

Table B - Routine Program Change
CZM Rules
N.J.A.C. 7:7E-1.7, 1.8, 3.2, 3.6, 3.15, 3.27, 4.2, 4.10, 4.19, 4.23, 7.3, 7.4, 7.11 and 8.2
12-10-13

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
SUBCHAPTER 1. GENERAL PROVISIONS					
7:7E-1.7 Correspondence with the Department	MODIFIED: Updated Department's mailing address	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	April 16, 2013	April 16, 2013	The address to which correspondence relating to the CZM rules is updated to reflect the Department's current mailing address. The Department does not consider this change to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest. This change is included for informational purposes only.
7:7E-1.8 Definitions	ADDED: Definitions of engineered beach, engineered dune, living shoreline, non-polluting material, pumpout facility, and State Aid Agreement	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	April 16, 2013	April 16, 2013	<p>As discussed in Table A, definitions of "living shoreline," "non-polluting material," and "pumpout facility" were added. These terms are the same as those added to N.J.A.C. 7:7-1.3.</p> <p>A definition of "engineered beach" is added. This term describes either a beach that has been built in accordance with a Federally authorized beach berm design template for shore protection and/or storm damage reduction purposes, for which the Department has issued a Federal consistency determination; or a beach that has been built in accordance with a beach berm design template for shore protection and/or storm damage reduction purposes, which has been funded through the New Jersey Shore Protection Program, and for which the Department has issued a permit under the CZM rules. For the purposes of this definition, the beach berm design template is the height, width, slope, and length of the engineered beach.</p> <p>A definition of "engineered dune" is added. This term describes either a dune that has been built in accordance with a Federally authorized dune design template for shore protection and/or storm damage reduction purposes for which the Department has issued a Federal consistency determination; or a dune that has been built in accordance with a dune design template for shore protection and/or storm damage reduction purposes, which has been funded through the New Jersey Shore Protection Program and for which the Department has issued a permit under the CZM rules. For the purposes of this definition, dune design template means the height, width, slope, and length of the engineered dune.</p> <p>A definition of "State Aid Agreement" is included for purposes of N.J.A.C.</p>

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7:7E-1.8 (continued)					<p>7:7E-3.16(d) and 3.22(b)10 in the standards, respectively, for engineered dunes and beaches. A State Aid Agreement is a binding agreement between the Department and a municipality or county for the construction of a shore protection project funded through the State Shore Protection Fund. The Agreement specifies how activities receiving shore protection funding are to be conducted, and under N.J.A.C. 7:7E-3.16(d) and 3.22(b)10 an Agreement is a pre-requisite for conducting maintenance of an engineered dune or beach. For Federally funded projects, the State Aid Agreement contains the project agreement between the Department and the U.S. Army Corps of Engineers (USACE), and defines the project design template.</p> <p>This section has been revised to incorporate additional terms used in the chapter. These changes are not substantial changes to special management areas, uses subject to management, authorities and organization, or national interest as they merely define the terms used throughout the Chapter.</p>
SUBCHAPTER 3. SPECIAL AREAS					
7:7E-3.2 Shellfish habitat	<p>ADDED 3.2(h): Allows for the establishment of a living shoreline allows for the one-time replacement, reconstruction, or renovation of a legally existing bulkhead</p>	<p>N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program</p>	April 16, 2013	April 16, 2013	<p>New N.J.A.C. 7:7E-3.2(h) provides that the establishment of a living shoreline in shellfish habitat to address the loss of vegetated shorelines and habitat in the littoral zone is conditionally acceptable provided the living shoreline complies with the new living shoreline general water area rule at N.J.A.C. 7:7E-4.23. Living shoreline projects designed in accordance with the living shoreline rule at N.J.A.C. 7:7E-4.23 will enhance the overall health and ecology of the coastal waters in which they are placed thus enhancing the shellfish habitat that may exist at that location. Because a living shoreline project is a habitat protection, restoration or enhancement project that will result in a net gain of habitat functions and values, mitigation is not required. The Department does not consider this change to be a significant change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>
	<p>ADDED 3.2(i): Allows for the one-time replacement, reconstruction, or renovation of a legally existing bulkhead</p>				<p>New N.J.A.C. 7:7E-3.2(i) allows for the one-time replacement, reconstruction or renovation of a legally existing bulkhead outshore of the existing bulkhead within waters classified as prohibited for harvesting shellfish. Specifically, the replacement or reconstructed bulkhead must be constructed of a non-polluting material and must be located within 18 inches of the existing bulkhead, except where the replacement bulkhead is constructed of a corrugated material in which case it shall be located no more than 24 inches from the existing bulkhead. Non-polluting materials are required to minimize impacts to water quality. The 18 and 24 inch distances are intended to allow</p>

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7:7E-3.2 (continued)					<p>the replacement or reconstruction of an existing functioning bulkhead outshore of the existing bulkhead while minimizing the amount of substrate impacted by the bulkhead. These distances are also consistent with those of the filling rule at existing N.J.A.C. 7:7E-4.10 and the coastal engineering rule at N.J.A.C. 7:7E-7.11. The Department is allowing for the replacement or reconstruction of a bulkhead outshore of the existing bulkhead as long as the replacement or reconstructed bulkhead is made of non-polluting materials. This will encourage the elimination of polluting material in shellfish habitat and the correction or prevention of erosion. In many instances, the bulkhead being replaced will have been constructed of a treated material that is not considered to be non-polluting. Allowing the replacement or reconstruction outshore of the existing bulkhead will prevent the detrimental impact to water quality that could occur through the sloughing of soil that has been in contact with the sheathing of the existing bulkhead. The replacement or reconstruction is limited to one time only in order to limit the encroachment into shellfish habitat.</p> <p>Where the one-time replacement, reconstruction or renovation of a legally existing functioning bulkhead outshore of the existing bulkhead is allowed, N.J.A.C. 7:7E-3.2(i)3 requires that a conservation restriction be placed on the property associated with the bulkhead requiring that any future replacement bulkhead be located in the same location as the bulkhead replaced or reconstructed under this subsection. This requirement is consistent with the existing mitigation requirement at N.J.A.C. 7:7E-3.2(d)3vi(1) for impacts associated with the installation of a dock or pier at a single family dwelling. This requirement balances the need to replace existing bulkheads while preventing future encroachments within shellfish habitat. The Department does not consider this addition to be substantial changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>
	<p>MODIFIED 3.2(c):</p> <ul style="list-style-type: none"> • Clarified and expanded the exception to the prohibition at 3.2(c) to reference the activities already described in the rule and to add reference to living shorelines subject to 3.2(h); • Clarified that 				<p>Prior to this rulemaking, N.J.A.C. 7:7E-3.2(c) prohibited development that would result in the destruction, condemnation (downgrading of the shellfish growing water classification) or contamination of shellfish habitat except for a dock, pier or boat mooring constructed in accordance with N.J.A.C. 7:7E-3.2(d)3. However, N.J.A.C. 7:7-3.2(d)1 as well as other subsections in the rule also allow, under specific circumstances, certain activities that would affect shellfish habitat. Accordingly, for clarity, the exception to the prohibition at N.J.A.C. 7:7E-3.2(c) is expanded to reference the activities already described in the rule and to add reference to living shorelines, which</p>

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7:7E-3.2 (continued)	<p>construction of docks and piers and the one-time replacement/reconstruction of certain bulkheads in waters classified as prohibited are acceptable; and</p> <ul style="list-style-type: none"> Updated terminology 				<p>are governed by the standards in new N.J.A.C. 7:7-3.2(h) (described below). Further, N.J.A.C. 7:7E-3.2(c) is modified to make it clear that the construction of docks and piers and the one-time replacement or reconstruction of a legally existing functioning bulkhead outshore of the existing bulkhead when located in waters that have been classified as prohibited for the purpose of harvesting shellfish are acceptable in accordance with (d)2 and (i). At N.J.A.C. 7:7E-3.2(c)1, the term "spoils" is replaced with "dredged materials" since the latter is the term used throughout the CZM rules.</p> <p>The Department does not consider the above clarifications to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>
	<p>MODIFIED 3.2(d)3i(1): Replaced existing language with newly defined term "non-polluting material"</p>				<p>N.J.A.C. 7:7E-3.2(d)3i(1), which requires that a proposed single noncommercial dock, pier or boat mooring associated with a single family dwelling in shellfish habitat be constructed of a non-polluting material, is modified to delete reference to "other inert material" since non-polluting material as defined at N.J.A.C. 7:7E-1.8 includes inert products. This change is not a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>
	<p>MODIFIED 3.2(m): Updated to reflect provisions relating to living shorelines, one-time bulkhead replacement and to update cited statistics</p>				<p>The rule rationale is modified to update cited statistics and to include rationale concerning the establishment of living shorelines within this special area and the one-time replacement or reconstruction of a legally existing functioning bulkhead outshore of the existing bulkhead when located in waters that have been classified as prohibited for the purpose of harvesting shellfish. This change is included for informational purposes only.</p>
7:7E-3.6 Submerged vegetation habitat	<p>MODIFIED 3.6(b): Refined to allow for the establishment of a living shoreline</p>	<p>N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program</p>	April 16, 2013	April 16, 2013	<p>N.J.A.C. 7:7-3.6(b) which sets forth acceptable activities within this special area is modified to include at 3.6(b)8 the establishment of a living shoreline to address the loss of vegetated shorelines and habitat in the littoral zone. The Department has determined that the establishment of a living shoreline is environmentally beneficial and therefore conditionally acceptable within submerged vegetation habitat provided the living shoreline complies with the new living shoreline general water area rule at N.J.A.C. 7:7E-4.23 (discussed below). Some types of living shorelines may require the placement of fill within submerged vegetation habitat in order to restore habitat that has been lost or to protect existing habitat. For example, increased sedimentation from an eroding shoreline will directly affect the submerged vegetation habitat in the immediate area where the erosion is occurring and may also</p>

