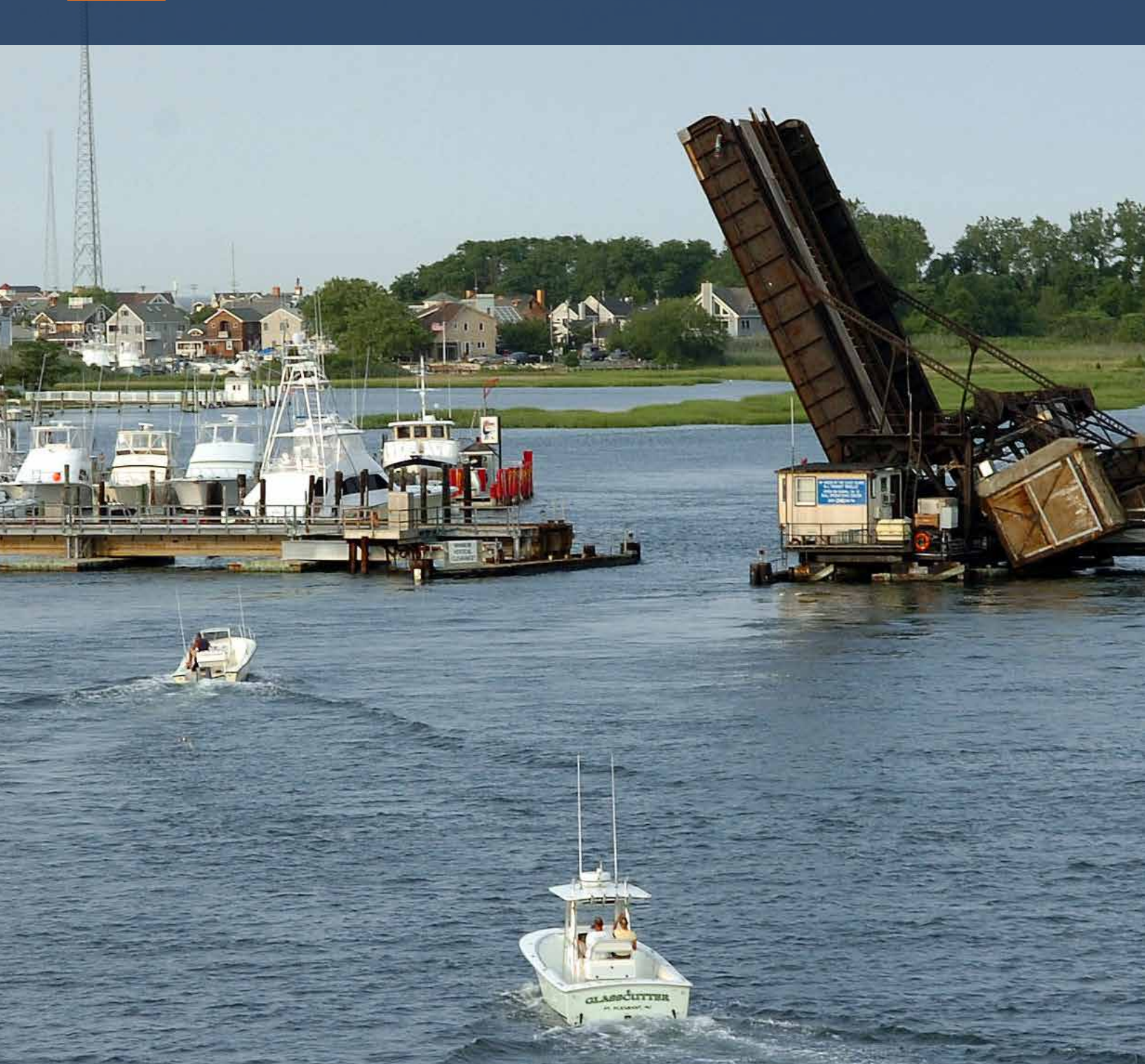


40
YEARS

NEW JERSEY'S COASTAL MANAGEMENT PROGRAM

40 Years of Coastal Protection, Policy and Progress 1978 – 2018



MONMOUTH
UNIVERSITY

URBAN COAST INSTITUTE

THE NEW JERSEY COASTAL ZONE



NEW JERSEY'S COASTAL GOALS

The Coastal Goals express the results that the Coastal Management Program strives to obtain²:

1. Healthy coastal ecosystems
2. Effective management of ocean and estuarine resources
3. Meaningful public access to and use of tidal waterways and their shores
4. Sustained and revitalized water-dependent uses
5. Coastal open space
6. Safe, healthy and well-planned coastal communities and regions
7. Coordinated coastal decision making, comprehensive planning and research
8. Coordinated public education and outreach

New Jersey may be one of the smallest states in the nation, but within its boundaries lies an enormous jewel: the coastal zone. With 126 miles of Atlantic shoreline and 1,792 miles of tidally-flowed lands, New Jersey's coast has served as the "Summer Capital" for seven presidents, hosts a large portion of the State's 87.5 million annual visitors and is home to nearly 7 million year-round residents.³ It is a major contributor to the State's economy, responsible for \$38 billion in tourism dollars annually as well as a thriving billion-dollar commercial and recreational fishing industry.⁴ The contributions that the coast makes to the well-being and peace of mind of residents and visitors are immeasurable. Yet, in the 1970s, the New Jersey coast was threatened.

Development along the nation's coasts was rampant with little thought to the consequences. Citizens and Congress took notice and, in 1972, the Coastal Zone Management Act (CZMA) was adopted. The CZMA is a federal statute that, for the first time, acknowledged the threats to our coastal resources and the immediate need to address them. The CZMA recognized that the coastal states were best positioned to protect their coastlines, and encouraged them to develop their own comprehensive Coastal Management Programs (CMPs).

The CZMA, through the oversight of the National Oceanic and Atmospheric Administration (NOAA), offered the coastal states financial and other incentives to voluntarily develop a CMP. It also set forth the elements that a CMP must address, including protection of coastal resources, prevention of development in high-hazard areas, ensuring public access to tidal waterways and their shores and the encouragement of water-dependent uses. New Jersey already had several statutes in place to protect its resources, such as the Coastal Area Facility Review Act (CAFRA), the Wetlands

Act and the Waterfront Development Act. But the State accepted the CZMA's challenge and, in 1978, New Jersey's Coastal Management Program was established. Developed and implemented by the New Jersey Department of Environmental Protection (DEP), New Jersey's CMP has been thriving for 40 years.

In the 40 years since the CMP was established, a lot has changed. The coastal population has increased, development has placed stress on important natural resources, and storms and flooding increasingly threaten our coastal and riverine communities. We have also experienced many significant positive changes: cleaner water, more public access, a resurgence of whales and other marine species and a better understanding of the protections afforded by natural coastal features such as beaches, dunes and wetlands.

This report celebrates 40 years of the CMP and the tireless efforts of those who made protection and management of New Jersey's coastal resources their mission. Presented in the four decades from 1978 through 2018, it looks back at some of the milestones the CMP has achieved, the events that have shaped CMP policies and some of the trials and tribulations it has faced along the way.

The old adage "history repeats itself" is alive and well in the world of coastal management, as certain issues addressed by the CMP arise decade after decade. These include ongoing efforts to provide stronger protections for dunes, beaches and water quality, to increase and maintain public access to coastal resources, and prevent off-shore oil and gas drilling. They also include efforts to face down and prepare for the next Irene or Sandy or the many unnamed nor'easters that influence coastal policy and continually remind us why coastal management is important.

