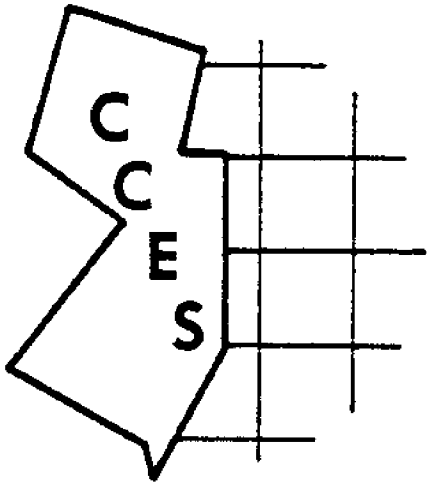

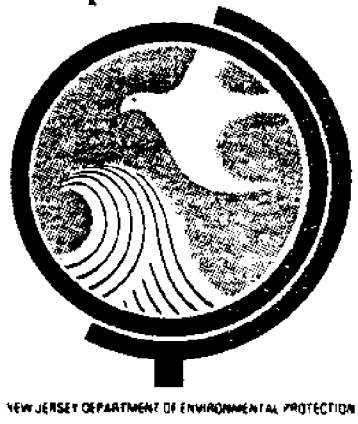

COASTAL ZONE LEGISLATION

COASTAL NOTES NO. R-1

CENTER FOR COASTAL AND ENVIRONMENTAL STUDIES
RUTGERS UNIVERSITY-THE STATE UNIVERSITY OF NEW JERSEY
NEW BRUNSWICK

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MARINE SERVICES
OFFICE OF COASTAL ZONE MANAGEMENT

COASTAL ZONE LEGISLATION

Coastal Notes No. R-1
September, 1976

This pamphlet was prepared by the Center for Coastal and Environmental Studies of Rutgers - The State University for the Office of Coastal Zone Management, Division of Marine Services, New Jersey Department of Environmental Protection, with financial assistance from the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, under the provisions of P. L. 92-583.

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The nation's coastal zone has a unique value based on the delicately balanced ecological ecosystems which thrive in this nutrient-rich environment. In recent years, increasing pressures have been placed on these natural systems through the demands of industry, commerce, residential development, recreation, waste disposal, and harvesting of marine resources.

The problems generated by these pressures include the siting of nuclear power plants and electrical generating stations while protecting marine resources and aesthetic coastal features; the encouragement of residential development while protecting dune stability and marshlands as marine sanctuaries; and the siting of industrial developments while preserving the wetlands. How can social and economic needs be balanced with the need to preserve the ecosystems of our coast? Coastal zone management is an attempt to find the answers.

The enactment of federal and state coastal legislation gave New Jersey the opportunity to develop and implement a coastal zone management program. Presently, four key laws govern activities in New Jersey's tidelands and uplands: Riparian Statutes, the Wetlands Act of 1970, the Coastal Area Facility Review Act of 1973, and the Federal Coastal Zone Management Act of 1972. Together, these acts provide several mechanisms designed to balance the economic and social pressures facing the coastal zone with the protection and preservation of a healthy natural coastal and marshland system. The land area encompassed by these acts is shown in Figure 1. This report describes the major features of these four coastal laws and explains how they affect human activities where the land meets the sea in New Jersey.

RIPARIAN LAW

In New Jersey the private right to the use of "tide-flowed lands" is based on the ownership of land adjacent to the waterway. These rights are termed "riparian" and apply to each owner to the "ripa", the adjoining upland property. Thus, Riparian Law (N.J.S.A. 12:3-1 et.seq.) determines who may use Riparian lands: lands at or below the line of mean high tide along waterways that are or were, periodically or permanently covered by tidal waters.

Riparian lands belong to the State of New Jersey and not to the owner of adjoining uplands (unless conveyed by the State). Historically, clear State title to Riparian

lands was established in 1776 when all lands belonging to the King, including riparian lands, passed directly to the State. The State of New Jersey has the discretionary authority to convey these lands to land-owners who seek to develop riparian land adjoining their property.

Vested in the riparian landowner is the pre-emptive or first right to apply to the State for a grant for riparian lands. A person other than the riparian landowner may apply for and receive such a grant, provided the upland owner is given six months notice and does not exercise his pre-emptive right before the end of the six-month period.

Riparian lands may be conveyed by the State by grant (purchase in fee simple) or by lease, license or easement (rental). The proceeds from such sales and rentals are allocated to the New Jersey Free Public School Fund as mandated by State Law in 1818.