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7:7E-3.6 (continued)					<p>adversely affect a larger area of habitat through indirect impacts associated with the suspension of sediment in the water column. While the placement of fill to construct the living shoreline will also directly impact the submerged vegetation habitat in the immediate area, the long-term stabilization of the shoreline will protect the larger area of submerged vegetation habitat. Because a living shoreline project is a habitat protection, restoration or enhancement project that will result in a net gain of habitat functions and values, mitigation is not required.</p> <p>Based on the above, the Department has determined that the inclusion of living shorelines as an acceptable activity within submerged vegetation is not a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>
	<p>MODIFIED 3.6(e): Updated to reflect changes to rule</p>				<p>The rule rationale is modified to include information supporting the changes to the rule allowing the establishment of living shorelines within this special area. This change is included for informational purposes.</p>
7:7E-3.15 Intertidal and subtidal shallows	<p>ADDED 3.15(g): Allows for the establishment of a living shoreline</p>	<p>N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program</p>	<p>April 16, 2013</p>	<p>April 16, 2013</p>	<p>New subsection (g) allows for the establishment of a living shoreline in intertidal and subtidal shallows to address the loss of vegetated shorelines and habitat in the littoral zone, provided the living shoreline complies with N.J.A.C. 7:7E-4.23. Some types of living shorelines may require the placement of structures or fill within intertidal and subtidal shallows in order to restore habitat that has been lost or to protect existing habitat. Because intertidal and subtidal shallows include areas from the spring high tide line to a water depth of four feet mean low water, the establishment of a living shoreline will affect this special area. However, for the reasons described with regard to allowing living shorelines in submerged vegetation habitat and shellfish habitat above, the Department has determined that the establishment of living shorelines is environmentally beneficial and therefore conditionally acceptable within intertidal and subtidal shallows. The Department does not consider this change a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>
	<p>ADDED 3.15(h): Allows for the one-time replacement, reconstruction, or renovation of a legally existing bulkhead</p>				<p>New subsection (h) allows for the construction and/or replacement of a bulkhead in intertidal and subtidal shallows, provided the bulkhead complies with the filling rule and the coastal engineering rule, N.J.A.C. 7:7E-4.10 and 7.11, respectively. While this activity was allowable under the rules prior to this rulemaking, the addition of N.J.A.C. 7:7E-3.15(h) makes the acceptability</p>

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7:7E-3.15 (continued)					of this activity explicit. As provided at recodified N.J.A.C. 7:7E-3.15(i)1 and 5, mitigation is not required for impacts to the shallows where the replacement bulkhead is constructed in accordance with the filling rule at N.J.A.C. 7:7E-4.10(c) and (f)1 through 3 and the coastal engineering rule at N.J.A.C. 7:7E-7.11(d)2i or ii. The construction and/or replacement of an existing bulkhead that meets those requirements will have only minimal impacts on intertidal and subtidal shallows. Based on the above, the Department does not consider this change to be substantial changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest.
	MODIFIED 3.15(b): Added living shorelines and the construction or replacement of a bulkhead to the listing of acceptable activities				N.J.A.C. 7:7E-3.15(b) provides that development, filling, new dredging, or other disturbance is discouraged but may be permitted in accordance with subsections (c) through (f) and the general water area rules (subchapter 4). This subsection is modified to include the establishment of living shorelines and the construction or replacement of a bulkhead within this special area provided the standards of new (g) and (h) (described above) are satisfied. The Department does not consider the changes to subsection (b) to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest since these changes merely reference the new subsections.
	MODIFIED AND RECODIFIED 3.15(g): Added the establishment of living shorelines as an activity that does not required mitigation				N.J.A.C. 7:7E-3.15(i), previously N.J.A.C. 7:7E-3.15(g), requires mitigation for the destruction of intertidal and subtidal shallows, and identifies the activities for which mitigation is not required. At N.J.A.C. 7:7E-3.15(i)6, the establishment of a living shoreline is added to the list of activities for which mitigation is not required. Because a living shoreline project is a habitat protection, restoration or enhancement project that will result in a net gain of habitat functions and values, mitigation is not required. The Department does not consider this change a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.
	MODIFIED 3.15(k): Updated to reflect changes to rule concerning living shorelines				The rule rationale is modified to include language supporting the changes to the rule allowing the establishment of living shorelines within this special area. This change is included for informational purposes.
7:7E-3.16 Dunes	ADDED 3.16(d): Includes standards for maintaining engineered dunes to the dune design template	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq.	April 16, 2013	April 16, 2013	Municipalities with an engineered dune system or a wide and well developed natural beach and dune system had less damage from Superstorm Sandy than those without such protections. Accordingly, the Department is modifying the special area rule for dunes to establish standards for maintaining engineered dunes to the dune design template to protect coastal

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7:7E-3.16 (continued)		State Permitting Program			<p>communities from impacts of future storms.</p> <p>Typically, beach nourishment projects include the construction of dunes for shore protection and/or storm damage reduction purposes. These engineered dunes are designed to a specific height, width, slope, and length, in accordance with a dune design template. See the definition of “engineered dune” at N.J.A.C. 7:7E-1.8. In some instances, an engineered dune may capture sand and grow beyond the design template, in which case, maintenance of the dune to its design template may be necessary to minimize the effects that an influx of sand has on infrastructure, access, and public safety. This excess sand can then be utilized along sections of dune or upper beach berm in the areas that have eroded and no longer meet the design template. Engineered dunes are designed to provide storm damage reduction in addition to the beach berm, and are subject to the influx of wind-blown sand from the beach berm as well as erosion from wave and tidal current activity. Engineered dunes may be supplemented during periodic renourishment cycles to replenish lost material to maintain the overall design template. Maintenance activities between renourishment cycles may potentially reduce the volume of material needed when accreted sand is transferred from areas that exceed the design template in height, width, slope, or length to areas that have experienced increased erosion. However, maintenance of the engineered dune must not reduce the dune to less than the dune design template.</p> <p>New subsection (d) sets forth the standards for the maintenance of an engineered dune to the dune design template. N.J.A.C. 7:7E-3.16(d)1 requires that the applicant demonstrate that the engineered dune existing at the time of application is not consistent with the dune design template and that the proposed maintenance activities will not result in the reduction of any part of the dune to less than the dune design template. Pre- and post-construction surveys, typically every 200 feet, which are overlaid on the design template of the dune, are required. N.J.A.C. 7:7E-3.16(d)2 requires that a New Jersey licensed professional engineer must certify that alteration of the existing dune to the dune design template will not compromise the beach and dune system. These requirements are intended to ensure that the level of shore protection provided by the engineered dune will not be compromised when it is altered by the maintenance activity.</p>

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7:7E-3.16 (continued)					<p>To ensure that the activity does not interfere or conflict with any State or Federal agreements relating to the engineered dune or threatened or endangered wildlife or plant species, N.J.A.C. 7:7E-3.16(d)3 requires that the activity be conducted in accordance with the State Aid Agreement between the Department and a municipality or a county and comply with any management plan for the protection of State and Federally listed threatened and endangered species, approved by the Department's Division of Fish and Wildlife and the USFWS, that is applicable to the portion of the dune that is the subject of the application.</p> <p>N.J.A.C. 7:7E-3.16(d)4 requires that all existing public accessways be maintained.</p> <p>To ensure the stability of the altered dune, N.J.A.C. 7:7E-3.16(d)5 requires that any vegetation disturbed during the maintenance activities be restored in accordance with the dune construction planting specifications in the Federal consistency determination or Department permit for the engineered dune, as applicable.</p> <p>N.J.A.C. 7:7E-3.16(d)6 requires that the sand removed during maintenance activities remain within the shore protection project and be placed within the existing dune system or the engineered beach berm, in accordance with N.J.A.C. 7:7E-3.22(b). This provision will ensure that the sand is used for the purposes of replenishing the shore protection project.</p> <p>Based on the above, the Department has determined that the maintenance of an engineered dune to the design template is not a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>
	<p>MODIFIED 3.16(e): Updated to reflect change allowing for maintenance of engineered dunes</p>				<p>The rule rationale is modified to include a discussion on the importance of maintaining the dune design template. This change is included for informational purposes.</p>
7:7E-3.22 Beaches	<p>MODIFIED 3.22(b): Included standards at 3.22(b)10 for maintaining engineered beaches to the beach berm design template</p>	<p>N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq.</p>	April 16, 2013	April 16, 2013	<p>As noted with regard to the changes to the dune rule above, municipalities with an engineered dune system or a wide and well developed natural beach and dune system had less damage from Superstorm Sandy than those without such protections. Accordingly, the Department modified the special area rule for beaches to establish standards for maintaining engineered</p>

