

# Final Evaluation Findings

## New York State Coastal Management Program

August 2015 to March 2023

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## Summary of Findings

The Coastal Zone Management Act requires the National Oceanic and Atmospheric Administration (NOAA) to conduct periodic evaluations of the performance of states and territories with federally approved coastal management programs. This evaluation examined the operation and management of the New York State Coastal Management Program administered by the New York State Department of State, the designated lead agency, for the period from August 2015 to March 2023. The evaluation focused on three target areas: program administration, offshore wind energy, and resilience.

The findings in this evaluation document will be considered by NOAA in making future financial award decisions concerning the New York State Coastal Management Program. The evaluation came to these conclusions:

### *Findings for Program Administration*

**Accomplishment:** The New York State Coastal Management Program is building its capacity to address diversity, equity, inclusion, and accessibility through multiple approaches including hiring an Empire Fellow with expertise to lead the effort, developing a plan, training for staff, and creating new partnerships.

**Recommendation:** NOAA's Office for Coastal Management recommends that the New York State Department of State and New York Coastal Management Program continue to coordinate with the State of Connecticut, the U.S. Environmental Protection Agency, and the U.S. Army Corps of Engineers to find solutions for dredge disposal for projects in Long Island Sound.

### *Findings for Offshore Wind*

**Accomplishment:** The New York State Department of State developed a Geographic Location Description, which NOAA's Office for Coastal Management approved on April 19, 2023, for the review of renewable energy projects in federal waters under the Coastal Zone Management Act federal consistency provision.

**Accomplishment:** The New York State Department of State and New York Coastal Management Program have provided strong leadership, facilitation, and coordination with local, state, and federal agencies; communities; and industry in support of a growing offshore wind industry. Coastal program staff have supported a process with broad engagement and have implemented a fair and equitable settlement process.

**Recommendation:** NOAA's Office for Coastal Management encourages the New York State Department of State and coastal program to continue to support local communities impacted by offshore wind including connecting communities to resources and developing and providing information that will help ensure community goals and needs are addressed.

## ***Findings for Resilience***

**Accomplishment:** The New York State Coastal Management Program continues to build on the success of the state’s Local Waterfront Revitalization Program and increase local governments’ ability to address climate resilience through the development of guidance, resilience principles, tools, technical assistance, and dedicated funding and partnerships, such as a new partnership with AARP. The coastal program’s support and technical assistance has laid the groundwork for further successes such as bringing \$50 million in state funds to implement the City of Rochester’s Local Waterfront Revitalization Program.

**Accomplishment:** The New York State Coastal Management Program worked closely with other state agencies, in support of the Resiliency and Economic Development Initiative and Coastal Lakeshore Economy and Resiliency programs, to help Lake Ontario communities recover from high lake levels in 2017 and 2019. The coastal program managed numerous grants, coordinated with other state agencies, and provided extensive technical assistance to local communities to help them recover and complete climate resilience projects.

**Accomplishment:** The New York State Coastal Management Program has developed and refined a suite of tools including the Resilience Principles, Model Land Use Laws, Statewide Shoreline Monitoring Framework, and Geographic Information Gateway to help build community resilience.

**Recommendation:** NOAA’s Office for Coastal Management encourages the New York State Coastal Management Program to explore and implement methods to bring local governments and other entities together to share information and facilitate new partnerships around climate resilience. Methods could include developing and supporting communities of practice, hosting regional symposia, or building on other collaborations.

**Recommendation:** NOAA’s Office for Coastal Management encourages the New York State Coastal Management Program to create a workgroup with its federal and state agency regulatory partners and municipal leaders to: (1) assess shoreline management issues including the cumulative impacts of shoreline hardening; (2) conduct a systematic review of regulatory maps and survey products that are dated; (3) develop and implement a strategy to prioritize and update datasets to make the data easily accessible through tools such as the Geographic Information Gateway; and (4) as necessary, identify how to incorporate adaptive management and innovative solutions into regulatory authorizations to enhance and support the state’s ability to address climate resilience.

This evaluation concludes that the State of New York is successfully implementing and enforcing its federally approved coastal management program, adhering to the terms of the federal financial assistance awards, and addressing coastal management needs identified in section 303(2)(A) through (K) of the Coastal Zone Management Act.

## Program Review Procedures

The Coastal Zone Management Act of 1972, 16 U.S.C. § 1451–1465 requires that state coastal zone management programs and national estuarine research reserves that are developed under the act and approved by the secretary of the Department of Commerce be evaluated periodically. Section 312 of the Coastal Zone Management Act and implementing regulations at 15 C.F.R. Part 923, Subpart L, requires that a state coastal program be periodically evaluated concerning the extent to which the state has: (1) implemented and enforced the program approved by the secretary; (2) addressed the coastal management needs identified in section 303(2)(A)–(K) of the act; and (3) adhered to the terms of any grant, loan, or cooperative agreement funded under the act.

NOAA evaluated the New York State Coastal Management Program in fiscal year 2023. The evaluation team consisted of NOAA Office for Coastal Management’s Carrie Hall, evaluation team lead; Nelle D’Aversa, site liaison; Darlene Finch, mid-Atlantic regional lead; and Scudder Mackey, Chief, Office of Coastal Management, Ohio Department of Natural Resources. NOAA’s Office for Coastal Management gratefully acknowledges the support of New York State Coastal Management Program staff members, which was crucial in conducting the evaluation.

NOAA sent a notification of the scheduled evaluation to the secretary of the New York State Department of State, published a notice of “Intent to Evaluate” in the Federal Register on January 13, 2023, and notified members of New York’s congressional delegation. The New York State Coastal Management Program posted a notice of the public meeting with an opportunity to comment in the *Times Union* on January 13, 2023.

The evaluation process included a review of annual federal financial assistance award reports, the Coastal Zone Management Act Section 309 Assessment and Strategy documents, and information provided by the programs documenting how they are implementing their programs and addressing the programmatic requirements of the Coastal Zone Management Act. The review also included a survey of interested parties. This information was used to help identify three target areas for the evaluation: program administration, offshore wind, and resilience. A virtual site visit was conducted February 27–March 3, 2023, and the evaluation team held meetings with staff members and group discussions with program partners, interested parties, and staff members about the target areas. In addition, a virtual public meeting was held on March 1, 2023, to provide an opportunity for members of the public to express their opinions about the implementation of the coastal program.

Interested parties and members of the public were given the opportunity to provide written comments via email or U.S. mail through March 10, 2023. Written comments were received from interested parties (see Appendix A). NOAA’s Office for Coastal Management then developed draft evaluation findings, which were provided to the New York State Department of State for review. The state’s comments were considered in drafting the final evaluation findings.

Final evaluation findings for all coastal management programs highlight the program's accomplishments in the target areas and include recommendations, which are of two types, "necessary actions" and "recommendations."

**Necessary Actions** address programmatic requirements of the Coastal Zone Management Act or its implementing regulations at 15 C.F.R. Part 923, the state coastal management program approved by NOAA, and the terms of any grant or cooperative agreement funded under the Coastal Zone Management Act. Necessary actions must be carried out by the date specified. Failure to address necessary actions may result in a future finding of nonadherence and the invoking of interim sanctions, as specified in the Coastal Zone Management Act §312(c).

**Recommendations** are actions that NOAA believes would improve the program but which are not mandatory. The state is expected to have considered the recommendations by the time of the next evaluation or dates specified.

# Evaluation Findings

## Findings for Program Administration

### *Administration*

The New York State Coastal Management Program has seen a generational shift in staff, with long time staff members retiring or leaving. This has resulted in a significant loss of institutional knowledge and experience. Since the last evaluation, both Office of Planning, Development and Community Infrastructure division directors resigned or retired. A new director and deputy director have been assigned to the office, and the New York secretary of state has changed twice. The associate attorney who served the program for two decades also left in 2021. The coastal program has been able to hire some new staff members but has been challenged in finding qualified applicants to fill critical vacancies. As discussed below, the coastal program is working to expand its outreach to potential applicants through activities such as hosting its first virtual employment open house, participating in job fairs at universities, and expanding opportunities for college students to work with staff. The coastal program has moved to become more regionally focused with offices in New York City, Utica, Syracuse, Long Island, and Binghamton. The coastal program also offers fifty percent telecommuting per pay period. These efforts will allow the coastal program to reach more potential applicants and build interest in the program as a potential employer. The coastal program may also wish to review its position descriptions and determine if the descriptions and eligibility criteria could be written more broadly to widen the pool of eligible applicants. As of December 2022, the coastal program had 35 state positions and 10 contract positions filled, but 30 positions were vacant. Staffing numbers were up from November 2014, when the program had 30 state positions filled and five contract positions filled.

Coastal program staff members are valued for their expertise, assistance, connections, interagency collaboration, and focus on community involvement. Partners described them as initiators, propellants, and problem solvers and praised them for their ability to facilitate and coordinate linkages to other state programs and resources. Partners also look to program staff to discuss their ideas and potential projects.

### *Partnerships*

The coastal program provides valuable support to NOAA partner programs. The coastal program is supporting NOAA efforts to designate two new National Marine Sanctuaries in New York: Hudson Canyon and Lake Ontario. The coastal program has also increased its engagement with NOAA Sea Grant, particularly related to training partnerships, and is working with the Hudson River Research Reserve on habitat monitoring efforts. NOAA's Office for Coastal Management encourages the coastal program to continue to look for opportunities to strengthen relationships with NOAA partner programs, particularly the Hudson River Research Reserve. For example, the coastal program and reserve might identify joint research priorities that could be addressed by a NOAA Coastal Zone Management Act Margaret A. Davidson

Fellow, look for opportunities to build on support of nature-based solutions where appropriate, and seek opportunities for coastal program staff to use the Hudson River Research Reserve Coastal Training Program.

