

FINAL Evaluation Findings

New Jersey Coastal Management Program

June 2004 – May 2007

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I. EXECUTIVE SUMMARY

Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to conduct periodic evaluations of the performance of states and territories with federally approved coastal management programs. This review examined the operation and management of the New Jersey Coastal Management Program (NJCMP or coastal program) by the New Jersey Department of Environmental Protection, the designated lead agency, for the period from June 2004 to May 2007.

This document describes the evaluation findings of the Director of NOAA's OCRM with respect to the NJCMP during the review period. These evaluation findings include discussions of major accomplishments as well as recommendations for program improvement. This evaluation concludes that the New Jersey Department of Environmental Protection is successfully implementing and enforcing its federally approved coastal management program, adhering to the terms of the Federal financial assistance awards, and addressing the coastal management needs identified in section 303(2) (A) through (K) of the CZMA.

The evaluation team documented a number of NJCMP accomplishments during this review period. Most notably, the CMO has demonstrated leadership in the development of statewide policies and rules that address current coastal management issues. The Division of Land Use Regulation and the Bureau of Coastal and Land Use Compliance and Enforcement have enhanced permitting and enforcement components of the program. The NJCMP has increased its outreach to coastal communities by collaborating with program partners to offer technical assistance opportunities. Other significant accomplishments during this evaluation period included enhancements to public access policy and outreach, and implementation of the Clean Marina Program.

The evaluation team also identified areas where the NJCMP could be strengthened. All but two of the recommendations for NJCMP are in the form of Program Suggestions, and describe actions that OCRM believes DEP could take to enhance or improve the program, but that are not mandatory. The Program also has two Necessary Actions: one related to the incorporation of the Hackensack Meadowlands' new Master Plan into the NJCMP, and one related to permitting. As mentioned above, the NJCMP has expanded its role in coastal management, and so most recommendations address enhancing Program capacity. Suggestions thus include: increasing communication and integration both within NJCMP and across DEP; reconsidering the allocation of CZMA funding among NJCMP components; and developing strategies for partnerships to address emerging coastal issues and outreach to coastal communities.

II. PROGRAM REVIEW PROCEDURES

A. OVERVIEW

The National Oceanic and Atmospheric Administration (NOAA) began its review of the NJCMP in March 2007. The §312 evaluation process involves four distinct components:

- An initial document review and identification of specific issues of concern;
- A site visit to New Jersey, including interviews and a public meeting;
- Development of draft evaluation findings; and
- Preparation of the final evaluation findings, partly based on comments from the State regarding the content and timetables of necessary actions specified in the draft document.

The recommendations made by this evaluation appear in boxes and **bold** type and follow the findings section where facts relevant to the recommendation are discussed. The recommendations may be of two types:

Necessary Actions address programmatic requirements of the CZMA's implementing regulations and of the NJCMP approved by NOAA. These must be carried out by the date(s) specified;

Program Suggestions denote actions that the OCRM believes would improve the program, but which are not mandatory at this time. If no dates are indicated, the State is expected to have considered these Program Suggestions by the time of the next CZMA §312 evaluation.

A complete summary of accomplishments and recommendations is outlined in Appendix E.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA §312 (c). Program Suggestions that must be reiterated in consecutive evaluations to address continuing problems may be elevated to Necessary Actions. The findings in this evaluation document will be considered by NOAA in making future financial award decisions relative to the NJCMP.

B. DOCUMENT REVIEW AND ISSUE DEVELOPMENT

The evaluation team reviewed a wide variety of documents prior to the site visit, including: (1) the 2005 NJCMP §312 evaluation findings; (2) the federally-approved Environmental Impact Statement and program documents; (3) federal financial assistance awards and work products; (4) semi-annual performance reports; (5) official correspondence; and (6) relevant publications on natural resource management issues in New Jersey.

Based on this review and discussions with NOAA's OCRM, the evaluation team identified the following priority issues:

- Program accomplishments since the last evaluation, including changes to the core statutory and regulatory provisions of the NJCMP;
- Long-term planning to guide the Program in identifying priorities, gaps, and the most effective role for the CMP;
- Implementation of federal and state consistency authority;
- Effectiveness of interagency and intergovernmental coordination and cooperation at local, regional, state, and federal levels;
- Public participation and outreach efforts;
- Coastal hazards;
- The coastal nonpoint pollution control program;
- The manner in which the NJCMP has addressed the recommendations contained in the §312 evaluation findings released in 2005. The NJCMP's assessment of how it has responded to each of the recommendations in the 2005 evaluation findings is located in Appendix A.

C. SITE VISIT TO NEW JERSEY

Notification of the scheduled evaluation was sent to the New Jersey Department of Environmental Protection, the NJCMP, relevant environmental agencies, members of New Jersey's congressional delegation, and regional newspapers. In addition, a notice of NOAA's "Intent to Evaluate" was published in the *Federal Register* on February 27, 2007.

The site visit to New Jersey was conducted from June 4-7, 2007. The evaluation team consisted of Kimberly Penn, Evaluation Team Leader, Office of Ocean and Coastal Resource Management, National Policy and Evaluation Division; Kris Wall, Program Specialist, Office of Ocean and Coastal Resource Management, Coastal Programs Division; and Barbara Neale, South Carolina Coastal Management Program.

During the site visit the evaluation team met with NJCMP staff, DEP staff and other state officials, federal agency representatives, coastal researchers and educators, nongovernmental representatives and private citizens. Appendix B lists individuals and institutions contacted during this period.

As required by the CZMA, NOAA held an advertised public meeting on Wednesday, June 6, 2007, at 5:30 p.m., at the Ocean County College, College Drive, Toms River, New Jersey. The public meeting gave members of the general public the opportunity to express their opinions about the overall operation and management of the NJCMP. Appendix C lists persons who registered at the public meeting. NOAA's response to written comments submitted during this review is summarized in Appendix D.

The NJCMP staff members were critical in setting up meetings and arranging logistics for the evaluation site visit. Their support is most gratefully acknowledged.

III. COASTAL MANAGEMENT PROGRAM DESCRIPTION

NOAA's Office of Ocean and Coastal Resource Management (OCRM) approved the New Jersey Coastal Management Program (NJCMP) in two phases, the first coastal area in 1978 and the second (incorporating the entire shoreline) in 1980. The lead coastal agency is the New Jersey Department of Environmental Protection (DEP), where the NJCMP is comprised of a network of offices that serve distinct functions within the approved program. A primary mission of the NJCMP is ensuring that coastal resources and ecosystems are conserved as a vital aspect of local, state and federal efforts to enhance sustainable coastal communities.

The coastal area includes coastal waters to the limit of tidal influence including: the Atlantic Ocean (to the limit of the State's seaward jurisdiction); Upper New York Bay, Newark Bay, Raritan Bay and the Arthur Kill; the Hudson, Raritan, Passaic, and Hackensack Rivers, and the tidal portions of the tributaries to these bays and rivers. The coastal boundary encompasses the area described in the Coastal Area Facility Review Act (CAFRA area) and the Hackensack Meadowlands District. The Delaware River and Bay and other tidal streams of the Coastal Plain are also in the coastal area, as is a narrow band of adjacent uplands in the Waterfront Development area beyond the CAFRA area. The State's diverse coastal zone includes portions of eight counties and 126 municipalities.

The NJCMP is based primarily on four laws and their implementing regulations: The Coastal Area Facility Review Act; The Wetlands Act of 1970; The Waterfront Development Act; and The Freshwater Wetlands Protection Act. These four laws regulate the area between the upland boundary of the coastal zone and the three nautical mile limit of the U.S. Territorial Sea and the interstate boundaries with New York, Delaware, and Pennsylvania. The Hackensack Meadowlands Development and Reclamation Act, implemented by the New Jersey Meadowlands Commission, applies to the Hackensack Meadowlands District. These coastal policies and procedures are administered through the New Jersey Coastal Zone Management Rules, which are broken down by location, use, and resource.

The central component of the NJCMP is the Coastal Management Office (CMO), which is part of the Commissioner's Office of Policy, Planning and Science. The Coastal Management Office (CMO) administers the planning and enhancement aspects of New Jersey's federally approved Coastal Management Program. CMO staff develop and implement long range planning projects involving coastal resource issues, and coordinate their efforts with complementary programs having similar interests and initiatives in the coastal area. The CMO also administers Coastal Zone Management Grants and prepares grant performance reports. Other DEP offices that share NJCMP responsibility include:

- The Division of Land Use Regulation, which reviews coastal permit applications submitted to the Department under CAFRA, the Waterfront Development Law, the Wetlands Act of 1970, and the Freshwater Wetlands Protection Act;
- The Bureau of Tidelands Management, which is part of the Division of Land Use Regulation, serves as staff to the Tidelands Resource Council.
- The Bureau of Coastal and Land Use Compliance and Enforcement, which investigates possible coastal and freshwater wetland violations and seeks remedies for violations;

- The Office of Dredging and Sediment Technology, which reviews coastal permit applications for dredging and ports;
- The Engineering and Construction Program, which manages coastal area dredging and shore protection projects, and provides aids to navigation;
- The Green Acres Program, which focuses on land acquisition and linking existing protected areas to create open space corridors; and
- The New Jersey Meadowlands Commission, which serves as trustee of the natural resources of the Meadowlands District and to foster a sustainable regional economy.