1978 THROUGH 1988



1978: New Jersey Receives Federal Approval of its Coastal Management Program

New Jersey was one of the first states in the nation to adopt a CMP. Submitted to and approved by NOAA in 1978, the CMP identified New Jersey's "Coastal Area," designated the DEP as the lead agency for coastal management, and identified the statutes and regulations that would govern coastal development, resource protection and decision making. The Coastal Area included those portions of the State regulated by the Coastal Area Facility Review Act (CAFRA) as well as wetlands protected under New Jersey's Wetlands Act. These two statutes, along with the State Waterfront Development Law, the Tidelands Act and the Shore Protection program under the Beaches and Harbors Bond Act, as well as the regulations adopted to implement these statutes, collectively served as the "enforceable policies" of the CMP.

Adoption of the CMP gave New Jersey access to the Consistency Provision, a powerful tool that was included in the CZMA as an incentive for states to develop CMPs. The Consistency Provision gives states with CMPs the authority to challenge federal activities that may impact their coastal resources, regardless of whether the activities take place in state or federal waters. Federal activities challenged by a state, including beach restoration and offshore energy projects, must be consistent with the enforceable policies of the state's CMP.

"Each area of the state is special and important, but the coast is the area which presents perhaps the most challenging set of potential opportunities and conflicts. The Coastal Management Program...is a major step towards maintenance and protection of this special area."

—DEP Commissioner Daniel J. O'Hern, August 22, 1978⁵

1979: Proposals to Protect Beaches and Dunes and Close the CAFRA Loophole Part I

CAFRA did not apply to residential developments with less than 25 units, regardless of how close to a beach or dune they were to be constructed. This became known as the “CAFRA loophole” and gave rise to 24-unit developments throughout the Coastal Area.⁶ In 1979, the Dune and Shorefront Protection Act of 1979 was proposed to address the loophole. The Act focused on the dynamic quality of the migrating beach and dune system and would regulate development in accordance with these dynamics. It would also enable the DEP to prohibit building, or the rebuilding of severely storm-damaged structures, along the coast between the ocean and the first paved road, the area where dunes were historically located but had been destroyed by development. Despite the strong advocacy efforts of the DEP and others, the Act was not adopted in 1979 or thereafter.

1980: DEP Receives Federal Approval to Revise the CMP

The DEP sought and received NOAA approval for several changes to its CMP, the most significant being the expansion of the CMP’s Coastal Area. Added to the CMP were (i) the State’s tidally influenced waterfront areas in the northeastern part of the State along the Hudson River, (ii) the Hackensack Meadowlands and (iii) areas along the Delaware River and its tributaries in the southwestern part of the State. The DEP rejected efforts to label these areas as the “Developed Coast,” noting that this term did not fully connote their diversity. Instead, the CMP refers to them separately as the “Northern Waterfront Area,” the Hackensack Meadowlands” and the “Delaware River Area.”

1981: The Release of the New Jersey Shore Protection Master Plan

In October 1981, the DEP released the New Jersey Shore Protection Master Plan. In support of the Plan, the DEP cited the inconsistent approaches of local governments towards shore protection: some allowed dunes to be overtaken by development, while others worked to acquire oceanfront lots and rebuild dunes. The net result was “an amalgam and

somewhat reactive approach to shore protection.” The Shore Protection Master Plan was intended to represent a more consistent and comprehensive approach to shore protection to be utilized by the State and local governments.⁷

To avoid piecemeal measures, the Plan was based on a regional “reach” system that applied consistent shore protection methods across areas impacted by similar coastal processes. The Plan identified 13 reaches from Sandy Hook to Cape May Point, and three additional reaches in Raritan Bay, Delaware Bay and the Delaware River. It further categorized sections within each reach that were experiencing critical, significant and moderate erosion. The Shore Protection Master Plan remains in effect to this day.

“New Jersey’s Coastal Program is one of the best in the country. It’s tackling some of the most difficult environmental protection and development questions at the same time.”

—Federal NOAA CZMA Coordinator, April 20, 1981⁸

1981: New Federal Administration Proposes Abolishing CZMA Program and Funding to States

In 1980, NOAA concluded that the CZMA program, and New Jersey’s CMP in particular, was achieving outstanding results, and that New Jersey and other coastal states could do even more with additional funding. In November 1980, Congress reauthorized the program nationwide. However, shortly thereafter and a mere three months after taking office, the Reagan Administration sought to abolish NOAA’s CZMA program and cut off all funding to the coastal states. Environmental organizations, citizens, the Coastal States Organization, the League of Women Voters, the coastal state governors and many others fought hard to save the program. This public support along with strong backing from Congress kept the program alive, but at a significantly reduced level of funding.⁹

1982: The Consistency Provision in Action: Governor Kean Sues U.S. Interior Secretary Watt Arguing that Oil Drilling off the Atlantic Coast is Not Consistent with New Jersey's CMP

It was not long after the CMP was approved that New Jersey invoked the CZMA's Consistency Provision to protect State coastal resources that were threatened by a proposed federal action. Over New Jersey's objections, U.S. Interior Secretary Watt announced the intent to lease 23 Atlantic Ocean tracts for offshore oil and natural gas drilling. Because New Jersey had a federally-approved CMP, the Secretary was required to demonstrate that these activities were consistent with the enforceable policies of the State's CMP. When the Federal Government refused, Governor Kean filed suit arguing that the leasing was inconsistent with the CMP's policy of protecting commercial and recreational fishing habitats.¹⁰ Secretary Watt argued that the Interior Department did not have to determine consistency until after oil or gas was discovered and planning for offshore facilities actually began. The Federal Court agreed with Governor Kean and held for the first time that, under the CZMA Consistency Provision, the Interior Department must provide New Jersey with a written consistency statement explaining how the offshore drilling plan met the enforceable policies of the CMP.¹¹



In 1982, Congress banned offshore oil and gas development in most of the Outer Continental Shelf (OCS), including off the Atlantic Coast of New Jersey. In 1990, President George H.W. Bush issued an Executive Order that continued the ban in the majority of the OCS. The Order was extended by President Clinton in 1990 with the intention that it would remain in place through 2012.

“What’s more direct than eliminating the fish?”

—Federal District Court Judge Dickinson Debevoise refuting federal government's argument that oil drilling off the coast in prime fishing habitat will not have a direct impact on NJ's coastal resources. August 4, 1982¹²

1987: New Jersey Adopts the Freshwater Wetlands Protection Act and Consolidates State Wetlands Protections

Although tidal wetlands were regulated by New Jersey's Wetlands Act of 1970, freshwater wetlands throughout the State were overseen by the U.S. Army Corps of Engineers under the Federal Clean Water Act. Because the Corps' focus was on navigable waters, other freshwater wetlands were not receiving adequate protection, including in the Coastal Area.

