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New Jersey Coastal Program Boundary

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A discussion paper prepared as part of a series of focus groups on the topic of the

NEW JERSEY COASTAL PROGRAM BOUNDARY

scheduled for 26 February 2003.

*Prepared by the Urban Harbors Institute
at the University of Massachusetts Boston
under a contract with the New Jersey Coastal Management Program*

The boundary of a federally approved coastal program defines a geographic area that receives special planning and management attention through regulations, financial assistance, and technical support. Section 306(d)(2)(A) of the federal Coastal Zone Management Act provides the basis for determining the coastal boundary. In Section 304 of the act, the *coastal zone* refers to coastal waters (and the lands below them) and the adjacent shorelands, "strongly influenced by each other and in proximity to the shorelines of the several coastal states, including transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends...seaward to the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749)."¹ The inland boundary must include those lands necessary "to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise."²

Along with the coastal policies and coastal management decision-making framework, the New Jersey Coastal Program's boundary is an essential element of the state's Coastal Program.³ The boundary of the New Jersey coastal zone, as defined in the New Jersey Coastal Program and Final Environmental Impact Statement (1980) is as follows (see Figure 1):

The inland boundary from Raritan Bay to Cape May Point and then north along Delaware Bay is coincident with the boundary as defined in the Coastal Area Facilities Review Act (CAFRA)⁴ or the upper boundary of the coastal wetlands, whichever is more inland. Outside CAFRA, the coastal boundary is defined as the inland boundary of the State's jurisdiction under the Waterfront Development Act⁵, the Wetlands Act of 1970, or the inland boundary of State-owned tidelands, whichever is more inland. The New Jersey Meadowlands District is also included in the inland boundary.

The seaward boundary is the three-mile limit of state waters and the interstate boundaries with New York, Delaware, and Pennsylvania. In much of Salem County, the Delaware-New Jersey boundary is the mean low water line on the New Jersey shore of the Delaware River.

¹ 16 U.S.C., Sec. 1453 (1) (1996)

² Ibid.

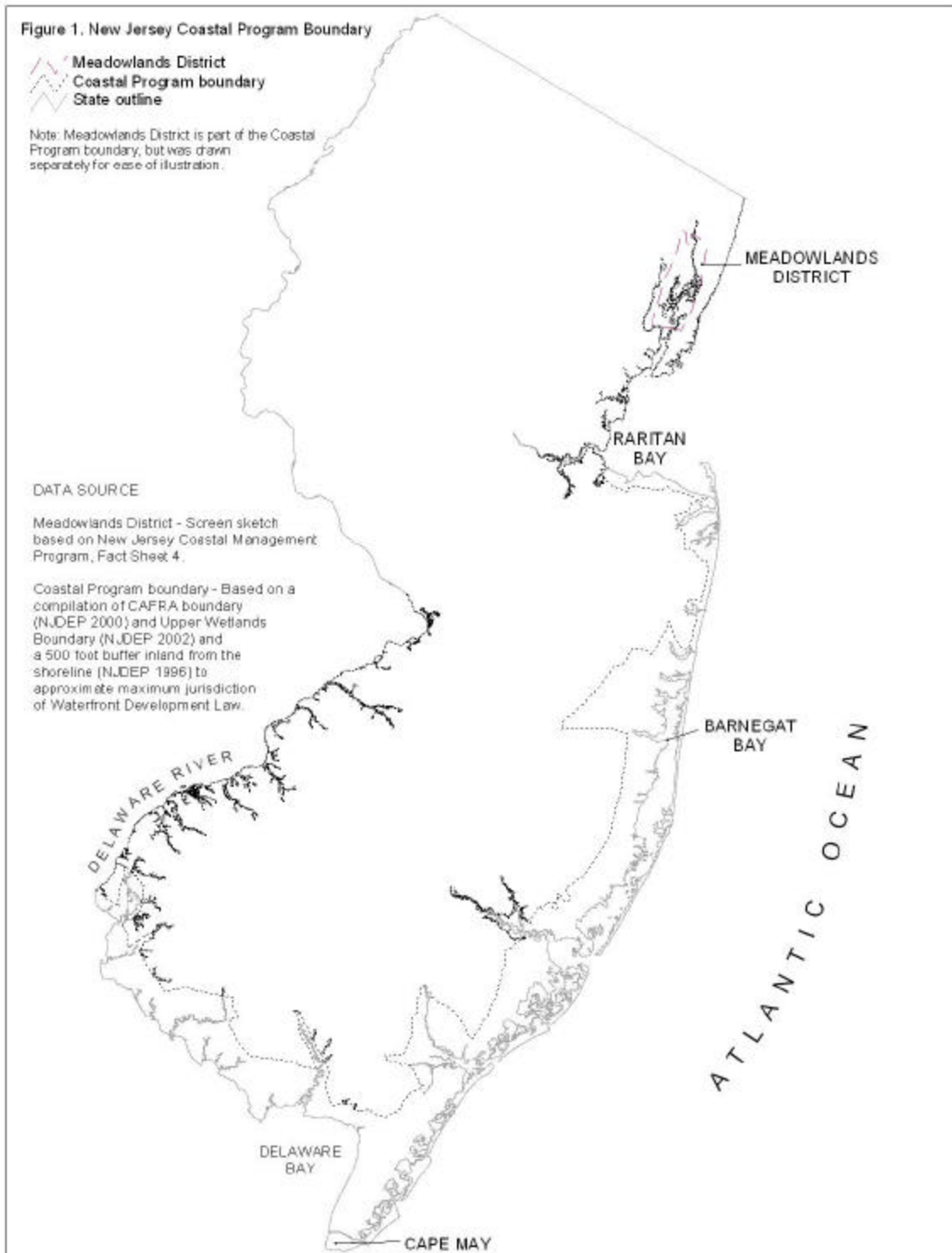
³ NJDEP, NOAA (1980) New Jersey Coastal Management Program and Final Environmental Impact Statement, page 18.