Federal and State consistency are conducted through the permitting process by the Division of Land Use Regulation. The one exception in the coastal area is the Hackensack Meadowlands District which is managed by a State-level regional agency known as the New Jersey Meadowlands Commission. State coastal management actions within the District are governed by the District Master Plan and zoning rules, which are considered a separate component of the NJCMP, as well as the Coastal Zone Management rules.

IV. REVIEW FINDINGS, ACCOMPLISHMENTS, AND RECOMMENDATIONS

A. OPERATIONS AND MANAGEMENT

Overall, OCRM finds that the New Jersey Department of Environmental Protection (DEP) is successfully implementing the New Jersey Coastal Management Program as approved by NOAA.

1. Organization and Administration

The New Jersey Coastal Program (NJCMP) is organized as a networked program, with aspects of program implementation administered by different offices and programs within DEP. The three primary components of the NJCMP are: the Coastal Management Office, the Division of Land Use Regulation, and the Bureau of Coastal and Land Use Compliance and Enforcement. The Coastal Management Office (CMO) is the coordinating component of the NJCMP, and is responsible for overall program administration, grants management, long-range planning and enhancement. CMO staff advise DEP on policies influencing coastal resource management, administer the Coastal Zone Management Grants, and prepare and submit the semi-annual performance reports to OCRM. The Division of Land Use Regulation (DLUR) reviews coastal permit applications and is responsible for Federal Consistency reviews. The Bureau of Coastal and Land Use Compliance and Enforcement (BCLUE) is responsible for ensuring compliance with New Jersey's land use laws through site inspections and investigations.

The success of DEP in implementing the NJCMP is directly attributable to the coordination of these offices and the knowledgeable and dedicated staff therein. Most notably during this evaluation period, the NJCMP has: made numerous program enhancements through policy and rule development; become more involved in land use planning; and improved enforcement processes. Together with program partners in the coastal management community, the NJCMP has also implemented new initiatives such as the Clean Marina Program and provided technical assistance to local communities. OCRM commends the NJCMP on their efforts during this evaluation period; specific accomplishments will be discussed in detail throughout this document.

The different programmatic functions of the CMO, DLUR and BCLUE are integral to comprehensive coastal management in New Jersey. While each office deserves recognition for their individual contributions to the NJCMP, it was evident to the evaluation team that the Program as a whole would benefit from a more structured approach to inter-office coordination and communication. For example, there were a number of "NJCMP issues" that came up throughout the site visit about which either CMO, DLUR or BCLUE were unaware.

In addition, though the CMO has been integral in shaping the State's coastal policy through DEP rule development during this review period (as discussed throughout in this document), the evaluation team observed the need to better integrate general coastal management policies across the Department. The recently proposed amendments to coastal management rules, specifically updating the coastal management priorities and goals, could be used as a catalyst to educate other offices in the Department and engage them in coastal management initiatives.

Program Suggestion: OCRM strongly encourages the NJCMP to institute regular meetings of CMO, DLUR and BCLUE to ensure that New Jersey’s coastal zone management rules and priorities are implemented and addressed through a more coordinated and comprehensive approach. In addition, the NJCMP should identify opportunities to coordinate and incorporate coastal management policies and priorities across DEP.

2. Policy and Rule Development

At the beginning of this evaluation period the NJCMP worked with the former Governor to release the New Jersey Coast 2005 initiative. New Jersey Coast 2005 is a comprehensive plan to protect the integrity and economic viability of coastal resources in the State. Under the initiative, the State plans to strengthen standards and regulations that protect the coastal ecosystem, enhance public access opportunities, expand protection for coastal wildlife and wildlife habitats, and support coastal industries. Building on this initiative, the CMO has taken on a leadership role in shaping coastal policy during this evaluation period. Specifically, CMO staff has been extremely active in developing new and/or amended rules that address emerging coastal management issues. The evaluation team repeatedly asked partners what the most significant coastal issues facing New Jersey are, and finds that the NJCMP is addressing all of them in some form. Rules that have been proposed, or are in development, include those addressing: coastal zone management, public access, stormwater management, and endangered and threatened species habitat. The NJCMP has also successfully adopted a number of program changes during this evaluation period that strengthen the State’s coastal and ocean resource management.

In addition, the NJCMP is currently developing an inventory of DEP initiatives (current or planned projects and programs) that address ocean and coastal resources and management. The evaluation team believes that the inventory will be an excellent tool for identifying opportunities for future NJCMP efforts and engaging partners, as an analysis of DEP efforts could help to identify gaps and needs in coastal and ocean research and management. There are no specific plans for the inventory’s availability as of yet. OCRM commends the NJCMP on this project, and encourages the Program to use the inventory to enhance the integration of coastal management efforts across DEP. In addition, OCRM would encourage DEP to make the inventory publicly available in order to focus the efforts of partners in the coastal and ocean management communities.

Accomplishment: CMO has taken on a leadership role in refining State policies and rules that address current coastal management issues such as public access, coastal hazards, and water quality. OCRM also commends the NJCMP on the development of the coastal and ocean initiatives inventory for DEP.

The allocation of CZMA funding was an issue that was identified and discussed in the 2005 evaluation findings, and one that OCRM finds still exists. The majority of the NJCMP’s CZMA implementation funds (§306 funds) are still primarily used to supplement State funds in supporting regulation (DLUR) and enforcement (BCLUE) staff. Therefore, the CMO, which relies exclusively on federal funding, must use the remaining §306 funds and a significant amount of their coastal zone enhancement funds (§309 funds) for staff. Since NOAA intends for §309 funds to support program enhancement, CMO staff supported with it are limited in their scope of

activities. This in turn limits the capacity of CMO to be proactive in addressing current coastal issues, responsive to emerging needs, or participate in any annual projects that could be funded through a CMO-run small grants program using §306 funds (e.g. small-scale construction for public access, habitat restoration, community/waterfront planning). OCRM thus continues to encourage DEP to either allow for more §306 funds to be retained by the CMO for staff and projects, or to seek an increase in general funds for the NJCMP from the State. Most significantly, an increase in State funding of the CMO would demonstrate New Jersey's support of the CMO's role in coastal resource policy and management, and institutionalize the Office within DEP. This would also enable the CMO to use federal funds to address the findings in this report to continue to fill their valuable leadership role in State coastal policy development, to take advantage of emerging opportunities and needs such as increasing outreach and assistance to municipalities, and to address the coastal management goals outlined in the CZMA.

Program Suggestion: OCRM strongly encourages the CMO to continue to enhance its program planning and policy development roles, and technical assistance capabilities. Again, OCRM strongly encourages the DEP to reconsider the allocation of federal and state funds that support various aspects of the NJCMP. An increase in either the percent of §306 funds or State general funds made available to the CMO would enable the NJCMP to address emerging coastal management issues, improve integration of coastal management within the DEP and state, and better address the technical assistance needs of local communities.

3. Land Use Planning and Regulation

New Jersey protects coastal waters and the land adjacent to them under a variety of laws, including the Coastal Area Facility Review Act (CAFRA), Waterfront Development Law, the Wetlands Act, and the Freshwater Wetlands Act. DEP applies the Coastal Zone Management Rules and Freshwater Wetlands Protection Act rules to determine what land uses or activities may or may not occur pursuant to these four laws. During this evaluation period, the NJCMP increased its efforts to ensure that coastal zone management policies and priorities, specifically those applied through CAFRA, are reflected in the State planning process in order to bring municipal plans and ordinances into compliance with the Coastal Zone Management rules.

CAFRA applies to projects near coastal waters in the southern part of the State. The CAFRA area begins in Old Bridge, Middlesex County and extends south along the coast around Cape May, north along the Delaware Bay, and ends at the Kilcohook National Wildlife Refuge in Salem County. The inland limit of the CAFRA area follows an irregular line drawn along public roads, railroad tracks, and other features. The law divides the CAFRA area into zones, and regulates different types of development in each zone. CAFRA regulates almost all activities involved in residential, commercial, or industrial development. The 1993 amendments to CAFRA required that the rules adopted to implement those amendments be closely coordinated with the State Development and Redevelopment Plan (State Plan). In addition, this legislation amended the State Planning Act to allow the State Planning Commission (SPC) to adopt the coastal planning policies of DEP's Coastal Zone Management (CZM) rules as the State Plan in the CAFRA area.

In response to these amendments, DEP adopted new rules (in 2000) for determining impervious cover limits and vegetative cover percentages for developments requiring a CAFRA permit based on the proposed development's location in a CAFRA center, CAFRA core, CAFRA node, or a Coastal Planning Area (as identified in the CAFRA Planning Map). These delineated areas have to be formally adopted by the SPC, and reviewed and accepted by DEP for the purposes of CAFRA. At the same time, DEP adopted a designation called "coastal centers" to accommodate development in the CAFRA area while municipalities pursued comprehensive planning, and thus CAFRA center, CAFRA core, CAFRA node, or a Coastal Planning Area designation, through the State's planning process. Initially, a 5-year expiration date was imposed on the boundaries of coastal centers located on the less developed mainland.

Municipalities are working with DEP and other state agencies to delineate growth centers, identify necessary environs protections, and to develop and implement plans and ordinances. Coastal policies are to be considered in parallel with other statewide policies, and plans are then endorsed by the SPC, of which the DEP's Coastal Management Office is one of seventeen voting members. It seemed, however, to the evaluation team that this process was not consistently integrated, and that centers and planning areas could be approved prior to specific review by the NJCMP.