A riparian grant, lease, or license may be obtained from the State upon approval of an application submitted to the Riparian Section, Division of Marine Services, Department of Environmental Protection. The application must include eight elements:

1. a metes and bounds description of the adjoining adjacent upland including multiple copies of a land survey indicating adjoining landowners, water width and depth at low and high tide respectively, the mean high water line, and the federal bulkhead or pierhead lines;

2. a description of the proposed improvement and any previous privileges conveyed by the State;

3. a definition of the type of conveyance sought;

4. copies of the deed and certificate of title to the land;

5. a statement concerning the type of party or firm making the application;

6. a designation of any signee of the application other than the riparian landowner;

7. a filing fee; and

8. an abbreviated environmental impact statement demonstrating how the project will serve the public interest and affect the riparian land.

When the application is filed with the Riparian Section, the staff reviews it for completeness. As appropriate, other State agencies review the application, including other sections of the Department of Environmental Protection as well as the Department of Transportation, the Corporation Tax Bureau, the Hackensack Meadowlands Development Commission, and the Secretary of State.

Following this review and the submission of all necessary additional information, the application is reviewed by the Natural Resources Council, a 12-member body appointed by the Governor with the advice and consent of the New Jersey State Senate. Decisions are made by a majority of the Council, which then must be approved by the Director of the Division of Marine Services, the Commissioner of the Department of Environmental Protection, the Attorney General, and the Governor, each of whom have veto privileges.

All riparian grants, leases, or license applications must be accompanied by a waterfront construction permit application. The waterfront construction permit application requires the same general information as the grant, lease, or license application, but also requires specific, detailed information about the construction that is proposed. Review and decision on the completed application must be made within 90 days after receiving the completed application. The decision must be approved by the Director of the Division of Marine Services and the Commissioner of Environmental Protection.

The fee to be paid to the State for acquiring riparian rights depends upon the type of conveyance sought:

a. A grant requires a $25 filing fee and a $100-$500 preparation fee. The Natural Resources Council fixes the price of the lands to be conveyed based on a market value measured either by area or by some rate per foot of frontage.

b. A lease requires the same filing and preparation fees as a grant. The Council fixes an annual rental payable semi-annually computed at seven percent of the price fixed for such lands. The lessee must pay a security deposit equivalent to one year's rental. The standard lease term is one year.

c. A license preparation fee has a minimum of $50. The amount of rent is determined by the Council in the same manner as the lease rental fee. Licenses are issued for a period of ten years, payable annually.

d. A waterfront construction permit requires no filing fee, but a payment of one-half of one percent of the estimated construction costs with a minimum of $100 is required. The fee for permits for minor maintenance and/or repair or replacement of lawful, existing structures is one-half of one percent of the construction costs, with a minimum of $25.

Appeals to a Council riparian permit decision may be made in writing to the Riparian Section of the Division of Marine Services, which will take the information and convey it to the Council and schedule a re-hearing. The Council again reviews the application and makes a decision which then is approved or denied by the Director and the Commissioner.

Municipal approval of a riparian grant, lease, or license is not required. If any construction is involved, however, the plans must meet with municipal approval.

WETLANDS ACT

The Wetlands Act of 1970 (N.J.S.A. 13:9A-1, et.seq.) regulates activities in the vital and productive tidal marshlands of New Jersey.

The primary tasks set forth by the Act are:

1. the inventory and mapping of the tidal wetlands;

2. the identification of the means by which boundaries are to be determined;

3. the definition of the types of activities to be regulated or prohibited within the wetlands zone; and

4. the establishment of a procedure through which to administer the provisions of the Act.

The Wetlands boundaries have been defined on the basis of twenty six vegetational communities, public hearings, maps of the lands in question, and meetings with affected property landowners. The approximate geographic extent of the Wetlands system included within the Act's jurisdiction is shown in Figure 2.

The Act has jurisdiction over all activities that occur on regulated Wetlands. Two different types of permits are issued depending on the activity type and scope of the project. Small projects have little anticipated environmental disruption. Activities considered small projects include the cultivating and harvesting of naturally occurring agricultural products; the excavation of small boat mooring slips; the maintenance of bridges, roads, highways, railway beds and municipal or utility facilities; and the construction of catwalks, piers, docks, landings, footbridges, and observation decks if built on pilings.

