

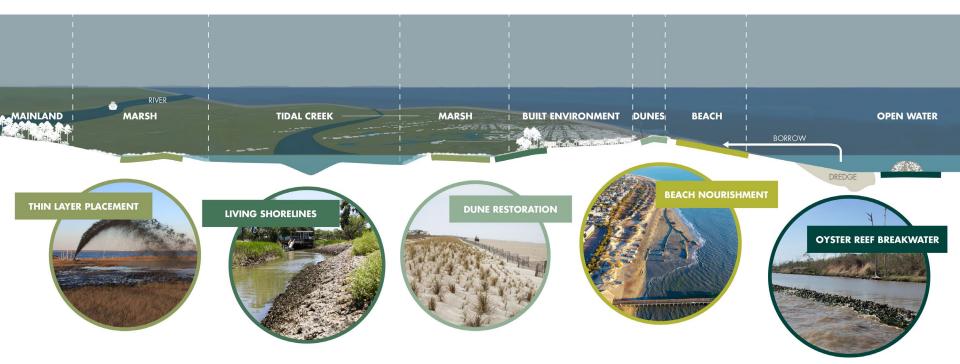
Synching with Policies – Required Efforts and Partnerships to Scale Up

Shana Jones, J.D.
Associate Public Service Faculty,
Assistant Director, Carl Vinson Institute of Government,
Georgia Sea Grant Law Program





What are we going to do?



Graphic developed by Rhett Jackson and Kelsey Broich, Network for Engineering with Nature, University of Georgia. Thin layer placement image by Tim Welp, USACE. Living shoreline and dune restoration images by UGA Marine Extension and Georgia Sea Grant. Beach nourishment image by Alan Robertson, City of Tybee. Oyster Reef Breakwater, Bon Secour National Wildlife Refuge in Alabama photo used with permission and provided to the University of Georgia by USACE, Engineering With Nature.

Policy Alignment: Some Framing

Structure of U.S. Government: Federalism

State Law: Findings from Stabilization Law Analysis

Legacy Institutions and Laws: USACE, CWA, ESA, etc.

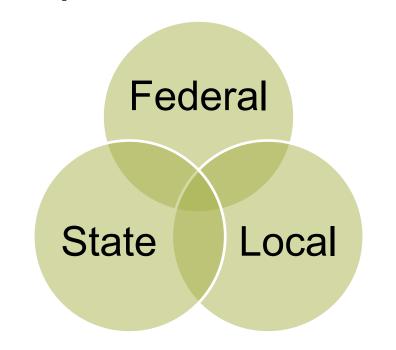
- Regulate
- Fund Infrastructure and Water Resource Projects
- Incentivize

Ecosystem of Interests: Gov't, Industry, Private Property Owners, NGOs, etc.

The Structure of Government

Federal State Local

Modern Enviro Law = "Cooperative Federalism"



Congress

Executive

Judiciary

Congress Passes Law
Clean Water Act



Federal Agency
Administers and Issues
Rules

EPA/USACE

The Courts



States agree to administer the federal NPDES program; issue permits/concur on 404 permits.



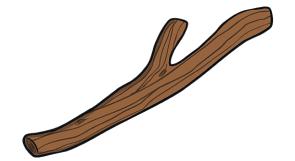
Local governments often tasked for permitting, inspections and enforcement

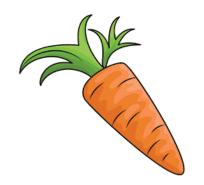
Cites, Counties, Authorities

DELEGATION

eds, states, and locals have "concurrent jurisdiction" for enforcement

And citizens can also sue (sometimes).





Congress Passes Law

CZMA



Federal Agency Administers NOAA



· General Assembly Passes Law. Coastal Marshlands Protection Act



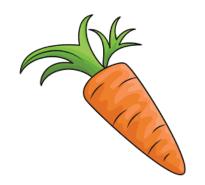
States agree to establish Coastal Zone Management Programs; administer state programs





Local Government Passes
Law: Ordinance

States often delegate authority to local governments for permitting, inspections and enforcement Cites, Counties, Authorities NOAA sends funding to states that agree to adopt CZMA programs. No citizen suit or enforcement provisions like the CWA.