### ***Diversity, Equity, Inclusion, and Accessibility***

The New York State Department of State and coastal program are committed to the practices of diversity, equity, inclusion, and accessibility. The department secured an Empire State fellow to lead the agency's effort to promote diversity and inclusion through active engagement of leadership and staff. The state's Empire State Fellow Program is a full-time leadership training program that prepares the next generation for careers as New York State policymakers. In addition, the program's NOAA Coastal Management Fellow was also able to provide support. The fellows developed and conducted training, were leading the development of an implementation plan to be completed in 2023, and were getting ready to host the first virtual employment open house to cast a wide net for potential employees. The fellows also provided allyship training for partners at a Mid-Atlantic Regional Council on the Ocean conference. The department and coastal program are encouraged to evaluate and measure the impact of their diversity, equity, inclusion, and accessibility efforts as they implement their new plan.

In 2023, the department launched a new program, the University Partnership for Innovative Climate Solutions, that includes New York colleges and universities that are connected to historically marginalized populations. Graduate and undergraduate students will be able to work with department staff on projects that focus on climate change and climate justice. The program will enable students to gain hands-on experience while also bringing their innovation and diversity of experiences to projects that advance the state's climate goals. Students represent a wide range of academic areas including law, architecture, environmental sciences, and finance.

In 2017, the governor signed an executive order making New York the first state to join the AARP (formerly the American Association of Retired Persons) Network of Age-Friendly States and Communities. The coastal program has helped AARP engage communities in joining and implementing a Livable Communities program. The Livable Communities program supports community efforts to provide opportunities for residents of all ages to participate in community life and have safe, walkable streets; age-friendly housing and transportation options; and access to needed services. The state's Local Waterfront Revitalization Program aligns well with the Livable Communities program. For example, their funding for public access projects incorporates accessibility standards. By March 2023, 30 New York coastal communities had been certified as Livable Communities. Going forward the department and coastal program will also help implement the governor's November 2022 Executive Order No. 23 establishing the New York State Master Plan for Aging.

**Accomplishment:** The New York State Coastal Management Program is building its capacity to address diversity, equity, inclusion, and accessibility through multiple approaches including hiring an Empire Fellow with expertise to lead the effort, develop an implementation plan, provide training opportunities for staff and partners, and foster new partnerships.



### ***Monitoring of Local Waterfront Revitalization Programs***

At the beginning of the evaluation period, the coastal program conducted at least one evaluation of a Local Waterfront Revitalization Program (LWRP) per year, as recommended in the previous Evaluation Findings (2017). From fiscal years 2019–2021 the coastal program worked on developing a new monitoring protocol that would allow for more regular contact with coastal communities and more targeted in-depth monitoring, technical assistance, and training. In fiscal year 2022, the coastal program conducted the first portion of their pilot program. This included surveying 10 coastal and inland waterfront program communities. The coastal program received seven responses and is developing steps for the next phase of monitoring. The new methodology aims to increase the coastal program’s capability to train, assist, and collect data from a larger number of programs and better direct assistance to communities that have the greatest need for additional training and support.

### ***Long Island Sound Dredging***

New York generally opposes open-water disposal under the Long Island Sound Dredged Material Management Plan at three open-water disposal sites in Long Island Sound that are approved by the Environmental Protection Agency. State and local governments, environmental groups, and commercial and recreational fishing representatives are concerned with contaminant levels in the sediment and the potential for bioaccumulation.

To address these issues with open-water disposal in Long Island Sound, the coastal program and state and local partners may wish to perform further research to assess potential impacts of open-water dredge disposal in Long Island Sound that would include: (1) an economic assessment of fisheries, (2) bioaccumulation studies, and (3) enhanced water quality monitoring near the disposal sites and along adjacent shorelines. The department and coastal program may also wish to consider reactivating the Long Island Sound Dredging Team, participating in the Long Island Sound Study Management Committee, and partnering with other state or federal agencies to support further research into the impacts of open-water dredge disposal in Long Island Sound.

**Recommendation:** NOAA’s Office for Coastal Management recommends that the New York State Department of State and New York State Coastal Management Program continue to coordinate with the State of Connecticut, the U.S. Environmental Protection Agency, and the U.S. Army Corps of Engineers to find solutions for dredge disposal for projects in Long Island Sound.

### ***Federal Consistency and Permitting***

The coastal program worked with NOAA’s Office for Coastal Management to develop an agreed-upon template with standard language accurately describing the difference between federal consistency and state consistency. The language was approved by NOAA in August 2019 and is being used in state communications. This successfully addresses the only necessary action in the previous evaluation findings (2017).

The New York State Department of State developed a Geographic Location Description, which NOAA's Office for Coastal Management approved on April 19, 2023, for the review of renewable energy projects in federal waters under the Coastal Zone Management Act's federal consistency provision (see also *Offshore Wind below*).

The coastal program assisted eleven municipalities in obtaining NOAA Office for Coastal Management approval for incorporating their LWRP amendments into the state's federally approved coastal program. The coastal program has been implementing a recommendation from the previous findings (2017) to provide the Office for Coastal Management with notice of 60-day public comment periods to allow the office to more efficiently flag concerns early in the review process.

The coastal program has also strengthened permitting partner relationships and communication, a recommendation in the previous findings. High-water flooding along Lake Ontario propelled the coastal program, Army Corps of Engineers, and New York Department of Environmental Conservation to work together to align permitting processes to be more efficient and effective and help communities recover faster. The coastal program ramped up its efforts to engage early and do on-site visits to evaluate projects, offer pre-consultation, and provide technical assistance. Staff members from the two permitting partners noted the value of this increased engagement in helping implement the state's two large recovery programs: Resilience and Economic Development Initiative and Lake Ontario Business Resilience Program.

The U.S. Army Corps of Engineers also coordinates with the coastal program and Department of Environmental Conservation to tailor regional permits and nationwide permits to maximize their use. The agencies have also been working together to streamline future efforts and, after the site visit in December 2023, the U.S. Army Corps of Engineers issued the state's first State Programmatic General Permit that authorizes activities to facilitate the recovery and restoration of damaged properties, projects, aquatic resources, and infrastructure following major storm events.

The coastal program has also developed training materials for federal, state, and municipal personnel to be delivered online or in person. In addition, the department was developing an online training for federal consistency applicants. With state staff and other staff turnover, the training will continue to be valuable.

The coastal program has worked to address challenges in receiving adequate and timely information from developers and relevant federal agencies for federal consistency reviews. To help address these concerns, the coastal program developed a program change that was approved by NOAA in late 2020. The program change requires *draft* National Environmental Protection Act documentation—either a draft Environmental Assessment or a Draft Environmental Impact Statement (DEIS; when required by a federal agency)—rather than final National Environmental Protection Act documentation as was previously listed. Although the program change allows the state to participate and raise concerns earlier in the National

Environmental Protection Act process, the change does not fully address the coastal program's concerns.

These concerns were partly addressed for renewable energy projects on the Outer Continental Shelf, when the U.S. Department of the Interior's Bureau of Ocean Energy Management promulgated its Renewable Energy Modernization Rule (89 F.R. 42602; May 15, 2024). The rule modifies the Bureau of Ocean Energy Management's processing of Construction and Operations Plans at 30 C.F.R. § 585.628(c). Under the rule, the Bureau of Ocean Energy Management will forward necessary information for Coastal Zone Management Act review to state agencies after all Construction and Operations Plans information requirements are met and the Bureau of Ocean Energy Management issues its Draft Environmental Impact Statement or Environmental Assessment. The rule also changes the start of the Coastal Zone Management Act review periods, including the federal consistency six-month review period and the unlisted activity 30-day review request period, from the publication of the Bureau of Ocean Energy Management's Notice of Intent to the Bureau's Notice of Availability for the Draft Environmental Impact Statement. The Bureau of Ocean Energy Management and NOAA coordinated on the promulgation of the new rule.

## **Offshore Wind**

The State of New York has an ambitious effort to develop nine gigawatts of offshore wind energy by 2035. The department and coastal program are working closely with other local, state, and federal agencies to support this effort. There were 20 active lease areas offshore in federal waters at the time of the evaluation site visit. Coastal program staff members cochair a state-sponsored Maritime Technical Working Group that includes navigation interests from the Port of New York and New Jersey, offshore wind developers, and state and federal agencies. The group is working to identify information needs and management approaches that can reduce conflicts between offshore wind project development and commercial navigation. Staff also participate in the Fisheries Technical Working Group and are engaged in a study to identify suitable port locations to support offshore wind construction.

To prepare for upcoming wind development, the coastal program developed a Geographic Location Description for incorporation into its federally approved program to establish federal consistency review authority for renewable energy activities in federal waters. The Geographic Location Description was approved by NOAA in April 2023. The coastal program is also working to improve the efficiency of the procedural steps and timing required for how projects are reviewed, addressing the types of data that are going to be applied, and maximizing the state's roles in decisions.

Coastal program partners appreciated the department and coastal program's efforts to move New York from a state-centric to a regional approach in managing wind energy development. The coastal program helped coordinate with other state offices to use ocean data, identify offshore planning and policy priorities, and share experiences with consistency review challenges and best practices. The coastal program staff were also commended for their

leadership role in bringing agencies together to develop a fair and transparent process. They were applauded by partners for being adaptive in addressing many challenges along the way.

