Improving Waterfront Permitting in the New York-New Jersey Harbor Estuary

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A report by the Metropolitan Waterfront Alliance with funding from the Robert Sterling Clark Foundation
About the Metropolitan Waterfront Alliance:

The Metropolitan Waterfront Alliance works to transform the New York and New Jersey Harbor and Waterways to make them clean and accessible, a vibrant place to play, learn and work, with great parks, great jobs and great transportation for all.

South Street Seaport, the birthplace of New York City. 2009 c Robert Simko/The Broadsheet
Table of Contents

Executive Summary ............................................................................................................ 5
  Waterfront Permitting: A Challenge for Many ............................................................... 5
  The Report and Recommendations ............................................................................... 6
  Top Three Recommendations ....................................................................................... 8
  MWA’s Waterfront Permitting Project ......................................................................... 9
  Methodology and Benchmarking ................................................................................ 10
  Chapter Summaries ..................................................................................................... 10

All Recommendations Summarized ........................................................................ 20

Introduction ..................................................................................................................... 24
  Effective Permitting is Key to a Better Waterfront ................................................. 24
  Methodology ................................................................................................................ 25

CHAPTER 1 ...................................................................................................................... 28
  Transparency and Efficiency in the NYSDEC Permit Application and Review Processes
    Applicant Feedback .................................................................................................... 29
    Availability of Policy Guidelines ............................................................................. 30
    Availability of Multi-Agency Information and Advice ................................................. 30
    Pre-application Meetings and Communications ....................................................... 31
    Statutory Timelines and Remedies .......................................................................... 32
    Reoccurring “Incompleteness” Determinations ....................................................... 34
    Application Fees ....................................................................................................... 35

  Chapter 1 Recommendations ................................................................................. 36

CHAPTER 2 ...................................................................................................................... 44
  Waterfront Science, Wetlands Mitigation, and the Ecological Effects of Waterfront Development
    Shading ...................................................................................................................... 45
      Research on Shading from Other States ............................................................... 46
      Feedback on Shading ............................................................................................. 47
      Agency Response to Shading Debate ................................................................... 48
      Conclusion on Shading .......................................................................................... 48
      Shading Recommendation .................................................................................... 49
    Wetlands Mitigation ................................................................................................. 49
      Background ........................................................................................................... 49
      Three Types of Mitigation ..................................................................................... 50
      Feedback on Wetlands Mitigation ...................................................................... 51
      Confusion About the Purpose Wetlands Mitigation ............................................. 52

  Chapter 2 Recommendations ............................................................................... 54
Executive Summary

Waterfront Permitting: A Challenge for Many

Throughout 2008, Metropolitan Waterfront Alliance (MWA) assembled hundreds of waterfront stakeholders at a series of task force meetings to discuss the issues that present the biggest challenges and provide the greatest opportunities for the waterfront community and for the New York metropolitan region as a whole. From these meetings, six pressing waterfront issues were identified: (1) creating incentives to encourage aquatecture and intelligent waterfront design; (2) protecting and improving the marine environment; (3) better education based on our rich maritime resources; (4) encouraging and expanding harbor recreation for all; (5) developing efficient and affordable mass water transit; and (6) diversifying and strengthening our working waterfront. To address these issues, six task forces were created. Each task force met twice for in-depth discussions about waterfront policies and for developing a multi-faceted vision to transform the New York/New Jersey waterfront into one that is world-class. The work of the task forces culminated in the November 2008 Waterfront Conference, where over 500 participants representing hundreds of public, private and nonprofit organizations, launched the Waterfront Action Agenda and the six white papers that support it.

Of the hundreds of policy matters explored during task force meetings and at a standing-room-only permitting session at the Waterfront Conference, one issue emerged as the most contentious and overarching; the complexity, confusion and frustration associated with waterfront permitting in New York City as administered by the myriad of regulatory agencies but especially the New York State Department of Environmental Conservation.

These opinions from a range of MWA Partners, permit applicants, and government agencies for permitting reform led MWA to realize the importance of:

- Providing more information to applicants and permittees regarding the permitting process and the rationale supporting it.
- Providing information on all of the permitting regulations administered by various agencies in one place so permittees have a centralized, one-stop-shop for permitting information.

- Analyzing the current permitting system in both New York and New Jersey to determine how the processes can be reformed and how the enduring strain between regulators, applicants, and government agencies over waterfront permitting in New York can become less prominent.

- Developing solutions to help ensure there is planning and regulatory alignment between the many agencies responsible for New York City’s waterfront.

More than 14 agencies have a regulatory role in the protection of the NY/NJ Harbor Estuary. Regulatory programs are administered to ensure impacts on the environment are avoided, minimized, or mitigated, while allowing reasonable and necessary development to go forward. A balancing economic, social, and ecological values is necessary. However, our ability to design an ecologically sound, active and accessible waterfront has, in some cases, outpaced the evolution of the waterfront permitting system.

The perception of many applicants and maritime stakeholders is that the New York waterfront permitting system is complicated and unpredictable. The permitting process is so involved that even the most sophisticated landowners and waterfront developers are confounded by the process.

**The Report and Recommendations**

In response to these concerns, MWA, with funding from the Robert Sterling Clark Foundation, analyzed and researched the waterfront permitting system in New York State and New Jersey, comparing waterfront permitting practices in New York State with those in Oregon, Washington, Connecticut, and Massachusetts and conducting extensive interviews with regulators and applicants. From this analysis MWA developed a guide to the permitting processes in both New York and New Jersey, including a website for applicants, and developed this report, *Improving Waterfront Permitting in the New York-New Jersey Harbor Estuary*.

This report contains twenty-six recommendations summarized on Page 20 that serve to improve communications between agencies and applicants, alleviate time and money wasted on permit disputes, and encourage agencies to work as consistently as possible toward common goals for New York City’s waterfront.

While this report covers permitting processes in both New York and New Jersey, the New York analysis and New York-centered recommendations are more substantial than those for New Jersey. This imbalance is due in part to efforts in New Jersey that addressed northern New Jersey’s permitting process in 2008, and in part is due to the growing interest and concern with the New York State permitting process.
Central to MWA’s analysis in this report is the need to ensure high levels of environmental protection along with the constraints and limited capacity of the New York State Department of Environmental Conservation (“NYSDEC”, or “Agency”, or “Department”). Despite what may be viewed as competing interests, MWA has formulated recommendations for permitting reform that address and balance the concerns of the maritime industry, waterfront parks interests, government officials and environmental advocates to create a permitting system that allows for change on the waterfront, but not at the expense of compromising the environmental integrity of the New York-New Jersey Harbor Estuary (NY/NJ Harbor Estuary).

There is no debate in that waterfront regulations are in place for good reason. Since the early settlement of the region, land adjacent to water was attractive to industry, commerce, government, and for recreation alike. As the population grew and the expanse of the metropolis was enabled by greater engineering capabilities, the waters of the harbor were seen as spaces to be filled to make more land and waterfront for New York City and its land-based needs.

The waterfront continues to be seen as prime real estate for many types of projects. Regulators, especially at the NYSDEC Region 2 Office, see themselves as constantly striving to push against this desire to grow the region into and over the water. NYSDEC views its role in waterfront development as the agency designated to ensure the proper management of tidal waters and the waters edge. This responsibility includes preventing unnecessary filling and building in tidal waters.

The crux of MWA’s recommendations, especially in Chapters 2 and 4, are based on the critical need to discuss and bring to light competing understandings of what projects are necessary and what parts of projects require filling and building in the water. Many important waterfront and harbor uses are affected by competing definitions of what is a necessary project. This report strives to make recommendations that will improve the waterfront permitting process as well as advance a greater understanding of these conflicts. Ultimately the goal of this report is to help identify ways our region and NYSDEC can better balance competing and equally valid visions for our waterfront. By analyzing these issues and identifying ways to improve the permitting process, this paper can provide a roadmap for decision-makers when trying to improve the waterfront permitting system as it applies to New York City’s waterfront.
Top Three Recommendations

MWA suggests starting with the three principle recommendations described below. It is believed that the momentum gained by these initial actions will in turn lead to other proposed reforms. The top three recommendations described below are to provide a simple and clear guide to waterfront permitting, protect and preserve the maritime industry, and improve the permitting system through a permit efficiency task force led by NYSDEC.

1) A Simple and Clear Guide to Waterfront Permitting

To help applicants with what is a complex, confusing and time-consuming regulatory process, MWA recommends a collaborative interagency partnership to either independently create an information source on waterfront permitting processes or utilize the User’s Guide and website (described above) developed by MWA. This interagency partnership could regularly update and revise the User’s Guide and website to provide applicants with the most up-to-date information. Currently, the User’s Guide and the website is the only reference source in our region where applicants can get information about the role of the state and municipal agencies involved in waterfront permitting, flow charts of each state’s permitting process, tips on how to navigate the process, descriptions of the permits and certifications required for waterfront development, and explanations of the application process from start to finish.

Recommendation 1.2

2) Protect and Preserve the Maritime Industry

To better ensure the economic viability of the maritime industry, in particular small operators, MWA recommends the creation of a Maritime Preservation Task Force through the newly established New York City Waterfront Management Advisory Board. The Maritime Preservation Task Force would be responsible for evaluating the current permitting system and proposing changes for improvement. Specifically, the Maritime Preservation Task Force would look at the impact of New York State and New York City waterfront permitting regulations on Significant Maritime and Industrial Areas (SMIAs) and would also examine issues affecting the maritime community such as waterfront-related laws, tax incentives, zoning regulations, land use management and subsidies for consulting assistance and support for the maritime industry. It is recommended that the Maritime Preservation Task Force, include representatives from NYSDEC, the NYS Department of State, NYC Department of City Planning, NYC Economic Development Corporation, the maritime industry, maritime experts, and non-governmental organizations. Ideally, the Maritime Preservation Task Force would
propose their suggested changes within eight months of formation.

**Recommendations 4.6 and 4.7**

3) An Improved Permitting System

To improve confusing and overlapping regulatory processes within NYSDEC, MWA recommends the creation of a Permit Efficiency Review Task Force, empowered by the State of New York. The Permit Efficiency Review Task Force would work with NYSDEC and waterfront stakeholders to create a set of recommendations aimed at increasing efficiency, timeliness, transparency, affordability and predictability in New York’s waterfront permitting process. The Permit Efficiency Review Task Force process can be jumpstarted through the New York City Waterfront Management Advisory Board and modeled after the successful program implemented by NJDEP, which has effectively consolidated the New Jersey waterfront permitting process without decreasing environmental protections. In addition to improving the permitting process, this task force can create an educational series, aimed at consultants, that provides information on the latest trends in waterfront development, and provide applicants with step-by-step permitting information through the User’s Guide and website, and guidance on NYSDEC policies and design guidelines. **Recommendation 5.1**

**MWA’s Waterfront Permitting Project**

The complexity of the regulatory process for waterfront projects is cited as one of the main sources of frustration among waterfront permittees and applicants. To aid applicants through the process, MWA developed a user’s guide and website focusing on waterfront permitting processes. Both resources were created with the goal of providing permittees with a single, all-inclusive place for permitting assistance. This would prevent applicants from having to contact several agencies at various and multiple stages in the process, thereby establishing a one-stop shop for permitting information.

In addition to this report, MWA developed two tools to help improve waterfront permitting in the New York metropolitan region:

1) The “**User’s Guide to Waterfront Permitting,**” (“User’s Guide”) which can be downloaded from the NY/NJ Waterfront Permitting web site (URL below), details the permitting processes in New York and New Jersey, provides flow charts on each State’s permitting process, and offers tips on how applicants can navigate both processes.

2) The Website – The “**Waterfront Permitting Made Simple**” website (“website”) contains an online version and downloadable copy of the information found in the
Methodology and Benchmarking

To inform our study of the permitting system and to generate the recommendations in this report, MWA conducted:

**Analysis:** MWA analyzed laws, policies, and studies that impact waterfront development.

**Interviews:** MWA interviewed stakeholders (listed in Appendix F) and applicants, from the public, private, and non-profit sectors.

**Benchmarking:** MWA conducted a benchmarking analysis of permitting policies and programs in Connecticut, Massachusetts, Oregon and Washington (See Appendices A-E). The benchmarking studies evaluate each State’s approach to the following:

- availability of permitting information and applicant guides
- adherence to statutory timelines
- application fees and availability of refunds
- regulation and interpretation of “water dependent” uses
- coordination between state permitting agencies and municipal parks departments
- programs implemented to encourage innovative projects or to fast-track projects of importance
- regulatory efforts to improve and consolidate the process

Chapter Summaries

Five themes emerged in the analysis of the waterfront permitting process. These five themes are represented by the five chapters in this report:

1. Transparency and efficiency in the permit application and review processes
2. Waterfront science, wetlands mitigation, and the ecological effects of waterfront development
3. Innovation in waterfront design
4. Protecting maritime uses and public access to the waterfront
5. Comprehensive streamlining of state environmental permitting.

The following sections summarize the major finds of each chapter.
Recommendations from Chapter 1
Transparency and Efficiency in the NYSDEC Permit Application and Review Processes

Chapter 1 recommendations begin on Page 36

The permit process is complicated by a lack of agency guidance and by the rules and procedural mechanisms NYSDEC must follow to approve permit applications. This chapter recommends a number of changes which can assist applicants and improve the management of the permitting process.

Better Guidance on Goals, Policies, and Designs
Recommendation 1.1
One of the biggest problems identified with the New York State permitting process, is the lack of guidance available to help applicants understand what requirements must be met for permit approval. NYSDEC has not issued guidance documents to explain what requirements it looks for when approving or denying permit applications. Therefore applicants, especially applicants new to the process, are left to speculate on what the Agency is looking for and run the risk of going through a lengthy and expensive permit process should the application be missing the necessary information. MWA has come to understand that apprehension over the permitting process for these reasons alone are enough to discourage project developers from considering environmentally sustainable waterfront improvements along the shoreline where NYSDEC has jurisdiction. To alleviate these concerns, MWA recommends that NYSDEC publish easily accessible information on the Agency’s website that articulates the Agency’s goals, policies, and regulatory interpretations that guide permitting decisions. With this information available, applicants will feel less confused and frustrated by the waterfront permitting process.

Better Guidance on the Permitting Process
Recommendation 1.2
Those interviewed also identified the lack of information available to help applicants navigate through the many requirements of the waterfront permitting process as a problem that should be addressed. Acquiring waterfront permits involves several agencies with overlapping jurisdiction and each agency has their own set of regulations and requirements that must be satisfied. Needless to say, the process is quite complex and often times confusing. To address this concern, MWA recommends creating and regularly updating a website where information on federal, state and municipal permitting regulations can be obtained. This website can serve as a one-stop shop for permitting information and can offer flow maps and text summaries to aid applicants through the process. MWA offers the use of the guide, “User’s Guide to Waterfront Permitting” and the corresponding website as an initial resource that can be utilized and updated.
**Updates to the Uniform Procedures Act**  
Recommendations 1.3 to 1.5  
Another issue affecting the efficiency and transparency of the permitting process is that the procedural mechanisms to ensure timely responses to permit applications are inadequate. Therefore, it is recommended that amendments to the Uniform Procedures Act (“UPA”) be made. One recommendation is to amend the UPA to require permitting agencies to send automatically generated notices explaining applicant remedies when statutory deadlines pass. This will notify applicants of the statutory timelines that are in place and can inform them of the next steps that can be taken to promote agency action. Another recommended amendment to the UPA, is to extend the requirement for mailing a notice of determination of an application’s completeness or incompleteness from 15 days to 60 days after receipt by the Agency (for most applications). This recommendation is designed to alleviate some of the strains on the NYSDEC and create a more realistic timeframe in which the Agency can make permit application review decisions. This also benefits permit applicants because a more accurate timeline will allow permittees the opportunity to make better informed project decisions. Finally, the report recommends that the UPA be amended to require permitting agencies to publish publicly accessible lists identifying all currently overdue agency actions. Creating a database to monitor the responsiveness of permitting agencies will create an incentive for faster agency response times and will establish a mechanism for agency accountability. Agency staff will be more likely to make decisions within statutory timelines because this database may be used to assess an agency’s efficiency.

**Increased Funding for NYSDEC, Region 2**  
Recommendation 1.6  
Finally, it is recognized that the NY/NJ Harbor Estuary represents a highly urban environment and that permitting decisions are more intricate than other locations. In particular, evaluating waterfront development in the New York metropolitan region includes complexities such as historic contamination, dense competing land uses, fragile and degraded ecosystems, local political complexity, and many other issues. Therefore, it is recommended that New York State increase funding for NYSDEC Region 2 (“Region 2 Office,” or “Region 2”), serving Bronx, Kings, New York, Queens and Richmond Counties, to reflect the complexity of waterfront challenges in ultra-urbanized settings. This funding can be used to increase staff, which in turn will allow for faster permit decisions.

**Additional Benchmarking**  
Recommendation 1.7  
This report also recommends that a benchmarking study be conducted to compare the efficiency and timeliness of NYSDEC regional offices with each other and with other state environmental permitting departments. While this recommendation is similar to creating lists of overdue agency actions, this benchmarking study will specifically address how NYSDEC makes decisions, the timeliness of those decisions and also look at other contributing factors such as the complexity of waterfront permitting in a highly urbanized environment,
Informal Policy on Completeness Determinations
Recommendation 1.8
Another recommendation designed to promote efficiency, is to explore the feasibility of adopting an informal “One Bite at the Apple” policy at NYSDEC with respect to completeness determinations. This policy will only work if significant agency guidance is provided to applicants such as through the recommendations mentioned above and if the UPA requirement for mailing of the determination completeness letter is extended from 15 days to 60 days. Essentially, this policy would require that NYSDEC put all of their reasons for deeming an application incomplete into one incompleteness notice to the applicant. This will increase efficiency because an applicant will be able to address all of the deficiencies at once and return a complete application for Agency approval. The current system has applicants submitting permit applications, receiving a notice for incompleteness, submitting a revised application and then other deficiencies are identified. This back and forth between the Agency and the applicant is both time consuming and expensive and can be avoided.

Fee Refunds
Recommendation 1.9
Finally, this report also suggests that legislation establishing fees for NYSDEC wetlands permits be amended to allow for a refund if the Agency fails to issue decisions within the established statutory timelines. This recommendation creates a monetary incentive for Agency staff to issue decisions within the statutory deadlines, because if they do not meet the deadline, the permit application fee will be refunded. Under the current regulations, there is no penalty for when Agency staff miss deadlines. Therefore, this refund policy would give an additional push for NYSDEC to meet those timelines and in turn will promote efficiency in the permit review process.

Recommendations from Chapter 2
Waterfront Science, Wetlands Mitigation, and the Ecological Effects of Waterfront Development

Chapter 2 recommendations begin on Page 54

The validity, sufficiency and interpretation of the science that underpins waterfront permitting policies, has spurred controversy among waterfront stakeholders, as expressed by those interviewed for this report and others in the environmental, development, and public policy community. Environmental policies that are not based on a breadth of credible scientific findings are likely to provide inadequate conservation and may result in unintended consequences.
Unfortunately, when it comes to the environmental impacts of waterfront development, the portfolio of scientific research is limited. As a result, MWA makes recommendations in this report to advance the research of waterfront science, to build awareness of ecological waterfront development and to study the use of wetlands banking in appropriate areas.

Shading Research
Recommendation 2.1
One of the controversies with the available waterfront science is over the applicability of a scientific study which found that over-water structures creating shade on the water have a negative impact on the aquatic life below. NYSDEC will often not issue a permit for a project if it will result in some degree shading because they want to ensure that the aquatic life and habitat are protected. However, this study was conducted under a very large pier and it is uncertain whether the same results would be obtained under smaller piers. To address this problem, MWA recommends that NYSDEC collaborate with universities to conduct focused research to determine the effects of shading and the impact of small over-water structures on aquatic habitat. MWA also recommends that permit applicants be allowed to contribute money to fund scientific research on this topic. Additional research will lead to a better understanding of the environmental impacts of waterfront development and these findings can then be used by NYSDEC to make more informed policy decisions and to provide guidance on to what extent shading is acceptable.

Building Awareness of Ecological Development
Recommendations 2.2 to 2.3
Another recommendation of this report is that MWA and other organizations work to build awareness of ecological waterfront development. There are many design elements that can be incorporated into waterfront development projects that will either have no impact or will enhance the aquatic environment. Waterfront development does not have to have negative impacts and with further research and information gathered from pilot projects, ecological designs can emerge that support marine habitat and that NYSDEC can feel confident supporting.

Wetlands Banking
Recommendation 2.4
MWA also recommends that studies be conducted to establish wetlands banking programs to replace disrupted wetlands from development in Significant Maritime Industrial Areas (“SMIAs”). SMIA is a designation given by New York City for areas that were historically used for industrial maritime purposes. Some of these areas have been abandoned or not maintained for maritime purposes and wetlands re-growth has emerged. Since these areas were traditionally used by the maritime industry, they are ideal locations for continued maritime use. However, to compensate for any wetlands lost, wetlands banking in a centralized wetlands
area, such as Jamaica Bay, would provide increased wetland functions and as part of a larger system the benefits will be more meaningful.

**Recommendations from Chapter 3**

**Innovation in Waterfront Design**

*Chapter 3 recommendations begin on Page 65*

As waterfront science and engineering technologies advance, innovative waterfront designs are discovered and implemented that make the impacts from waterfront development either minimal or actually beneficial to aquatic habitat and wildlife. There are many opportunities for embracing innovative ecological designs that should be fostered and promoted. NYSDEC has not encouraged innovative designs as a way to minimize to impacts on waterfront development nor has NYSDEC offered incentives to encourage such designs. In fact, projects that incorporate innovative design elements are likely indirectly discouraged by the Agency because of applicants’ struggles with the permitting process and applicants’ perception that they may have a harder time gaining permit approval. To counter this and to stimulate creativity and forward-thinking among developers, designers, and architects, MWA recommends that NYSDEC create incentives for innovative design, promote ecological design and create new design guidelines to help developers propose the most ecologically sound projects.

**Green Waterfront Investment Fund**

Recommendation 3.1

To encourage innovate design in waterfront projects this report recommends several ways that agencies can offer incentives for projects that utilize cutting-edge technologies. One recommendation is to create a green waterfront investment fund to provide grants for innovative, ecological waterfront projects. Creating a monetary incentive is one of the surest ways to encourage a particular course of action. However, it is recognized that government at all levels are facing budgetary constraints, yet the creation of even a modest fund could demonstrate a commitment to ecological design and spur increased interest in the field of environmental design.

** Expedited Permitting and Administrative Incentives for Waterfront Innovations**

Recommendations 3.2 to 3.3

Another recommendation to encourage innovative design is for NYSDEC to offer an expedited permitting process for projects that demonstrate environmental leadership or significantly advance state coastal goals. Many waterfront projects lose money the longer they wait to proceed with their developments. Therefore, offering expedited permitting will provide a monetary benefit to the applicant and does so with no extra expense to the Agency (aside from possible increased staffing needs). This report further recommends that additional administrative incentives for projects that experiment with habitat-enhancing design and materials be established. In exchange for offering these incentives, agencies will
be allowed access to the sites to conduct scientific research and monitoring to determine whether these habitat-enhancing designs are able to achieve the beneficial results that they claim.

**Develop a Vision for the Estuary Based on the Comprehensive Restoration Plan**

Recommendation 3.4
In addition to offering incentives for innovative design, MWA recommends that a vision be developed for the NY/NJ Harbor Estuary based on the U.S. Army Corps of Engineers’ Comprehensive Restoration Plan. A wide range of stakeholders, especially from NYSDEC, should engage in the development of a broad, inclusive, and inventive vision for the NY/NJ Harbor Estuary. As part of this visioning process, waterfront stakeholders should create a best practices guide to good ecological waterfront design. This guide would be especially helpful for permit applicants to consider projects that fit the vision adopted by NYSDEC or to tailor their projects to meet these goals.

**Recommendations from Chapter 4**

**Protecting Maritime Uses and Public Access to the Waterfront**

*Chapter 4 recommendations begin on Page 81*

State and municipal policies in New York and New Jersey recognize the critical role that maritime industries play in supporting our economy, protecting our environment and the social value of providing public access to the waterfront. However, there are some obstacles that inhibit the advancement of the maritime industry and that make public access and park development on the waterfront either difficult or impossible. This report offers a number of recommendations to address this problem and reach a balance to satisfy the interests of the maritime industry and provide public access to the waterfront, while at the same time ensuring a high level of environmental protection.

**Improving Communications**

Recommendation 4.1
The first recommendation aimed at protecting maritime uses and providing public access to the waterfront, simply involves increased communication between government agencies. Quarterly meetings, convened at the mayoral level, of the New York City Department of Parks and Recreation, New York City Department of City Planning, New York City Economic Development Corporation and the Region 2 Office of the New York State Department of Environmental Conservation should be scheduled. At these meetings the various agencies could track waterfront permits, discuss issues of mutual concern, and make sure that pending projects will advance the established comprehensive vision for the NY/NJ Harbor Estuary.
Updating New York State Water Dependency Definition
Recommendations 4.2 to 4.3
The next two recommendations deal with making amendments to the New York State definition of “water dependency.” For activities taking place on the waterfront, priority for permitting decisions is given to uses that require waterfront access. A list of such uses is provided in the New York State definition of “water dependency.” To increase public access to the waterfront and to encourage the development of waterfront parks, it is suggested that the New York water dependency laws and regulations be amended to include additional examples of water-dependent uses, including park features that provide direct public access to the water. If this use is specifically listed in the water dependency definition then there will be no controversy over whether parks should be afforded top priority to waterfront locations. It is also recommended that the New York water dependency laws and regulations be amended to include definitions of water-dependent-industrial uses. This amendment will serve as one of many measures needed to protect the maritime industry and allow for its development and preservation.