Congress Passes Law NFIP



Federal Agency Administers FEMA



EPD develops Model Flood Ordinance



States encourage adoption of FEMA's Flood Requirements





Local Government Passes
Law: Flood Control
Ordinance

States often delegate authority to local governments for permitting, inspections and enforcement Cites, Counties, Authorities FEMA provides subsidized flood insurance for communities that adopt FEMA flood maps and minimum development standards.
Communities that go above-and-beyond these standards earn flood insurance discounts.

Agency	Law	
National	Coastal Zone Management Act (CZMA).	PLANNING
Oceanic and	The CZMA's National Coastal Zone Management Program directs state	INCENTIVIZING
Atmospheric	and local coastal management measures. The program provides	ENFORCEABLE
Administratio	federal funding assistance when states develop coastal management	POLICIES
n (NOAA) ,	plans approved by NOAA that control uses impacting the state's	INCENTIVIZING
which, in turn,	coastal zone. State programs also have a coordinating function	CONSERVATION
funds state	involving local, area-wide, and interstate plans and agencies with	COASTAL
coastal zone	responsibilities for the coastal zone. States also currently address, to	MANAGEMENT
management	varying extents, coastal nonpoint source pollution, sea level rise, and	PROJECT FUNDING
programs.	ocean planning.	SUPPORT
EPA	Clean Water Act (CWA).	REGULATION
	The CWA requires stormwater permitting and provides funding through	STORMWATER
	its Section 319 for implementation, including green infrastructure	MANAGEMENT
	projects.	PROJECT FUNDING
		SUPPORT

U.S. Army Corps of Engineers (USACE).	Rivers and Harbors Act and Section 404, Clean Water Act (CWA), Wetlands Mitigation. Water Resources Development Act (WRDA) legislation is key part of the USACE's civil works project development process. WRDAs generally authorize new activities, tasks, and responsibilities allocated to the USACE or other federal agencies responsible for water resource infrastructure or activities. Generally, the authorizations consist of project studies, construction projects, and project modifications. As the authorizing step in project development, the WRDA is also the primary source for Congressional oversight and direction of Corps' project planning and development processes.	ENFORCEABLE POLICIES PLANNING PROJECT FUNDING SUPPORT
Department of Defense (DoD).	Readiness and Environmental Protection Integration (REPI). DoD's REPI Program enhances military readiness by combating encroachment that limits or restricts military training, testing, and operations through land acquisition and conservation efforts. The John S. McCain National Defense Authorization Act for Fiscal Year 2019, amended 10 U.S.C. 101 by adding the definition of military installation resilience and expanded REPI to allow agreements that use or develop "real property in the vicinity of, or ecologically related to, a military installationfor the purposes ofpreserving off base habitat on the property in a manner thatmaintains or improves military installation	PLANNING CONSERVATION PROJECT FUNDING SUPPORT

resilience."

Federal	Stafford Act, Hazard Mitigation Program. FEMA provides a	PLANNING
Emergency	number of grant funding opportunities for pre and post	HAZARD
Management	emergency or disaster-related projects, including, for example:	MITIGATION
Agency/	 <u>Hazard Mitigation Grants</u>. 	INCENTIVIZING
State	 Building Resilient Infrastructure and Communities (BRIC). 	ENFORCEABLE
Emergency		POLICIES
Management		INCENTIVIZING
	National Flood Insurance Act (NFIA), National Flood	MANAGEMENT
	Insurance Program (NFIP). The NFIP provides flood insurance	INCENTIVIZING
	to homeowners, renters, and business owners in communities	CONSERVATION
	that participate the program and adopt a set of enforceable	PROJECT FUNDING
	minimum standards (usually found in a floodplain ordinance).	SUPPORT
	Communities participating in the NFIP must adopt and enforce	
	ordinances that meet or exceed requirements set forth by FEMA	
	to reduce flooding risks. The NFIP's Community Rating System	
	(CRS) rates communities on a ten-point scale for exceeding	
	NFIP requirements.	