In January 2007, however, the DEP group charged with working on State planning issues was formalized by the establishment of an Office of Planning and Sustainable Communities within Policy, Planning and Science. The new office will coordinate DEP's sustainable growth and capacity-based planning policies and work with partners including the Office of Smart Growth, regional entities, and municipalities to incorporate these policies into all levels of planning. Since the establishment of this new office, the plan endorsement process appears to have become more coordinated and comprehensive with regards to the State's CZM rules. The CMO has also been working with the Office of Planning and Sustainable Communities to develop new rules that will formally establish specific criteria that DEP will use to determine the acceptability of SPC approved boundaries for use in CAFRA permitting. The proposed rules will also require the incorporation of certain coastal management policies into municipality plans and ordinances prior to accepting the State Plan boundaries for coastal permitting. OCRM encourages the CMO to continue to advance this level of coordination thorough the planning process.

Several municipalities completed the planning process to achieve status as a CAFRA center in the initial five-year period. Coastal centers in municipalities that did not achieve permanent status expired in February 2005; however centers in those municipalities that had begun, but not completed, the process were then re-established by rule in February 2006. These designations expired in March 2007. At the time of the site visit, the Office of Planning and Sustainable Communities, in consultation with the CMO and DLUR, was working with 16 municipalities to bring their plans into compliance with both the SPC's guidelines and the CZM rules. OCRM commends the CMO on their involvement in the planning process, which will help to ensure that the State Plan reflects coastal zone management policies and priorities. This addresses a program suggestion from the 2005 evaluation recommending that the NJCMP has a greater role in the plan review process. OCRM encourages the NJCMP to continue to coordinate with the Office of Planning and Sustainable Communities to incorporate coastal management policies and priorities throughout the planning process.

Accomplishment: NJCMP is proactively working with the Office of Planning and Sustainable Communities to assist coastal communities in their planning process, and to incorporate coastal zone management policies into the State Development and Redevelopment Plan.

4. Permitting and Enforcement

DLUR has been particularly active in addressing the needs of permit applicants and local officials and planners during this evaluation period. For example, DLUR supported the Jacques Cousteau National Estuarine Research Reserve (JCNERR) on an on-line training geared toward municipal officials and planners, real estate agents, contractors, homeowners, and enforcement officials that are affected by State rules applied to permitting through the Division. The five-module training course was developed as part of a Coastal Training Program entitled “Understanding Land Use Regulations and Enforcement” and included: 1) An Overview and Waterfront Development, 2) Coastal Zone Management Rules and CAFRA, 3) Freshwater and Coastal Wetlands, 4) Stream Encroachment and Tidelands, and 5) A Land Use Planning Web Quest. DLUR staff provided guidance and content quality assurance during the Reserve’s development of the modules. OCRM commends NJCMP on these efforts to provide information and training on land use regulations and enforcement, and encourages the Program to continue to identify and address technical assistance and outreach needs of these audiences.

DLUR also implemented a Call Center at DEP to allow applicants to access permitting staff directly to ask questions regarding coastal permits and permit applications. Information collected by the Call Center will help DLUR to identify common permitting questions or issues. NJCMP plans to use the information to direct the development of technical assistance and trainings that address specific needs of the general public, municipal officials, and/or permitting staff.

Accomplishment: DLUR has actively addressed the needs of the regulated community by providing technical assistance via trainings and a permit Call Center.

The NJCMP is required to identify and report to OCRM any permit applications which DLUR was unable to review within 90 days as mandated by the 90-Day Law. A failure to render permit decisions within 90 days results in “de facto” permit issuance. During this evaluation period (April 2004 to March 2007), NJCMP reported 18 of these “de facto” permits in their semi-annual performance reports. It was brought to the evaluation team’s attention during the site visit that there were likely more ‘de facto’ permits being issued by DLUR than had been reported. As follow-up, the CMO provided OCRM with a supplement to the reported list, which included 37 additional general permits that were issued due to failure to meet the 90 day timeframe. Thirty-eight of the total fifty-five were federal consistency determinations as well as coastal permit applications. The remaining seventeen were CAFRA permits that did not include a federal action. Approximately 1,740 coastal general permits were issued in this timeframe, with the “de facto” permits making up 3%. Activities covered by these general permits included the construction or reconstruction of docks, bulkheads, single family homes and swimming pools.

Given that a significant amount of §306 funds support coastal permitting, DLUR has a responsibility to the NJCMP to ensure that coastal permits are getting reviewed within appropriate

statutory timelines. CMO and DLUR should work together to identify practices that will help to manage permit applications in order to minimize the number of “de facto” permits issued. OCRM anticipates that this strategy might include, for example, a prioritization of permit types, increased use of DLUR’s electronic permit tracking system, and/or ways to reduce staffs’ permit workload (i.e. permits-by-rule for those with de minimus impact). This strategy should be submitted to OCRM within six months of receipt of these findings, and implemented as soon as possible. Statistics and information on permits issued as a result of DLUR’s failure to render decisions within the required timeframe, including type and scope of permit, should continue to be reported in the NJCMP’s semi-annual performance reports to NOAA.

Necessary Action: The CMO and DLUR must work together to develop a strategy for minimizing the number of permits that are issued due to the failure to render a decision within the required timeframe, and submit this strategy to OCRM for review within six months of receiving this findings document. In addition, the NJCMP must continue to report “de facto” permit issuance information to OCRM in their semi-annual performance reports.

Two program suggestions in the last findings were related to DEP’s coastal and land use enforcement capacity: one recommending a system for prioritizing enforcement actions and another regarding adequate administrative penalty authority. The evaluation team was highly impressed with DEP’s response to these suggestions, particularly with regards to prioritizing enforcement.

The number and scope of enforcement actions in the coastal zone requiring the attention of BCLUE is significant—an average of more than 600 annually each of the last two years. In response to this workload, the Department’s priorities, and the 2005 program suggestion, the Bureau recently adopted draft guidance documents that prioritize enforcement activities based on environmental and programmatic criteria. In general, enforcement agents are to always be working on the most environmentally significant matter first. BCLUE has also increased the number of violation investigations over the past two years, from approximately 200 in 2005-2006 to over 400 in 2006-2007. This represents a substantial change in percent of alleged violations reported that were investigated: from approximately 30% to 86%. Because field inspections have been determined to be the best approach for increasing permit compliance, the Bureau developed guidance documents outlining standard operating procedures for compliance inspections and notices of violation as well. BCLUE conducted, on average, 330 permit compliance inspections in the coastal zone annually for the last two years. The compliance inspection document includes the steps necessary to prepare for, conduct and follow up on the inspection, and lists, by statute, the specific items to confirm at the permit site. In addition, BCLUE set a minimum standard for the number of permit compliance inspections to be performed annually by each field inspector in the coastal zone. These guidance documents were developed in consultation with staff in DLUR. The adoption and implementation of systems described in these documents will help BCLUE staff to manage overwhelming workloads by providing the guidance necessary to identify priority cases. OCRM commends BCLUE on this effort.

In addition, at the time of the site visit, a bill known as the Enforcement Enhancement Bill had been drafted that would standardize all of the statutes enforced by BCLUE. The legislation, if

passed, would initially bring the penalty authority under all Land Use Regulation statutes up to \$25,000 per violation per day. If the bill becomes law, and DEP adopts rules reflecting the new law, these statutes would be consistent with current New Jersey environmental regulatory standards with penalty authority of up to \$50,000 per violation per day. Penalty fees received go into the State's General Treasury. OCRM encourages the State to consider having revenues from these coastal permit violations directed to the Coastal Program. A dedicated source of funding such as this would help to institutionalize the Coastal Management Office, as discussed previously, and supplement federal dollars.

Accomplishment: BCLUE developed a set of guidance documents that prioritize enforcement actions based on environmental and programmatic criteria. This guidance will help Bureau staff to manage workloads and focus on the enforcement actions with most environmental significance.

5. Grants Management

OCRM awards the State of New Jersey federal grant funds for the implementation and enhancement of its approved coastal management program, the NJCMP. OCRM requires the NJCMP to submit semi-annual performance reports that provide information about accomplishments related to each financial assistance award. OCRM finds that the NJCMP satisfactorily managed its federal funding and achieved desired results from funded tasks during this review period. NJCMP submitted performance reports as required, and has been responsive to additional information requests from OCRM.

6. Hackensack Meadowlands District

New Jersey's coastal zone, and thus Coastal Management Program, currently includes the Hackensack Meadowlands District, which encompasses parts of ten Bergen County and four Hudson County communities. In the Hackensack Meadowlands District the authority to regulate land and water uses is coordinated by the DEP and the New Jersey Meadowlands Commission which was created in 1969. The New Jersey Meadowlands Commission (NJMC) Master Plan has served as the NJCMP for the Hackensack Meadowlands District. In 2004, the NJMC adopted a revised Master Plan and zoning regulations. This was just prior to, and discussed in depth in, the last evaluation. Basically, the NJCMP describes the new Master Plan as "an expression of the overall vision of a re-greened Meadowlands and a revitalized urban landscape. It is also a commitment by the New Jersey Meadowlands Commission, in exercising its authority under the Hackensack Meadowlands Reclamation and Development Act, to continue to serve as trustee of the natural resources of the Meadowlands District and to foster a sustainable regional economy" (NJCMP Section 309 Assessment and Strategy.) Per program suggestions in the 2005 findings document, the NJMC and NJCMP developed an MOU (signed in 2005) that clearly outlines the roles and responsibilities of each entity in reviewing proposed developments and activities in the District, and in preparing and submitting this information as a program change to NOAA. However, OCRM has not received a program change related to the NJMC from New Jersey, and thus no program change has been approved for the incorporation of the new Master Plan into the NJCMP. Therefore, the NJCMP does not currently have full authority to review federal consistency determinations in the District. This gap in authority is a significant issue that the

NJCMP must address. The DEP and the NJMC must work with OCRM to determine the future of the Meadowlands District in the Coastal Program, and submit a draft of the proposed program changes to OCRM within eighteen months of receipt of these findings.