General Permits
Recommendation 4.4
In order to promote the maritime industry and in turn boost the economy, this report offers a couple of recommendations that will eliminate some of the barriers to the maritime industry’s work on the New York City waterfront. The first recommendation is for NYSDEC to create general permits for (1) dredging certain volumes (i.e. less than 50,000 cubic yards) for water-dependent maritime operations, (2) the removal of sunken vessels, and (3) maintenance and repairs to waterfront structures and bulkheads. General permits are intended to regulate common activities that are repeated in a similar manner and have minimal environmental impacts. Therefore, the permitting process can be simpler and more efficient for these common uses. Allowing general permits benefits the permitting agencies and applicants, because both parties will be able to focus their time and energy on those projects that are more likely to have a significant environmental impact.

Maritime Industry Desk at NYCEDC
Recommendation 4.5
The second recommendation designed to support the maritime industry, is for the New York City Economic Development Corporation (“NYCEDC”) to maintain a maritime industry desk. In particular, the staff assigned to the desk should focus on providing guidance to small, private operators, and offer them assistance in obtaining permits. NYSDEC should give priority to meetings with NYSEDC’s staff that serves the small operators in the maritime industry. This extra attention will encourage first-time applicants to consider waterfront development.

Maritime Preservation Task Force and Pollution Prevention Assistance
Recommendation 4.6
The next set of recommendations suggests the creation of a Maritime Preservation
Task Force. The NYSDEC Commissioner should, in consultation with the Mayor of New York City, create a Maritime Preservation Task Force to propose changes to New York State and New York City waterfront permitting regulations in SMIAAs. The newly formed New York City Waterfront Advisory Board can help serve as this task force and help ensure key stakeholders are represented. This task force will be dedicated to addressing policies that will support the maritime industry and that promote a comprehensive vision for waterfront development. In addition, the Maritime Preservation Task Force should propose regulations for SMIAAs that address wetlands mitigation regulations, the 50% rule, application of shading restrictions, and determine when wetlands impacts can or cannot be avoided. It is anticipated that this task force will encourage waterfront development in SMIAAs by seeking more relaxed environmental standards than those applied to other, more pristine areas that were not historically industrial maritime locations. Finally, NYSDEC and New York City should establish a pollution prevention assistance program serving the New York City maritime and waterfront industries to reduce emissions from the maritime industry and industrial waterfront impacts on surrounding communities.

**Chapter 5 Recommendation**
**Comprehensive Streamlining of State Environmental Permitting**

*Chapter 5 recommendations begin on Page 90*

MWA advances the position that many of the issues and concerns highlighted in this report should be addressed simultaneously through a New York State-sponsored review of the waterfront permitting system. This could be realized through the creation of a Permit Efficiency Review Task Force (“Task Force”) charged with analyzing and developing strategies to improve the waterfront permitting processes within NYSDEC.

**Establish a Permit Efficiency Review Task Force Led by NYSDEC Staff**

Recommendation 5.1

The purpose of the Task Force will be to work with NYSDEC staff and waterfront stakeholders to create a set of recommendations aimed at increasing efficiency, transparency and predictability in New York’s waterfront permitting process. The recommendations created by the Task Force will identify ways to increase the likelihood that regionally beneficial projects that embody New York State waterfront goals receive needed approvals in a timely and affordable manner and that applicants understand how to most effectively work with the Department. The Task Force will bring together a diverse group of leading stakeholders and interest groups, including government officials, industry groups, environmental advocacy groups, environmental justice advocates, and other advocacy leaders from around the region. Ultimately, this Task Force can be the driving force to implement the other recommendations outlined in the report and can develop additional recommendations to further improve the New York State waterfront permitting process. The newly formed New York City Waterfront Management
Advisory Board can play a significant role in working with NYSDEC to help in this endeavor.

Once the recommendations developed by the Task Force are implemented, the effect will be an improved permitting system that reduces the burdens on regulatory officials, maximizes the quality and effectiveness of their service, and increases the understanding between stakeholders and NYSDEC.
All Recommendations Summarized

Chapter 1 Recommendations: Transparency and Efficiency in the NYSDEC Permit Application and Review Processes

**Recommendation 1.1**  Page 36
Publish easily accessible information on NYSDEC’s website that articulates NYSDEC goals, policies, and regulatory interpretations that guide permitting decisions.

**Recommendation 1.2**  Page 37
Help permittees understand and navigate the permitting process by maintaining a User’s Guide to Waterfront Permitting and website. These tools should be updated and maintained through an interagency collaboration between state, municipal, and federal agencies.

**Recommendation 1.3**  Page 39
Amend the Uniform Procedures Act (UPA) to require permitting agencies to send automatically generated notices explaining applicant remedies when statutory deadlines pass.

**Recommendation 1.4**  Page 40
Amend the Uniform Procedures Act (UPA) to extend the requirement for mailing a notice of determination of an application’s completeness or incompleteness from 15 days to 60 days after receipt by the Agency (for most applications).

**Recommendation 1.5**  Page 40
Amend the Uniform Procedures Act (UPA) to require permitting agencies to publish publicly accessible lists identifying all currently overdue agency actions.

**Recommendation 1.6**  Page 41
New York State should increase funding for NYSDEC Region 2 to reflect the complexity of waterfront challenges in ultra-urbanized settings.

**Recommendation 1.7**  Page 41
Conduct a benchmarking study comparing the efficiency and timeliness of NYSDEC regional offices with each other and with other state environmental permitting departments. Use this to determine additional funding required for Region 2 given the complexity of the New York City environment.

**Recommendation 1.8**  Page 42
Explore the feasibility of adopting an informal “One Bite at the Apple” policy at
NYSDEC with respect to completeness determinations similar to that employed by the state of Oregon.

**Recommendation 1.9 Page 43**
Amend the recent legislation creating fees for NYSDEC wetlands permits to require a refund if the Agency fails to issue decisions within statutory deadlines.

### Chapter 2 Recommendations: Waterfront Science, Wetlands Mitigation, and the Ecological Effects of Waterfront Development

**Recommendation 2.1 Page 54**
Collaborate with universities to conduct focused research to determine the effects of small over-water structures and shading.

**Recommendation 2.2 Page 54**
Build awareness of ecological waterfront development.

**Recommendation 2.3 Page 55**
Allow permit applicants to contribute to research as a way to better understand the environmental impacts of development and use these findings to inform policy decisions. Determine other funding mechanisms for research.

**Recommendation 2.4 Page 56**
Study how to establish wetlands banking for wetlands replacement in Significant Maritime and Industrial Areas (SMIAs).

### Chapter 3 Recommendations: Innovation in Waterfront Design

**Recommendation 3.1 Page 65**
Create a green waterfront investment fund to provide grants for innovative, ecological waterfront projects.

**Recommendation 3.2 Page 66**
Create an expedited permitting process for projects that demonstrate environmental leadership or significantly advance state coastal goals.

**Recommendation 3.3 Page 67**
Create administrative incentives for projects that experiment with habitat-enhancing design and materials.

**Recommendation 3.4 Page 67**
Develop a vision for the New York-New Jersey Harbor Estuary based on the U.S.
Army Corps of Engineers’ Comprehensive Restoration Plan. From this develop a waterfront design guide, updated regularly to reflect innovations and the Comprehensive Restoration Plan.

Chapter 4 Recommendations: Protecting Maritime Uses and Public Access to the Waterfront

Recommendation 4.1 Page 81
Schedule quarterly meetings, convened at the mayoral level, of the New York City Department of Parks and Recreation, New York City Department of City Planning, New York City Economic Development Corporation, the New York State Department of State and the Region 2 Office of the New York State Department of Environmental Conservation.

Recommendation 4.2 Page 81
Amend the New York State water-dependency laws and regulations to include additional examples of water-dependent uses, specifically including park features that provide direct public access to the water.

Recommendation 4.3 Page 82
Amend New York State water dependency laws and regulations to include definitions of water-dependent-industrial uses.

Recommendation 4.4 Page 83
NYSDEC should create general permits for (1) dredging certain volumes (i.e. less than 50,000 cubic yards) for water-dependent maritime operations, (2) the removal of sunken vessels, and (3) maintenance and repairs to waterfront structures and bulkheads.

Recommendation 4.5 Page 83
The New York City Economic Development Corporation should maintain a maritime industry desk dedicated to serve the maritime industry. In particular, the dedicated staff at the desk should focus on providing guidance to small, private operators, assisting them in obtaining permits. NYSDEC should give priority to meetings with NYEDC’s staff that serves the small operators in the maritime industry.

Recommendation 4.6 Page 84
The NYSDEC commissioner should, in consultation with the Mayor of New York City, create a Maritime Preservation Task Force to propose changes to New York State and New York City waterfront permitting regulations in Significant Maritime and Industrial Areas (SMIAs).

Recommendation 4.7 Page 85
The Maritime Preservation Task Force should propose regulations for Significant
Maritime and Industrial Areas (SMIAs) that address wetlands mitigation regulations, the 50% rule, application of shading restrictions, and determine when wetlands impacts can or cannot be avoided.

**Recommendation 4.8 Page 86**
The New York City Department of Environmental Protection and NYSDEC should establish a pollution prevention assistance program serving the New York City maritime and waterfront industries to improve their environmental compliance, to reduce air and water emissions, and to reduce environmental impacts on surrounding communities.

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**Chapter 5 Recommendation:**
Comprehensive Streamlining of State Environmental Permitting

**Recommendation 5.1 Page 90**
New York State should create a Permit Efficiency Review Task Force composed of NYSDEC officials and staff and outside stakeholders to make the permitting process more efficient and effective, determine ways in which regulations should be modified to address sea level rise, and determine methods to better communicate with applicants and consultants.
Introduction

Effective Permitting is Key to a Better Waterfront

As our understanding of the science of environmental protection has increased, so has the complexity of New York State environmental laws and regulations. As with most states, these laws have been created and amended over time without sufficient analysis of the overall regulatory system.

Compounding this problem is the reality of the current economic downturn. Government agencies at all levels are being pressured to work with fewer resources, while maintaining high quality service.

We have the potential to create waterfronts that support thriving ecosystems, are economic generators, and represent world-class destinations for residents and tourists. Achieving this goal requires evaluation of our current permitting systems and waterfront priorities. It will also require a new vision for our waterfront and the New York/New Jersey Harbor Estuary (“NY/NJ Harbor Estuary”).

For most of the industrial age the waterways around the NY/NJ Harbor Estuary were seen as commercial conduits and dumping grounds for municipal and industrial waste. As manufacturing declined after World War II, the waterfront around the Harbor withered. In the decades that followed, much of the riverfront sat abandoned while pollution seeped deeper into the underlying soils. In 1972, the Federal Clean Water Act established ambitious pollution regulations, with the goal of making every water body in the country safe for active recreation. This marked the beginning of a new era in natural resource protection – an era in which water resources are valued for the economic, social and environmental benefits they bring to communities.

Despite these advances, our waterways still face significant hurdles. Many communities in the region do not have sufficient access to the waterfront, leaving residents disconnected from the vital waters that surround them. Maritime industries that provide vital economic and cultural value struggle to survive under the cost and complexity of regulatory requirements. And, while our waters are cleaner today than in decades past, we still struggle to grow and develop in a manner that simultaneously serves our economic, social and environmental goals.

Today, more than 14 agencies have a regulatory role in the protection of the NY/NJ Harbor Estuary. Regulatory programs administered by municipal, state, and federal agencies aim to ensure that any impacts on the environment are avoided, minimized, or mitigated, while allowing reasonable and necessary
development to go forward. These agencies are charged with the difficult task of balancing economic, social, and ecological values. However, our ability to design an ecologically sound, active and accessible waterfront has, in some cases, outpaced the evolution of the waterfront permitting system.

The perception of many applicants and maritime stakeholders is that the New York waterfront permitting system is complicated and unpredictable. The permitting process is so involved that even the most sophisticated landowners and waterfront developers are confounded by the process.

The prevailing opinion is that the current system suffers from a lack of centralized information, conflicting agency agendas, burdensome processes, inflexibility, and a perceived lack of transparency. While some project owners are able to overcome these regulatory hurdles by hiring consultants, paying for expensive studies, and enduring lengthy application processes, many others cannot.

This report analyzes the required permits and the associated processes with waterfront development in the NY/NJ Harbor Estuary. The report addresses four issues that are central to waterfront permitting:

- the permit application and review process
- the science that underpins waterfront policies
- the potential of innovative design and materials to mitigate a project’s environmental impacts
- the special needs of parks and maritime industries

**Methodology**

To inform our study of the permitting system, the Metropolitan Waterfront Alliance employed three types of research:

- **Regulatory and Policy Research:** To understand the legal foundation of the waterfront permitting process, MWA reviewed the laws, regulations, and policies that impact permitting decisions and procedures. This analysis provided MWA with an understanding of the New York and New Jersey regulatory structure and allowed for comparisons with benchmarking states.
• **Interviews:** MWA interviewed more than 40 individuals with an interest in the NY/NJ Harbor Estuary and its waterfront, including developers, landowners, non-profit leaders, environmental advocates, consultants, and agency officials from New York, New Jersey and other states. The input from these stakeholders informed MWA’s analysis of the permitting system and is cited throughout this report. While the opinions of these stakeholders are not always the same, they are a valuable source of information and context. Many of their comments broadly reflect the sentiment echoed in other forums such as MWA’s 2008 Waterfront Conference, MWA’s task force meetings, and other waterfront permitting discussions held over the last several years among environmentalists, parks representatives, and the maritime industry.

• **Benchmarking:** MWA conducted benchmarking research to compare the efficiency and effectiveness of the permitting systems in New York and New Jersey to other states that have implemented innovative waterfront permitting programs and procedures. The benchmarking states analyzed are Connecticut, Massachusetts, Oregon and Washington. The research for these benchmarking comparisons was conducted primarily through telephone interviews with each state’s environmental agency staff, and by reviewing the environmental laws and agency publications within those states. These interviews were helpful not only to understand what other states are doing, but also why, and the lessons learned in the process. The benchmarking research is incorporated into this report in two ways:

1. Some of the recommendations in this report are modeled after successful programs implemented in benchmarking states. For those recommendations, relevant examples from the benchmarking states are provided as an example of how a recommended program could be organized and implemented.

2. The full catalogue of benchmarking research for each state is compiled in appendices at the end of this report.

While this report includes permitting processes in both New York and New Jersey, the analysis of permitting in New York is more substantial than that in New Jersey. This imbalance is due to New Jersey’s recent streamlining efforts to address issues within their permitting system. In 2008, the New Jersey Department of Environmental Protection (NJDEP) undertook a comprehensive review of agency permits, processes, and regulations. The NJDEP Permit
Efficiency Review Task Force\(^1\) identified a long list of recommended changes to increase the efficiency, effectiveness, predictability, and transparency of the New Jersey State environmental permitting process. State regulators, waterfront and environmental stakeholders largely view this review process as a success. Before the economic downturn, NJDEP was in the process of implementing the recommendations generated by the NJDEP Permit Efficiency Review Task Force. A detailed discussion of the NJDEP permit efficiency review process is found in Chapter 5.

MWA is committed to the creation of a healthy, shared harbor. The recommendations in this report aim to further this goal and improve the economic, social and environmental health of this valuable natural resource. We invite agencies, elected officials, nonprofits, advocates, academia, and the general public to comment on the recommendations found in this document and contribute to this work.

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\(^1\) Additional information on the NJDEP Permit Efficiency Review Task Force is available at [http://www.state.nj.us/dep/permittf/](http://www.state.nj.us/dep/permittf/)
CHAPTER 1 SYNOPSIS

Transparency and Efficiency in the
NYSDEC Permit Application and Review Processes

Many stakeholders say that within the waterfront permitting system – a system administered by over 14 regulatory agencies -- what stands out as particularly vexing and confounding is the waterfront permitting process administered by NYSDEC. The permit process administered by NYSDEC is complicated by a lack of agency guidance and by the rules and procedural mechanisms NYSDEC must follow to approve permit applications.

This chapter recommends a number of changes which can assist NYSDEC and applicants by improving the management of the permitting process. Taken as a whole these recommendations serve to transform the permitting process, improve perceptions of the Department among stakeholders, and provide a basis for the justification for an increase in funding for NYSDEC Region 2. The recommendations in this chapter also serve a solid starting point for the framing of discussions and deliberations of the Permit Efficiency Review Task Force described in Chapter 5, Recommendation 5.1, Page 90).

<table>
<thead>
<tr>
<th>Chapter 1 Recommendations</th>
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<tbody>
<tr>
<td>Better guidance on goals, policies, and designs</td>
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<tr>
<td>Better guidance on the permitting process</td>
</tr>
<tr>
<td>Updates to the uniform procedures act</td>
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<tr>
<td>Increased funding for NYSDEC, Region 2</td>
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<tr>
<td>Comparisons and benchmarking studies</td>
</tr>
<tr>
<td>Informal policy on completeness determinations</td>
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CHAPTER 1

Transparency and Efficiency in the NYSDEC Permit Application and Review Processes

Applicant Feedback

To develop the *User’s Guide to Waterfront Permitting* ("User’s Guide" or "Guide") and the recommendations in this report, MWA conducted more than 35 interviews in early 2009 and bolstered this with extensive research. Individuals were asked to provide information about their experiences with the permitting process, share their opinions on the strengths and weaknesses of the municipal, state, and federal waterfront processes, and provide recommendations, if any, for improvements. While responses varied, a considerable majority of those interviewed identified issues with the New York State ("NY State") environmental permitting process as their primary concern. Perceived problems with the NY State permitting process include:

1. Policy guidelines do not adequately explain the New York State Department of Environmental Conservation’s ("NYSDEC," "Agency," or "Department") goals, policies and decision-making processes.

2. A lack of responsiveness from the Agency makes the permitting process unnecessarily confusing and frustrating.

3. Statutory deadlines for permitting decisions are frequently missed without explanation or recourse.

4. Guidance documents do not adequately explain how different agencies and permits fit into the permitting process as a whole, and do not help applicants navigate the process from start to finish.

In addition to these broad issues, many applicants identified a number of specific concerns with NY State environmental permitting, described below. Many of these issues stem from a general lack of information and difficulties communicating with permitting officials. As such, many of our recommendations involve improving communication and increasing the availability of regulatory information. MWA also found that many concerns reflect fundamental disagreements between NYSDEC regulators and permittees about the interpretation of available science and the interpretation and application of wetlands mitigation rules. Further discussion of issues related to regulatory interpretation can be found in Chapter 2.

Government officials were interviewed, as well as private land owners and nonprofit leaders, many of whom had experience with obtaining waterfront permits or could provide insight to permitting processes in other states. See Appendix F for a list of stakeholders.
When conducting interviews for this report, many interviewees did mention that a probable cause for many of the issues regarding the New York State permitting process are the result of inadequate staffing and limited capacity in the NYSDEC Region 2 Office (“Region 2 Office” or “Region 2”). Due to budget shortfalls, the Region 2 Office, which serves the Bronx, Kings, New York, Queens and Richmond Counties, is understaffed. Consequently, Region 2 is overly burdened with permit requests and unable to take the time to fully explain the permitting process to each new applicant. Moreover, because of the complexity of waterfront projects on the New York City waterfront, NYSDEC Region 2 staff need to take more time to review each permit application, thus further demonstrating the need to increase staff at the Region 2 Office (See Recommendation 1.6).

**Availability of Policy Guidelines**

Regulatory agencies support their credibility with the public by publishing guidance documents that explain why regulations are necessary, the factors that are weighed in decision-making processes, and how final decisions are made. Such documents help to assure the public that regulatory decisions are transparent, predictable and firmly rooted in existing policies. In general, applicants and the public are likely to accept government regulation if regulations are applied with consistency; regulatory decisions are transparent and predictable; and decisions are justified by existing laws and policies.

Those interviewed for this report attributed much of the perceived lack of predictability and transparency in waterfront permitting to an absence of publicly available documents outlining policies, interpretations, goals, and decision-making processes within the NYSDEC.

Improved guidance documents clearly identifying NYSDEC’s policies on what NYSDEC considers functionally necessary and reasonable, shading, wetlands mitigation, infrastructure repairs, and other policy issues will help permittees better understand how decisions are made, and that the policies of NYSDEC are consistent and firmly rooted in the law (See Recommendation 1.1). This will also improve NYSDEC’s overall relationship with the applicant community and its clients.

**Availability of Multi-Agency Information and Advice**

Navigating the waterfront permitting process in the New York Harbor area is complicated and confusing. While all regulatory agencies have made efforts to provide descriptions and explanations of their own permits and processes, there is no unified source of information to help applicants understand what permits are needed for a project, how permits relate to each other, and the order in which they must be acquired.

Lack of a central source of permitting information may deter proponents of smaller projects who cannot afford professional permitting consultants and increases the likelihood that the waterfront may be dominated by exclusive, well-funded, private developments.
In the absence of a government-sponsored guide, MWA created the *User’s Guide to Waterfront Permitting* and a waterfront permitting website (“website”) [http://nynjwaterfrontpermitting.squarespace.com/](http://nynjwaterfrontpermitting.squarespace.com/). The Guide and website describe the New York and New Jersey municipal and state permitting processes, as well as the federal processes, that affect waterfront development in the NY/NJ Harbor Estuary. While the Guide and website provide detailed descriptions of relevant agencies, permits and processes, both would be improved with agency collaboration.

A central recommendation of this report is that agencies obtain funding and capacity to form inter-governmental partnerships and/or partnerships with MWA to update and improve this single source for consolidated permitting information *(See Recommendation 1.2).*

**Pre-application Meetings and Communications**

Through its website and publications, NYSDEC provides applicants with some suggestions for navigating the permitting process. If the project requires several permits, or is otherwise complex, NYSDEC strongly suggests scheduling a pre-application meeting to discuss the project design and necessary permits. If the project is less complex, NYSDEC suggests scheduling a similar consultation over the phone. Such consultations are intended to identify relevant permits, inform the applicant of application requirements, and guide the project’s design in a manner that will be acceptable to the Agency and meets all statutory requirements.

While NYSDEC recommends scheduling pre-application consultations, many applicants interviewed for this report found that often times NYSDEC was unable to accommodate their requests. Without the Agency’s input, applicants find it difficult to predict what will be required of them and what will be allowed. In the absence of such consultation, applicants may continue with the design process without an understanding of Agency views. This can create frustration if the Agency then reviews the application and determines it to be incomplete or the design to be unsatisfactory.

Applicants can be left with the sense that decisions and policies are based on a subjective analysis, rather than clearly established policies. Applicants also expressed concern that information and recommendations provided during early consultations occasionally change during subsequent meetings.

Whether related to pre-application meetings or other communication needs, the majority of applicants interviewed for this report found that the lack of Agency input created unnecessary delays in their projects and increased confusion. Many say they have difficulty reaching permit reviewers by telephone and email, and that sometimes messages are not returned.
NYSDEC officials interviewed for this report say applicants are asked to contact Agency officials early in the process when a project is still “an idea and a sketch.” Then, later in the process when the applicant has gathered the team of professionals they require to make the project a reality (e.g. engineers, architects, etc), permitting officials will schedule a pre-application meeting.

NYSDEC representatives acknowledge that staffing and resource shortages mean they cannot always meet with applicants as frequently as they would prefer. Given NYSDEC’s lack of capacity and their inability to meet the needs of permit applicants, further exemplifies the need for information to be more readily available to applicants, the need for a more efficient permitting process and for the NYSDEC Region 2 Office to be provided with sufficient funding to increase its permitting staff (See Recommendations 1.1, 1.2, 1.6 and 5.1).

Statutory Timelines and Remedies
The Uniform Procedures Act (UPA) controls the timelines affecting NYSDEC decisions on permit applications. Under the UPA, once an application is submitted, the Department must mail a notice of its determination of an application’s completeness or incompleteness to the applicant within 15 days after receipt for most applications. Section 621.6(h) of the Department’s regulations states that if the Department fails to mail notice of its determination of completeness or incompleteness to the applicant within the time specified above, the application will automatically be deemed complete. This timeline resets each time an application is resubmitted.

Once an application is deemed complete, either by Department decision or by default, the Department is required to make a final decision to issue or deny a permit within a second statutory timeline. The UPA and Section 621.10 of the Department’s regulations state that notice of a final decision to issue a permit, to issue a permit with conditions, or to deny a permit must be mailed to the applicant within 45 days for minor projects.

For major projects, where no hearing is held, NYSDEC has 90 days to issue a notice. For major projects for which a hearing is held, NYSDEC must notify the applicant and the public of a hearing within 60 days of the completeness determination. The hearing must commence within 90 days of the completeness determination. Once the hearing ends, NYSDEC must issue a final decision on the application within 60 days after receiving the final hearing record. These timelines can be temporarily suspended or extended if an application requires review by another agency.