The State of New York has also considered environmental justice in its decision-making, recognizing that the dirtiest power plants were located in environmental justice communities. The state's top priority is retiring peak demand power plants; the second priority is not replacing harm with harm. The state and coastal program have pursued two community benefit agreements through two settlement processes with companies to ensure that communities feeling the impacts of wind energy development are also seeing benefits. Five other projects were under review at the time of the site visit. The New York State Energy Research and Development Authority has an extensive workforce development and job training program with a focus on disadvantaged communities. The coastal program and other state agencies are continuing to look for opportunities to establish relationships and engage affected communities.

**Accomplishment:** The New York State Department of State and New York State Coastal Management Program have provided strong leadership, facilitation, and coordination with local, state, and federal agencies, communities, and industry in support of a growing offshore wind industry. Coastal program staff have supported a process with broad engagement and strived to implement a fair and equitable settlement process.

## Resilience

### *Local Waterfront Revitalization Programs*

The coastal program administers the state's Local Waterfront Revitalization Programs. LWRPs provide communities with the opportunity to build consensus and a vision for their waterfronts, identify strategies for achieving that vision, and receive assistance in implementing the vision. Local programs are also submitted to NOAA for incorporation into the state's federally approved coastal management program. Within the evaluation period, the coastal program submitted seven new or updated LWRPs for incorporation into the federally approved program and are currently developing 23 new programs and 34 amendments to approved programs.

Between 2015 and 2019, local communities were awarded over 100 grants totaling more than \$42.6 million, including 45 planning grants and 58 implementation grants. The coastal program awards \$15–20 million annually from the Environmental Protection Fund to help communities address coastal issues and reinvigorate their waterfront. Coastal program staff also provide extensive technical assistance to local programs. In 2019, the coastal program finalized updated program guidance that incorporates resilience, natural resource infrastructure, and economic development. The department now sets aside \$2–2.5 million annually to support LWRP amendments to incorporate the new guidance and address climate resilience.

The Pace University Land Use Law Center's Leadership Alliance Training Program provides training to local leaders focused on their priority land use issues. Coastal program staff will

often speak and highlight a range of tools and techniques that can be used in both the land use and decision-making contexts. The partnership allows the coastal program to reach local community leaders. The center is also supporting students in working with five municipalities to help the communities conduct resiliency assessments, identify and prioritize strategies, and develop LWRP resilience components. This effort is helping support the coastal program and training the next generation.

LWRP grants and technical assistance often serve as a catalyst for additional community efforts. One successful example is the city of Rochester. The city expanded their LWRP to include the development of a community-driven plan for the Genesee River and the Erie Canal waterfront. The city's efforts impressed the governor who provided the city with \$50 million from the Empire State Development's Upstate Revitalization Initiative to further develop the vision and implement projects. The 13 projects in Phase I are making the waterfront a significant part of the city.

Communities have also been able to combine funding to maximize impact. The Village of Haverstraw paired funding from the LWRP and Downtown Redevelopment Initiative Strategic Investment Plan allowing for more extensive public outreach and to further understand the town's vulnerabilities. The results informed both plans. For example, the village's redevelopment of its publicly owned waterfront will have buildings setback from the shoreline and garages on the first floor making the area more resilient.

Having a state- and federally approved LWRP also helps ensure state and federal actions are consistent with the program. Based on New York City's approved LWRP, the city requires the majority of projects it reviews to include an evaluation of sea level rise and to be designed to minimize risks.

New York State also has a Climate Smart Communities program that helps local governments take action to reduce greenhouse gas emissions and adapt to a changing climate. This program complements the resilience efforts of the LWRP. The coastal program is encouraged to explore opportunities to further capitalize on synergies and provide incentives for municipalities participating in both the LWRP and New York State Climate Smart Communities program.

The coastal program is moving forward in addressing one of the most challenging issues for coastal communities, managed retreat. The program received a Federal Emergency Management Agency grant to explore developing a managed retreat program. The coastal program will be developing a planning process for communities to explore this strategy. The project involves student teams from several universities who are working on a resilience issue through visualization development and by identifying best management practices, policies, financial analyses, and economic scenarios.

**Accomplishment:** The New York State Coastal Management Program continues to build on the success of the state's Local Waterfront Revitalization Program and increase local governments' ability to address climate resilience through the development of guidance, resilience principles,

tools, technical assistance, and dedicated funding and partnerships, such as a new partnership with AARP. The coastal program's support and technical assistance has laid the groundwork for further successes such as bringing \$50 million in state funds to implement the city of Rochester's LWRP.

One challenge raised by local communities was the "arduous" approval process for amending their LWRP solely to incorporate the latest climate data and projections used for predicting climate impacts. Local communities noted that NOAA's program change approval process was a barrier. The coastal program is encouraged to discuss this potential issue with NOAA.

Evaluation participants noted opportunities for increased sharing of information, such as best practices and information on what failed to work, to assist with helping them address climate resilience. There is a continuing need to educate local officials and staff due to turnover. The coastal program also has new resilience information and tools that will benefit local communities. Some coastal programs, such as New Hampshire, Washington, Minnesota, and Wisconsin, have initiated communities of practice that are bringing together interested parties, including local governments, to learn and collaborate on projects to improve climate resilience. The coastal program could also explore other options for encouraging information sharing such as working through the initiatives of partners like New York Sea Grant, hosting symposia, or pursuing other methods, perhaps by using the existing structure of the Coastal Lakeshore Economy and Resiliency Initiative.

**Recommendation:** NOAA's Office for Coastal Management encourages the New York State Coastal Management Program to explore and implement methods to bring local governments and other entities together to share information and facilitate new partnerships around climate resilience. Methods could include developing and supporting communities of practice, hosting regional symposia, or building on other collaborations.

### **Great Lakes High Water Levels**

New York faced exceptionally high water levels along Lake Ontario in 2017. In response, the state created the Resiliency and Economic Development Initiative (REDI) program to increase the resilience of shoreline infrastructure and bolster economic development in the region. As part of the effort, the coastal program was tasked with managing and providing technical assistance to 50 projects totaling \$77 million. This multiagency effort also strengthened the coastal program's relationships with other state agencies.

The coastal program supported local governments, such as the Town of Clayton, in their efforts to recover and build resilience. The town was awarded \$4.5 million to stabilize the shoreline, raise the town's docks, build a boat launch accessible during high and low lake levels, and reconstruct a river walk to include access for people with disabilities. Representatives of the town expressed the value of the coastal program staff's assistance, which included coordinating with federal and state agencies on the town's behalf and providing technical assistance to ensure the project met the needs of the LWRP.

In response to the flooding caused by high lake levels, the coastal program partnered with NOAA's Office for Coastal Management to conceptualize and map "risk areas" for viewing on the state's Geographic Information Gateway and to update the Risk Assessment Tool for Lake Ontario and the Hudson River Estuary. Communities across the state are now using these valuable resources to assess their risks during their Local Waterfront Revitalization Program planning process.

In 2019, water levels were again high along Lake Ontario, damaging community infrastructure. The department and coastal program created the Coastal Lakeshore Economy and Resiliency (CLEAR) Initiative to engage the public and community governments in developing comprehensive resilience plans and strategies. This initiative was designed to complement REDI. The lakeshore was divided into five regions, each with a steering committee consisting of public and private partners. The communities used the "risk areas" map and Risk Assessment Tool to plan and to identify and prioritize projects that would make them more resilient to future inundation events.

**Accomplishment:** The New York State Coastal Management Program worked closely with other state agencies, in support of the Resiliency and Economic Development Initiative and Coastal Lakeshore Economy and Resiliency programs, to help Lake Ontario communities recover from high lake levels in 2017 and 2019. The coastal program managed numerous grants, coordinated with other state agencies, and provided extensive technical assistance to local communities to help them recover and complete climate resilience projects.

The coastal program has also been a strong supporter of the Great Lakes Coastal Resiliency Study, a planning effort being led by the U.S. Army Corps of Engineers. The study will include a comprehensive risk assessment, as well as identify potential options to improve coastal resilience and develop a decision framework to prioritize investment. New York was one of three state champions for the study, and the coastal program's support was critical to the study's development and funding. The coastal program's previous experience helping communities along the Great Lakes build resilience will help inform this effort.

New York's coastlines continue to face major challenges due to coastal hazards and a changing climate. NOAA received comments from the public expressing concerns that the state was issuing shoreline hardening permits and state and federal consistency decisions that were not in accordance with state law. Public comments cited the cumulative impacts of these decisions on natural processes and the erosion of public access to the shoreline. The evaluation team heard from other stakeholders that the state's policies did not allow enough flexibility for nature-based solutions to address shoreline erosion. The coastal program is encouraged to bring together relevant federal and state agency regulatory partners and entities such as universities, New York Sea Grant, and the Hudson River Research Reserve that conduct research and collect relevant data to assess shoreline management issues, identify data gaps, and identify any programmatic changes needed to support the state in addressing climate resilience.

Some of New York's coastal data and regulatory maps and survey products have not been regularly updated and are out-of-date. For example, Coastal Hazard Area maps were last updated in 1988 and are only available as jpeg images. The coastal program is not directly responsible for these datasets but is encouraged to convene relevant parties for a statewide review of regulatory maps and survey products that are dated and develop and implement a strategy to incorporate the latest data into map and survey products. Datasets should reflect current and potentially future conditions. The coastal program is well positioned to help host the data through the Geographic Information Gateway.