Necessary Action: DEP and the NJMC must work with OCRM to develop a strategy to address the gap in approved enforceable policies in the Meadowlands District portion of the Coastal Program, and submit the strategy to OCRM within six months of receiving this findings document. Within a year of submitting the strategy, DEP must submit a draft of the proposed program changes to OCRM.

B. PUBLIC ACCESS

New Jersey aims to ensure that meaningful opportunities to enjoy the State’s tidal waterways and their shores are available to all residents and visitors per the Public Trust Doctrine. Recent court cases in the State have upheld that dry sand areas above the mean high water line are subject to certain rights of access to and use by the public in order to fully enjoy the State’s public trust lands. With the current rate of development in the coastal zone, however, the protection of coastal public access was identified in the last evaluation as an emerging issue in which the NJCMP could play a leadership role. In addition, the NJCMP identified Public Access as a high priority issue in their last two §309 Assessment and Enhancement Strategies. OCRM finds that the Coastal Program has had significant accomplishments in their public access program during this evaluation period in areas including rule development and increased public outreach.

Accomplishment: The NJCMP is making significant progress in addressing and enhancing coastal public access. NJCMP has been working to improve coastal public access policy and implementation, and increase the public’s understanding of their coastal access rights and responsibilities.

1. Rule Development

The current Public Access to the Waterfront Rule requires that development adjacent to coastal waters provide permanent perpendicular and linear access to the waterfront to the maximum extent practical. In November 2006, DEP proposed new rules and amendments to the NJMCP’s enforceable policies. The proposed Public Trust Rights Rule clarifies the public’s rights to access and use tidal waterways and their shores, and incorporates standards to maintain these rights when development occurs on or adjacent to the State’s tidal waterways and their shores. It also contains standards that municipalities must meet to participate in the Shore Protection Program (funding for beach renourishment and other shore protection projects), and that municipalities, counties and nonprofits must meet to be eligible for Green Acres funding. These standards provide specificity with respect to linear and perpendicular access, such as frequency of accessways, and restroom and parking requirements. The DEP received almost 600 public comments on the proposed rule change and amendments. These comments will be reviewed and incorporated into the rule and amendments as appropriate. The NJCMP anticipates that the rule change and amendments will be finalized by the end of 2007.

Because the proposed rules and amendments bring together the public access objectives of different programs within DEP (e.g. the NJCMP, the Shore Protection Program and Green Acres), they should allow for the development of a comprehensive set of public access enforceable policies. The CMO has also established a committee of senior management staff from DEP divisions and programs that address public access to both ensure the use of consistent access standards and to advance the NJCMP's coastal access strategy. OCRM commends the CMO on this comprehensive approach to elevating and addressing coastal public access.

The evaluation team met with a variety of coastal access stakeholders during the site visit, including marina owners, representatives from the Green Acres Program, and non-profit organizations. Many supported the new rules, and believed the rules are in line with, and appropriate for, the State's public trust responsibilities. However, some concerns were raised by partners, including: the lack of public participation early in the rule development process; the question of whether municipalities need the required frequency or quantity of public access; and the difficulty that small business owners and municipalities will have applying the new standards. Regarding the latter concern, the evaluation team heard that the inability to meet the proposed rules' public access requirements (e.g. additional restroom facilities and/or parking) could preclude some municipalities from receiving DEP funding for land acquisition (through Green Acres) or shoreline protection projects. OCRM encourages the CMO to consider these concerns, and work to identify ways that the Office could help municipalities better understand and meet requirements under the new rules (i.e. through technical or financial assistance.)

Program Suggestion: If the new public access rules and amendments are adopted, OCRM encourages the NJCMP to identify ways in which they assist state agencies and municipalities (e.g. through outreach or technical assistance) in understanding and addressing the new public access requirements.

2. Outreach and Education

NJCMP identified a lack in the overall understanding of access rights by the public and local governments in their recent §309 Assessment and Enhancement Strategy. In order to address this, the Coastal Program has expanded their outreach and education on the Public Trust Doctrine, public access opportunities, and the Coastal Program's role in public access. Specifically during this evaluation period, the NJCMP: hosted workshops for county and municipal officials; developed a handbook for coastal managers; and launched a webpage that provides a state map of oceanfront public access points.

In order to better understand public access issues, needs, and priorities across New Jersey, the CMO convened a series of focus group meetings in four regions around the State. Information gained from these focus groups provided the basis for a subsequent series of workshops developed by the Program. The workshops were entitled *Coastal Public Access in New Jersey: The Public Trust Doctrine and Practical Steps to Enhance Public Access*, and were hosted in five different coastal areas of the state during 2005 and 2006. The target audiences for the workshops included county and municipal officials, public works department staff, mayors, administrators and legislative representatives. Topics were aligned with the region-specific issues identified in the focus groups, and included the Public Trust Doctrine, the role of the State and local governments

in public access, and how municipalities protect and improve local public access. In addition, staff developed a handbook entitled *Coastal Public Access in New Jersey: The Public Trust Doctrine and Practical Steps to Enhance Public Access*, to supplement the information provided at the workshops. The handbook is intended for use as a reference tool for coastal managers at the municipal level, providing information on public access issues as well as steps for protecting and improving local public access.

The NJCMP also increased outreach to the public in the form of a new public access web page. In addition to information on the proposed public access rules and a guide to the Public Trust Doctrine, the website provides a map of public access points along the State's Atlantic coast. The map was developed using the NJCMP's recently completed GPS inventory of ocean access sites. The inventory includes information on site amenities such as restrooms, lifeguards, handicapped accessibility, and parking, as well as a description of the municipality in which the site is found. Over 1,300 accessways are cataloged to date, and DEP plans to expand the inventory to include the State's bays and urban tidal rivers in the future. This inventory is an excellent service for residents of and visitors to New Jersey.

3. Permit Tracking

Permits granted through DEP's CAFRA, Waterfront Development, and Coastal Wetlands programs often include conditions that require public access to help offset losses that may be incurred through new development or redevelopment. In 2005, NJCMP worked with the Office of Information Technology to modify the current electronic permit tracking database to include a field for 'public access conditions' on approved permits. This new capability allows NJCMP to identify and track all access requirements included in permits. BCLUE will monitor the database to target compliance inspections on permits with easements and access requirements. The ability to track public access conditions will help to ensure that even as private development continues to occur along New Jersey's coast, the public's access to coastal resources will be maintained. OCRM commends the NJCMP for taking the initiative to enhance the ability to enforce public access in permitting.

4. Hudson River Walkway

The plan for the Hudson River Walkway envisions a contiguous 18.5 mile long public waterfront corridor traversing nine municipalities in two counties from the George Washington Bridge to the Bayonne Bridge. The Walkway was created to provide recreational opportunities for the public while allowing economic development along a diverse waterfront. This ambitious effort was initiated in 1986, and significant progress has been made, but the Walkway has not yet been completed due to a number of factors, including the pace of redevelopment along the Hudson River and funding for publicly owned sections of the waterfront. In 2006 the DEP Commissioner created the Hudson River Waterfront Walkway Strategic Planning Team to revitalize efforts to complete the Walkway. The team, which consists of state and local agency representatives and stakeholders, was tasked with assessing the current status of the Walkway (gap sites) and identifying opportunities (location, funding, partners) for completion. Six gap sections in Hudson County have been identified on which DEP will focus their efforts.

The NJCMP has been coordinating Walkway efforts with partners including: PSE&G, New Jersey Transit, Steven’s Institute, the Department of Transportation, and the Department of Treasury. CMO and DLUR staff have facilitated meetings, commented on walkway design contracts, and helped to ensure compliance with applicable rules and regulations. Funding remains the most significant challenge to completing the Walkway—design and construction costs are high while funding opportunities are limited. OCRM commends the CMO for their engagement in and focus on completing this important public access enhancement.

C. COASTAL HABITAT

1. Land Acquisition

The Coastal and Estuarine Land Conservation Program (CELCP) was established “for the purpose of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses.” CELCP gives priority to lands that can be effectively managed and protected and that have significant ecological value. Each coastal state that submits grant applications under CELCP must develop a NOAA-approved CELCP Plan.

The CMO assumed the lead for coordinating and developing New Jersey’s CELCP Plan. During this evaluation period, the Office met with both government and non-profit partners to identify land acquisition priorities and to coordinate funding and match opportunities. CMO has primarily been working with DEP’s Green Acres Program, but also has engaged the Jacques Cousteau National Estuarine Research Reserve (JCNERR), the Delaware Bay Estuary Program and NY/NJ Harbor Estuary Program and various land trusts. The Green Acres Program is a state agency responsible for creating “a system of interconnected open spaces that contribute to the preservation and enhancement of the state’s natural environment and historic, scenic, and recreational resources for public use and enjoyment.” In addition to having a mission similar to that of CELCP, the Green Acres Program has a statewide, prioritized, land acquisition plan in place, as well as the capacity necessary to administer an acquisition program—aspects that make them a good partner for the NJCMP in this endeavor. Unfortunately, at the time of the site visit, the process to develop a CELCP Plan seemed to have stalled. The evaluation team, however, heard from numerous program partners that would like to continue to be involved in the Plan development process. The participation of these, and other, land acquisition partners (land trusts, local governments, the JCNERR, etc.) will significantly strengthen New Jersey’s CELCP Plan, and so OCRM encourages the CMO to actively engage them as partners in the process. CMO should coordinate with all key land acquisition partners to complete and submit the CELCP Plan as soon as possible.