In order to conduct any of these activities on the Wetlands, a Type A permit is required from the Department of Environmental Protection. A Type A permit application, filed with the Wetlands Section, Division of Marine Services in the Department of Environmental Protection, must include:

1. the name and address of the applicant;

2. a written explanation of the proposed activity and the need for that activity;

3. a copy of the applicant's notification to the local governing body of the municipality in which the property is located which describes the proposed activity and informs the local governing body that an application for a Type A permit is being made to the Department under the provisions of the Act;

4. two copies of a detailed plan of the proposed activity which shall include;

    a. a map showing the location and boundaries of the area of the proposed activity and the specific location of all proposed structures, filling and excavation;

    b. a detailed description of all proposed structures, filling, and excavation;

    c. a detailed description of measures to be taken during and after the completion of the proposed activity to reduce detrimental off-site effects;

d. evidence of applicant's receipt of all required riparian grants and permits for the conduct of the proposed activity, where necessary; and,

5. a list of names and addresses of the owners of record of adjacent lands and known claimants of rights in or adjacent to the Wetland of whom the applicant has notice.

The filing fee for a Type A permit is one-half of one percent of the costs of construction, with a minimum of $100.

Major projects on the Wetlands have the potential to cause greater environmental disruption. These projects include activities requiring excavation for boat channels and mooring basins, the construction of impoundments and seawalls, the diversion or appropriative use of water, the driving of motor vehicles on the Wetlands, and the major use of pesticides.

These types of activities require a Type B permit if they are to be conducted on the Wetlands. The application for a Type B permit must include the same information as the Type A permit application plus an environmental impact statement. The environmental impact statement must:

1. describe and analyze all possible and indirect effects of the proposed activity on the site itself as well as on adjacent and non-contiguous areas with particular reference to the effect of the project on the public safety, health and welfare;

2. relate the ecological and physical characteristics of the proposed activity site to the local and regional functioning of microscopic marine life, vegetation, birds, mammals, tidal circulation, hydrology, meteorology, geology, soils, land use, recreation and history;

3. describe the reasons that the structures cannot be located on lands other than the Wetlands;

4. describe the temporary and permanent physical changes which would be caused by the proposed activity and the impact of these changes on the activity area and immediate environs;

5. describe alternatives to the proposed action which would reduce or avoid environmental damage;

6. describe measures to be taken during and after the completion of the proposed activity to reduce detrimental on-site and off-site effects; and,

7. describe the adverse environmental impacts which cannot be avoided.

A public hearing may also be required for a Type B permit if deemed necessary by the Department of Environmental Protection. The filing fee is one-half of one percent of the construction costs with a minimum of $300.

Certain activities are prohibited altogether in the Wetlands, including the placing, deposition, or dumping of any solid waste, garbage, refuse, trash, rubbish, or debris; the dumping or discharging of treated or untreated domestic sewage or industrial wastes, either solid or liquid; the application of pesticides on significant stands of Saltmarsh cordgrass, Wildrice, Cattail, and Common three-square; the storage or disposal of pesticides; and the application of persistant pesticides.

Permit applications are submitted to the Wetlands Section of the Department of Environmental Protection, which must review the application for completeness within 20 days of submission. If incomplete, additional information may be sought from the applicant. When the application is declared complete, a date for a public hearing may be set if it is deemed necessary. After the hearing the DEP Commissioner may request further information. With or without a hearing, a final decision on the application must be made within 90 days after the application has been declared complete.

The Commissioner will issue a Type A permit only if he finds that the proposed activity:

1. is a Type A activity and the application is complete;

2. requires water access or is water oriented as a central purpose of the basic function of the activity;

3. has no prudent or feasible alternative on a non-Wetland site;

4. will result in minimum feasible alteration or impairment of natural tidal circulation; and,

5. will result in minimum feasible alteration or impairment of natural contour or the natural vegetation of the Wetlands.

These criteria apply as well to the Type B permit procedure which also must consider:

1. the degree to which the proposed activity serves the public need and interest and the free public access to beaches and navigable waters;

2. the degree to which marine and/or land traffic generated by the proposed activity will give rise to traffic flow and safety problems;

3. the degree to which any aspect of food chain or plant, animal, fish, or human life processes are affected adversely within or beyond the activity area;

4. the degree to which filling and excavation activities can be minimized;

5. the degree to which excavation and filling creates stagnant water conditions, fish entrapments, and deposit sumps;

6. the degree to which the proposed activity controls erosion;

7. the degree to which the proposed activity provides facilities for the proper handling of litter, trash, refuse, and sanitary and industrial wastes;

8. the degree to which the proposed activity alters natural water flow or water temperature;

9. the degree to which irreplaceable land types will be destroyed;

10. the degree to which the natural, scenic, and aesthetic values at the proposed activity site can be retained;

11. the degree to which the proposed activity ecologically enhances the estuarine environment; and

12. the degree of danger arising from hurricanes, floods, or other determinable and periodically recurring natural hazards.