The workgroup could help fill data gaps and build consensus on a path forward among the different entities. A workgroup could look at opportunities to incorporate adaptive management and innovative solutions into regulatory authorizations to enhance and support the state's ability to address climate resilience.

**Recommendation:** NOAA's Office for Coastal Management encourages the New York State Coastal Management Program to create a workgroup with its federal and state agency regulatory partners and municipal leaders to: (1) assess shoreline management issues including the cumulative impacts of shoreline hardening; (2) conduct a systematic review of regulatory maps and survey products that are dated; (3) develop and implement a strategy to prioritize and update datasets to make the data easily accessible through tools such as the Geographic Information Gateway; and (4) as necessary, identify how to incorporate adaptive management and innovative solutions into regulatory authorizations to enhance and support the state's ability to address climate resilience.

## **Coastal Resilience Tools**

The coastal program has developed a number of tools to assist communities and state agencies with building resilience.

### *Resilience Principles*

The coastal program developed [resilience principles](#) to provide a framework and approach to resilience that can be broadly integrated into planning and development. The principles lay out a process to help communities understand their vulnerabilities, advance resilience measures that reduce risk, including through the use of natural infrastructure and natural processes, and avoid investments that are not adapted to a changing climate. The coastal program has trained their staff on the resilience principles and had training scheduled for consultants at the time of the evaluation site visit. The coastal program also plans to do training for communities. The coastal program is encouraged to consider ways to provide additional guidance on applying its resilience principles.

### *Model Land Use Laws*

The New York State Community Risk and Resiliency Act (2014) has a key provision requiring the department to work with the Department of Environmental Conservation to develop model local laws to increase community resilience to future sea level rise, storm surge, and flooding.



The coastal program worked with partners to research examples from New York and other states and develop a range of alternatives that could be used or modified to address a community's specific needs. A comprehensive guidance document was published, [Model Local Laws to Increase Resilience](#), that provides a range of options for local governments across five general topics: basic land use tools for resiliency, wetland and watercourse protection measures, coastal shoreline protection measures, management of floodplain development, and stormwater control measures.

The guidance is a valuable resource for local governments who wish to better incorporate resilience into planning efforts. For example, the Village of Haverstraw is using state grant funding and the guidance to engage their community and incorporate resilience considerations into updates of their masterplan and LWRP. This work will guide the upcoming redevelopment of the village-owned waterfront.

### *Statewide Shoreline Monitoring Framework*

The coastal program worked with partners, including the Hudson River Research Reserve, to develop a [statewide shoreline monitoring framework](#) to monitor and evaluate the performance of nature-based shoreline features. The framework provides standard monitoring protocols and an adaptable foundation for the inclusion of additional monitoring parameters.

Through the initiative the coastal program helped create a network of individuals and organizations across New York State engaged in shoreline work. The network provides an opportunity to share information and expanded opportunities for translating research into practice. Through the network the coastal program has been able to obtain broad buy-in from agencies, practitioners, and civic groups. Program partners were pleased with how useful the framework was for training students, engaging citizen science, and providing a common framework for a community of practice.

The project was initially funded with Coastal Zone Management Act Section 309 funds, through a competitive Project of Special Merit grant (2016), and support from the New York State Energy Research and Development Authority. The coastal program plans to continue to support the growth of this initiative which is a strategy in the program's 2021–2025 309 Strategy and Assessment.

As the coastal program continues to expand on this work, evaluation participants noted the following opportunities:

- Working with partners to develop a more formal training program for those interested in applying the shoreline monitoring framework
- Exploring how to integrate older data sets (collected prior to implementation of the monitoring framework)
- Increasing connections with research institutions that are also collecting data
- Identifying changes that could be made to capture socioeconomic data in the online data management system (since it does not capture as much resolution as in the protocols)

- Exploring new ways to use the data to inform decision-making, especially to support implementation of nature-based solutions

### *Geographic Information Gateway*

The coastal program manages the Geographic Information Gateway as required under a state law passed in 2006. The gateway underwent a major overhaul in 2016 and won several awards: Special Achievement in GIS award (2016) from ESRI, Exemplary Systems in Government - Distinguished System award from the Urban and Regional Information Systems Association (2017), and GIS Application of the Year award by the New York State GIS Association (2017).

The coastal program has benefitted from NOAA's Coastal Management Fellowship and state fellowship programs that have brought additional expertise into management and expansion of the gateway. The gateway currently provides access to over 700 datasets and continues to expand. The coastal program has continued to improve the gateway, for example, optimizing it for mobile devices, improving search capabilities, allowing users to draw their own maps, and adding data from other sources. The coastal program is also moving forward with creating content for K-12 students.

The gateway hosts key datasets that assist with implementation of the state's coastal program. Partners of the coastal program noted the value that the gateway brought to other state agencies and local governments, helping them understand the landscape and evaluate their risk. For example, the department's "risk areas" can be coupled with a range of other information relevant for helping communities and state agencies address coastal hazards.

The gateway serves as an important tool for smaller communities who do not have their own extensive GIS databases. Smaller communities have been able to bring their data into the gateway to create dynamic maps and display their data. One example, highlighted by partners the evaluation team met with, was the development of the Regional Niagara River/Lake Erie Watershed Management Plan (Phase 2). Citizen science groups also use the gateway to store and access their data. Coastal program staff work with the department's Office of Local Government Services and Support to conduct training for interested communities.

The gateway is a valuable tool for other state agencies. For example, the Department of Environmental Conservation placed its wetland maps on the gateway to make them electronically accessible to state staff and consultants, and State Parks, Recreation and Historic Preservation staff use the gateway when analyzing projects and permits. There is an opportunity to further expand the gateway with additional datasets such as Coastal Erosion Hazard Area maps that could help inform permitting and project development.

The gateway can potentially serve many types of users and provide even more data layers. The coastal program is currently in the process of expanding the portal to serve students. When considering opportunities to expand the gateway to other audiences, the coastal program is encouraged to reach out to stakeholders early in the process to clearly define target audiences, identify their needs, and expand the gateway to address those needs. The coastal program may

also wish to pursue studies to better understand how the portal is currently being used, identify what improvements would best support coastal decision-makers, and identify opportunities to increase uptake by coastal decision-makers. These studies could include a focus on environmental justice communities.

**Accomplishment:** The New York State Coastal Management Program has developed and refined a suite of tools including the Resilience Principles, Model Land Use Laws, Statewide Shoreline Monitoring Framework, and Geographic Information Gateway to help build community resilience.

As the coastal program moves to build out tools such as the Geographic Information Gateway, there is an opportunity to work with other agencies to identify and ensure that key information is up-to-date and reflects current or anticipated future conditions.

## Evaluation Metrics

Beginning in 2012, state coastal management programs began tracking their success in addressing three evaluation metrics specific to their programs. The evaluation metrics include a five-year target and provide a quantitative reference for each program about how well the program is meeting the goals and objectives it has identified as important. In 2018, coastal programs began a new five-year period and set targets specific to their programs for two performance measures from the existing Coastal Zone Management Performance Measurement System and the coastal hazards performance measure.

### 2018–2023 Evaluation Metrics

#### Metric 1

**Goal:** Improved coordination with other state agencies and local government officials that conduct activities in New York’s coastal zone.

**Objective:** By 2023, increase the number of coordination meetings, particularly with the New York State Department of Environmental Conservation, for issues concerning the regulation of New York’s coastal zone.

**Objective:** By 2023, increase the number of consistency trainings available for state and local government staff members and officials.

**Strategy:** Improved coordination with other State agencies will ensure that the actions of State agencies are consistent with the laws, regulations, and policies of New York’s coastal areas. The Office of Planning, Development, and Community Infrastructure (OPDCI) will be reaching out to other New York agencies, particularly the Department of Environmental Conservation, to improve coordination. OPDCI will improve coordination through meetings concerning the following laws, regulations, and policies:

- Article 42 of the State Executive Law
- Department of State regulations in 19 NYCRR Part 600
- State Environmental Quality Review Act (SEQRA) regulations in 6 NYCRR Part 617

- State coastal policies in 19 NYCRR Part 600.5
- Long Island Sound coastal policies in 19 NYCRR Part 600.6
- And state-approved LWRP policies

OPDCI will be establishing an updated contact list of state agency and local government staff members and officials to improve communications regarding coordination meetings for issues concerning the regulation of New York’s coastal zones and scheduled consistency trainings.

The performance measure will be a subset of trainings documented in CZMA PMS #4a and 4b: Number of training events (and participants) related to Government Coordination offered by the coastal program; a training will be counted toward the measure if the comment section includes that ‘consistency training’ was provided.

**Performance Measure:** Between 2018 and 2023, the number of government coordination trainings offered by the coastal program that include federal consistency.

**Targets:** Between 2018 and 2023, 15 government coordination trainings offered by the coastal program that include federal consistency.

**Results:**

- Year 1 (2019) = 5 Federal consistency government trainings
- Year 2 (2020) = 2 Federal consistency government trainings
- Year 3 (2021) = 2 Federal consistency government trainings
- Year 4 (2022) = 4 Federal consistency government trainings
- Year 5 (2023) = 3 Federal consistency government trainings

**Total: 16 Federal consistency government trainings**

**Discussion:** The coastal program exceeded its target, and the trainings helped ensure efficient and effective implementation of federal consistency.

**Metric 2**

**Goal:** Create and track new public access sites created through acquisition or easement with assistance from coastal program funding or staff.

