

State's ability to effect  
change through the CZMA

## It's An "Effects Test" . . .

**Federal Consistency** is the requirement that *Federal actions*, in or outside the coastal zone, that *affect* any land or water *use* or natural *resource* of a State's coastal zone must be consistent with the *enforceable policies* of State Coastal Management Programs.

(*See* CZMA Section 307 (16 U.S.C. § 1456))

# “Federal Actions”

- *Federal Agency Activities & Development Projects*  
CZMA 307(c)(1), (2), 15 CFR part 930, subpart C
- *Federal License or Permit Activities*(non-federal applicants)  
CZMA 307(c)(3)(A), 15 CFR part 930, subpart D
- *Outer Continental Shelf Plans* CZMA  
307(c)(3)(B), 15 CFR part 930, subpart E
- *Federal Financial Assistance to State or Local Agencies*  
CZMA 307(d), 15 CFR part 930, subpart F

# Enforceable Policies

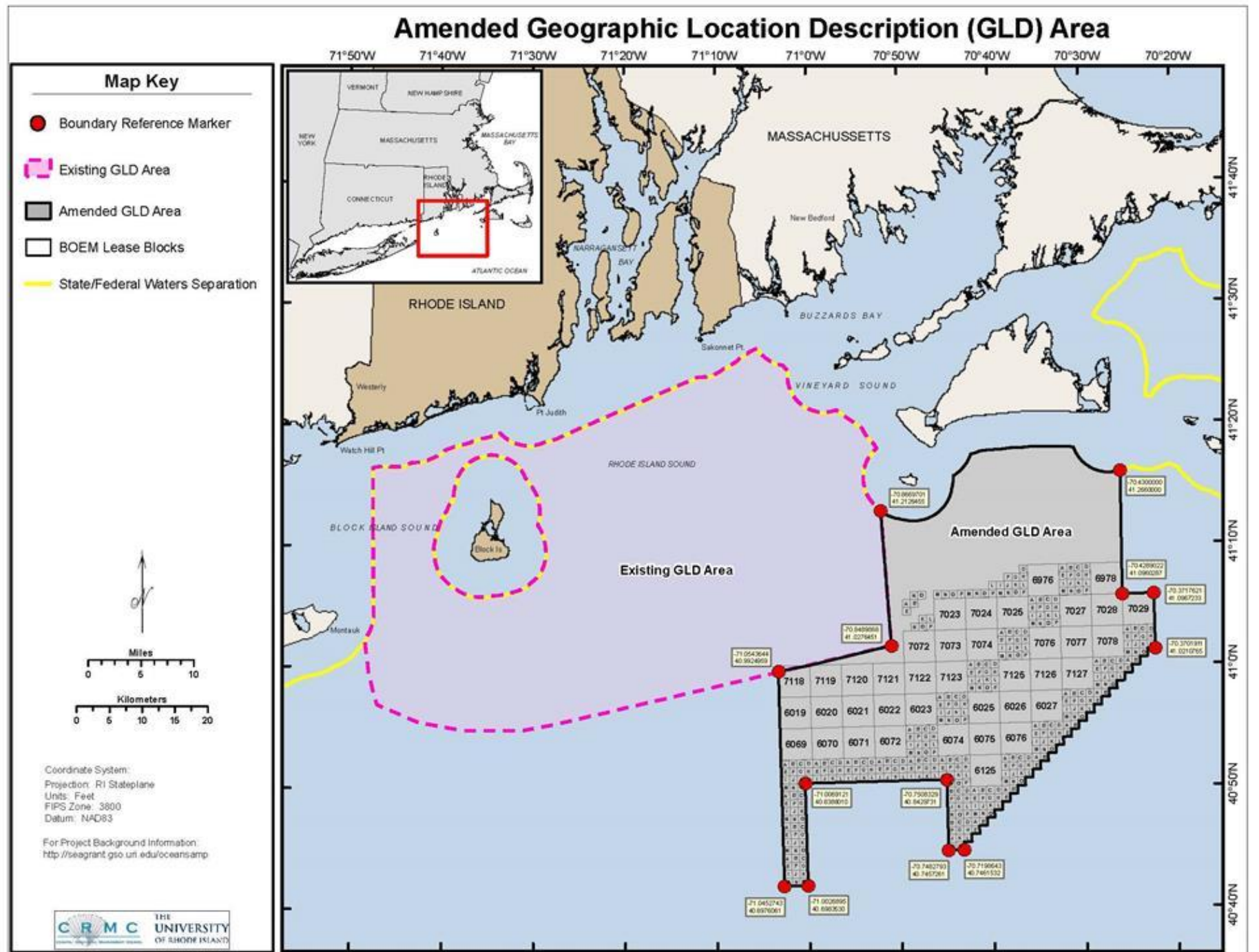
- Legally binding under State Law
  - Apply to State Jurisdiction and not Federal areas or agencies
  - Not Preempted by Federal Law
  - Do not discriminate against a particular group or activity
  - Consistent with CZMA requirements
  - Once superseded by other State law, no longer enforceable
- Approved by NOAA
  - Input by Federal agencies and the public
  - No incorporation by reference