Appeals to the decision may be filed within 30 days. Appeals are heard by a hearing officer before whom the applicant and witnesses and the state present their arguments. The Commissioner then reviews this information and makes a decision.

Violations of the provisions of the Wetlands Act may result in a penalty of not more than $1000 and an obligation to restore the affected Wetland to its original condition.

COASTAL AREA FACILITY REVIEW ACT

The Coastal Area Facility Review Act (CAFRA) of 1973 (N.J.S.A. 13:19- et. seq.) is the most recent and encompassing of the coastal legislation in New Jersey. CAFRA was enacted to plan and regulate major coastal land development proposals so that the best balance of commercial, industrial, residential, agricultural, and public use would take place in a healthy, stable environment.

The lands encompassed by CAFRA comprise roughly 18 percent of the state's land area. The boundaries of this region are the state's territorial limits and specified railways, highways, and physiographic features stretching from Raritan Bay in Middlesex County down the Atlantic coast to the tip of Cape May, and along the tidal portion of the Delaware River to the Delaware Memorial Bridge in Salem County (See Figure 2).

CAFRA empowers the Department of Environmental Protection to regulate certain types of facilities and activities. Specifically mentioned for review and regulation by the Act are facilities designated or utilized for the following purposes:

1. electric power generation;
2. food and food by-product production;
3. incineration of wastes;
4. paper production;
5. public facilities and housing (projects of 25 units or more);
6. agri-chemical production;
7. inorganic acids and salts manufacture;
8. mineral procession;
9. chemical processing;
10. storage;

11. metallurgical processing; and,

12. a number of miscellaneous operations including sawmill operations, marine terminals, and cargo-handling facilities.

None of the above-cited facilities are banned from the coastal area defined by CAFRA, but the Act does require that a permit be obtained before construction may begin.

The permit application is submitted to the Department of Environmental Protection, Division of Marine Services, Office of Coastal Zone Management and must include an environmental impact statement with the following general elements:

1. an inventory of existing environmental conditions at the project site and in the surrounding region;

2. a project description;

3. a listing of all licenses, permits or other approvals as required by law and the status of each;

4. a listing of adverse environmental impacts which cannot be avoided;

5. an assessment of the probable impact of the project;

6. steps to be taken to minimize adverse environmental impacts during construction and operation, both at the project site and in the surrounding regions;

7. alternatives to all or any part of the project with reasons for their acceptability or nonacceptability; and,

8. a reference list of pertinent published information relating to the project, the project site, and the surrounding region.

The fee to be paid to the State for a residential facility permit is $500 plus $10 for each dwelling unit; the fee for a non-residential and mixed-use facility is $1000 plus $10 per acre to be developed.

Once submitted, the application is reviewed for completeness within 30 days by the Department of Environmental Protection with the assistance of the Department of Labor and Industry, and the Department of Community Affairs. The applicant is notified if additional information is needed. When the application is re-submitted with the additional data, the staff has fifteen days in which to review it for completeness. Once an application is declared complete a public hearing date must be set within 15 days. The hearing must take place within 60 days and is usually held in the vicinity of the proposed project.

Within 15 days after the hearing, the Director of the Division of Marine Services may request that the applicant submit more information. Once the application is declared complete for review, the Director must then make a decision on the application within the next 90 days. If no additional information was necessary after the hearing, the Director must make his decision within 60 days.

A permit may be granted if the proposed facility meets seven basic requirements specified in the law. The facility must:

1. conform with all applicable air, water and radiation emmission and effluent standards, and all applicable water quality criteria and air quality standards;

2. prevent air emmissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region;

3. provide for the handling and disposal of litter, trash, and refuse in such a manner as to minimize adverse environmental effects and the threat to the public health, safety and welfare;

4. result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies;

5. cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region;

6. be located or constructed so as to neither endanger human life nor property, nor otherwise impair public health, safety and welfare; and,

7. result in minimal practicable degradation of unique or irreplaceable land types, historical or archeological areas, and existing scenic and aesthetic attributes at the site and within the surrounding region.