**Objective:** Assist communities with the creation of new public access sites and accurately capture the number of public access sites created with the assistance of coastal program staff.

**Strategy:** Public access sites are designed and constructed through the LWRP grant program. This program is a competitive state-funded grant program for eligible coastal and inland waterfront communities. Therefore, the number of public access sites vary from year to year depending on the applications submitted and awarded. To complete this goal the current tracking procedures will be adjusted so that at the conclusion (close out) of every Environmental Protection Fund grant administered by coastal program staff those coastal projects that created a public access site, or easement, can be identified. A pre- and post-grant survey is being developed as part of the coastal program’s measurable results compilation to track the number of public access sites.

**Performance Measure 5a:** Between 2018 and 2023, number of public access sites created through acquisition or easement with assistance from coastal program funding or staff.

**Target:** Between 2018 and 2023, create five public access sites through acquisition or easements with assistance from coastal program funding or staff.

**Results:**

Year 1 (2019) = 0 New public access sites

Year 2 (2020) = 0 New public access sites

Year 3 (2021) = 0 New public access sites

Year 4 (2022) = 0 New public access sites

Year 5 (2023) = 0 New public access sites

**Total: 0 New public access sites**

**Discussion:** The LWRP led to the creation of 0 new public access sites during the five-year period. Instead of acquiring new public access sites, local governments were active in submitting projects for public access sites enhancement with 39 projects completed. The small dollar amount of the grants is more suited to site enhancements than the purchase of expensive waterfront lands.

**Metric 3**

**Goal:** Update existing, and develop new, local-level policies and plans that address the future damages posed by coastal hazards.

**Objective:** Recognize and address climate-related impacts and coastal hazards, such as sea level rise, flooding, and storm surge, through plans, guidance and projects in New York State.

**Strategy:** On the local level, during the development of LWRPs, or while implementing program activities funded by the Office of Planning, Development, and Community Infrastructure, office staff will encourage communities to incorporate practices that address anticipated changes in the climate, including increased damages from coastal hazards. On the state level, office staff will work collaboratively with other state agencies, organizations, or groups to develop or complete plans, guidance, or projects aimed at reducing risk from climate change impacts and coastal hazards.

This measure will be counted following the Coastal Zone Management Act Performance Measurement System Guidance (p. 18): Completed plans and policies are those that have been completed by a local unit of government or by a state legislature, agency, board, or commission. For the purpose of reporting, local plans and policies should be those developed with assistance from Coastal Zone Management Act funding or staff and can include the development or update of local coastal hazard mitigation plans, policies, ordinances, and codes.

- “Completed plans and policies” are new or updated plans and policies that are either (i) formally adopted by all entities required for the plans and policies to go into effect or (ii) ready to be proposed for adoption by an oversight body or proposed for signature or clearance by the head of an organization or another person with signatory authority.

- An update to an existing policy or plan should be counted only if there are changes to the hazards aspect(s) of an adopted plan or policy.
- State plans and policies should be those developed with Coastal Zone Management Act funding and leadership from coastal program staff (i.e., efforts that are led or initiated by the coastal program or staff).
- State-level policy and plan efforts that are initiated outside of the coastal program should not be counted (i.e., where Coastal Zone Management staff simply play a participating or support role that is of a similar level of investment to other groups or agencies that may be involved in the effort).
- Plans developed by a nongovernmental organization, in cooperation with a local or state governmental entity, can be included if they meet the respective Coastal Zone Management involvement thresholds described above.

Completed projects can include technical assistance, mapping, education and outreach, and on-the-ground projects to reduce future damage from hazards at the state or local level. Projects completed by a nongovernmental organization for a coastal community can be reported.

**Performance Measures 11:** Between 2018 and 2023, number of (a) state-level policies and plans completed; (b) local-level policies and plans completed; (c) projects completed at the state-level; and (d) projects completed at the local-level to reduce future damage from coastal hazards with assistance from coastal program funding or staff.

**Target:** Between 2018 and 2023, 12 (a) state-level policies and plans completed; (b) local-level policies and plans completed; (c) projects completed at the state-level; and (d) projects completed at the local-level to reduce future damage from coastal hazards with assistance from coastal program funding or staff.

**Results:**

- Year 1 (2019) = 0 State or local hazard policies, plans, or projects
- Year 2 (2020) = 0 State or local hazard policies, plans, or projects
- Year 3 (2021) = 1 State or local hazard policies, plans, or projects
- Year 4 (2022) = 3 State or local hazard policies, plans, or projects
- Year 5 (2023) = 1 State or local hazard policies, plans, or projects

**Total: 5 State or local hazard policies, plans, or projects**

**Discussion:** The coastal program’s performance measurement reports show that the coastal program is far short of its target and not doing much work related to coastal hazards. Based on other information provided, the coastal program is not fully capturing its coastal hazards work in the performance measurement system. The coastal program is encouraged to consult the Performance Report Guidance (2023) and its NOAA program specialist regarding the eligibility of projects and fully report on its work through the performance measurement system going forward.

## **2012–2017 Evaluation Metrics**

### **Metric 1: Consistency Review**

**Goal:** Ensure consistency between proposed projects and New York State Coastal Management Program policies.

**Objective:** Provide review of proposed projects in the coastal zone to ensure they do not adversely impact coastal resources and uses.

**Strategy:** Program staff will prescreen all applications and then initiate dialogue with applicants when necessary to understand their proposed project. Staff will advise applicants regarding modifications to bring projects into conformance with New York State Coastal Management Program policy.

**Performance Measure:** Percent of federal consistency projects reviewed where the project was modified or withdrawn due to consultation with the applicant to meet the state’s Coastal Management Program policies.

**Target:** Ten (10) percent of federal consistency projects reviewed where the project was modified, withdrawn, or found to be inconsistent due to consultation with the applicant to meet New York State Coastal Management Program policies, in the five-year reporting period.

#### **Results:**

Year 1 (2012–2013) = 57/825 is 6.9 percent  
Year 2 (2013–2014) = 63/669 is 9.4 percent  
Year 3 (2014–2015) = 76/726 is 10.5 percent  
Year 4 (2015–2016) = 71/954 is 7.4 percent  
Year 5 (2016–2017) = 75/1004 is 7.5 percent

**Average over five years: 8.19 percent**

**Discussion:** The numbers demonstrate the coastal program’s significant workload and that projects are carefully reviewed.

### **Metric 2: Public Access**

**Goal:** Improve public access to the shoreline

**Objective:** Provide funds and technical assistance for projects using a variety of techniques such as planning assistance and construction funding to implement plans that provide improved public access.

**Strategy:** Staff, whose activities are substantially supported by Coastal Zone Management Act funds, will provide technical assistance to local governments for implementing public access components of waterfront plans. Program staff will guide municipalities in using New York State competitive grant funding to provide or enhance public waterfront access as identified by a waterfront management or revitalization plan. The New York State Department of State funds waterfront planning and implementation as a means to protect and restore water resources

and local economies. Each project is guided by a municipal or an intermunicipal organization or advisory committee, facilitated by New York's Department of State. To support creation and implementation of waterfront revitalization plans, the coastal program provides grants through the statewide Consolidated Funding Application that uses money from the state Environmental Protection Fund. Grants are provided to support projects identified in a local waterfront plan or to support the goals and objectives of the coastal program. The coastal program staff annually review and rank grant applications, oversee the grants, and provide technical assistance to the local planning group.

**Performance Measure:** Number of waterfront revitalization projects completed by municipalities that include planning for public access, construction of new public access facilities, or enhancement of existing public access facilities.

**Target:** One hundred (100) waterfront revitalization projects completed by municipalities that include planning for public access, construction of new public access facilities, or enhancement of existing public access facilities in the five-year reporting period.

**Results:**

Year 1 (2012–2013) = 26 Waterfront revitalization projects

Year 2 (2013–2014) = 21 Waterfront revitalization projects

Year 3 (2014–2015) = 19 Waterfront revitalization projects

Year 4 (2015–2016) = 46 Waterfront revitalization projects

Year 5 (2016–2017) = 33 Waterfront revitalization projects

**Total: 145 Waterfront revitalization projects**

**Discussion:** The coastal program significantly exceeded its target for the number of waterfront revitalization projects completed. The coastal program has a strong waterfront revitalization program that is supported through state funding and is discussed in the findings

**Metric 3: Watershed Management**

**Goal:** Preserve and restore the natural resource base of watersheds to achieve municipal benefit.

**Objective:** Complete local implementation projects based on watershed plans for land and water management.

**Strategy:** Staff, whose activities are substantially supported by Coastal Zone Management Act funds, will provide technical assistance to local governments to implement watershed plans. Program staff will guide municipalities in using New York State competitive grant funding to restore or enhance watershed water quality or habitats as identified by a watershed management plan. The New York State Department of State funds watershed planning and implementation as a means to protect and restore water resources and local economies. Each project is guided by an intermunicipal organization or advisory committee, facilitated by New York's Department of State. To support watershed organizations and creation and implementation of watershed management plans, the coastal program provides grants through the statewide Consolidated Funding Application that uses money from the state Environmental



Protection Fund. Grants are provided to support projects identified in a local watershed management plan or to support the goals and objectives of the coastal program. Coastal program staff annually review and rank grant applications, oversee the grants, and provide technical assistance to the local planning group.

**Performance Measure:** Number of watershed plan implementation projects completed by local governments or watershed organizations to restore or enhance watershed water quality or habitats.

