

## ALABAMA<sup>1</sup>

### *State Authority for Marine Protection*

#### Summary of State Authorities

Alabama does not have a comprehensive statute regarding protection of marine areas. However, the state does have a legal framework for regulating oyster reefs, shrimp nurseries, and other areas that could be used for marine conservation, as well as a coastal area management program that includes planning for Alabama’s coastal and marine areas. In addition, Alabama has a state parks system that, while more tailored to conservation and recreational use of inland areas, could be applied to marine areas.

	Wildlife Management Areas (WMAs)	Alabama State Parks and Monuments	Oyster Reefs and Shrimp Nurseries	Coastal Area Management Program
Legal requirement	Authority to establish WMAs with closed or regulated areas for hunting and fishing	Allows acquisition of areas for State Parks and Monuments	Authority to close areas for oyster or shrimp harvesting	Planning and permit requirements in coastal lands and waters
Citation <sup>2</sup>	Ala. Code 9-11-300 to -307 (1939-1940)	Ala. Code 9-2-3, -9, -10, Chapters 9-14, 9-14A	Ala. Code 9-2-4, 9-12-20 to -126 (1935-1940)	Ala. Code Chapter 9-7 (1976); Ala. Admin. Code 335-8-1, -2
Designation authority	Alabama Department of Conservation and Natural Resources (ADCNR)	ADCNR; Alabama State Parks Improvement Corporation	ADCNR Marine Resources Division	Coastal area defined by statute; Alabama Department of Environmental Management (ADEM) may designate “areas of particular concern”
Management & enforcement authority	ADCNR	ADCNR State Parks Division	ADCNR Marine Resources Division	ADEM
Jurisdiction & boundaries	No limit specified; may be on state-owned or non-state-owned tracts	No limit specified; definition of “land” includes submerged lands	All state waters	Coastal waters and shoreline below 10-ft level

<sup>1</sup> This state chapter is part of a 23-state assessment of state and local authority for marine protection. It should be read in conjunction with the Executive Summary, Introduction and Methodology Chapters in order to fully understand the scope and approach. Other chapters are available at [www.eli-ocean.org/mpa](http://www.eli-ocean.org/mpa).

<sup>2</sup> The citation date provided is the earliest date of enactment and does not reflect subsequent amendments unless otherwise noted. The enactment date is meant to inform the reader of how long the protection authority has existed.

	Wildlife Management Areas (WMAs)	Alabama State Parks and Monuments	Oyster Reefs and Shrimp Nurseries	Coastal Area Management Program
Prohibited uses	ADCNR has authority to establish regulations; specifically, may set closed fishing/hunting areas within WMAs (seasonal or year-round)		May designate closed areas for fishing in general (seasonal or year-round); may also order seasonal or year-round closure of oyster and shrimp harvesting	No state agency may issue permits for listed activities in coastal areas (including projects impacting wetlands, discharges into coastal waters, etc.) without ADEM review and approval
Permitted uses	None specified			Permit and review process for listed activities in coastal areas; in designated areas, priority on preserving or maintaining “existing natural state” and “natural function of wetlands”

**Jurisdiction and Administrative Authority**

Alabama’s jurisdiction over coastal waters extends three nautical miles into the Gulf of Mexico from the average low tide, under the terms of the federal Submerged Lands Act.<sup>3</sup> As a general matter submerged lands, as well as seafood present in coastal waters, are state property unless “legally divested” in accordance with state law.<sup>4</sup> Submerged lands are managed by the Alabama Department of Conservation and Natural Resources (ADCNR).<sup>5</sup>

**Wildlife Management Areas**

The Alabama Department of Conservation and Natural Resources (ADCNR) has authority to establish wildlife management areas (WMAs).<sup>6</sup> The Department may enter into agreements with private owners or federal authorities to designate non-state-owned tracts as WMAs.<sup>7</sup> Its statutory authority does not limit WMAs to land-based tracts; and while it is not clear that any existing WMAs include coastal waters, the statute does not appear to prohibit it. Three existing WMAs in the state include coastal areas and also overlap with Forever Wild Program tracts (described below): the Grand Bay Savanna WMA, Mobile-Tensaw Delta WMA, and Upper Delta WMA.