If the Department fails to mail notice of a final decision on the application within the above timelines, the applicant may make notice of that failure by mailing the Department Commissioner and asking for a final decision on the application within five working days. This is known as the “five day letter.” If the Department or its agent fails to mail the decision to the applicant within five
working days of the receipt of such notice, the application will be deemed approved and the permit deemed granted, subject to the standard terms or conditions applicable to such a permit.

The table below shows the number of Wetlands and Protection of Waters permit applications currently held by the NYSDEC Region 2 Office for which a completeness determination or a final decision is currently overdue (as of April 23, 2009).

<table>
<thead>
<tr>
<th>County</th>
<th>Wetlands Permit Applications (Freshwater and Tidal)</th>
<th>Permit Applications Related to Protection of Waters Program</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Completeness Determination Past Due</td>
<td>Final Decision Past Due</td>
</tr>
<tr>
<td>Bronx</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Kings</td>
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<td>1</td>
</tr>
<tr>
<td>Queens</td>
<td>15</td>
<td>7</td>
</tr>
<tr>
<td>Richmond</td>
<td>31</td>
<td>24</td>
</tr>
<tr>
<td>Total</td>
<td>75</td>
<td>37</td>
</tr>
</tbody>
</table>

The data in the above table was collected on April 23, 2009, using the NYSDEC Permit Application Search Wizard. The table reflects the status of pending applications filed after April 23, 2005.

The figures illustrated in Table 1 are not sufficient to draw definitive conclusions about the efficiency and effectiveness of the Region 2 Office. The data above does not account for the complexity of projects in New York City, nor does it compare the performance of Region 2 to other regions. This table also does not account for applications that were not completed because projects were no longer pursued by the applicant and therefore no longer needed a permit. However, the table does suggest that the Region 2 Office fails to meet statutory deadlines for a significant number of applications. In some of these cases, notices were outstanding by as long as four years.

This suggests the need for changes to the UPA, particularly an extension of the completeness determination (See Recommendation 1.4), increased funding for Region 2 relative to other NYSDEC divisions (See Recommendation 1.6), and a full benchmarking study comparing notice delinquency rates between NYSDEC
It should be highlighted that the statutory requirement for NYSDEC to make a completeness determination on a waterfront permit application is 15 days after receipt of an application by the Agency. Admittedly, this is not a sufficient amount of time for NYSDEC staff to review permit applications. MWA recommends that the statutory timeline be extended from 15 days to 60 days to provide adequate time for Agency review (See Recommendation 1.4). By increasing the deadline for completeness determinations, a more realistic timeframe will be established and permit applicants will have a better idea of when decisions on their application will be made and can factor that information into their development plans.

As discussed previously, each applicant who has not received a timely notice of completeness, or a final decision, has a statutory remedy. Applicants can demand that an application be deemed complete, or can send a letter requesting a final permit decision within five days. Anecdotal evidence suggests, however, that many applicants do not take advantage of these remedies. There are several possible reasons to explain an applicant’s reluctance to take advantage of these options. For example, applicants frequently expressed concern about falling into disfavor with the permitting officials.

If an applicant does not receive a timely notice of application completeness, the applicant can cite the UPA and request that the application be immediately deemed complete. At this point, however, the Department still has the authority to approve or deny the permit application. It is possible that applicants are wary of forcing such a completeness determination when the ultimate fate of the application is still under the authority of the Department. In addition, many applicants anticipate applying for additional permits in the future and seek to preserve a good working relationship with the Department. Applicants may be similarly wary of sending a so-called “five day letter” (forcing a final permitting decision) out of fear that the pressure to issue a decision will increase the probability that the application is denied.

**Reoccurring “Incompleteness” Determinations**

As described in the proceeding section, NYSDEC has a statutory timeline in which to determine if an application is complete. If the Department determines that an application is incomplete, a notice must be sent to the applicant identifying...
the deficiencies in the application and requesting additional documentation. There are no regulations limiting the number of times the Department can find an application incomplete. As Department staff learns more about the scope of a project, they may find it necessary to request additional information.

While the ability of the Department to request additional documentation is necessary, such requests should be consolidated to the greatest extent possible. Many applicants expressed frustration over what they see as ongoing incompleteness determinations citing deficiencies that could have been identified in one or two consolidated notices. Therefore, it would be helpful if NYSDEC would indicate what types of information might be requested in future notices, and also to include a prediction of when the application might be deemed complete.

A flaw that seems to exist in the system is that there are no incentives to identify all application deficiencies at once. Without such an incentive, the Department can allow permit applications to linger long past statutory deadlines, making it difficult to estimate the duration and cost of the process. Long, drawn-out permitting processes typically increase costs to applicants and may force applicants without significant funding to abandon their project.

**Application Fees**

Prior to 2009, wetlands permits did not require application fees. Recently, the New York Legislature amended Section 70-0117 of the Environmental Conservation Law to create wetlands permit application fees. These new fees took effect April 1, 2009. The fee schedules are as follows:

**Freshwater Wetlands Permits:**
- Minor projects $50
- Modifications to permits $50
- Residential projects defined as associated with a single family dwelling and its customary appurtenances $50
- Multiple family dwellings and their customary appurtenances $100
- Other projects $200

**Tidal Wetlands Permits**
- Minor projects $200
- Modifications to permits $200
- Other projects $900

Some applicants expressed concern over the amount of the increases and the lack of a commensurate increase in service or accountability by the Agency. Applicants said they would welcome an increased fee if it translates to better service. The current NYSDEC fee regulations do not provide for refunds or other penalties if the Agency misses deadlines or otherwise provides inadequate service, and thus do not increase accountability or timeliness.
Chapter 1 Recommendations

Recommendation 1.1
Publish easily accessible information on NYSDEC’s website that articulates NYSDEC goals, policies, and regulatory interpretations that guide permitting decisions.

Permit applicants often do not have a clear understanding of the goals, policies, and regulatory interpretations that dictate the outcomes of applications. The lack of clearly stated guidance causes confusion and ultimately frustrates applicants, leading some to form negative conclusions about the way in which permitting decisions are made. To alleviate this confusion and alter the opinions of applicants who believe that permit decisions are made ad hoc and inconsistently NYSDEC should:

- provide on its website more direct information about its goals, policies, and regulatory interpretations that guide permitting decisions.
- provide examples of innovative waterfront projects that have quickly and easily received permit approvals.
- publicize threshold levels of permit requirements so that permittees can design projects that do not trigger additional scrutiny.

In addition to the benefits provided to applicants, NYSDEC will also stand to benefit from these changes. By providing more information to applicants, applicants will be better able to comply with the permit requirements of NYSDEC on the first try. As a result, the burden on NYSDEC’s staff will be lessened because if NYSDEC receives a complete application on the first try, Agency staff will be able to make a decision immediately and not have to repeatedly contact applicants about missing documentation and then wait for the application to be complete.

Moreover, by letting applicants know what thresholds will lead a more thorough review, affords applicants the opportunity to either tailor their projects to avoid this additional review, or provides the applicant with notice that their project will require a higher level review so that the applicant can prepare for the additional requirements. These recommendations will aid NYSDEC by promoting efficiency, reducing applicant confusion and frustration, and will require less staff
time, thus allowing more to get accomplished without requiring the hiring of additional staff.

**Recommendation 1.2**

Help permittees understand and navigate the permitting process by maintaining a *User's Guide to Waterfront Permitting* and website. These tools should be updated and maintained through an interagency collaboration between state, municipal, and federal agencies.

MWA created templates of two useful tools that we hope will be adopted and used by New York and New Jersey to guide applicants through the permitting process. Unlike the policy information described above for NYSDEC’s website, the *User’s Guide to Waterfront Permitting* (“User’s Guide”) and *Waterfront Permitting Website* (“website”) available at [http://nynjwaterfrontpermitting.squarespace.com/](http://nynjwaterfrontpermitting.squarespace.com/), are stand-alone tools for permittees to use as a “One-Stop Shop” for permitting information. Instead of checking individual websites and guides for every state and municipal agency, permittees can visit a central location that provides a comprehensive look at the permitting process as well as detailed information about requirements and regulations. The User’s Guide and website should be updated regularly by the municipal and state agencies in each state. The website contains the same information as the User’s Guide and the User’s Guide is downloadable in PDF format from the website.

The Guide and website show the role of each agency involved in waterfront permitting, provide flow charts of the permitting processes of each state, give tips on how to navigate the permitting process, describe the permits and certifications required for waterfront development, and explain the application process from start to finish.

These resources could be updated by multiple agencies in communication with each other to ensure consistency. We recommend that NYSDEC coordinate with other agencies in New York using these templates or create similar tools. We recommend that New Jersey do the same. Each relevant agency should elect a representative to meet with other agency representatives to define the parameters of the collaboration, review the content relative to that agency, and update the tools as necessary to ensure a sustained multi-year effort.

The New York State Governor’s Office of Regulatory Reform (GORR) offers Online Permit Assistance and Licensing (OPAL), a system that helps identify state requirements. However, this system focuses on business permits and licenses and is less helpful to those interested in waterfront permitting. To address the needs of waterfront permitees, GORR could extend the services they offer the business community to the maritime industry as well. Alternatively, NYSDEC could set-up a system similar to the OPAL system but focused on waterfront permitting. Under either approach, the User’s Guide and website could be utilized by GORR or NYSDEC as the initial document offered to
waterfront permit applicants and then more information can be added as updates are needed.

If executed correctly, the User’s Guide and website would benefit both agencies and permit applicants for the following reasons:

**Public accessibility to complex permitting information**– A guide that is co-edited by agency representatives could be linked to each agency’s website. This would make it easy for the public to find the guide.

**Easy access to agency expertise for permittees**– Agency officials have direct access to agency policies and regulations and, of course, intimate knowledge of the permitting process. Agency representatives could provide helpful tips and answers to frequently asked questions.

**Easy-to-access updates on the permitting process**– Agency representatives have first-hand knowledge of changes in agency policies and regulations. Regular input from agency representatives would ensure that the User’s Guide is consistently updated and accurate.

**Opportunities to identify the need for process adjustments**– When problems in the permitting system are identified, agency representatives will be placed in the unique position of recommending adjustments to improve procedures. This group should be encouraged to go beyond the regular upkeep of the User’s Guide, and identify ways in which the process could be improved. By bringing agencies together on a project that explains the entire permitting process, agency representatives would have a chance to expand their views beyond their individual roles and see the system as a whole. This is important because it allows representatives to identify redundancies, omissions, conflicts and confusion that might not be apparent when the process is viewed piecemeal.

**Permittees will no longer believe they are lost in the system**– Some applicants say their frustration partially stems from the limited contact with agency representatives during the process. Permittees may believe their applications have been dropped or ignored, when in fact a certain action may be their responsibility to take. The User’s Guide and website, when updated and accurate, will provide a holistic view of the permitting system and will allow permittees to see where their application lies in the process. This will also promote efficiency because applicants will be able to respond faster when they realize the next steps are their responsibility to take.

*A Comparison of Other States’ Permitting Guides and Assistance*

**New Jersey:** In 1999, The New Jersey Department of Environmental Protection released a state permitting guide titled “Permits, Licenses, Approvals and
Certificates.” As the title suggests, the guide outlines the regulations and permits that affect development and other regulated activities in the state. The guide also highlights some, but not all of the federal permits that affect waterfront development. While this guide covers a broad spectrum of permits, it does not discuss application requirements and processes in detail, and does not provide an overview of the permitting process.

Oregon: In Oregon, the Department of State Lands coordinated an interagency task force called the Water-Related Permit Process Improvement Team (WRPPIT), a consortium of representatives from eight state agencies involved in water-related activities and permitting. Representatives from the agencies co-drafted the State Water-Related Permits User Guide with the purpose of providing a comprehensive, yet simple, reference for regulatory and non-regulatory programs that influence permitting of projects in wetlands and waterways.

Washington: In Washington, the Governor’s Office of Regulatory Assistance (GORA) has created a single application that can be used to apply for up to 10 federal, state and local permits. The Joint Aquatic Resource Permit Application (JARPA) can be used throughout the State and is viewed in Washington as a great streamlining success. GORA also hosts the Washington Environmental Permitting Website (http://www.ora.wa.gov/resources/permitting.asp/), which provides detailed information on each of the permits covered under the JARPA program. This website is a One-Stop Shop for environmental permitting information. The Director of the GORA office identifies the joint permit and the accompanying website as significant assets to the State and a great step forward in permitting efficiency.

Massachusetts: In Massachusetts, the Office of Coastal Zone Management has created a single guide that explains all of the state and federal permits and processes affecting waterfront projects. The guide, titled Environmental Permitting In Massachusetts, also describes how local zoning and harbor plans relate to the permitting process.

Connecticut: The Connecticut Department of Environmental Protection publishes an online guide to environmental permitting called the User’s Guide to Environmental Permits. This guide describes each state permit offered by the Department of Environmental Protection, but not municipal or federal permits.

Recommendation 1.3
Amend the Uniform Procedures Act (UPA) to require permitting agencies to send automatically generated notices explaining applicant remedies when statutory deadlines pass.

Permit applicants should have a full understanding of the statutory timelines and the remedies that are available if deadlines are missed. In addition, they should be notified when an agency fails to act within the required timeline. To facilitate
this, agencies should be required to send notices explaining that a deadline has passed without the required agency action and explaining what steps the applicant can take to enforce the statutory rules.

**Recommendation 1.4**
Amend the Uniform Procedures Act (UPA) to extend the requirement for mailing a notice of determination of an application’s completeness or incompleteness from 15 days to 60 days after receipt by the Agency (for most applications).

Currently under the UPA, the NYSDEC must mail a notice of its determination of an application’s completeness or incompleteness within 15 days of the receipt of the application. To enable NYSDEC to determine with better accuracy the completeness of applications, and successfully act on changes proposed in Recommendations 1.3 to 1.5, the UPA should be amended to allow the Department 60 days for completeness determinations. This is sometimes referred to as the need for the Department to improve its ability to submit “complete incomplete notices” by allowing sufficient time to conduct the review given the complex land conditions of the New York City waterfront.

**A Comparison of Other States’ Completeness Determination Timeline Policy:**
**Connecticut:** Connecticut law requires ConnDEP to determine the completeness of a permit application within 60 days of the first submittal of the application. If the application is deemed incomplete, and is resubmitted, the Department must make a second completeness determination within 30 days. After an application is deemed complete, the Department has 180 days to issue a tentative decision (subject to a public hearing).

**Recommendation 1.5**
Amend the Uniform Procedures Act (UPA) to require permitting agencies to publish publicly accessible lists identifying all currently overdue agency actions.

It is difficult to assess the degree to which agencies are in compliance with statutory deadlines. To increase transparency and make an analysis easier, agencies should be required to maintain easily accessible online records of all overdue actions and decisions.

The New York State Permit Application Search Database, which can be found at [http://www.dec.ny.gov/cfmx/extapps/evaps/](http://www.dec.ny.gov/cfmx/extapps/evaps/), is an online tool allowing individuals to search for submitted permit applications, review agency decisions, and track the application’s status. This tool allows individuals to search permit applications by “status,” which makes it easy to identify applications for which a Department decision is overdue. The site allows for county-wide application searches within the five counties under the authority of the NYSDEC Region 2 Office (Bronx, Kings, New York, Queens and Richmond Counties). For applications submitted outside of these counties, the search must be done on a
town-by-town basis. This makes it difficult to identify overdue actions outside of Region 2. To remedy this, NYSDEC should change the site to allow for both county-by-county searches and region-by-region searches. Creating an easily searchable format for all overdue permit approvals in the NYSDEC regional offices will allow the Department to be able monitor which regions are performing adequately and which are not. This information will encourage healthy competition between the regional offices, as each region will not want to stand out as the underperforming office. Moreover, this information can also guide NYSDEC in evaluating the permitting staff needs for the different regional offices.

**Recommendation 1.6**

**New York State should increase funding for NYSDEC Region 2 to reflect the complexity of waterfront challenges in ultra-urbanized settings.**

At every level of the permitting process in the NYC region there is manifold complexity on the waterfront. Historic contamination, dense competing land uses, fragile and degraded ecosystems, local political complexity, and significant impact on and interdependence with the national economy combine to necessitate additional funding to improve the capacity of NYSDEC’s Region 2 Office. In particular, adequate funding should be provided to:

- increase staff capacity for administering dredging permits and for dredging issues in general
- hire additional staff in the permitting division with special attention to qualified environmental specialists
- hire additional communication staff to assist the Department in communicating its goals and requirements and to implement the communications, outreach, and awareness-building recommendations contained in this report.

**Recommendation 1.7**

**Conduct a benchmarking study comparing the efficiency and timeliness of NYSDEC regional offices with each other and with other state environmental permitting departments. Use this to determine additional funding required for Region 2 given the complexity of the New York City environment.**

To fully understand the efficiency and effectiveness of NYSDEC Region 2 permitting review, a detailed comparative analysis should be conducted, studying statutory timeline compliance in Region 2 against other regions and environmental permitting agencies in other states. Table 1, in the chapter above, provides only a cursory and unscientific analysis of this issue. A full benchmarking study would compare staffing levels, associated budgets, number of permits received and processed, staff opinions and insights, turnaround times, project complexity, the number of projects per capita in the areas served, and other factors that influence the efficiency of regional offices. This research can be used to determine funding and staffing needs for Region 2.
A full benchmarking study may show that NYSDEC Region 2 lacks sufficient resources and internal capacity to manage the complexity inherent in projects located along the New York City waterfront. It is likely that this is a major consideration in permit processing efficiency. Anecdotal evidence suggests Region 2 faces permitting challenges far more complex and time consuming that those of other regional offices. This is due to the nature of the New York City waterfront itself – a waterfront of dense and competing land uses, degraded environments, intense local political and media interest sometimes disproportionate to the size of a project, and a wide diversity of waterfront stakeholders. These factors require time-consuming attention from regulators during the permitting process at levels incomparable to other New York State regional offices.

**Recommendation 1.8**

Explore the feasibility of adopting an informal “One Bite at the Apple” policy at NYSDEC with respect to completeness determinations similar to that employed by the state of Oregon.

NYSDEC should have the Permit Efficiency Review Task Force consider how to formally adopt a policy to gather all application deficiencies in a single incompleteness notice when possible. While it would be a mistake to create a regulatory limit allowing only one incompleteness notice, a nonbinding policy would foster an environment in which the timely processing of applications is favorably recognized. This change would also require NYSDEC to provide information and guidance to applicants on how to submit high quality permit applications.

The Permit Efficiency Review Task Force could also recommend that NYSDEC implement an incentive program to encourage applicants to submit complete applications on the first try. This program can offer applicants who submit a complete application on the first try a lower application fee than applicants whose submissions are returned as incomplete. The program can even go as far as requiring additional fees for every time the application is returned as incomplete. However, this program will only work if there are clearer guidelines established to identify what constitutes a “complete” application according to NYSDEC standards and if the completeness determination requirement is extended from 15 to 60 days (See Recommendation 1.4). In addition, there will also have to be safeguards in place to prohibit NYSDEC from charging an additional fee if the deficiency leading up to a new incomplete determination was present, but not mentioned, in a previous application submission.

*A Comparison of Other States’ “One Bite at the Apple” Policy*

**Oregon:** The Oregon Department of State Lands implemented a “one bite at the apple” policy to encourage application reviewers to consolidate application deficiencies into a single notice of incompleteness. The policy is not a rule.
Reviewers can make multiple requests for new information, but the Department tries to limit these occurrences.

**Recommendation 1.9**

**Amend the recent legislation creating fees for NYSDEC wetlands permits to require a refund if the Agency fails to issue decisions within statutory deadlines.**

The recent amendment creating wetlands application fees should be amended to require a full refund if a notice of final decision is not mailed to an applicant before the statutory deadline. Such a refund program would communicate a good-faith desire on the part of NYSDEC to conduct timely reviews and issue permits within the required timeline. If the NYSDEC performs permit reviews in an efficient manner, this refund program would not substantially affect the Department’s revenue. If the Department frequently fails to meet statutory deadlines, this refund program will be a helpful indicator of those shortcomings and encourage the State to provide additional resources or improve the efficiency within the Agency. This recommendation could be combined with Recommendation 2.3 to require increased permit fees be dedicated to fund research.

**A Comparison of Other States’ Permit Fees and Refund Policies:**

**New Jersey:** The New Jersey Department of Environmental Protection charges fees for permit applications. While these fees are refunded in some cases, the refund policy is not set up as an incentive to produce timely decisions and refunds are not automatically given if the Department misses a statutory deadline. Under New Jersey law (N.J.A.C. 7:7A-12), an application fee is refundable if the Department returns the application as administratively incomplete. If the application is resubmitted, the application fee is credited toward the resubmitted application. If the application is not resubmitted, the applicant may obtain a fee refund upon request. A fee is not refundable once the application has been declared administratively complete. However, if the Department denies an application, or if the applicant withdraws the application, the Department will credit the fee towards a new application for a revised project on the same site, if the new application is submitted within one year of the denial or withdrawal. If the Department cancels an application, the application fee is not refunded.

**Massachusetts:** In Massachusetts, the Legislature has created a process called the Timely Action Schedule and Fees Program. Like New York, Massachusetts law requires the Department Of Environmental Protection (MassDEP) to abide by statutory timelines for issuing application completeness determinations and issuing notices of final decisions. However, unlike New York, if MassDEP fails to send a notice of the Department’s final permit decision within the required time frames, the application fee is refunded in full. (310 CMR 4.00)
CHAPTER 2 SYNOPSIS

Waterfront Science, Wetlands Mitigation, and the Ecological Effects of Waterfront Development

Agencies charged with environmental protection strive to base their policies on the best available science, and then balance environmental impacts against economic and social goals. Unfortunately, when it comes to the environmental impacts of waterfront development, the portfolio of scientific research is limited and frustration exists over permitting review based on incomplete or controversial science. This is especially true regarding shading from over-water structures.

A controversial issue brought up by applicants is NYSDEC’s seemingly arbitrary and inconsistent method of applying wetlands mitigation to waterfront projects. This is based partially on the lack of understanding of New York State law. The discontent is magnified, however because permittees believe that a broader, holistic view of wetlands protection in New York City is needed and that this could be accomplished by developing wetlands banking opportunities in New York City.

Recommendations in this chapter seek to improve the body of research that informs regulatory decisions and to promote research to determine the feasibility of wetlands banking for wetlands replacement from projects in Significant Maritime and Industrial Areas.

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Chapter 2 Recommendations

- Shading research
- Building awareness of ecological development
- Improving research base
- Wetlands banking
CHAPTER 2

Waterfront Science, Wetlands Mitigation, and the Ecological Effects of Waterfront Development

Shading

Many of those interviewed for this report and others in the waterfront community have strong feelings regarding the science and policies surrounding the issue of shaded water. When a proposed project would extend into or over the waters around New York City, the NYSDEC makes a conclusion about its effect on the surrounding aquatic habitat.

One of the considerations is the effect of increased shaded water on marine habitat. When structures extend over the water they often block sunlight from reaching the water below. This changes the characteristics of the habitat below the structure. Unfortunately, the research into the effects of shaded water on fish habitat is limited and local studies have mainly focused on very large areas of shading.

NYSDEC’s shading policies are based primarily on research conducted by Professor Ken Able, at the Rutgers University Marine Field Station, and National Oceanic and Atmospheric Administration (NOAA) studies. Professor Able has worked extensively on issues surrounding the effect of piers on fish and invertebrates in the NY/NJ Harbor Estuary. He describes his research in the following abstract from a chapter he authored titled “Impacts of Piers on Juvenile Fishes in the Lower Hudson River,” from the book The Hudson River Estuary.²

of the distribution of benthic invertebrate prey for fishes around piers suggest that prey abundances under piers are more than sufficient to support fish growth, however, results of directed growth studies indicate that feeding and growth rates of visually-feeding fish species (winter flounder, tautog) are negative under piers (that is, fish lose weight). It is not likely that factors associated with pier pilings, such as reduced flow or sedimentation, affect feeding, since studies of fish growth in pile fields (piers without the decking) indicate that fish grow well in that habitat. Rather, it appears that the decking associated with piers creates conditions of intense shading that impede foraging activities. We propose that under-pier areas, and potentially any areas that significantly reduce light penetration to depth in near shore areas, are poor habitats for fishes, and we urge careful consideration of shading effects prior to the construction, restoration, or renovation of over-water structures.

Professor Able’s work on the topic is ongoing but he identifies numerous areas for further research, including: 1) effects of shading on other types of fish, specifically predatory and non-bottom dwelling fish, 2) seasonal variations in the response of fish to shading, 3) the ability to avoid or reduce negative effects on habitat by altering pier height, width, size, and orientation or providing for light penetration or artificial lighting, 4) the effects of shading on other (non-fish) forms of aquatic life.

Research on Shading from Other States

Similar studies conducted in other parts of the country have produced mixed conclusions. Extensive research on the effects of piers and shade on bass and salmonids conducted in Washington State, has failed to produce consensus on the issue of shading. The studies suggest that species react differently to shade depending on the species type, the age of the fish, the time of year, and the particularities of the body of water. The significant differences that exist between species and habitats in Washington State and New York rule out these results from being applied in the NY/NJ Harbor Estuary. It is therefore incumbent upon New York State environmental agencies charged with the protection of the harbor estuary to rely on regional studies, such as those of Professor Able.