**Target:** Staff assistance to twenty (20) watershed plan implementation projects completed by local governments or watershed organizations to restore or enhance watershed water quality or habitats in the five-year reporting period.

**Results:**

Year 1 (2013) = 5 Watershed plan projects implemented with staff assistance

Year 2 (2014) = 8 Watershed plan projects implemented with staff assistance

Year 3 (2015) = 11 Watershed plan projects implemented with staff assistance

Year 4 (2016) = 8 Watershed plan projects implemented with staff assistance

Year 5 (2017) = 16 Watershed plan projects implemented with staff assistance

**Total: 48 Watershed plan projects implemented with staff assistance**

**Discussion:** The coastal program more than doubled its target and helped implement 48 watershed plan projects. These projects are protecting and restoring coastal habitats, improving water quality, and reducing stormwater risks.

# Conclusion

This evaluation concludes that the New York State Coastal Management Program is successfully implementing and enforcing its federally approved coastal management program, adhering to the terms of the federal financial assistance awards, and addressing coastal management needs identified in section 303(2)(A) through (K) of the Coastal Zone Management Act.

These evaluation findings contain four recommendations that must be considered before the next regularly scheduled program evaluation but that are not mandatory at this time. Recommendations that must be repeated in subsequent evaluations may be elevated to necessary actions.

This is a programmatic evaluation of the New York State Coastal Management Program, which may have implications regarding the state's financial assistance awards. However, it does not make any judgment about or replace any financial audits.

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Jeffrey L. Payne, Ph.D.  
Director  
NOAA Office for Coastal Management

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Common Access Card (CAC) Signature

## Appendix A

**Richard George, Director, Beachside Bungalow Preservation Association**

**Matthew Wynn, Resident of Far Rockaway**

**Victor Aquirre, Resident of Far Rockaway**

**David Schlat, Resident of Far Rockaway**

**Jonathan Nelson, Resident of Far Rockaway**

**Danielle Anderson, Resident of Far Rockaway**

NOAA received comments from Richard George, the director of the Beachside Bungalow Preservation Association, as well as similar comments from other Far Rockaway, New York, community members: Matthew Wynn, Victor Aquirre, David Schlat, Jonathan Nelson, and Danielle Anderson. The comments have been summarized. The commenters are concerned with overdevelopment and destruction of bungalows in Far Rockaway. The commenters ask NOAA to:

- find that the New York Coastal Program and New York City's Waterfront Revitalization Program have violated the Coastal Zone Management Act;
- establish necessary actions that the New York Coastal Program must address to remedy said violations; and
- impose sanctions under the Coastal Zone Management Act if the state fails to implement the necessary actions.

The areas of alleged non-compliance are:

1. New York City's waterfront zoning regulations and building codes violate the final Environmental Impact Statement approving the New York City Waterfront Revitalization Program by failing to revise the city's waterfront zoning regulations to contain historic preservation requirements that further waterfront revitalization policies and describe how historic properties will be protected as set forth in section 303(2)(F) of the Coastal Zone Management Act.
2. New York City fails to inventory and designate the Rockaway Peninsula as an area of particular concern and [fails to] include the Far Rockaway Bungalows [Historic District] as a special waterfront zoning district to be included in the inventory as required by section 306(d)(2)(C) of the Coastal Zone Management Act and Policy 10 of the Waterfront Revitalization Program, as well as the New York City Administrative Code.
3. The New York City Zoning Resolution needs to be updated and the Far Rockaway Bungalow area rezoned, as a Special Waterfront Zoning District, since it is listed on the National Register [of Historic Places].
4. New York City Waterfront Revitalization Program consistency review procedures fail to comply with the Coastal Zone Management Act consistency review procedures in 303(d)(1) because local governments and other interested parties' participation is limited to only certain classes of activities under the state's and city's environmental quality review acts. The Metroplex on the Atlantic at 120 Beach 26th Street is used as an example of a project in which consistency review was allegedly waived.

5. New York fails to protect the coastal zone from coastal erosion, storm surges, and flooding as required under section 303(2)(B) and control development as required under section 306(d)(10)(A), and [is] in violation of the state's Coastal Erosion Hazard Act and the Tidal Wetlands Act by allowing development in and around the bungalow properties as evidenced by construction of condos like the Metroplex.

These comments are similar to comments from Far Rockaway citizens submitted in previous evaluations including 2004 and 2008 and correspondence that has been received over the past 20 years.

**NOAA's Response:** The New York Waterfront Revitalization of Coastal Areas and Inland Waterways Act requires that a resource inventory be conducted as part of the development of Local Waterfront Revitalization Programs. Properties or areas listed on the National Register of Historic Places are to be included in those inventories. Local Waterfront Revitalization Programs are required to address how historic properties will be protected. As noted in the guidance manual for preparing programs, there is not a prescribed format for the inventories. As with the Local Waterfront Revitalization Programs for other localities, the resource inventory for New York City is a narrative discussion, which in Section II discusses some resources specifically and others generally.

Policy 10 of the New York City Local Waterfront Revitalization Program, regarding the protection of historic resources, applies to all properties listed on the National Register of Historic Places, which includes the Far Rockaway bungalows, regardless of whether the historic property is specifically mentioned or listed in a Local Waterfront Revitalization Program.

New York State has permitting programs in place to address coastal erosion hazard areas, tidal wetlands, and navigable water. The state also works closely with the U.S. Army Corps of Engineers on a number of storm risk reduction projects.

NOAA's Office for Coastal Management does not have authority or jurisdiction to interject itself into local land use decisions as these are matters best left to the discretion of the state or city. The Coastal Zone Management Act is a voluntary partnership between the federal government and a state. The state and all units of local government in the state still retain their sovereign rights and jurisdictional authorities after NOAA has approved the state's coastal program. A programmatic evaluation under Section 312 of the Coastal Zone Management Act considers the totality of actions and activities undertaken during the policies and provisions of the Coastal Zone Management Act as it did when originally approved and through subsequent program change approvals. Thus, a programmatic evaluation under Section 312 of the Coastal Zone Management Act is not intended to resolve specific disputes of local permitting decisions, nor to collect evidence regarding specific actions taken, nor to issue a finding about whether a governmental entity was correct or incorrect in specific project-related decisions or 'force' a state or local government to enforce or implement a state or local law or regulations. Citizens who do not agree with decisions made by the city or the state have available appropriate recourse through state law.

**Nancy Featherson, Carl Irace, and Steve Resler** provided comments related to shoreline management. Their comments are summarized individually below.

### **Nancy Featherson**

Nancy Featherson provided the following supporting materials:

1. Nancy Featherson’s letter to Thomas S. Kohlmann (NYSDEC) dated January 2, 2023, regarding the DeSimone application to protect a home in a Coastal Erosion Hazard Area with a 257-foot stone revetment along the toe of the Nissequogue Bluffs including regrading bare areas and stabilization
2. Response from Thomas S. Kohlman (NYSDEC) to Nancy Featherson dated March 1, 2023, regarding the DeSimone application
3. State (not federal) Consistency Review one-pager from the Department of State’s Office of Planning and Development
4. Comments sent to Elyssa Hopkins (NYSDEC) dated October 19, 2017, regarding a Wallis Bulkhead application
5. Response from the DEC dated October 19, 2017, regarding the Wallis Bulkhead application
6. Response from the DEC dated October 26, 2017, regarding the Wallis Bulkhead application
7. DOS Federal Consistency Certification with modifications dated December 7, 2018, for Wallis Bulkhead

Ms. Featherson raised concerns about the New York Department of Environmental Conservation’s (DEC) and the New York Department of State’s (DOS) implementation of New York’s Coastal Management Plan (CMP), in approving the last 12 consecutive, contiguous, erosion structures on the bluff, a ‘natural protective feature’ area. She raised concerns that DEC and DOS are approving projects that should not be approved under current regulations and that DEC has an unofficial policy of “reasonable accommodation.”

She described two specific permit examples:

Wallis 2018 permit: The permit was considered to be a “type II” action, avoiding the State Environmental Quality Review Act (SEQRA) decision-making standards to approve a structure that shouldn’t have been approved. The permit application was also found to be “inconsistent” with two approved Local Waterfront Revitalization Plans (LWRP): Nissequogue and Smithtown. While the DEC stalled, the DOS issued a “concurrence,” which failed to comply with the requirements for a concurrence. Ms. Featherston states that these shoreline hardening projects are destroying the natural protective features along Smithtown Bay and are resulting in a loss of public access along Nissequogue Bluff, Long Beach, and public beach enclosing Stony Brook Harbor.

DeSimone 2023 permit: The March 1, 2023 permit is the first to be “listed as Type I” yet remains inconsistent with coastal policy. The DEC made Nissequogue Village “Lead Agency.”

DeSimone was the twelfth Nissequogue Village Board overrule of a negative LWRP consistency decision.

Ms. Featherson stated that Long Island shoreline hardening was recently reported to be 70 percent. She also notes that the (CEHA) map hasn't been updated since 1988; although the 110-foot, sandy Nissequogue bluffs erode at 1–2 feet per year.

She noted that 27 years ago, the DOS wrote a letter to the DEC that resulted in several erosion structure permit denials on Long Beach spit and calls for the DOS to take a similar stand. Ms. Featherson also stated that a "36-Year Analysis" report (2017) was ordered by the department to be destroyed.

**Carl Irace, Esq.**  
**Defend H2O Inc.**

Mr. Irace provided an Improper Administration Report, dated September 20, 2016, and a copy of the statewide LWRP policies.