Not withstanding the applicant's compliance with these criteria, if the Director finds that the proposed facility would violate or tend to violate the purpose and intent of the act, or if the Director finds that the proposed facility would materially contribute to an already serious and unacceptable level of environmental degradation or resources,he may deny the permit application, or he may issue a permit subject to such conditions as he finds reasonably necessary to promote the public health, safety and welfare, to protect public and private property, wildlife and marine fisheries, and to preserve, protect and enhance the natural environment.

Any appeals to a CAFRA permit application decision are reviewed by the Coastal Area Review Board which consists of the Commissioners of the Departments of Environmental Protection, Labor and Industry, and Community Affairs. The Board may affirm, reverse or modify the decision of the Director. Alternatively, an appellant can request a quasijudicial plenary hearing before a Departmental hearing officer.

Any violation of the provision of this Act may result in a penalty of no more than $3000. If the violation is of a continuous nature however, each day of occurance may be considered a distinct offense.

The long term thrust of CAFRA is the planning of a coastal "strategy" to be established in three stages. Each stage results in a support which the DEP Commissioner must submit to the Governor and Legislature. The first stage was the development of an inventory of the environmental resources, existing facilities, and land uses in the delineated coastal area. This inventory was completed as required by law in September, 1975.

The second stage was to establish a set of alternative long-term environmental management strategies, based on the environmental inventory, which take into account the paramount need for preserving environmental values and the legitimate need for economic and residential growth within the coastal area. These alternatives were completed in September, 1976.

The third stage is the selection of a coastal area environmental design, to be chosen from the alternative strategies by September, 1977. The environmental design will include a delineation of areas appropriate for the development of residential and industrial facilities of various types, depending on the sensitivity and fragility of the adjacent environment.

COASTAL ZONE MANAGEMENT ACT OF 1972

The Federal Coastal Zone Mangement Act of 1972 (P.L. 92-583) was passed in order to protect and preserve the uniques coastal resources of the nation. Protection of our coastal resources is

the goal of state management programs established voluntarily with the aid of federal funds allocated through this Act and its ammendments passed in 1976. The spirit of the Act is to encourage and aid the various coastal states to develop and implement sound coastal zone management strategies that will balance the ever increasing social and economic pressures with ecological stability of the coast. The federal funds are offered in the form of five types of grants: grants for coastal management program planning, grants for program implementation, grants for beach acquisition, grants for onshore energy impact evaluation, and grants for the establishment of estuarine sanctuaries as natural field laboratories to be used for education and research.

A state may apply for and receive as many as four annual planning grants. New Jersey received its third planning grant for fiscal year 1977. These grants are to be used by the state to plan its coastal zone management program. The program is to include seven elements: an identification of the boundaries of the coastal zone; land and water uses which have a direct and significant impact on coastal waters; an inventory of geographic areas of particular concern; public and governmental involvement; state-federal interaction and national interests; the means by which the state proposes to control those uses; and the organizational structure which would implement the management program.

The Governor must submit the completed state program to the Secretary of the Department of Commerce. To secure approval, the authorities necessary for its implementation must be in existence. Following approval, the state becomes eligible for federal implementation grants, and for "federal consistency", a unique provision requiring all federal actions covered by the state's coastal program to be consistent with its approved coastal program. Until 1976 the state matched the total federal grant it requested by one half. The Coastal Zone Management Act Amendments of 1976 reduce the state's share to 20 percent.

The third major section of the Act authorizes funding for the acquisition, development, and operation of estuarine sanctuaries. The grant, made on a 50-50% matching basis, enables a state to acquire estuarine water bodies and adjacent waters, wetlands, and uplands, and to operate and maintain that area for education and research in the support of coastal efforts.

Federal grant funds for beach acquision and onshore energy impact evaluation were mandated in the 1976 ammendments to the 1972 Coastal Zone Management Act (P.L. 94370). To date, guidelines for these grants include a definition of beach, beach access, and energy facility. Regulations are to be written by January, 1977.

CONCLUSION

These are the major laws which guide human activities in the coastal zone of New Jersey. They help control human impact on the complex coastal environment so that these productive and vital lands and waters can continue to thrive. It is important for citizens to aid in this process by sharing their knowledge and making their opinions known to the people administering the laws. The future of New Jersey's coastal zone is directly related to citizen response to state and federal attempts to preserve and protect this environment.