⁴ The CAFRA boundary begins where Cheesequake Creek enters Raritan Bay and extends south along the coast along Cape May and north along Delaware Bay, ending at Kilcohook National Wildlife Refuge. The boundary extends seaward to mean high water and inland to a variable point defined by public roads, railroads and other features.

⁵ The inland boundary of the Waterfront Development Law extends a minimum of 100' from mean high water to the first public road, right of way, railroad, or property line, but no more than 500' from mean high water.

This paper discusses the existing coastal program boundary and considers whether a boundary that encompasses more inland area might better serve the goals of the New Jersey coastal program. Note that any boundary change for the coastal program discussed herein is a *programmatic* boundary change and not a *regulatory* boundary change.

According to the Coastal Zone Management Program Regulations (15 CFR §923.80 (d)), a boundary change is considered a substantial program change that requires a coastal zone management program amendment. The regulations stipulate that a state submit a proposal to the National Oceanic and Atmospheric Administration (NOAA), explaining and justifying the amendment, and that at least one public meeting is held on the proposed amendment. NOAA's Office of Ocean and Coastal Resource Management (OCRM) reviews each amendment to verify that it is consistent with the goals and procedural requirements of the CZMA. If OCRM determines that the approved amendment is consistent and that the program would still constitute an approvable program, they then determine whether the amendment is significant enough to warrant an environmental impact statement, pursuant to the National Environmental Policy Act of 1969.



EXISTING BOUNDARY – HISTORY AND DEFINITION

Prior to developing its federally approved coastal management program in 1978, the New Jersey Department of Environmental Protection (DEP) exercised authority in New Jersey's coastal environment through three regulations: the Wetlands Act of 1970, the Coastal Area Facility Review Act (CAFRA), and the Waterfront Development Law. The intent and jurisdiction of these programs and their function in the coastal management program are fundamental to the current configuration of the state's coastal management boundary.

The Wetlands Act of 1970 enabled DEP to regulate development in all coastal wetlands from the Raritan River Basin southward. CAFRA was enacted in 1973 and enabled DEP to control *major* development within a section of the coast—the Bay and Ocean Shore Segment—with a set of regulations and guidance from a coastal management strategy. The Waterfront Development Law was enacted in 1914 and enabled DEP to control construction of docks, wharves, bulkheads, and similar structures in the navigable waters of the state and the adjacent waterfront.

The State of New Jersey decided to develop a coastal management program in two phases. The program was approved in 1978 for the Bay and Ocean Shore segment, which is coincident with the CAFRA area. In 1980, the coastal zone was expanded to include the Hackensack Meadowlands District and, outside of the Bay and Ocean Shore segment, an area extending at least 100 feet but no more than 500 feet from tidal waters. Upon federal approval of the statewide plan in 1980, the New Jersey Coastal Program Statewide Coastal Zone Boundary was, and remains, a strip of land and sea territory defined by a series of regulatory program boundaries and the state's territorial sea. Inland jurisdiction was a function of geography and jurisdiction of CAFRA; the Waterfront Development Law, and the Wetlands Protection Act; seaward jurisdiction extends to the interstate boundaries of New York, Delaware, and Pennsylvania or to three nautical miles. The boundary ranges in width from 100 feet to 16.5 miles. Table 1 provides a list of other coastal program boundaries as a comparison.