USDA	The Conservation Reserve Enhancement Program (CREP).	CONSERVATION
		INCENTIVIZING TAX
	The Agricultural Conservation Easement Program through NRCS	AND OTHER
	provides financial assistance for purchasing Agricultural Land	FINANCIAL CREDITS
	Easements, with NRCS contributing up to 50% fair market value, and	PROJECT FUNDING
	Wetlands Reserve Easements.	SUPPORT
	Under the Working Lands for Wildlife program, NRCS provides technical and financial assistance to participants who voluntarily make improvements to their working lands while the US Fish and Wildlife Service (FWS) provides participants with regulatory predictability for the Endangered Species Act (ESA).	
	The Emergency Watershed Protection program provides financial and technical assistance for activities such as removing debris from stream channels, road culverts and bridges, reshaping and protect eroded streambanks, vegetative cover, etc.	
	The Watershed Protection and Flood Prevention Program helps units of federal, state, local and tribal of government (project sponsors) protect and restore watersheds up to 250,000 acres.	

NSF Research Project

Examined shore protection laws and policies in seven states, with an emphasis on setbacks (areas designating where structures such as homes may or may not be built) and shoreline stabilization approaches (e.g., seawalls, bulkheads, and living shorelines).

Analysis included both ocean-facing and estuarine areas from Florida to Delaware.

PREMISE:

- Adaptation will require a comprehensive understanding of these jurisdictional frameworks if they are to be updated and/or better informed.
- Outlining these frameworks sets the stage for integrating the jurisdictional boundaries with science-based modeling efforts.
- (3) Outlining these frameworks allows us to characterize sets of law and policy options.
- Law is notoriously path dependent, building upon past decisions and approaches -- the regulations to come will build from existing frameworks.

Big Picture Findings: Ocean-Facing

The majority of ocean-facing shore protection laws have established jurisdictional lines designed to control the location of structures based on **erosion** rates, allowing for a more adaptive management approach driven by scientific data as sea-levels rise.

A more explicit acknowledgement and accounting for sea-level rise will be necessary in many areas, however.

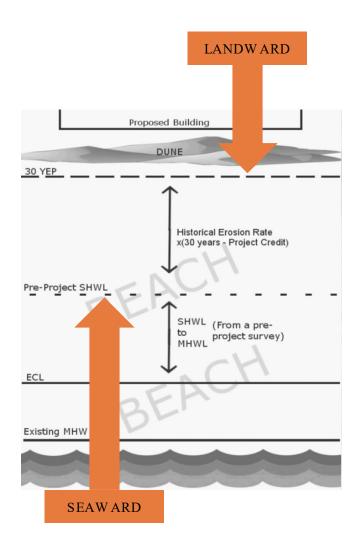
A trend towards "freezing" the most oceanward jurisdictional baselines is occurring, suggesting that rising sea-levels and increased flooding may create pressure to "hold the line" when more dynamic and adaptive responses are needed.



OCEAN-FACING BOUNDARIES:

Erosion Rates

STATE	SEAWARD BOUNDARY	+	EROSION RATE =	LANDWARD BOUNDARY
FL	Spring tide	+	30-year erosion rate	Coastal Construction Control Line
sc	Three possible baselines	+	40-year erosion rate	Setback Line
NC Ocean Erodible Areas	Mean low water line	+	Recession line multiplying the long -term annual erosion rate times 90 or at 120 feet landward of the first line of stable and natural vegetation, if there has been no long-term erosion or the rate is less than two feet per year. The building size also determines the final setback, with smaller structures allowed closer to the ocean than larger ones.	Setback Line
VA Barrier Islands Only	Dune crest	+	20 times the local 100 -year long-term annual shoreline recession rate, which is average shoreline recession over fixed onemile intervals averaged over the period between surveys of 100 years or more.	Setback Line

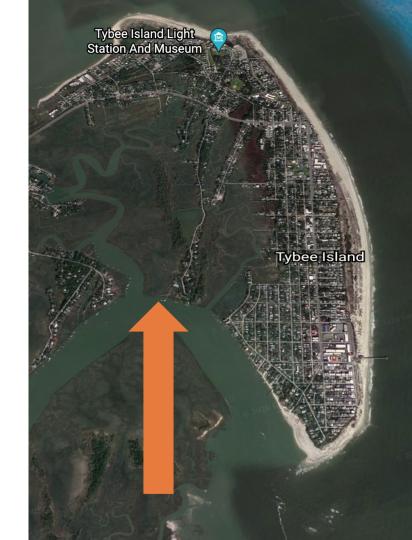


Example Patchwork: Overview of Current Laws and Policies Protecting March in NC, SC, Ga, and NE FL