Program Suggestion: OCRM strongly encourages the CMO to complete the development of the New Jersey CELCP Plan. The CMO should make a concerted effort to engage land acquisition partners statewide to increase support and to make the Plan as coordinated and comprehensive as possible.

D. WATER QUALITY

1. Coastal Nonpoint Pollution Control Program

The Coastal Nonpoint Pollution Control Program (CNPCP), or §6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), is jointly administered by NOAA and the Environmental Protection Agency. Two of the CNPCP's key purposes are to strengthen the links between federal and state coastal zone management and water quality programs, and to enhance state and local efforts to manage land use activities that degrade coastal waters. NOAA and USEPA must approve each state's coastal nonpoint program.

New Jersey's CNPCP has been conditionally approved since 1997. There remains one final management measure to be met regarding the development of a process for inspection of on-site sewage disposal systems at a frequency adequate to determine whether systems are failing. The NJCMP has oversight and management responsibilities for the CNPCP, while the other divisions, sections, and programs within the DEP and other state departments help to implement the actual rules, regulations, and programs that fulfill the management measures. The evaluation team discussed with the NJCMP the State's interest in addressing the remaining management measure. Given funding limitations, the NJCMP did not feel that the State will have the capacity to conduct on-site sewage disposal system inspections in the near future. Nevertheless, the NJCMP and OCRM agreed to revisit the measure and try to identify alternatives to addressing it.

2. Stormwater Management

DEP adopted revised Stormwater Management Rules and regulations in 2004. The new rules describe the required components of regional and municipal stormwater management plans, and establish the design and performance standards for new development. The new development standards address groundwater recharge, runoff quantity and quality controls, and buffers around Category One waters (those requiring special protection from measurable changes in water quality because of their exceptional ecological, recreational, water supply and fisheries significance). The Stormwater Rules provide additional protection for Category One waters by requiring a 300-foot resource protection area adjacent to them. Increasing the buffer in these areas not only helps to protect water quality, but also improves coastal hazard mitigation through the reduction of potential flood damage and provides area for the horizontal landward migration of coastal wetlands in response to sea level rise. Stormwater management regulations are implemented through DLUR permit programs (including CAFRA, Waterfront Development, Coastal Wetlands, Stream Encroachment and Freshwater Wetlands) and by local authorities (through the Municipal Land Use Law and the Residential Site Improvement Standards). NOAA approved these regulations as a program change in 2006.

E. COASTAL HAZARDS

Coastal New Jersey continues to see significant development and re-development activity, and consequently an increase in both year-round and seasonal population. Therefore, the vulnerability of the coastal environment, both natural and built, to natural hazards is also increasing. In the last evaluation findings, OCRM identified coastal hazards as an important issue for which the NJCMP should develop a strategy. Specifically, OCRM encouraged the NJCMP to develop and provide information to local governments about potential impacts and risks of natural hazards. In addition, the NJCMP identified coastal hazards as a high priority issue in their last two §309 Assessment and Enhancement Strategies. OCRM finds that the NJCMP has actively directed or been involved in various activities that address coastal hazards during this evaluation period, and commends the Program on their efforts.

1. Policy changes

NJCMP has made significant progress in strengthening State policies on coastal hazards. For example, the DEP amended their Coastal Zone Management Rules to further mitigate damage from coastal hazards. The new language encourages dedication of developed and undeveloped flood hazard areas as public open space, and limits the types of development that can occur in undeveloped flood hazard areas. Allowable exceptions to preservation of flood hazard corridors are water dependent uses, infill development, and uses for which there is no feasible alternative location. The DEP also adopted two rule changes related to beach and dune protection. These rules increased the minimum dune design volume required for 100-year flood protection to 1,100 square feet from 540 square feet, and strengthened construction standards for geotextile bags or tubes. NOAA approved these amendments as a program change in 2006. The CMO plans to examine options for rule changes addressing mitigation of hazards, such as sea level rise and coastal storms, on barrier islands. OCRM commends the NJCMP for taking this proactive approach to addressing coastal hazard issues.

NJCMP has also worked to identify gaps in the State's coastal hazards policies in both economic and environmental terms. For example, in order to develop policy options for addressing climate change, the CMO helped to organize and deliver the Governor's "Summit Confronting Climate Change in New Jersey" in 2006. Participants in the Summit included members of the Governor's Cabinet, representatives from the financial services and insurance industries, and experts from the scientific community. The goal of the Summit was to assess potential consequences of climate change in the State and to generate policy options for addressing them. One significant issue that was identified by participants in the Summit was the need for community vulnerability assessments. In response, NJCMP has recently initiated a new effort to acquire LiDAR images to identify the most vulnerable coastal communities, so the Program can target future technical assistance.

2. Coastal Community Assistance

In April 2005, the Federal Emergency Management Agency approved New Jersey's Hazard Mitigation Plan. This allows the State's Office of Emergency Management (NJOEM) to provide state, county and municipal governments with funds to promote hazard mitigation planning. In

2006, after FEMA approval of the State Plan, the NJCMP worked with the NJOEM and the Jacques Cousteau National Estuarine Research Reserve to develop and deliver workshops on hazard mitigation planning for municipal and county officials. The workshops, titled “Understanding Hazard Mitigation Planning” and “Hazard Mitigation Planning: Technical Assistance Seminar,” were designed to provide an overview on coastal hazards and educate local officials on how to develop a comprehensive FEMA-approvable multi-hazard mitigation plan.

Accomplishment: The NJCMP collaborated with partners to develop and conduct workshops on hazard mitigation planning for municipal officials.

F. COASTAL DEPENDENT USES AND COMMUNITY DEVELOPMENT

1. Clean Marina Program

The NJCMP developed and implemented the New Jersey Clean Marina Program during this evaluation period. The Clean Marina Program is a voluntary, incentive-based program that addresses cumulative and secondary impacts from marina and boating activities by encouraging marina owners, yacht clubs, boatyards and boaters to adopt practices to protect water quality and coastal resources. The CMO leads the implementation of the Program in coordination with a Steering Committee that includes: the New Jersey Marine Sciences Consortium (NJMSC), New Jersey Sea Grant, the New Jersey Marine Trades Association, the Jacques Cousteau National Estuarine Research Reserve (JCNERR), and the US Coast Guard Auxiliary, Barnegat Bay National Estuary Program, and the New Jersey Department of Transportation. The DEP designated the first New Jersey Clean Marina in 2005, and as of the site visit, there were nine certified Clean Marinas. Twenty-three, of the 500-600 marinas statewide, have pledged their commitment to participation in the program.

The Clean Marina Program has focused a significant amount of effort on education and outreach during this early implementation stage. To assist marinas in becoming certified “NJ Clean Marinas,” the CMO, in cooperation with the Clean Marina Committee, developed a Clean Marina Guidebook, brochure, self-assessment checklist, and pledge card. The Clean Marina Program has also offered a series of workshops to introduce the program to the marina and boating community. Topics have included: Stormwater Regulation; Funding Opportunities; Marine Environmental Compliance; Management of Mercury Switches; Waterfront, Wetlands and Coastal Permitting; Underground Storage Tanks; Landscaping Techniques for Marinas; and other best management practices including fuel spill prevention and clean up, and landscaping for stormwater management. These workshops have been well attended. In addition, there is a website for the Clean Marina Program. The site is an excellent resource for marina owners and operators, as well as the boating public, as it includes a list of certified and pledged marinas, all Program materials, copies of workshop presentations, and information for boaters. OCRM commends the Clean Marina Program for their approach to outreach and education.

Accomplishment: The NJCMP, in coordination with partners, has successfully initiated the New Jersey Clean Marina Program.

The Clean Marina Program is now in its third year. The evaluation team was able to meet with Program partners including marina owners, and the Marine Trades Association, NJMSC/Sea Grant and JCNERR during the site visit. In general, there seems to be widespread support for the Clean Marina Program from these groups. That said, partners also identified a variety of opportunities for program enhancement.

There is clearly apprehension on the part of marina owners and operators to joining the Program due to a perception that the publicity would make it more likely for the marinas to be targeted for permit compliance inspections. The evaluation team also heard that incentives, in the form of technical or financial assistance (including assistance with permitting), would significantly increase Program participation. NJMSC/Sea Grant, who is contracted by the NJCMP to help implement the Clean Marina Program, would like to formally solicit more feedback on the Program in order to focus expansion and enhancement efforts, and to strengthen the partnership with marina owners and operators, and the boating public. NJMSC is also looking for more flexibility in their role in the Program, to “maximize their creativity and energy”. Sea Grant’s ideas for Program enhancement included: working more closely with partners to provide education and outreach to target audiences, and focusing more on building relationships with marina owners and operators to increase their support of the Program.

