

Routine Program Change
Summary of Rule Changes and Significance of Change
Coastal Zone Management rules, N.J.A.C. 7:7E, 1.1, 1.5, 1.6, 1.8, 3.4 and 3.21
 March 16, 2009

The rule changes described in detail below do not change the program approvability areas of special management areas and boundaries. While the rule 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 set forth below. A description of each enforceable mechanism is included in Attachment A. NOTE: While OCRM does not consider the rules with asterisks (*) to be enforceable policies, the NJCMP is incorporating them into the approved CMP for informational purposes.

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
7:7E-1.1 Purpose and scope	See Below	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	04/07/2008	04/07/2008	See Below
MODIFIED: *7:7E-1.1(b)	Corrected titles of the referenced Environmental Impact Statements Clarified that the NJCMP was approved in two segments				Changes to correct titles of documents are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes. The NJCMP was approved in two segments. The first segment, approved by NOAA in September 1978, included the CAFRA area only. Because the Department, under CAFRA, had already prepared a coastal management strategy for the CAFRA area in 1977, the Department elected to seek Federal approval of this segment first and then to complete the boundary, policy and management system for the remainder of the State's CMP. Subsequently, the Department developed the "Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement" to add the tidally influenced waterfront areas in the northeastern part of the State along the Hudson River (known as the northern waterfront area), the Hackensack Meadowlands area, and the southeastern area of the State along the Delaware River and

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*7:7E-1.1(b) (continued)	Recodified language of N.J.A.C. 7:7E-1.1(c) that addresses the national interest as 7:7E-1.1(b)				<p>its tributaries (known as the Delaware River area) to the segment that had received Federal approval in 1978. In September 1980, Federal approval was received for the second segment. This change merely clarifies that the NJCMP was approved in two segments and does not affect the 5 program approvability areas.</p> <p>N.J.A.C. 7:7E-1.1(c) addressed consideration of the national interest as required by the Federal CZMA. Consideration of the national interest is a requirement for approval of a CMP under the Federal CZMA. This language was recodified at N.J.A.C. 7:7E-1.1(b) because this subsection addresses Federal approval of the NJCMP. The recodification of language with no changes in text does not affect the 5 program approvability areas.</p>
MODIFIED: 7:7E-1.1(c)	<p>Previous section (c), deleted, but language regarding the national interest was incorporated into 1.1(b)</p> <p>Clarified that the CZM rules, including the coastal goals and policies, are enforceable policies under the Federal Coastal Zone Management Act</p> <p>Refined the eight basic coastal policies and added supplemental policies that set forth the means to achieve the goals</p>				<p>Prior to this rule change, N.J.A.C. 7:7E-1.1(c) provided that the adoption of the CZM rules as administrative rules ensures their enforceability under the Federal CZMA. This provision was replaced with language that makes it clear that the CZM rules, including the coastal goals and policies set forth are enforceable policies under the Federal CZMA. This clarification does not affect the 5 program approvability areas.</p> <p>The NJCMP and CZM rules were founded on broad coastal goals. Prior to this rule change, the goals were referred to as the "eight basic coastal policies." These goals have been part of the CZM rules since they were promulgated in 1978 and have remained essentially unchanged until 2008. The Department reexamined and refined the coastal policies. The refined coastal goals encompass one or more of the existing eight basic coastal policies. Each revised coastal goal is accompanied by related policies that set forth the means to accomplish that particular goal. By providing greater detail, State and local government agencies as well as the general public, will</p>

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7:7E-1.1(c) (continued)	<p>Renamed the “eight basic coastal policies” as “coastal goals”</p> <p>Recodified goals from N.J.A.C. 7:7E-1.5(a) to 1.1(c)</p>				<p>have a better understanding of each goal and the means that may be employed to attain the goal. Based on the above, the refined coastal goals do not substantially affect the uses subject to management, authorities and organization, or consideration of the national interest.</p> <p>The Coastal Zone Management 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 coastal goals which are codified in the Coastal Zone Management rules are enforceable policies under New Jersey’s coastal permitting program. The coastal goals can be used individually or in combination with other Coastal Zone Management rules to approve, condition, or deny a coastal permit application. For example, the previous basic coastal policy to “concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development and encourage the preservation of open space” has been used in conjunction with other rules addressing secondary impacts and wastewater treatment facilities to restrict connections to an approved sewer line in rural or sensitive areas. The new goal “Healthy coastal ecosystems” and supplemental policy to “manage coastal activities to protect natural resources and the environment” could be used in combination with the endangered and threatened species rule to deny a permit application that would adversely affect an endangered species.</p>