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7:7E-3.22 (continued)		State Permitting Program			<p>beaches to the beach design template to protect coastal communities from impacts of future storms. Many of New Jersey's beaches, especially those along the Atlantic Ocean, have been nourished through the State's Shore Protection Program. These beaches, referred to for purposes of the CZM rules as engineered beaches, are designed for shore protection and/or storm damage reduction purposes. They are designed to a specific height, width, slope, and length, in accordance with a beach berm design template. As previously discussed at N.J.A.C. 7:7E-3.16, the Department is allowing maintenance of an engineered dune to the engineered dune design template. The changes at N.J.A.C. 7:7E-3.22 are consistent with new N.J.A.C. 7:7E-3.16(d) and will allow maintenance of an engineered beach that is part of a shore protection project. Engineered beaches are subject to erosive forces of waves, winds, and tidal currents; in many instances, eroded material is moved and deposited in areas within the shore protection project in such a way that the beach grows beyond the design template and thus the beach no longer conforms to the shore protection project design. For engineered beaches to provide storm damage reduction and shore protection, the design template needs to be maintained throughout the entire project area. Municipalities are encouraged to maintain the project design, to the maximum extent feasible, between project renourishment cycles. However, maintenance of the engineered beach must not reduce any portion of the beach to less than the beach berm design template.</p> <p>N.J.A.C. 7:7E-3.22(b) prohibits development on beaches, except for development that has no prudent or feasible alternative in an area other than a beach, provided that the development will not cause significant adverse long-term impacts to the natural functioning of the beach and dune system. Engineered beaches are designed to react to wave and tidal current activity, with periodic renourishment cycles intended to replenish lost material to maintain the overall design template. Maintenance activities between renourishment cycles can potentially reduce the volume of material needed.</p> <p>New N.J.A.C. 7:7E-3.22(b)10 sets forth the standards for maintaining an engineered beach berm to its design template through the transfer of sand. Similar to N.J.A.C. 7:7E-3.16(d)1 and 2 applicable to engineered dunes, N.J.A.C. 7:7E-3.22(b)10i requires that the applicant demonstrate that the engineered beach berm as it exists at the time of application is not consistent with the design template in height, width, slope, or length and that the sand</p>

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7:7E-3.22(continued)					<p>transfer will not result in the grading of any portion of the beach below the beach berm design template. Pre- and post- construction surveys, typically every 200 feet, which are overlaid on the beach berm design template, are required to demonstrate compliance with these provisions. N.J.A.C. 7:7E-3.22(b)10ii requires that a New Jersey licensed professional engineer must certify that sand transfer to the beach berm design template will not compromise the beach system. These provisions are intended to ensure that the level of shore protection provided by the engineered beach will not be compromised when it is altered by the maintenance activity.</p> <p>For the same reasons discussed at N.J.A.C. 7:7E-3.16(d)3, N.J.A.C. 7:7E-3.22(b)10iii requires that the maintenance activities be conducted in accordance with the State Aid Agreement between the Department and a municipality or a county and comply with the management plan for the protection of State and Federally listed threatened and endangered species, approved by the Department's Division of Fish and Wildlife and the USFWS, that is applicable to the portion of the dune that is the subject of the application.</p> <p>N.J.A.C. 7:7E-3.22(b)10iv provides that the sand transfer cannot impact a dune unless the transfer complies with the dune rule at N.J.A.C. 7:7E-3.16. N.J.A.C. 7:7E-3.22(b)10 is intended to only allow the alteration of an engineered beach to the beach berm design template. In some cases, dunes may form on the engineered beach through natural processes or may be built by the municipality. Thus the maintenance activities under N.J.A.C. 7:7E-3.22(b)10 cannot impact any existing dunes unless the activity complies with the dune rule. Similar to N.J.A.C. 7:7E-3.16(d)6, N.J.A.C. 7:7E-3.22(b)10v requires that any sand transferred as part of the maintenance of the beach berm design template must remain within the area covered by the shore protection project and must be placed within the existing engineered dune in accordance with N.J.A.C. 7:7E-3.16(d). This will ensure that the sand is kept within the designed project, allowing the beach to provide the storm damage reduction and shore protection for which it was designed.</p> <p>For the reasons discussed above, the Department has determined that the changes to this special area rule are not substantial changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>

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7:7E-3.22(continued)	MODIFIED 3.22(d): Updated to reflect change allowing for maintenance of engineered beaches				The rule rationale is modified to discuss the importance of maintaining the beach berm design template when accreted sand is transferred from areas that have expanded beyond the design template to areas that have experienced increased erosion. This change is for informational purposes only.
7:7E-3.27 Wetlands	ADDED 3.27(d): Allows for the establishment of a living shoreline	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	April 16, 2013	April 16, 2013	Tidal wetlands are a major component of the coastal ecosystem that serve multiple ecosystem purposes as well as functioning as a first defense against coastal storms. Living shorelines are a means to protect, restore, or enhance this special area. Accordingly, new N.J.A.C. 7:7E-3.27(d) allows for the establishment of living shorelines within wetlands provided the living shoreline complies with the standards set forth at N.J.A.C. 7:7E-4.23. Because a living shoreline project is a habitat protection, restoration or enhancement project that will result in a net gain of habitat functions and values, mitigation is not required. An applicant seeking to protect, restore or enhance an existing habitat should not be required to provide additional compensation, which is typically only required when there is a loss of habitat under specific conditions as outlined under this chapter. The Department does not consider this change a substantial change to special management areas, uses subject to management, authorities or organization or consideration of the national interest.
	MODIFIED 3.27(j): Updated to reflect changes relating to living shorelines				The rule rationale is modified to include language supporting the changes to the rule allowing the establishment of living shorelines within this special area. This change is for informational purposes only.
SUBCHAPTER 3A. STANDARDS FOR BEACH AND DUNE ACTIVITIES					
7:7E-3A.1 Purpose and scope	ADDED 3A.1(b): Requires activities subject to this chapter to comply with any applicable management plan for the protection of State and Federally listed threatened and endangered species, approved by the Department and USFWS	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	April 16, 2013	April 16, 2013	The N.J.A.C. 7:7E-3A standards for beach and dune activities are referenced in various specific CZM rules. They are also the standards for the coastal general permit for beach and dune maintenance activities at N.J.A.C. 7:7-7.6 in the Coastal Permit Program rules. New N.J.A.C. 7:7E-3A.1(b) requires that any beach and dune maintenance activity subject to the subchapter must comply with any applicable management plan for the protection of State and Federally listed threatened and endangered species, approved by the Department and the USFWS. This provision is consistent with State and Federal requirements and will ensure that these species are protected. For example, all cost sharing agreements between the Department and a municipality for the construction of a shore protection or beach nourishment project, known as a State Aid Agreement,

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
7:7E-3A.1 (continued)					require beach management plans where these species are present. The addition of this provision is not considered to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.
7:7E-3A.2 Standards applicable to routine beach maintenance	<p>MODIFIED 3A.2(a):</p> <ul style="list-style-type: none"> Refined to require activities be conducted in a manner that does not destroy, jeopardize or adversely modify endangered or threatened wildlife or plant species habitat; Refined to require activities cannot jeopardize the continued existence of any local population of an endangered or threatened wildlife or plant species; Updated terminology; Refined standards for routine beach maintenance activities within documented habitat for threatened or endangered beach nesting shorebirds; Added standards for routine beach maintenance activities within areas documented by the Department as supporting known occurrences of threatened and endangered plant species; Added standards to allow removal of sand accumulated beneath a boardwalk; Clarified that sand removed from boardwalks, street ends and single family lots must be paled on the seaward toe of 	<p>N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program</p>	April 16, 2013	April 16, 2013	<p>N.J.A.C. 7:7E-3A.2(a)1 requires all routine beach maintenance to be conducted in a manner that does not destroy, jeopardize, or adversely modify endangered or threatened wildlife or plant species habitat; and shall not jeopardize the continued existence of any local population of an endangered or threatened wildlife or plant species. and is intended to protect Federal or State listed endangered or threatened wildlife or plant species and their habitat.</p> <p>At N.J.A.C. 7:7E-3A.2(a)3 reference to the Land Use Regulation Program is updated to Division of Land Use Regulation.</p> <p>N.J.A.C. 7:7E-3A.2(a)4 addresses routine beach maintenance activities within documented habitat for threatened or endangered beach nesting shorebirds. This subsection provides that no beach raking or other mechanical manipulation of the beach may occur in areas documented by the Department as habitat for threatened or endangered beach nesting shorebirds during specified time periods. The use of non-emergency vehicles is added to the list of prohibited activities within documented habitat. This prohibition is necessary to protect nests and unflighted Piping Plover chicks from being run over. In addition, unflighted chicks have difficulty navigating vehicle tire ruts.</p> <p>The list of examples of threatened or endangered beach nesting shorebirds whose habitat is protected by this provision is amended to update the scientific name of the least tern and to include Black Skimmers (<i>Rynchops niger</i>). Black Skimmers were placed on New Jersey's threatened and endangered species list in the early 1980's. Although historically these birds have nested in remote areas, more recently the species has demonstrated a willingness to nest on beaches that have undergone beach maintenance. Further, the time period in which beach raking, other mechanical manipulation, and the use of non-emergency vehicles are prohibited is expanded from April 1 through August 15 to March 15 through August 31. This change reflects current science and is consistent with the U.S. Fish and Wildlife Service's current recommendations for Piping Plover and with the Department's current timing restrictions for threatened or endangered beach</p>

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
7:7E-3A.2 (continued)	<p>the existing dune, or if no dune is present, the upper beach berm; and</p> <ul style="list-style-type: none"> • Added standards for winter sand management activities 				<p>nesting shorebirds. The earlier start time for the time period reflects the fact that Piping Plover begin to arrive and establish their territory around March 15. The extension of the time period into August is necessary because Least Terns and Black Skimmers nest later in the season than Piping Plovers. Additionally, Piping Plover chicks and fledges can be present and continue to be vulnerable after August 15. As a result of this timing change, as specified in N.J.A.C. 7:7E-3A.2(a)4i, the Department will be providing permittees with the updated list of areas that have been documented to contain threatened and endangered species habitat during the most recent nesting seasons prior to March 1 of each year; this information is currently provided prior to April 1 each year. N.J.A.C. 7:7E-3A.2(a)4iii is amended to add that if a beach area not identified on the updated list described above in N.J.A.C. 7:7E-3A.2(a)4i is found to contain an unflighted chick, then no beach raking is to be undertaken. This subparagraph previously only provided this protection if a nest of a threatened or endangered beach nesting shorebird was located. In addition, for the reasons previously discussed, the use of non-emergency vehicles during March 15 and August 31 is prohibited within these areas.</p> <p>New N.J.A.C. 7:7E-3A.2(a)5 addresses the protection of known occurrences of Federally listed endangered and threatened plant species, such as seabeach amaranth (<i>Amaranthus pumilus</i>), and known occurrences of State listed endangered plant species, such as sea beach knotweed (<i>Polygonum glaucum</i>).</p> <p>Similar to the restriction for threatened or endangered beach nesting shorebirds, no beach raking, other mechanical manipulation of the beach, or use of non-emergency vehicles is permitted in areas documented by the Department as supporting known occurrences of threatened and endangered plant species. These activities are not permitted to take place between May 15 and November 30. These restrictions are consistent with protections afforded to seabeach amaranth under CAFRA permits pursuant to N.J.A.C. 7:7E-3.36, endangered and threatened wildlife or plant species habitat, and by the USFWS, prior to these amendments. Similar to the provisions for threatened or endangered beach nesting shorebirds, N.J.A.C. 7:7E-3A.2(a)5 specifies that the Department will develop a list of specific areas where this restriction applies, update the list annually and provide the list to each permittee prior to May 1 of each year. If a particular beach area is not identified on the list but is subsequently found to contain an occurrence, in accordance with N.J.A.C. 7:7E-3A.2(a)5ii the Department will notify the</p>