An informal survey of staff from environmental agencies in other states suggests that NYSDEC’s general conclusions about the negative effects of shade are supported nationally. It is generally agreed that shade reduces the abundance of

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eelgrass and other aquatic plant-life and adversely affects near-shore habitat, particularly for juvenile fishes.

Representatives from the NYSDEC acknowledge that more research on the effects of shading is needed. Until more research is available, however, the Department has adopted what could be described as a “do no harm” policy, which avoids unnecessary increases in shaded water. This policy is based on the reasonable belief that the available science suggests that shading, in general, has a negative effect on marine habitat.

Feedback on Shading

Some of those interviewed for this report expressed concern that the NYSDEC relies too heavily on the available shading studies and draws unsupported conclusions from the research, given the limited scope of the studies. Because much of the existing research focuses on the shading effects under one very large pier (Pier 40 on Manhattan’s west side -- a pier large enough to hold multiple buildings and playing fields), applicants are skeptical that their smaller projects would cause similar negative effects. In addition, they find NYSDEC to be resistant to design elements that might counter or minimize the effect of the shading.

With further research into the effects of shading from small over-water structures, a more unified consensus on the impacts may be discovered. Should the results of the first study apply to smaller over-water structures then it is reasonable for NYSDEC to continue to apply standards that are protective of the environment. However, if the result of a new study finds that little or no impacts result, then many waterfront projects that benefit the public, the maritime industry and the economy should be able to move forward with confidence that they are not negatively affecting the aquatic environment.

The perception is there is an arbitrary line drawn for each individual project where NYSDEC will issue permits to smaller structures, up to a certain number of square feet, but will not permit projects above an unpublished threshold. While it is agreed that based on the shading studies over-water structures the size of Pier 40 pose risks to marine life, there is still a large gray area between the size of projects that NYSDEC will permit and projects the size of Pier 40.

There are no guidance documents issued by NYSDEC regarding the maximum square acreage they are willing to permit or the limits of number of square feet of shading allowed in a set amount of waterfront area. If NYSDEC issued guidance
documents indicating a square footage threshold, this information could be used by project designers to tailor projects to meet NYSDEC’s requirements for permit approval. This would save both the applicant and NYSDEC time and effort because applicants would not submit plans above this threshold and NYSDEC staff will not be burdened with enduring negotiations over unknown limits or burdened with reviewing applications that based on criteria would have been denied.

Because of this, applicants feel that restrictions due to shading are particularly onerous for the maritime industry, and stifle growing attempts to improve water mass transit and public access.

**Agency Response to Shading Debate**

Environmental agency officials agree that waterfront development policies are based on a limited portfolio of research, but argue that the conclusions they draw are reasonable. NYSDEC officials say that with the exception of publicly financed projects, they rarely see projects that prioritize environmental concerns. The realities of real estate and construction costs encourage applicants to design projects that maximize the financial return. This often translates to a large development footprint and no room for enhanced waterfront habitat. Ignorance on the part of some designers, project proponents and property owners of the biological productivity of the NY/NJ Harbor Estuary and the wide diversity of important species it supports further affect the dialogue between New York State regulators and waterfront permittees.

Agency officials also said that project designers often have a poor understanding of Agency priorities and mandates. For example, NYSDEC officials believe that healthy habitats are best created through long-term natural processes and that man-made habitats are a poor substitute. One scientist described man-made ecological designs as based on “Disney” science – designs that over the long term hold and maintain less ecological value than they could or should. Building awareness about the importance of ecological design is therefore an important tool in bridging the gap between permittees and regulators, and is the basis of Recommendation 2.2 in this chapter and the basis of many of the recommendations in Chapter 3 which explores the importance of ecological design and innovations in design.

**Conclusion on Shading**

NYSDEC’s positions on shading, the preservation of open water, and in-water structures present clear tradeoffs. The Agency’s firm policies help to ensure that development does not encroach on remaining aquatic habitats but limit the...
region’s ability to maintain working waterfronts, build parks and facilities that provide public access to the water, allow for expanded water mass transit, and experiment with new ecological designs and materials.

**Shading Recommendation**

MWA recommends that additional research on shading, though limited in cost and scope given other research priorities, be conducted (See Recommendation 2.1). In an era of limited research funds for environmental science and greater threats to habitat in the harbor estuary than shading, protracted and expensive research will only delay needed regulatory relief and may not provide firm conclusions. Research should explore the effects of shading on small structures and the potential benefits from design innovations.

To build the body of research, NYSDEC should allow project applicants to contribute to research funding (See Recommendation 2.3). For example, NYSDEC could establish a fund that permittees could contribute to. The fund would be dedicated toward advancing the scientific research on the impacts of shading on marine habitat. NYSDEC would oversee the research, thereby eliminating possible claims against permittees that the research findings were self-serving.

When new research in this area becomes available, agencies should reevaluate policies to make sure they reflect updated scientific conclusions. In addition, incentives should be created that encourage projects to incorporate design elements that have positive ecological impacts. If we had a clear understanding of the effects of different designs and materials, particularly positive effects, Agency officials could use this data when making permitting decisions. MWA also recommends that NYSDEC and New York City explore ways to apply less rigid shading restrictions in Significant Maritime and Industrial Areas (SMIAs) (See Recommendation 4.7).

**Wetlands Mitigation**

**Background**

Wetlands “mitigation” is a term used to describe actions taken to counter the negative effects of a project that impacts wetlands habitat. In New York, projects that will impact wetlands require either a freshwater or tidal wetlands permit. To receive this permit, an applicant must 1) show that impacts to the wetland cannot be avoided entirely, 2) demonstrate that unavoidable losses or impacts on the functions or benefits of the wetland have been minimized, and 3) fully compensate for (replace) any remaining loss of wetland acreage and function unless it can be shown that the losses are inconsequential or that, on balance, economic or social need for the project outweigh the losses.
When compensation is required, the compensation plan is guided by a NYSDEC memorandum titled “Freshwater Wetlands Regulation Guidelines on Compensatory Mitigation.” While this document contains general policy guidelines, it also states: “We cannot prescribe a ‘cookbook’ approach to mitigation that will cover every possible case. The State’s wetlands are too diverse and the range of projects with a potential impact on wetlands is too great. Mitigation for each project must be decided on the basis of the character of a particular wetland, the nature of the project’s impacts and the opportunities to avoid or offset these impacts. The guidance provided here offers a framework for project-specific decisions.”

The NYSDEC divides wetlands into different classes. The higher the class, the more valuable the wetland is in its ecological context. When NYSDEC creates a compensatory mitigation plan with an applicant, a higher class and/or greater impact on the wetland will lead to a greater burden of proving over-riding need to avoid compensation. The guidelines stress the evolving nature of mitigation science and caution Agency officials and the public not to assume that impacts from a project can be fully compensated. This is why impacts should be avoided when possible.

When mitigation is needed, the guidelines state that mitigation should be “in-kind.” This means replacing the wetland being altered with a wetland of the same type; for example, replacing emergent marsh with emergent marsh. Some wetlands may offer flood-control functions; others provide habitat for migratory birds. It is the goal of the NYSDEC to replace lost wetland functions with identical functions.

The guidelines also stress the importance of “on-site” mitigation. This does not necessarily mean that the mitigation project must be on the project site, but that it is within the same wetland. The preference for “on-site” mitigation is intended to ensure that the size and function of the wetland being impacted is not seriously altered by the project. In some cases “off-site” mitigation is allowed. This is primarily the case when the function of the wetland is not site-dependant. For example, if the impact is aesthetic, a mitigation program may allow for compensation in the same neighborhood or town.

**Three Types of Mitigation**

There are three generally accepted types of mitigation: restoration, creation, and enhancement. This is also the preference order of the NYSDEC when evaluating mitigation plans. Restoration means reclaiming a degraded wetland to bring back one or more functions that have been partially or completely lost by actions such as filling or draining. Creation means making a new wetland, usually by flooding or excavating lands that were not previously occupied by a wetland. Enhancement means altering an existing wetland to increase functions and
benefits to a degree that offsets the losses of these functions or benefits in another wetland or in parts of the same wetland.

The degree of mitigation required is often expressed in an acreage ratio. The guidelines do not create mandatory ratios but suggest that it is frequently necessary to replace more acreage than has been impacted to fully compensate for losses. Typical mitigation ratios range from 1:1 to 3:1 (the first number indicating the number of mitigation acres required per acre impacted). NYSDEC sets replacement ratios on a project-by-project basis, considering the functions and benefits lost or gained, the acreage involved, and the type of mitigation being proposed.

Some state environmental agencies allow “wetlands banking”: the practice of creating or restoring a wetland in advance of a project. The entity that undertakes the mitigation effort receives “credits” based on the value of the wetland functions created. Then, when a project creates unavoidable impacts, an arrangement is made such that the credits are debited from the earlier wetlands conservation project. MWA recommends studying wetlands banking as it applies to wetlands mitigation in the NY/NJ Harbor Estuary, particularly in Significant Maritime and Industrial Areas (SMIAs) (See Recommendation 2.4). The Comprehensive Restoration Plan can be used to guide wetlands banking and trades between in-kind and on-site mitigation (See Recommendation 3.4).

Feedback on Wetlands Mitigation

Those interviewed for this report identify habitat mitigation requirements as an important permitting issue. Many of those interviewed believe that wetlands mitigation policies, including mitigation ratios, are set without adequate justification or explanation to the applicant. This does not necessarily mean the ratios are not justified, but rather that the Agency does not clearly communicate its decision-making process to the public. This makes it difficult to predict the time and cost of a project and leaves applicants with the impression that mitigation decisions are overly subjective.

Many interviewed for this report also raised concerns over the lack of a “holistic” approach to calculating impacts to a wetland. Some project proponents are under the impression that NYSDEC considers negative impacts “in a vacuum” when assessing the total impact, without considering positive impacts elsewhere on the site. This would mean that applicants are required to compensate for any perceived damage, but are not given credit for any positive impacts that may offset that damage.

4 Please refer to Chapter 3 and to Recommendation 3.4 for more information on the Comprehensive Restoration Plan.
Confusion About the Purpose Wetlands Mitigation

This frustration is likely the result of opposing views and confusion over the purpose of wetlands mitigation. According to the NYSDEC guidelines, mitigation plans are meant to replace specific wetlands functions. Applicants, on the other hand, sometimes view mitigation as a way to generally preserve or improve the local ecosystem. This difference is subtle, but important. If the goal of wetlands mitigation was to generally improve the surrounding environment, a project that had a slightly negative impact on flood control, but greatly improved fish habitat might not require any mitigation. The net environmental impact could be viewed as positive. However, if the goal of mitigation is to preserve local wetland functions, then the positive impacts on fish habitat would do nothing to offset the impacts on flood control. Although the project might have a positive impact overall, the applicant would still be required to replace the lost flood control function through mitigation.

The NYSDEC’s focus on wetland functions is supported by Article 24 of the New York Environmental Conservation Law (“ECL”). Section 24-0705 of the ECL states: “In granting, denying or limiting any permit, the local government or the commissioner shall consider the effect of the proposed activity with reference to the public health and welfare, fishing, flood, hurricane and storm dangers, and protection or enhancement of the several functions of the freshwater wetlands and the benefits derived therefrom which are set forth in section 24-0103 of this article.” Other sections of the ECL similarly address wetland “functions” and stress the importance of conserving these benefits. Article 24 of the ECL also authorizes the NYSDEC Commissioner to “impose conditions or limitations designed to carry out the public policy set forth in this article.” This includes the power to require compensatory wetland mitigation.

In 2001, the National Research Council (“NRC”) concluded that the effectiveness and success of wetlands mitigation in the United States was arguable. On paper, wetlands mitigation appears to show a net gain of wetland acres replaced, but the NRC reported that wetlands mitigation projects often fail to meet permit requirements.

Benefits of Wetlands Banking

Though the technical ability of scientists to replace wetlands functions is under debate, the NRC concludes that wetlands mitigation banks offer advantages over permittee-managed wetlands mitigation projects and wetlands replacements. One of the main benefits is the ability to centralize wetland restoration in larger areas instead of piecemeal wetlands replacement at individual sites.

Wetlands banking aggregates permit compliance and ongoing maintenance, thereby helping to reduce failure rates and non-compliance. In addition, wetlands banking will allow mitigation to occur simultaneously with development, as opposed to waiting for the development to proceed and then establishing the mitigation measures. This allows for a much shorter time lag where wetlands benefits are not being realized. Finally, wetlands banking also provides benefits
to NYSDEC because the staff time and resources dedicated to 
ensuring compliance with agreed upon wetlands mitigation plans 
at several individual sites can be consolidated to overseeing 
compliance at a few aggregated wetlands sites or if deemed 
appropriate, this responsibility could be outsourced to a wetlands 
banking organization.

Opportunities for wetlands banking in New York City could 
benefit both the maritime industry and areas threatened by 
considerable wetlands loss, such as Jamaica Bay (See box to the 
right.)

It is important to note that stakeholders representing 
environmental interests expressed interest in a comprehensive 
evaluation of wetlands policies, wetlands banking and wetlands 
areas as they apply to different land uses in the harbor. Some of 
those interviewed suggested an examination of the regional 
models for wetlands banking currently taking place in the New 
Jersey Meadowlands.

**Conclusion**

Shading and wetlands mitigation are two of the most contentious 
issues cited by applicants and Agency officials as causing serious 
disagreements and frustration between permittees and NYSDEC. 
MWA believes any solutions must entail a combination of 
additional research, better communication with the design 
community, better agency guidance, ecological design solutions, and wetlands 
banking. MWA makes recommendations in this chapter regarding conducting 
research on small over-water structures, building awareness of ecological design, 
allowing permittees to contribute to research, and studying important 
opportunities for wetlands mitigation banking.

MWA believes that to fundamentally resolve these issues, improved dialogue 
between New York City, New York State, and a diverse group of waterfront 
stakesholders must be undertaken (See Recommendations in Chapter 4 [4.6 & 4.7] 
and Recommendation 5.1).
Chapter 2 Recommendations

**Recommendation 2.1**
Collaborate with universities to conduct focused research to determine the effects of shading and the impact of small over-water structures on aquatic habitat.

State environmental agencies rely, to a large extent, on outside research. In interviews with regulatory officials it is clear that our understanding of the effects of shading on habitat is incomplete. To guide the direction of research, NYSDEC should collaborate with universities to create and prioritize a list of specific study sites. Specifically, additional research on the effects of small piers would help alleviate stakeholder concerns and form the basis for good policy decisions.

To maximize its impact, the list should be available on agency websites and sent to schools, educators, scientists and scientific journals. Although such a list would not guarantee additional research, it would create momentum and is also inexpensive and easy and to create.

This list could also identify potential pilot study areas where different innovations in waterfront development could be tested. In coordination with the shading research, innovative design techniques that may minimize shading can offer potential solutions. By monitoring a few test sites utilizing cutting edge environmental design, we may be able to come across mechanisms that eliminate the shading concern altogether.

**Recommendation 2.2**
Build awareness of ecological waterfront development.

Increased awareness of the importance of waterfront design would benefit regulatory agencies, permit applicants, and designers. In recent years, public interest in environmental issues has increased. This is an ideal time to promote the importance of aquatecture and waterfront design, and the importance of the restoration of the NY/NJ Harbor Estuary.

To ensure that ecological innovation becomes standard in waterfront design, MWA, MWA’s Aquatecture Task Force, and other organizations should build awareness among nonprofits, foundations and grant-makers, the scientific community, and professional organizations. In particular, agencies and advocacy groups should increase communication with grant-makers to emphasize the need for more pilot projects of innovative designs. Agencies and nonprofits should stress the need for pilot projects that serve as research stations to investigate the effectiveness of new waterfront designs and materials.

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Implementation of the Comprehensive Restoration Plan for the harbor requires this level of public awareness effort. The Comprehensive Restoration Plan is described in Chapter 3.
One way to increase awareness is to hold design seminars on ecological design sponsored by New York State and New York City. Ideally this seminar series would educate both the project designers and agency officials. Agency officials would first have a chance to present to project principals and designers their views on current best practices. This would reduce future design conflicts. The seminar would also give design specialists and engineers a chance to introduce innovative design ideas to agency officials.

Agency officials have expressed an interest in new ideas and in-water designs, but have also articulated the need for scientific backing of claimed ecological benefits. It should be the responsibility of the host organizations to invite design leaders whose projects are completed and being monitored for their effects.

Organizations should also engage the next generation of field researchers and environmental scientists to underscore the need for innovation in this area. A coalition of agencies and advocacy groups should open dialogues with educators and institutions to communicate the importance of this issue and the current lack of pilot projects and research opportunities.

**Recommendation 2.3**

Allow permit applicants to contribute to research as a way to better understand the environmental impacts of development and use these findings to inform policy decisions. Determine other funding mechanisms for research.

The availability of funding for environmental research rarely meets demand. This imbalance is even more severe during times of economic slowdown. Both governments and private funders are currently faced with reduced resources with which to support such research. It is helpful in this economic climate to consider alternative sources of funding. One source of funding that has been overlooked is the private waterfront developer.

To encourage contributions from waterfront developers, NYSDEC could establish a fund dedicated to environmental research on the impacts of waterfront development. This fund would be beneficial to NYSDEC because it would alleviate some of the costs for scientific research and would also benefit permit applicants because they will be able to contribute to a scientific research fund, instead of having to conduct their own expensive studies.

Moreover, by increasing our understanding of the impacts of waterfront development on the aquatic environment, NYSDEC can make more informed decisions on permit applications. In addition, because NYSDEC would oversee the fund and the research, any fear that the research findings may be self-serving to the maritime industry would be completely abated.
When a permitting agency believes a waterfront project will degrade or reduce the functions of a wetland, the agency often requires the project developer to restore the wetland or create new wetlands. This is referred to as wetland “mitigation” and it comes at the expense of the project developer.

At some point, however, our lack of understanding about the effects of waterfront development may hinder our ability to effectively minimize and mitigate wetland degradation. It is difficult to effectively mitigate a ramification that we do not fully understand. In light of the current economic slowdown and reduced funding for research, permitting agencies should explore the possibility of creating partnerships between project developers and researchers whereby the project site would serve as an ongoing research station or educational facility. In this scenario, the agency would allow applicants whose projects have been designed to supplement a standard wetlands mitigation program by providing funding and support for on-site research. The ideal project for such a program would employ a range of innovative designs. This would allow researchers to evaluate the on-site effects of different aspects of the project and determine which, if any, provided an ecological benefit.

This recommendation is supported by published studies stating that building a knowledge base of the practice of ecological restoration offers opportunities for refinement: “There is…great potential to enhance understanding of the basic structure and function of ecological systems by using restoration settings to develop and test theory.”

In addition to collecting research funds from projects, it is important for the region to look for other ways to enhance the funds available for research as well as the funds available for wetlands mitigation banking (See Recommendation 2.4).

**Recommendation 2.4**
**Study how to establish wetlands banking for wetlands replacement in Significant Maritime Industrial Areas.**
MWA recommends that New York State and New York City research wetlands banking to determine its feasibility for projects where wetlands loss is unavoidable or the result of new wetlands that have developed due to aging infrastructure in SMIs. Environmental stakeholders suggest that wetland banking innovations undertaken in the New Jersey Meadowlands may be used as a regional model. Because of the importance of the maritime industry to New York City, and the opportunities for wetlands creation in the region, and the critical and immediate need for wetlands restoration in Jamaica Bay, a collaborative study conducted by New York City and New York State is highly recommended.

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Innovation in Waterfront Design

Regulatory officials tend not to be proactive supporters of environmentally innovative project designs that have the potential to improve the ecological features of waterfront development. Instead the ethos is to try and improve the health of the harbor by curtailing all development. The *Hudson-Raritan Estuary Comprehensive Restoration Plan* offers a profound vision for the NY/NJ Harbor Estuary and should serve as the basis for improving planning and regulatory decision making along the waterfront.

Innovative waterfront designs can be beneficial to the ecology of the NY/NJ Harbor while providing great public benefit. For example, MWA has partnered with the New York City Department of Parks and Recreation on an environmentally significant waterfront redevelopment of Harlem River Park. The redevelopment provides public access and ecological enhancements in one project.

This chapter discusses environmental design, its recent advances, ways for regulators to promote and develop incentives for innovative ecological design, and the need for a new vision for our waterfront based on the *Hudson-Raritan Estuary Comprehensive Restoration Plan*.

**Chapter 3 Recommendations**

- Green waterfront investment fund
- Expedited permitting and administrative incentives for waterfront innovations
- A vision for the NY/NJ Harbor Estuary based on the *Hudson Raritan Estuary Comprehensive Restoration Plan*
Innovation in Waterfront Design

Innovative Environmental Design Should be Encouraged

We are faced with a circular dilemma regarding waterfront design. Projects that incorporate innovative ecological designs struggle to receive needed permits because they lack the scientific findings that support the purported environmental benefits. At the same time, the lack of existing innovative projects makes it difficult to conduct the type of research needed to support the ecological claims of proposed projects. If this stalemate continues, our understanding of ecological waterfront design and the waterfront itself will be frozen in time.

The recent economic downturn and resulting lull in development has temporarily taken some of the development pressure off waterfront sites. This slow-down presents us with an opportune window in which to assess the region’s needs and the time to create a vision and framework to guide future waterfront development. As market forces strengthen and eventually re-stimulate development, it will be essential that waterfront projects are guided by ecological design practices and ecological restoration is embraced.

We have an opportunity to embrace ecological restoration and address future threats to the harbor estuary -- such as sea level rise -- through the Hudson-Raritan Estuary Comprehensive Restoration Plan (“Comprehensive Restoration Plan” or “Plan”), an important document released in March 2009 by the Army Corps of Engineers. In addition to listing hundreds of potential restoration project sites throughout the region, the Plan creates a master plan that is used to guide ecosystem rejuvenation efforts. It is intended to allow the various stakeholders of the region to work together toward a series of common restoration goals.

The green design movement has advanced significantly in the last decade. Designers and engineers are increasingly integrating sustainable materials, increasing energy efficiency, and incorporating environmentally appropriate site design into building projects. Our challenge now lies in weaving these advances into actual waterfront design. Designs must arise from an integration of
architecture, landscape architecture, engineering, restoration ecology, and environmental science. The goal of this movement is to evolve beyond the age where waterfront infrastructure (and human society) is segregated from, and detrimental to, natural systems.

The following three sections provide examples and information on innovations in waterfront edge design, a discussion of over-water design innovations, and examples of innovative waterfront projects.

**Waterfront Edge Design Innovation**

The sustainable design movement is driven by increasing knowledge of the ecological impacts of human activities. Although this field is young, recent innovative waterfront projects demonstrate its promise. Designers around the country are experimenting with ways to restore habitats that have been altered by human development and are creating “green corridors” that allow better species movement and migration along the waterfront. Flat walls are increasingly being replaced with permeable surfaces such as gabions, geocells and other “greenwalls,” (Figure 3.1) that enable plants and animals to grow within and along the surface.

These new materials and designs increase the ecological functions and productivity of a riverbank. Promising results have been realized by using “culch”, a material made from shells, along gabions and greenwalls. The Comprehensive Restoration Plan provides examples of alternatives to hardened shorelines to provide better habitat and stimulate growth of marine organisms.

*Restoration should focus on removing hardened shorelines to create gently sloping areas with three zones: vegetated riparian, stable intertidal, and illuminated littoral zones. Although restoration of natural shorelines is ideal, other methods of shoreline softening should be considered in achieving target conditions. Structural elements can provide general habitat enhancement or target individual species by varying the size of crevices and structural materials. Examples of habitat features that can be*
incorporated into new waterfront features or reconstructed shorelines include:  

- Underwater baffles or training walls to redirect flows and maintain desirable depths and exposed substrates,
- Increasing light transmission through piers by increasing the height or decreasing the width of piers
- Adding physical complexity through the use of texturized bulkheads or the addition of individual reef elements, like reef balls or stacked hollow cubes along a shoreline

![Figure 3.2](image-url)  

Figure 3.2  Examples of in-water structures that increase habitat value, from the Army Corps of Engineers’ Comprehensive Restoration Plan.

**Over-Water Design Innovations**

Designers and engineers are also experimenting with new ways to build over-water structures such as docks and piers. These structures present a different set of concerns from bulkheads and shoreline designs. One of the primary issues with over-water structure is that they reduce open water habitat and increase the amount of shaded water. As discussed in the preceding chapter, shaded water is generally regarded as less productive than similarly situated open water. If an over-water project is necessary, one possible way to overcome shading impacts is to design the project in a manner that avoids or reduces shading.

This can be achieved either by building a structure high enough above the water such that light comes in from the sides, or by allowing light to penetrate the structure’s surface. The impacts and effectiveness of these methods have not been well studied and documented. The Washington State Department of Fish and Wildlife has conducted some limited studies on the effects on habitat of light-
permeable over-water surfaces (such as grating). The following is an abstract from a report titled “Using Light-Permeable Grating to Mitigate Impacts of Residential Floats on Eelgrass Zostera Marina L. in Puget Sound, Washington.”

