

To restore, protect, and preserve the natural, chemical, physical, and biological integrity, and the economic potentialities, of the New York/New Jersey Bight through designation and establishment of the New Jersey/New York Clean Ocean Zone and the regulation of various activities therein, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**  
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**A BILL**

To restore, protect, and preserve the natural, chemical, physical, and biological integrity, and the economic potentialities, of the New York/New Jersey Bight through designation and establishment of the New Jersey/New York Clean Ocean Zone and the regulation of various activities therein, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SEC. 1. SHORT TITLE.**

This Act may be cited as the “New Jersey/New York Clean Ocean Zone Act of 2011”.

**SEC. 2. CONGRESSIONAL FINDINGS, POLICY, AND DECLARATION OF PURPOSE.**

(a) FINDINGS.—The Congress finds the following:

(1) The New York/New Jersey Bight is an essential natural and scenic resource of the United States, providing innumerable recreational, commercial, economic and aesthetic benefits and extraordinary ecological, biological, and environmental benefits.

(2) Various harmful activities within the New York/New Jersey Bight, including the dumping of contaminated dredged material, the dumping of various wastes, point source and nonpoint source pollution, the extraction of nonrenewable natural resources, and the potential development of deepwater oil and gas facilities, have caused or may cause serious adverse impacts to human health, welfare, and amenities, or threaten the marine environment, ecological systems, and economic potentialities of the New York/New Jersey Bight.

(3) Ecologically unique areas at risk from degradation caused by pollution, such as the New York/ New Jersey Bight, are worthy of special protections to reduce such threats. Pollution-preventing protections have been established for and awarded to the Great Lakes and the Everglades, for example.

(b) PURPOSE.—

(1) IN GENERAL.—The purpose of this Act is to restore, protect and preserve, the natural, chemical, physical, and biological integrity, and the economic potentialities, of the New York/New Jersey Bight.

(2) LIMITATION.—This Act is not intended—

(A) to authorize or require any fisheries management actions within the New Jersey/New York Clean Ocean Zone, including fisheries management allocation and techniques or any similar fisheries management related activity; or

(B) to prohibit or limit beach replenishment activities, flood control activities, erosion control activities, or habitat restoration projects on or along the shoreline adjoining the New Jersey/New York Clean Ocean Zone.

### **SEC. 3. DESIGNATION OF NEW JERSEY/NEW YORK CLEAN OCEAN ZONE.**

(a) DESIGNATION.—The New York/New Jersey Bight shall be known and designated as the “New Jersey/New York Clean Ocean Zone”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the area referred to in subsection (a) shall be deemed to be a reference to the “New Jersey/New York Clean Ocean Zone”.

### **SEC. 4. REGULATION OF THE NEW JERSEY/NEW YORK CLEAN OCEAN ZONE.**

(a) OCEAN DUMPSITES.—

(1) PROHIBITION OF DESIGNATION OR ESTABLISHMENT OF NEW SITES.—Neither the Administrator, the Secretary, nor any State may issue a permit for ocean dumping, nor designate or establish any new disposal site, within the New Jersey/New York Clean Ocean Zone, including pursuant to section 102, 103, 104A, or 104B of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1412, 1413, 1414a, 1414b) or section 4 of Public Law 95–153 (33 U.S.C. 1412a).

(2) TERMINATION OF EXISTING DESIGNATIONS.—Except as provided by paragraph (3), all existing designations of disposal sites within the New Jersey/New York Clean Ocean Zone are hereby terminated, and such sites shall not be used as disposal sites.

(3) USE OF HARS.—Notwithstanding paragraphs (1) and (2), and consistent with the terms, conditions, and limitations of section 228.15(d)(6) of title 40, Code of Federal Regulations, dredged material may be placed in the Primary Remediation Area of the HARS for the purposes of ecological remediation and protection of sensitive species at sensitive life stages, if the Administrator determines, following testing and analytical measures established by regulation for materials proposed for ocean dumping, that the dredged material qualifies as material for remediation.

(b) REGULATION OF POINT SOURCES.—

(1) PROHIBITION ON DISCHARGES FROM NEW POINT SOURCES.—The discharge of a pollutant into the New Jersey/New York Clean Ocean Zone from a point source constructed or put into use after the date of enactment of this Act is prohibited under section 301 of the Federal Water Pollution Control Act (33 U.S.C. 1311). Neither the Administrator, nor any State, may issue a permit, pursuant to section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) or comparable State law, for the discharge of a pollutant into the New Jersey/New York Clean Ocean Zone from a point source constructed or put into use after such date of enactment.