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7:7E-3A.2 (continued)					<p>permittee and no beach raking, mechanical manipulation of the beach, or use of non-emergency vehicles will be permitted from May 15 through November 30. N.J.A.C. 7:7E-3A.2(a)5iii provides that the restrictions in N.J.A.C. 7:7E-3A.2(a)5i may be waived where the Department determines that the area identified does not support an occurrence of these species.</p> <p>New N.J.A.C. 7:7E-3A.2(a)7 addresses the excavation of sand accumulated beneath a boardwalk. Beach and dune systems are dynamic, changing from the movement of sand throughout the system by wind, waves and storms. Sand routinely accumulates under boardwalks. This sand may be part of a beach or dune depending upon whether a dune is present and the location of the dune; that is, whether the dune is located landward or waterward of the boardwalk. The accumulation of sand may in some cases result in public safety issues from the upheaving of planks. In order for excavation of sand beneath a boardwalk to be authorized, the elevation of the area after the excavation is completed must not be lower than either the upper beach berm design template for an engineered beach, or, for a non-engineered beach, lower than the elevation of the existing beach berm. The excavated sand must be relocated to the seaward toe of the dune, if one is present, or on the upper beach berm. This ensures that the sand is placed in an area where it is least likely to be affected by wind and wave action, most likely to help protect adjacent properties and public safety, and can potentially become part of the dune system. Where breaching of an existing dune is necessary to excavate sand, the area of the breach must be minimized and the breached area must be restored to pre-existing conditions, thus assuring that the dune is impacted to the least extent possible and any reduction to the functions served by the dune is short-term. Where the proposed excavation of sand from under a boardwalk would affect the landward dune slope, the dune slope must be restored to the preexisting condition and in no case can the slope be steeper than three horizontal to one vertical. Further, the landward dune slope is required to be revegetated. These standards are intended to balance public safety with protecting and maintaining the beach and dune system. Based on the Department's experience issuing such permits, the Department has determined that the excavation of sand from beneath boardwalks will have minimal adverse impacts provided the activity complies with the specified conditions.</p> <p>New N.J.A.C. 7:7E-3A.2(a)8 requires sand removed from boardwalks, street ends, and single family homes to be placed on the seaward toe of the</p>

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
7:7E-3A.2 (continued)					<p>existing dune or, if no dune is present, on the upper beach berm. This provision ensures that the sand is put back into the beach and dune system from which it came in a location that will increase the size of the dune or will become a part of the beach ecosystem. The higher the elevation of the upper beach berm, the greater the storm protection will be for the adjacent community.</p> <p>New N.J.A.C. 7:7E-3A.2(a)9 provides for the placement of temporary sand fencing during the winter months. The placement of sand fencing on an existing beach allows for the accumulation of sand during the winter months. The accumulated sand is then redistributed along the beach berm prior to the beach season. Prior to this change, this activity was performed by several communities under a CAFRA individual permit. The activities allow for the sand that accumulates each year under a boardwalk, alongside a home, or at street ends to be placed back onto the beach or dune in a manner that will assist in the maintenance of the beach and dune system, thus preserving that system's ecological and flood protection role. Based on the Department's experience, this management activity will have only minimal temporary impacts on the beach and dune system and may in fact provide additional storm protection during the winter months.</p> <p>N.J.A.C. 7:7E-3A.2(a)9i sets forth the standards for the placement of sand fencing. The sand fencing must be placed a minimum of 15 feet seaward from the seaward toe of any existing dune or structure. This provides separation of the accumulated sand and the existing dune and will also provide a buffer to any structure where no dune is present. The sand fencing cannot be installed until October 15 and must be removed before the Memorial Day weekend, unless timing restrictions for endangered or threatened wildlife or plant species apply. The sand fencing cannot be installed in a manner that prevents public access along the tidal waterway and cannot restrict public access to the beach from existing public access points. N.J.A.C. 7:7E-3A.2(a)9ii sets forth the standards for the redistribution of sand that accumulates against the sand fence. These standards are intended to ensure that the activity of redistributing accumulated sand will have a positive effect on the beach berm and that the sand is redistributed consistent with the existing beach contours. Specifically, the redistributed sand must be placed on the beach, at or above the elevation of the beach berm design template for engineered beaches or, for non-engineered beaches, at or above the elevation of the beach berm elevation existing prior</p>

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
7:7E-3A.2 (continued)					<p>to the redistribution. Further, the redistribution must not result in the grading of the beach below the beach berm design template for engineered beaches or, for non-engineered beaches, the existing beach berm elevation; and, where feasible cannot result in a beach face slope steeper than 10:1.</p> <p>Based on the above, the Department does not consider this change a substantial change to special management areas, uses subject to management, authorities or organization or consideration of the national interest.</p>
	<p>MODIFIED 3A.2(b):</p> <ul style="list-style-type: none"> • Refined to require activities be conducted in a manner that does not destroy, jeopardize or adversely modify endangered or threatened wildlife or plant species habitat; • Refined to require activities cannot jeopardize the continued existence of any local population of an endangered or threatened wildlife or plant species; • Updated terminology; • Refined standards for routine beach maintenance activities within documented habitat for threatened or endangered beach nesting shorebirds; and • Added standards for routine beach maintenance activities within areas documented by the Department as supporting known occurrences of threatened and endangered plant species 				<p>N.J.A.C. 7:7E-3A.2(b) sets forth the standards for the mechanical transfer of sand from the lower beach profile to the upper beach profile or alongshore. The term “mechanical redistribution” is replaced with “transfer.” This change makes clear that transfer of sand by any means is subject to this subsection and is consistent with the description of these activities in other paragraphs within this subsection (see, for example, N.J.A.C. 7:7E-3A.2(b)3).</p> <p>N.J.A.C. 7:7E-3A.2(b)1 (described above) contains the same language as N.J.A.C. 7:7-3A.2(a)1 for general beach maintenance activities and is intended to protect Federal or State listed endangered or threatened wildlife or plant species and their habitat.</p> <p>N.J.A.C. 7:7E-3A.2(b)3, is recodified as (b)4, and modified to clarify that the 30 day period within which fencing must be placed where a transfer is made to repair eroded dunes is intended to refer to 30 calendar days.</p> <p>N.J.A.C. 7:7E-3A.2(b)4 is recodified as (b)5 with no change in text.</p> <p>For projects involving sand transfers, the standards for protecting endangered or threatened beach nesting shorebirds at N.J.A.C. 7:7E-3A.2(b)6 are modified consistent with the changes made at N.J.A.C. 7:7E-3A.2(a)4, described above. Similarly, consistent with N.J.A.C. 7:7E-3A.2(a)5, standards for the protection of known occurrences of Federal listed threatened or endangered plant species and State listed endangered plant species are included at N.J.A.C. 7:7E-3A.2(b)7. The Department does not consider these changes to be substantial changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
7:7E-3A.3 Standards applicable to emergency post-storm beach restoration	<p>MODIFIED 3A.3(b): Refined standards for use of geotextile bags or tubes as part of an emergency post-storm recovery</p>	<p>N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program</p>	<p>April 16, 2013</p>	<p>April 16, 2013</p>	<p>N.J.A.C. 7:7E-3A.3(b) identifies beach restoration activities as part of an emergency post-storm recovery to which the standards in this section apply. Prior to this rulemaking, this section indicated that the placement of geotextile bags or tubes was preferred to the placement of concrete, rubble or other material. Geotextile bags when they first emerged on the market were thought to be the best method for stabilizing an eroded beach. Since that time, it has been the Department's experience that there are many ways to solve an emergency post-storm beach erosion problem, depending upon the extent of the damage, the urgency of the situation and the likely permanent solution. These methods include the placement of concrete, rubble, and other material, such as rock. Therefore, the indication that the use of geotextile bags is preferred to the placement of concrete, rubble and other material is deleted. The subsection is also modified to specifically recognize rock as one of the materials used in beach restoration activities. The Department does not consider the above changes substantial changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>
	<p>MODIFIED 3A.3(e): Corrected grammatical error</p>				<p>At N.J.A.C. 7:7E-3A.3(e) the word "longshore" is corrected to "alongshore" with reference to transfer of sand from one beach area to another. This change does not affect the intent of this provision and is included for informational purposes only.</p>
	<p>MODIFIED 3A.3(f):</p> <ul style="list-style-type: none"> • Refined to allow for use of suitable dredged material as fill for geo tubes; and • Refined to require geotextile bag or geotube be installed with a manufacturer's recommended scour apron 				<p>N.J.A.C. 7:7E-3A.3(f) contains the standards for the placement of sand filled geotextile bags or geotubes as part of an emergency post-storm beach restoration plan. N.J.A.C. 7:7E-3A.3(f)6, which requires the fill material be from an upland source excluding the beach and dune, is modified to allow for the use of suitable dredged material. As stated previously, the Department encourages the beneficial use of dredged material. This change supports that policy.</p> <p>A new provision, requiring that the geotextile bag or geotube be installed with a manufacturer's recommended scour apron is included at N.J.A.C. 7:7E-3A.3(f)8. The use of a scour apron will reduce the potential for undermining of the geotube or bag and will minimize the effects if such undermining occurs. The Department does not consider the above changes substantial changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
7:7E-3A.3 (continued)	<p>MODIFIED 3A.3(g):</p> <ul style="list-style-type: none"> • Refined standards for placement of sand, gravel, rubble and other inert materials as part of an emergency post-storm beach restoration plan to include rock; and • Adjusted timeframes for such materials to remain in place while permit application is under review 				<p>N.J.A.C. 7:7E-3A.3(g) contains the standards that must be met for the placement of sand, gravel, rubble, concrete, and other inert materials to be allowed as part of an emergency post-storm beach restoration plan. Rock is added to this listing to make it clear that the Department finds the use of this material acceptable. Rock is generally used along the Delaware bayshore and other high energy environments. Subsection (g) is also modified to require that concrete, rubble or rock placed on the beach be removed within 90 calendar days, unless an application is filed within 90 calendar days of the placement of the material for Department approval of an engineered design for permanent shore protection. Prior to this change, all concrete and rubble placed on the beach was required to be removed within 90 days, unless the placement was part of a Department approved, engineered design for permanent shore protection. As modified, if a permit application is filed within this period, the material may remain on the beach until a determination is made on the application. The Department does not consider the above changes substantial changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>
7:7E-3A.4 Standards applicable to dune creation and maintenance	<p>MODIFIED 3A.4(c):</p> <p>Refined rule to:</p> <ul style="list-style-type: none"> • Require dune vegetation to be species native to New Jersey and requires that certain specified vegetation be used to maximum extent practicable; • Specify that dune vegetation be diversified to maximum extent practicable; and • Require landscape plan be created as part of any dune creation activity 	<p>N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program</p>	April 16, 2012	April 16, 2013	<p>Vegetation is an important component of the beach and dune system as the vegetation traps windblown sand and helps the dune grow through accretion. Dune vegetation also helps to stabilize the dune and protect it from erosion. N.J.A.C. 7:7E-3A.4(c) is modified to require that all proposed dune vegetation be species native to New Jersey and to specify that the coastal species specified within this paragraph should be utilized, to the maximum extent practicable. Requiring species that are native to New Jersey will assure that species utilized have the greatest probability of surviving and thriving on the dune, and will assure that non-native species that could negatively affect coastal species native to the State and become invasive are not introduced to the State's coastal area, therefore facilitating the resilient recovery of dunes in an environmentally protective manner. In addition, Shore Juniper (<i>Juniperus conferta</i>) and Sea Oats (<i>Uniola paniculata</i>) are deleted from the list. Shore Juniper is not a suitable plant for the building of dunes and Sea Oats is not native to New Jersey. The Department also modified the rule by eliminating the sentence "although they may not be currently available from commercial nurseries at this time, the following plant species are also well suited to the dune environment" since that is no longer the case. Bitter Panicgrass and Saltmeadow cordgrass are commercially available so these species are listed as optional native plantings. The following native species</p>