COASTAL NONPOINT POLLUTION CONTROL PROGRAM (§6217)

Section 6217 of the Coastal Zone Act Reauthorization Amendments integrates the EPA nonpoint source water pollution program, Section 319 of the Clean Water Act, into each coastal state's coastal management program. Under this amendment, each state with an approved coastal management program is required to prepare a Coastal Nonpoint Pollution Control Program Plan and submit it to NOAA for approval. As part of the program's design, states were required either to change their coastal program boundary in accordance with the 6217 management area determined by NOAA, or to otherwise develop a way of dealing with the area outside the coastal program boundary. The programs also had to identify the land uses contributing to nonpoint source pollution impacting coastal resources and management measures to overcome these sources/impacts, including enforceable policies and authorities.

The 6217 management area is determined by the inland extent “necessary to control nonpoint source pollution from land and water uses that have a significant impact on a state's coastal waters.”⁶ In New Jersey's conditionally approved Coastal Nonpoint Pollution Control Plan the management area encompasses almost the entire state (with the exception of the Wallkill Watershed). This 6217 boundary exceeds the coastal regulatory boundary originally approved by NOAA, which excluded a small part of the Delaware Bay watershed above the head-of-tide at Trenton. Implementation of 6217 management measures is voluntary. However, the 6217 program relies on other enforceable authorities, such as the Water Pollution Control Act and the Freshwater Wetlands Protection Act.

Thus, New Jersey effectively has two distinct coastal boundaries under its existing NOAA approved program. One boundary is the regulatory boundary and the second is a broad statewide boundary to address nonpoint pollution. The question is how to resolve any program discrepancy once the 6217 program is auto-incorporated into the base coastal program.

⁶ NOAA, OCRM. 6217 Program Development and Approval Guidance.

FEDERAL CONSISTENCY

Section 307(c)(1) of the federal Coastal Zone Management Act requires that federal actions that are reasonably likely to affect the coastal zone—even if they are seaward or landward of the coastal zone boundary⁷—must be consistent to “the maximum extent practicable” with a state’s federally approved coastal program and its enforceable policies. In addition, a federal license or permit cannot be issued for activities that are inconsistent with coastal policies. These requirements provide states with a certain amount of oversight authority known as *federal consistency*. Such oversight has been one key reason why states seek federal approval of their coastal programs. The federal consistency process allows New Jersey to review the following activities occurring wholly or in part within the coastal zone or in the Atlantic Ocean for compliance with the requirements of its approved management program:

1. Activities that require a federal license or permit;
2. Activities conducted by or on behalf of a federal agency;
3. Federally funded activities; and
4. Activities conducted pursuant to an Outer Continental Shelf Lands Act minerals exploration plan or lease.

In addition, federal actions occurring in federal waters, or in New Jersey but outside of the coastal zone boundary, which might have a reasonably foreseeable effect on any land or water use or on natural resources of New Jersey’s coastal zone, must be listed in order to be subject to federal consistency. In January 2001, new NOAA federal consistency regulations required that a state list federal actions in another state which it intends to review under federal consistency. This opportunity places New Jersey at a critical juncture where, in addition to creating a list of activities and areas outside the coastal zone boundary where it can exert jurisdiction under federal consistency, it may choose to amend the coastal zone boundary to encompass a larger area. A landward boundary change would have the effect of subjecting additional federal actions, within the expanded boundary, to federal consistency regardless of whether they were listed by the state.

IS THE BOUNDARY APPROPRIATE?

In the early days of coastal management, the focus was on the immediate land-sea interface. Coastal zone boundaries tended to be defined as narrow bands of land and sea adjacent to the shoreline, and the programs were often limited to managing land use along the shoreline and protecting nearshore ocean resources such as beaches and wetlands, neglecting other vital resources.⁸ More recent evaluations of coastal programs suggest that three factors are important in setting the coastal boundary: (1) there must be political support, (2) it must be administratively workable,⁹ and (3) it must include most activities that come within the auspices of the coastal program.

(1) Political Support.