(2) LIMITATIONS ON EXISTING PERMITS.—A State or Federal permit issued pursuant to section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) for the discharge of a pollutant into the New Jersey/New York Clean Ocean Zone may not be renewed, reissued, or modified after the date of enactment of this Act to allow for any increase of discharge capacity of any point source or sources. The renewed, reissued, or modified permit may not contain any effluent limitation that is less stringent than comparable effluent limitations in such permit and shall otherwise require compliance with all other applicable laws and regulations under the Federal Water Pollution Control Act, including applicable water quality standards.

(c) EXTRACTION OF NONRENEWABLE NATURAL RESOURCES.—

(1) PROHIBITION.—The permanent extraction of any nonrenewable natural resource from the New Jersey/New York Clean Ocean Zone for commercial or industrial use is prohibited, unless such removal is undertaken for the primary purpose of maintaining or establishing navigation channels.

(2) LIMITATION.—This Act shall not be used to restrict or otherwise limit beach replenishment activities, flood control activities, erosion control activities, or habitat restoration projects on or along the shores of the New Jersey/New York Clean Ocean Zone.

(d) NONRENEWABLE ENERGY FACILITIES.—Except as set forth in subsection (e)—

(1) the creation of any type of nonrenewable energy facility or pipeline within the New Jersey/New York Clean Ocean Zone is prohibited;

(2) the Secretary of Transportation shall not issue any license pursuant to section 4 of the Deepwater Port Act (33 U.S.C. 1503) or section 106 of the Maritime Transportation Security Act of 2002 (116 Stat. 2086) for the ownership, construction, or operation of a deepwater port used for the production, storage, transport, or transfer of nonrenewable energy in the New Jersey/New York Clean Ocean Zone;

(3) there shall be no conveyance of any interest in any federally owned, submerged or subterranean land within the New Jersey/New York Clean Ocean Zone for the purpose of establishing or operating a nonrenewable energy facility, including—

(A) the conveyance of such an interest for any pipeline that transports any nonrenewable natural resource or any refined product produced therefrom, within or through the New Jersey/New York Clean Ocean Zone; and

(B) the grant or lease of such right-of- ways by the Secretary of the Interior pursuant to section 28 of the Mineral Leasing Act (9 U.S.C. 185), or the Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.).

(e) RENEWABLE ENERGY FACILITIES.—

(1) LIMITATION ON GRANTING LEASES, ETC.— No lease, easement, or right-of-way for a renewable energy facility may be granted for any federally owned, submerged, or subterranean land in the New Jersey/New York Clean Ocean Zone except in accordance with this subsection, section 8(p) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(p)), and section 388 of the Energy Policy Act of 2005 (43 U.S.C. 1337 note).

(2) COMPLIANCE WITH APPLICABLE LAWS.— The granting of any lease, easement, or right-of-way referred to in paragraph (1) shall comply with all applicable laws and regulations and shall not be exempt nor categorically excluded from the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Section 102 of such Act shall be applied to each such lease, easement, and right-of-way on a project-by-project basis.

(3) DETERMINATION REQUIRED.—No lease, easement, or right-of-way referred to in paragraph (1) may be granted unless—

(A) the Secretary of the Interior, after completion of any review required by paragraph (2), determines that such action—

(i) complies with all environmental criteria, conditions, and restrictions established by or pursuant to section 8(p) of the Outer Continental Shelf Lands Act (43 15 U.S.C. 1337(p)) or section 388 of the Energy Policy Act of 2005; and

(ii) will not unreasonably degrade or endanger human health, welfare, or amenities, the marine environment, or ecological systems or economic potentialities thereof; and

(B) the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration, concurs in writing with the determination of the Secretary of the Interior under subparagraph (A).

(4) STANDARD OF REVIEW.—For purposes of paragraph (3), an action is deemed to unreasonably degrade or endanger human health, welfare, or amenities, the marine environment, or ecological systems or economic potentialities thereof, only if the action is likely to cause, on an individual or cumulative basis—

(A) significant adverse impacts to marine habitat, ecosystem diversity, productivity, and stability of the biological community within the area of the renewable energy facility concerned and surrounding biological communities;

(B) a threat to human life, health, or existing or potential amenities through—

(i) the creation of a hazard to navigation, fishing, or recreation;

(ii) direct exposure to pollutants; or

(iii) consumption of exposed aquatic organisms; or

(C) significant impairment of recreational, scientific, or economic benefits currently or potentially derived from or within the area of the renewable energy facility and surrounding waters.

(f) UNDERWATER RESEARCH AND EXPLORATION.—

(1) IN GENERAL.—Nothing in this Act restricts or otherwise limits underwater research or exploration of the aquatic environment within the New Jersey/New York Clean Ocean Zone, if such re-search or exploration—

(A) will not adversely affect, or will be performed for the sole purpose of furthering, the restoration, protection and preservation of, the natural, chemical, physical and biological integrity of the New Jersey/New York Clean Ocean Zone; and

(B) is conducted in accordance with all other applicable laws and regulations.