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7:7E-1.1(c) (continued)					<p>The updated coastal goals do not specifically address energy facilities. However, this change does not affect the laws and regulations that govern energy facility siting and energy production in New Jersey. The coastal permitting programs under CAFRA, the Wetlands Act of 1970 and Waterfront Development law continue to regulate energy facilities in New Jersey's coastal areas. The Coastal Zone Management rules' Energy use rule, N.J.A.C. 7:7E-7.4 contains standards for the siting of energy facilities in New Jersey's coastal zone. This rule contains both general standards and standards specific to development of various types of energy facilities. The standards encourage certain energy uses in particular areas (e.g. onshore support bases in urban waterfront areas) and discourage certain energy uses in particular areas (e.g. pipe coating yards are discouraged in the CAFRA areas but encouraged in existing ports). The energy use rules also contain standards protective of special areas, marine fish and fisheries, water-dependent uses, public access, and scenic and visual resources. These standards are applicable in reviewing coastal permit applications for energy facilities in New Jersey's coastal areas.</p>
<p>MODIFIED: 7:7E-1.1(d)*</p> <p>ADDED: 7:7E-1.1(e)*</p>	<p>Consolidated, reorganized, and clarified the description of the development of the CZM rules and their application in the coastal decision-making process at N.J.A.C. 7:7E-1.1(d) and 1.5(a) a</p> <p>Deleted language at 7:7E-1.1(d) which described the decision-making process in the Meadowlands District.</p>				<p>This change merely consolidated, reorganized and clarified the description of the CZM rules and the coastal decision-making process and does not affect the 5 program approvability areas.</p> <p>The language which describes the coastal decision-making process in the Hackensack Meadowlands District was deleted because the Hackensack Meadowlands District Special Area rule describes the roles of the Department and New Jersey Meadowlands Commission in the coastal decision-making process within the District. Therefore this change does not affect uses subject to management, Special management areas, authorities and organization or national interest.</p> <p>N.J.A.C. 7:7E-1.1(d) provides that in developing the Coastal Zone Management rules, balances were struck among various conflicting,</p>

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7:7E-1.1(d) and (e) (continued)					<p>competing and contradictory local, State and national interests. This provision allows the Department to either approve or deny an activity or development in cases where a balance was struck, reflecting the broad range of concerns involved in coastal management. The concept of balancing between interests and uses of the coastal zone could be used in supporting a decision on a permit application.</p> <p>N.J.A.C. 7:7E-1.1(e) provides that the Department's decision-making integrates professional judgment and recommendations and comments by applicants, public agencies, interest groups, corporations and citizens. It also states that the interpretation of certain terms can vary depending upon the context of the proposed use, location and design of a development or activity.</p>
N.J.A.C. 7:7E-1.5 CAFRA Findings	See Below	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	04/07/2008	04/07/2008	See Below
MODIFIED: 7:7E-1.5(a)	Deleted (a), but incorporated the text and concepts into new 7:7E-1.1(c), (d), and (e) Renamed title of subsection				Changes to titles and recodification of text with no changes in text are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
7:7E-1.5(b)	Recodified the CAFRA findings section from N.J.A.C. 7:7E-1.5(b) to 1.5(a)				Recodification of text with no changes in text are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.