This study evaluated whether light-permeable deck grating could mitigate impacts of residential mooring floats constructed over eelgrass (Zostera marina L.) in Puget Sound, Washington. Eelgrass shoot densities in undisturbed control areas and underneath and adjacent to 11 residential floats (16–50% of each float was grated) were monitored prior to float installation and annually for 3 years following installation. Using linear regression analysis, a decline in eelgrass shoot densities relative to controls was detected underneath three floats (eelgrass was eliminated under only one float) and adjacent to two floats.

When control data were used to represent 100% grated, there was a weak relationship between eelgrass bed quality and percent of the deck grated ($r = 0.46, p = 0.032$), but no relationship when the range of grating was 16–50% ($p = 0.90$). The percent of a float deck grated did not contribute significantly to a multiple regression model examining change in eelgrass density that included five other dependent variables associated with the design of the floats. We conclude that either there was no effect of grating up to 50% of a float deck or we could not detect an effect.

We hypothesize that the large number of site and landscape scale variables associated with a float influenced the effect (and our ability to detect it) of any one variable (such as grating). Consequently, we recommend that managers manipulate as many attributes of a float as possible (including grating) in order to reduce risks to eelgrass.

While this report does not provide definitive conclusions about the effects of light-permeable over-water surfaces, it suggests that grating and other design elements (e.g. grating, glass bricks, Plexiglas, etc) can reduce the negative impacts on habitat.

Research for this report limited information regarding over-water design innovations other than references to increasing the height of over-water structures and decreasing the width of piers. Designers should explore materials and designs which increase the transparency of piers and bridges through the use of transparent or translucent plastics or glass materials.

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Such designs can add an aesthetic quality to a pier or walkway that gives users the impression they are walking over water. Innovations in habitat design that promote oyster or other shellfish growth under piers can be complemented by viewing locations in transparent sections of the pier. NYSDEC should considering working with the design community to promote innovations in over-water designs.

**Examples Innovative Waterfront Projects**

**Commons Park, Denver, Colorado**

This 26-acre park provides generous open space as well as an interface between the river and new development. The landscape of the park reflects that of a riparian corridor through the region’s original landscape. Landscaping close to the groundwater includes native grasses, shrubs, and trees, while wetlands lie in swales. They will eventually receive stormwater runoff from 40 new acres of development through three “storm ceptors.” The river maintains a rich diversity of habitats, while the natural slopes provide easy access to the water for an array of recreational activities.9

**Buffalo Bayou Promenade, Houston, Texas**

The Buffalo Bayou Promenade redevelopment project converted 3,000 linear feet of blighted waterfront to over 20 acres of park space in Houston’s inner city. The master plan stabilizes the natural channel which flows through the site with the use of gabions and 14,000 tons of rock and recycled concrete. Weeds and other invasive plants were replaced with 287,000 native plants and trees. The project provides continuous bike and pedestrian pathways, and includes stairs which run directly into the water for aquatic recreational purposes. Since redevelopment, the area has seen an increase in the abundance of ducks, turtles, herons, and fish. All plantings, walkways, and lights have been designed to withstand the natural and periodic flooding of the bayou.10

10 Retrieved online May 21, 2009, from SWAgroup.com
Harlem River Park, New York, NY

Many of the designs and materials described above were employed in the redevelopment of Harlem River Park in Manhattan. The new park includes the incorporation of tide pools, native plants, a lowered seawall and rocky shore, and a stepped-back shoreline to provide shallow water and intertidal ecosystems.11

Alternative design materials can also improve the physical function of a shoreline by reducing the speed of flowing water, absorbing wave energy, and storing floodwaters. A recent study for the Harlem River Project experimented with various shoreline designs by placing models in a wave tank. A variety of materials and physical models were introduced into the simulation to see how each design impacted flow speeds and sedimentation. Results indicated that gabions and other “greenwalls” were more effective than standard sheet pilings at slowing flow speeds and were found to encourage sedimentation at the water’s edge. Sedimentation is important because it creates shallow habitat for juvenile fishes and other small aquatic life.

The limits of this report prevent us from exploring each of the above innovative designs in detail. This sampling of projects demonstrates the growing opportunities and increased technological capabilities for innovative waterfront designs. New Jersey and New York should take note of these examples and prepare for similar innovation to play a key role in future waterfront development.

Incentives for Innovative Design

New York State rewards environmental design leaders for land-based design through several programs. The NYSDEC Environmental Excellence Award12 selects a project each year that achieves environmental excellence through innovative and environmentally sustainable practices or creative partnerships. Successful candidates are those who solve environmental challenges through constructive solutions that go beyond standard techniques or regulatory compliance requirements. While the Environmental Excellence Award could recognize a waterfront project, its scope is far more expansive, and includes community development programs, education initiatives, recycling efforts, and The guidelines also stress the importance of “on-site” mitigation. This does not

11 For more information about the Harlem River Park redevelopment and MWA’s Design the Edge Program see http://www.waterfrontalliance.org/projects/designtheedge
12 http://www.dec.ny.gov/public/945.html
necessarily mean that the mitigation project must be on the project site, but that it is within the same wetland. The preference for “on-site” mitigation is intended to ensure that the size and function of the wetland being impacted is not seriously altered by the project. In some cases “off-site” mitigation is allowed. This is primarily the case when the function of the wetland is not site-dependant. For example, if the impact is aesthetic, a mitigation program may allow for compensation in the same neighborhood or town. Other activities unrelated to the waterfront. It therefore does not create a great incentive for innovative waterfront projects.

New York also provides a Green Building Tax Credit to owners and tenants of eligible buildings that meet certain “green” standards. These standards include energy efficiency, improved indoor air quality, and other quantifiable impacts typical of large commercial and residential buildings.

While New York’s award programs and tax credits provide incentives, they are not designed or administered with waterfront innovations in mind. Green building tax credits rely on quantifiable measures, such as energy efficiency data or Leadership in Energy and Environmental Design (LEED) ratings, when approving credits. Such programs are well adapted to reward energy efficient designs, but are less appropriate for non-traditional buildings and structures where effects are less quantifiable or of a different nature.

At present there is no uniform system to rate the environmental benefits of non-building waterfront projects (e.g. a dock or pier). As such, any incentive for innovative waterfront projects would have to be flexible enough to take into account design elements that are less quantifiable.

The Environmental Excellence Award is more flexible, and thus better suited to reward waterfront projects. Though this award provides no financial incentive and does not focus on the waterfront, it serves as a good model and could incorporate waterfront design as a program component.

Other governments and agencies around the world are experimenting with a variety of programs to encourage design innovations for land-based projects. One such program is the Green Investment Fund\textsuperscript{13}, in Portland, Oregon. This program offers a competitive grant that supports innovative green building projects in the City of Portland. As of 2009, a total of $425,000 was available for public and private industrial, multifamily residential, commercial, and mixed-use projects that exemplify green design. The primary intent of the program is to support

\textsuperscript{13}  http://www.portlandonline.com/bps/index.cfm?c=42134
early building and site-related project activities that examine the potential and identify the means to realize an exemplary, comprehensive green building project.

Unlike other green building incentive programs, the Green Investment Fund does not rely on quantified building performance measures (e.g., energy efficiency) when picking a winner. Rather, the panel of judges is free to consider any innovative design or material use, and can therefore reward projects that are less conventional. The program is sponsored by city and state agencies, including the city of Portland Bureau of Environmental Services, the Office of Sustainable Development, the Water Bureau, and the Energy Trust of Oregon. The Green Investment Fund offers a model that could easily be adapted for waterfront design projects (Recommendation 3.1).

**Conclusion**

The New York-New Jersey Harbor Estuary will change to meet social and environmental needs over time. The questions are 1) how will it change, 2) what will be done to oversee and influence impending change, and 3) how will we restore the ecological health of the harbor estuary and prepare for the effects of climate change? These are the fundamental questions we must answer to plan for the future of a harbor with national and international significance. Permitting is an instrument to realize plans. Permitting, therefore, must ultimately align with a vision for the harbor, the *Comprehensive Restoration Plan*, and other important planning documents.

Currently, agencies do not do enough to encourage innovation in waterfront design. To encourage innovation, MWA recommends NYSDEC create incentives for innovative design (See Recommendations 3.2 and 3.3) and promote ecological design (See Recommendation 3.4). The planning and policy departments in agencies such as the NYSDEC, the New York State Department of State, and NJDEP should create design guidelines to inform developers of agency policies and goals and help them design ecologically sound projects. Design guidelines should be based on innovative waterfront designs and the restoration opportunities described in the Comprehensive Restoration Plan (See Recommendation 3.4).

**Chapter 3 Recommendations**

**Recommendation 3.1**

Create a green waterfront investment fund to provide grants for innovative, ecological waterfront projects.

A Waterfront Environmental Excellence Award should be created to provide incentives and awards for shoreline projects that demonstrate an example of excellence through innovative and environmentally sustainable practices.
The states of New York and New Jersey and their cities that border the NY/NJ Harbor Estuary, should establish grant programs that are designed to encourage and reward innovative and environmentally sensitive projects located at the water’s edge. In creating these grant programs, the model for Portland’s Green Investment Fund can be utilized but tailored to specifically recognize innovative waterfront development projects. Such a program could be sponsored and administered by a single agency, or could be the result of a collaboration between agencies or private groups.

Recognizing that governments at all levels are facing budgetary constraints, the creation of even a modest fund could demonstrate a commitment to ecological design and spur increased interest in the field of environmental design.

**Recommendation 3.2**

Create an expedited permitting process for projects that demonstrate environmental leadership or significantly advance state coastal goals.

New York State should provide NYSDEC or the New York State Department of State with the authority and resources to create an internal office dedicated to expediting permits for projects that are designed to produce substantial environmental benefits or advance a considerable number of the State’s coastal goals as outlined in the Coastal Zone Management Program. This expediting program would establish a set of criteria by which certain projects would be selected for expedited permitting. The applications selected for this program would be reviewed by a special group of permitting staff that have a reduced caseload and therefore able to review applications more quickly. The selected projects could receive faster administrative and technical reviews, negotiated permit schedules and fees, and a single point of contact through the entire permitting process.

**A Comparison of Other States’ Expedited Permitting Processes:**

**New Jersey:** NJDEP has created a special office within the Division of Land Use Regulation, the Bureau of Urban Growth and Redevelopment. This bureau was designed to offer expedited permit application reviews for innovative projects and projects that exemplify the State’s coastal goals. The bureau is guided by the same procedures and regulations as other permit processing divisions, but the staff manages reduced caseloads and therefore process applications faster and with more personal attention. Examples of projects that are processed within this division include brownfield redevelopment and urban redevelopment projects.

**Massachusetts:** MassDEP has initiated a program called Fast Track Permitting aimed at expediting projects that exemplify the State’s “smart growth” and sustainability policies. Fast Track projects receive:

- Expedited administrative and technical reviews;
- Negotiated permit schedules and fees; and
- A single point of contact through the entire permitting process.
Examples of Fast Track projects include: certain biotech projects, clean energy projects, transit-oriented development projects, brownfield redevelopment projects, solid waste recycling facilities, and “smart growth” projects.

Projects must meet one or more of the following criteria to be eligible for Fast Track:

- Projects that are consistent with sustainable development principles and promote smart growth;
- Projects determined by the Commissioner to be of significant environmental interest to the Commonwealth; and
- Projects with multi-permit complexity

**Recommendation 3.3**

*Create administrative incentives for projects that experiment with habitat-enhancing design and materials.*

Permitting agencies should consider creating incentives to encourage the types of projects that exemplify environmentally conscious design and enhance our understanding of the effects of waterfront development. Expedited permitting is one example of an incentive that would reduce the time and cost associated with the permitting process. Such a program would encourage designs that reduce the effects of shading (such as the use of grated or translucent over-water platforms); reduce storm water runoff; generate renewable power; create new marine habitat or allow for environmental education opportunities.

In return for the benefits of streamlined permitting, the regulatory agency could require the project owner to allow monitoring and research at the site. This would increase the agency’s understanding of the impacts and effectiveness of the project’s design and materials.

**Recommendation 3.4**

*Develop a vision for the New York-New Jersey Harbor Estuary based on the U.S. Army Corps of Engineers’ Comprehensive Restoration Plan.* From this develop a waterfront design guide, updated regularly to reflect innovations and the Comprehensive Restoration Plan.

A wide range of stakeholders should engage in the development of a broad, inclusive, and innovative vision for the NY/NJ Harbor Estuary. As part of this vision, NYSDEC and NJDEP, in conjunction with the Army Corps of Engineers, the National Marine Fisheries Service (NMFS), the New York State Department of State, New York City, other agencies, and leading design specialists and advocacy groups, should create a best practices guide to good ecological waterfront design. The guide should be based on the Comprehensive Restoration Plan and could be a supplement to it. The guide should include the restoration opportunities and Target Ecosystem Characteristics of the Comprehensive Restoration Plan, and should also include the best and most recent innovations.
and design principles for waterfront designs. As science progresses, this document would be updated to reflect innovations in restoration and waterfront design.

The guide should reflect the vision for the future of the NY/NJ Harbor Estuary so that permit applicants can understand both NYSDEC and NJDEP’s goals and how their projects will or will not fit within that vision. This guide would also outline existing regulations and policies, explain common hurdles that permit applicants face, and profile innovative design projects that have quickly and easily received permit approvals. Finally, the guide would highlight examples of local designs that successfully addressed the needs of the project proponents while also satisfying the concerns of regulatory agencies.

Changes, exceptions, or reprieves to permits will be necessary for restoration projects outlined in the Comprehensive Restoration Plan. A coordinated vision, developed by many levels of local, state, and federal government can help begin the discussions about what permitting changes will be required to implement the Comprehensive Restoration Plan.

Ultimately, a design guide based on a vision will bring ecological restoration to the NY/NJ Harbor Estuary, it will better assist project developers in designing projects, it will satisfy the requirements of permitting officials, and will comprehensively reflect the changes that will provide a sustainable future for the NY/NJ Harbor Estuary.

Moreover, by developing a broad vision we are taking control of our waterfront’s future and providing a well thought-out strategy that is not based on piecemeal waterfront development decisions.
CHAPTER 4 SYNOPSIS

Protecting Maritime Uses and Public Access at the Waterfront

State and municipal policies in New York and New Jersey recognize the critical role that the maritime industry plays in supporting our economy and the social value of providing public access to the waterfront. This report offers a number of recommendations to address how to meet the needs of the maritime industry and provide public access to the waterfront, while at the same time ensuring a high level of environmental protection.

Among other recommendations, this chapter advocates for updates to water dependency definitions, the establishment a Maritime Preservation Task Force to ensure the financial viability of the maritime industry, and the development of a pollution prevention assistance program for the maritime industry. The Maritime Preservation Task Force can be started or incorporated immediately into the newly established New York City Waterfront Management Advisory Board.

<table>
<thead>
<tr>
<th>Chapter 4 Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improving communications</td>
</tr>
<tr>
<td>Updating New York State water dependency definition</td>
</tr>
<tr>
<td>General permits</td>
</tr>
<tr>
<td>Maritime industry desk at NYCEDC</td>
</tr>
<tr>
<td>Maritime Preservation Task Force and pollution prevention assistance</td>
</tr>
</tbody>
</table>
CHAPTER 4

Protecting Maritime Uses and Public Access at the Waterfront

Trends in Public Access

The Public Trust Doctrine states that public lands, waters, and living resources in a state are held by the state in trust for the benefit of all. The doctrine affirms the right of the public to enjoy these resources for their scenic, cultural, recreational and educational value. It includes providing direct access such as boat launching, swimming, recreational fishing, indirect access such as waterfront promenades and scenic overlooks, and upland access such as pedestrian routes and bike paths.

Improvements in the quality of the region’s waters have spurred increased recreational and outdoor educational activities along the waterfront and in the NY/NJ Harbor Estuary waters. Although there have been several significant improvements in public access such as Hudson River Park and Brooklyn Bridge Park, many neighborhoods still have few opportunities to access the water, particularly outside Manhattan.

Interagency Communication on the Design of Public Waterfront Parks

Public waterfront parks present vital access points to NY/NJ Harbor Estuary waters. Conversations with New York City park planners suggest that some efforts to increase the number of public waterfront access points have been proposed, however due to conflicting views between park planners and state environmental officials, such efforts have been hindered. These differing opinions have typically been over conflicting views on (1) the need for and functionality of over-water structures or fill projects in parks, (2) the net effect a park has on wetlands and the appropriate mitigation plan, and (3) whether certain park elements that provide public access to the waterfront should qualify as a water-depandant use.

While some of these issues are difficult to resolve, increased communication and cooperation in the early stages of park design would benefit all parties. Promoting collaboration should be relatively easy because both agencies have expressed a desire to meet early in the planning stages of park development. To ensure better cooperation between NYC Parks Department and NYSDEC, in particular, MWA recommends that quarterly meetings convened at the mayoral level be scheduled among NYC Parks, NYSDEC, and other interested agencies (See Recommendation 4.1).
The Importance of Water-Dependency Definitions for Maritime Uses

A maritime use is one that supports commercial shipping, water-based transportation, or recreational boating. As with park development, the definition of water-dependent use affects the types of activities and projects that are allowed to take place on the waterfront. All water-dependent maritime uses require some form of in-water use, an upland use, and access to adjacent uses. For example, a commercial pier will require in-water fixed piers and deep-water access, upland infrastructure for maintenance and operations, and access to adjacent commercial support services. If any of these three features do not qualify as water-dependent, or are seen as functionally unnecessary, the maritime use may be forced to compete with non-water-dependent development for space and may struggle to maintain its operation. This makes maritime uses particularly vulnerable and underscores their unique siting requirements.14

Defining “Water-Dependent” Uses to Protect Maritime Uses and Encourage Public Access to the Waterfront

The primary tool used by state governments to shape the development of coastal lands is the Federal Coastal Zone Management Act (CZMA), and the State Coastal Management Programs created under the Act. Enacted in 1972, the CZMA provides incentives, including federal funding, for states to create coastal policies and programs that give priority access to “coastal-dependent uses,” (often referred to as “water-dependent” uses) and “public access to the coasts for recreation purposes” (16 U.S.C. §1452).

Coastal Management Programs do not regulate waterfront development directly. Rather, they provide guidance and rules for state agencies to follow when making decisions that impact waterfront development. For example, if a state requires a permit for a specific type of waterfront development, the permitting agency must ensure that its decision to grant or deny the permit conforms to the goals and policies of the Coastal Management Program. The degree of specificity in the definition of water-dependent use varies between New York, New Jersey and the aforementioned benchmarking states. State definitions of water dependency differ from each other based on the priorities and attributes of the state. For example, Massachusetts, a state with a rich maritime cultural history, has a detailed definition that provides a long list of specific examples of water-dependent uses. Many of these examples are existing uses that Massachusetts aims to preserve as part of its cultural heritage. The state of Washington, on the other hand, does not have a statewide definition of water dependency, but allows agencies to interpret the term as agency officials find appropriate.15

New York State “Water Dependency” Definition and Policies

Under the New York State Coastal Management Program, “water-dependent” uses are given priority access to the waterfront, while non-water-dependent uses are discouraged. New York law defines a “water-dependent use” as an activity that “can only be conducted on, in, over or adjacent to a water body because such activity requires access to water, and involves the use of water as an integral part of the activity.” 6 NYCRR §608.1(ii)

15 Telephone interview with Faith Lumsden, Washington State Governor’s Office of Regulatory Assistance
This definition can be interpreted narrowly because it requires that the project “involves the use of water as an integral part of the activity.” The definition differs from some other states because it requires that a project “use” the water, and that the use of water be “integral” to the activity. In addition to the above definition, “Policy 2” of the New York State Coastal Management Policies describes the following uses and facilities as water-dependent:

1. Uses which depend on the utilization of resources found in coastal waters (for example: fishing, mining of sand and gravel, mariculture activities);
2. Recreational activities which depend on access to coastal waters (for example: swimming, fishing, boating, wildlife viewing);
3. Uses involved in the sea/land transfer of goods (for example: docks, loading areas, pipelines, short-term storage facilities);
4. Structures needed for navigational purposes (for example: dams, locks, lighthouses);
5. Flood and erosion protection structures (for example: breakwaters, bulkheads);
6. Facilities needed to store and service boats and ships (for example: marinas, boat repair or construction yards);
7. Uses requiring large quantities of water for processing and cooling purposes (for example: hydroelectric power plants, fish processing plants, pumped storage power plants);
8. Uses that rely heavily on the waterborne transportation of raw materials or products which are difficult to transport on land, thereby making it critical that a site near shipping facilities be obtained (for example: coal export facilities, cement plants, quarries);
9. Uses which operate under such severe time constraints that proximity to shipping facilities becomes critical (for example: firms processing perishable foods);
10. Scientific/educational activities which, by their nature, require access to coastal waters (for example: certain meteorological and oceanographic activities); and
11. Support facilities which are necessary for the successful functioning of permitted water-dependent uses (for example: parking lots, snack bars, first aid stations, short-term storage facilities). Though these uses must be near the given water-dependent use they should, as much as possible, be sited inland from the water-dependent use rather than on the shore.

While this list of examples provides helpful guidance to regulators, the definition of water-dependency still leaves room for disagreement. For example, does a waterfront esplanade in a public park “involve the use of water as an integral part of the activity?” Is an over-water esplanade in Manhattan used for “wildlife viewing?” Reasonable and informed people could disagree.

New York’s narrow definition of water-dependency serves the State by strictly protecting the use of the waterfront, but it places limits on our ability to increase public access and waterfront recreation. At the same time, the State’s Coastal Management Policies require regulatory agencies to encourage, facilitate and give priority to water-dependent and “water-enhanced” or “water-related” recreation uses, as in Coastal Policy 21 which states in part:

Water-related recreation includes such obviously water-dependent activities as boating, swimming, and fishing, as well as certain activities which are enhanced by a coastal
location and increase the general public's access to the coast such as pedestrian and bicycle trails, picnic areas, scenic overlooks and passive recreation areas that take advantage of coastal scenery.

Provided the development of water-related recreation is consistent with the preservation and enhancement of such important coastal resources as fish and wildlife habitats, aesthetically significant areas, historic and cultural resources, agriculture and significant mineral and fossil deposits, and provided demand exists, water-related recreation development is to be increased and such uses shall have a higher priority than any non-coastal dependent uses, including non-water-related recreation uses. In addition, water-dependent recreation uses shall have a higher priority over water-enhanced recreation use. Determining a priority among coastal dependent uses will require a case-by-case analysis.

While this policy instructs agencies to encourage public access and “passive recreation,” these uses are not specifically included in the definition of “water-dependent.” The result is that proposed recreational uses that enhance our enjoyment of the waterfront but are not specifically included in the definition of “water-dependent” may be regulated more strictly, thus reducing the overall amount of public access and recreation. Overall, however, New York’s Coastal Management Policies present a relatively clear definition of water-dependent use and encourage the protection and development of maritime and recreational uses.

New Jersey “Water Dependency” Definition and Policies

The New Jersey Administrative Code §7:7E-1.8 defines “water-dependent” as:

“development that cannot physically function without direct access to the body of water along which it is proposed. Uses or portions of uses, that are able to function on sites that are not adjacent to the water, are therefore not considered “water dependent” regardless of the economic advantages that may be gained from a waterfront location. Maritime activity, commercial fishing, public waterfront recreation and marinas are examples of water-dependent uses, but only the portion of the development requiring direct access to the water is water-dependent. The test for water dependency assesses both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use is not considered water-dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation, a dock or quay and associated unloading area would be water-dependent, but an associated warehouse would not be water-dependent.

1. Examples of water-dependent uses include: docks, piers, marina activities requiring access to the water, such as commissioning and decommissioning new and used boats, boat repairs and short term parking for boaters, storage for boats which are too large to be feasibly transported by car trailer, rack systems for boat storage, industries such as fish processing plants and other commercial fishing
operations, port activities requiring the loading and unloading of vessels, and water-oriented recreation.

2. Water-dependent uses exclude, for example: housing, hotels, motels, restaurants, warehouses, manufacturing facilities (except those which receive and quickly process raw materials by ship), dry storage for boats that can be transported by car trailer, long-term parking, parking for persons not participating in a water-dependent activity, boat sales, automobile junk yards, and non-water-oriented recreation such as roller rinks and racquetball courts.”

The New Jersey Administrative Code e §7:7E-1.8 has a second classification called “water-oriented,” which is similar to “water-enhanced” or “water-related” uses in New York, and is defined as:

“development that serves the general public and derives economic benefit from direct access to a water. (Industrial uses need not serve the general public.) A hotel or restaurant, since it serves the public, could be water-oriented if it takes full advantage of a waterfront location. An assembly plant could be water-oriented if overland transportation is possible but water-borne receipt of raw materials and shipment of finished products is economically advantageous. Housing is not water-oriented despite the economic premium placed on waterfront housing, because it only benefits those who can afford to buy or rent the units.”

Overall, the definition of water-dependent uses in New Jersey is similar to that in New York. Like New York, the New Jersey definition stipulates that water-dependent uses “cannot physically function without direct access to the body of water...” This is similar to the New York requirement that “use” of the water be “integral.” The New Jersey definition does not present obvious advantages or disadvantages over the New York definition.

**Oregon “Water Dependency” Definition and Policies**

Oregon defines “water-related uses” as those that are “not directly dependent upon access to a water body, but whose presence facilitates public access to and enjoyment of a water body” and as those “uses which are not directly dependent upon access to a water body but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered.”