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7:7E-3A.4 (continued)	<p>MODIFIED 3A.4(d): Deleted extraneous reference</p>				<p>are added to the listing as they are common and thrive in New Jersey's dune environment: Switchgrass (<i>Panicum virgatum</i>), Partridge Pea (<i>Chamaecrista fasciculata</i>), Eastern red cedar (<i>Juniperus virginiana</i>), and Groundsel tree (<i>Baccharis halimifolia</i>).</p> <p>N.J.A.C. 7:7E-3A.4(c)2, which addresses the diversity of dune vegetation, is modified to specify that dune vegetation be diversified to the maximum extent practicable. New N.J.A.C. 7:7E-3A.4(c)3 requires that a landscape plan be created as part of any dune creation activity. The plan must depict the vegetative community on the dune and include the species, quantity of each species, density, stock type, and the source of the plant material. This provision will ensure that the Department has the information needed to assess compliance with this section. The Department does not consider the above changes substantial changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p> <p>N.J.A.C. 7:7E-3A.4(d)1 identifies how copies of the cited specifications for the construction of dune walkovers may be obtained. An extraneous reference to a Soil Conservation Service report is deleted. This change is included for informational purposes.</p>
SUBCHAPTER 4. GENERAL WATER AREAS					
7:7E-4.2 Shellfish aquaculture	MODIFIED: Refined scope to specifically address shellfish aquaculture	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	April 16, 2013	April 16, 2013	<p>Prior to this rulemaking, aquaculture as defined at N.J.A.C. 7:7E-4.2 included the growth and harvesting of plants and animals. The rule is modified to apply only to shellfish aquaculture activities. According to the New Jersey Coastal Management Program's Section 309 Assessment, 2011-2015 (http://www.state.nj.us/dep/cmp/nj2011-309assessment.pdf), almost all aquaculture in New Jersey's waters consists of hard clams and oysters and interest in aquaculture relating to finfish and aquatic plants in New Jersey is low. In addition to hard clam and oyster aquaculture, soft clam and bay scallop aquaculture activities are present in the State (see http://www.jerseyseafood.nj.gov/aquaculture.html).</p> <p>The title of this section is renamed "Shellfish aquaculture" to reflect the new focus of the rule. As a result of this change, should a future applicant be interested in finfish or plant aquaculture in a water area (as opposed to an upland operation), this general water area rule would not apply; rather, N.J.A.C. 7:7E-4.22, Miscellaneous uses, would apply. The new definition of shellfish aquaculture at N.J.A.C. 7:7E-4.2(a) is similar to the definition of aquaculture set forth in the New Jersey Aquaculture Development Act at</p>

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7:7E-4.2 (continued)					<p>N.J.S.A. 4:27-3. However, in addition to focusing specifically on shellfish aquaculture, the definition excludes the statement that aquaculture does not include the placement of structures because this rule is intended to address shellfish aquaculture activities which include structures such as cages and racks and bags. The definition also identifies the species of shellfish subject to this rule.</p> <p>N.J.A.C. 7:7E-4.2(b) contains the conditions that must be satisfied for shellfish aquaculture activities to be allowed in general water areas. N.J.A.C. 7:7E-4.2(b)1, requires that shellfish aquaculture activities not unreasonably conflict with other marine uses. The phrase "other marine uses" replaces the previous reference to "resort or recreational uses" to make clear that the activity is not allowed to unreasonably conflict with marine uses beyond just resort or recreational uses, such as individual noncommercial docks at single family home lots. N.J.A.C. 7:7E-4.2(b)2, which required that the aquaculture activity not cause significant adverse off-site environmental impacts, is generalized to apply to any adverse environmental impact. This amendment is necessary in order to protect the marine ecosystem, since adverse impacts can occur as a result of an aquaculture activity on the site of the activity or off the site. New N.J.A.C. 7:7E-4.2(b)4 requires that the aquaculture activities not prevent the catching and taking of free swimming fish from tidal waters of the State in any lawful manner. This provision, which is consistent with N.J.S.A. 50:1-33, N.J.A.C. 7:7-7.2(a)18ii and 19iv, as well as N.J.A.C. 7:7-7.35(a)6, will ensure that the aquaculture activities will not affect the public's ability to catch fish. For example, shellfish cages could be placed in such a manner as to prevent a boater from traversing the water area. New N.J.A.C. 7:7E-4.2(b)5 requires that shellfish aquaculture activities be conducted in shellfish lease areas authorized under N.J.S.A. 50:1-23, which governs the leasing of shellfish areas.</p> <p>New N.J.A.C. 7:7E-4.2(c) addresses the removal of structures associated with aquaculture activities upon expiration or termination of a shellfish lease, or the cessation of aquaculture activities. This provision, which is consistent with N.J.A.C. 7:7-7.2(a)18 and 19, as well as N.J.A.C. 7:7-7.35(b), will ensure that abandoned structures do not create a hazard when a lease or activities have ended.</p> <p>The rule rationale is modified to describe the importance of the shellfish aquaculture industry in New Jersey.</p>

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
7:7E-4.2 (continued)					Based on the above, the Department does not consider the refinement of this rule to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest. Aquaculture activities other than shellfish aquaculture will continue to be reviewed by the Department under the CZM rules' miscellaneous uses rule. Further, the changes relating to the rule rationale are included for informational purposes only.
7:7E-4.10 Filling	ADDED 4.10(d): Provision allowing for the establishment of a living shoreline	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	April 16, 2013	April 16, 2013	New N.J.A.C. 7:7E-4.10(d) allows for the establishment of a living shoreline in accordance with the new living shoreline general water area rule at N.J.A.C. 7:7E-4.23. Some types of living shoreline projects may require filling in order to restore the habitat that has been lost to erosion. The Department has determined that the establishment of living shorelines is environmentally beneficial and therefore filling to establish a living shoreline is conditionally acceptable under this rule, provided it meets the standards set forth at N.J.A.C. 7:7E-4.23. The Department does not consider this change to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.
	MODIFIED 4.10(f): Included living shorelines and construction of boat ramps as activities that do not require mitigation				<p>N.J.A.C. 7:7E-4.10(f)1 through 5 identify activities for which mitigation is not required. Two new activities are added to this listing: the establishment of living shorelines in accordance with N.J.A.C. 7:7E-4.23 and the construction of boat ramps in accordance with N.J.A.C. 7:7E-4.3.</p> <p>New N.J.A.C. 7:7E-4.10(f)4 provides that filling associated with the establishment of a living shoreline in accordance with new N.J.A.C. 7:7E-4.23 will not require mitigation. Establishing a living shoreline for purposes of habitat protection, restoration, or enhancement of a vegetative community results in a net gain of habitat functions and values. Therefore, additional compensation in the form of mitigation is not necessary, since mitigation is typically required under these rules when there is a loss of habitat.</p> <p>New N.J.A.C. 7:7E-4.10(f)5 provides that filling associated with the construction of a boat ramp in accordance with N.J.A.C. 7:7E-4.3 does not require mitigation because the impacts are de minimis. Boats ramps were also damaged as a result of Superstorm Sandy and applicants may want to rebuild a boat ramp in a new location. This provision makes it clear that the Department supports the construction of boat ramps and that mitigation is not required. N.J.A.C. 7:7E-4.11(f) is recodified as (g) with no changes in text. The Department does not consider these changes to be substantial</p>