# 3 Ways to get Federal Consistency in Federal Waters

1. Unlisted Review
2. Voluntary Submittal
3. Geographic Location Description

**Geographic Location Description** :Federal agency, federal license or permit, and federal financial assistance activities are subject to federal consistency review if the activity occurs outside of the states coastal zone but within a GLD. This location description encompasses an area outside the coastal zone in which an activity would have reasonably foreseeable coastal effects.

# CRMC Geographic Location Description (GLD) 2011 and 2018 boundaries



# CRMC Enforceable Policies for Federal Consistency Activities

CRMC Ocean SAMP: 650-RICR-20-05-11

§ 11.10.1 Overall Regulatory Standards (formerly § 1160.1)

§ 11.10.1(C) - Offshore developments shall not have a significant adverse impact on the natural resources or existing human uses of the Rhode Island coastal zone, as described in the Ocean SAMP. In making the evaluation of the effect on human uses, the Council will determine, for example, if there is an overall net benefit to the Rhode Island marine economic sector from the development of the project or if there is an overall net loss. Where the Council determines that impacts on the natural resources or human uses of the Rhode Island coastal zone through the pre-construction, construction, operation, or decommissioning phases of a project constitute significant adverse effects not previously evaluated, **the Council shall, through its permitting and enforcement authorities in state waters and through any subsequent CZMA federal consistency reviews, require that the applicant modify the proposal to avoid and/or mitigate the impacts or the Council shall deny the proposal.**

§ 11.10.1(F) - The Council shall prohibit any other uses or activities that would result in significant long-term negative impacts to Rhode Island's commercial or recreational fisheries. Long-term impacts are defined as those that affect more than one or two seasons.

§ 11.10.1(G) - The Council shall require that the potential adverse impacts of offshore developments and other uses on commercial or recreational fisheries be evaluated, considered, and mitigated as described in § 11.10.1(H) of this Part.

# CRMC Enforceable Policies for Federal Consistency Activities

CRMC Ocean SAMP: 650-RICR-20-05-11

§ 11.10.1(H) - For the purposes of fisheries policies and standards as summarized in Ocean SAMP Chapter 5, Commercial and Recreational Fisheries, §§ 5.3.1 and 5.3.2 of this Subchapter, mitigation is defined as a process to make whole those fisheries user groups that are adversely affected by proposals to be undertaken, or undertaken projects, in the Ocean SAMP area. Mitigation measures shall be consistent with the purposes of duly adopted fisheries management plans, programs, strategies and regulations of the agencies and regulatory bodies with jurisdiction over fisheries in the Ocean SAMP area, including but not limited to those set forth above in § 11.9.4(B) of this Part. Mitigation shall not be designed or implemented in a manner that substantially diminishes the effectiveness of duly adopted fisheries management programs. Mitigation measures may include, but are not limited to, compensation, effort reduction, habitat preservation, restoration and construction, marketing, and infrastructure improvements. Where there are potential impacts associated with proposed projects, the need for mitigation shall be presumed. **Negotiation of mitigation agreements shall be a necessary condition of any approval or permit of a project by the Council. Mitigation shall be negotiated between the Council staff, the FAB, the project developer, and approved by the Council.** The reasonable costs associated with the negotiation, which may include data collection and analysis, technical and financial analysis, and legal costs, shall be borne by the applicant. The applicant shall establish and maintain either an escrow account to cover said costs of this negotiation or such other mechanism as set forth in the permit or approval condition pertaining to mitigation. This policy shall apply to all large-scale offshore developments, underwater cables, and other projects as determined by the Council.