In 1987, New Jersey adopted the Freshwater Wetlands Protection Act and remedied this shortfall. Through the Act, DEP consolidated the wetlands protections of all of its permit programs, including its CAFRA, Waterfront Development, water quality planning, stream encroachment and sewer extension programs. It also assumed responsibility for the Federal Clean Water Act wetlands program and incorporated the Freshwater Wetlands Act into the CMP. This brought an additional 50,000 to 60,000 acres of wetlands under the CMP's protections.¹³



1987: The Summer of Devastating Events

In the summer of 1987, New Jersey experienced a series of devastating and highly visible incidents in its coastal waters and on its beaches:

- **In May**, beaches from Island Beach State Park to Holgate were closed due to a 25-mile stretch of sludge-like waste containing fecal matter, tampon applicators and condoms.
- **In June**, an algal bloom stretching from Sandy Hook to Point Pleasant appeared two miles off shore.
- **In July**, sections of beaches in Atlantic City, Long Branch and North Wildwood were closed due to high fecal coliform levels. Sightings of dead dolphins, including some that had washed up on the beaches, were reported throughout July and into August.
- **In early August**, most bay beaches and several ocean beaches on Long Beach Island were closed due to high fecal coliform levels. In mid-August, beaches from Spring Lake to Harvey Cedars were closed due to hospital waste, timbers and plastics floating ashore.
- **In September**, oil washed up on the beaches of Atlantic City and Cape May, and tar balls littered the beaches along a 20-block stretch of Ocean City, Margate, Ventnor, Longport and Brigantine. That same month, nine bottle-nose dolphins and 12 leatherneck turtles reportedly died in New Jersey waters.

These incidents resulted in the public's demand for action.

1988: DEP Convenes the Blue Ribbon Panel on Ocean Incidents

DEP Commissioner Richard Dewling convened a Blue Ribbon Panel of respected scientists, agency personnel, and business, industry and environmental leaders to determine the causes of the 1987 ocean incidents and make recommendations on how to prevent their recurrence. The Panel attributed some of the incidents to disposal practices, including the ongoing ocean dumping of sewage sludge and industrially-contaminated dredged sediments. However, it also concluded that the primary factor contributing to the denigration in water quality was the insufficient regulation of development in New Jersey's Coastal Area. The Panel warned that each new unit of development had an additive effect and that existing laws and regulations were not working. It recommended that significant restrictions be placed on further development in the coastal zone and that federal and state laws must be strictly enforced. The Panel also urged New Jersey to expand and strengthen CAFRA.¹⁴

1988: Efforts to Close the CAFRA Loophole Part II

Governor Kean proposed the creation of a Coastal Commission to gain more control over coastal development but, due to strong opposition by development interests, the Commission never came to be. Citing the "imminent peril" unchecked development posed to New Jersey's coastal resources, Governor Kean issued an Emergency Executive Order (EEO) extending the Waterfront Development Act to all oceanfront areas and the bays and rivers that lead to the ocean. Under the EEO, all new construction in the Coastal Area, even of a single family home, required DEP approval. The DEP formalized the Governor's action through amendments to the Waterfront Development Permit Rules.

Several property owners and developers filed suit. The Court, noting that the purpose of the Waterfront Development Act is to regulate development that has a direct effect on navigation and not environmental impacts to coastal waters, determined that the rules exceeded the Act's scope and declared them invalid.





1989 THROUGH 1998

**1991: The End of Sewage Sludge Dumping in the Atlantic Ocean**

In 1991, there were nine sewerage authorities in the U.S. that continued to dump sewage sludge in the ocean. Six were in New Jersey and three were in New York. Prompted by the debris that washed up on the beaches in 1987, the New Jersey legislature and Congress each passed laws requiring the end to ocean dumping. The New Jersey law required its authorities to stop dumping by March 17, 1991. The federal law required the New York facilities to stop dumping by July 1, 1992.

As March 17th approached, tremendous pressure was put on Governor James Florio to extend the deadline to allow the authorities more time to find alternative disposal options. But Governor Florio held fast. Supported by environmentalists, shore legislators and petitions bearing the signatures of more than 500,000 citizens who wanted the dumping to cease, Governor Florio refused to extend the deadline. Both the New Jersey and New York deadlines were met and the dumping of sewage sludge in the ocean became a thing of the past.

“It was a promise that was made and a promise that’s going to be kept. Dumping in the ocean is not a bargain for anybody... The time for excuses is over.”

—Governor James Florio, celebrating the end to sewage sludge dumping in the ocean, March 17, 1991¹⁵

1991: Efforts to Close the CAFRA Loophole Part III

Efforts to close the CAFRA loophole continued, and included a proposed DEP-endorsed bill that would extend CAFRA’s reach to all development within 1000 feet of the shore. It provided an exception for one and two unit buildings, but only if there was an existing structure between the proposed development site and the water. The bill also required the DEP to create a Coastal Management Plan that would identify where building was and was not appropriate in the Coastal Area and that would be binding upon municipalities. The bill also allowed the DEP to take into account nonpoint source pollution, including stormwater, that would be generated by a proposed development. This and other competing bills were the subject of many hearings and debates, but none were adopted.

“What boll weevils are to cotton, 24-unit complexes have been to the Jersey Shore.”

—Editorial Board, Asbury Park Press, May 12, 1991

1991: The Halloween Storm, a/k/a “The Perfect Storm” Kicks off a Six Storm Series

The 1991 Halloween Nor’easter, also known as the Perfect Storm, hit New Jersey on the evening of October 31st and lingered for three days while it pounded the coast with wind and waves. The strong waves up to 30 feet high and persistent intense winds caused extreme levels of beach erosion all along the coast. By the time it was over, New Jersey had lost 13.5 million cubic feet of sand and sustained \$90 million in damages, though no deaths occurred in the State. This was only the first of six damaging nor’easters that hit New Jersey between 1991 and 1998, with others occurring on January 2, 1992, December 11, 1992, March 2, 1994, January 28, 1998 and February 4, 1998.

These storms played a major role in New Jersey’s coastal policy. The first two storms led to the establishment of a stable source of shore protection funding and, along with the third storm, contributed to substantial CAFRA reforms and the creation of the Blue Acres Program. The subsequent storms reignited a debate that continues today over the long-term benefits of spending millions of state and federal dollars on beach replenishment each year.¹⁶



1992: Passage of the Shore Protection Stable Funding Act - the First in the Nation

Following the storms in the early 1990’s, the DEP looked for ways to enhance protections for New Jersey’s eroded beaches. These efforts were strongly advocated for by the Jersey Shore Partnership, an organization established after the 1991 Halloween Storm in order to secure a stable source of funding to protect New Jersey’s coastal municipalities. In 1992, New Jersey adopted the “Shore Protection Stable Funding Act” providing \$15 million dollars annually to fund shore protection projects along the coastline. This was the first such legislation passed in the Nation.

The funds have been used to support projects for which the Federal Government pays 65% of the cost, with the State and local municipality providing a combined 35% share. This allows for greater shore protection efforts than could be undertaken by the State and municipal entities alone. In 1998, New Jersey increased the annual Shore Protection Act funding to 25 million, where it stands today.¹⁷ Debate over the adequacy of this amount and legislative efforts to increase the funds are ongoing.

1993: Efforts to Close the CAFRA Loophole Part III; The Connection Between the Coastal Area and the State Plan

In July 1993, after 15 years of wrangling and more than five years of dueling bills in the legislature, comprehensive CAFRA reforms were signed into law. The amendments were described as a compromise but, like all good compromises, failed to give either group everything they wanted. The CAFRA revisions included important provisions to allow the DEP, through its CMP program, to address development projects in areas it previously could not reach, including the critical beach, dune and wetland areas adjacent to coastal waters.

