations reflect political rather than scientific and regulatory concerns. The Council's non-expert composition has meant that it also muddies the procedural record frequently, resulting in lawsuits and public distrust. One recent example involves *The Dumplings Association* case, in which the Council approved – in a procedurally deficient manner – a hotly-contested a dredge project (on New Years Eve, no less) and then “ratified” the decision months later in attempt to cure its own procedural errors. *See The Dumplings Association, Inc. v. CRMC, Case No. PC-2021-00296 (R.I. Super. 2021)*. The Council's handling of this matter undermined the public's trust in the Council's own procedures.

Public trust – and faith that the letter of CRMC rules will be followed and upheld by the Council – is essential to the functioning of the Coastal Resources Management Program. To understand why, we need look no further than the Quidnessett Country Club's sea wall. The Club constructed its blatantly illegal sea wall after the Council effectively denied an application for a similar but smaller wall in 2012. Rather than obtaining Council approval for the project, the Club simply built a larger wall without permission. While the Army Corps of Engineers recently issued a notice of violation for the wall, and CRMC staff began enforcement efforts that remain ongoing, the Council has issued a Notice of Proposed Rulemaking to entertain the Club's petition for a water type change

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that may allow some form of a sea wall to remain – effectively interfering with CRMC staff's enforcement efforts by potentially changing which laws apply to the Club.

Thus the Council's structure undermines the enforcement of the Coastal Resources Management Program that were in part the subject of NOAA's [March 2010 to June 2019 Final Evaluation Findings](#) and recommendations (see p. 14). The Quiddnessett Country Club matter is by no means an isolated event. Rather, historical actions by the Council, like the *Champlin's* and *Dumplings* cases, may have encouraged the Club to act as it did – it may be rational, after all, to seek forgiveness rather than permission from a Council that has a history of interfering with staff recommendations, ignoring its own procedures, and taking into account irrelevant political considerations.

III. The Council Has Diminished the Federal Consistency Review Process.

Federal consistency reviews present another weak spot for CRMC. While CRMC staff work tirelessly to meet the goals of the Coastal Program, there is not enough staff to undertake the extensive review process required. This has had troubling results, as giant corporations that are allowed to negotiate piecemeal with individual states have been able to bulldoze the Council – and as a result, the livelihoods of fishermen. Indeed, in 2023 the entire membership of the Fishery Advisory Board resigned out of a perception of inequity in negotiations for compensation. Moreover, decisions by BOEM to allow subdivision of leasing parcels, like in the South Fork project, limited the available alternatives that CRMC could consider and allowed windfarms to be located inside protected glacial moraines in Cox's Ledge. Finally, during the Revolution Wind consistency review, the staff recommendation specifically stated that the Council lacked authority to grant the requisite submerged land lease and that it must be approved separately from the legislature. Despite this clear finding, the Council approved the project and never sought the legislative approval as recommended by staff. These challenges are exacerbated because the Council's federal consistency process timeline does not allow for state judicial review of final Council decisions, as the final vote is often on the eve of NOAA's deadline.

IV. Conclusion

Many of the challenges facing the Council – and by extension, the essential mission of the Coastal Resources Management Program – could be resolved with a change to the Council structure. Thus, the Attorney General's Office respectfully requests that NOAA recommend that the Council adopt a state agency structure, like those in place in the vast majority of states, or other reforms to ensure that expert staff decisions are respected and not subject to the oversight of a politically-motivated and unqualified Council. Additionally, the Attorney General's Office believes that extending timelines for

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regional federal consistency review would lead to increased state oversight and reduce existing inequities in the consistency process.

Sincerely,

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