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Institutional Structure of the New Jersey Coastal Zone Management Program

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

Institutional Structure of the New Jersey Coastal Zone Management Program

Scheduled for May 7, 2003

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

The federal Coastal Zone Management Act of 1972 (CZMA), since amended, was established to help states and territories to develop and implement comprehensive coastal management programs formed around “enforceable policies”— the establishment of guiding principles and policies that are supported by a regulatory program. These enforceable policies also drive planning, funding, and outreach efforts by a state’s program.

The Congress designed the CZMA:

1. To preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations;
2. To encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development.
3. To encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes, and improved predictability in governmental decision-making;
4. To encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this title;
5. To encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and
6. To respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging States to consider such issues as ocean uses potentially affecting the coastal zone.

The CZMA then, encourages states to establish coordinated coastal management programs. As an incentive, if the state’s coastal management program is approved by the National Oceanic and Atmospheric Administration (NOAA), through its Office of Ocean and Coastal Resource

Management, the state will receive funding for implementation and improvements as well as the authority to review federal actions in or affecting the state's coastal zone to ensure that such actions are consistent with the state coastal management plan (federal consistency review).

States are allowed to define the nature of their program within certain limits. Section 306 of the CZMA and supporting regulations offer three different structural options:

- Option A allows states to establish criteria and standards for local implementation subject to state administrative review and enforcement compliance. In practice, under this option the state establishes goals and standards to be implemented and enforced at the municipal level through planning, zoning, and other local ordinances with oversight by the state coastal management agency.
- Option B allows states to rely on direct state land and water use planning and regulation, either through comprehensive legislation or by networking a number of different state statutes that covered various coastal uses or resources.
- States are also offered the option to employ a combination of A and B.

An "Option B" program can be centralized with all state coastal activities administered within one agency or it can be networked through the use of existing agencies, statutes/regulations, and programs. The networked model is generally coordinated through one central coastal management office.

Subsequent to initial acceptance, states have the ability to change their coastal management program with the approval of the federal Office of Ocean and Coastal Resource Protection (OCRM) within NOAA.

Working under these policies, New Jersey developed a State Coastal Management Program based on Option B that was formally accepted by the National Oceanic and Atmospheric Administration (NOAA) in 1978. The Coastal Program established Eight Basic Coastal Policies to be implemented by what the state identified as its Principal Implementation Programs:

- The Waterfront Development Act
- The Coastal Area Facility Review Act (CAFRA)
- The Wetlands Act of 1970
- The state's Tidelands statutes
- The Hackensack Meadowlands Reclamation and Development Act
- Regulation and Planning of Energy Facilities
- The Green Acres Program
- The Shore Protection Program

Some of these programs, *e.g.*, the Hackensack Meadowlands District or the Regulation of Energy Facilities, did not lie within the direct purview of the Division of Coastal Resources but Memoranda of Understanding were developed to ensure that the Basic Coastal Zone Management Program Policies would be incorporated into these programs also.

Another series of programs and permits was described as being, "useful in implementing particular coastal policies. They were legally bound to be consistent with the Coastal Zone Management rules. This remains true today. The following programs were listed in the 1980 Coastal Management Program document:

- The Water Quality Program
- NPDES permits
- Area-wide Water Quality Management (208) Plans
- Wastewater Treatment Facilities
- Stream Encroachments and Flood Hazards
- Wild and Scenic Rivers
- The Delaware and Raritan Canal State Park Act
- Pinelands Protection

