

## NEW JERSEY<sup>1</sup>

### *State Authority for Marine Protection*

#### Summary of State Authorities

New Jersey has a system of Natural Areas, which include areas either owned by the State or held via conservation easements. Some existing Natural Areas include coastal, tidal, and marine areas. State agencies develop a management plan for each Natural Area that specifies permitted and prohibited activities. Other statutes related to marine protection include designation of marine fisheries management areas and laws requiring a permitting process for certain activities in coastal areas.

	Natural Areas System Act	Marine Fisheries Management & Commercial Fisheries Act	Coastal Area Facility Review Act
Legal requirement	Allows designation of Natural Areas for preservation of sensitive species or natural features	Regulation of fisheries; authorizes designation of fisheries management areas	Permitting process for activities in coastal area
Citation <sup>2</sup>	N.J.S.A. §§ 13:1B-15.12a, et seq. (1961, 1975); Regulations in N.J. Admin. Code 7:5A	N.J.S.A. §§ 23:2B-1, et seq. (1979)	N.J.S.A. § 13:19-1, et seq. (1973); Regulations in N.J.A.C. 7:7, 7:7E
Designation authority	Department of Environmental Protection (DEP), based on recommendation of Natural Areas Council	DEP; Marine Fisheries Council	Defined by statute
Management & enforcement authority	DEP Div. of Parks & Forestry or Div. of Fish & Wildlife	DEP; Marine Fisheries Council	DEP Division of Land Use Regulation
Jurisdiction & boundaries	Area owned or held as conservation easement by the State	All salt waters of the State	Coastal waters & land as defined by statute
Prohibited uses	To be defined in a management plan; regulations provide a list of default prohibitions, including prohibition of public use that will “impair natural features”	May prohibit or limit fishing gear types; fish species, size, and quantity; open/closed seasons; etc. May set area-specific standards in “fisheries management areas”	Prohibited activities depend on classification of coastal area
Permitted uses	To be defined in management plan; default rules allow research activities and fishing	Fishing consistent with regulations and other regional/federal fisheries mgmt programs	Certain activities in coastal areas require a permit

<sup>1</sup> This state chapter is part of a 23-state assessment of state and local authority for marine protection. It should be read in conjunction with the Executive Summary, Introduction and Methodology Chapters in order to fully understand the scope and approach. Other chapters are available at [www.eli-ocean.org/mpa](http://www.eli-ocean.org/mpa).

<sup>2</sup> The citation date provided is the earliest date of enactment and does not reflect subsequent amendments unless otherwise noted. The enactment date is meant to inform the reader of how long the protection authority has existed.

### Natural Areas System Act

“Natural Areas” are areas in New Jersey that contain habitat for rare plant or animal species, or other natural features, and are designated for special management and protection.<sup>3</sup> To be designated as a Natural Area, a site must either be owned by the State or held by the State as a conservation easement.

The “Natural Areas” designation exists within the New Jersey State Parks System.<sup>4</sup> The Natural Areas system was originally created by the Natural Areas System Act of 1961 (the current statute dates to 1975) and is managed by DEP.<sup>5</sup> The Act lists criteria for including areas within the Natural Areas system: the area must be free from permanent human impacts or human impacts that are “seriously destructive of the area’s potential for developing natural values,” “obviously apparent to the casual observer,” or such that the “lessening of human impact will [not] allow the land or water to recover natural values of interest.”<sup>6</sup>

Most of the Natural Areas created under the statute are land-based, but the regulations specifically include State-owned “water” within the definition of potential Natural Area sites. Some marine site examples include the following, which cover tidal salt marsh areas:

- Cape May Wetlands Natural Area
- Great Bay Natural Area
- Island Beach (Northern & Southern) Natural Areas
- North Brigantine Natural Area
- Swan Point Natural Area<sup>7</sup>

The Natural Areas system is managed by the DEP and the Natural Areas Council, a seven-member body composed of the Office of Natural Lands Management (ONLM) Administrator and six members appointed by the Governor. Because the State must have an ownership interest in Natural Areas prior to designation, the areas are managed by an “administering agency” within the State, most commonly DEP’s Division of Parks and Forestry or Division of Fish and Wildlife.<sup>8</sup>

#### *Management Plan*

For each Natural Area, the DEP, along with the administering agency, creates a management plan, which is the key foundation for conservation and preservation of the Natural Area.<sup>9</sup> Regulations establish the minimum standards for Natural Area management plans. These plans must include: a description of physical features and biodiversity in the area; a description of existing uses and activities; management practices for preservation of the area; analysis of public uses, including research, public observation, and studies, and recreational activities; and other required components.<sup>10</sup> Management plans are subject to review by the Natural Areas Council and approval by the DEP Commissioner.<sup>11</sup>

<sup>3</sup> See N.J. Admin. Code § 7:5A-1.3.