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N.J.A.C. 7:7E-1.6 Mitigation	See Below	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	04/07/2008	04/07/2008	See Below
MODIFIED: 7:7E-1.6(a)	Updated cross-reference to coastal goals				Changes to cross-references are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
N.J.A.C. 7:7E-1.8 Definitions	See Below	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	04/07/2008	04/07/2008	See Below
MODIFIED: 7:7E-1.8(a)	Replaced introduction to definitions subsection with language consistent with introduction to the definitions subsection of the Coastal Permit Program rules				In February 2003, the definitions section of the CZM rules was recodified as N.J.A.C. 7:7E-1.8 for the purposes of assisting the reader in easily locating the terms. Prior to 2003, the definitions were codified as part of the coastal decision-making process at N.J.A.C. 7:7E-1.5(c). As such, the introduction to the definitions section was stated in terms of the definition's relationships to the coastal decision-making process. Since the definitions are intended to be applicable to the entire chapter, the language indicating that the rules are stated in terms of actions that are encouraged, required, acceptable, conditionally acceptable, discouraged or prohibited and cross-referencing the principles at N.J.A.C. 7:7E-1.5(a) was no longer necessary and therefore deleted. This change does not affect the 5 program approvability areas.
	Added definition of footprint of development				The addition of the definition of "footprint of development" does not substantially change the uses subject to management and authorities and organization. This definition was added for the purposes of rule changes to at N.J.A.C. 7:7E-8.12 and N.J.A.C. 7:7E-8.14, as discussed in greater detail below. The "footprint of development" is the vertical projection to the horizontal plane of the

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7:7E-1.8(a) (continued)					exterior of all exterior walls of a structure. This definition is consistent with the Coastal Permit Program rules, N.J.A.C. 7:7-1.3. The changes to the Scenic resources and design and Traffic rules balance the need for parking with the preservation of historic structures by reducing the parking requirements associated with the expansion of historic "Doo Wop" era hotels when such expansion is within the footprint of the development. The addition of this definition furthers the national interest in preserving historic sites and districts and areas of unique cultural significance.
N.J.A.C. 7:7E-3.4 Prime fishing areas	See below	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	04/07/2008	04/07/2008	See Below
MODIFIED: 7:7E-3.4(a)	<p>Refined definition of prime fishing area to:</p> <ul style="list-style-type: none"> • Replace term "quantity" with "intensity"; • Add groins to the list of prime fishing areas; and • Add examples of physical features considered prime fishing areas <p>Updated the mapping of areas considered prime fishing areas</p>				<p>The refinement of the definition of this special area merely clarifies the Department's interpretation of a prime fishing area and is not a substantial change to uses subject to management and authorities and organization. Prior to this change, prime fishing areas were defined as areas that include tidal water areas and water's edge areas which have a demonstrable history of supporting significant local quantity of recreational or commercial fishing activity. Under the 2008 rule changes, the term "quantity" was replaced with "intensity" which is a better indicator of fishing activity.</p> <p>The rule contains a listing of areas considered to be prime fishing areas. Under the 2008 rule changes, "groins" and physical features were added to the list of prime fishing areas. Similar to jetties, groins extend from the shoreline into a body of water. Groins are constructed of the same materials as jetties and have the ability of supporting significant intensities of recreational and commercial fishing activity. Examples of physical features that are also</p>

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7:7E-3.4(a) (continued)					<p>considered prime fishing areas include rock outcroppings, sand ridges or lumps, rough bottoms, aggregates such as cobblestone, coral, shell and tubeworms, slough areas and offshore canyons.</p> <p>The rule at N.J.A.C. 7:7E-3.4(a) lists various publications and maps which identify prime fishing areas. Prime fishing areas were first mapped by the Department in the 1980s. Since the mapping was over 20 years old, it was determined in 2003 that an update was needed. In 2003, the Department, under its CZM grant, updated the prime fishing area map in digital format for inclusion in the Department's Geographic Information System. The updating of the map was accomplished through direct interviews with recreational fishing boat captains. Prime recreational fishing grounds identified in the various publications referenced in the rule and commercially prepared sport fishing charts (Homeport Charts and Charter Boat Charts) were transferred onto two sets of NOAA nautical charts, which served as the working or base map. For fishing grounds within 20 nautical miles of the coast, NOAA nautical charts Series 12326, 12323, 12318 and 12214 at a scale of 1:80,000 were used. For fishing beyond 20 nautical miles NOAA nautical charts Series 12200 and 12300 at a scale of 1:400,000 were used.</p> <p>During the summer of 2003, 28 party boat captains, 47 charter boat captains and 22 private boat captains from each fishing port (inlet) along the Atlantic Coast of New Jersey were interviewed by Department staff. These recreational fishing party boat, charter boat and private boat captains were selected because they fish the ocean waters on a daily basis using a wide variety of methods to catch a variety of fish species. The interview process entailed examining the accuracy of the already delineated prime fishing areas on the base map. Fishermen modified the base map by drawing their changes on the map.</p>