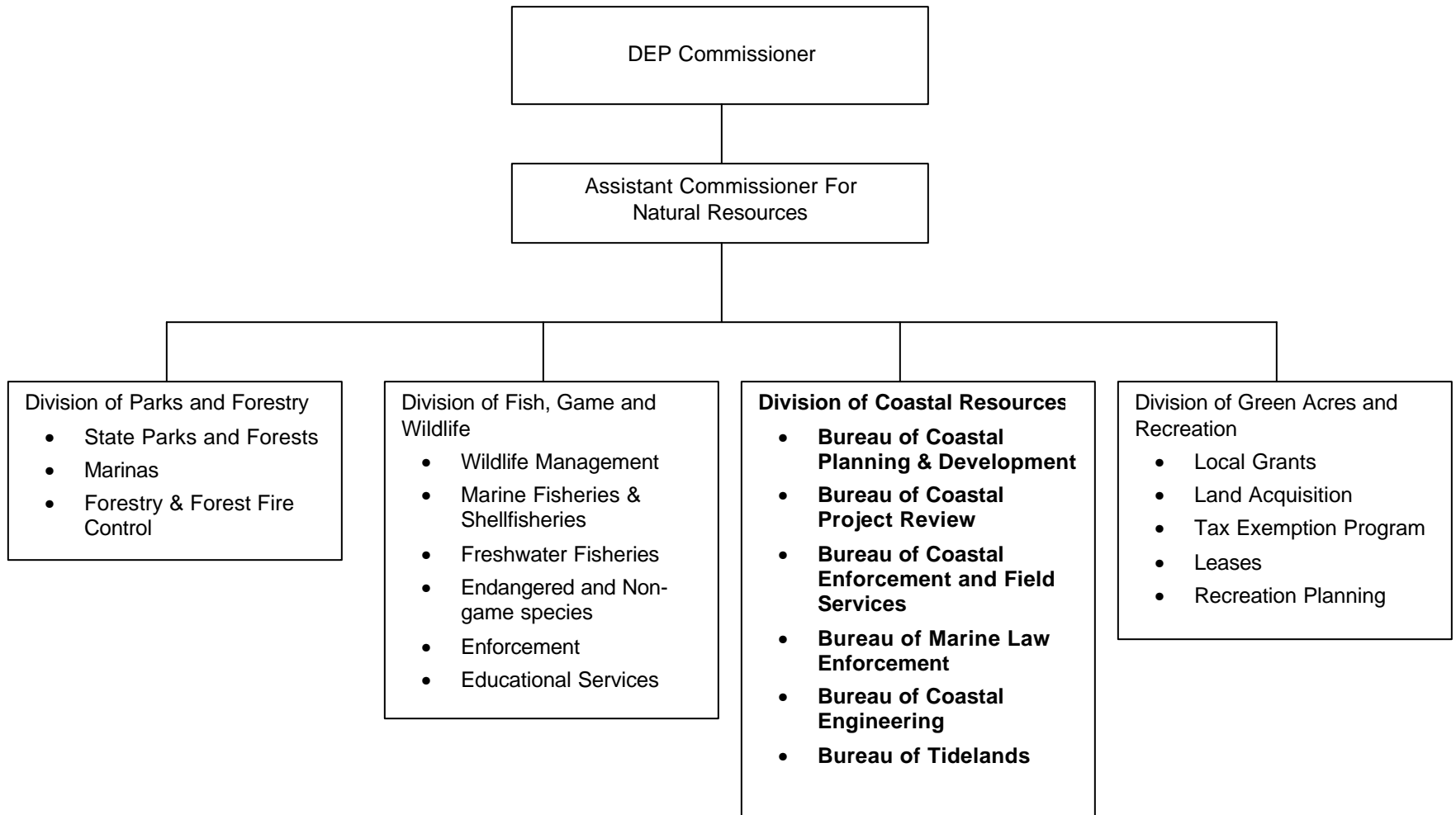
- Regulation of State Owned Land
- Air Quality Programs
- Solid Waste
- The New York/New Jersey Harbor Clean-up.

Per section 307 (f) of the federal CZMA, state laws implementing the Federal Air and Water Pollution Control Laws, e.g., the New Jersey Pollution Discharge Elimination System (NJPDES) and the Water Quality Certification Program, were automatically incorporated into the state's coastal management program upon assumption of these programs.

To implement the state's coastal management program, a Division of Coastal Resources was established within the Department of Environmental Protection. As shown on Diagram #1, the Division included the following elements:

- Bureau of Coastal Planning and Development,
- Bureau of Coastal Project Review,
- Bureau of Coastal Enforcement and Field Services,
- Bureau of Marine Law Enforcement,
- Bureau of Coastal Engineering, and
- Bureau of Tidelands.