Having developed a strong outreach and education strategy in the first few years, OCRM suggests that the CMO and Clean Marina Steering Committee focus efforts over the next couple years on evaluation of the Program in order to enhance implementation. The CMO currently has plans to evaluate the Clean Marina Program in 2009, which would be five years into its implementation. OCRM encourages the Clean Marina Program to do this sooner, as the evaluation team did not hear a compelling reason to wait on this, and to target all those involved in the Program including marina owners and operators, and the boating public. In addition, the CMO could explore possible incentives for marina participation in the Program. The evaluation team observed a lot of interest and energy on the part of the Steering Committee members interviewed; CMO is encouraged to take advantage of their partners’ eagerness to be involved. For example, JCNERR are experienced and uniquely positioned to help with the evaluation work.

<p>Program Suggestion: OCRM encourages the NJCMP to begin an evaluation of the Clean Marina Program in order to identify accomplishments and areas for improvement, and to help develop incentives which will increase support for and involvement in the Program.</p>

The NJCMP will also be involved in the implementation of new rules and regulations that affect marina owners and operators, namely: the proposed public access rules and the revised Basic Industrial Stormwater General Permit. The former was discussed earlier in this document; the latter will specifically require marina operators to cease discharges from boat bottom washing operations. The Stormwater General Permit changes went into effect in June 2007, and marina owners have two years to make necessary changes at their facilities to comply with the new permit. The NJCMP has been engaged in a dialogue with marina owners to hear and address concerns, and has already identified a point of contact for applicants with questions regarding marina permit issues in DLUR. OCRM commends this proactive approach, and encourages the Program to consider other ways of providing assistance to marine owners and operators to facilitate

compliance with the new stormwater regulations, as well as develop ways to reach out to individual boaters.

2. Offshore Wind

There is significant interest along the East Coast in developing offshore wind facilities due to high energy wind resources that are available in shallow waters in proximity to energy grid and support infrastructure. Therefore, New Jersey has identified offshore wind energy as a major emerging issue. In 2004, the former Governor Codey established by Executive Order the Blue Ribbon Panel on the Development of Wind Turbine Facilities in Coastal Waters. The Blue Ribbon Panel was directed to assess the environmental and economic issues associated with offshore wind turbines and provide recommendations to the Governor. The CMO helped to staff the Panel, and recommendations were released in 2006.

The Blue Ribbon Panel found that:

- New Jersey faces a serious and growing energy crisis, and that the State must be a leader in responsible development of clean, renewable sources of energy;
- based on information currently available, offshore wind turbine technology offers a range of potential benefits and possible drawbacks; and
- development of an offshore wind test project would yield important information on wind technology that will help to guide New Jersey in addressing population growth and increased energy demand and in balancing the need to protect its economy and ecologically valuable natural and wildlife resources.

NJCMP has since taken a leadership role in gathering information on offshore wind facility development and impacts in order to inform the State's policy development on the issue. Program efforts include the establishment of a DEP working group on the subject, and helping to develop a solicitation for research proposals to determine the current distribution and usage of New Jersey's coastal waters by ecological resources. CMO staff is working with NOAA's National Marine Fisheries Service to prepare and submit the permits necessary for the scientific research. OCRM commends the NJCMP on their leadership in addressing this important emerging issue.

Accomplishment: The NJCMP has taken a leadership role in the State's initiatives to address offshore wind facility development and its impacts to coastal and ocean resources.

3. Aquaculture

The number of aquaculture farms in New Jersey tripled from 1998 to 2005 (United States Department of Agriculture Census of Aquaculture, 2007) and the State wants to continue to strengthen the industry. The NJCMP has also focused its aquaculture efforts on reviewing the regulatory process for implementing community-based shellfish restoration in the State's coastal bays.

In order to advance shellfish aquaculture in New Jersey's coastal waters, NJCMP staff worked with staff from DEP's Bureau of Shellfisheries to develop criteria and guidelines for siting aquaculture development zones (ADZs) and for selecting traditional shellfish lease areas. Four

sites in the Delaware Bay were selected based on these criteria, and the Bureau has obtained the necessary permits to designate the areas.

The NJCMP has also coordinated with the Bureau of Shellfisheries and the Bureau of Marine Water Monitoring to promote and implement volunteer-based oyster gardening programs for habitat restoration and water quality improvements. DLUR has helped to ensure that all required permits and licenses are obtained for these programs, and is currently working on a draft general permit for the activities and structures associated with oyster gardening. In order to mitigate public health issues and user conflicts in restoration areas, the NJCMP is also working with partners to identify optimal locations for oyster gardening. OCRM finds that the NJCMP has played an important coordinating role in the advancement of aquaculture in this evaluation period.

G. GOVERNMENT COORDINATION AND DECISION-MAKING

1. Federal Consistency

The CZMA's federal consistency provision (§307) is a significant incentive for states to join the national coastal zone management program. It is also a powerful tool that states use to manage coastal uses and resources and to facilitate cooperation and coordination with federal agencies. The federal consistency provision requires that federal agencies funding, licensing, or permitting activities that have reasonably foreseeable effects on any resource in the coastal zone must be consistent to the maximum extent practicable with the enforceable policies of a state's coastal management program. In New Jersey, DEP exercises the state's authority to review most federal activities in the coastal zone to ensure that they are consistent with the NJCMP's enforceable policies. Federal consistency determinations for dredging projects and port facilities are made by DEP's Office of Dredging and Sediment Technology.

During this evaluation period, the NJCMP updated their Federal Consistency guidance document (July 2004) and list of enforceable policies. Federal partners who met with the evaluation team expressed a range of opinions on the NJCMP consistency review process. In addition, the Program described issues with partners' experience with the process and managing federal agencies' expectations with regards to review timelines, specifically with regards to fisheries management plans and Army Corps individual permits. There was general consensus that while the process has improved, it could be made more efficient through increased communication and coordination among state and federal partners. OCRM encourages the NJCMP to identify ways to improve communication throughout the federal consistency process. For example, the NJCMP could institute coordination meetings with Army Corps representatives to ensure both entities get to know federal consistency contacts.

<p>Program Suggestion: OCRM encourages the NJCMP to identify ways to improve the communication and coordination among federal consistency partners.</p>
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2. Coordination and Partnerships

OCRM finds that the NJCMP maintains productive partnerships to further New Jersey's coastal zone management priorities. The evaluation team observed a good rapport between staff and

program partners, which has resulted in successful collaborations on initiatives including coastal land acquisition, the Clean Marina Program, and technical assistance workshops for municipal officials. Partners include: other offices within DEP, the New Jersey Marine Sciences Consortium (NJMSC) and Sea Grant, the Jacques Cousteau National Estuarine Research Reserve (JCNERR) the Urban Coast Institute (UCI), and the Partnership with the Delaware Estuary. Joint initiatives are discussed throughout this document.

NJCMP continues to maintain a particularly productive partnership with the New Jersey Marine Science Consortium and New Jersey Sea Grant. The NJMSC is a non-profit affiliation of colleges, universities and public and private sector groups dedicated to advancing a greater knowledge of the State's marine and coastal environments. The New Jersey Sea Grant Program is managed by the Consortium. It appears that this collaboration provides support to the CMO similar to that envisioned by the CZMA for the coastal management program and National Estuarine Research Reserve partnership, as the programs coordinate efforts in coastal research, public outreach and education. DEP/CMO has a seat on the Consortium's Board of Trustees and works with the NJMSC to identify research priorities. In addition, the programs partner to deliver education and outreach and provide technical assistance to communities on current coastal management issues. Issues that the programs have addressed include: public access, maritime heritage, sustainability and coastal hazards. OCRM commends the NJCMP and NJMSC on their joint initiatives during this evaluation period.

Accomplishment: NJCMP maintains productive partnerships to address coastal management priorities. CMO's collaboration with the NJMSC is particularly successful in engaging coastal communities and addressing local technical assistance needs.

Given the breadth of the CMO's current and proposed initiatives, and the reality of funding limitations, NJCMP staff should identify which efforts are best suited to collaborations with which partners. A more strategic approach to collaborative work would allow the CMO to leverage NOAA funds to engage partners, and would help to maximize the impact of efforts, particularly in the realm of public outreach to and technical assistance for local governments. For example, OCRM encourages the NJCMP to strengthen its relationship with the JCNERR. (This was also a program suggestion in the previous evaluation findings.) One of the primary goals of the NERR System is to help address priority coastal management issues through scientific research, education and stewardship activities conducted by reserves. Attaining this goal requires regular two-way communication and collaboration between the Reserve and coastal management community to identify issues and needs. The NJCMP should work with JCNERR to identify how to best utilize the Reserve's strengths to enhance coastal management in the State. JCNERR will be encouraged to work with the NJCMP on developing this partnership through their program evaluation as well.

As described throughout this document, the NJCMP has developed many successful partnerships to address the needs of the coastal management community. The evaluation team noted, however, that collaborative efforts seem to be initiated on a somewhat ad hoc basis, and could be more efficient and potentially have greater impact if they were planned more strategically.

Program Suggestion: OCRM encourages the NJCMP to increase their coordination with partners in order to continue to address emerging coastal management issues and priorities. The NJCMP should specifically consider how to best utilize their partnership with the JCNERR.