<sup>4</sup> Natural Areas System Act, N.J. Stat. Ann. § 13:1B15.12a1, et seq.

<sup>5</sup> *Id.* § 13:1B-15.12a3; see also Div. of Parks & Forestry, *Natural Areas Program*, <http://www.state.nj.us/dep/parksandforests/natural/natareas.html> (accessed 4/11/13).

<sup>6</sup> *Id.* § 15.12a1.

<sup>7</sup> The full list of Natural Areas is in N.J. Admin. Code § 7:5A-1.13.

<sup>8</sup> See *id.* § 7:5A-1.3.

<sup>9</sup> See *id.* § 7:5A-1.8.

<sup>10</sup> See *id.* § 7:5A-1.8(d).

<sup>11</sup> See *id.* § 7:5A-1.8(f)-(h).

Each management plan establishes permitted and prohibited human activities within each Natural Area. Regulations provide an extensive list of default permitted and prohibited activities, including a general requirement that public use of the areas be allowed “only to the extent and in a manner that will not impair natural features” of the area.<sup>12</sup> The management plan may restrict public access to the area as needed in order to protect the area. Default rules permit fishing in accordance with other state laws. These default rules apply unless added to or altered by the approved management plan.

*Designation Process (see Figure 1):*

Designation of Natural Areas requires two major steps. First, a site must be listed in a “Register of Natural Areas” maintained by the Division of Parks and Forestry that lists *potential* sites for designation as Natural Areas.<sup>13</sup> Listing in the register does not itself impose any regulatory authority or change the legal status of a site.<sup>14</sup>

Once a site is listed in the Register, if it is owned or held by the State in conservation easement, it may be designated as a Natural Area. The process is described below and in Figure 1.

The first step in the registry process is making a suggestion for study. Any individual or organization may submit a “Register site summary” to DEP or the Natural Areas Council, to be kept on file by the DEP Division of Parks and Forestry.<sup>15</sup> The Register site summary must include a map showing the boundaries of the suggested site and information on the suitability of the area for designation as a Natural Area.<sup>16</sup> A proposed site must include “rare species habitat” or “at least one ecological community,” which the regulations define broadly as “an interacting assemblage of plants, animals and other organisms, their physical environment and the natural processes that affect them.”<sup>17</sup> The regulations define “rare species” as any plant or animal species listed, proposed, or included as a candidate under the federal Endangered Species Act or under state law.<sup>18</sup>

After the site summary has been submitted, the Council reviews the summary. The Council must submit a recommendation for listing to the DEP Commissioner, who must then approve the listing of the site on the Register.<sup>19</sup>

Once a site is listed on the Register, in the second step, the DEP Commissioner or a majority of the Council may request DEP to prepare a study of the site for Natural Area designation. The study includes analysis of the quality, biodiversity, and uniqueness of the area, as well as other factors.<sup>20</sup>

Following the study, the Council may recommend designation of the site as a Natural Area to the DEP. Such a recommendation must include: (1) a management objective; (2) a summary of the specific characteristics that qualify the site as a Natural Area, as well as management practices that would be needed to preserve those characteristics; and (3) an interim classification of the site as either an

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<sup>12</sup> See *id.* § 7:5A-1.9(e).

<sup>13</sup> *Id.* 7:5A-1.4(a).

<sup>14</sup> *Id.* 7:5A-1.4(b).

<sup>15</sup> *Id.* 7:5A-1.4(c). A Register site summary may also be submitted to the Council by the Office of Natural Lands Management (ONLM).

<sup>16</sup> *Id.* 7:5A-1.3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* 7:5A-1.4(d).

