

Public Access Meeting with Fishermen Groups
October 27, 2011
Monmouth University
6pm

At our meeting on June 28, 2011, a number of you shared your ideas and concerns with the Department and suggested changes/clarifications to the current public access rule proposal. Below is the list of requested changes and the Department's response to each issue.

1. All current tidal water access points shall be maintained.

Current proposal language (pg. 30)

N.J.A.C. 7:7E-8.11(b)2 states the following, *“All existing public access to, and along tidal waterways and their shores shall be maintained to the maximum extent practicable;”*

2. Do not limit the hours fishermen can fish; 9-5 does not work. Access to fishing must be allowed 24 hours a day 7 days a week. Want to be able to fish at night.

Proposed revision (pg. 32)

Proposed N.J.A.C. 7:7E-8.11(d)1 states the following, *“Municipal Public Access Plans shall incorporate fishing access and associated amenities, including parking that accommodates nighttime fishing for a reasonable duration of time, to the maximum extent practicable on or adjacent to tidal waterways and their shores. In the case of a beach, fishing access shall not be required in areas designated for swimming during hours designated for swimming.”*

3. The NJDEP shall have the final approval on all Municipal Public Access Plans and ensure that there is access for all user groups.

Proposed revisions (starting on pg. 40)

Modified N.J.A.C. 7:7E-8.11(h)i, states the following: *The Department shall review an application for approval of a Municipal Public Access Plan to determine whether the plan is consistent with the broad coastal goals described at N.J.A.C. 7:7E-1.1(c), the goals for public access at (b) above and all other requirements of this section.”* In addition, the process for how the Department will review an application for approval of a MPAP has been added to this section.

4. Reinforce in each MPAP that the public has a right to use tidal waters. It was suggested that the Department add as a standard what the Public Trust Doctrine says as a public education element in each plan.

Current proposal language (pg. 23)

N.J.A.C. 8.11(a) includes the following language, *“No authorization or approval under this chapter shall be deemed to relinquish public rights of access to and use of lands and waters subject to public trust rights in accordance with N.J.A.C. 7:7E-3.50”*. 8.11(a) applies to Municipal Public Access Plans as well as site specific public access proposals.

In addition, NJAC 7:7E-8.11(b) refers back to the overall coastal policies in 7:7E-1.1(c). That section contains the purposes of the Department’s coastal policy and thus is applicable to MPAPs. 7:7E-1.1(c)3 provides that one of the overall policies is *“Meaningful public access to and use of tidal waterways and their shores”*. 7:7E-1.1(c)3i states, the rules are intended to *“preserve public trust rights to tidal waterways and their shores.”*

5. Clarify that a town through a MPAP will not be allowed to transfer public access to tidal waters to another municipality.

The intent of the language in N.J.A.C. 7:7E-8.11(e)1 is to allow for shared public access amenities when deemed appropriate. This will be reviewed on a case-by-case basis. As stated in 8.11(a) *“no authorization or approval under this chapter shall be deemed to relinquish public rights of access to and use of lands and waters subject to public trust rights in accordance with N.J.A.C. 7:7E-3.50”*

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6. It was requested that the minimum distance between public access points be changed from 1/2 mile to 1/4 mile.

As stated in the public access rule proposal at 8.11(r), *the ACOE guidance states, "Reasonable access is access approximately every one-half mile or less,"* The Department made this change in the proposal in order to be consistent with Federal regulations. This will not be amended in the Notice of substantial change on adoption.

7. It was requested that the Department not exempt the need to provide public access based on the number of buildable single family lots but rather on the length of shoreline (500 feet or less).

The Department is not proposing any amendments to this portion of the rule proposal.

8. Better define what the Department means by "reasonable access". It was suggested that the Department go back to the original wording in the rule to "maximum extent practicable"

Proposed revision (pg 32)

The following language is proposed at N.J.A.C. 8.11(d)1: "Municipal Public Access Plans shall incorporate fishing access and associated amenities, including parking that accommodates nighttime fishing for a reasonable duration of time, to the maximum extent practicable on or adjacent to tidal waterways and their shores. In the case of a beach, fishing access shall not be required in areas designated for swimming during hours designated for swimming."

9. It was requested that parking must be shown on MPAP. It was also requested that a reasonable fee be charged to fishermen with ideally it being free parking especially when fishing at night.

See language above at 8. This proposed revision addresses parking; including parking that accommodates nighttime fishing.

10. It was suggested the Department issue a Fishermen parking permit that is tied to the DEP's fishing license to allow free parking while fishing similar to what the State of Massachusetts has provided their fishermen. The pass could be recognized in a MPAP.

This requires legislation, however parking for fishermen was addressed at proposed N.J.A.C. 7:7E-8.11(d)1 (see 2. above)

11. Have towns put up "Quiet time" signs so that fishermen know to keep the noise down during those hours.

Proposed revision (pg. 32)

The following requirement was added at proposed N.J.A.C. 7:7E- 8.11(d)3. *“Municipal Public Access Plans shall require installation and maintenance of appropriate public access signage.”*

12. It was requested that as part of the DEP's review of a MPAP that the fishing community be notified when a proposed plan has been submitted. It was also requested that the plan be electronically distributed or posted on DEP's web site.

The Department agrees and therefore has added a MPAP review process at N.J.A.C. 8.11(i) that requires the Department to post the proposed MPAP on its website and to notify anyone who requested notice of applications. A 30-day public comment period is also required. (pg. 40)

13. It was requested that the Department reach out to the appropriate DEP personnel in the Division of Fish & Wildlife to review a proposed MPAP to ensure fishing access has been appropriately addressed.

The Department has established a team of professionals to review MPAPs. The review staff will reach out to the Division of Fish & Wildlife and any other appropriate DEP Division as needed.

14. It was requested that the Department commit to posting the date & time a municipality will conduct a public hearing on a proposed MPAP.

The following language has been added at N.J.A.C. 8.11(j)2, *“Notify the Department two weeks in advance of the dates and times of any scheduled public meetings on the approved Municipal Public Access Plan. The Department shall post the meeting information on its website”*

15. It was requested that the Department clarify that the Public Trust Doctrine will be a minimum standard that must be achieved in every MPAP.

Current proposal language (pg. 23)

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8.11(a) applies to Municipal Public Access Plans as well as site specific public access proposals.

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16. It was requested that the Department develop a GIS layer that is viewable through I-Map with the location of public parking and possibly public access points as part of a MPAP.

There is a map currently available on the Department’s website that shows public access points at beaches and also includes a list of amenities available at each access point. The Department will continue to update this map as MPAP’s are approved.

17. It was requested that once a MPAP has been approved that progress reports on how the municipality has been able to maintain and increase their public access should be posted on DEP's web site.

The Department agrees with this comment and has revised the rule proposal to require progress reports every 5 years. In addition, this requirement will be added to 8.11(j) (pg 41)