

April 14, 2006

Ruth Ehinger
Coastal Management Office
NJDEP
P.O. Box 418
Trenton, New Jersey 08625-0418

Re: Draft Section 309 NJ Coastal Management Program Assessment (Feb. 2006)

Dear Ms. Ehinger:

As discussed, thank you for extending the initial comment period until April 12, 2006 or thereabouts, and for being willing to consider comments that are submitted soon after the close of this informal comment period.

Please accept the following comments on the subject draft Section 309 Coastal Assessment. Comments are submitted on behalf of the Coastal Ocean Coalition (COC) and the groups which have signed on below.

On September 28, 2005, the Coastal Ocean Coalition (COC*) released a Report: "*Ocean Protection in New Jersey: A Blueprint for State-Level Action*" (Report). The Report outlined values and benefits of NJ's ocean resources and identified recommendations issued by two national ocean commissions that should be adapted and implemented in NJ. The Report called upon the Governor and NJ Legislature to implement a range of policies to: protect coastal and bay waters; restore fisheries; curb coastal sprawl; strengthen ocean management; enhance public access; protect the public's interest from privatization schemes; improve stewardship of public resources allocated to beach replenishment; reduce and adapt to accelerating global warming threats; and require cooling towers for energy facilities. The report is available online at www.oceanblueprintnj.org.

We urge the Department to consider relevant sections of this Report for each topical area of the 309 assessment, as a supplement to the more specific additional comments below.

We reiterate the Report's findings and recommendations and submit the Report for the Department's formal consideration, in concert with NOAA, in identifying NJ's priority needs and designing necessary program changes as part of the 309 assessment process.

We provide the following comments on the text of the draft 309 assessment document:

1. Coastal Hazards

The assessment states:

"While the precise rate of sea level rise is uncertain, current models indicate that global warming will cause the rate to increase. Recent projections forecast that relative sea level rise at the New Jersey coast will be between 0.31 m and 1.10 m by 2100. The approximate

central value of this range, 0.71, is more than twice the rise that occurred during the last century. This increase would result in the threat of more sustained extreme storm surges, increased coastal erosion, escalating inundation of coastal wetlands and saline intrusion.

Many parts of New Jersey's densely populated coastal area are highly susceptible to the effects of the following coastal hazards: flooding, storm surge, episodic erosion, chronic erosion, sea level rise, and extra-tropical storms. Reconstruction of residential development and the conversion of single family dwellings into multi-unit dwellings continues in hazardous areas... the value of property at risk is increasing significantly. With anticipated accelerating sea level rise and increasing storm frequency and intensity, vulnerability to the risks of coastal hazards will not abate; it will only become more costly.

...Development in areas suited to the inland migration of coastal wetlands serves to preclude this adaptation and the wetlands will either diminish in extent or will be lost to inundation. ...

All of the impediments to meeting this 309 programmatic objective that appeared in the last New Jersey Coastal Zone Section 309 Assessment and Strategy remain. These include lobbying efforts of special interest groups, legal challenges to DEP permit decisions, provision of flood insurance through the National Flood Insurance Program, and public perception that large-scale beach nourishment projects eliminate vulnerability to coastal hazards.

...Titus demonstrates that in certain instances, structural engineering solutions will not be practical or economically feasible. In these cases future public and private development and redevelopment must be directed away from the hazardous areas. While some derogatorily refer to this option as "retreat," from the perspective of sound planning based on the best available science, the concept actually involves "strategic adjustment." Prudent planning requires that we expand upon the existing studies of the societal, economic, and environmental costs of possible mitigative actions while the greatest number of alternatives exist.

...
The state's coastal area continues to experience substantial seasonal and residential population increases. Conversion of formerly seasonal homes to year-round residences continues unabated. In many instances, formerly modest houses are replaced with significantly more expensive homes while property values continue to escalate.

At the same time, risks associated with coastal hazards continue to increase. Factors such as escalating sea level rise and cyclical and possibly long-term increases in storm frequency and intensity threaten both the natural environment and built environment of New Jersey's coast. Consequently, the ranking of the Coastal Hazards Section 309 enhancement area remains a high priority with the NJCMP.

These are alarming findings that warrant a serious and aggressive response.

However, in spite of these major statewide issues, the policy response appears reliant on voluntary DEP regional land use coordination and local initiative via local hazard mitigation planning. According to the assessment, local efforts are responsive to the Federal Disaster Mitigation Act of 2000 and the applicable Interim Final Rules through New Jersey's Office of

Emergency Management's mitigation planning program for municipalities. This program draws on guidance prepared by FEMA in the document, *Multi-Hazard Mitigation Planning Guidance Under the Disaster Mitigation Act of 2000*. FEMA's response to hurricane Katrina and performance of the federal DHS has given us little confidence in this program. We urge a more active State response.