This definition is far more inclusive than that in New York or New Jersey, and includes a greater number of maritime infrastructure uses, recreational activities, and public access features.

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16 N.J. ADMIN. CODE 7:7E-1.8
17 Id.
Washington “Water Dependency” Definition and Policies

Washington does not have a statewide definition of water-dependent uses.²⁰

Massachusetts “Water Dependency” Definition and Policies

Massachusetts law provides a general definition of water-dependency and a long list of specific examples. The law states in relevant part:

“(2) The Department shall determine a use to be water-dependent upon a finding that said use requires direct access to or location in tidal or inland waters, and therefore cannot be located away from said waters. In making this determination, the Department shall act in accordance with the following provisions.

(a) The Department shall find to be water-dependent the following uses:
1. any use found to be water-dependent-industrial in accordance with 310 CMR 9.12(2)(b);
2. marinas, boat basins, channels, storage areas, and other commercial or recreational boating facilities;
3. facilities for fishing, swimming, diving, and other water-based recreational activities;
4. parks, esplanades, boardwalks, and other pedestrian facilities that promote use and enjoyment of the water by the general public and are located at or near the water’s edge, including but not limited to any park adjacent to a waterway and created by a public agency;
5. aquariums and other education, research, or training facilities dedicated primarily to marine purposes; [emphasis added]
6. aquaculture facilities;
7. beach nourishment;
8. waterborne passenger transportation facilities, such as those serving ferries, cruise ships, commuter and excursion boats, and water shuttles and taxis;
9. dredging for navigation channels, boat basins, and other water-dependent purposes, and subaqueous disposal of the dredged materials below the low-water mark;
10. navigation aids, marine police and fire stations, and other facilities which promote public safety and law enforcement on the waterways;
11. shore protection structures, such as seawalls, bulkheads, revetments, dikes, breakwaters, and any associated fill which are necessary either to protect an existing structure from natural erosion or accretion, or to protect, construct, or expand a water-dependent use...”²¹

The law also provides examples of water-dependent-industrial uses:

“(b) The Department shall find to be water-dependent-industrial the following uses:
1. marine terminals and related facilities for the transfer between ship and shore, and the storage of, bulk materials or other goods transported in waterborne commerce;
2. facilities associated with commercial passenger vessel operations;

²⁰ Telephone interview with Faith Lumsden, Washington State Governor’s Office of Regulatory Assistance
3. manufacturing facilities relying primarily on the bulk receipt or shipment of goods by waterborne transportation;
4. commercial fishing and fish processing facilities;
5. boatyards, dry docks, and other facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures;
6. facilities for tug boats, barges, dredges, or other vessels engaged in port operations or marine construction;
7. any water-dependent use listed in 310 CMR 9.12(2)(a)9. through 14., provided the Department determines such use to be associated with the operation of a Designated Port Area;
8. hydroelectric power generating facilities; and
9. other industrial uses or infrastructure facilities which cannot reasonably be located at an inland site as determined in accordance with 310 CMR 9.12(2)(c) or (d).”

The Massachusetts definition is the most specific of any benchmarking state. The long list of included and excluded uses illustrates the uses the lawmakers seek to protect. The examples provided within the Massachusetts definition indicate to policymakers that public parks, esplanades, and research and education facilities are all considered water-dependent. The Massachusetts definition also makes it clear that a broader range of maritime uses will be considered water-dependent.

**Connecticut “Water Dependency” Definition and Policies**

In Connecticut, water-dependent uses are those which “require direct access to, or location in, marine or tidal waters and which therefore cannot be located inland. This definition includes, but is not limited to: marinas, recreational and commercial fishing, boating facilities, finfish and shellfish processing plants, waterfront dock and port facilities, shipyards, boat building facilities, water-based recreational uses, navigation aides, basins, channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an inland site and uses which provide general public access to marine or tidal waters…”[emphasis added]22

In addition, the Connecticut Coastal Management Act requires permitting agencies to provide “a description of impacts or effects the project will have on future water-dependent uses or water-dependent development on and adjacent to the site,” as well as “a description of proposed measures to mitigate, or lessen, any unavoidable adverse impacts on future water-dependent development opportunities.” This information is used to determine whether a project will be consistent with the State’s Coastal Management Plan and serves to protect the waterfront for current and future water-dependant uses.

The Connecticut definition is more inclusive than the New York or New Jersey definition because it does not require that the use of water be integral to the project, as in New York, or that the use is unable to “physically function without direct access to the body of water,” as in New [CGS §22a-93[16]]

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22 Connecticut General Statutes [CGS] §22a-93[16]
Jersey. Additionally, the definition specifically includes “uses which provide general public access to marine or tidal waters.”

**Stakeholder Feedback on the Water-Dependent Definition**

The NYSDEC’s interpretation of the definition of “water-dependent” was frequently cited as a cause of frustration among maritime stakeholders and park designers. Some individuals in these fields have found that the definition is being interpreted too narrowly, and as a result is hindering the maritime industry and the development of parks. In the case of maritime uses, maritime stakeholders express concern that the definition excludes certain types of upland infrastructure and other infrastructure integral and essential to a maritime business. In the case of parks, parks stakeholders express concern that park features that provide direct public access to the water and over the water (as opposed to upland viewing access) are wrongly excluded from the definition. These stakeholders also suggest that the definition has, in the past, excluded some water-related recreation, research, and educational facilities that would have increased the value of our waterfront and provided a significant public benefit.

There is some debate over this issue because representatives from the NYSDEC interviewed for this report stated that they believe New York’s definition of water-dependent use is clear and would not be improved by any textual amendment, including the addition of more examples. They acknowledge that some of their water-dependency determinations are controversial and have prevented projects that would have been popular with residents and tourists. NYSDEC also points out that some controversy centers not on the definition of water dependency, but on the debate over what is functionally necessary and reasonable in project designs.

**Conclusions Regarding “Water Dependency” Definitions**

The definition of “water-dependent” use in the New York State Coastal Management Program is slightly narrower than definitions in other states. Although the examples of water-dependent uses provided in the New York State Coastal Management Program provide some clarity, they do not sufficiently address forms of maritime use as are found in the Massachusetts definition, and do not address public access and recreation. New York State would be better served by coastal management plans and policies that restrict non-water-dependent uses and reserve waterfront space for such future uses. Without these policies, traditional maritime and waterfront recreational uses would likely be crowded out by well-financed private development. However, if the definition is interpreted too narrowly, the policies that restrict non-water-dependent uses may actually prevent projects that the law was intended to protect.
providing a list of water-dependent recreational activities similar to that in the Massachusetts definition, which includes “parks, esplanades, boardwalks, aquariums and other education, research, or training facilities dedicated primarily to marine purposes” (See Recommendations 4.2 and 4.3).

**Regulatory Obstacles for Maritime Uses**

New York and New Jersey coastal management programs have policies and regulations that aim to protect existing maritime uses and preserve the waterfront for future water-dependent uses. Despite the goals of such programs, there is broad recognition that water-dependent maritime uses in the NY/NJ harbor estuary are in decline. Some of this decline can be attributed to the cost and difficulty of obtaining the permits required to operate and maintain water-dependent maritime uses.

A recent study by the Regional Plan Association identified the following primary threats to water-dependent maritime uses.

- Intense competition for waterfront space
- Lack of coordination among decision-making entities
- Inadequate land use regulations
- Complex and costly environmental regulations

This section addresses the regulatory hurdles facing maritime uses.

**Compliance with Environmental Regulations**

Complying with environmental regulations has become increasingly challenging for many maritime uses. While environmental regulations have not changed significantly over the years, the increasing time and cost associated with the permitting process has negatively impacted maritime uses, particularly for small-scale maritime operations. Much of the complexity of the permitting process for maritime activities comes from their location at the water’s edge, where municipal, state and federal jurisdictions often overlap. Regulatory requirements are particularly strict in the coastal zone because of the concentration and vulnerability of natural resources in these areas. In addition, waterfront projects are given particularly close scrutiny because of their exposure to high-energy storm events and the effects of climate change.

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24 Id.
25 Id.
Dredging and Disposal of Dredged Material

Many water-dependent maritime uses require regular dredging to maintain the necessary depth of the channels used by commercial and recreational vessels. Without the ability to maintain these channels, maritime businesses cannot service their client vessels. The costs associated with dredging, coupled with the amount of time and effort it takes to obtain the necessary dredging permits, have had a significant impact on the long-term viability of water-dependent maritime uses.26

Reducing the costs associated with dredging would provide a substantial benefit to water-dependent maritime industries. While permitting agencies have little power to reduce the costs of dredging itself, these agencies could reduce the time and administrative costs associated with the permitting process required for dredging activities.

One way to decrease the time and cost of dredging is to create a “general permit” or “standard activity permit” for dredging activities where the amount of dredged material is under a certain volume (See Recommendation 4.4). Such a permit would allow for a streamlined application process for dredging activities that are designed to merely maintain the already established maritime industrial operations.

Currently, if a maritime business undertakes a dredging operation to restore a channel to a previously recorded depth, and this is done within 10 years of the previous dredging, then the activity is considered “maintenance dredging” and is a “minor” activity. Permit applications for “minor” activities face fewer regulatory hurdles and tend to be processed faster. Since the closing of the Mud Dump Site in 1997, however, many smaller maritime operations have put off dredging due to the costs and have now passed the 10-year deadline for maintenance dredging. If they undertake dredging activities today, the activity will be considered “major” and the process will be longer and more costly to the operator. Any “standard activity permit” created for maintenance dredging should take this fact into consideration and allow maritime operators who have missed the 10-year deadline to begin regular dredging again, as maintenance dredging, under the streamlined permit. Without providing this exception, many smaller maritime operators would not be eligible to use a standard activity permit for maintenance dredging.

Maintenance, Repair, and Replacement of Waterfront Infrastructure and Bulkheads

Maritime uses rely on the ability to build and repair in-water structures such as pilings, docks, piers and bulkheads. Without functioning waterfront infrastructure, maritime uses cannot operate. The New York Protection of Waters Program28 regulates the construction and maintenance of marine infrastructure to avoid or minimize impacts on water quality and marine habitat. This permitting program aims to protect water resources while allowing for economic development.

26 Id.
27 For more information on the Mud Dump Site visit: http://www.epa.gov/region2/water/dredge/intro.htm
28 6 NYCRR Part 608
Many of the maritime stakeholders and environmental consultants interviewed for this report suggested that the Protection of Waters regulations are being interpreted by NYSDEC in an increasingly narrow way. They argue that there is added scrutiny over the size, design and placement of such structures and that this hinders the maintenance and development of maritime uses. Moreover, the lack of flexibility forces maritime developers to implement impractical and ineffective solutions.

The 50% rule also raises concern among maritime operators. This rule states that if an in-water structure has been neglected to the point where it is over 50% deteriorated, then any attempt to repair it will be considered ‘new construction’ and will require all associated permits. This policy is designed to prevent destroying habitat destruction in areas where degraded infrastructure has provided the opportunity for new wetlands or other habitats to become established.

Some maritime operators refer to an “in-kind replacement” rule, in which waterfront infrastructure replacement is a “minor” activity as long as it is replaced by a structure made of the same design and materials as the old structure, and placed in the same location. Applicants cite the “in-kind” replacement rule as an example of Agency rigidity because they believe NYSDEC forces the maritime industry to replace aging infrastructure with designs and materials that are outdated and ineffective. NYSDEC officials state, however, that no “in-kind replacement rule” exists.

Research on the maritime industry has shown that strict interpretation of regulations affecting waterfront development has placed undue burdens on the industry as a whole. As a result, either new regulations or different interpretations of existing regulations need to be adopted in order to reduce these unnecessary and cumbersome requirements. For example, difficulties created by the 50% rule can be reduced by increasing the threshold for when permits for new structures are required and through wetlands banking (described in Recommendation 2.4). Recommendations 4.5 to 4.7 offer suggestions to support the maritime industry while at the same time ensuring environmental protection.
Chapter 4 Recommendations

Recommendation 4.1
Schedule quarterly meetings, convened at the mayoral level, of the New York City Department of Parks and Recreation, New York City Department of City Planning, New York City Economic Development Corporation, the New York State Department of State and the Region 2 Office of the New York State Department of Environmental Conservation.

It is suggested that these agencies hold quarterly meetings to track waterfront permits and discuss issues of mutual concern. Agency officials would discuss all current and future projects and identify design issues before substantial plans are made. This would foster an improved and more comprehensive understanding of what is happening on the waterfront, as well as establishing an ongoing working relationship among the agencies. These meetings would also allow each agency to hold high level discussions about what park designs are considered functionally reasonable and necessary.

A Comparison of Other States’ Cooperative Efforts:

Oregon: In Oregon, the Portland Department of Parks and Recreation schedules quarterly meetings with the Oregon Department of State Lands to discuss current and future parks projects. These meetings are used to describe design plans and identify necessary permits. Parks officials described the process as “collaborative.”

Washington: In Washington, the Seattle Department of Parks and Recreation has standing monthly meetings with the Army Corps of Engineers and the state environmental permitting agencies (Fish and Wildlife, Ecology, Natural Resources). These meetings are used to discuss current and upcoming projects and the permits that may be required. Parks Department officials said the meetings were helpful to explain why certain designs were chosen and how the park may impact the surroundings.

Massachusetts: Representatives from the City of Boston’s Departments of Transportation and Parks meet quarterly with officials from the Massachusetts Department of Environmental Protection Waterways Regulation Program and officials from the Coastal Zone Management Programs to address pre-application issues, application processing, planning and other areas of mutual interest.

Recommendation 4.2
Amend New York State water dependency laws and regulations to include additional examples of water-dependent uses, including park features that provide direct public access to the water.

Providing examples of water-dependant uses within the definition clarifies the intent of the law and ensures that the interpretation of the definition will not change under new political leaders and ideologies. The definition of “water-dependent” should be amended to include public
access, research and educational facilities. The Massachusetts definition can serve as a model it is provided in relevant part below:

4. parks, esplanades, boardwalks, and other pedestrian facilities that promote use and enjoyment of the water by the general public and are located at or near the water's edge, including but not limited to any park adjacent to a waterway and created by a public agency;
5. aquariums and other education, research, or training facilities dedicated primarily to marine purposes

This amendment would allow the development of parks and facilities that encourage public interaction with the water and provide the opportunity for the public to learn about the surrounding marine ecosystem, rather than simply viewing it from afar. This type of interaction with, and proximity to, the water will increase the public value of waterfronts and the public’s interest in the health of our waters.

**Recommendation 4.3**

Amend New York State water dependency laws and regulations to include definitions of water-dependent-industrial uses.

Providing examples of water-dependent industrial uses in the NY statutory definition of maritime uses will allow for the preservation and development of the maritime industry. The Massachusetts definition again provides a good example:

(b) The Department shall find to be water-dependent-industrial the following uses:
1. marine terminals and related facilities for the transfer between ship and shore, and the storage of, bulk materials or other goods transported in waterborne commerce;
2. facilities associated with commercial passenger vessel operations;
3. manufacturing facilities relying primarily on the bulk receipt or shipment of goods by waterborne transportation;
4. commercial fishing and fish processing facilities;
5. boatyards, dry docks, and other facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures;
6. facilities for tug boats, barges, dredges, or other vessels engaged in port operations or marine construction;
7. any water-dependent use listed in 310 CMR 9.12(2)(a)9. through 14., provided the Department determines such use to be associated with the operation of a Designated Port Area;
8. hydroelectric power generating facilities; and
9. other industrial uses or infrastructure facilities which cannot reasonably be located at an inland site as determined in accordance with 310 CMR 9.12(2)(c) or (d).
**Recommendation 4.4**

NYSDEC should create general permits for (1) dredging certain volumes (i.e. less than 50,000 cubic yards) for water-dependent maritime operations, (2) the removal of sunken vessels, and (3) maintenance and repairs to waterfront structures and bulkheads.

General permits are intended to regulate common activities that are repeated in a similar manner and have minimal environmental impacts. To ensure that environmental degradation is minimized, general permits outline a set of precautions and rules that an applicant must follow when undertaking the activity. So long as the applicant agrees to conduct the proposed activities under the pre-set limits established by the permit, he or she does not need to apply for a more costly and time-consuming individual permit. By allowing general permits, both the permitting agencies and permittees will be able to focus their time and energy on those projects that are more likely to have a significant environmental impact.

Instituting general permits for small scale dredging, removal of sunken vessels, and regular repair and maintenance would decrease the burdens on both the maritime industry and on government agencies. In particular, NYSDEC would benefit from this because they are already operating with limited capacity, by having a streamlined permit review procedure will free up staff time for more pressing matters. At the time this report was drafted, NYSDEC officials said they were working to create several new general permits.

NYSDEC officials also say their capacity to fully address dredging issues within the Department have been dramatically reduced due to a loss in federal funding for a NYSDEC dredging team that formerly met for several years.

**Recommendation 4.5**

The New York City Economic Development Corporation should maintain a maritime industry desk dedicated to serve the maritime industry. In particular, the dedicated staff at the desk should focus on providing guidance to small, private operators, assisting them in obtaining permits. NYSDEC should give priority to meetings with NYCEDC’s staff that serves the small operators in the maritime industry.

The maritime industry, especially smaller operations, should receive additional direct assistance from the New York City Economic Development Corporation (NYCEDC) with permitting, environmental compliance, and industrial retention through a dedicated desk with the mandate of preserving New York City’s viable small maritime operations. This recommendation is consistent with the findings in the report “Making Waterfronts Work,” which explains that small operators are negatively affected by the time and costs of complying with waterfront regulations:

*Complying with some environmental regulations is a significant challenge for certain maritime uses. In some cases the challenge is not the regulations themselves, but the costs and time associated with the permitting process. Such investments of time and money are particularly problematic for smaller-scale, privately-owned maritime uses.*
such as shipyards and ship repair businesses, recreational marinas and boatyards, and mixed-use piers.\textsuperscript{29}

Dedicated NYCEDC staff could also serve an ombudsman function through regularly scheduled meetings with NYSDEC. During these meetings agency officials would discuss all current and future projects and identify design issues before substantial plans are made. These meetings would allow each agency to explain its needs and motivations, and foster an improved understanding and working relationship between the two agencies.

NYSDEC should give priority to permitting meetings concerning the small maritime industry and give priority to meetings with NYCEDC maritime industry staff. This will allow NYCEDC and NYSDEC to quickly work out permitting issues and allow small maritime operations to receive permits sooner, thus mitigating additional costs from delays.

**Recommendation 4.6**

The NYSDEC commissioner should, in consultation with the Mayor of New York City, create a Maritime Preservation Task Force to propose changes to New York State and New York City waterfront permitting regulations in Significant Maritime and Industrial Areas (SMIAs).

Though not the focus of this report, the Maritime Preservation Task Force should make recommendations to promote the viability of the maritime industry in areas such as waterfront-related laws, tax incentives, zoning regulations, land use management and subsidies for consulting assistance and support for the maritime industry.

A Maritime Preservation Task Force with members appointed by NYSDEC’s commissioner in consultation with the Mayor of New York City should be convened immediately to develop changes to regulations for the maritime industry, propose tax incentives for the industry, and develop proposals for its protection. The newly formed New York City Waterfront Advisory Board can help serve as this task force and help frame the discussions and ensure that all key stakeholders are represented.

Consisting of representatives from NYSDEC, the New York State Department of State, New York City Department of City Planning, New York City Economic Development Corporation, the maritime industry, maritime experts, environmental advocates, environmental scientists and non-governmental organizations, the Task Force will be charged with proposing regulatory changes to New York State and New York City waterfront-related laws affecting the maritime industry within a short time frame. These proposed changes will provide regulatory relief to the maritime industry. The Task Force would study the recommendations in this and other reports, and develop final proposals for regulatory reform.

In New York City’s Waterfront Revitalization Plan, SMIAs are identified as unique areas, separate from other areas of New York City that are particularly well suited for maritime and

industrial development. Therefore, government regulations and laws should recognize their unique characteristics. The SMIAs of the New York City include: South Bronx, Newtown Creek, Brooklyn Navy Yard, Red Hook, Sunset Park, and the north shore of Staten Island. Waterfront activity that furthers the industrial or maritime character of these areas would be consistent with coastal policies for these properties. The SMIAs were originally determined by identifying concentrations of existing water-dependent uses and areas where the physical capacity of the lands, water, and infrastructure, and zoning accommodated these uses. A significant feature of many SMIAs is their proximity and adjacency to deep water areas of the harbor, making them accessible to larger ships carrying larger cargo loads.

In many instances, NYSDEC has become the de facto land-use agency governing what is built on the waterfront and how it is built to ensure environmental protection. As such, MWA recommends that NYSDEC more clearly indicate the different uses for waterfront property, and treat those uses in ways that better balance the needs of critical industry and civic functions, specifically the policy imperative of maintaining and growing our maritime economy and providing public waterfront access through parks. All regulatory parties agree that the survival and growth of the maritime industry is critical to maintain a vibrant waterfront for our region.

In addition to proposing changes to regulations, the Maritime Preservation Task Force should propose legislation to create greater tax incentives for the maritime industry and allow for changes to zoning regulations. In 2006, the Bloomberg Administration created Industrial Business Zones to provide safe havens for industrial and manufacturing companies that were being crowded out by the escalating values of waterfront property. However, these zones do not prevent conflicting uses (i.e. residential development) from occurring in areas adjacent to important centers for our industrial maritime community. The deteriorated economy brings to light the importance of a diverse economic base, and the need for land reserved for a plethora of functions. Mechanisms to examine include creating strong industrial maritime zoning districts in designated locations and providing residential deed restrictions within buffer zones near M-zoned waterfront property. The Maritime Preservation Task Force should therefore propose legislation that provides special protection for the water-dependent industrial sector.

Currently, there are no local or state business attraction programs specifically targeted at facilitating the retention and growth of industrial maritime businesses. With the change to the sunset provisions of the Empire Zones Program, setting the program’s expiration in June 2010, there are few tools to broaden the transportation and production clusters of the maritime community. The Maritime Preservation Task Force should propose legislation that creates a tax incentive that is linked to job creation and geared toward the maritime business community.

**Recommendation 4.7**
The Maritime Preservation Task Force should propose regulations for Significant Maritime and Industrial Areas (SMIAs) that address wetlands mitigation regulations, the 50% rule, application of shading restrictions, and determine when wetlands impacts can or cannot be avoided.

MWA recommends that the NYSDEC Commissioner and New York City Mayor charge the Maritime Preservation Task Force with immediately working with the maritime industry and other stakeholders to propose new regulations that apply to waterfront permitting in Significant...
Maritime and Industrial Areas (SMIAs). MWA has identified five permitting factors that maritime stakeholders have found to be detrimental to the maritime industry as described in this report and listed below:

- wetlands mitigation regulations
- the 50% rule
- the application of shading restrictions
- the determination of when wetlands impacts can or cannot be avoided
- the lack of opportunity of wetlands banking to benefit SMIAs.
- the perception that there is an “in-kind” rule requiring permittees to build new structures with outdated materials
- NYSDEC’s definitions of what is a necessary project or what parts of projects are necessary or functionally necessary

**Recommendation 4.8**
The New York City Department of Environmental Protection and NYSDEC should establish a pollution prevention assistance program serving the New York City maritime and waterfront industries to improve their environmental compliance, to reduce air and water emissions, and to reduce environmental impacts on surrounding communities.

Pollution prevention assistance to maritime operators can improve the environmental performance of maritime business, help keep costs low by helping small operations avoid consultant fees, and in many cases reduce overall costs to the industry by reducing waste. The philosophy of pollution prevention assistance is to aid industry in preventing the pollution before it is created in the first place. A program may be structured so a team of agency engineers and specialists is formed when needed to identify opportunities to increase the efficient use of materials and energy throughout a maritime or industrial waterfront facility. Pollution prevention assistance offered in a partnership between New York State and New York City should be a priority. As a first step a pollution prevention program should be explored through a feasibility study jointly funded by both agencies.
CHAPTER 5 SYNOPSIS

Comprehensive Improvement of State Environmental Permitting

The concerns over the New York State waterfront permitting process highlighted in the preceding chapters point to the need for a comprehensive streamlining effort. This chapter recommends the creation of a streamlining task force bringing NYSDEC officials together with outside stakeholders to identify current issues and solutions. A similar effort was recently undertaken by the NJDEP, and was heralded as a success both inside and outside the agency. The New Jersey task force can be used as a model to create a more efficient and effective permitting process in New York.

Today, the permitting system is not only lengthy and confusing, but it also hinders the region’s potential for responsible and sustainable growth. Although the recommendations suggested in this report could be implemented individually, each provides only a partial solution. MWA advances the position that many of the issues and concerns highlighted in this report should be addressed simultaneously through a New York State-sponsored review of the permitting systems affecting waterfront development through a Waterfront Permit Efficiency Review Task Force. This process should be used by NYSDEC to make the permitting process more efficient and effective, to determine ways in which regulations should be modified to address sea level rise, and to determine ways to better communicate with applicants and consultants. An option is to jumpstart the Task Force through the New York City Waterfront Management Advisory Board.