(2) PROHIBITION.—The conduct of any under-water research or exploration of the aquatic environment within the New Jersey/New York Clean Ocean Zone that does not comply with paragraph (1) is prohibited.

## **SEC. 5. SUPPORT FOR MARINE ACTIVITIES.**

### (a) MARINE ACTIVITIES.—

(1) **ACTIVITIES NOT LIMITED.**—Nothing in this Act shall be considered to restrict or otherwise limit the conduct of any of the maritime activities described in paragraph (2) in the New Jersey/New York Clean Ocean Zone, to the extent that such activity does not violate any other applicable law or regulation.

(2) **MARINE ACTIVITIES DESCRIBED.**—The maritime activities referred to in paragraph (1) are the following:

- (A) Boating.
- (B) Underwater diving.
- (C) Surfing, swimming, and other similar recreational activities.
- (D) Recreational fishing and commercial fishing.
- (E) The creation of artificial reefs.

(b) **FISHERIES MANAGEMENT ACTIONS NOT AUTHORIZED.**—This Act shall not be used to adopt or enact fisheries management actions within the New Jersey/New York Clean Ocean Zone, including fisheries management allocation and techniques or any similar fisheries management related activity.

## **SEC. 6. ENFORCEMENT.**

This Act may be enforced under sections 105 and 107 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1415 and 1417), except that section 4(b) of this Act may be enforced under sections 309 and 505 of the Federal Water Pollution Control Act (33 U.S.C. 1319 and 1365).

## **SEC. 7. DEFINITIONS.**

Except as otherwise specifically provided, in this Act:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) **ARTIFICIAL REEF.**—The term “artificial reef” means a federally or State approved structure that is constructed or placed in the waters of the New York/New Jersey Bight for the purpose of enhancing one or more of benthic relief, fishery re-

sources, commercial diving, recreational diving, surfing, commercial fishing opportunities, and recreational fishing opportunities.

(3) CONTINENTAL SHELF.—The term “Continental Shelf” means the seabed and subsoil of the submarine areas adjacent to the coast of the United States, and all submerged lands lying seaward and outside of the area of lands beneath navigable waters (as that term is defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301)), extending to a depth of 1000 fathoms.

(4) DISCHARGE OF A POLLUTANT.—The term “discharge of a pollutant” means any addition of any pollutant to the waters of the New York/New Jersey Bight from any point source.

(5) DISPOSAL SITE.—The term “disposal site” means a precise geographical area designated under Federal law for the dumping of any material into the waters of the New York/New Jersey Bight, including, but not limited to, any site at which dumping is authorized under a permit issued under section 102 or 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1412, 1413).

(6) DREDGED MATERIAL.—The term “dredged material” means any material excavated or dredged from the navigable waters of the United States.

(7) DUMPING.—The term “dumping” has the meaning that term has under section 3(f) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1402(f)).

(8) EFFLUENT LIMITATION.—The term “effluent limitation” has the meaning that term has in section 502(11) of the Federal Water Pollution Control Act (33 U.S.C. 1362(11)).

(9) HARS.—The term “HARS” means the dredged material disposal site located within the New York/New Jersey Bight and bounded by the co-ordinates set forth in section 228.15(d)(6) of title 40, Code of Federal Regulations (in effect as of July 1, 1999), also known as the Historic Area Remediation Site.

(10) MATERIAL.—The term “material” has the meaning that term has in section 3(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1402(c)).

(11) MATERIAL FOR REMEDIATION.—

(A) IN GENERAL.—The term “material for remediation” means dredged material that, through testing and analysis, is determined by the Administrator to—

(i) contain, or to cause through bio-accumulation, chemical concentrations of any Contaminant of Concern that are less than those

concentrations present in, or caused through bioaccumulation by, the surficial sediment collected at a depth of no more than 6 inches from the proposed placement site within the HARS;

(ii) have fewer screening level exceedances for Contaminants of Concern than the surficial sediment collected at a depth of no more than 6 inches from the proposed placement site within the HARS, except material for remediation shall have no Screening Level exceedances if such surface sediment have no such exceedance; and

(iii) otherwise complies with applicable Federal and State laws and regulations established for materials proposed for ocean dumping, including, without limitation, section 227.6 of title 40, Code of Federal Regulations.

(B) CONTAMINANT OF CONCERN DE-FINED.—In this paragraph, the term “Contaminant of Concern” means—

(i) any of the pollutants specified in the chart in subparagraph (C) and having the corresponding Screening Level value (in parts per billion dry weight); and

(ii) any additional pollutant designated under subparagraph (D).