	SETBACK/BUFFER & PERMITTING PROGRAM	TIDAL WETLANDS JURISDICTIONAL AREA/PERMITTING PROGRAM
FLORIDA	Comprehensive state wetlands permitting program through its Environmental Resource Permits.	Florida requires a "unified statewide methodology for the delineation of the extent of wetlands," working from a statutory baseline that defines wetlands as "areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils."
GEORGIA	marshland-upland interface," commonly referred as the "vegetated buffer." Permitting program for tidal wetlands; a "Revocable License" required for activities disturbing tidally-influenced waters.	Coastal marshlands are defined as "any marshland intertidal area, mud flat, tidal water bottom, or salt marsh within the estuarine area of the state, whether or not the tidewaters reach the littoral areas through natural or artificial watercourses." "Vegetated marshlands" have at least one of fourteen marsh plant species. If salt marsh peat exists at the undisturbed surface of an area, this is deemed "conclusive evidence" of salt marsh.
SOUTH CAROLINA	Regulates tideland critical areas through a permitting process.	"Tidelands" encompass "all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous and adjacent to coastal waters and are an integral part of the estuarine systems involved." Coastal wetlands include areas "periodically inundated by saline waters" either by natural or artificial water courses and that are "normally characterized by the prevalence of saline water vegetation" as long as they are an integral part of an estuarine system."
NORTH CAROLINA	normal water level.	Coastal wetlands are marsh areas that have regular or occasional flooding by tides including wind tides, but not hurricanes or tropical storm tides and one or more of ten designated marsh plant species present.

Big Picture: Estuarine

- Sea-level rise, in the meantime, will affect estuarine areas as much as – and, at times, even more than – ocean-facing areas.
- Erosion rates and/or sea-level rates are not incorporated into the jurisdictional determinations even for shoreline armoring projects that are intended to address erosion or flooding.
- Climate change and sea-level rise will likely make the changes in marsh and wetland boundaries much more dynamic than in the past.
- In contrast to many of the ocean-facing setbacks and permitting approaches, no requirements exist for states to reevaluate jurisdictional boundaries in estuarine areas.
 Using more local data that is regularly updated should allow for more nuanced management and produce better results.



Lots of interesting details!

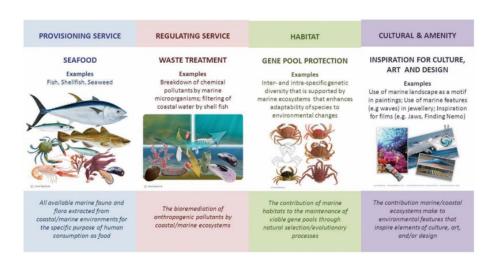
Trends, Norms, and Frames

1. Multiple Values, Many Conflicts, and "Balance"

A wide variety of values and interests are revealed across our study area: habitat protection, dune preservation, beach access, hazard mitigation, recreation, economic development, property protection, public health, and aesthetics.

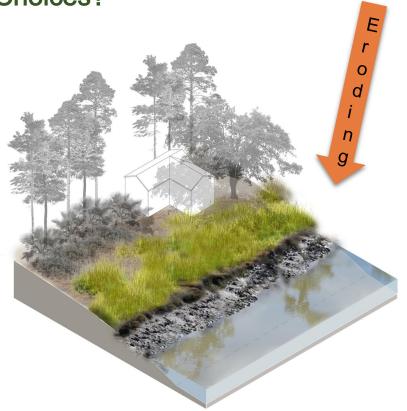
Beach protection acts -- the connection with tourism, recreation, and hazard protection is particularly strong.

Estuarine areas, while at times also celebrated for their aesthetic contribution, are generally protected primarily for their conservation values, often in order to prevent "despoliation."



Static Erosion Control: A Hardened Value for Stabilization Choices?