The Organization of the Division of Coastal Resources in 1980



The Division Director reported to an Assistant Commissioner for Natural Resources. There were several advantages to the Coastal Management Program structured in that manner including:

- A highly visible program at a relatively high level in the organizational structure ensuring that there was a clear organizational path to the Commissioner on policy matters and that other elements of DEP and state government, county and municipal government, non-governmental organizations, and the general public could identify and communicate with the program
- A coherent, balanced program linking policy/planning, regulatory decisions, and enforcement within one agency. This allowed coordination between the “big picture” planning aspects and the case by-case, “on-the-ground” elements of regulatory decisions and enforcement.
- A central point of contact within state government on coastal issues

The Division implemented the principal regulatory programs supporting the coastal management program: CAFRA, the Waterfront Development Act, the Coastal Wetlands Act, and the Tidelands Management Program. (The Tidelands Management Council made decisions on the granting, leasing, or licensing of state-owned tidelands but the DEP Commissioner and the Director of the Division of Coastal Resources could veto Council actions inconsistent with state policy. In addition, the Division served as staff to the Council.)

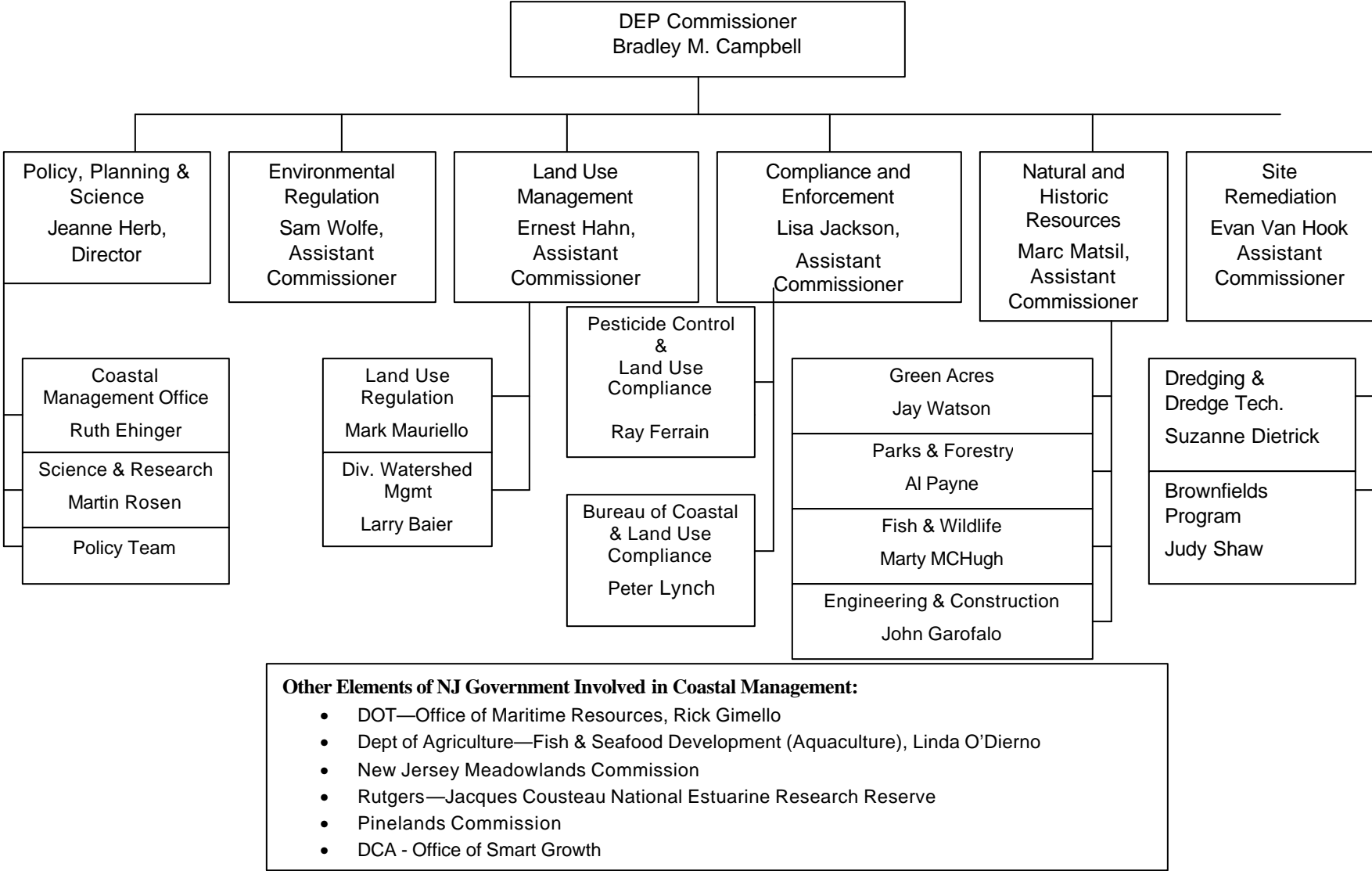
Memoranda of Understanding were established with the Department of Energy and the Meadowlands Development Commission to incorporate the Coastal Zone Management Program Policies into their programs to the extent possible. Implementation of the coastal policies in the Hackensack Meadowlands District was to be done jointly by DEP and the Hackensack Meadowlands Development Commission “with the Commission’s plan guiding both agencies in their decisions.”