Within the WMAs, the Commissioner of Conservation and Natural Resources has authority to issue regulations on the management and protection of wildlife.<sup>8</sup> Specifically, regulations may set open and

<sup>3</sup> Submerged Lands Act, 43 U.S.C. § 1301(a)(2). Alabama state law conflicts with the federal law by attempting to provide that the State has authority to lease submerged lands for oil and gas exploration up to six leagues (20.7 miles) from the shoreline. Ala. Code § 9-17-62.

<sup>4</sup> See Ala. Code § 9-12-20 (ownership and control of seafoods); Ala. Code § 9-17-62 (authority to lease submerged lands for exploration of oil, gas, and other minerals).

<sup>5</sup> See *id.*

<sup>6</sup> Ala. Code § 9-11-300.

<sup>7</sup> Ala. Code § 9-11-300.

<sup>8</sup> Ala. Code § 9-11-301.

closed seasons for hunting and fishing within the managed areas; the Commissioner may also set special fees for hunting or fishing in a particular WMA, a portion of which may be given to the owner or administrator that cooperated with the state in establishing that WMA.<sup>9</sup> ADCNR has the authority to completely close WMAs or areas within WMAs (except those under cooperative wildlife management agreements) to all hunting and fishing.<sup>10</sup> This authority could likely be used to create a marine WMA, with certain areas closed to fishing.

## Alabama State Park System

### *State Parks and Monuments*

The Alabama Department of Conservation and Natural Resources (ADCNR) oversees the state park system. ADCNR has authority, dating from at least 1940, to “acquire land by donation, purchase, condemnation or lease,” “for the purpose of establishing, developing and maintaining state parks and parkways.”<sup>11</sup> Alabama statutes do not prescribe a specific process for the Department to use in determining whether and where to establish state parks or monuments. Once they are established, ADCNR has authority to issue regulations for the “management, administration, occupancy and use” of state parks.<sup>12</sup>

The statutory definition of “state parks” includes areas that are “primarily valuable for recreational purposes because of [their] scenic, historic, prehistoric, archaeological, scientific or other distinctive characteristics or nature features.”<sup>13</sup> Likewise, the Alabama Code defines “monuments” or historic sites as “[a]ny area of land, with or without buildings, structures or other objects thereon, wholly or primarily of historic, prehistoric, archaeological, scientific or commemorative interest or value.”<sup>14</sup> These definitions do not explicitly envision protection of marine areas, nor do they preclude it; the statute specifically includes “land under water” in the definition of “land” for both parks and monuments,<sup>15</sup> which would seem to allow for designation of a marine conservation area (either as a standalone protected area or as part of a land-based state park or monument). Gulf State Park is one example of state park authority being used to protect pristine beach areas.<sup>16</sup>

The Alabama Public Recreational and Historical Facilities Improvement Act creates a state entity, the Alabama State Parks System Improvement Corporation, and grants it power to “acquire, provide, construct, improve, renovate, equip and maintain the state parks system,” including the authority to purchase areas, receive by gift, or use eminent domain power to acquire property.<sup>17</sup>

### *Forever Wild Program*

In addition to state parks, ADCNR also manages areas under Alabama’s Forever Wild Program, which was created in 1992 by a state constitutional amendment.<sup>18</sup> While the Program does not specifically address marine areas, it does provide a mechanism for the state to acquire coastal areas that may be relevant to the overall protection of the marine environment.

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<sup>9</sup> Ala. Code § 9-11-300.

<sup>10</sup> Ala. Code § 9-11-302.

<sup>11</sup> Ala. Code § 9-2-3.

<sup>12</sup> Ala. Code § 9-2-3.

<sup>13</sup> Ala. Code § 9-14-1.

<sup>14</sup> Ala. Code § 9-14-1.

<sup>15</sup> Ala. Code § 9-14-1(4).

<sup>16</sup> See <http://www.alapark.com/gulfstate>

<sup>17</sup> Ala. Code § 9-14A-7.