- Rooted within shoreline stabilization approaches is a fixed understanding of stability -- presumption that erosion, in and of itself, is the primary factor guiding stabilization structure choice.
- On the ocean-facing side, erosion control very much at the forefront. More subtle on the estuarine side but strong when stabilization choices are discussed.



2. Static Erosion Control: A Hardened Value for Stabilization Choices?

- Armored shorelines are almost always held to a lesser standard throughout our study area than nature-based living shorelines.
- Living shoreline projects often must justify that the location is appropriate based on structural suitability and scientific considerations such as fetch, bank elevation, erosion, and tides, which are not required for armoring.
- A question for policy -makers going forward is why "hard" armoring approaches such as bulkheads are not subject to the more comprehensive and specific science -based requirements applied to living shorelines.



The illustration above represents Georgia's coastal ecology. The water level is based an actual site at sea level. At sea level, the water covers roughly 1 ft of oysters at the bottom of the living shoreline.

3. Minding the Gaps: Fragmentation, Alignment, and the Neighbor Effect

Connectivity in armored areas, rather than in ecological connectivity, is a key value embedded within many of regulatory frameworks in our study area.

The importance of **neighbors for shoreline management** law and policy is woven throughout our study area. These fall into four categories:

- 1. Policies designed to inform neighbors about proposed shoreline stabilization activities;
- 2. Policies designed to protect adverse impacts on adjacent properties;
- Policies designed to protect against structures interfering with the adjacent property owner's riparian rights; and
- 4. "Gap-filling" and "shoreline alignment" policies designed to promote contiguous hardened shorelines.

Reveal concerns about nuisance, trespass, and invasion of property rights.

In addition to the above, reveal concerns about standardized erosion control, fairness, and even aesthetics.

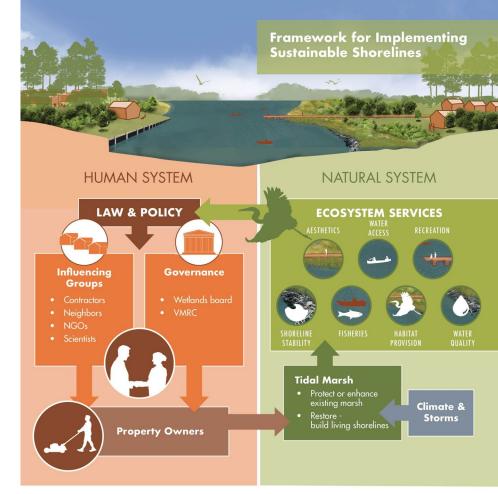
Big Picture

Property owners and some decision-makers tend to operate from a **parcel-scale perspective**.

Influencing stabilization decisions BEFORE the project and permitting stage is needed. People listen to neighbors and contractors. It's hard to change minds once an approach is decided upon. The permitting stage is too late.

Most of the statutes and many of the regulations used to manage these areas are decades old in their design and conception. They largely come from an era when environmental protection focused on a single resource or individual threat

We need a system that recognizes the varied dynamics of natural systems and the complexities of human demands on them, a system that relies on multiple scales of both temporal and spatial data. We should reevaluate jurisdictional boundaries in estuarine areas periodically.



Developed by the Virginia Institute of Marine Science at William and Mary for the National Science Foundation (NSF) Coastal Science, Engineering, and Education for Sustainability (SEES) Initiative.lmage designed by Kelsey Broich, Network for Engineering with Nature, University of Georgia. [2021].

Policy Alignment: Some Framing

Structure of U.S. Government: Federalism

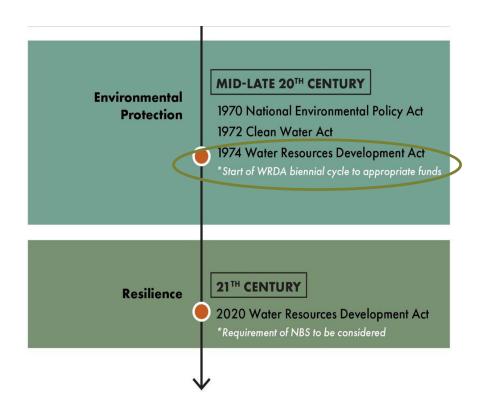
State Law: Findings from Stabilization Law Analysis

Legacy Institutions and Laws: USACE, CWA, ESA, etc.