There was further recognition of the links between the resources and management of the New Jersey Pinelands and the bays and estuaries of the coastal zone. Consequently the coastal program established a policy that “coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978...creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979.” This was further codified in a Memorandum of Understanding was established between the Pinelands Commission and the Coastal Management Program.

In the 1990s, DEP reorganized itself along functional lines rather than by resource. This fragmented the elements of the Division of Coastal Resources into several groups, reporting through separate Directors and Assistant Commissioners. Permitting functions are now in the Land Use Regulation Program under an Assistant Commissioner for Land Use Management—the Coastal Non-point program (§ 6217) and the National Estuary Programs are located within the Division of Watershed Management under the same Assistant Commissioner. Enforcement is within the Bureau of Coastal and Land Use Compliance under a Director of Pesticide Control and Land Use Compliance, Policy and planning aspects are located in the Coastal Management Office under a Director of Policy, Planning and Science. Coastal engineering functions are within the Office of Engineering and Construction under an Assistant Commissioner for Natural and Historic Resources.

The current structure is shown in Diagram #2.

Elements of Current NJ DEP Involved in Coastal Management Activities



The Coastal Management Office became the administrative arm of the program—applying for federal funding grants and preparing progress reports while retaining responsibility for local coastal grants program, coastal enhancement projects and assessments. By 2001 the program had devolved into 1 1/2 staff positions. (Recently there has been an increase in staffing levels of the Coastal Management Office.) Approximately 75% of the base federal grant was and continues to be utilized to fund staff and activities of the Land Use Regulatory Program and Coastal Enforcement. By and large, coastal management in the state was defined through regulatory action (CAFRA, Waterfront Development Act, Coastal Wetlands Act) and no longer as a comprehensive program.

Following the dissolution of the Division of Coastal Resources, the following elements of Coastal Management received less attention from the program:

- the preparation of special area management plans;
- encouraging participation and cooperation of the public, state and local governments, interstate and other regional agencies, and federal agencies having programs affecting the coastal zone;
- collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support state and federal regulation of land use practices affecting the coastal and ocean resources of the United States; and
- the ability to respond to changing circumstances affecting the coastal environment and coastal resource management.

With the dissolution of the Division of Coastal Resources, the New Jersey Coastal Management Program became a *de facto* networked program—but without the appropriate institutional structure to be effective. Other programs are involved in coastal management-related activities (*e.g.*, Office of Smart Growth, the Department of Transportation’s Office of Maritime Resources, the Jacques Cousteau National Estuarine Research Reserve, and the National Estuary Programs) but not necessarily as part of a coordinated state program

A 1988 paper by Stephen M. Born and Allen H. Miller published in the journal “Coastal Management” (1988, v16: 229–243) defines “truly networked coastal programs” as having the following attributes:

- i. The program emphasizes making existing authorities work better and in a more coordinated way.
- ii. The designated “lead agency” has broad policy formulation and coordination responsibilities and a horizontal orientation (*i.e.*, is concerned with cross-cutting issues and functions, in contrast to a vertically-oriented line agency organized around a comparatively narrow mission).
- iii. The “lead agency” tends to be an Executive Department staff agency vs. an operating agency.
- iv. The “lead agency” relies significantly on other state agencies and/or local governments, *i.e.*, program management is dispersed, especially regarding regulatory powers, and there is no unified program administration.