2. Local Government Capacity and Public Participation

New Jersey is a strong home rule state, and thus most land use decisions are made at the local level. The evaluation team was unfortunately unable to meet with any representatives of local governments, but did receive some information from program partners that work closely with municipalities. Partners believed that a greater focus on providing assistance to local governments would strengthen the NJCMP's relationship with coastal communities, and increase local coastal management capacity. As highlighted throughout these findings, the NJCMP has increased and enhanced technical assistance provided to coastal communities on public access, land use regulations, and hazard mitigation plans. OCRM encourages the NJCMP to continue to identify areas where they can provide assistance to increase community capacity to address coastal management priorities.

The evaluation team did have the opportunity to meet with a number of non-profit and advocacy groups during the site visit. These meetings provided OCRM with valuable feedback regarding public perception of, and participation in, the NJCMP. Overall, environmental groups believe that the NJCMP has identified and is engaging in the most important coastal issues, i.e. public access, coastal hazards. These groups did express concerns, however, that the program is not as effective as it could be in addressing these issues due in part to a lack of coordination and integration within DEP (which was addressed earlier in this document.) The evaluation team also heard that public support for new coastal policies and rules could potentially be increased through the involvement of stakeholders (i.e. local governments, non-profits) earlier in the rule development process. The NJCMP might consider examining the process to identify opportunities that provide for increased stakeholder input prior to rule proposal.

OCRM encourages the NJCMP to enhance its work to build local government capacity and improve public participation. There are a number of partners that could assist the NJCMP in building local capacity. For example, the NJMSC, JCNERR, and the Urban Coast Institute each of which expressed strong interest in expanding their partnerships to address these areas.

Program Suggestion: OCRM encourages the NJCMP to develop a strategy for enhancing outreach and assistance to coastal communities.

V. CONCLUSION

For the reasons stated herein, I find that the State of New Jersey is adhering to the programmatic requirements of the Coastal Zone Management Act and its implementing regulations in the operation of its approved NJCMP.

The NJCMP has made notable progress in the following areas: coastal management policy and rule development, permitting and enforcement, public access, and coastal hazards.

These evaluation findings also contain ten recommendations: two Necessary Actions that are mandatory and nine Program Suggestions. The state must address the Necessary Actions by the date indicated. The Program Suggestions should be addressed before the next regularly-scheduled program evaluation, but they are not mandatory at this time. Program Suggestions that must be repeated in subsequent evaluations may be elevated to Necessary Actions. Summary tables of program accomplishments and recommendations are provided in Section VI.

This is a programmatic evaluation of the NJCMP which may have implications regarding the State's financial assistance awards. However, it does not make any judgment about or replace any financial audits.

signed David Kennedy
David M. Kennedy
Director, Office of Ocean and Coastal
Resource Management

1 - 10 - 08
Date

VI. APPENDICES

APPENDIX A. NJCMP'S RESPONSE TO 2005 EVALUATION FINDINGS

Program Suggestion: The Coastal Management Office needs to continue to find ways to play a leadership role in the management of New Jersey's coastal resources. One mechanism would be to retain more of the §306 funds that are currently being provided to LURP and BCLUE. This would enable the Coastal Management Office to hire additional staff needed to address emerging coastal issues and resolve inconsistencies in coastal management. This would also allow the Coastal Management Office to provide funding support to other entities for projects addressing emerging coastal issues.

NJCMP Response: In March 2007, the Coastal Management Office (CMO) hired an additional staff member in a Research Scientist position, bringing the number of staff to 8 individuals (7 professional titles and one clerical title). The office has successfully utilized the NOAA CSC Fellowship Program and post-graduate internship programs to supplement professional staff resources.

The staffing level of the various DEP program offices is set by the Department through a process of verifying continued (stable) funding sources, need and available titles to be allocated to the various programs. Not having the discretion to allocate funds away from other networked programs and the continued increase in salaries, fringe and indirect costs has also limited the CMO's ability to fully implement this program suggestion. Instead, the CMO continues to seek alternative opportunities to supplement program resources.

Program Suggestion: Several of the laws upon which the NJCMP is based have outdated and insufficient administrative penalty authority. To promote compliance, the NJCMP should pursue legislation that gives the Department updated and sufficient administrative penalty authority.

NJCMP Response: A bill known as the Enforcement Enhancement Bill, has been drafted with the goal of standardizing all the statutes that the Bureau of Coastal and Land Use Compliance and Enforcement (Bureau) enforces. This legislation would initially bring the penalty authority under all Land Use Regulation statutes up to \$25,000 per violation per day. Once the bill becomes law and the Department adopts rules reflecting the new law, these statutes would be consistent with current New Jersey environmental regulatory standards with penalty authority of up to \$50,000.00 per violation per day. This bill would also give the Bureau access to the Office of Administrative Law, rather than the Superior Court system as the venue for prosecution of Land Use cases. The bill has gained a sponsor and is expected to be introduced into the New Jersey Legislature in late spring, 2007.

Program Suggestion: It is clear that the need for enforcement outpaces the Department's staff and resource capabilities. To prevent overtaxing the system, NJCMP should develop a systematic approach to measure and distribute the enforcement workload and recognize

accomplishments. NJCMP should also devise and implement a system to prioritize enforcement activities.

NJCMP Response: In February 2007 the Bureau of Coastal and Land Use Compliance and Enforcement adopted a set of guidance documents to guide enforcement actions. Specific time frames are identified for expected enforcement case assessment and investigation, issuance of Notice of Violation, and any necessary civil administrative penalty assessment and follow-up.

The Bureau has also set a minimum standard for the number of permit compliance inspections to be performed annually by each field inspector in the coastal zone, which is identified in the performance standards of each employee's Performance Evaluation System agreement. The Bureau has adopted a standard operating procedure for permit compliance inspections which requires and limits the types of conditions examined for compliance during a compliance review to those permit conditions of environmental or programmatic importance.

Program Suggestion: NJCMP should consider establishing more regular interactions with the Jacques Cousteau National Estuarine Research Reserve to discuss needs and the possibility of joint efforts. If possible, the Reserve should be integrated into NJCMP's other research planning efforts, including the DEP Coastal Research Agenda, and the New Jersey Marine Sciences Consortium Priority Research Agenda.

NJCMP Response: The NJCMP continues to partner with the Jacques Cousteau National Estuarine Research Reserve on the delivery of workshops and training courses offered by the CMO, Division of Land Use Regulation, Compliance and Enforcement Programs and Watershed Programs of the Department. The Coastal Management Program has also included the JCNERR as a partner on a number of initiatives, including the Clean Marina Program and the CELCP committee. The JCNERR and the Division of Land Use Regulation jointly developed an on-line training program, "Understanding Land Use Regulations."

Program Suggestion: There are many parties – federal, state, and private – involved in coastal management activities in New Jersey. Coordination is not as good as it could be, however, and joint efforts are very ad hoc. The Department should look at ways to enhance communication and coordination among these groups, such as through workshops, regular meetings, strategic planning committee, or other forums. Such activities could help promote sharing research priorities and activities, seeking opportunities to leverage funds, and other joint activities.

NJCMP Response: The CMO participates as a representative in a number of coastal initiatives directed by state, federal, and private entities. Where the CMO can provide expertise or assist in the coordination of activities every effort is made to provide that assistance. The CMO coordinates a number of Department-wide and inter-agency committees, including those working on public access, the Hudson River Waterfront Walkway, and offshore wind development. The CMO has also hosted a number of workshops and conferences on coastal issues where representatives from various federal, state and non-governmental organizations

have been included in the planning and delivery of the events. The Division of Land Use Regulation participates in monthly permit coordination meetings with federal agencies, including the Army Corps of Engineers, US Fish and Wildlife Service, and National Marine Fisheries Service.

Program Suggestion: The Coastal Management Office and the New Jersey Meadowlands Commission should develop an MOU/MOA to ensure mutual understanding of the Commission's role in implementing the NJCMP in the Hackensack Meadowlands District.

NJCMP Response: On November 9, 2005, the Department entered into a Memorandum of Agreement with the New Jersey Meadowlands Commission identifying the roles of each agency in reviewing proposed developments and activities in the District.

Program Suggestion: Prior to using the new Master Plan for consistency determinations, the Meadowlands Commission must also submit the Plan as a Routine Program Change or Amendment to NOAA's Office of Ocean and Coastal Resource Management.

NJCMP Response: CMO staff provided comments to NJMC staff on the draft program change analysis for the Natural Environment Section of the Master Plan in November 2004, and on a revised version and new analysis for housing, community facilities and historic preservation in December 2004. However, the final draft analysis has not yet been completed.

Program Suggestion: NJCMP should develop a strategy for enhancing assistance to coastal communities.

NJCMP Response: The Coastal Management Program is working to assist local coastal communities through coordination with the Department's Office of Planning and Sustainable Communities, as well as the Office of Smart Growth, Office of Emergency Management, non-governmental organizations and academia as well as providing technical assistance, education and training on various issues such as implementation of coastal regulations, land use planning, coastal hazards, coastal land acquisition and public access.

Program Suggestion: NOAA is encouraged by the Department's involvement in the plan endorsement process and, in particular, the prospect of an initiative whereby local governments would incorporate coastal management principles into local plans and ordinances. To accomplish this, the Coastal Management Office will need a greater role in the plan review and development process.

NJCMP Response: The Coastal Program Manager and staff of the CMO continue to provide a lead role in directing this activity and ensuring that plan endorsement is consistent with existing NJCMP enforceable policies. In January 2007, the Department established a new Office of Planning and Sustainable Communities within Policy Planning and Science to

coordinate the sustainable growth and capacity-based planning policies of the Department and proactively work with sister state agencies, particularly the Office of Smart Growth, regional entities and local jurisdictions to incorporate these policies into all levels of planning. The CMO is working closely with the Department's Office of Planning and Sustainable Communities in these efforts.