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FIGURE 1

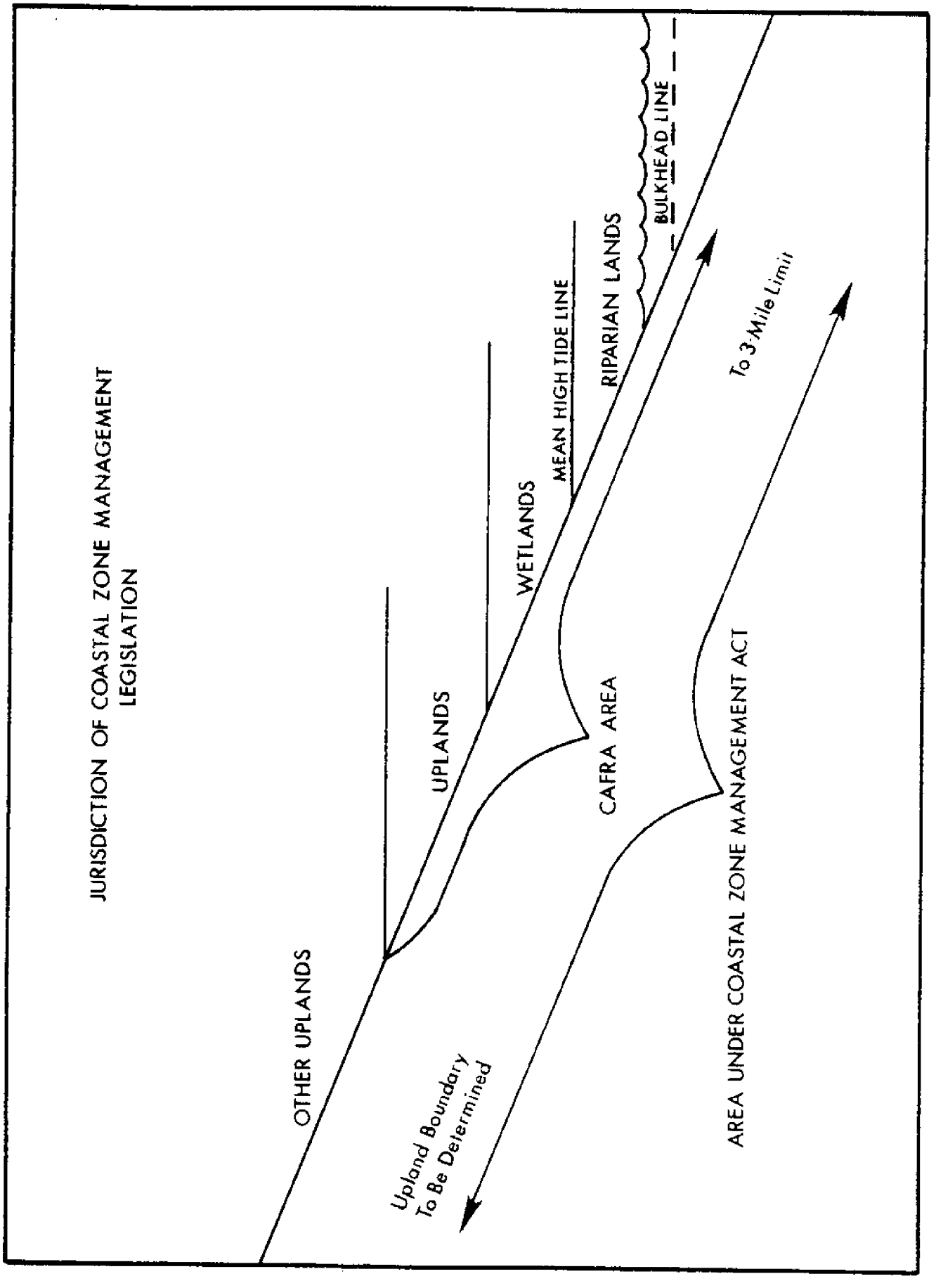
JURISDICTION OF COASTAL ZONE MANAGEMENT LEGISLATION
OTHER UPLANDS
UPLANDS
WETLANDS
MEAN HIGH TIDE LINE
RIPARIAN LANDS
BULKHEAD LINE
CAFRA AREA
To 3 Mile Limit
Upland Boundary To Be Delermined
AREA UNDER COASTAL ZONE MANAGEMENT ACT

FIGURE 2

COASTAL ZONE MANAGEMENT BOUNDARIES