Chapter 5 Recommendation

Create a Permit Efficiency Review Task Force (“Task Force”) to analyze and consolidate the waterfront permitting processes
CHAPTER 5

Comprehensive Improvement of State Environmental Permitting

The New Jersey Model for Improving Environmental Permitting

In 2008, New Jersey Commissioner of Environmental Protection, Lisa Jackson issued an administrative order creating the New Jersey Department of Environmental Protection (NJDEP) Permit Efficiency Review Task Force. This action was in response to concerns regarding permitting efficiency and timeliness, dwindling budgets, overstretched permitting staff and regulatory confusions and contradictions. Commissioner Jackson appointed 24 members, giving them 120 days to complete their assignment and providing them with staff assistance from senior members of the NJDEP, including two assistant commissioners. The members of the Task Force included representatives of residential and commercial developers, environmental organizations, land use planning firms, nongovernmental organizations, housing advocacy groups, business and industry, the environmental justice community, counties, municipalities, public utilities authorities, engineering firms, the EPA, the Governor’s office and environmental consulting firms.

Commissioner Jackson’s charge to the Task Force was to conduct a comprehensive analysis of the permitting programs of NJDEP and submit a report with recommendations for restructuring NJDEP permitting and other programs to ensure timely and efficient service while maintaining public health and protecting the environment. The Task Force was asked to recommend policy and regulatory changes that would establish incentives specifically for sustainable development projects contributing to economic growth and having little or no impact on public health and safety, the environment or natural resources. The Commissioner asked the Task Force to make the permit process more timely, predictable, consistent and transparent and to do so at the lowest possible cost to taxpayers while enhancing New Jersey’s environment. This process was driven in large part by input from the NJDEP staff.

The scope of the review included only the work of the Division of Land Use Regulation and the Division of Water Quality, two of the key permitting units of the Department. The work of the Task Force was divided into three committees: Land Use, Water Quality and Priorities. The Task Force met 12 times, each for three hours, either in committees or as a whole. A briefing book of permit application statistics and efforts to improve efficiency was supplied to the Task Force before the first meeting. NJDEP staff also compiled information about programs in selected states and localities that address permit processing efficiencies and made presentations to committees and the full Task Force. Finally, there were numerous conference calls and email exchanges to supplement the work of the group, and many additional documents were supplied to the Task Force in response to issues raised and data requested. All written materials prepared for the Task Force are available on the NJDEP website, which can be found at http://nj.gov/dep/permittf/.

88
The Task Force’s finding and recommendations for the Land Use Division focused on several key issues, including:

- Improved information technology
- More complete policy guidance documents and public access to the rulemaking process
- Staffing issues, fees and funding
- Application submittal and review procedures
- Regulatory conflicts and gaps

The NJDEP Permit Efficiency Review Task Force is widely viewed as a success both within the department and by outside stakeholders. In an interview with Thomas Mica, Director of the NJDEP Division of Land Use Regulation, Mr. Mica called the review process “a great success” and said NJDEP staff had embraced the recommendations and were pleased to have a path forward. Mr. Mica cited many aspects of the project’s success, and particularly emphasized the following elements:

- Strong, disciplined and determined leadership from the Task Force Chairman Christopher Daggett
- A high level of cooperation and collaboration between NJDEP staff, members of the NJDEP Permit Efficiency Review Task Force and other involved stakeholders
- The inclusion of a broad spectrum of stakeholders, which “gave the process credibility.” – Mr. Mica

In an interview, Mr. Daggett expressed similar satisfaction with the success of the NJDEP Permit Efficiency Review Task Force and the quality of its recommendations. Mr. Daggett emphasized the fact that the recommendations were frequently developed by NJDEP staff, did not require a single new staff person and were sensitive to budgetary constraints facing the State. Many of the recommendations, he said, could be implemented at little or no cost. Mr. Daggett identified several aspects of the project that he felt were key to its success, including:

- Agency involvement in the development of recommendations. “Having the agency staff involved in the development of the recommendations was key to gaining acceptance from agency staff” – Mr. Daggett
- A chairperson seen as independent (without ties to developers or environmental organizations) and driven, with broad respect in the community
- Support from Governor Corzine and NJDEP Commissioner Lisa Jackson.
- The inclusion of a truly diverse coalition of government officials, industry representatives, developers, environmental and non-profit leaders, and permitting consultants. “A diverse coalition is key to success” – Mr. Daggett

30 Conversation June 2009
31 Telephone interview, May 2009
32 Telephone interview, May 2009
Chapter 5 Recommendations

Recommendation 5.1

New York State should create a Permit Efficiency Review Task Force composed of NYSDEC officials and staff and outside stakeholders to make the permitting process more efficient and effective, determine ways in which regulations should be modified to address sea level rise, and determine methods to better communicate with applicants and consultants.

The purpose of the Task Force will be to work with the staff at NYSDEC and waterfront stakeholders to create a set of recommendations aimed at increasing efficiency, transparency and predictability in New York’s waterfront permitting. The recommendations created by the Task Force will identify ways to increase the likelihood that regionally beneficial projects that embody New York State waterfront goals receive needed approvals in a timely and affordable manner and that applicants understand how to most effectively work with the Department. The Task Force will bring together a diverse group of leading stakeholders and interest groups, including government officials, industry groups, environmental advocacy groups, environmental justice advocates, and other advocacy leaders from around the region.

One important distinction between the New Jersey task force and the recommended New York State process is that New York State and downstate officials should work either before or as part of the task force process to build consensus on a vision for the NY/NJ Harbor Estuary based on the Comprehensive Restoration Plan and based on Recommendation 3.5 in this report. The Task Force should also comprehensively determine the regulatory changes needed to assess how greater probability of sea level rise, flooding, and storm surges should or should not be addressed through permitting requirements.

The Task Force should determine ways to improve the permitting system to better take into account environmental justice issues and the social benefits of waterfront projects in under-represented and under-resourced communities.

Recommendations in this report should be the starting point for many of the task force discussions. Beginning with the recommendations in Chapter 1 and Chapter 2 in this report, the task force should identify ways of providing better information to applicants, their consultants, and others involved in the waterfront permitting process. Armed with appropriate details, applicants and consultants can better navigate the permitting system and work more effectively with regulators. Specifically, the task force should identify ways to regularly bring consultants together for educational programs on waterfront development (See Recommendations 2.2 and 3.1) and ways of pooling applicants to provide them with step-by-step permitting information through the User’s Guide and website (See Recommendation 1.2) as well as guidance on NYSDEC policies and design guidelines (See Recommendation 1.1).

Once the recommendations developed by the Task Force are implemented, the effect will be a consolidated permitting system that reduces the burdens on regulatory officials, maximizes the quality and effectiveness of their service, and increases the understanding between stakeholders and NYSDEC. To achieve this goal, New York State’s political leaders should call for the
creation of such a Task Force and provide NYSDEC with the additional resources required to undertake this review. Although the State’s budget is restrictive, the investment required to update the waterfront permitting system will bring a substantial return in the form of an efficient system that reduces the burden on staff and increases economic and recreational activity on the waterfront.

**Permit Efficiency Review Task Force Conclusion**

The NJDEP Permit Efficiency Review Task Force presents the most effective model for permitting reform among those reviewed for this report. As illustrated by Mr. Daggett and Mr. Macai, the NJDEP Permit Efficiency Review Task Force’s success was due to strong political support, a disciplined and driven Chairperson, the inclusion of diverse interest groups, and the leadership and participation of agency staff.

A coordinated review of New York’s waterfront permitting system is long overdue. The waterfronts along the Hudson River Estuary have the potential to be vibrant, active and healthy spaces that attract visitors and expand our economy. In order to achieve this vision, the regulatory processes that protect these spaces must be efficient, transparent and predictable. As inhabitants of an archipelago, every New York City resident and tourist has an interest in the future of the waterfront. The investment of time and resources necessary to increase the efficiency and effectiveness of our permitting system will serve the region for years to come and preserve New York City’s status as host to a world-class waterfront.
Conclusion

This report concludes that waterfront permitting in the NY/NJ Harbor Estuary could be improved by focusing on several specific weaknesses.

The state permit application and review process should be improved by
• increasing the availability of policy and decision-making information
• increasing responsiveness within NYSDEC
• adhering more closely to statutory timelines
• providing a unified source of permitting information explaining the municipal, state, and federal permitting processes.

Waterfront policies that are based on a scientific understanding of the impacts of development should be informed by new research – which can in part be conducted by permittees -- on the effect of small-scale over-water structures on marine habitat. Innovative waterfront development design should be encouraged by permitting agencies through the creation of administrative incentives and design guides.

Public waterfront access and maritime operations should be protected and promoted by
• expanding the definition of “water-dependent” uses
• creating streamlined permitting for common, low-impact maritime activities such as infrastructure repair and replacement and routine dredging
• changing regulatory interpretation and regulations in Significant Maritime and Industrial Areas (SMIAs).

To ensure that long overdue changes to regulations in SMIAs are implemented, a Maritime Preservation Task Force should be convened by the NYSDEC commissioner. Representatives of agencies from New York State and New York City, the maritime industry, and nongovernmental organizations will develop proposals for regulatory changes aimed at alleviating burdensome regulations that threaten the maritime industry’s financial health and viability. Streamlining New York State’s permitting processes will lead to decreased complexity, increased efficiency, and improved timeliness in waterfront permitting. New York State should conduct a permit efficiency review process led by NYSDEC, similar to that conducted in New Jersey. The results of this process will provide significant improvements to waterfront permitting in New York.

MWA encourages its Alliance Partners and government partners to provide comments on the recommendations in this document and seeks to work together to improve waterfront permitting for our region.

Research conducted by Andrew McCartor, with assistance from MWA interns Ehren Seybert and Timothy Yeo, and MWA staff including Lee Miller, Program Manager, Cortney Worrall, Director of Programs, and Roland Lewis, President and CEO, MWA. Recommendations developed by Roland Lewis, Cortney Worrall, Andrew McCartor, Lee Miller, and Alison Karmel.
Appendix A

New Jersey
Review of the Permits, Processes and Programs

New Jersey Regulation of Water-Related Projects:
The New Jersey Department of Environmental Protection (NJDEP) regulates waterfront development through its Division of Land Use Regulation. This division administers six permits that may be required for a waterfront project, including freshwater and tidal wetlands permits and a Waterfront Development permit. Together these permits regulate approximately the same activities as New York wetlands permits and the Protection of Waters permit.

Availability of Permitting Information and Applicant Guides:
In 1999, The New Jersey Department of Environmental Protection released a state permitting guide titled “Permits, Licenses, Approvals and Certificates.” The guide outlines the regulations and permits that affect waterfront development as well as highlighting some, but not all, of the federal permits that apply to waterfront development. While this guide covers a broad spectrum of permits and is a great resource, it fails to discuss application requirements and the application process in sufficient detail. Moreover, the guide lacks an overview of the permitting process, which is especially helpful for first time permit applicants.

Statutory Timelines:
Like New York, New Jersey law requires the NJDEP to make final permitting decisions within a statutory timeline, typically 90 days after an application is deemed “complete.” In addition, the NJDEP must decide if an application is complete 30 days after it is submitted. If NJDEP does not issue a final decision before the deadline, then the application is automatically approved.

These regulations differ from those in New York. Under New York law, if NYSDEC misses the deadline for making a final decision, the enforcement mechanism is for the applicant to send NYSDEC a letter demanding a decision within 5 days. If the applicant does not send such a letter, NYSDEC can hold the application indefinitely without issuing a final decision.

Application Fees and Refunds:
NJDEP charges fees for permit applications. In some cases these fees are refunded, however the refund policy is not set up as an incentive to produce timely decisions and refunds are not automatically given if NJDEP misses a statutory deadline. Under New Jersey law (N.J.A.C. 7:7A-12), an application fee is refundable if the Department returns the application as administratively incomplete. If the application is resubmitted, the application fee is credited toward the resubmitted application. If the application is not resubmitted, the applicant may obtain a fee refund upon request. An application fee is not refundable once the application has been declared administratively complete. However, if NJDEP denies an application, or if the applicant withdraws the application, NJDEP will credit the fee towards a new application for a
revised project on the same site, provided that the new application is submitted within one year of the denial or withdrawal. If the NJDEP cancels an application, the application fee is not be refunded.

The rules for fee refunds in New Jersey are more accommodating to the applicant than those in New York. Under NYSDEC rules, wetlands application fees are not refunded under any condition after the application is filed.

**Regulation and Interpretation of “Water Dependant” Uses:**
The New Jersey Administrative Code defines “water dependent” as development that cannot physically function without direct access to the body of water along which it is proposed. Uses, or portions of uses, that can function on sites not adjacent to the water are not considered water dependent regardless of the economic advantages that may be gained from a waterfront location. Maritime activity, commercial fishing, public waterfront recreation and marinas are examples of water dependent uses, but only the portion of the development requiring direct access to the water is water dependent. The test for water dependency assesses both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use is not considered water dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation, a dock or quay and associated unloading area would be water dependent, but an associated warehouse would not be water dependent.

Examples of water-dependent uses include: docks, piers, marina activities requiring access to the water, such as commissioning and decommissioning new and used boats, boat repairs and short term parking for boaters, storage for boats which are too large to be feasibly transported by car trailer, rack systems for boat storage, industries such as fish processing plants and other commercial fishing operations, port activities requiring the loading and unloading of vessels, and water oriented recreation.

Water-dependent uses exclude, for example: housing, hotels, motels, restaurants, warehouses, manufacturing facilities (except for those which receive and quickly process raw materials by ship), dry boat storage for boats that can be transported by car trailer, long-term parking, parking for persons not participating in a water-dependent activity, boat sales, automobile junk yards, and non-water oriented recreation such as roller rinks and racquetball courts.

New Jersey has a second classification called “water oriented,” which is defined as development that serves the general public and derives economic benefit from direct access to the water body along which it is proposed. (Industrial uses need not serve the general public.) For example, a hotel or restaurant, since it serves the public, could be considered “water-oriented” if it takes full advantage of a waterfront location. Similarly, an assembly plant could be classified as “water oriented” if overland transportation is possible but water-borne receipt of raw materials and shipment of finished products is economically advantageous. Housing however, is not considered a “water-oriented” use, despite the economic premium placed on waterfront housing because it only benefits those who can afford to buy or rent the housing units.
The definition of “water-dependant” uses in New Jersey is similar to that in New York. However, representatives from NJDEP claim that their interpretation of the definition encourages waterfront parks and allows for a certain degree of flexibility when evaluating a project’s need for waterfront access. In addition, the New Jersey definition includes uploading areas for maritime operations but does not include association facilities such as warehouses.

**Coordination Between State Permitting Agencies and Municipal Parks Departments:**
NJDEP does not have regularly scheduled meetings with municipal parks staff, but rather meets on an as-needed basis.

**Programs to Encourage Innovative Projects or Projects of Particular Importance**
To promote innovation in waterfront projects, NJDEP created a special office within the Division of Land Use Regulation, called the Bureau of Urban Growth and Redevelopment. This bureau’s sole responsibility is to expedite permit application reviews for projects that incorporate innovative design and projects that exemplify the State’s coastal goals. This bureau is guided by the same procedures and regulations as other permit processing divisions however, because the staff has a reduced caseload there is a greater capacity to process applications faster and with more personal attention. Examples of projects that are processed within this bureau include brownfield redevelopment and urban redevelopment projects.

The NJDEP Office of Fish and Wildlife has created the Landowner Incentive Program (LIP) Grant. This program provides funding for projects that enhance, protect or restore habitats that benefit endangered, threatened or other at-risk species on private lands. However, this financing is limited and is not available for actions that will only meet mitigation requirements.

Another New Jersey incentive program is the New Jersey Clean Energy Program. This program offers a number of incentives for projects that reduce energy needs and embody “green building” practices. More information can be found at www.njcleanenergy.com

**Regulatory Streamlining Efforts**
In 2008, the New Jersey Commissioner of Environmental Protection, Lisa Jackson, issued an administrative order creating the NJDEP Permit Efficiency Review Task Force. This action was in response to concerns regarding permitting efficiency and timeliness, dwindling budgets, overstretched permitting staff, and regulatory confusions and contradictions. Commissioner Jackson appointed 24 members, giving them 120 days to complete their assignment and providing them with staff assistance from senior members of the NJDEP, including two assistant commissioners. The members of the NJDEP Permit Efficiency Review Task Force included representatives of residential and commercial developers, environmental organizations, land use planning firms, non-government organizations, housing advocacy groups, business and industry, the environmental justice community, counties, municipalities, public utilities authorities, engineering firms, the USEPA, the Governor’s office and environmental consulting firms.

33 Additional information on the NJDEP Permit Efficiency Review Task Force is available at [http://www.state.nj.us/dep/permitf/](http://www.state.nj.us/dep/permitf/)
Commissioner Jackson charged the NJDEP Permit Efficiency Review Task Force with conducting a comprehensive analysis of NJDEP’s permitting programs and submitting a report with recommendations for restructuring these and other programs to ensure timely and efficient service, while still upholding public health standards and protecting the environment. The task force was asked to recommend policy and regulatory changes that would provide incentives to advance sustainable development projects that contribute to achieving statewide greenhouse gas limits, economic growth opportunities in urban areas and meaningful affordable housing. The Commissioner asked the NJDEP Permit Efficiency Review Task Force to help her make the permit process more timely, predictable, consistent and transparent and to do so at the lowest possible cost to taxpayers while at the same time enhancing New Jersey’s environment.

The work of the NJDEP Permit Efficiency Review Task Force included only the Division of Land Use Regulation and the Division of Water Quality, two of the key permitting units of NJDEP. The work of the task force was divided into three committees: Land Use, Water Quality and Priorities. The NJDEP Permit Efficiency Task Force met 12 times, each for three hours, either in committee or as a whole. A briefing book of permit application statistics and ongoing efforts to improve efficiency was supplied to the task force before the first meeting. NJDEP staff also compiled information about programs in other states and localities where attempts have been made to address permit processing inefficiencies. In addition, several staff presentations were made to committees and to the full NJDEP Permit Efficiency Review Task Force. Finally, there were numerous conference calls and email exchanges to supplement the work of the group, and many additional documents were supplied to the task force in response to issues raised and data requested. All written materials prepared for the NJDEP Permit Efficiency Review Task Force are available to the public and can be found on the NJDEP website.

The NJDEP Permit Efficiency Review Task Force’s findings and recommendations to the Land Use Division focused on several key issues, including:

- Improved information technology;
- More complete policy guidance documents and public access to the rulemaking process;
- Staffing issues, fees and funding
- Application submittal and review procedures
- Regulatory conflicts and gaps

The NJDEP Permit Efficiency Task Force is widely viewed as a success, both within NJDEP and by outside stakeholders. In an interview with Thomas Micai, Director of the NJDEP Division of Land Use Regulation, Mr. Micai called the review process “a success” and said NJDEP staff embrace the recommendations and are pleased to have a path forward. Mr. Micai cited many aspects that led to the project’s success, and particularly emphasized the following key elements of the process:

- Strong, disciplined and determined leadership from the NJDEP Permit Efficiency Review Task Force Chairman, Mr. Christopher Daggett;
- A high level of cooperation and collaboration between NJDEP staff, members of the task force and other involved stakeholders; and
- The inclusion and contributions of a broad spectrum of stakeholders “gave the process credibility.”
In an interview with Mr. Daggett, he similarly expressed satisfaction with the success of the NJDEP Permit Efficiency Review Task Force and the quality of the recommendations it produced. Mr. Daggett highlighted the fact that the recommendations were well received by NJDEP staff, did not require a single new staff person, and were sensitive to the budgetary constraints facing the State. In addition, many of the recommendations could be implemented at no, or little cost to the State. Mr. Daggett identified several aspects of the project that he believed were key to its success, including:

- Agency involvement in the development of recommendations. “Having the agency staff involved in the development of the recommendations was key to gaining acceptance from agency staff” (Mr. Daggett)
- A chairperson who is seen as independent (without ties to developers or environmental organizations), has broad respect in the community and is driven to get things done;
- Support from Governor Corzine and Commissioner Lisa Jackson.
- The inclusion of a diverse coalition of government officials, industry representatives, developers, environmental and non-profit leaders, and permitting consultants. “A diverse coalition is key to success” (Mr. Daggett)

The NJDEP Permit Efficiency Review Task Force represents the most effective model for permitting reform among the benchmarking states. It is superior to the permit review process in Oregon because NJDEP staff drove the process of analyzing the system and drafting recommendations. In Oregon however, the review process was coordinated outside the agency being reviewed and had less agency participation. The New Jersey model is more favorable compared to the Oregon model for two reasons: (1) it utilized the expertise of agency staff, who are uniquely qualified to assess the internal processes and efficiencies of the agency; and (2) it gave agency staff a sense of control and a stake in the outcome, which, in turn, increased their desire to support and implement the recommendations.
Appendix B

Oregon
Review of the Permits, Processes and Programs

Oregon State Regulation of Water-Related Projects:
In Oregon, the state agency with the primary authority to regulate water-related projects through discretionary permitting is the Oregon Department of State Lands (“DSL”). DSL exercises its authority by issuing or denying the Removal-Fill Permit. As the name suggests, this permit is required for most projects that involve the removal or addition of material from or to any state waterway. The authority to require the Removal-Fill Permit comes under ORS 196.810, which states in Section (1)(a):

 Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person may not remove any material from the beds or banks of any waters of this state or fill any waters of this state without a permit issued under authority of the Director of the Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland conservation plan.

The Removal-Fill Permit is the chief regulatory tool for state supervision of water-related projects. Activities typically requiring a Removal-Fill Permit include: stream bank stabilization, small-scale recreational placer mining, bridges and culverts, wetland fills & excavations, piling projects, wetland restoration, stream restoration, navigational maintenance dredging, water diversions, dams and impoundments.

Availability of Permitting Information and Applicant Guides:
To address the issue of waterfront permitting, DSL coordinated an interagency task force called the “Water-Related Permit Process Improvement Team” (“WRPPIT”). The WRPPIT is a consortium of representatives from eight state agencies involved in water-related activities and permitting. Representatives from the agencies co-drafted “The State Water-Related Permits User Guide” with the goal of providing permit applicants with a comprehensive, yet simple reference guide for regulatory and non-regulatory programs that influence permitting of projects in wetlands and waterways.

Statutory Timelines:
Like New York, Oregon agencies are required to make permitting decisions within statutory timelines. If the DSL fails to determine whether a permit application is administratively complete by the deadline, then the application will automatically be deemed complete. However, there is no remedy for the applicant if the DSL misses the deadline for a final decision on the application. Thus, the DSL needs to review an application for completeness within the
timeline or there will be a penalty, yet there is not a similar motivation to ensure that DSL makes a timely decision to either approve or deny the permit application.

**Permit Fees and Refunds:**
DSL charges fees for removal-fill permits based on the area that is being disturbed and the amount of material being moved. DSL regulations do not provide for a refund of application fees if statutory deadlines are missed.

**Regulating Shade and Other Secondary Effects from Removal-Fill Projects in Oregon:**
The Oregon statutory language describing the Removal-Fill Permit and the factors that DSL must weigh when issuing permits focuses on the effects of the actual removing and filling of material. This leaves open the question of whether DSL has the authority to consider secondary effects from projects that require the permit. For example, the statute does not address DSL’s authority to consider the effects on fish habitat from additional shade created by a pier surface, even if the construction of the pier requires a Removal-Fill Permit. Rather, the language focuses solely on the effects of the actual removal or filling of material.

DSL officials stated that the agency’s authority to regulate a project’s secondary effects was a gray area in the law. Representatives from DSL would not say that the agency does not have the authority to weigh secondary effects, such as shading, but that they typically do not exercise such authority. Moreover, there is hesitancy to base permitting decisions on secondary effects because this issue has not been thoroughly tested in the courts.

The effect of shaded water on fish habitat is an important and contentious issue in Oregon. While DSL officials expressed an interest in the subject, they admitted that most of the regulation of shading in Oregon is conducted by the National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act (ESA), and not by DSL. Under section 7(a)(2) of the ESA, federal agencies must consult with NMFS on activities that may affect a listed species, including the issuance of a federal permit. These interagency consultations are designed to assist federal agencies in fulfilling their duty to ensure that their actions will not jeopardize the continued existence of a species or destroy or adversely modify critical habitat. A project that creates shade will be regulated under the ESA if the action harms a “listed species” or damages “critical habitat.” Because the ESA is a federal law, the regulation of shade under the ESA is similarly applied to both Oregon and New York.

**Regulation and Interpretation of “Water Dependant” Uses:**
Oregon, like New York, regulates projects differently depending on whether the project is considered “water-dependant.” In fact, DSL restricts the availability of a Removal-Fill Permit for non-water-dependant uses under ORS 196.825(3).

> The director (of DSL) may issue a permit for a project that results in a substantial fill in an Estuary for a non-water-dependent use only if the project is for a public use and would satisfy a public need that outweighs harm to navigation, fishery and recreation and if the proposed fill meets all other criteria contained in ORS 196.600 to 196.905.

DSL regulations under OAR 141-085-0565(6) add:
A “substantial fill” in an Estuary is any amount of fill regulated by the DSL. No authorizations will be issued for a substantial fill in an Estuary for a non-water dependent use unless all of the following apply:
(a) The fill is for a public use;
(b) The fill satisfies a public need that outweighs the harm, if any, to navigation, fisheries and recreation; and
(c) The removal-fill meets all other review standards.

