

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
Coastal Management Office
Notice of Determination on Routine Program Change to the Coastal Management Program

Take notice that the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management has, by letter dated May 28, 2004, approved changes to New Jersey's Federally approved Coastal Management Program (see 36 N.J.R. 2084(a); April 19, 2004). The New Jersey Coastal Management Program has been changed to incorporate: (1) the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B and Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A; (2) the Department's dredging technical manual titled, "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," dated October 1997; and (3) rulemaking actions specified below amending the Coastal Permit Program rules, N.J.A.C. 7:7, and the Coastal Zone Management rules, N.J.A.C. 7:7E. NOAA did not concur with the Department's determination that two of the changes to the Coastal Permit Program rules, N.J.A.C. 7:7, listed below constitute a routine program change. Federal Consistency requirements of the CZMA apply to the approved provisions as of the date of publication of this notice.

Pursuant to the requirements of 15 CFR 923, changes to the Coastal Management Program must be approved by NOAA. On April 20, 2004, the Department submitted to NOAA a request for concurrence with the Department's determination that incorporation of the above listed statutes, regulations and technical guidance into New Jersey's Coastal Management Program constitutes a routine program change. (see 36 N.J.R. 2084(a); April 19, 2004) Under 15 C.F.R. 923.84(a) changes to an approved coastal management program constitute Routine Program Change when they do not result in the kind of amendments of the state's Coastal Management Program that can be described as "substantial changes to enforceable policies or authorities related to: (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization; and, (5) coordination, public involvement and national interest." NOAA requested comments on whether the change should be considered a routine program change. No comments were submitted to NOAA concerning the Department's determination that the actions listed above constitute a routine program change.

NOAA has concurred with the Department's determination that the specific rulemaking actions listed below constitute a routine program change:

(A) Regulatory amendments to the Coastal Zone Management rules, N.J.A.C. 7:7E, adopted February 3, 2003

Surf clam areas, N.J.A.C. 7:7E-3.3(a)-(c); Navigation channels, N.J.A.C. 7:7E-3.7 (a)-(b); Inlets, N.J.A.C. 7:7E-3.9(a)-(b); Ports, N.J.A.C. 7:7E-3.11(a); Submerged infrastructure routes, N.J.A.C. 7:7E-3.12(a); Shipwrecks and artificial reef habitats, N.J.A.C. 7:7E-3.13(a)-(d); Historic and archaeological resources, N.J.A.C. 7:7E-3.36(f) and (i); Endangered or threatened wildlife or plant species habitats, N.J.A.C. 7:7E-3.38 (a)-(i); Critical wildlife habitats, N.J.A.C. 7:7E-3.39(a); Wild and scenic river corridors, N.J.A.C. 7:7E-3.46(a)-(i); Purpose and scope, N.J.A.C. 7:7E-3C.1(a)-(d); Standards for conducting Endangered or Threatened Wildlife or Plan Species Habitat Impact Assessments, N.J.A.C. 7:7E-3C.2(a)-(c); Standards for conducting Endangered or Threatened Wildlife Species Habitat Evaluations, N.J.A.C. 7:7E-3C.3(a)-(c); Standards for reporting the results of impact assessments and habitat evaluations, N.J.A.C. 7:7E-3C.4(a)-(c); Purpose and scope, N.J.A.C. 7:7E-4.1(a)-(c); Aquaculture, N.J.A.C. 7:7E-4.2(a)-(b); Boat Ramps; N.J.A.C. 7:7E-4.3(a)-(c); Docks and piers for cargo and commercial fisheries, N.J.A.C. 7:7E-4.4(a)-(b); Recreational docks and piers, N.J.A.C. 7:7E-4.5(a)-(g); Maintenance dredging, N.J.A.C. 7:7E-4.6(a)-(f); New dredging, N.J.A.C. 7:7E-4.7(a)-(h); Dredged material disposal, N.J.A.C. 7:7E-4.8(a)-(e); Solid waste or sludge dumping, N.J.A.C. 7:7E-4.9(a)-(b); Filling, N.J.A.C. 7:7E-4.10(a)-(i); Mooring, N.J.A.C. 7:7E-4.11(a)-(b); Sand and gravel mining, N.J.A.C. 7:7E-4.12(a)-(d); Bridges, N.J.A.C. 7:7E-4.13(a)-(b); Submerged pipelines, N.J.A.C. 7:7E-4.14(a)-(c); Overhead transmission lines, N.J.A.C. 7:7E-4.15(a)-(d); Dams and impoundments, N.J.A.C.

7:7E-4.16(a)-(b); Outfalls and intakes, N.J.A.C. 7:7E-4.17(a)-(b); Realignment of water areas, N.J.A.C. 7:7E-4.18(a)-(c); Breakwaters, N.J.A.C. 7:7E-4.19(a)-(b); Submerged cables, N.J.A.C. 7:7E-4.20(a)-(d); Artificial reefs, N.J.A.C. 7:7E-4.21(a)-(f); Miscellaneous uses, N.J.A.C. 7:7E-4.22(a)-(c); Rule on location of linear development, N.J.A.C. 7:7E-6.1(a); Basic Location rule, N.J.A.C. 7:7E-6.2(a); and Secondary impacts, N.J.A.C. 7:7E-6.3(b); Dredged material placement on land, N.J.A.C. 7:7E-7.12(a)-(d) and (h)-(j); and Marine fish and fisheries, N.J.A.C. 7:7E-8.2(a)-(d).

(B) Regulatory amendments to the Coastal Permit Program rules, N.J.A.C. 7:7, adopted February 3, 2003

Request for a pre-application review, N.J.A.C. 7:7-3.2(a) and (c); and Application contents, N.J.A.C. 7:7-4.2(a).

Rationales are provided for certain Coastal Zone Management rules to explain the intent of rule provisions. Although rule rationales have been incorporated into New Jersey's Coastal Management Program, they are not considered enforceable policies by NOAA.

Regulatory Amendments-NOAA non-concurrence

As noted above, NOAA did not concur with the Department's determination that changes to two sections of the Coastal Permit Program rules, N.J.A.C. 7:7, constituted a routine program change. Particularly, NOAA did not concur with amendments to N.J.A.C. 7:7-3.1(a), Purpose, and N.J.A.C. 7:7-3.2(b) and (d), Request for a pre-application review. The amendments to these sections that are not considered a routine program change require that a pre-application conference be held for applications involving the installation of submarine cables in the Atlantic Ocean. Accordingly, the changes to these sections were not approved as enforceable policies and Federal Consistency will not apply to them. However, the amendments to these sections continue to apply to applications to the Department for approval of submarine cable installations within the State of New Jersey territorial waters.