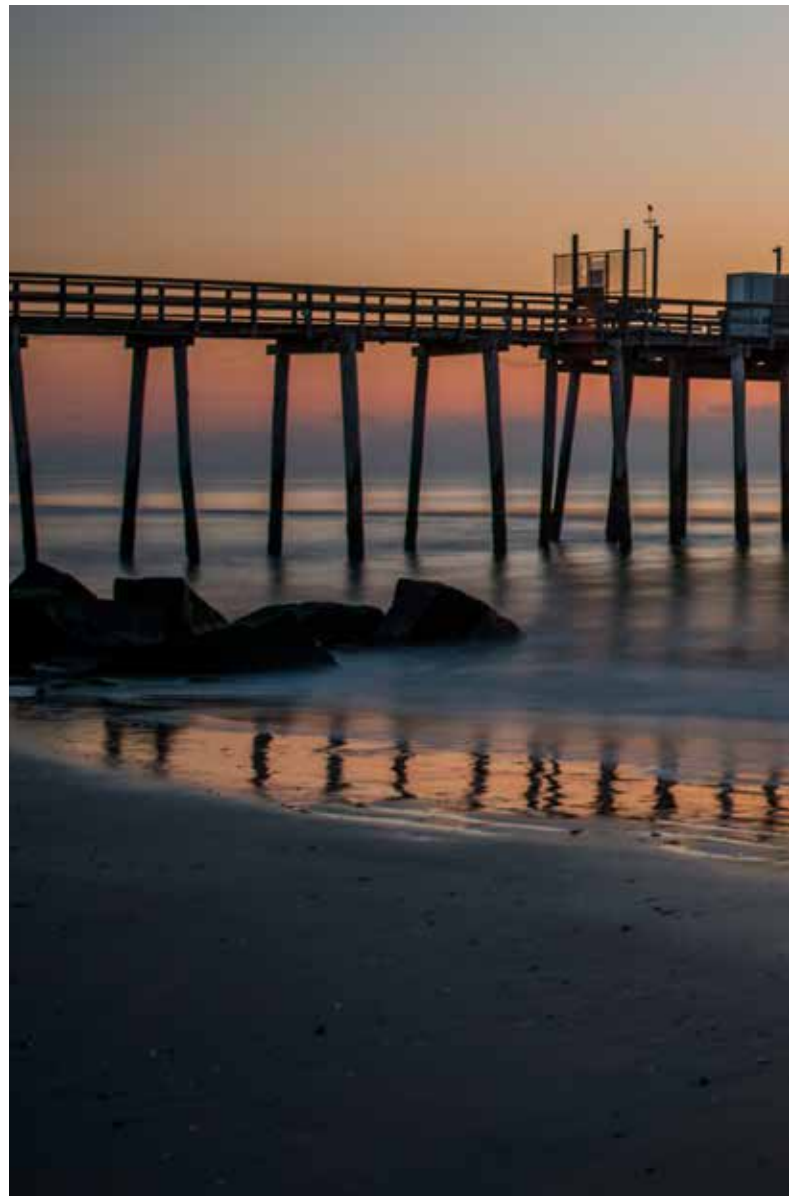
The amendments did not include the binding Coastal Management Plan that was supported by the DEP and environmental advocates. Instead, the legislature encouraged the DEP and the State Planning Commission to work together to develop a plan that would guide development in the Coastal Area and that could be incorporated into the State Plan. Thus, the amendments required any new coastal rules adopted by DEP to be “closely coordinated with the provisions of the State Development and Redevelopment Plan.” At the same time, the New Jersey legislature authorized the State Planning Commission to adopt the DEP’s coastal management policies as the State Plan for the Coastal Area.

“It represents a consensus, not quite what we wanted, but it’s satisfactory.”

—Michael McGuinness, NJ Builders Association, June 9, 1993, regarding CAFRA amendments¹⁸

1995: Coastal Blue Acres Program is Established

As a result of repetitive storm and flood damage to several shore and inland properties, New Jersey established the Coastal Blue Acres Program. Adopted pursuant to the Green Acres, Farmland, Historic Preservation and Blue Acres Bond Act of 1995, and approved by voters in November 1995, the program includes funds to purchase properties in coastal areas that have been damaged by



storms, that may be prone to storm damage, or that buffer or protect other lands from storm damage. Properties are purchased from willing sellers only, and ownership transfers to the municipality in which the land is located or to a qualifying non-profit organization. The property is deed-restricted to ensure it is preserved for recreation and conservation purposes and so that any development is restricted to minimal improvements for public access. The original bond act included \$30 million dollars to be shared equally for the purchase of shore properties and properties in the floodway of the Passaic River and its tributaries.



1995: New Jersey Coastal Nonpoint Pollution Control Program is Established

The 1990 reauthorization and amendments of the CZMA included a new provision requiring coastal states with CMPs to address nonpoint source pollution through the development of coastal nonpoint pollution control programs. The CZMA amendments required states to describe how they would implement nonpoint source pollution controls, known as management measures, and identified the specific categories of management measures each state must address. The categories

included sources of pollution, such as agricultural, urban areas, marinas and recreational boating, as well as natural protections against nonpoint source pollution, such as forests, wetlands and riparian areas. New Jersey submitted its proposed Nonpoint Pollution Control Program to NOAA and the EPA for review in 1995 and it was conditionally approved in 1997. The DEP made several program improvements over the years as the federal recommendations evolved and full approval of the program was granted in 2010.