Mr. Irace discussed the 2016 Improper Administration Report, previously submitted to NOAA, focused on the "Montauk Revetment Project," which Mr. Irace states is an explicitly prohibited Erosion Control Structure, specifically, a revetment out of 14,000 Geo-textile Sand Containers ("GSCs"), each weighing 1.7 tons, mostly seaward of mean high water, along 3,200 linear feet of oceanfront shoreline in Montauk. He notes the project was constructed, and taxpayers continue to fund sand replenishment.

Mr. Irace raised concerns that

- the construction of the Montauk revetment was inconsistent with the enforceable policies of the CZMA and CMP as expressed in the town's LWRP;
- the project is a physical impediment to public access;
- the project interferes with nearshore sediment transport causing scouring at the eastern and western end of the revetment resulting in the shoreline being impassible;
- the DEC and the DOS are not looking at the cumulative effects of shoreline protection structures;
- due to cumulative impacts, no project should be given a Type II designation;
- the DEC should not have classified shoreline installations such as seawalls, GSCs, and stone riprap in front of single-family residences, as SEQRA Type II actions;
- the DOS should not be finding shoreline installations such as seawalls, GSCs, and stone riprap as "consistent";
- any determination as to any particular items that should be exempt from consistency review ought to be a matter for consideration by the DOS and not the DEC (if any such exemption might ever be permissible); and

- municipalities are incorrectly administering the CMP all over Long Island, and the improper administration is likely occurring statewide.

Mr. Irace notes that Type II actions have been determined not to have a significant adverse impact on the environment. Once an action is determined to be Type II, no further environmental review is required. He states that a SEQRA designation is not a relevant basis for finding any purported exemption from consistency review. Consistency review and SEQRA review are inherently different processes with different factors, legislated purposes, and authority. Mr. Irace cited the statutory requirement of Environmental Conservation Law Article 34–0109.1(b) and SEQRA regulations requiring consistency with state coastal policy(ies) or the policies and purposes of a state-approved LWRP. Mr. Irace states that the DEC is not delegated authority in consistency review.

Mr. Irace states that on numerous occasions since the 2017 evaluation, the Village of Sag Harbor has proposed, and even adopted, local laws that affect land use patterns without proper consistency review. He believes the Village Harbor Committee, like the state, is improperly conflating consistency review with SEQRA review and the public does not have the procedural experience to effectively participate in the consistency review process. He states there are not adequate resources available to the public, or even the members of review agencies, to participate fully.

Mr. Irace suggested that NOAA consider the following recommendations:

- 1) require the DOS to provide appropriate oversight of the DEC’s implementation of DEC programs that implement elements of the state’s CMP (such as the CEHA program) and providing a sustained level of appropriate DOS direction and consistency training to the DEC;
- 2) as NOAA has recommended for several years and required during some of them, increase CMP and LWRP programmatic training— especially consistency training— for municipalities participating in what is supposed to be a federal-state-municipal partnership that all three levels of government agreed to and are legally bound to comply with in order to not just meet but to proactively advance the national, state, and municipal policy objectives and purposes of an LWRP as an element of a federally approved CMP;
- 3) make review practices and resources more obviously available to the agencies and municipalities, as well as the public; and
- 4) expand opportunities for challenging incorrect determinations.

Mr. Irace urges consideration of the contents of the Evaluation Metrics, specifically Metric 1 and Metric 2. The expressed goal of Metric 1 is to ensure consistency between proposed federal license or permit activities and the New York State Coastal Management Program. The expressed goal of Metric 2 is to improve public access. It is self-evident that the construction of Montauk’s revetment restricts public access.

## Steve Resler

Steve Resler provided the following supporting materials:

1. Letter from Steve Resler (DOS) to Kevin Kispert (DEC) dated October 19, 1998, regarding geotubes along Nissequogue bluffs
2. Letter from Steve Resler to Carl Irace dated October 22, 2015, regarding the Montauk dune projects
3. Letter from Steve Resler to Thomas S. Kohlmen dated January 5, 2023, regarding the Desimone stone revetment application
4. Unsigned copy of letter from George Stafford, deputy secretary of state for coastal resources, to Shoreline Bulkheading Inc. dated June 5, 2007
5. Internal DOS memo from George Stafford to Bob Benedick dated July 20, 1994
6. The DEC online permit application summary dated October 4, 2017, for Wallis's 400 feet of steel sheeting

Mr. Resler provided the following summarized information. The state's Coastal Act and state's Coastal Erosion Hazard Areas Act are part of the federally approved coastal management program and guide the state in managing the coastline and addressing rapidly increasing hazards and risks to human life and property, natural resources, and other important public uses and interests.

The approach the state opted for, and carefully crafted, was one of Strategic Retreat and Selective Fortification. While the need for it was recognized decades ago, that need is more evident than ever given more rapidly rising sea levels and associated increases in erosion, flooding, and related hazards [that are greater] than expected four decades ago. This required approach—it is required through statutes, implementing agency regulations, the enforceable policies of the CMP and land and water use plans that implement and advance the CMP, rather than suggested or recommended approach— is the limitation and prohibition of most new development that is not water dependent and therefore requires a location at or near the water's edge. Those prohibitions include the construction of new and reconstruction of previously existing erosion protection structures, without distinctions in law, regulations, or programmatically between "hard" or "soft" structures, such as seawalls, stone riprap, sand-filled geotextile bags, and artificially nourished beaches and constructed dunes, in designated coastal erosion hazard areas that comprise designated natural protective feature areas. It requires, as an alternative to structural approaches to protect preexisting non-water dependent uses, the use of non-structural measures to achieve the legislative and programmatic intent of protecting human life and property and important resources and uses. That includes the phasing out of preexisting development— now nonconforming development— in designated natural protective feature areas by moving it away from hazards in or out of the designated coastal erosion hazard/natural protective feature and hazard area over time, and in varying circumstances. For example, the restoration of structures— including residences and seawalls "...that are damaged or destroyed by events not related to coastal flooding and erosion" may be undertaken without a permit (6 NYCRR Parts 505.8(b)(4),



505.8(c)(5), 505.8(d)(7), and 505.8(e)(5)(ii)). Structures that have been damaged or destroyed by events related to coastal flooding and erosion are regulated. [These structures] are regulated so that they can be phased out as nonconforming structures, and the legislative and programmatic intent applying in and to natural protective features and natural protective areas, important physical coastal processes and interactions of and between them, and the wide range of important public benefits they provide are achieved—especially the protection those natural protective features and feature areas provide to areas landward of them, reducing and eliminating risks to human life, property, and development landward of them. Wherever that option is possible and it would provide protection to the development from the hazard, that option of moving development away from the hazard, rather than a structural measure that interferes with the important functions and values of natural protective features and leaves inappropriate development in the hazard area, the non-structural option of moving away from the hazard and natural protective feature is required pursuant to and in accordance with the enforceable policies of the state’s CMP and implementing legislation in Article 42 of the State Executive Law and its implementing regulations in 19 NYCRR Part 600, Article 34 of the state’s Environmental Conservation Law in 6 NYCRR Part 505, and amendments to the State Environmental Quality Review Act’s (SEQRA) implementing regulations, applicable to state agencies and which were required by Article 42 of the Executive Law, in 6 NYCRR Part 617.

The prohibition of new, and the phasing out and eventual elimination of preexisting and nonconforming, structures and development is nothing new in common zoning and building code standards and land and water use law and practice in New York. Without developing and implementing new standards for development and phasing out the inappropriately old and unsafe— such as requiring the replacement of outdated and unsafe 1890s electrical wiring; requiring new plumbing in a home that meets current safety and related design standards; prohibiting (outside of the historic district) the reconstruction of a 1950s-era, 45-foot tall residence of no historic value, destroyed by fire, only 3 feet from an adjacent building, rather than the new standard of 25 feet, in an area where residential structures are now limited to 32 feet in height and must provide adequate side yard distances of at least 25 feet from adjacent lot lines for safety and to avoid interference with neighboring uses— government would never be able to achieve legitimately important public objectives.

As for claims of unconstitutional regulatory takings, implementation of the state’s CMP and its Coastal Erosion Hazard Areas program in such manners is not unconstitutional.

The preceding approach of retreat does not apply in more densely developed and urbanized areas of the state consisting of high-density populations and major public and private investments in infrastructure. In those relatively well-defined and limited areas of significantly lesser stretches of New York’s coasts, structural measures are the only means available, and they should be used in those areas. There are significant public and private economic costs associated with necessary structural protection from coastal hazards in such areas. Such costs are appropriate in these areas. They are significantly more— on the order of magnitudes higher— than the significantly less public and private economic and other costs of moving inappropriate development away from the state’s designated coastal erosion hazard/natural protective feature areas.

To ensure that the preceding and related legislative underpinnings and intent and the programmatic objectives of the CMP are met, the State Legislature included an important provision in Article 34–0109.1(b) of the Environmental Conservation Law that states:

“A proposed activity or development in an erosion hazard area shall be deemed an action that is likely to require the preparation of an environmental impact statement pursuant to [citing relevant section of the State Environmental Quality Review Act].”