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7:7E-3.4(a) (continued)					<p>In general, modifications to the boundaries of the prime fishing areas resulted in an increase to the size of the prime fishing area. In a similar fashion, the captains drew new prime fishing areas on the base maps. It should be noted that while the maps show an increase in the size of prime fishing areas, these areas were already included in this special area by definition since the areas “have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity.” The updated mapping of these areas better reflects visually the ocean sport fishing areas included in this special area. The revised base maps were then digitized as the New Jersey Specific Sport Ocean Fishing Grounds Coverage map and posted on the CMP’s web site at www.state.nj.us/dep/cmp. The areas identified on this digital map are prime fishing areas under this rule.</p> <p>The above changes to the definition of prime fishing areas further the national interest in living marine resources. Specifically the changes to the rule advance the major objectives identified in the NJCMP 1980 program document of conserving, enhancing and managing in a rational manner, commercial fishing, which constitutes a major source of employment and contributes significantly to the food supply, economy and health of the nation</p>
MODIFIED: *7:7E-3.4(c)	Updated statistical information contained in the rule rationale				Updating statistical information is considered to be a minor change to the program that does not affect the 5 program approvability areas but is included for notification purposes.
N.J.A.C. 7:7E-3.21 Bay islands	See Below	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	04/07/2008	04/07/2008	See Below

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MODIFIED: 7:7E-3.21(a)	Added Shawcrest/Hildreth Island to the list of bay islands exempted from the rule				<p>The CZM rules describe bay islands as former wetlands where uplands have been created by past filling, particularly with dredged material. These filled areas are adjacent to wetlands, intertidal flats, tidal waterways, shellfish beds and endangered and threatened wildlife species habitats. In many cases, development of the islands would pose a significant threat to these environmentally sensitive resources. Bay islands are also subject to flooding and, by virtue of their location, function as bridges between the mainland and barrier islands. If developed, these islands would pose an added storm evacuation problem. In addition, they are usually distant from public services and therefore are not suitable for development.</p> <p>The Bay islands rule is intended to protect these environmentally sensitive areas from development and to protect the public during coastal evacuations. However, the rule does not pertain to certain islands that meet this geographical condition based on a review of the physical conditions of these islands, including environmental sensitivity, accessibility, and level of existing development and infrastructure. It was determined that future development on these islands would not pose a significant threat to environmental resources, nor would it adversely affect storm evacuation from the oceanfront barrier islands. The islands that are excluded from the rule have many characteristics in common, including a significant amount of previously filled wetlands, existing high intensity commercial and/or residential development, direct access to major roads and access to existing utility infrastructure to support development.</p>

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7:7E-3.21(a) (continued)					<p>The list of islands to which the rule does not apply has been changed to add portions of the areas known as Shawcrest /Hildreth Meadow Island located in Lower and Middle Townships, Cape May County, respectively. These areas, referred to in the rule as Shawcrest/Hildreth Island, are located between the mainland portion of Middle and Lower Townships and Five Mile Island. Shawcrest/Hildreth Island is adjacent to State Highway 47. The portion of the island south of State Highway 47 is approximately 48 acres in size. The portion of the island north of State Highway 47 is approximately 28 acres in size and has been developed for use as a landfill, as well as an amusement park, including miniature golf course, go-cart track and arcade. Both areas are serviced by public utilities including sewer, electric, gas and water. While the total land area of the island is approximately 280 acres, the Department is including only the two areas consisting of approximately 76 acres described above. The remaining 204 acres of the island consist of wetlands and sparse development and therefore remain a bay island subject to the rule. Accordingly, the rule continues to further the national interest in protection of wetlands and other ecologically sensitive areas while providing for redevelopment. Further, the policies pertaining to Shawcrest/Hildreth Island will be comparable to the policies that pertain to other islands that are similarly developed. Accordingly, the change to the bay island rule does not substantially affect the uses subject to management, authorities and organization and consideration of the national interest.</p>