<sup>18</sup> Ala. Const. amend. 543.

The Forever Wild Program allows the state to purchase land (from willing sellers only; no condemnation authority is granted) to be “preserved for use as state parks, nature reserves, recreation areas, and wildlife management areas.”<sup>19</sup> The Program is funded by a percentage of the state’s natural gas royalties, grants, and fees for special license plates.<sup>20</sup> Funding was originally established for a 20-year period, which was renewed for an additional 20 years by constitutional amendment in 2012.<sup>21</sup>

Lands in the Forever Wild Program are managed by ADCNR. Title to the lands is held by a special Trust that must ensure that they are used for “conservational, educational, recreational or aesthetic purposes.”<sup>22</sup> The Program allows for multiple use of Forever Wild lands, but prohibits construction “not related to the stewardship of [Forever Wild land]”<sup>23</sup> and uses that are “not compatible with the primary purpose for acquitting the land.”<sup>24</sup> However, Forever Wild lands may still be subject to condemnation for other public uses, such as transportation, energy, or public utility projects, to the same extent as private lands.<sup>25</sup>

While the program includes tracts of land throughout the state, portions of the following coastal areas are included: the Grand Bay Savanna, the Mobile-Tensaw Delta, Weeks Bay, and Lillian Swamp (on the Perdido Bay).<sup>26</sup>

### Oyster Reefs and Shrimp Nurseries

Oyster reefs in Alabama are managed by the Marine Resources Division of ADCNR.<sup>27</sup> Both ADCNR and the Alabama Department of Health are authorized to close certain areas for oyster harvesting, for purposes of oyster management or public health.<sup>28</sup> As of 2010, most of the northern parts of Mobile Bay and the Mobile-Tensaw Delta were listed as permanently closed to oyster harvesting, with Weeks Bay and the rest of the northern part of the Bay listed as conditionally closed.<sup>29</sup>

ADCNR also has statutory authority to set areas where shrimp may be taken (or may not be taken), and may set the opening and closing of shrimp catching seasons.<sup>30</sup> Shrimp nurseries, where shrimp may not be taken, are expressly listed in the Alabama Administrative Code.<sup>31</sup> These areas may, as a secondary result, help protect submerged vegetation.<sup>32</sup>

### Coastal Area Management Program

Under the Alabama Code, the state’s “coastal area” includes coastal waters as well as submerged lands and adjacent shorelands, extending inland “to the extent necessary to control shorelands, the uses of

<sup>19</sup> Ala. Const. amend. 543 § 1; see Alabama Forever Wild Land Trust, <http://alabamaforeverwild.com/>.

<sup>20</sup> See Alabama Forever Wild Land Trust, How we are funded, <http://alabamaforeverwild.com/index.php/about-us/how-we-are-funded> (accessed Mar. 1, 2013).

<sup>21</sup> See Ala. Const. amend. 860.

<sup>22</sup> Ala. Const. amend. 543 § 3(b).

<sup>23</sup> Ala. Const. amend. 543 § 3(e).

<sup>24</sup> Ala. Const. amend. 543 § 9.

<sup>25</sup> Ala. Const. amend. 543 § 3(c).

<sup>26</sup> See ADCNR, Forever Wild Program Land Tracts, <http://www.outdooralabama.com/public-lands/stateLands/foreverWild/FWTracts/> (accessed Mar. 1, 2013).

<sup>27</sup> Ala. Code §§ 9-12-20, -21; see Stephanie Showalter & Lisa C. Schiavinato, Marine Protected Areas in the Gulf of Mexico: A Survey 9 (2003).

<sup>28</sup> See Alabama Commercial/Recreational Oyster Harvest Information, <http://www.outdooralabama.com/fishing/saltwater/regulations/oyster.pdf> (2010); Ala. Code § 9-2-4(c).

<sup>29</sup> See Alabama Commercial/Recreational Oyster Harvest Information, *supra*.

<sup>30</sup> Ala. Code § 9-2-4(f).

<sup>31</sup> Ala. Admin Code 220-3-4.