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7:7E-4.10 (continued)	<p>MODIFIED 4.10(h): Modified standard relating to filling for the purposes of beach nourishment to allow for dredged material to be used in the establishment of a living shoreline provided the Department has issued an acceptable use determination</p>				<p>changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p> <p>N.J.A.C. 7:7E-4.10(h), formerly codified at N.J.A.C. 7:7E-4.10(g), addresses filling for the purposes of beach nourishment. Prior to this rulemaking, filling using clean sediment of suitable particle size and composition was acceptable for beach nourishment projects provided it met the standards of the coastal engineering rule, N.J.A.C. 7:7E-7.11. This subsection is modified to reflect the addition of filling for the purposes of a living shoreline project as an acceptable use and to allow for the beneficial use of dredged material that is deemed appropriate fill material for beach nourishment or living shoreline projects through a determination of the acceptable use of the material by the Department. This change will continue to promote the long-standing State policy of treating dredged material as a resource and to beneficially use dredged material in appropriate applications, rather than relying on disposal of dredged material in confined disposal facilities.</p> <p>Based on the above, the Department has determined that this change is not a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>
	<p>MODIFIED 4.10(i): Recodified and updated to reflect above changes</p>				<p>The rule rationale is recodified and amended to reflect the addition of living shorelines as an acceptable use, and to recognize the beneficial use of dredged material of the appropriate grain size and composition in beach nourishment and living shoreline projects. This change is included for informational purposes only.</p>
	<p>MODIFIED: Refined focus of the rule to protection of boat mooring areas such as those at marinas and to include flexibility in the design of vertical wake or wave attenuation structures</p>	<p>N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program</p>	<p>April 16, 2013</p>	<p>April 16, 2013</p>	<p>Prior to this rulemaking, N.J.A.C. 7:7E-4.19 contained standards applicable to breakwater structures designed to protect shoreline areas or boat moorings. The section as modified, addresses the construction of vertical wake or wave attenuation structures designed to protect boat mooring areas, including marinas, rather than shorelines. The changes reflect the results and recommendations of the New Jersey Wake Mitigation Study discussed below. Under the refined rule, breakwaters, which are hard structures, such as jetties and groins, that dissipate wave energy in higher energy environments and are designed to protect shoreline areas from erosion, are required to comply with the filling rule at N.J.A.C. 7:7E-4.10 and the coastal engineering rule at N.J.A.C. 7:7E-7.11.</p> <p>In 2009 and 2010 Stevens Institute of Technology, Center for Maritime Systems, conducted the New Jersey Wake Mitigation Study which evaluated</p>

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7:7E-4.19 (continued)					<p>wake attenuation and flushing characteristics of vertical breakwaters (wake attenuation structures). The study concluded that the design of a wake attenuation structure should be site specific, based on vessel traffic, water depth and tidal flow. (See New Jersey Wake Mitigation Study, prepared for the New Jersey Department of Transportation, Office of Maritime Administration, by Thomas O. Herrington, March 2010. The study can be viewed online at: www.state.nj.us/transportation/airwater/maritime/documents/NJWakeMitigationStudy_Final.pdf. While this study evaluated the effectiveness of vertical breakwaters in protecting marina basins from wake, the Department has determined that it is also appropriate to apply the design standards resulting from this study to waves created by natural forces. Regardless of source, waves have the same effect on boats moored within marina basins.</p> <p>N.J.A.C. 7:7E-4.19(a) describes wake or wave attenuation structures. These structures are designed to protect boat moorings, including those at marinas, by intercepting wakes or waves and reducing wake or wave energy which would normally impact mooring areas. N.J.A.C. 7:7E-4.19(a) also reflects that breakwaters designed for the protection of shoreline areas, which were formerly subject to this section, must instead comply with the filling rule at N.J.A.C. 7:7E-4.10 and the coastal engineering rule at N.J.A.C. 7:7E-7.11.</p> <p>N.J.A.C. 7:7E-4.19(b) provides that the porosity of a vertical wake or wave attenuation structure and the distance between the structure and the bottom of the water body will be determined on a case by case basis, taking into consideration vessel traffic, water depth, and tidal flow. Porosity refers to the space between planking and/or the distance between the structure and the bottom of the water body. When designed in accordance with the above, the structure will not adversely affect the movement of sediment and marine organisms, or water circulation patterns.</p> <p>Prior to these changes, N.J.A.C. 7:7E-4.19(b)1 required that timber, vinyl or plastic breakwaters be designed to have a minimum of three inch spacing between planking and the distance between the structure and the water body bottom to be a minimum of 18 inches, unless the structure was one constructed in compliance with the filling rule at N.J.A.C. 7:7E-4.10 and the coastal engineering rule at N.J.A.C. 7:7E-7.11. These standards were intended to protect boat mooring areas and shorelines while allowing for</p>

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7:7E-4.19 (continued)					<p>movement of sediment and marine organisms and water circulation.</p> <p>The wake mitigation study found that wake transmission through vertical wake attenuation structures of very low porosity allows a significant amount of wave energy to cross the structure. An analysis of the impact of low porosity wake attenuation structures on the flushing of mooring areas located within the vicinity of strong currents found that a complete water exchange within the mooring area occurred within one to two hours. Based on these findings, the study recommended that the design of wake attenuation structures for the purposes of protecting boat mooring areas be based on the type of wake energy generated within the vicinity of the mooring area. N.J.A.C. 7:7E-4.19(c)1 through 3 provide guidance on the design of a vertical wake or wave attenuation structure when located in a high, medium or minor wake or wave energy environment.</p> <p>N.J.A.C. 7:7E-4.19(c)1 addresses high wake or wave energy environments. Boat moorings located in or near deep water and that are exposed to port, harbor, and/or ferry traffic are subject to high wake energy. The Hudson River between New Jersey and New York is an example of a high wake or wave energy area. Vertical wake or wave attenuation structures located in these areas may be designed to provide no spacing between planks and extend to a depth of between 30 and 40 feet or to the bottom of the water body, whichever is less, in order to intercept almost all wave energy. The distance between the structure and the bottom of the water body will be dependent upon the water depth of the area in which the structure will be located. In general, high wake energy environments can generate water movement at depths exceeding 25 feet. In order to provide the greatest amount of protection in these deep waters, the larger wake or wave attenuation structures are necessary.</p> <p>N.J.A.C. 7:7E-4.19(c)2 addresses medium wake or wave energy environments. Boat moorings located adjacent to or near navigation channels subject to light commercial and recreational boat traffic are subject to medium wake or wave energy. Cape May Harbor is an example of a medium wake energy environment. Vertical wake or wave attenuation structures located in these areas may be designed to have approximately one inch spacing between planking and to extend to the bottom of the water body. By extending the structure to the bottom of the water body, most of the wave energy will be intercepted.</p>

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7:7E-4.19 (continued)					<p>N.J.A.C. 7:7E-4.19(c)3 addresses minor wake or wave energy environments. Boat moorings that do not meet the criteria of (c)1 and 2 are considered minor wake energy environments. The Upper Manasquan River is an example of a minor wake environment. In these environments, wake or wave attenuation structures may be designed to provide three inch spacing between planking and the distance between the structure and the bottom of the water body will be determined on a case-by-case basis taking into account the potential wake or wave energy at that mooring location. However, in areas of low tidal flow, that is areas with a tidal range of less than two feet, this distance must be at least 18 inches. This distance is consistent with the existing rule and will allow sufficient movement of sediment and marine organisms and water circulation in low flow tidal areas.</p> <p>N.J.A.C. 7:7E-4.19(d) requires that detached vertical wake or wave attenuation structures which are not fixed directly to a dock or pier be marked with photocell lights and/or reflectors. This requirement is the same as the requirement in the previous rule at N.J.A.C. 7:7E-4.19(b)2. Based on the above, the Department does not consider the changes to this rule to be substantial changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>
	MODIFIED 4.19(e): Updated to reflect changes described above				The rule rationale is recodified and modified to reflect the focus of the rule on the protection of boat mooring areas. This change is included for informational purposes.
7:7E-4.23 Living shorelines	ADDED: New rule which sets forth the standards for the establishment of living shorelines	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	April 16, 2013	April 16, 2013	New N.J.A.C. 7:7E-4.23 contains the Department's standards for the establishment of living shorelines. Shorelines lost due to erosion eliminate intertidal habitat, reduce the amount of sandy beach, and decrease the amount of organic matter, the presence of which is important to maintaining tidal wetlands. This erosion results in the degradation of the coastal environment through impacts to natural habitats. Coastal states are seeking natural solutions, such as the creation of living shorelines, to address erosion. Living shorelines are a shoreline management practice that addresses the loss of vegetated shorelines and habitat in the littoral zone by providing for the protection, restoration or enhancement of these habitats. This shoreline management practice provides "living space" for organisms through the strategic placement of plants, sand, or other structural and organic materials. There are three types of living shorelines: natural, hybrid and structural. Natural living shorelines include natural vegetation, submerged vegetation, fill