Under DSL regulatory definitions, "public use" means “a publicly owned project or a privately owned project that is available for use by the public.” Additionally, “non-water-dependant” uses are those “that do not require location on or near a waterway to fulfill their basic purpose.” OAR 141-085-0510 (72), (54).

This definition of “water-dependant” differs slightly from that under NYSDEC regulations. NYSDEC describes a “water-dependent use” as an activity that “can only be conducted on, in, over or adjacent to a water body because such activity requires access to water, and involves the use of water as an integral part of the activity.” 6 NYCRR §608.1(w)

The primary difference between the two definitions of “water-dependant” is the additional language in the New York definition stating that the project “involves the use of water as an integral part of the activity.” Although DSL officials described a high level of scrutiny when analyzing the water-dependency of projects, the absence of the language “involves use of water as an integral part of the activity” allows DSL greater flexibility than NYSDEC. DSL representatives stated that they felt there was some flexibility in their ability to designate water-dependant uses, and that waterfront esplanades and parks could qualify under the definition if the project proponents made a reasonable argument.

Coordination Between State Permitting Agencies and Municipal Parks Departments:
In Oregon, the Portland Department of Parks and Recreation schedules quarterly meetings with the Oregon Department of State Lands to discuss current and future Parks projects. These meetings are used to describe design plans and identify necessary permits. Parks officials described the process as “collaborative.”

Programs to Encourage Innovative and Environmentally Conscious Project Designs:
Portland, Oregon sponsors a program called the Green Investment Fund. This program offers a competitive grant that supports innovative green building projects in the City of Portland. A total of $425,000 is available for public and private industrial, multifamily residential, commercial, and mixed-use projects that exemplify green design. The primary intent of the program is to support early building and site-related project activities that examine the potential and identify the means to realize an exemplary, comprehensive green building project. The program is sponsored by city and state agencies, including the City of Portland Bureau of Environmental Services, the Office of Sustainable Development, the Water Bureau and the Energy Trust of Oregon. The Green Investment Fund offers a model that could easily be modified and adapted to apply to aqueatual design projects.
Portland has also created a “carbon fee-bate” program that levies a fee on buildings that do not substantially beat the State’s minimum energy efficiency standards. The proceeds generated from this fee are then awarded to projects that demonstrate energy efficiency well above the minimum standards.

The Oregon Department of Energy and the Energy Trust of Oregon (a quasi-governmental organization) also provide tax incentives for projects that achieve certain Leadership in Energy and Environmental Design (LEED) ratings or otherwise demonstrate significant energy savings.

**Regulatory Streamlining Efforts:**
In 2004, Oregon Governor Ted Kulongoki ordered the creation of a task force of industry leaders, state agency directors, and city and county representatives to identify the key barriers to economic growth in Oregon. One of the task force’s first conclusions was that the “byzantine nature” of water-related permitting creates such regulatory uncertainty as to drive away important economic development opportunities.

After the Governor’s task force identified water-related permitting as a key hurdle to economic development, a leader from the group approached the State’s newly created Office of Regulatory Streamlining to see if they would take on water-related permitting as their first streamlining project. The Office accepted this project and formed the "Water-Related Permit Process Improvement Team." This team, which consisted of senior staff members from seven state agencies, identified a lack of centralized permitting information as one of the first problems that needed to be resolved. A sub-group was formed with the task of creating the interagency "Oregon State Water-Related Permits User Guide." This guide was authored over the following year. The Water-Related Permit Process Improvement Team is now shifting its focus to accomplish the following reforms:

- Consistent State Processes Between Permit Types
- Faster Application Processing and Adherence With Statutory Deadlines
- Joint Applications

**Keys To Oregon’s Success:**
Kirk Jarvie, from DSL, led the creation of the Oregon State Water-Related Permits User Guide and identified several key elements to the Water-Related Permit Process Improvement Team’s success, including:

- The support and encouragement of the Governor.
- The selection of a strong project manager with credibility among the involved agencies, a willingness to probe into perceived sacred regulatory ground, and a desire to achieve concrete results.
- The help of a professional facilitator.

Mr. Jarvie also credited the strength of the Water-Related Permit Process Improvement Team to the team members. The team consisted of senior managers from: DSL; Department of Fish and Wildlife, Department of Environmental Quality; Department of Land Conservation and Development; Water Resources Department; Department of Parks and Recreation; Department of Consumer and Business Services, all of whom have a hand in waterfront permitting decisions.
Moreover, all the team members were respected within their agencies, able to make policy decisions, and willing to explore new paradigms for regulatory reform.

**Lessons Learned:**
In hindsight, Mr. Jarvie identified several ways in which the process of creating the Oregon State Water-Related Permits User Guide could have been improved, including:

1. **Incorporate the Army Corps of Engineers** - In the Oregon process the Corps was not represented in the Water-Related Permit Process Improvement Team. Mr. Jarvie believes that Corps participation would have led to a more complete Guide.

2. **Do not disband the authors after the guide is created** - The Water-Related Permit Process Improvement Team did not create an inter-agency team to revise the guide and keep it current. This task has fallen on Mr. Jarvie, who concedes that a single representative from a single agency is far less effective than a team representing all relevant agencies.

3. **Establish a timeline for the creation for an interagency user’s guide, and then double it** - In Oregon, it took approximately one year to create the Water-Related Permit Process Improvement Team. Once assembled, the team believed they could create the document is roughly six months, however, the drafting took a full year.

4. **Make the document web based, rather than a downloadable PDF** - The Oregon document is available as a downloadable MS Word document or as a PDF. Users have complained that the large size of the document makes download times too long.

**Conclusions From The Oregon Benchmarking Process:**
New York could borrow several helpful ideas from the processes and programs in Oregon, such as:

1. **Create a permitting reform task force to analyze the State’s current water-related permitting process and draft recommendations for improving the system.** Lessons from Oregon suggest that this task force should consist of leaders from state and local agencies, the development community, the environmental community, and permitting specialists and consultants who are familiar with the process.

2. **Create an interagency guide to state permitting** (but, unlike Oregon, include municipal and federal permitting).

3. **Schedule monthly or quarterly meetings between the State’s environmental agency and major Municipal Parks Departments.**

4. **Amend the statutory definition of “water-dependant use”** so that agencies can better utilize water-dependency rules to protect maritime industries and encourage the development of public parks.

5. **Develop programs to encourage and reward innovative environmental designs.**
Appendix C

Washington Review of the Permits, Processes and Programs

Washington State Regulation of Water-Related Projects:
Washington State regulates waterfront development through a series of permits similar to those in New York and New Jersey. Any activity modifying the natural flow or bed of state salt or fresh waters requires a Hydraulic Project Approval issued by the Washington Department of Fish and Wildlife. The Washington Department of Natural Resources administers the Aquatic Resources Use Authorization, which is required for any activities taking place on aquatic lands owned by the State. Applicants for these permits, as well as many federal and municipal permits can use a single application known as the Joint Aquatic Resources Permit Application (JARPA).

Availability of Permitting Information and Applicant Guides:
In Washington, the Governor’s Office of Regulatory Assistance (GORA) hosts the Washington Environmental Permitting Website, which provides detailed information on each of the permits covered under the JARPA program. This website is a one-stop-shop for environmental permitting information. The Director of the GORA office identifies the joint permit and the accompanying website as significant assets to the state and a great step forward in permitting efficiency.

Statutory Timelines:
Washington State agencies do not have deadlines to determine the completeness of JARPA applications. After an application is deemed complete, the agency must make a final decision within 45 days. However, there are no penalties or remedies if a decision is overdue. Washington State policy ensures that timely decisions are made by requiring the agency to report on its permit turnaround time to the Governor and at various points in time to the Legislature. This system provides accountability for the agency’s general performance on permit reviews. In addition, at the staff level, staff are monitored for missed deadlines and this can be reflected on performance evaluations.

Permit Fees and Refunds:
The JARPA application is free.

Regulation and Interpretation of “Water Dependant” Uses:
Washington does not have a statutory definition for “water dependent” uses. An official from GORA explained that “the term must accommodate new uses and technologies and it also must
make sense…the general understanding of the word, can give you better outcomes in many cases.”

**Coordination Between State Permitting Agencies and Municipal Parks Departments:**
In Washington, the Seattle Department of Parks and Recreation has standing monthly meetings with the Army Corps of Engineers and the state environmental permitting agencies (e.g. Fish and Wildlife, Ecology, Natural Resources). These meetings are used to discuss current and upcoming projects and the permits that may be required. Officials from the Seattle Department of Parks and Recreation found the meetings helpful, especially for explaining why certain designs were chosen and how parks may impact the surroundings.

**Programs to Encourage Innovative and Environmentally Conscious Waterfront Project Designs:**
Washington does not have an incentive program for waterfront development, but does recognize innovative and environmentally protective development with planning awards from the Washington Department of Community Trade and Economic Development. In addition, the Governor, in conjunction with the Department of Ecology, grants an environmental award every year to state environmental leaders.

**Regulatory Streamlining Efforts:**
In February 2006, Washington Governor Christine Gregoire signed a Regulatory Improvement Executive Order affirming that state agencies needed to simplify their permitting procedures. The order identified five tasks: (1) develop a one-stop, secure, online business portal; (2) engage in ongoing regulatory improvement; (3) listen to clients; (4) communicate to the public in clear language; and (5) establish measurable service delivery standards that lead to accountability. As a result, the Governor’s Office of Regulatory Assistance joined other regulatory agencies in updating the Joint Aquatic Resource Permit Application (JARPA). Created 15 years ago to simplify the environmental permitting process, JARPA is a single application that can be used to apply for up to ten permits simultaneously. JARPA is viewed as a success in Washington and was recently revised to provide more information to agencies and to be more user friendly for applicants.

**Qualifying permits for JARPA**
The JARPA application, which includes ten permits, simultaneously covers federal, state, and local permit requirements. On the federal level, the US Army Corps of Engineers is represented through the Section 404 and Section 10 permits for activities taking place in US waters. JARPA can also be used for US Coast Guard permits such as the General Bridge Act Permit and the Private Aids to Navigation Permits, which apply to the construction of fixed structures within US waters. On the state level, the Department of Ecology requires that users applying for the Federal Section 404 permit also apply for the Section 401 Water Quality Certification. Any activity modifying the natural flow or water bed of state salt or fresh waters requires a Hydraulic Project Approval issued by the Washington Department of Fish and Wildlife. The Washington Department of Natural Resources administers the Aquatic Resources Use Authorization, which is required for any activity taking place on aquatic lands owned by Washington State. Local governments require shoreline permits that are in compliance with each local government’s Shoreline Master Program. The Substantial Development permit is required for developments that exceed a fair market value estimation threshold. The Conditional Use permit covers projects
that are considered “non-preferred” by the local government, but nonetheless permissible under specified conditions. The Variance permit is filed for projects that do not comply with the local government’s development standards in terms of physical features, including dimensions, heights, setbacks, and densities. Streamlining the process of obtaining these permits has been the goal of JARPA, and since its inception, JARPA has proved to be an effective mechanism at accomplishing this goal.

**Updating and Streamlining JARPA**

The waterfront permit streamlining process initiated by Washington Governor Gregoire, was aimed at reducing the turnaround time and cost associated with waterfront permitting while simultaneously providing for greater environmental protection. The review surveyed 24 other states and compared the results with corresponding initiatives in Washington State. This analysis showed that the success of permitting reviews typically focused on the following issues:

- Cooperation between regulatory agencies;
- Standardization of data systems;
- Continual assessment by management; and
- A sense of urgency among agency staff;

In addition, the analysis showed that the success of permitting task forces was dependant on strong political support and cooperation between agency officials and the regulated community.

The analysis also showed that Washington’s joint permit is unique in its breadth and thus the JARPA review process would be unlike those in other states. For this reason Washington did not emulate the review format of other states. Instead, the process focused on interviewing applicants and agency staff to revise the format and substance of the actual JARPA application form. The review also resulted in the creation of a website that serves as a “One-Stop JARPA Resource Center.”

**Conclusion**

The review of the JARPA application and permitting process is viewed in Washington as an important and valuable investment in the State’s future. However, the JARPA form is much broader than joint permit applications in New York, and thus a review of New York permitting would differ substantially. Still, the JARPA review process highlights the necessity of strong political support and the importance of input from and cooperation between agency staff and the regulated community.
Massachusetts Regulation of Water-Related Projects:
The regulation of waterfront projects in Massachusetts is similar to that in New York. The Massachusetts Department of Environmental Protection (MassDEP) will require specific permits for construction, dredging and filling in waterways, as well as requiring a coastal zone consistency determination, and an environmental review pursuant to the Massachusetts Environmental Policy Act.

Availability of Permitting Information and Applicant Guides:
In Massachusetts, the Office of Coastal Zone Management has created a single guide that explains all of the state and federal permits and processes that affect waterfront projects. The guide, titled “Environmental Permitting in Massachusetts,” also describes how local zoning and harbor plans relate to the permitting process.

Statutory Timelines:
Statutory timelines for permit application reviews vary depending on the permit and type of project. Generally, Massachusetts law requires a decision on a permit application between 24 and 72 days after the application is deemed complete.

Application Fees and Refunds:
In Massachusetts, the Legislature has created a process called the “Timely Action Schedule and Fees Program.” Like New York, Massachusetts charges fees for water-related permits. The fee is based on the category of the proposed activity and the resource area to be impacted by the activity. Massachusetts law requires MassDEP to abide by statutory timelines for issuing application completeness determinations and issuing notices of final decisions. However, unlike New York, if MassDEP fails to issue a notice of the department’s final permit decision within the required time frames, then the application fee is refunded in full. (310 CMR 4.00)

Regulation and Interpretation of “Water Dependant” Uses:
Massachusetts law provides a general definition of water-dependency and a long list of specific examples. The law states in relevant part:

“(2) The [MassDEP] shall determine a use to be water-dependent upon a finding that said use requires direct access to or location in tidal or inland waters, and therefore cannot be located away from said waters. In making this determination, the [MassDEP] shall act in accordance with the following provisions.
(a) The [MassDEP] shall find to be water-dependent the following uses:
1. any use found to be water-dependent-industrial in accordance with 310 CMR 9.12(2)(b);
2. marinas, boat basins, channels, storage areas, and other commercial or recreational boating facilities;
3. facilities for fishing, swimming, diving, and other water-based recreational activities;
4. parks, esplanades, boardwalks, and other pedestrian facilities that promote use and enjoyment of the water by the general public and are located at or near the water's edge, including but not limited to any park adjacent to a waterway and created by a public agency;
5. aquariums and other education, research, or training facilities dedicated primarily to marine purposes;
6. aquaculture facilities;
7. beach nourishment;
8. waterborne passenger transportation facilities, such as those serving ferries, cruise ships, commuter and excursion boats, and water shuttles and taxis;
9. dredging for navigation channels, boat basins, and other water-dependent purposes, and subaqueous disposal of the dredged materials below the low water mark;
10. navigation aids, marine police and fire stations, and other facilities which promote public safety and law enforcement on the waterways;
11. shore protection structures, such as seawalls, bulkheads, revetments, dikes, breakwaters, and any associated fill which are necessary either to protect an existing structure from natural erosion or accretion, or to protect, construct, or expand a water-dependent use...

The law also provides examples of water-dependent-industrial uses:

(b) The [MassDEP] shall find to be water-dependent industrial the following uses:
1. marine terminals and related facilities for the transfer between ship and shore, and the storage of, bulk materials or other goods transported in waterborne commerce;
2. facilities associated with commercial passenger vessel operations;
3. manufacturing facilities relying primarily on the bulk receipt or shipment of goods by waterborne transportation;
4. commercial fishing and fish processing facilities;
5. boatyards, dry docks, and other facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures;
6. facilities for tug boats, barges, dredges, or other vessels engaged in port operations or marine construction;
7. any water-dependent use listed in 310 CMR 9.12(2)(a)9. through 14., provided the [MassDEP] determines such use to be associated with the operation of a Designated Port Area;
8. hydroelectric power generating facilities; and
9. other industrial uses or infrastructure facilities which cannot reasonably be located at an inland site as determined in accordance with 310 CMR 9.12(2)(c) or (d).
The Massachusetts definition is the most specific of any benchmarking state. The long list of included and excluded uses makes it perfectly clear what uses the lawmakers want to protect.

**Coordination Between State Permitting Agencies and Municipal Parks Departments:**
Departments in the city of Boston that develop public projects (e.g. the Department of Transportation and Parks Department) meet quarterly with officials from MassDEP Waterways Regulation Program and officials from the Coastal Zone Management Programs. These meetings address pre-application issues, application processing, planning and other areas of mutual interest.

**Programs to Encourage Innovative Projects or Projects of Particular Importance:**
MassDEP has initiated a program, called “Fast Track Permitting,” aimed at expediting projects that exemplify the State’s smart growth and sustainability policies. Fast Track Permitting projects receive:
- expedited administrative and technical reviews;
- negotiated permit schedules and fees; and
- a single point of contact through the entire permitting process.

Examples of Fast Track Permitting projects include certain biotech projects, clean energy projects, transit-oriented development projects, brownfield redevelopment projects, solid waste recycling facilities, and smart growth projects. Projects must meet one or more of the following criteria to be eligible for Fast Track Permitting:
1. Projects that are consistent with sustainable development principles and promote smart growth;
2. Projects determined by the MassDEP Commissioner to be of significant environmental interest to the Commonwealth; and

**Regulatory Streamlining Efforts:**
Massachusetts has created a digital interagency information sharing system called the “Environmental Protection Integrated Computer System” (EPICS). EPICS takes information supplied by twelve separate MassDEP divisions, including air emissions, hazardous waste and water supply, and combines it into a single database. This provides MassDEP employees with instant access to all of the agency's information and allows them to easily search for data on a specific facility by entering its name and location.

In 1995, Massachusetts created the Massachusetts Permit Streamlining Legal Advisory Committee. The legal advisory committee was established by the Secretaries of Environmental Affairs and Economic Affairs and included representatives from business and environmental constituencies. The legal advisory committee prepared a report, which included the following recommendations:
• Increasing outreach efforts, such as creating permitting manuals, holding preapplication conferences, establishing a permitting assistance office with a regional presence, and providing easy access to agency policies;
• Focusing on the coordination of permitting such as having a single point of contact through the permitting process, coordination among different agencies who issue media-specific permits for single projects and establishing a permit ombudsmen for projects;
• Increasing use of general permit mechanisms in appropriate situations, with an emphasis on enforcing permit conditions;
• Developing uniform timeframes for steps in the permit process and for when decisions are made;
• Creating a master uniform reporting form to be submitted on a single annual date for all permits with annual reporting requirements
• Evaluating a consolidated or integrated permit approach.

In 2007, Massachusetts Governor Deval Patrick announced new initiatives aimed at improving the efficiency and effectiveness of environmental regulations. Utilizing the advice and input from an external advisory group, MassDEP is in the process of reviewing permit applications that were approved, denied, or withdrawn over the last two years in order to determine the factors influencing the duration and outcome of the review process. MassDEP proposed regulations that will reduce timelines for the majority of its permit categories by 20%. MassDEP has also committed to issuing 90% of all permit decision in 180 days or less.
Appendix E

Connecticut
Review of the Permits, Processes and Programs

Connecticut Regulation of Water-Related Projects:
The Connecticut Department of Environmental Protection (ConnDEP) regulates activities in tidal wetlands and in tidal, coastal or navigable waters of the state through the Structures, Dredging and Fill permit, and the Tidal Wetlands permit. These permits regulate substantially similar activities as the New York Tidal Wetlands and Protection of Waters permits.

ConnDEP uses both individual and general permits to regulate activities. Individual permits are issued directly to an applicant for a specific project, whereas general permits are issued to authorize similar minor activities that may be undertaken by one or more applicants.

Proposed activities in the coastal zone must also be reviewed for consistency with the applicable standards and policies of the Connecticut Coastal Management Plan.

The NYSDEC Region 2 Office is currently considering creating general permits for common activities like those used in Connecticut.

Availability of Permitting Information and Applicant Guides:
ConnDEP publishes an online guide to environmental permitting called the “User’s Guide to Environmental Permits.” This guide describes each state permit offered by the ConnDEP, but does not include information on municipal or federal permits.

Statutory Timelines:
Connecticut law requires ConnDEP to determine the completeness of a permit application within 60 days of the first submittal of the application. If the application is deemed incomplete, and is resubmitted, ConnDEP must make a second completeness determination within 30 days. After an application is deemed complete, ConnDEP has 180 days to issue a tentative decision (subject to a public hearing).

Application Fees and Refunds:
ConnDEP charges an initial permit application fee of $525 for waterfront projects. However, during the application review, ConnDEP may alter the fee depending on the complexity of the review.

Regulation and Interpretation of “Water Dependant” Uses:
In Connecticut, "Water-dependent uses" are those which require direct access to, or location in, marine or tidal waters and which therefore cannot be located inland, including but not limited to: “Marinas, recreational and commercial fishing and boating facilities, finfish and shellfish processing plants, waterfront dock and port facilities, shipyards and boat building facilities, water-based recreational uses, navigation aides, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an inland site and uses which provide general public access to marine or tidal waters…” [emphasis added]

The Connecticut definition is more inclusive than the New York definition and also provides examples to help ConnDEP officials understand the intent of the law.

**Coordination Between State Permitting Agencies and Municipal Parks Departments:**
ConnDEP does not schedule regular meetings with municipal parks departments, but rather meets with park officials on an as-needed basis.

**Programs to Encourage Innovative Projects or Projects of Particular Importance:**
Connecticut has several programs to encourage energy efficiency, but none that promote ecological design in water-related projects.

- The Connecticut Energy Efficiency Fund (CEEF) is an initiative designed to help homeowners and renters, small and large businesses, and state and local governments alike get in the habit of using energy more efficiently.
- The Connecticut Clean Energy Fund invests in enterprises and other initiatives that promote and develop sustainable markets for energy from renewable energy sources and fuel cells that will benefit the ratepayers of Connecticut.
- Connecticut Office of Policy and Management: supports energy research and policy development.
- The Connecticut Office of Policy and Management sponsors New Technology Program grants. Up to $10,000 is available for energy conserving technologies that have not been commercialized (for Connecticut individuals or companies with 15 or fewer employees).

**Regulatory Streamlining Efforts:**
In 1993, ConnDEP created an Environmental Permitting Task Force to prepare a plan to streamline their permitting processes. The plan provided specific recommendations to:

- simplify and standardize workflows;
- eliminate redundant and non-substantive activities;
- eliminate processing bottlenecks;
- prioritize applications in a consistent manner;
- simplify application forms and provide applicants with checklists for completing applications;
- revise fee structures, including reviewing fee amounts, fee collection, and other potential revenue sources for the department;
- streamline and eliminate unnecessary hearings;
- streamline the ways businesses report spills;
- share routine inspection reports with subject companies;
• use private contract services in the review process, and allow for the use of private consultants to certify whether permit applications are complete.

Other recommendations focused on communication and outreach; coordination and management; information technology; and human resources and training.
Appendix F

Individuals, Applicants, and Agency Representatives Interviewed

The following list identifies the individuals, applicants, and agency representatives interviewed for this report:

Al Butzel – Lawyer and consultant
Carter Craft – Former MWA staff and private consultant
John Cryan – New York State Department of Environmental Conservation
Chris Daggett – Candidate for Governor of New Jersey and former Chair of the New Jersey Department of Environmental Protection Permit Efficiency Review Task Force
Thom Engel – New York State Department of Environmental Conservation (Albany)
Clay Hiles – Hudson River Foundation
Marcha Johnson – New York City Department of Parks and Recreation
Marianna Koval – Brooklyn Bridge Park Conservancy
Joshua Laird – New York City Department of Parks and Recreation
Venetia Lannon – New York City Economic Development Corporation
Jose Lopez – New York City Department of Parks and Recreation
Debbie Mans – NY/NJ Baykeeper
Carlos Marcial – NYC Department of Small Business Services
Suzanne Mattei – New York State Department of Environmental Conservation
John Mattera – New York City Department of Parks and Recreation
Kathryn McGuckin – New York City Economic Development Corporation
Charles McKinney – New York City Department of Parks and Recreation
Tom Micai – New Jersey Department of Environmental Protection
Nicholas Molinari – New York City Department of Parks and Recreation
Greg O’Connell – Owner, Red Hook Pier 41
Robert Piel – New Jersey Department of Environmental Protection
Robert Pirani – Regional Plan Association
Don Riepe – American Littoral Society
Richard Sabatini – Staten Island Terminal
David Sharps – Waterfront Museum
Andy Stone – Trust for Public Land
Carter Strickland – NYC Mayor's Office of Long Term Planning and Sustainability
Dennis Suszkowski – Hudson River Foundation
Beryl Thurman – North Shore Waterfront Conservancy of Staten Island
Bill Woods – Department of City Planning
Robert Yaro – Regional Plan Association
Steve Zahn – New York State Department of Environmental Conservation
Benchmarking State Agency Representatives interviewed:

Scott Boettcher – Washington State Governor's Office of Regulatory Assistance
Karen Green – National Marine Fisheries Service
Michael Hart – Connecticut Department of Environmental Protection
Kirk Jarvie – Oregon Department of State Lands
Andrea Langhauser – Massachusetts Department of Environmental Protection
Faith Lumsden – Washington State Governor's Office of Regulatory Assistance
Tonia Selmeski – Connecticut Department of Environmental Protection