<sup>32</sup> See ELI, Gulf of Mexico Habitat Conservation & Restoration 74 (2011) (citing conversation with expert).

which have a direct and significant impact on the coastal waters.”<sup>33</sup> “Coastal waters,” in turn, are defined to include water along the state’s shoreline with a “measurable quantity or percentage of sea water, including but not limited to, sounds, bays, lagoons, bayous, ponds and estuaries.”<sup>34</sup>

Since 1979, coastal areas have been subject to Alabama’s Coastal Area Management Program (ACAMP), which is overseen by the Alabama Department of Environmental Management (ADEM).<sup>35</sup> “Coastal areas” under the program include land along the coasts, extending inland up to the 10-foot surface elevation contour, along the Gulf Coast and Mobile Bay throughout the state.<sup>36</sup>

The Coastal Area Management Program is described in Alabama’s Administrative Code.<sup>37</sup> ADEM’s regulations require a permit and review process for certain activities undertaken in coastal areas, such as projects impacting wetlands, discharges into coastal waters, siting of energy facilities, large commercial or residential developments, groundwater extraction, dredging & filling, etc.<sup>38</sup> Under the regulations, no other state agency may issue a permit for any of the listed activities within the coastal zone without the approval of ADEM, certifying that the permit is consistent with the ACAMP.<sup>39</sup>

#### *Special Management Areas*

The Alabama statute on coastal area management gives ADEM authority to designate “areas of particular concern” within the coastal area as part of the ACAMP, as well as authority to issue “broad guidelines on priority of uses in particular areas.”<sup>40</sup> These areas are listed in ADEM’s regulations as “Special Management Areas” and broken down into two categories: Geographical Areas of Particular Concern (conservation-based or otherwise) and Areas of Preservation and Restoration.<sup>41</sup> Areas of Preservation and Restoration are more specifically designated for conservation in the regulations, which state that “uses which alter the existing natural state of [the area] may not be permissible.”<sup>42</sup> While designation of these areas does not alter the permit application process, it places a priority on activities that preserve or maintain the “existing natural state” of sensitive areas and the “natural function of wetlands,”<sup>43</sup> and does require ADEM to consider those priorities in making permit decisions.<sup>44</sup>

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<sup>33</sup> Ala. Code § 9-7-10(1).

<sup>34</sup> Ala. Code § 9-7-10(2).

<sup>35</sup> Ala. Code §§ 9-7-10 to -20.

<sup>36</sup> Ala. Code § 9-7-15. A map of the area below the 10-foot line subject to ACAMP can be found on the ADEM website at <http://adem.alabama.gov/programs/coastal/default.cnt> (accessed 3/8/13).

<sup>37</sup> See Ala. Admin. Code §§ 335-8-1, -2, *available at* <http://www.alabamaadministrativecode.state.al.us/docs/adem/index.html>.

<sup>38</sup> Ala. Admin Code § 335-8-2.

<sup>39</sup> Ala. Admin Code § 335-8-1-.08.

<sup>40</sup> Ala. Code § 9-7-15.

<sup>41</sup> Ala. Admin Code § 335-8-1-.04.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* § 335-8-1-.03(2)(a).