The above cited findings are generally consistent with the findings and conclusions of a recent report by Princeton Professor Michael Oppenheimer: *The Potential Impacts of Sea Level Rise on the Coastal Region of New Jersey, USA* (2005, with M.P. Cooper and M.D. Beevers). According to press reports on that report, "the Atlantic Ocean, swollen by melting ice caps, could rise by up to 4 feet by the year 2100, moving the coastline 480 feet inland in a worst-case scenario." Similar catastrophic findings have been reported by 50 year storm event modeling by the Coastal Research Center at Richard Stockton College, and work done by Stevens Institute of Technology.

The Department must consider this research and develop strategies, policies, plans, and regulations to prevent, mitigate, respond, and adapt to global warming induced sea level rise and increased storm frequency and intensity. The costs and impacts on coastal systems must be factored into the Department's greenhouse gas reduction strategies.

The Section 309 Programmatic Objectives include:

- I. Direct future public and private development and redevelopment away from hazardous areas, including the high hazard areas delineated as FEMA V zones and areas vulnerable to inundation from sea and Great Lakes level rise.
- II. Preserve and restore the protective functions of natural shoreline features such as beaches, dunes, and wetlands.
- III. Prevent or minimize threats to existing populations and property from both episodic and chronic coastal hazards.

Based on the current land use/land cover data on the coastal zone, it is apparent that these objectives are not being met, nor are the statutory requirements of CAFRA being met. The assessment lacks adequate discussion of the regulatory tools under CAFRA and other statutes to manage land use and improve implementation of these objectives. CAFRA regulations need to be updated to and strengthened to prohibit new development or redevelopment in high hazard areas. The mapping of these areas needs to be updated and revised to reflect current and projected risks, included global warming driven risks, and rules strengthened. This would include restrictions on rebuilding of storm damaged properties or structures.

We concur with the assessment's characterization of storm surge, flooding, shoreline erosion, and tropical storms as a high priority issue, and that public awareness and existing policies are inadequate to address these issues. Yet we are troubled with the lack of strategies to respond to and manage these risks.

2. Cumulative and Secondary Impacts

The assessment documents increasing development pressure, severe habitat degradation in international recognized Delaware Bay, forest fragmentation, and an accelerating loss of

critical coastal resources. It is unfortunate that the assessment relies on 6-year-old data and that more recent air photography based land use land cover estimates are not included in this assessment. Current land use land cover data must be incorporated in any final revised assessment.

The assessment lacks an adequate discussion of secondary and cumulative impacts and the specific current regulatory tools to prevent and mitigate these impacts, including those originating in land use, pollutant discharge, and development activities located outside the regulated CAFRA and coastal zone.

Some examples include:

- The Department needs to reduce nutrient (especially nitrogen) pollutant loadings discharged to ocean tributary waters. These reductions may be achieved via imposition of effluent limits on NJPDES dischargers.
- The Department needs to upgrade protections for “exceptional ecological waters” and “exceptional recreational waters” via additional designation of shellfish growing, bays, and estuarine/bay/ocean tributaries as “Category One waters” pursuant to NJAC 7:9B-1.5.
- The Department needs to update the Water Supply Master Plan and revise and strengthen water allocation permit requirements to address the unique ecological and hydrological conditions presented in the coastal zone. Enforceable policies must discourage short sighted technological management options, such as desalination treatment to mitigate salt water intrusion and “beneficial reuse of wastewater” that artificially would increase supply to serve new development and create secondary impacts and unintended consequences.
- The Department must allow the “CAFRA Coastal Centers” to expire.
- The Department needs to propose and re-adopt revised “water quality management planning rules” (NJAC 7:15-1 et seq.) that restrict extension of wastewater infrastructure to serve development in environmentally sensitive lands and reduce approved NJPDES permitted capacity to reflect growth management objectives and environmental constraints.

Unfortunately, the assessment lacks an adequate discussion of these expanded and more stringent regulatory policy responses and recommended enforceable strategies to address these issues. This is a serious deficiency in the assessment.

Implementation of the CAFRA and land use and water resource programs are not attaining the Section 309 Programmatic Objectives to develop, revise or enhance procedures or policies to provide cumulative and secondary impact controls. The assessment lacks a clear discussion of these regulatory issues and a specific strategy and recommendation for fixing the problems and deficiencies in regulatory oversight.

We agree with the finding that:

There is a need for a comprehensive ocean policy and regulations for the new uses under consideration that take into account the cumulative effect of multiple uses.