The preceding provision is important. It’s a statutory requirement. It cannot lawfully be abrogated, avoided, ignored, or eliminated as a requirement by agency regulation or practice. It subjects anything and everything regulated pursuant to Article 34 of the Environmental Conservation Law to the SEQRA process and, because those activities and associated state agency actions by the DEC are subject to SEQRA review and decision-making processes, they are also subject to full consistency with all relevant and applicable policies of Article 42 of the State Executive Law, their attendant explanations and guidelines in the state’s CMP document, and any applicable element of the CMP such as a state-approved Local Waterfront Program of a municipality or the state’s Long Island Sound Regional Coastal Management Program. The provision was included in the statute to ensure that all of the relevant and applicable legislative coastal policies of the state that are included in the CMP are fully implemented as envisioned in the CMP, including retreat from the most physically dynamic and hazardous stretches of New York’s coastal area and fortification of important urbanized and certain other areas of the state’s coastal area. Those legislative and programmatic objectives and statutory and regulatory requirements to achieve and advance them are not being met. They are being undermined primarily by the DEC—the very agency charged with the overall administration and implementation of the Coastal Erosion Hazard Areas program—while the DOS, as the state’s coastal management agency, is supposed to monitor, guide, and provide coastal policy and overall CMP advice, technical assistance, and direction to the DEC and other agencies (see administrative case law decision of DEC ALJ and Commissioner, in *Xanadu Properties Associates*, 1990, page 5, where “DEC must certify to...consistency with the policies set forth in the Executive Law, Article 42. However, consistency with those policies is an area within the primary expertise of the DOS...This Department [DEC], while not necessarily bound by [DOS’s] determination, ordinarily will defer to the DOS in matters of coastal policy consistency...”); DEC instead ignores and intentionally avoids complying with state coastal policy and related decision-making requirements and standards, and the DOS avoids its responsibilities in ensuring the DEC complies with them. For example:

The DEC routinely circumvents not only state coastal consistency provisions but also State Environmental Quality Review Act (SEQRA) requirements by improperly arguing that new and preexisting seawalls, bulkheads, and other structures in designated coastal erosion hazard areas are classified in SEQRA regulations as accessory structures, and that such structures accessory to single-family residences are therefore SEQRA Type II actions that are exempt from both SEQRA and coastal consistency provisions of Article 42 of the Executive Law and DOS regulations applicable to the DEC and all other state agencies in 19 NYCRR Part 600. As aforementioned in these remarks and over many previous years, that is incorrect and clearly

conflicts with the statutory provision, requirement, and intent of Article 34–0109.1(b), SEQRA regulations in 6 NYCRR Part 617, and DOS regulations in 19 NYCRR Part 600.

The DEC also fails to meet other important provisions of the CMP, and the CEHA program is an important element of it. Examples of some of the major underpinnings of the matters are reflected in DEC/U.S. Army Corps of Engineers project- and cost-share partnerships such as the one addressed in the attached October 15, 2015 letter regarding the Corps' Downtown Montauk Project. In that instance and another involving the Corps and its multibillion-dollar Fire Island to Montauk Point (FIMP) project, the Corps' NEPA and project evaluation characterized both projects as "soft" rather than "hard," and "nonstructural" rather than "structural." Those were serious faults on the part of the Corps, and they will adversely affect New York's coast and attempts to properly manage it for decades. Those mischaracterizations weren't merely disingenuous on the part of the Corps. They significantly affected and influenced, incorrectly and improperly, not only the Corps' NEPA and CZMA consistency analysis, conclusions, and determinations (see also DOS file record comment on Corps draft analysis regarding those and other matters), undermining much of the state's CMP and decades of work attempting to forthrightly address the issues on Long Island's Atlantic Ocean south shore barriers and elsewhere; it has done the same to undermine many years of efforts involved in developing the Town of East Hampton's LWRP as an element of the LWRP, and its intent to strategically retreat rather than attempt to "hold the line" and fortify in the "downtown" hamlet of Montauk and elsewhere. So much so that the DEC and the town both misused that analysis in its own reviews and decision-making. DOS had, by then, relinquished its responsibilities overseeing the CMP and providing policy direction and technical assistance and advice to the Town, the DEC, and the Corps.

Examples of some of these failures are included with these remarks/comments. They include copies of agency and interagency correspondence and readily available online agency records. One telling example of the DEC's intransigence regarding the matters were the words of one of the DEC's CEHA program administrators and a former DEC regional director on Long Island during a conference call with now retired DOS CMP staff and former counsel regarding matters involving seawalls and massive stone riprap and other development in a village and town on Long Island's north shore. When the DOS summarized relevant matters, policies, and legislative and programmatic underpinnings of them, the DEC regional director, ignoring specific standards that could not be met for the lawful issuance of state permits for the structures, replied with: "But what about their property rights? We have to accommodate them." The DEC's CEHA program manager said: "I don't agree with the law. Are you telling me I've been doing my job wrong?"

The DEC subsequently worked with permit applicants and others to design and construct structures that did not and cannot meet applicable municipal (an area covered by an LWRP, as an element of the CMP, that does not allow for such structures in the area) zoning; comprehensive plans; special purpose land use laws; state, coastal, and related decision-making standards; nor any one or more of municipal or state standards required to be met to deviate from or allow any variances or overrides or overruling of the applicable standards. The DEC then authorized those structures. One of the structures authorized by the DEC relatively

recently in that area was not authorized several years ago after the DOS determined, in accordance with its CZMA federally delegated consistency decision-making authority as part of the federal review and decision-making process for a required Corps' permit and to guide and inform DEC, that the structure—or any such structure in the designated coastal erosion hazard/natural protective feature area—would not be consistent with any of the applicable policies of the CMP or the CMP as it is expressed in the LWRP covering the area. The DOS formally objected to the applicant's federal consistency certification. A new structure in that area, also not meeting any applicable standards that would allow for it, was authorized less than two weeks ago this month. The state's actions are now responsible for the cascading adverse effects of multiple applications for and the construction of erosion control structures where they're supposed to be prohibited. These are activities and agency actions for them that the local Joint Coastal Management Commission properly determined and the DOS previously determined (but has recently and improperly reversed) would not be consistent with applicable policies and purposes of that municipality's LWRP as an element of the CMP. These and similar scenarios are repeated throughout Long Island's Atlantic Ocean shallow nearshore and wetland, barrier islands and spits, beaches, dunes, and bluffs areas and Long Island Sound shallow nearshore wetlands, barrier spits, beaches, dunes, and fronting bluffs areas.

In 2017 a thirty-six-year analysis and report regarding these matters had been requested by a DOS executive staff member. It was being prepared internally by a formerly retired senior staff member of the DOS who had been brought back to the DOS staff for several long-term special assignments. That analysis began in 2016 and involved reviews of records over the previous thirty-six years of the CMP and the CEHA as an element of it. That analysis and a summary report of it was being prepared in anticipation of a planned meeting and presentation with the commissioner of the DEC, in accordance with Article 42 of the Executive Law, on behalf of the secretary of state as overall administrator of the CMP, in hopes that it would provide necessary change in the DEC's implementation of the CEHA program. The report was to include recommendations for such changes. An unfinished draft of part of that report had been provided to the DEC's Region 1 regional director for review of the subject matter of the conference call referenced earlier in these remarks. The report—summarizing the analysis of misadministration of the CEHA, the effects of that misadministration on the coast and the overall CMP, and the recommendation of necessary changes in the administration and implementation of the CEHA—was not completed. The DOS's counsel ordered the author of the draft document to destroy it. The author of the document responded by indicating the document was in the custody and control of the DOS and that if the DOS wanted it destroyed, then the DOS would have to destroy it. The DOS staff author of that document and the DOS subsequently terminated their official relationship by mutual agreement.

These remarks are only a snapshot of part of New York's failure to properly manage an important element of its CMP. [This mismanagement] results in failures to achieve and advance—and conflicts with and between—statutory coastal policies; significant adverse effects along and affecting the coast and its important resources and uses; undermining of the programmatic and statutory intent and achievement of the federal Coastal Zone Management and State Waterfront Revitalization and Coastal Resources Acts and their respective amendments and the respective national and state Coastal Management Programs developed

in accordance with those statutes; significant losses and impairments to important coastal resources and uses; increased, rather than reduced, risks to human life and property; and significantly increasing and unsustainable economic, environmental, developmental, recreational, and other costs that were foreseen as avoidable, [with a] required means of avoiding them [that] was developed decades ago, but is not being used as intended and required.

**NOAA’s Office for Coastal Management Response:** NOAA’s Office for Coastal Management thanks Nancy Featherson, Carl Irace, and Steven Resler for their comments. New York, like other states, is challenged by shoreline erosion due to coastal hazards and a changing climate. The evaluation findings contain a recommendation for the coastal program to “create a workgroup with its federal and state agency regulatory partners and municipal leaders to: (1) assess shoreline management issues including the cumulative impacts of shoreline hardening; (2) conduct a systematic review of regulatory maps and survey products that are dated; (3) develop and implement a strategy to prioritize and update datasets to make the data easily accessible through tools such as the Geographic Information Gateway; and (4) as necessary, identify how to incorporate adaptive management and innovative solutions into regulatory authorizations to enhance and support the state’s ability to address climate resilience.”

There is also a recommendation to further support sharing of climate resilience information with local officials and staff along with other interested parties so that local governments can make more informed decisions. “NOAA’s Office for Coastal Management encourages the New York State Coastal Management Program to explore and implement methods to bring local governments and other entities together to share information and facilitate new partnerships around climate resilience. Methods could include developing and supporting communities of practice, hosting regional symposia, or building on other collaborations.”

The New York Coastal Program followed NOAA’s Office for Coastal Management guidance when developing and tracking the implementation of the National Coastal Zone Management Performance Measurement System.