NEW JERSEY COASTAL MANAGEMENT PROGRAM

Major Milestones

1978

NJ CMP approved
by NOAA

1981

Shore Protection
Master Plan released

1992

Shore Protection
Stable Funding Act
passed

1993

CAFRA reforms
passed

1995

Blue Acres Program
established

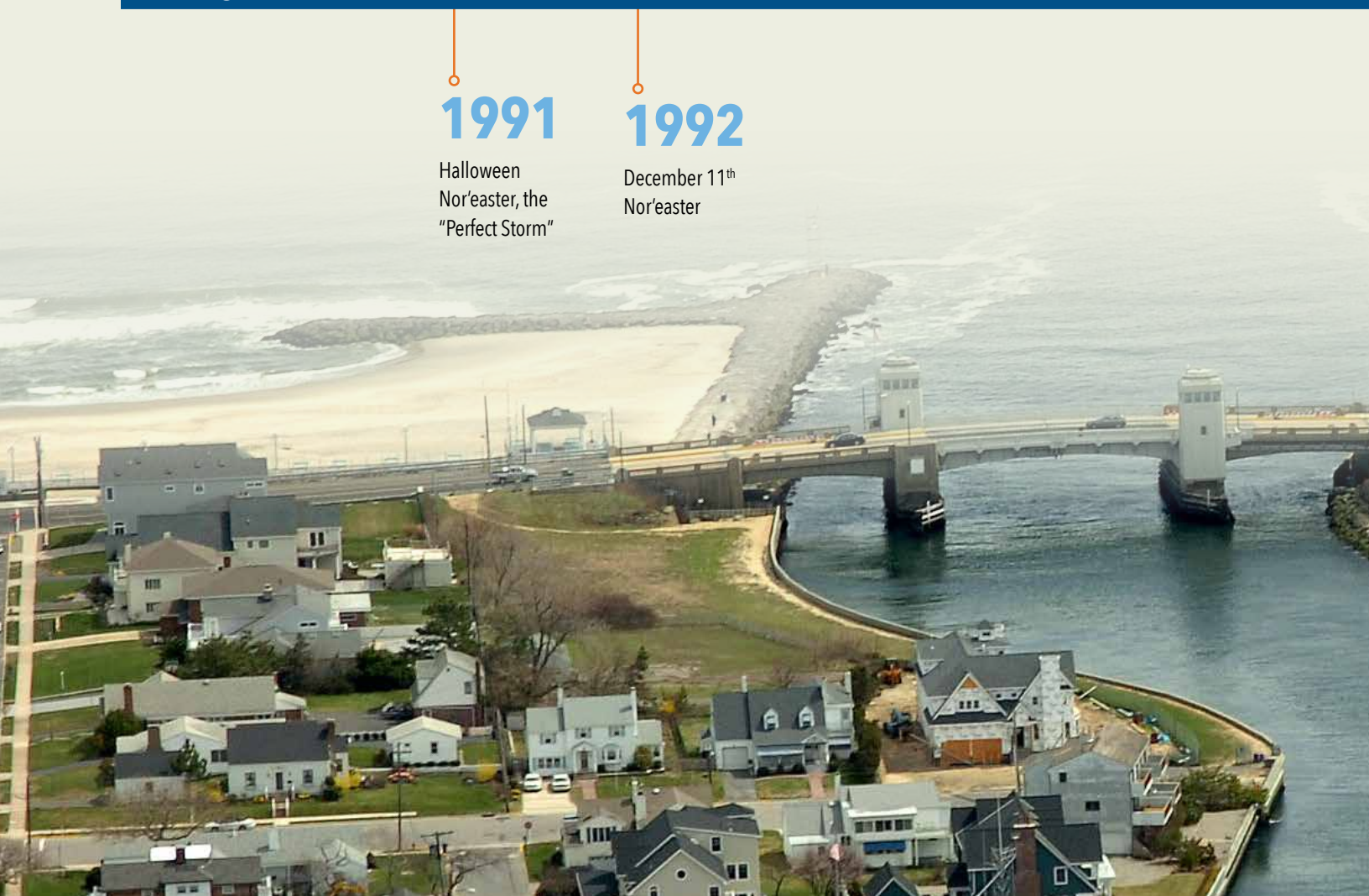
1978

1991

Halloween
Nor'easter, the
"Perfect Storm"

1992

December 11th
Nor'easter



1999

Court upholds DEP's authority to require public access along Hudson River waterfront.

Court upholds DEP's authority to restrict high rise development to protect "visual public access" to the New York skyline

2004

Stormwater Management Rules adopted and Clean Marina Program established, enhancing the Nonpoint Source Pollution Program established several years earlier

2013

The CMP establishes the Resilient Coastal Communities Initiative

2013

Court upholds DEP's reasonable compensation to private property owners for shore protection projects.

In 2017, Court also upholds DEP's right to obtain perpetual easements with public access for shore protection projects

2018

DEP begins development of a comprehensive New Jersey Coastal Resilience Plan

2018

2011

Hurricane Irene

2012

Superstorm Sandy



1999 THROUGH 2008

**1999: Courts Confirm CMP's Hudson River Walkway Public Access Requirement**

As a condition of a development permit for construction along the Hudson River, the DEP required a builder to include a public walkway adjacent to the river to preserve public access to the waterfront. The property where the walkway would be built was at one time submerged under the Hudson River, but had since been filled in. The builder asserted that the walkway requirement constituted a taking of private property without just compensation and filed a law suit against the DEP.

The Court determined that the public had the right to access and enjoy what it deemed public trust property and upheld the DEP's walkway requirement on this land. It rejected the builder's argument that this constituted a taking, holding that the right of the public to use and enjoy public trust land "does not disappear" because the land was filled in. The Court emphasized that, under the Public Trust Doctrine, "the public already owns the land the walkway was built on."¹⁹

"It is clear that title to such "public trust property" is subject to the public's right to use and enjoy the property, even if such property is alienated to private owners."

—U.S. District Court upholding DEP Hudson River public walkway requirements, August 12, 1999²⁰

1999: Courts Confirm CMP's Right to Protect Public Access View of New York City Skyline

The DEP denied a development permit for a high-rise building in Weehawken that would block the views of the New York City skyline enjoyed by the public, including from the approach ramp to the Lincoln Tunnel. The DEP based its denial on several coastal rules concerned with preserving "visual public access" and scenic views. The developer sued alleging that the DEP had no authority to preserve visual public access to the waterfront and skyline.

The Court reviewed the coastal rules cited by the DEP and heard expert testimony that the building

could be redesigned to preserve the view and still be economically viable. In addition, it received the statement of the Director of Coastal Resources explaining that “this is not a situation in which a nice view would be protected for only a few people” but that “this spectacular vista of the Hudson River and Manhattan skyline is viewed by over 400,000 motorists and bus passengers each weekday...”²¹ The Court sided with the DEP and upheld the denial of the development permit.

1999: Hurricane Floyd Causes Devastating Floods

Although downgraded to a tropical storm by the time it hit New Jersey, Floyd ravaged the State with winds gusting over 70 miles an hour and rains averaging half an inch per hour. Hardest hit were communities in the northern and central parts of the State, where floodwaters rose to all-time highs on 14 different rivers. The Raritan, Rahway, Millstone and Saddle Rivers all overflowed their banks. Bound Brook was hit especially hard by a record-breaking 42-foot flood crest that sent 12 feet of water onto Main Street, drowning three people. Manville was also hit with record-breaking floods from the Raritan and Millstone Rivers, and it was reported that 14.13 inches of rain fell in Little Falls. New Jersey suffered \$250 million in damages and six deaths from this storm.²²

“It’s a job that can’t be accomplished just by the regulators and actually, in some sense, Mother Nature has a role.”

—DEP Spokeswoman, March 13, 2006, referring to efforts to protect communities from coastal hazards²³

2002: Integration of State Plan Maps and CAFRA as Coastal Planning Areas

In 2002, DEP amended the Coastal Zone Management Rules to incorporate certain Planning Areas developed by the State Planning Commission for the State Plan. DEP designated the areas as “CAFRA Planning Areas” and adopted a CAFRA Planning Map depicting their boundaries in the coastal zone. Under the amendments, instead of determining acceptable development

intensity based upon factors such as patterns of existing development, natural and cultural resources, environmental sensitivity and existing infrastructure, development intensity would be determined solely upon where the site was located on the CAFRA Planning Map.

The amendments were challenged by environmentalists who argued they were too closely coordinated with the State Plan and by builders who argued they were not closely coordinated enough. They were also challenged by realtors who argued that the DEP failed to disclose the criteria it used to determine that the Planning Area boundaries were acceptable under CAFRA. The Court rejected all of these arguments and upheld the DEP’s acceptance of the State Plan Planning Areas and their use to determine development intensities.²⁴

2003: Integration of the PCB Limits for Dredged Material into the CMP

In May 2003, the New Jersey legislature adopted a statute prohibiting the “transport of dredged materials in State waters for the purposes of dumping or placing the material in State waters of the Atlantic Ocean” if the sediment contained polychlorinated biphenyls (PCBs) in excess of 113 parts per billion (ppb). The statute was immediately submitted to NOAA for approval and incorporation into the New Jersey CMP, thus allowing any contrary federal action to be rejected under the CZMA Consistency Provision as inconsistent with New Jersey’s CMP.