Endorsement of the Coastal Program, including the program’s boundary, by non-governmental organizations, coastal users, and the general public is a strong political motivator. A common perception is that a narrow coastal boundary has advantages in terms of public awareness because it clearly distinguishes the land-sea interface from other managed environments as special and unique. A narrow boundary, however, also prevents the public from making the connection that upland activities—even those distant from the coastline—also can impact the coastal zone.¹⁰

⁷ As amended, H.R. 967, 101st Cong., 1st Sess. (1989)

⁸ Cicin-Sain, Biliiana and Robert Knecht (1998). *Integrated Coastal and Ocean Management*, Island Press.

⁹ *Ibid*

¹⁰ Cicin-Sain, Biliiana and Robert Knecht (1998). *Integrated Coastal and Ocean Management*, Island Press.

(2) Administrative Function.

One consideration in deciding whether to redefine and/or extend the inland boundary of the coastal zone would be the recognition that activities further inland do impact the quality of coastal resources (e.g., water quality) and that inclusion within the boundary would allow for financial and technical assistance from the coastal program to be available within these areas. Because the New Jersey coastal boundary is so variable in width, there are many areas where only the immediate fringe of tidal waters are within the boundary, leaving out many of the interior portions of municipalities and waterways. These areas outside the boundary are eligible only for Nonpoint Pollution Abatement Program funding (while such funding remains in appropriations), whereas municipalities within the coastal zone are eligible for additional grant funds when available.

While a broader program boundary would make existing funds available to more communities, it would not increase the funding the program itself receives from the federal government. Currently, almost 80 percent of coastal management base programming funds are allocated to fund regulatory and enforcement program staff and activities.

(3) Activities and Policies of the Coastal Program.

A variety of coastal management activities are included in New Jersey's Coastal Program, including: beach and dune management, wetlands and habitat protection, coastal water quality protection, public access protection and acquisition, endangered or threatened species protection, coastal land use management, natural hazard management, and living marine resource management. The plan also identifies uses of the coastal zone that call for management, such as housing, recreational uses, energy uses, transportation, public facilities, ports, and commercial uses. Each management measure consists of two parts, the policy goals and the program or rules used in achieving them.

A federally approved coastal management program must have authority over all uses and activities that impact resources of the coastal environment. Such an area would likely extend from the headwaters of the coastal watershed seaward to three nautical miles offshore at the state's limit of jurisdiction. Under Section 6217, an analysis was conducted to identify regulatory authorities and jurisdiction outside the existing coastal boundary that could help achieve New Jersey's coastal policy goals with respect to non point source pollution abatement. The existing state Water Quality program exists both within and outside the current coastal zone boundary and all such authorities are cross-referenced by the Coastal Zone Management policies and regulations. For example, the Coastal Program contains a resource policy specific to water quality, which prohibits all development that would prevent attainment of federal, state, or local water quality standards or otherwise conflict with a State certified, Section 208 Water Quality Management Plan. However, outside the coastal zone boundary, these programs need not be implemented in a manner that is consistent with Coastal Policies.

DISCUSSION QUESTIONS

Does the existing boundary encompass sufficient area to ensure that all activities and uses that impact the coastal resources are subject to the management program? If not, what is a more appropriate boundary? What are the pros and cons of each alternative boundary?

What regulatory authorities or programs exist outside the coastal boundary that could be used to implement the enforceable policies of the Coastal Program?

Are there other potential boundaries that might be appropriate (e.g., municipal or other political boundaries)?