Ecosystem of Interests: Gov't, Industry, Private Property Owners, NGOs, etc.

Timeline of Events and Missions Evolution

19[™] CENTURY **Military Establishment** & Protection 1806 Military Peace Establishment Act 1824 General Survey Act **Navigation** 1899 Rivers and Harbors Act **EARLY 20TH CENTURY** Infrastructure 1933 New Deal Flood Control 1936 Flood Control Act *BCA first required for project justification



Policy Flowchart BCA Evolution

1925 | 308 REPORTS

Set the stage for the BCA

1950 | GREEN BOOK

Recommended BCA principles, guidelines, and methods (all quantifiable)

1962 | SENATE DOCUMENT 97

Formalized multi-objective analytical standards

1973 | P&S

Reformed multi-objective analysis Incorporated NEPA and FCA into water resources planning

1983 | P&G

Re-established NED as primary purpose Retained four accounts for BCA

2013 | PR&G

Switched to an Ecosystem Services Model Allows for more flexibility in project selection Six accounts for BCA

2021 MMR MEMORANDUM

Modernization of regulatory review process to reflect economic and scientific development

Key Features of the 1973 P&S: FOUR OBJECTIVES FOR WATER RESOURCES PLANNING AND EVALUATION

System of Accounts

REQUIRED

"Design" Objectives
Central to "society's
preferences" for
"promot [ing] the quality
of life."

National Economic Development (NED)

1. National Economic 2. Environmental Quality (EQ)

OPTIONAL

"Display" Objectives to be considered "display" objectives that would provide a basis for comparing alternative plans.

3. Regional Economic Development 4. Social Well -being

1983 P&G:	
FOUR OBJECTIVES	
FOR WATER RESOURCES PLANNING AND EVALUATION	
System of Accounts	
REQUIRED 1. National Economic Development (NED)	

3. Regional Economic

Development (RED)

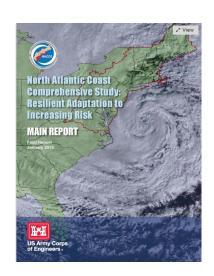
4. Other Social

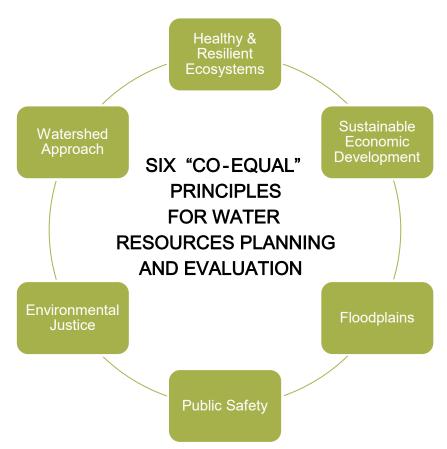
Effects (OSE)

OPTIONAL 2. Environmental

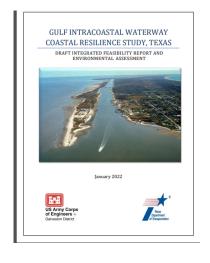
Quality (EQ)

Key Features of the Principles, Requirements, & Guidelines (PR&G)









Recent Executive Action: Jan 2021

- Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis" (86 Fed. Reg. 7037, 2021). An emphasis on multiple benefits.
- Executive Memorandum titled "Modernizing Regulatory Review" ("MRR"; 86 Fed. Reg. 7223, 2021). MRR then directs the Director of OMB, in consultation with other agencies, to develop a set of recommendations for improving and modernizing regulatory review. "These recommendations should provide specific suggestions on how the regulatory review process can promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations" (86 Fed. Reg. 7223, Sec. 2, 2021). Addressing the disconnects between USACE's and OMB's discount rates as well as the differing benefit -cost analyses could be consistent with the overall objectives of the MRR.
- Executive Order 14008 entitled, "Tackling the Climate Crisis at Home and Abroad," which seeks to "put the climate crisis at the center of United States foreign policy and national security" and take a "government-wide approach to the climate crisis" (Executive Order No. 14008, 2021). DoD.