This was the culmination of a prolonged effort by the State and concerned citizens to prevent contaminated sediment from being dumped six miles off the coast at the Historic Area Remediation Site (formerly known as the “Mud Dump Site”). Adopted when the U.S. EPA lowered its PCB threshold for dredged material from 400 ppb to 113 ppb, the New Jersey Statute allows the State to implement more stringent protections if emerging science determines that a lower level of PCBs is necessary to protect human health or the environment.²⁵



2004: DEP Adopts the Stormwater Management Rules

In 2004, the DEP adopted Stormwater Management Rules to address water quality impacts associated with existing and future Stormwater discharges. The rules were approved by NOAA and incorporated into the CMP in 2006. They set forth the components of regional and municipal stormwater management plans, and required coastal municipalities to adopt ordinances to address a variety of nonpoint source issues. They also established the stormwater management design and performance standards for new development, which include requirements for groundwater recharge, stormwater runoff controls and for the establishment of “special water resource protection areas” ranging from 150 to 300 feet adjacent to waters of exceptional quality and their immediate tributaries (“Category One” waters).²⁶ The DEP also developed a Stormwater Best Management Practices Manual to coincide with adoption of the rules to guide municipalities in their efforts.

2004: Establishment of the New Jersey Clean Marina Program

The New Jersey Clean Marina Program represents another significant measure to address nonpoint source pollution as well as cumulative and secondary impacts in New Jersey’s coastal waters. The program encourages marina owners, yacht clubs, boatyards and boaters to voluntarily adopt practices that help prevent adverse impacts to water quality, sensitive habitats, and living resources in proximity to marinas. It provides assistance and guidance regarding sewage facility management, fueling operations, solid waste management and boat cleaning and has established several recycling programs for marinas to take part in. The program also hosts free educational workshops, provides Best Management Practices signage, Clean Boater Tip Sheets and a New Jersey Clean Marina Guidebook for participating marinas. Facilities that demonstrate best management practices become certified Clean Marinas. Nearly 50 marinas throughout the State are certified Clean Marinas, and 37 other have pledged to implement practices to control pollution.

2007: Public Access Rules Part I - Public Access and Public Trust Rules Adopted and Challenged

In December 2007, the DEP adopted new Public Access Rules to increase the predictability of its public access requirements and ensure that “meaningful” public access to tidal waterways and their shores was provided. Several provisions were controversial. For example, municipalities were required to allow public access to tidal waterways and their shores “at all times,” meaning 24 x 7, unless they obtained the DEP’s permission to close the area to protect public safety. The rules also required municipalities seeking Shore Protection Funds to enter into a State Aid Agreement with the DEP that required them to provide additional public parking and restroom facilities.

The new rules were successfully challenged by several shorefront communities. The Court held that the rules unlawfully preempted the basic power of municipalities to manage and control their beaches, including the power to decide when those areas should be open to the public.

“I’ve been here since 1973, when barnacles wouldn’t grow. That’s how polluted the water was. Now we have egrets, swans, crabs, snappers. Fish that haven’t been here in years are all coming back.”

—Michael Davidson, owner, Green Cove Marina, one of NJ’s first Certified Clean Marinas, February 28, 2006²⁷

The Court also held that the DEP did not have the authority to impose parking and restroom requirements on municipalities participating in the Shore Protection Program. These holdings invalidated the new rules.²⁸

2008: Atlantic Offshore Oil and Gas Drilling Part II

In 2008, President George W. Bush rescinded the Executive Order banning offshore oil and gas development that was issued by his father 18 years earlier, and introduced a 2010-2015 schedule to lease lands for drilling off the Atlantic and Pacific coasts. In April 2010, before any leasing or drilling occurred, the Deepwater Horizon oil rig exploded, killing 11 workers and releasing 200 million gallons of oil into the Gulf of Mexico.

The disaster fouled beaches and coastal wetlands from Louisiana to the Florida panhandle, killed birds, fish and marine mammals and devastated the recreation and fishing-based economies of the Gulf States. The catastrophe and its tragic aftermath caused the Obama administration to revisit the issue and to remove the Mid-Atlantic and other areas from consideration for development through 2017.



2009 THROUGH 2018

**2009: Mid-Atlantic Regional Council on the Ocean (MARCO) is Established**

On June 4, 2009, the Governors of New York, New Jersey, Delaware, Maryland, and Virginia established the Mid-Atlantic Regional Council on the Ocean (MARCO) to address shared regional priorities, including climate change, marine habitats, sustainable renewable energy and water quality. Each state has a designated representative on the MARCO Management Board.

New Jersey is represented by Elizabeth Semple, the Manager of the CMP's Office of Coastal and Land Use Planning, who, from 2017-2019, is also serving as the Management Board Chair. Among other accomplishments, MARCO oversaw the development of the Mid-Atlantic Ocean Data Portal, an online resource that combines coastal and ocean use data with mapping technology to make essential information available to coastal decision makers and ocean planners.

2011: Hurricane Irene Brings Devastating Riverine Flooding

On August 28, 2011, Hurricane Irene made landfall next to Galloway and Little Egg Harbor on the southern New Jersey shore. With a storm surge of three to five feet, it caused moderate to severe flooding along the ocean and moderate tidal flooding along the Delaware Bay and River. However, Irene's record rainfall caused damaging riverine flooding in the highly populated areas along the Raritan, Millstone, Rockaway, Rahway, and Passaic Rivers. Eleven rivers reached record levels, and a week after the storm all rivers in New Jersey remained at moderate flooding levels. This unprecedented flooding caused seven deaths and approximately \$1 billion in damages, making it the costliest storm in New Jersey at that time.

2012: Public Access Rules Part II – New Public Access Rules Adopted

After seeking input from a variety of stakeholders, the DEP adopted new Coastal Rules in 2012. The rules required municipalities to create and enhance opportunities for public access, maintain existing public access and made it clear that public access for new development would be required when a CAFRA or other coastal development permit was sought. The rules also encouraged municipalities to create a Municipal Public Access Plan (MPAP) that would identify existing public access points, parking and other amenities such as public restrooms as well as plans for future access.

The rules provided incentives for MPAP development, such as allowing a municipality to rely on its MPAP, including its plans for future access, to satisfy the public access conditions of a coastal development permit. A municipality with an MPAP could also establish a Public Access Fund to which developers could contribute in lieu of providing public access on site, and that could be used by the municipality to provide or enhance public access elsewhere.



2012: Superstorm Sandy - New Jersey's Worst Natural Disaster – Devastates New Jersey

On October 29, 2012, Superstorm Sandy barreled across the country, impacting 24 states including the entire eastern seaboard from Florida to Maine. It battered New Jersey with record breaking coastal flooding and wave action and sustained winds as high as 70 mph.²⁹ A record storm surge of 8.9 feet was measured at Sandy Hook, and ranged from about 5 to 8 feet in other portions of the coast. The storm surge caused water to build up in the coastal waterways and wetlands of northeastern New Jersey, flooding inland areas adjacent to tidal rivers and bays, including the Raritan Bay, Newark Bay, the Passaic and Hackensack Rivers, the Kill Van Kull, and the Arthur Kill. Barrier islands were inundated and in some cases breached when large waves from the Atlantic Ocean converged with rising waters of back bays, including Barnegat Bay and Little Egg Harbor.³⁰

Sandy destroyed or significantly damaged 30,000 homes and businesses, impacted 42,000 additional structures and caused an estimated \$29.4 billion in damages in New Jersey. It was by far the single most costly natural disaster in the State.³¹ It was also the deadliest: 72 people in the U.S. died during Sandy, and more than half of those deaths occurred in New Jersey. After Sandy, the DEP established several important resilience programs that will shape coastal policy for decades to come.