Table 1. A Comparison of Coastal Program Boundaries

State/Territory	Boundary Type	Description: State CZM Boundary Establishment Guidelines	Boundary Changes?	Year Boundary Established
Alabama	Physical	Seaward of the continuous 10-ft (above sea level) contour in counties on the coast	None noted.	1979
Alaska	Locally determined	Boundary is determined by municipality or, in areas outside of municipal boundaries, by coastal district authority. Various methods are used: flood plains, timberlines, etc. State approves local plans for management.	None noted.	1977
American Samoa	Political	All islands in the territory are considered to be in the coastal zone.	None noted.	1990
California	Physical/ arbitrary	Inland 1000 feet from the mean high tide line or to the nearest coastal road. In specified less developed areas the boundary can extend inland up to 5 miles. State approves local plans for management.	None noted.	1977
Connecticut	Physical	Inland 1000 feet from the inland boundary of tidal wetlands or 100-year flood plain boundary, whichever is farther inland.	None noted.	1980
Delaware	Political	Entire state is considered the coastal zone. A “coastal strip”, a 4 mi wide band of land bordering the state’s coastline, is identified as a specific management area	None noted.	1971
Florida	Physical	Entire state is considered coastal zone.	None noted.	1981
Georgia	Political	Counties in which water meets land	None noted.	1997
Guam	Unknown	No website or further information available. Likely to be similar to American Samo		
Hawaii	Political	Entire state as well as marine waters to the extent of the state’s police and management authority	None noted.	1978
Indiana	Physical	Watershed areas that drain into the state’s portion of Lake Michigan	None noted.	2001
Louisiana	Political	Coastal parishes (i.e. counties). State approves local plans for management.	None noted.	1978
Maine	Political	All political jurisdictions that have land along the coast or a tidal waterway as well as all islands.	None noted.	1978
Maryland	Political	Inland boundary if the counties bordering the Atlantic Ocean, Chesapeake Bay, and the Potomac River as far as the municipal limits of Washington DC	None noted.	1978
Massachusetts	Physical	100 feet beyond the first major land transportation route encountered, as well as any impacts in the watershed and Cape Cod, Martha’s Vineyard, Nantucket, and Gosnold in their entirety	None noted.	1978
Michigan	Physical	Extends a minimum of 1000 ft from the ordinary high water mark of the Great Lakes and connecting channels, or further to include wetlands, bays, floodplains, parks, etc.	None noted.	1978
Minnesota	Physical	Lake Superior watershed	None noted.	1999
Mississippi	Political	Specific counties that are adjacent to coastal waters as well as the barrier islands in their entirety	None noted.	1980
New Hampshire	Physical	Tidally influenced waters	None noted.	1982/1988
New Jersey	Regulatory	Inland boundary from Raritan Bay to Cape May Point and then north along Delaware Bay is coincident with the boundary as defined by CAFRA or the upper boundary of the coastal wetlands, whichever is more inland. Outside CAFRA, the boundary is defined as the inland boundary of the State’s jurisdiction under the Waterfront Development Act, the Wetlands Act of 1970, or the inland boundary of State-owned tidelands, whichever is more inland. The New Jersey Meadowlands District is also included in the inland boundary. Seaward boundary is the three-mile limit of state waters and the interstate boundaries with New York, Delaware, and Pennsylvania. In much of Salem County, the Delaware-New Jersey boundary is the mean low water line on the New Jersey shore of the Delaware River.	None	1980
New York	Physical	Shorelines of coastal areas, major rivers, major inland waterways, and the Great Lakes	None noted.	1982
North Carolina	Political	Counties that are adjacent to, adjoining, intersected by, or bounded by the Atlantic Ocean or any	None noted.	1974

State/Territory	Boundary Type	Description: State CZM Boundary Establishment Guidelines	Boundary Changes?	Year Boundary Established
		coastal sound		
Northern Mariana Islands	Political	All islands in the territory are considered to be in the coastal zone	None noted.	1983
Ohio	Physical	Originally included islands in Lake Erie and landward to the coastal county boundary. This county boundary was not specific enough during later planning processes. The inland boundary was moved to 1000 meters inland from the shoreline. This boundary was modified to avoid inclusion of urban areas and expanded to include critical coastal resource areas. This boundary is still roughly in place, but has been modified significantly to account for local needs.	Yes.	1997
Oregon	Physical	Landward to the crest of the coastal mountain range	None noted.	1977
Pennsylvania	Physical	Frontage on tidally influenced waters and the Great Lakes. Islands are included in their entirety	None noted.	1980
Puerto Rico	Political	Entire island is considered coastal zone, however resource management focuses on the tidal zone	None noted.	1978
Rhode Island	Physical	200 ft inland from any coastal feature and an extended contiguous 200 ft area from the inland borders of coastal beaches and dunes, barrier beaches, coastal wetlands, cliffs, bluffs, banks, rocky shores, and manmade shorelines	None noted.	1971
South Carolina	Political	Coastal counties	None noted.	1977
Texas	Political	Encompasses 19 first-tier counties that have tidewater influence and extends to 3-mi. limit of state jurisdiction	None noted.	1997
Virgin Islands	Arbitrary	Offshore islands and cays in their entirety as well as a “narrow coastal strip” on the 3 major islands	None noted.	1978
Virginia	Physical	VA’s Atlantic coast watershed and parts of the Chesapeake Bay and Albemarle-Pamlico Sound watersheds	None noted.	1986
Washington	Political	From ordinary low water seaward in counties that border saltwater (including part of the Columbia River)	None noted.	1971
Wisconsin	Political	Coastal counties	None noted.	1978