APPENDIX B. PERSONS AND INSTITUTIONS CONTACTED

New Jersey Coastal Management Program

Name	Office
John D'Agostino	Coastal Management Office
Ruth Ehinger	Program Manager, Coastal Management Office
Tali Engoltz	Coastal Management Office
Dorina Frizzera	Coastal Management Office
Kevin Hassell	Coastal Management Office
Jennifer Lennon	Coastal Management Office
Kurt Kalb	Coastal Management Office
Kim Springer	Coastal Management Office
Scott Brubaker	Coastal and Land Use Enforcement
Kathleen Cann	Coastal and Land Use Enforcement
Marcedius Jameson	Coastal and Land Use Enforcement
Pete Keledy	Coastal and Land Use Enforcement
Andy Clark	Land Use Regulation
Christopher Dolphin	Land Use Regulation
Tom Micai	Land Use Regulation

New Jersey Department of Environmental Protection

Name	Department or Program
Dave Rosenblatt	Coastal Engineering
Steve Jandoli	Green Acres
Judeth Yeany	Green Acres
Deborah Watkins	Marine Water Monitoring
Bill Purdie	Office of Planning
Suzanne Dietrick	Office of Dredging and Sediment Technology
Jim Joseph	Division of Fish and Wildlife
Terry Kell	Federal Funds
Vincent Siracusa	Federal Funds

Program Partners

Name	Affiliation
Debbie Lawlor	New Jersey Meadowlands Commission
Lisa Auermueller	Jacques Cousteau National Estuarine Research Reserve
Martha Maxwell-Doyle	Partnership for the Delaware Estuary
Mike Danko	New Jersey Marine Sciences Consortium – Sea Grant
Tom Herrington	New Jersey Marine Sciences Consortium – Sea Grant
John Miller	New Jersey Marine Sciences Consortium – Sea Grant
Peter Rowe	New Jersey Marine Sciences Consortium – Sea Grant
Tim Dillingham	American Littoral Society
Cindy Zipf	Clean Ocean Action
Bill Wolfe	Public Employees for Environmental Responsibility
Benson Chiles	Coast and Ocean Coalition

John Weber	Surfrider
Tony MacDonald	Urban Coast Institute
Melissa Danko	New Jersey Marine Trades Association
Ed Harrison II	Marina Owner
Ed Harrison III	Marina Owner

Federal Agencies

Name	Agency
Karen Greene	NOAA National Marine Fisheries Service
Beth Brandreth	USACE Environmental Resources Planning Division
Michael Hayduk	USACE Regulatory
Carlo Popolozio	USFWS New Jersey Field Office

APPENDIX C: PERSONS ATTENDING THE PUBLIC MEETING

No one attended the public meeting.

APPENDIX D: NOAA'S RESPONSE TO WRITTEN COMMENTS

OCRM received one set of written comments regarding the New Jersey Coastal Management Program. Comments are summarized below and followed by OCRM's response.

Benson Chiles, Environmental Defense and Coastal Ocean Coalition
Bill Wolfe, Public Employees for Environmental Responsibility
John Weber, Surfrider Foundation

Comments: The Coastal Ocean Coalition submitted both written comments and additional documentation for the evaluation team's consideration. The Coalition made a number of recommendations for improving the Coastal Management Program. The Coalition recommends that the State should: reorganize and elevate the New Jersey Coastal Management Program (NJCMP) within the Department of Environmental Protection to the division level with a broader mission of habitat assessment, planning and ecosystems protection; increase funding of the Program; expand the coastal zone boundaries of the NJCMP; address (perceived) implementation issues with regards to CAFRA authorities; strengthen enforcement; and address the conditional approval of the New Jersey Coastal Nonpoint Pollution Control Program (CNPCP).

Documents submitted included: *Ocean Protection in New Jersey: A Blueprint for State Level Action*; written comments by the Coastal Ocean Coalition provided to DEP on 1) the draft 309 assessment and 2) cover letter and written comments on the proposed Coastal Zone Management Rules; public comments of Bill Wolfe before the Senate Environment Committee; a summary of *Valuing New Jersey's Natural Capital: An Assessment of the Economic Value of the State's Natural Resources*; and a press release on the land use/land cover analysis by Drs. Richard Lathrop and John Hasse.

OCRM's Response: Unless OCRM determines that the current organizational structure and position of the coastal program prevent it from implementing and enforcing its federally-approved program, OCRM believes it is the responsibility of the State to determine the appropriate organization and position for the coastal program within the state government structure. OCRM has addressed inter-office coordination and program cohesiveness in the findings. With regards to expanding the NJCMP's mission and boundaries, and CAFRA authority, OCRM finds that New Jersey is successfully implementing and enforcing the Program as approved by NOAA, as well as addressing coastal management priorities of the CZMA. The status of enforcement and the CNPCP are discussed in the findings.

APPENDIX E: SUMMARY OF ACCOMPLISHMENTS AND RECOMMENDATIONS

Accomplishments

Issue Area	Accomplishment
Policy and Rule Development	CMO has taken on a leadership role in refining State policies and rules that address current coastal management issues such as public access, coastal hazards, and water quality. OCRM also commends the NJCMP on the development of the coastal and ocean initiatives inventory for DEP.
Land Use Planning and Regulation	NJCMP is proactively working with the Office of Planning to assist coastal communities in their planning process, and to incorporate coastal zone management policies into the State Development and Redevelopment Plan.
Permitting and Enforcement	DLUR has actively addressed the needs of the regulated community by providing technical assistance via trainings and a permit Call Center.
Permitting and Enforcement	BCLUE developed a set of guidance documents that prioritize enforcement actions based on environmental and programmatic criteria. This guidance will help Bureau staff to manage workloads and focus on the enforcement actions with most environmental significance.
Public Access	The NJCMP is making significant progress in addressing and enhancing coastal public access. NJCMP has been working to improve coastal public access policy and implementation, and increase the public’s understanding of their coastal access rights and responsibilities.
Coastal Hazards	The NJCMP collaborated with partners to develop and conduct workshops on hazard mitigation planning for municipal officials.
Clean Marina Program	The NJCMP, in coordination with partners, has successfully initiated the New Jersey Clean Marina Program.
Offshore Wind	The NJCMP has taken a leadership role in the State’s initiatives to address offshore wind facility development and its impacts to coastal and ocean resources.
Coordination and Partnerships	NJCMP maintains productive partnerships to address coastal management priorities. CMO’s collaboration with the NJMSC is particularly successful in engaging coastal communities and addressing local technical assistance needs.

Recommendations

Recommendations are in the form of Necessary Actions (NA) or Program Suggestions (PS).

Issue Area	Recommendation
Permitting and Enforcement	NA: The CMO and DLUR must work together to develop a strategy for minimizing the number of permits that are issued due to the failure to render a decision within the required timeframe, and submit this strategy to OCRM for review within six months of receiving this findings document. In addition, the NJCMP must continue to report “de facto” permit issuance information to OCRM in their semi-annual performance reports.

Hackensack Meadowlands District	NA: DEP and the NJMC must work with OCRM to develop a strategy to address the gap in approved enforceable policies in the Meadowlands District portion of the Coastal Program, and submit the strategy to OCRM within six months of receiving this findings document. Within a year of submitting the strategy, DEP must submit a draft of the proposed program changes to OCRM.
Organization and Administration	PS: OCRM strongly encourages the NJCMP to institute regular meetings of CMO, DLUR and BCLUE to ensure that New Jersey's coastal zone management rules and priorities are implemented and addressed through a more coordinated and comprehensive approach. In addition, the NJCMP should identify opportunities to coordinate and incorporate coastal management policies and priorities across DEP.
Policy and Rule Development	PS: OCRM strongly encourages the CMO to continue to enhance its program planning and policy development roles, and technical assistance capabilities. Again, OCRM strongly encourages the DEP to reconsider the allocation of federal and state funds that support various aspects of the NJCMP. An increase in either the percent of §306 funds or State general funds made available to the CMO would enable the NJCMP to address emerging coastal management issues, improve integration of coastal management within the DEP and state, and better address the technical assistance needs of local communities.
Public Access	PS: If the new public access rules and amendments are adopted, OCRM encourages the NJCMP to identify ways in which they assist state agencies and municipalities (e.g. through outreach or technical assistance) in understanding and addressing the new public access requirements.
Coastal Habitat	PS: OCRM strongly encourages the CMO to complete the development of the New Jersey CELCP Plan. The CMO should make a concerted effort to engage land acquisition partners statewide to increase support and to make the Plan as coordinated and comprehensive as possible
Clean Marina Program	PS: OCRM encourages the NJCMP to begin an evaluation of the Clean Marina Program in order to identify accomplishments and areas for improvement, and to help develop incentives which will increase support for and involvement in the Program.
Federal Consistency	PS: OCRM encourages the NJCMP to identify ways to improve the communication and coordination among federal consistency partners.
Coordination and Partnerships	PS: OCRM encourages the NJCMP to increase their coordination with partners in order to continue to address emerging coastal management issues and priorities. The NJCMP should specifically consider how to best utilize their partnership with the JCNERR.
Local Government Capacity	PS: OCRM encourages the NJCMP to develop a strategy for enhancing outreach and assistance to coastal communities.