However, we urge that the priority for these programmatic and regulatory gaps be upgraded from moderate to high and resources be identified and made available to develop monitoring and enforceable policies.

3. Energy and Government Facility Siting

We oppose the energy deregulation initiative and recent revisions to the recent CAFRA rules that eliminated DEP control over energy facility siting decisions in the coastal zone.

However, we are concerned about how the assessment addresses new alternative energy sources in a manner that appears to characterize them narrowly as a conflicting use or adverse impacts:

There is interest in new uses of the ocean, particularly for alternative energy generation, including wind turbine facilities and wave or tidal energy devices.

We would oppose the development of energy facility siting criteria that would prevent or erect barriers to the development of alternative energy sources, including wind and solar energy. We are concerned because the assessment lacks any affirmative findings or policy statement on this issue.

4. Marine Debris

We do not agree that CSO impacts are “moderate” but are instead “significant”.

We disagree that CSO/SSO strategy and designated funding should be a “low” priority, and instead support a “high priority” characterization.

We are disappointed that, although thus far 150 ocean outfalls and approximately 7,700 estuarine outfalls have been mapped under the SIIA program, that funds for implementation have been withdrawn and that the Department is currently reevaluating financing and compliance options.

5. Ocean Resources

Recent expanded (both geographically and species) shellfish and fish consumption advisories highlight the need to reduce the continuing discharge of toxic bio-accumulative pollutants to all state waters and to develop wildlife based water quality standards. A 1996 USFWS Biological Opinion and numerous USEPA directives seek to have these criteria adopted. We are disappointed that the November 2002 proposed “wildlife criteria” for mercury, PCBs and DDT were abandoned. This issue needs to be addressed in the assessment.

We are concerned by the findings on fisheries water quality related issues. The assessment tends to minimize ocean water quality issues and create a misleading appearance that the

Department has satisfied and is implementing all necessary and appropriate enforceable policies and programs to protect and improve ocean water quality:

“Ocean water quality: The NJCMP received NOAA approval of its Coastal Nonpoint Pollution Control Program (prepared pursuant to Section 6217 of the Coastal Zone Management Amendments). All of the conditions for full program approval have been met except for one condition regarding inspections of Onsite Sewage Disposal Systems. Most significantly for ocean water quality, all of the conditions regarding stormwater have been met due to the promulgation of the DEP’s stormwater regulations.”

Ocean wastewater and stormwater outfalls, CSO’s and SSO remain significant uncontrolled water quality concerns, as do under-regulated failing septic systems and non-point source pollution from development, agriculture, and land uses like golf courses.

Additionally, this water quality portion of the assessment fails to include relevant findings of the recent Barnegat Bay Estuary program Report. We urge the final assessment to discuss those findings and development of new policies, strategies and enforceable management measures to meet the objectives of that management plan.

See relevant sections of the COC Report for supplemental comments.

6. Public Access

We applaud the Departments efforts to expand public access and enforce the public trust doctrine.

7. Special Area Management Planning

See relevant sections of the COC Report for supplemental comments.

8. Wetlands

See relevant sections of the COC Report for supplemental comments.

9. Aquaculture

We support the Department’s making it a priority for DEP to concentrate on implementing management programs to improve coastal water quality and reduce the number of water areas that are classified as restricted for shellfish harvest.

We urge the Department and NOAA to consider whether recent changes in State law create conflicts or inconsistencies with federal Coastal Zone Management requirements overseen by NOAA. Specifically, the assessment notes that:

“Two significant changes have occurred recently in New Jersey’s ability to address the planning for and siting of aquaculture facilities. These are changes regarding the New Jersey Aquaculture Development Act and changes involving permitting as it pertains to aquaculture. These are discussed below.

Updates and Changes Regarding the New Jersey Aquaculture Development Act
In 1997, the New Jersey Legislature adopted Title 4, Chapter 27 “The New Jersey
Aquaculture Development Act.”

We are particularly concerned with potential ecological, water quality, fisheries, and user conflicts associated with Department of Agriculture oversight and the stated objectives to reduce the regulatory burden on industry. We believe this issue should be a higher priority as well.

See relevant sections of the COC Report for supplemental comments.

We appreciate the opportunity to submit these comments and look forward to the Department’s favorable consideration of our concerns.

Sincerely,

Sarah Chasis
NRDC

Benson Chiles
Coastal Ocean Coalition
Environmental Defense

Dena Mottola
NJ PIRG

Michael Pisauro
NJ Environmental Lobby

Dave Pringle
NJ Environmental Federation

Joe Reynolds
Bayshore Regional Watershed Association

Jeff Tittel
Sierra Club, NJ Chapter

John Weber
Surfrider

Bill Wolfe
NJ PEER