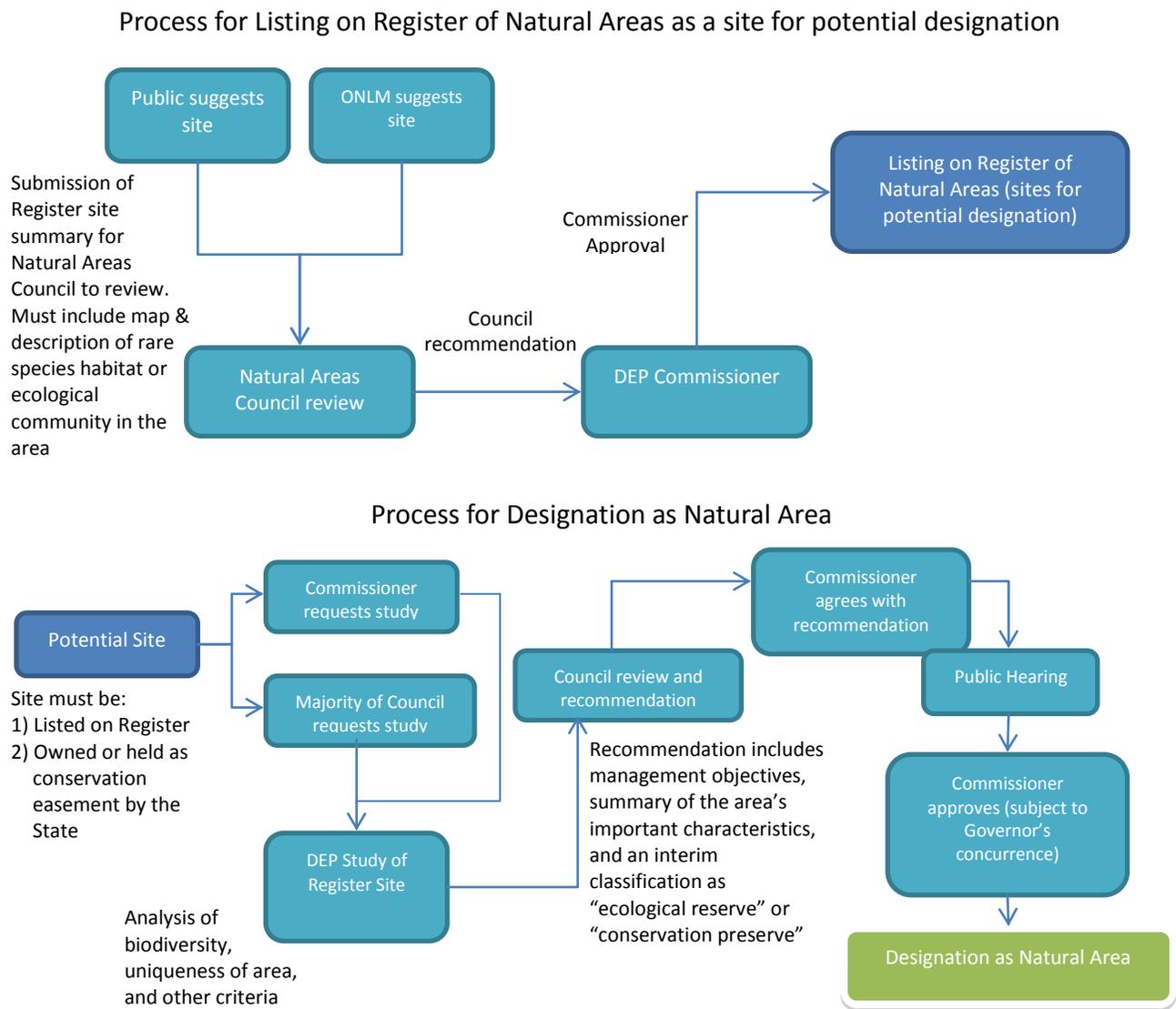
<sup>20</sup> *Id.* 7:5A-1.6(b).

“ecological reserve” with little or no habitat manipulation permitted or a “conservation preserve” that allows for more active habitat manipulation to preserve a particular species or ecosystem.<sup>21</sup>

The site designation is then subject to a public hearing if the DEP Commissioner agrees with the Council’s recommendation for designation.<sup>22</sup>

After the hearing, the DEP Commissioner may approve the designation as a Natural Area (subject to the concurrence of the Governor), or may make changes to the designation in consultation with the Council or request the Council to reconsider its recommendation.<sup>23</sup>

**Figure 1: Natural Area Designation Process**



<sup>21</sup> *Id.* 7:5A-1.6(c), -1.7.

<sup>22</sup> *Id.* 7:5A-1.6(d).

<sup>23</sup> *Id.* 7:5A-1.6(e).