Born and Miller found that, to be successful, networked programs needed to include the following components:

- i. A coastal program office that provides a focus for the state’s activities; acts as a single point of contact for federal, state, and local interactions; and administers funding activities related to coastal management—particularly the federal funding made available through NOAA. The program and the program office may be established through legislation.
- ii. Coordination with other agencies and levels of government. Interagency linkages are often codified by MOA/MOU or Executive Orders. Links with municipal government may take the form of development of local coastal plans consistent with the state plan.

- iii. Technical Assistance to other governmental agencies and non-government organizations. This may be case-specific or in the development of new policy or regulations
- iv. Financial Assistance to other governmental agencies at the state or municipal level or to non-governmental organizations
- v. Policy development related to refinements of existing policies and/or regulatory regimes or in response to new, emerging issues. Often the resulting policies/regulations are implemented by agencies other than the coastal program office
- vi. Public outreach as a means of transmitting information to the public at large as a means of improving voluntary compliance with good coastal management practices.

A review of the New Jersey Coastal Zone Management program indicates that it incorporates few of the principles listed above. While the state is implementing many worthwhile programs related to coastal management, the system appears fragmented and seems to operate with little coordination. The New Jersey Coastal Management Program has become almost entirely regulatory-based with few truly “networked” aspects.

The findings of Born and Miller are reflected in many other state programs. Four principal techniques show-up in successful programs:

- i. Institutional placement under direct authority of a high-ranking office (*e.g.*, State Planner, Secretary of Environmental Affairs, Secretary of State).
- ii. Memoranda of Agreement/Understanding negotiated between agencies by which the state’s coastal management policies are adopted into the operations of entities outside the coastal program office.
- iii. The ability to bring something of value to the networking process (*e.g.*, funds, technical assistance, contacts with parties important to the process, ability to represent the Commissioner).
- iv. Suitable interagency “personality” (*e.g.*, being able to become part of the process without offending or threatening other parties).

In New York the Coastal Program is in the Office of the Secretary of State; in Massachusetts, in the Executive Office of Environmental Affairs; in Maine and New Hampshire, the Office of State Planning. Delaware’s Program is within a division of the Department of Natural Resources and Environmental Control. In each of these states, regulatory programs are located in another agency and in most cases in another Department. Separation of the regulatory process from policy development/planning and technical assistance is seen by many states as a good thing. It is sometimes difficult for a regulatory agency, faced with the possibility of having to render a decision on a particular proposal to offer technical assistance on its design and regulatory agencies sometimes have difficulty in the realm of policy generation—sometimes they “can’t see the forest for the trees.”

Florida’s program somewhat parallels the experience in New Jersey. The Florida Coastal Program was originally in the Office of the Secretary of the Environment but gradually moved lower in the administrative structure. It is now housed in the Department of Community Affairs but legislation has been proposed to move it to the Department of Environmental Protection. In either location, the program focuses on development of policy and planning that is designed to balance resource protection with development and sustained use of resources.

The current effort for evaluation and updating of the New Jersey Coastal Zone Management Program—coupled with the increased staff levels—offers an opportunity to help shape the nature of the program. Now that it is established as a networked program, what can be done to make it function more effectively in this role?

Topics for Discussion:

- Your program was identified as an element responsible for implementing the goals of the Coastal Management Program in 1978. What does your program currently do to implement the coastal policies or coastal management?
- Is there a need for clearly articulated coastal management policies?
- Given the current institutional structure is there a way to implement the state's Coastal Management Program more effectively?
- Are there management techniques that could be utilized to improve coordination?
- How can the policies of the coastal management program be effectively implemented across the DEP and other agencies involved in coastal issues in the state?
- How can the Coastal Management Office most effectively facilitate networking within the range of the coastal management program?
- Are there additional authorities that should be incorporated into the New Jersey Coastal Management Program?