

Section IV. CZM rules

The coastal land and waters areas of New Jersey are diverse. The CZM rules Management rules address a wide range of land and water uses, and natural and cultural, social and economic resources in the coastal zone. In addition to complying with the specific use rule, proposed wind turbines must comply with all other applicable CZM rules, including special area and resource rules. Special areas are areas that are so naturally valuable, important for human use, hazardous or sensitive to impact or particular in their planning requirements, as to merit focused attention and special management rules. The resource rules are used to analyze the proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as the surrounding region. Compliance with the standards of these rules will ensure that affects of wind turbines on resources such as wild and scenic river corridors, birds, bats, marine mammals and fisheries are addressed.

Data indicates that wind turbines have potentially significant impacts that vary in severity depending upon a number of factors including the location of the wind turbine. The importance of taking into account all aspects of the area where wind turbines are sited, particularly the prevalence and habits of local and migratory bird populations in the area is illustrated by the Altamont Pass wind farm where failure to take into account bird flight paths and behavior resulted in significant impacts and avian deaths. Little of the information available studying the impacts of wind turbines on avian populations provides definitive answers as to the impacts in the coastal zone. Available information from the Atlantic City wind facility indicates that impacts in the coastal region are more significant than other areas. The Atlantic County Utilities Authority site is one of a few sites in the coastal area of the United States where impacts to birds have been studied and data is readily available. The study performed at the Atlantic County Utilities Authority wind facility has revealed higher than national average bird kills. In addition, the Atlantic County Utilities Authority site is the only coastal site in New Jersey where impacts to bats have been studied. The study has revealed that mortality was much higher for bats at the Atlantic County Utilities Authority site than sites in other landscape types other than the mesa/desert.

As described previously, as the height and size of wind turbines increase, so does the potential for adverse impacts to both birds and bats due to the operation of wind turbines. In order to minimize adverse effects of wind turbines on birds, bats and in tidal waters marine organisms, the Department has adopted rules specific to the construction of wind energy facilities on land and in the water.

The CZM rules represent the State's substantive standards for the use and development of resources in New Jersey's coastal zone. These rules are used to review permit applications submitted under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and the Waterfront Development Law, N.J.S.A. 12:5-3. The rules are also a basis for making recommendations to the Tidelands Resource Council on applications for Tidelands

Instruments, and are applied in other Department decision-making pursuant to N.J.A.C. 7:7E-1.2. The authority for the CZM rules is founded in the following statutes:

- **N.J.S.A. 12:5-3, Waterfront Development Law:** This Law authorizes the Department to regulate the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipeline, cable or other similar development on or adjacent to tidal waterways throughout the state. Outside of the CAFRA area and Hackensack Meadowlands District, the Law applies in upland areas adjacent to tidal waters extending from the mean high water line to the first paved public road, railroad or surveyable property line. Upland jurisdiction extends from the mean high water line landward a minimum of 100 feet and not exceeding 500 feet. Within this area, construction, reconstruction, alteration, expansion or enlargement of any structure, or the excavation or filling of any area are subject to this Law;
- **N.J.S.A. 13:9A-1 et seq., Wetlands Act of 1970:** This Act authorizes the Department to regulate activities on coastal wetlands that have been delineated and mapped by the Department. Examples of regulated activities include excavation, dredging, fill or placement of a structure on a mapped coastal wetland;
- **N.J.S.A. 13:19-1 et seq., Coastal Area Facility Review Act (CAFRA):** CAFRA applies to projects near coastal waters in the southern part of the State. The CAFRA area begins where the Cheesequake Creek enters Raritan Bay in Old Bridge, Middlesex County. It extends south along the coast around Cape May, and then north along the Delaware Bay ending at Kilcohook National Wildlife Refuge in Salem County. The inland limit of the CAFRA area is an irregular line that follows public roads, railroad tracks, and other features. The width of the CAFRA area varies from a few thousand feet to nearly 17 miles. The law divides the CAFRA area into zones, and regulates different types and sizes of development in each zone. Regulated activities within the CAFRA area include a wide variety of residential, commercial, industrial or public development such as construction, relocation, and enlargement of buildings and structures; and associated work such as excavation, grading, site preparation and the installation of shore protection structures;
- **N.J.S.A. 13:1D-9, Powers of the Department:** This statute provides that the Department shall formulate comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State; and
- **N.J.S.A. 13:1D-29 et seq., Ninety-Day Construction Law:** This Chapter establishes application submission requirements, public notice requirements, fees and review procedures for permit applications submitted to the Department under the Waterfront Development Law, N.J.S.A. 12:5-3; Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.; Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. and Flood Hazard Area Control Act, N.J.S.A. 58:16A -1 et seq. as well as sewer extensions under the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

Table A, Routine Program Change, Coastal Zone Management rules, identifies the changes to the rules and provides an analysis describing the changes and why they are not

significant changes to New Jersey's approved CMP. These changes do not change the program approvability area of boundaries nor do they change special management areas. While the changes may affect the program approvability areas of uses subject to management, authorities and organization, or consideration of the national interest, these changes are not substantial for the reasons described in the analysis portion of Table A. A copy of the rule text subject to the Routine Program Change is included in this submission.