*Evaluation of State Authorities<sup>45</sup>*

FACTORS	Wildlife Management Areas	Alabama State Parks and Monuments	Oyster Reefs and Shrimp Nurseries	Coastal Area Management Program
<b>Legal Regime</b>	Regulatory ★★★★★	Regulatory ★★★★★	Regulatory ★★★★★	Planning ★★★★★
<b>Ocean Jurisdiction</b>	May be land- or water-based; some coastal WMAs exist ★	Beach and tidal (However, definition of “land” also includes submerged land) ★	Marine waters with oyster reefs or used as shrimp nurseries ★★★★★	Coastal water and land to 10-foot elevation contour ★★★★★
<b>Durability</b>	May be annual/seasonal or permanent ★★	Permanent ★★★★★	May be annual/seasonal or permanent ★★	Permanent ★★★★★
<b>Consistency</b>	Authorizes year-round protection ★★★★★	Authorizes year-round protection ★★★★★	Authorizes year-round protection ★★★★★	Authorizes year-round protection ★★★★★
<b>Habitat</b>	Byproduct = habitat protection ★★	Could be oriented toward habitat protection ★★★★★	Species-specific ★	Goal: habitat protection ★★★★★
<b>Sector</b>	Authorizes single-sector ★	Authorizes multi-sector ★★★★★	Authorizes single-sector ★	Managed
<b>Enforcement</b>	WMA-specific criminal penalties for unauthorized hunting ★★★★★	No marine-specific enforcement ★	Specific criminal penalties for unauthorized harvesting ★★★★★	No marine-specific enforcement ★
<b>Extent (Scope)</b>	Multi-site, expansion possible ★★★★★	Multi-site, expansion possible ★★★★★	Multi-site, expansion possible ★★★★★	Multi-site ★★
<b>Process for designation or expansion</b>	No MPA-specific public process ★★	No MPA-specific public process ★★	No MPA-specific public process ★★	No MPA-specific public process ★★

In sum, Alabama’s wildlife management areas and state parks or monuments may present the best opportunity for broader protection of marine areas; however, these instruments both seem designed (and are applied more frequently) for land-based protection. Oyster reefs and shrimp nurseries can provide species-specific protection that may have overall benefits for marine habitats. Coastal management can also support place-based protection of marine areas through the designation of special management areas, although this is an indirect way to provide place-based protection in the marine environment itself.

<sup>45</sup> For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.

## *Local Authority for Marine Protection*

### **Summary of Local Authorities**

No specific provision in the Alabama Code or Constitution specifies whether counties or other local governments have jurisdiction over coastal waters or submerged lands in Alabama; therefore, it is not clear that counties or other local jurisdictions would have broad authority to create place-based protection schemes for marine areas. However, provisions in the Alabama Code do suggest the possible participation of counties and municipalities in the management of coastal areas.

Alabama’s coastline lies within the borders of two counties: Mobile County, which includes the border with Mississippi and the western half of Mobile Bay, and Baldwin County, which includes the eastern half of Mobile Bay and runs to the border with Florida. Each county has several municipalities on the coast, along with unincorporated areas.

No specific provision in the Alabama Code or Constitution specifies whether counties or other local governments have jurisdiction over coastal waters or submerged lands in Alabama.<sup>46</sup> However, provisions in the Alabama Code do suggest the possible participation of counties and municipalities in the management of coastal areas. In the chapter on Coastal Area Management, the Alabama Code declares that it is the state’s policy to “encourage and assist counties and municipalities, wherever applicable, to exercise effectively their responsibilities in the coastal area through the development and implementation of administration programs to achieve wise use of the land and water resources of the coastal area . . . .”<sup>47</sup>

#### *Baldwin County Conservation Development*

Baldwin County zoning ordinances allow for Conservation Development areas, which may be created in residential, rural, or rural agricultural zones, with a requirement that at least 20 percent of the buildable area in the Conservation Development be maintained as open space, protected by a conservation easement.<sup>48</sup> Conservation Developments may include multiple parcels, but must be contiguous and cover an area of at least 10 acres, and must be developed under a single development plan (whether carried out at once or in stages). This zoning ordinance could be used in a coastal area to preserve a specific piece of coastline by way of conservation easement.

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<sup>46</sup> County boundaries are not explicitly defined in Alabama’s current Code of 1975, and the current Constitution, dating to 1901, does not describe county boundaries or jurisdiction, but rather ratifies the boundaries as they existed prior to 1901. See Ala. Const. § 38. Alabama Code states that all seafood in water beds and bottoms in Alabama bordering on or connecting with the Gulf of Mexico are property of the State, under the control of ADCNR, unless “legally divested” in accordance with state law. Ala. Code § 9-12-20.

<sup>47</sup> Ala. Code § 9-7-12.

<sup>48</sup> Baldwin County Zoning Ordinances art. 11, available at <http://www.co.baldwin.al.us/uploads/Article%2011,%207-21-09.pdf> (accessed Mar. 4, 2013).