### Marine Fisheries Management and Commercial Fisheries Act

Under the Marine Fisheries Management and Commercial Fisheries Act,<sup>24</sup> The DEP Commissioner has authority to develop and implement fisheries management programs, including species-related management plans.<sup>25</sup> This authority applies to all salt waters of the State, including the Atlantic Ocean, bays, inlets, and estuaries below the mouth of freshwater rivers.<sup>26</sup>

These programs are to be coordinated with Federal, Federal-State, regional, and interstate fisheries management programs.<sup>27</sup> The Commissioner, subject to the veto power of the Marine Fisheries Council described below, has authority to promulgate rules and regulations for carrying out these management plans.<sup>28</sup> Regulations may include, for example, prohibition or restrictions on fishing gear; fish species, size, and quantity; and open/closed seasons.<sup>29</sup> These regulations may be area-specific through the establishment of “fisheries management areas.”<sup>30</sup>

The Marine Fisheries Council (an eleven-member body, nine of whom are appointed by Governor) has authority to contribute to preparation and revision of fisheries management plans, and has authority to veto rules or regulations proposed by the Commissioner.<sup>31</sup> There is an exception (no veto authority) for “emergency” rules, which are temporary unless extended by the Legislature.<sup>32</sup>

The Act mandates special training for enforcement of marine management statutes.<sup>33</sup> It also creates a general civil penalty (a monetary fine) for violations of the Act or related regulations and authorizes the Commissioner to set penalties for specific violations of statutory provisions or regulations.<sup>34</sup>

The Act specifically notes that the Commissioner may not use authority under this particular law to regulate shellfish species; those are regulated separately under Title 50.<sup>35</sup>

Marine fisheries management in New Jersey under this statute is focused on preventing overfishing, with the goal of conserving fisheries and habitats “to promote their continued productivity.”<sup>36</sup> The goal of conservation is essentially maintaining optimal yield, rather than habitat protection *per se*.

### Coastal Area Facilities Review Act (and related statutes)

New Jersey’s Coastal Management Program is a system of laws requiring a permit and review process for certain activities in the coastal area. New Jersey law refers to the “coastal area” in the State as including “bays, harbors, sounds, wetlands, inlets, the tidal portions of fresh, saline or partially saline streams and tributaries and their adjoining upland fastland drainage area nets, channels, estuaries,

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<sup>24</sup> N.J.S.A. § 23:2B-1, et seq.

<sup>25</sup> *Id.* § 23:2B-7.

<sup>26</sup> *Id.* § 23:2B-3(g).

<sup>27</sup> *Id.* § 23:2B-6.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* § 23:2B-5.

<sup>32</sup> See N.J. Admin. Proc. Act § 4(c) [N.J. Stat. Ann. § 52:14B-4(c)] (temporary rules valid only for up to 60 days unless extended by Legislature).

<sup>33</sup> N.J. Stat. Ann. § 23:2B-12.

<sup>34</sup> *Id.* § 23:2B-14.

<sup>35</sup> See *id.* § 23:2B-6.

<sup>36</sup> *Id.* § 23:2B-2(b).

barrier beaches, near shore waters and intertidal areas.”<sup>37</sup> Specific borders of the coastal area, including both water and land, are provided in the Coastal Area Facility Review Act (CAFRA).<sup>38</sup>

The laws involved in the permitting process include CAFRA,<sup>39</sup> which was enacted in 1973 and amended in 1993, as well as the Wetlands Act of 1970,<sup>40</sup> the Waterfront Development Law,<sup>41</sup> and portions of the federal Clean Water Act and Coastal Zone Management Act.

In particular, CAFRA requires a permit for development on beaches or dunes and some developments within the “coastal area” defined by the law, depending on the distance from the beach or dunes, size of the development, and whether other developments exist between a proposed site and the beach or dunes.<sup>42</sup> Permit applications under CARFA must include an environmental impact statement, which is evaluated by the Commissioner of Environmental Protection.<sup>43</sup> Permits may only be granted when the Commission determines that the development will be in keeping with the purpose of the act, and when a number of conditions are met, including, among others, a finding that the development will cause “minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region.”<sup>44</sup>

Regulations in the New Jersey Administrative Code, Chapters 7-7 and 7-7E, provide much more detailed information on the requirements and processes for coastal development permits.

Within the category of coastal area, specific management rules apply to particularly valuable or sensitive “Special Areas.”<sup>45</sup> Special Water Areas are a category of Special Areas and include, for example, shellfish habitat, surf clam areas, prime fishing areas, as well as areas that are sensitive for non-conservation reasons, such as navigation channels, canals, ports, and submerged infrastructure routes.<sup>46</sup> Detailed lists of prohibited and permitted activities in each type of Special Area are provided in the regulations. Specific rules also apply for activities or development in the Hackensack Meadowlands District.<sup>47</sup> In addition to other regulations, coastal activities that would adversely impact marine fisheries in coastal waters are “discouraged,” although construction of submerged infrastructure is generally permitted, as is removal of material for beach nourishment, provided there are no alternative sites for doing so that would be less damaging to fisheries.<sup>48</sup>

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<sup>37</sup> *Id.* § 13:19-2.

<sup>38</sup> *Id.* § 13:19-4.