(C) CHART.—The chart referred to in sub-paragraph (B) is as follows:

<b>Pollutant</b>	<b>Screening level</b>
Cadmium .....	1,200.0000
Chlordane .....	0.5000
Dieldrin .....	0.0200
2,3,7,8 TCDD (Dioxin) .....	0.0036
Total DDTs .....	1.5800
Lead .....	46,700.0000
Mercury .....	150.0000
Total Polychlorinated Biphenyls (PCBs) .....	22.7000
Total Polynuclear Aromatic Hydrocarbons (PAHs) .....	4,022.0000.

(D) ADDITIONAL POLLUTANTS.—The Administrator shall designate additional pollutants and corresponding Screening Level values for purposes of this paragraph as is necessary to achieve the purpose and intent of section 4(a)(3).

(12) NAVIGATION CHANNEL.—The term “navigation channel” means a channel that is federally or State designated and open to permit free and unobstructed navigation by all types of vessels and tows normally using such waterways.

(13) NEW YORK/NEW JERSEY BIGHT.—The term “New York/New Jersey Bight” means the geographic area within the Atlantic Ocean generally known by that name and located within the boundaries described more particularly as follows: Beginning at a point at the southern tip of Cape May, New Jersey, and running—

(A) northerly along the mean high water mark of the coast of New Jersey to the northern tip of Sandy Hook, New Jersey, then

(B) northeasterly along the transect of the northern tip of Sandy Hook and the western tip of Long Island, New York, then

(C) easterly along the mean high water mark of the south shore of Long Island to the eastern tip of Long Island, New York, then

(D) southerly to the eastern bank of Block Canyon to the 1,000 fathom line of the Continental Shelf, then

(E) southwesterly along the 1,000 fathom line to the western bank of Baltimore Canyon, and then

(F) northwesterly to the point of beginning at the southern tip of Cape May, New Jersey.

(14) NONRENEWABLE ENERGY.—The term “nonrenewable energy” means any form of energy that is produced from a nonrenewable natural re-source, including oil, natural gas, liquid or gaseous fuels, sand, or rock, any product produced there-from, or any synthetic version thereof.

(15) NONRENEWABLE ENERGY FACILITY.—The term “nonrenewable energy facility” means any equipment, pipeline, or facility, other than an electrical transmission cable, a communication cable, or a vessel in transit, that is or will be used primarily—

(A) in the development, production, conversion, storage, transfer, processing, or transportation of any non-renewable natural resource; or

(B) for the manufacture, production, or assembly of any equipment, machinery, product, or device that is involved in any activity de-scribed in subparagraph (A).

(16) NONRENEWABLE NATURAL RESOURCE.— The term “nonrenewable natural resource”—

(A) except as provided in subparagraph (B), means any naturally occurring, inanimate object, mineral, or nonliving resource that can-not be replenished by natural means at the same rate that it is consumed; and

(B) does not include any manmade object.

(17) PERMANENT EXTRACTION.—The term “permanent extraction” means the permanent removal of any nonrenewable natural resource from the marine environment, including the water column, the seabed, or subsoil.

(18) PIPELINE.—The term “pipeline”—

(A) except as provided in subparagraph (B), means any pipe or conveyance constructed or used primarily for the transport of non-renewable energy; and

(B) does not include an electrical trans-mission cable or communications cable.

(19) POLLUTANT.—The term “pollutant”—

(A) except as provided in subparagraph (B), has the meaning that term has in section 502(6) of the Federal Water Pollution Control Act (33 U.S.C. 1362(6)); and

(B) does not include any material approved under Federal law or a stricter State standard for use in the construction or maintenance of a permitted artificial reef.

(20) POINT SOURCE.—The term “point source” has the meaning that term has in section 502(14) of the Federal Water Pollution Control Act (33 U.S.C. 1362(14)).

(21) RENEWABLE ENERGY RESOURCE.—The term “renewable energy resource”—

(A) means a source of energy that is re-generative and is produced without depleting or otherwise diminishing the resource from which such energy is derived; and

(B) includes solar, thermal, photochemical, photoelectric, photosynthetic, hydropower, geo-thermal, tidal, and wind energy sources.

(22) RENEWABLE ENERGY FACILITY.—The term “renewable energy facility” means any equipment or facility, other than a vessel in transit, that is or will be used primarily—

(A) in the development, production, conversion, storage, transfer, processing, or transportation of any renewable energy resource; or

(B) for the manufacture, production, or assembly of equipment, machinery, products, or devices, which are involved in any activity de-scribed in subparagraph (A).

(23) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(24) VESSEL IN TRANSIT.—The term “vessel in transit”—

(A) means a vessel that has departed for, but has not yet arrived at, its next point of destination; and

(B) includes any vessel described in sub-paragraph (A) that is temporarily anchored pending such arrival.