2013: The Resilient Coastal Communities Initiative is Established

After Superstorm Sandy, the CMP, with funding from NOAA, established the Resilient Coastal Communities Initiative (RCCI). A collaboration of project partners with subject matter expertise, the RCCI provided New Jersey coastal communities with planning assistance and technical support to identify their exposure to coastal hazards and reduce their vulnerability through long-range planning. Accomplishments of the RCCI include:

- A Coastal Vulnerability Assessment to enable municipalities to evaluate the impact of flooding scenarios on community assets, populations, and critical services.
- Getting to Resilience, an interactive questionnaire and mapping tool to identify community vulnerabilities and how they can be addressed through hazard mitigation planning.
- A Local Recovery Planning Managers program that teamed resilience professionals with select Sandy-damaged towns for nearly two years to assist them with their recovery and long-term resilience efforts.
- An RCCI Policy Recommendations Report identifying CMP policy, regulatory and management practices to increase resilience opportunities for New Jersey's coastal communities.

2013: Post-Sandy Funding for Blue Acres Program Increased

After Superstorm Sandy, \$300 million in additional funding was added to the Blue Acres program and made available to purchase up to 1300 homes, including 1,000 homes in tidal areas and 300 homes in other areas that have flooded repeatedly, such as the Passaic River Basin.³² The Federal Emergency Management Agency provided \$185 million of the funding, \$100 million was provided by the U.S. Department of Housing and Urban Development and an additional \$15 million came from the Blue Acres and State Land Acquisition funds within the DEP's Green Acres Program. In October 2017, Governor Christie announced the addition of \$75 million to the Blue Acres program.³³ Since 2013, the Blue Acres program has purchased more than 600 properties in seven counties and 14 municipalities that were affected by Superstorm Sandy.³⁴

"We've dedicated a special team of experts within the Blue Acres program that works closely with people and understands what the property owner is going through and the tough decisions that have to be made."

—Larry Hanja, DEP spokesman, regarding the Blue Acres Program, August 15, 2017³⁵

2013: The Harvey Cedars Case – The Court Supports DEP's Calculation of Compensation to Property Owners for Shore Protection Projects

To complete a protective dune project in Long Beach Island, the Borough of Harvey Cedars exercised its power of eminent domain to take a portion of a private homeowner's beachfront property. The dune behind the homeowner's property was constructed, but a legal dispute arose over the "just compensation" the homeowner was entitled to for use of the land. The dune partially blocked the homeowner's view of the ocean and, at trial, the Court allowed the homeowner to demonstrate the resulting loss in the home's value. But the Court denied Harvey Cedars the



opportunity to show that the dune also enhanced the value of the property by protecting it from powerful storms and ocean surges. Based on this one-sided calculation, the homeowner was awarded \$375,000 for the loss of the oceanfront view. This halted the rest of the project, as Harvey Cedars could not afford to pay similar amounts to the remaining oceanfront homeowners.

Harvey Cedars and the DEP took the matter to the New Jersey Supreme Court, which disagreed with the prior Courts' findings. It vacated the \$375,000 award and sent the matter back to the lower Court to properly consider the value that the dune's protection would add to the property.³⁶ By that time, Superstorm Sandy had occurred, and the evidence was clear: although the dune did block the homeowner's view from the top floor, it also prevented the \$1.7 million dollar home from being destroyed.³⁷ In the end, the homeowner settled with the Borough and accepted compensation in the amount of \$1dollar.

2015: The New Jersey Coastal Resiliency Collaborative is Established

The New Jersey Coastal Resiliency Collaborative (NJCRC) is a network of organizations working together to coordinate community planning with ecological project activities that will enhance and increase community resilience to coastal hazards. NJCRC partners include more than 20 state and federal agencies, public, academic, non-governmental, and professional organizations.

Although it is facilitated and staffed by the CMP, the NJCRC operates as a consensus-based group. The partners coordinate efforts and share information to advance a common framework for evidence-based coastal resilience planning at a local and regional scale. Through collaboration, the NJCRC uses the best science and technical tools available to support comprehensive coastal resilience planning and implementation.

"It is imperative that the Legislature pass a bill that clearly and unequivocally grants DEP the authority to adopt rules that regulate and promote meaningful public access to the waterfront."

—Tim Dillingham, American Littoral Society, January 10, 2016³⁸

2015: Public Access Rules Part III - The Court Limits DEP's Authority to Adopt Public Access Rules; New Jersey Legislature Affirms DEP's Authority

Almost immediately after the 2012 public access rules were adopted, a lawsuit challenging their validity was filed. The challengers argued that allowing developers to contribute to a municipal Public Access Fund in lieu of providing public access violated the Public Trust Doctrine, and that the rules usurped the powers reserved to municipalities. They also argued that DEP did not have the authority to adopt public access rules or manage the State's public trust resources. The DEP argued that the Public Trust Doctrine and CAFRA gave it the authority to adopt rules and manage public trust resources and it had been doing so for decades. DEP also argued that it did not usurp municipal authority because the rules encouraged but did not compel municipalities to adopt Municipal Public Access Plans.

The Court agreed with the challengers and, in a 2015 decision, held that, not only did the DEP lack the authority to adopt and enforce the 2012 public access rules, but it had no authority to adopt and enforce any public access rules.³⁹ The State Legislature responded quickly to the Court's decision and amended the Waterfront Development Act and CAFRA to give DEP the authority to require on-site or off-site public access to the waterfront and adjacent shoreline as a condition of CAFRA and Waterfront Development permits.



2016: The CMP Works with Partners to Develop a Regional Resilience Plan – NJ FRAMES

In 2016, NOAA awarded New Jersey a \$900,000 Regional Coastal Resilience Grant to help 15 municipalities in northeastern Monmouth County develop a regional plan to address the impacts of coastal hazards and storm surge. The planning project, called New Jersey Fostering Regional Adaptation through Municipal Economic Scenarios (NJ FRAMES), partners the CMP with planning, resilience and community outreach experts and the Two River Council of Mayors, which represents the 15 municipalities. The project partners are engaged in a scenario-based approach to help the Two Rivers Council determine the actual costs and benefits of specific resiliency decisions. The end result will be a long-term Regional Resilience and Adaptation Action Plan that will identify ways the 15 municipalities can work together to reduce risks and impacts and that can be used as a model for other regional resilience efforts.

“It’s their homes, the roads in front of their houses and the beaches that they go to. The people need to be a part of the decision making.”

—Elizabeth Semple, Manager, DEP Office of Coastal and Land Use Planning on Regional Resilience Plan process for 15 Two River communities, March 6, 2017⁴⁰

2017: DEP’s Right to Acquire Shore Protection Easements through Eminent Domain Upheld

Working directly with coastal municipalities, the DEP undertook efforts to secure the property interests needed for the implementation of federal shore protection projects. While many property owners voluntarily granted easements, 23 property owners on Long Beach Island and in northern Ocean County refused. The DEP filed condemnation actions against the property owners seeking “perpetual” easements that would allow continuous access for the construction and ongoing maintenance of the project’s dunes and berms. Based on the Public Trust Doctrine and on the prohibition against federally-funded shore protection projects that benefit only private property, the easements would also provide public access to the areas at issue.