<sup>39</sup> *Id.* § 13:19-1, et seq.

<sup>40</sup> *Id.* § 13:9A-1 et seq.

<sup>41</sup> *Id.* § 12:5-3.

<sup>42</sup> *Id.* § 13:19-5.

<sup>43</sup> *Id.* § 13:19-6, -10.

<sup>44</sup> *Id.* § 13:19-10(e).

<sup>45</sup> N.J. Admin. Code § 7:7E-3.1(a).

<sup>46</sup> N.J.A.C. § 7:7E-3.2 to -3.15.

<sup>47</sup> N.J.A.C. § 7:7E-3.45.

<sup>48</sup> N.J.A.C. § 7:7E-8.2.

*Evaluation of State Authorities<sup>49</sup>*

FACTORS	Natural Areas System Act	Marine Fisheries Management & Commercial Fisheries Act	Coastal Area Facility Review Act
<b>Legal Regime</b>	Regulatory ★★★★★	Regulatory ★★★★★	Planning ★★★★★
<b>Ocean Jurisdiction</b>	All area owned by State or held in conservation easement; could apply to all marine waters	All marine waters ★★★★★	Coastal water and land; defined by statute ★
<b>Durability</b>	Permanent ★★★★★	Indeterminate ★★	Indeterminate ★★
<b>Consistency</b>	Year-round ★★★★★	Seasonal ★★	Year-round ★★★★★
<b>Habitat</b>	Goal = protect representative habitats ★★★★★	Byproduct = habitat protection ★★	Goal = habitat protection ★★★★★
<b>Sector</b>	Authorize multi-sector ★★★★★	Authorize single-sector ★	Managed
<b>Enforcement</b>	Protected-area-specific enforcement with civil penalties; enforced along with state parks ★★★★★	Specific enforcement with civil or administrative penalties for violation of act or related regulations ★★★★★	Specific civil penalties for violation ★★★★★
<b>Extent (Scope)</b>	Multi-site with expansion possible ★★★★★	Multi-site with expansion possible ★★★★★	Multi-site ★★
<b>Process for designation or expansion</b>	Specific public process (can suggest sites for registry, but cannot petition for designation itself) ★★★★★	No MPA-specific public process ★★	No MPA-specific public process ★★

Overall, the Natural Areas System can provide the broadest legal protection of marine areas. Permitted and prohibited activities may vary according to regulations for a specific Natural Areas, but unlike other statutes in the state, the System allows for multi-sector protection in specific areas and has a well-defined (though indirect) process for advocating for expansion. Although the system is not limited to or specifically designed for marine areas, some natural areas do include marine sites; further, the applicability of the program to all area owned by the State (or managed through conservation easement) would allow for expansion in marine areas under the State’s jurisdiction.

*Local Authority for Marine Protection*

**Summary of Local Authorities**

Pursuant to New Jersey statutes, counties in the state have jurisdiction over state waters in the Atlantic Ocean; county boundaries extend 3 nautical miles from the ocean shoreline. Some of these counties have programs for acquiring and maintaining property as open space; however, these programs do not appear to have been used nor specifically designed for place-based protection in marine environments.

Pursuant to New Jersey statutes, counties in the state have jurisdiction over state waters in the Atlantic Ocean; county boundaries extend out 3 nautical miles from the ocean shoreline.<sup>50</sup> However, there does

<sup>49</sup> For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.

<sup>50</sup> N.J. Stat. Ann. § 40A:13-2.

not appear to be any statewide program to organize or promote county efforts to designate marine areas for special protection.

New Jersey's marine areas include four main ones along the Atlantic Coast: Monmouth, Ocean, Atlantic, and Cape May (Cumberland and Salem in the southern part of the state extend into Delaware Bay, while Middlesex borders Raritan Bay near Staten Island, New York. Each of the four counties has a department or board responsible for planning and land use regulation in the county.

Atlantic County has an Open Space Trust Fund, which is managed by an Office of Land Acquisition that is authorized to acquire land and water areas for regional parks.<sup>51</sup> Similarly, Ocean County has a Natural Lands Trust Fund Program; however, this program does not currently appear to include marine areas within the county's jurisdiction.<sup>52</sup>

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<sup>51</sup> See Atlantic County, New Jersey, Planning & Infrastructure, *Land Acquisition*, <http://www.aclink.org/Planning/MainPages/LandAcq.asp> (accessed June 7, 2013).

<sup>52</sup> See Ocean County Dept. of Planning, *Ocean County Natural Lands Trust Fund Program*, <http://www.planning.co.ocean.nj.us/natlands.htm> (accessed June 7, 2013).