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
7:7E-4.23 (continued)					<p>and biodegradable organic materials. Hybrid living shorelines incorporate natural vegetation, submerged vegetation, fill, biodegradable organic materials and low-profile rock structures such as segmented sills, containment and living breakwaters seeded with native shellfish. Structural living shorelines include, but are not limited to, revetments and jetties. Because living shorelines are intended to address the loss of vegetation and habitat, the CZM rules relating to shellfish habitat, submerged vegetation, intertidal and subtidal shallows, wetlands and marine fisheries are amended to encourage use of these structures.</p> <p>N.J.A.C. 7:7E-4.23(a) sets forth a definition of living shoreline. As stated in Table A, living shorelines are a shoreline management practice that addresses the loss of vegetated shorelines and habitat in the littoral zone by providing for the protection, restoration, or enhancement of these habitats accomplished through the strategic placement of vegetation, sand or other structural and organic materials. The goal of a living shoreline project is to protect, restore or enhance a habitat.</p> <p>N.J.A.C. 7:7E-4.23(b), identifies the conditions under which the Department considers the establishment of a living shoreline acceptable. N.J.A.C. 7:7E-4.23(b)1 requires a demonstration that the proposed project is part of a plan for the restoration, creation, or enhancement of the habitat and water quality functions and values of wetlands, wetland buffers and open water areas; is consistent with the requirements of the Wetlands Act of 1970, the Waterfront Development Law, CAFRA and the CZM rules; will improve or maintain the values and functions of the ecosystem; and will have a reasonable likelihood of success, or, if performed by a college or university, will advance the level of knowledge regarding the success or failure of various designs in New Jersey's waters. These criteria are the same as those included in the coastal general permit for habitat creation, restoration, enhancement and living shoreline activities at N.J.A.C. 7:7-7.29 and are necessary to protect special areas such as shellfish habitat, submerged vegetation, intertidal and subtidal shallows, and wetlands, as well as resources such as marine fish and fisheries, while advancing the engineering knowledge of the success rates of different forms of living shoreline to determine the methods best suited to conditions found in the State's waters.</p> <p>N.J.A.C. 7:7E-4.23(b)2i requires that the disturbance of special areas</p>

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7:7E-4.23 (continued)					<p>associated with the establishment of a living shoreline be the minimum necessary to implement the project. The Department may approve a reduction in the size of a particular special area in order to allow an increase in a different special area if it is determined that there are sufficient environmental benefits to outweigh any negative environmental impacts associated with the reduction. This requirement is the same as that applicable to the general permit at N.J.A.C. 7:7-7.29(f)2. In addition, N.J.A.C. 7:7E-4.23(b)2ii limits the amount of fill that may be used in the establishment of the living shoreline, that is, fill cannot be placed beyond the footprint of the shoreline as it appeared on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978), except for a structural component of the project intended to reduce wave energy. This provision is necessary to ensure that a project does not impact more special areas than is necessary to protect, restore or enhance a habitat. Fill in the form of a structural component intended to reduce wave energy is permitted. Often the placement of these structural components is beyond the footprint of the shoreline as shown on the Tidelands Map; therefore it is necessary to allow for this exception to ensure a successful living shoreline project.</p> <p>N.J.A.C. 7:7E-4.23(c) allows for the beneficial use of dredged material in the establishment of a living shoreline, provided it is determined by the Department that the material is acceptable for use in a living shoreline. N.J.A.C. 7:7E-4.23(d) sets forth the rationale for the rule.</p> <p>The addition of standards relating to the establishment of living shorelines is not a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest. Prior to these amendments, the coastal engineering rule at N.J.A.C. 7:7E-7.11 encouraged the use of non-structural solutions to shoreline erosion and provided that hybrid structures which allow for growth of vegetation are the preferred form of retaining structure. The modified coastal engineering rule as described below, continues to encourage the use of non-structural shoreline stabilization measures and recognizes the establishment of living shorelines as natural means to address shoreline erosion.</p>

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SUBCHAPTER 7. USE RULES					
7:7E-7.3 Resort/recreational use	<p>DELETED 7.3(d)2i: Provision concerning types of services provided at marinas</p>	<p>N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program</p>	<p>April 16, 2012</p>	<p>April 16, 2012</p>	<p>The Department's standards applicable to marina development are set forth at N.J.A.C. 7:7E-7.3(d). Prior to this rulemaking, N.J.A.C. 7:7E-7.3(d)2i provided that new marinas or the expansion or renovation (including, but not limited to, dredging, bulkhead construction and reconstruction, and relocation of docks) of existing marinas for recreational boating are conditionally acceptable if the marina includes the development of an appropriate mix of dry storage areas, public launching facilities, berthing spaces, repair and maintenance facilities, and boating and hardware supply facilities, depending upon site conditions. This standard is deleted. Marinas are not one size fits all. The service provided by new marinas and the expansion of an existing marina will be dependent upon existing site conditions, their customers' needs, and the types of surrounding development. This change is not a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest as it merely adds flexibility in the services provided by a marina.</p>
	<p>MODIFIED 7.3(d)10iii: Incorporated newly defined term "non-polluting material"</p>				<p>Prior to this rulemaking, N.J.A.C. 7:7E-7.3(d)10ii prohibited all new, expanded, and renovated boat mooring facilities with five or more slips on the Navesink, Shrewsbury, Manasquan (upstream of Rt. 35 bridge) or St. George's Thorofare from using pressure treated lumber or other lumber treated with any other substance in any portion of the project. This restriction applied to bulkhead sheathing and planking but not pilings. As discussed in the summary of N.J.A.C. 7:7-1.3 and 7:7E-1.8, a definition of "non-polluting material" is added to describe materials not considered to result in discharge of pollutants when used in the marine environment. N.J.A.C. 7:7E-7.3(d)10ii is modified to incorporate the use of the defined term "non-polluting material" for clarity. This change is not a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest as it merely incorporates the use of a new term.</p>
7:7E-7.4 Energy facility use	<p>MODIFIED 7.4(b): Refined to allow a wind energy facility located on a pier provided the facility is an accessory use to the other uses of, or purposes for the pier</p>	<p>N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program</p>	<p>March 3, 2011</p>	<p>March 3, 2011</p>	<p>Subsection (b) is modified in response to legislative amendments to CAFRA at N.J.S.A. 13:19-10.1. Specifically, subsection (b) allows for a wind development to be located on a pier provided the wind facility is an accessory use to the other uses of, or purposes for, the pier. For the reasons discussed below, the Department does not consider this change to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>

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7:7E-7.4 (continued)					Any wind facility proposed on a pier must meet all applicable criteria in the CZM rules. Thus, such projects may not be acceptable if they do not meet the requirements of, for example, the endangered and threatened wildlife and plant species rule and critical wildlife habitat rule due to potential impacts on migratory and resident birds and bats. A wind energy facility would only be approvable if it is determined that the facility will not have inappropriate impacts on resources protected by the CZM rules. Including special areas and resource rules. Special areas are areas that are so naturally valuable, important for human use, hazardous, sensitive to impact or particular in their planning requirements, as to merit focused attention and special management rules. The resource rules are used to analyze the proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as the surrounding region. Compliance with the standards of these rules will ensure that the impacts of wind turbines on resources such as threatened and endangered wildlife, critical wildlife, wild and scenic river corridors, marine mammals and fisheries are addressed.
7:7E-7.11 Coastal engineering	REPEALED EXISTING RULE AND ADDED NEW RULE: New rule continues the standards from the repealed rule, the standards are reorganized and modified (as discussed below) to emphasize and clarify the Department's shore protection and/or storm damage reduction priorities, and to facilitate the rebuilding of a more resilient shoreline	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	April 16, 2013	April 16, 2013	<p>N.J.A.C. 7:7E-7.11(a) explains that coastal engineering measures include a variety of structural, hybrid, and non-structural shore protection and/or storm damage reduction measures intended to manage water areas and protect the shoreline from the effects of erosion, storms, and sediment and sand movement. A shore protection and/or storm damage reduction measure is designed to stabilize and/or restore shorelines in coastal areas and/or prevent or reduce damage caused by erosion, and flood and wave impact due principally to storm tide levels and wave action, including wave setup and run up. The examples of coastal engineering measures are expanded to include living shorelines in recognition of their importance as a shoreline stabilization measure.</p> <p>N.J.A.C. 7:7E-7.11(b) establishes a hierarchy of the shore protection and/or storm damage reduction measures that can be implemented, with non-structural measures to be considered first (see N.J.A.C. 7:7E-7.11(b)1), then hybrid measures (see N.J.A.C. 7:7E-7.11(b)2), then structural measures (see N.J.A.C. 7:7E-7.11(b)3).</p> <p>Where non-structural measures are feasible, the prior rule specified that vegetative measures were preferred. Vegetative shore protection and storm damage reduction measures are non-structural measures that offer many</p>