The homeowners argued at trial that the DEP did not have the authority to (i) take the easements through eminent domain for shore protection purposes; (ii) take perpetual easements that endured beyond the time it took to complete the initial project; and (iii) require public access. The Court disagreed with the homeowners and found that the DEP had the right to do all of these things. It also found the compensation offered for the easements to be just and that the DEP engaged in fair and bona fide negotiations.⁴¹

2018: Oil and Gas Drilling Part III: The STOP Offshore Oil and Gas Act is Adopted

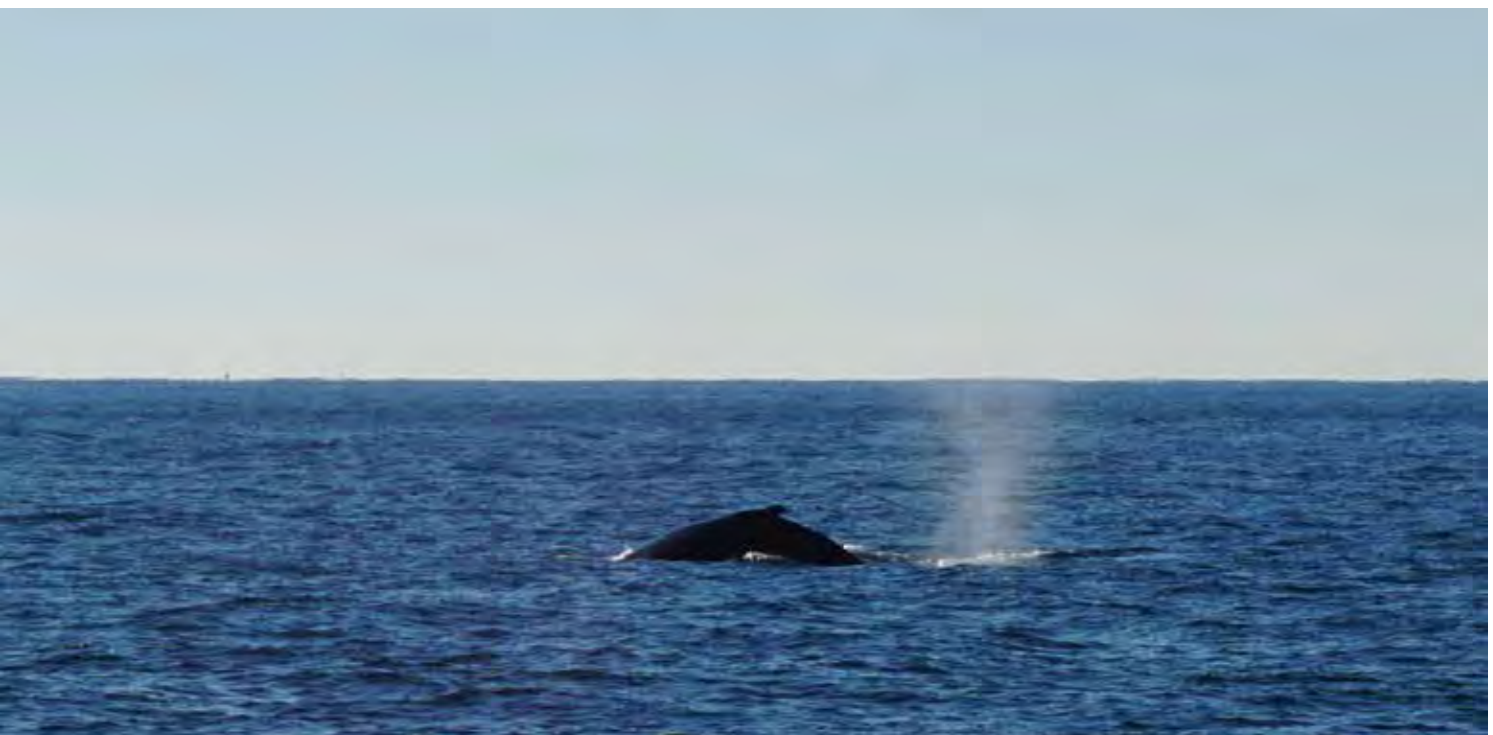
In 2017, the new Presidential Administration announced plans to open up areas of the Atlantic Ocean to offshore oil and gas exploration and development. New Jersey's reaction was swift and, in April 2018, the Shore Tourism and Ocean Protection from Offshore Oil and Gas Act was adopted.⁴² Signed into law by Governor Murphy on April 20, 2018 – the eighth anniversary of the Deepwater Horizon disaster – the Act bans oil or natural gas exploration, development or production in State waters. It also bans the lease of State tidal or submerged lands for these activities, and prohibits the DEP from issuing any permit or approval under CAFRA or the CZMA for any activities associated with offshore oil or gas development. To ensure the DEP can invoke the CZMA Consistency Provision to object to any federal efforts to engage in such activities, the DEP submitted the Act to NOAA for inclusion in its CMP.⁴³

2018: DEP Announces Development of a New Jersey Coastal Resilience Plan

In the past several years, communities throughout New Jersey have continued to work with the State

and Federal governments and consultants to identify ways to protect their infrastructure, homes, businesses, and way of life from the damage and disruption of storms and frequent flooding. At the same time, the DEP has been working to develop data, tools, and protocols to aid in these efforts. Often these efforts and the resultant projects have been in response to a specific storm, limited to a single town, or reliant upon federal programs for solutions. The DEP envisions a different, better way of doing things, and has announced its intent to develop a Coastal Resilience Plan.

The Coastal Resilience Plan will provide a road map to address the enormous challenges of supporting resilient and sustainable communities, New Jersey's coastal economy, and ecosystem protection in the face of climate change, sea level rise and the prospect of more intense and frequent coastal storms. To achieve this, the DEP will work with stakeholders from various sectors and disciplines to develop a framework for a Coastal Resilience Plan, and continue to engage with them throughout the Plan development process. These efforts are currently underway.



END NOTES

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Written By:

Susan M. Kennedy

Graphic Design By:

Sabrina Hague Design

Supported By:

Urban Coast Institute



**MONMOUTH
UNIVERSITY**

URBAN COAST INSTITUTE

400 Cedar Avenue

W. Long Branch, NJ 07764

www.monmouth.edu/uci

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U.S. to brief New Jersey on oil leases



Kean orders scrutiny of shore development

Wetlands bill pits environment against development

Sandy

CAFRA
measure
advances

Officials in county object to state's shorefront

■ An Assembly panel releases a bill that would expand coastal development regulations and close a loophole.

State Readies Complex Coastal Protection Program

Wild surf could take a big toll



Sludge
extension
opposed

500,000 sign petitions
seeking dump closure

Offshore
oil bar N.J.
revived in
Congress

Finger in the dike

Legislature must close CAFRA loopholes now

Storm aid on way to Shore

Marina owners: Proposed rules on public access go too far

Sandy affected nearly all in N.J.



Public beach access rules have been restored

Judge gives N.J. OK to seize property

Closing loopholes

Revised CAFRA improves coastal protection

State Senate moves
to limit PCB dumping

New Jersey fights offshore oil drilling

Shore

N.J. will implement clean water rules