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7:7E-7.11 (continued)					<p>environmental benefits. The root systems of the vegetation help to hold the soil particles, reducing erosion and increasing bank stability. The vegetation can also increase the resistance to the hydraulic flow of the waterbody and reduce local velocities in smaller channels. Vegetation can also serve as a buffer to wrack (seaweed or other marine vegetation that floats in a tidal waterbody or is cast onto the shore); will allow sediment deposition; and can redirect water flow away from the bank.</p> <p>N.J.A.C. 7:7E-7.11(b)1 identifies the factors the Department will consider in determining whether a non-structural shore protection and/or storm damage reduction measure is feasible. These factors are the type of waterway on which the site is located, the distance to the navigation channel, the width of the waterway, the water depth at the toe of bank, bank orientation, shoreline slope, fetch, erosion rate, the amount of sunlight received, substrate composition and presence of shellfish habitat, submerged vegetation and wetlands at the site. The Department has developed a worksheet entitled, "Guidance for Appropriate Shoreline Protection and/or Storm Damage Reduction Measures for a Site." The guidance explains how the factors influence the choice of a shore protection measure for a site. This guidance is available from the Division of Land Use Regulation's website at www.state.nj.us/dep/landuse.</p> <p>If non-structural measures are not feasible, N.J.A.C. 7:7E-7.11(b)2 provides that hybrid shore protection and/or storm reduction measures, which include rip rap and gabions, are to be used. These measures provide some habitat functions by allowing the establishment of vegetation within the structure. The establishment of vegetation within the structure provides some of the functions of a non-structural vegetative measure as described above.</p> <p>N.J.A.C. 7:7E-7.11(b)3 provides that if use of hybrid shore protection and/or storm damage reduction measures is not feasible, then structural measures such as bulkheads, revetments, sea walls, or other retaining structures are to be used. Structural shore protection and/or storm damage reduction measures are least preferred because the structures often increase erosion to adjacent properties, reflect wave energy, eliminate intertidal habitat, reduce the amount of sandy beach and decrease the amount of organic matter necessary to maintain tidal wetlands.</p> <p>N.J.A.C. 7:7E-7.11(c) provides that the hierarchy set forth at N.J.A.C. 7:7E-</p>

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
7:7E-7.11 (continued)					<p>7.11(b) does not apply to water dependent uses within existing ports. Ports are designed to accommodate the mooring and passage of large vessels, and the high volume of boat traffic and the water depths are such that non-structural shore protection measures are not feasible.</p> <p>N.J.A.C. 7:7E-7.11(d) contains the standards for the construction, maintenance, or reconstruction of a bulkhead. N.J.A.C. 7:7E-7.11(d)1 addresses the construction of a bulkhead in a V-zone. As described at N.J.A.C. 7:7E-3.18 (not modified in this rulemaking), a V-zone, or coastal high hazard area, is a flood prone area subject to high velocity waters as delineated on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency and areas within 25 feet of oceanfront shore protection structures, which are subject to wave run-up and overtopping. The standards previously codified at N.J.A.C. 7:7E-7.11(e)5 are continued.</p> <p>N.J.A.C. 7:7E-7.11(d)2 contains the standards for the maintenance or reconstruction of an existing bulkhead. These standards allow for replacement to be accomplished offshore of the existing bulkhead. The standards for both replacement and maintenance or reconstruction specify how far offshore of the existing bulkhead construction may occur. If construction is to occur more than 18 inches offshore of the existing bulkhead, the replacement, maintenance, or reconstruction is required to occur as close as physically possible to the existing bulkhead. These standards are continued from N.J.A.C. 7:7E-7.11(e)2 in the prior rule.</p> <p>N.J.A.C. 7:7E-7.11(e) provides that dune restoration, creation, and maintenance projects as non-structural shore protection and/or storm damage reduction measures are encouraged, and must comply with the standards for beach and dune maintenance at N.J.A.C. 7:7E-3A.</p> <p>N.J.A.C. 7:7E-7.11(f) provides that beach nourishment projects as non-structural shore protection and/or storm damage reduction measures are encouraged, provided the enumerated standards are met. The standards are continued from N.J.A.C. 7:7E-7.11(d) in the prior rule.</p> <p>N.J.A.C. 7:7E-7.11(g) sets forth the standards for structural shore protection and/or storm damage reduction projects funded using monies from the Shore Protection Fund established pursuant to N.J.S.A. 13:19-16 and/or any other Department monies. The standards are continued from N.J.A.C. 7:7E-7.11(e)</p>

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7:7E-7.11 (continued)					<p>in the prior rule. The rule is modified to make it clear that these standards apply only to publicly funded projects, as had been indicated in the rule rationale previously codified at N.J.A.C. 7:7E-7.11(e)6. As noted in the revised rationale at N.J.A.C. 7:7.11(h), structural shore protection measures are appropriate and essential at certain locations, given the existing pattern of urbanization of New Jersey's shoreline. However, the creation, repair, or removal of publicly funded shore protection or storm damage reduction measures must serve clear and broad public purposes, and must be undertaken only with a clear understanding, on a regional basis, of the consequences to natural shoreline sand systems.</p> <p>N.J.A.C. 7:7E-7.11(g)1 sets forth the conditions that must be met for the construction of new shore protection structures or expansion or fortification of existing structures, which are continued from N.J.A.C. 7:7E-7.11(e)1 in the prior rule. N.J.A.C. 7:7E-7.11(g)2 requires public access to a shore protection project and continues the requirement for public access at N.J.A.C. 7:7E-7.11(e)4 in the prior rule.</p> <p>N.J.A.C. 7:7E-7.11(h) contains the rule rationale. The separate rationales in the prior rule at N.J.A.C. 7:7E-7.11(b)2, (c)2, (d) 2 and (e)6 are consolidated and modified to reflect the reorganized and modified rule as described above.</p> <p>The Department does not consider the changes to this rule to be substantial changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest. As described above, the new rule continues the standards from the repealed rule. These standards are reorganized and modified to emphasize and clarify the Department's shore protection and/or storm damage reduction priorities, and to facilitate the rebuilding of a more resilient shoreline in the aftermath of Superstorm Sandy.</p>
7:7E-7.12 Dredged material management on land	MODIFIED 7.12(a): Added "capping" as another example of a beneficial use of dredged material	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	April 16, 2013	April 16, 2013	N.J.A.C. 7:7E-7.12(a) explains that dredged material management is the disposal or beneficial use of sediments removed during dredging operations and provides examples of beneficial uses of dredged material. "Capping material" is added as another example of a beneficial use of dredged material. This use is currently referenced in existing N.J.A.C. 7:7E-7.12(d). The Department does not consider this change to be a substantial change to

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
7:7E-7.12 (continued)	<p>MODIFIED 7.12(c): Clarified that the construction of a confined disposal facility is prohibited in wetlands unless it complies with N.J.A.C. 7:7E-3.27</p>				<p>special management areas, uses subject to management, authorities and organization or consideration of the national interest as it merely provides another example of a beneficial use of dredged material.</p> <p>N.J.A.C. 7:7E-7.12(c), which addresses the disposal of dredged material in wetlands, is modified to clarify that disposal of dredged material and/or the construction of a dredged material confined disposal facility is prohibited unless the criteria, including the requirement for mitigation, in the wetlands special area rule, N.J.A.C. 7:7E-3.27, are met. The Department does not consider this change to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest as it merely clarifies that the construction of a confined disposal facility within wetlands is prohibited unless it meets the criteria of the CZM rules' wetlands rule.</p>
	<p>MODIFIED 7.12(d): Clarified that this subsection applies to the beneficial use of dredged material and added an additional example of a beneficial use</p>				<p>N.J.A.C. 7:7E-7.12(d), which provides that the use of dredged material of appropriate quality and particle size is encouraged, is modified to clarify that the use referred to in this subsection is the beneficial use of the material. "Transportation projects" are included in the list of activities in which dredged material may be beneficially used. For example, the New Jersey Department of Transportation uses dredged material that meets the standards of these rules as fill in roadway projects. The Department does not consider this change to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest. This change merely clarifies that this provision refers to the beneficial use of dredged material and adds another example of a beneficial use of dredged material.</p>
	<p>MODIFIED 7.12(e): Clarified that this provision applies to both the transport of the dredged material to an upland confined disposal facility and to the site where dredged material will be beneficially used</p>				<p>N.J.A.C. 7:7E-7.12(e) addresses the potential adverse effects associated with the transport of dredged material to an upland site. The subsection is modified to make clear that the requirement to minimize to the maximum extent feasible any adverse effects associated with the transport of dredged material applies both to transport of the dredged material to an upland confined disposal facility and to the site where dredged material will be beneficially used. The Department does not consider this clarification to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p>

Legal Citation	Description of change	Enforcement Mechanism	Date adopted by State	Date Effective in State	Significance of Change
7:7E-7.12 (continued)	MODIFIED 7.12(h): Updated terminology				N.J.A.C. 7:7E-7.12(h), which addresses potential discharges of water from a confined disposal site, is modified to replace "sites" with "facilities" for consistency of terminology throughout the chapter. The Department does not consider this change to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest as it merely provides consistency in terminology throughout the chapter.
	MODIFIED 7.12(j): Updated to reflect the State's long term policy concerning the beneficial use of dredged material				The rule rationale is modified to recognize the State's longstanding policy concerning the beneficial use of dredged material. This change is included for informational purposes only.
SUBCHAPTER 8. RESOURCE RULES					
7:7E-8.2 Marine fish and fisheries	MODIFIED 8.2(c): Included living shorelines as acceptable use within this resource area	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program	April 16, 2013	April 16, 2013	N.J.A.C. 7:7E-8.2(c) sets forth activities that are conditionally acceptable provided the activity complies with the appropriate general water area rule(s) at N.J.A.C. 7:7E-4. The establishment of living shorelines to protect, restore, or enhance a habitat area, provided the living shoreline is created in accordance with the requirements specified in the new living shoreline general water area rule at N.J.A.C. 7:7E-4.23, is added to the list of conditionally acceptable activities. Shorelines lost due to erosion eliminate intertidal habitat, reduce the amount of sandy beach, and decrease the amount of organic matter necessary to maintain tidal wetlands. The result is the degradation of the coastal environment through increases in erosion and impacts to natural habitats, such as spawning grounds. In the aftermath of Superstorm Sandy, New Jersey is looking towards natural solutions, such as the creation of living shorelines, as an alternative that adds diversity to other shore protection measures. The Department does not consider this change to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.
	MODIFIED 8.2(d): Updated cited statistics and included information concerning living shorelines				The rule rationale is modified to update cited statistics and include rationale concerning the establishment of living shorelines. This change is included for informational purposes only.