To Do's/Considerations

- Update relevant policies (Engineering Regulations (ERs), Engineering Circulars (ECs), Engineering Manuals (EMs), Engineering Pamphlets (EPs), Economic Guidance Memoranda (EGMs), etc.) because <u>at the project -level, NI is still not being implemented at scale.</u>
- Consider the <u>Miami-Dade Back Bay Coastal Storm Risk</u>
 <u>Management Feasibility Study</u> (2021). Relies on floodwalls to limit risk of storm damage but local environmentalists, developers, and community advocates want more NI.

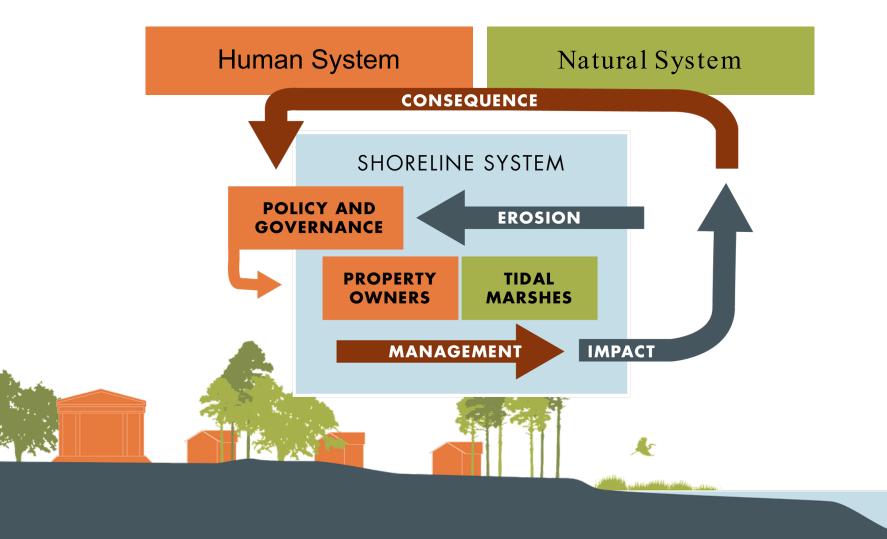
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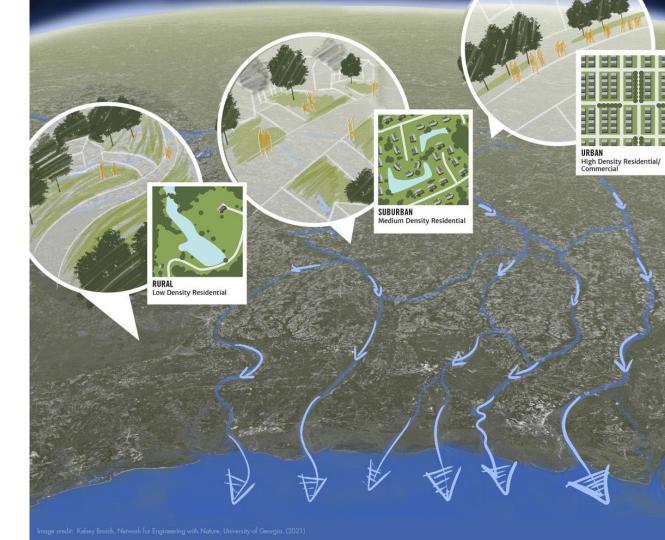


ECOSYSTEM SERVICES OF SUSTAINABLE SHORELINES



Image credit: Developed by the Virginia Institute of Marine Science at William and Mary for the National Science Foundation (NSF) Coastal S cience, Engineering, and Education for Sustainability (SEES) Initiative. Image designed by Kelsey Broich, Network for Engineering with Nature, Univers ity of Georgia. (2021).

Landscape Scale



COLLABORATING TOWARDS COASTAL RESILIENCE

IN THE SOUTHEAST

Emerging Partnerships and Opportunities with Military Installations







This partnership was funded by the National Sea Grant Law Center as part of its Small Grants Competition under NA18OAR4170079, with support from SERPPAS.



SOUTH ATLANTIC SALT MARSH INITIATIVE

The South Atlantic coast is home to an expansive network of salt marsh and tidal creeks covering over a million acres. Filling and draining with saltwater as the tides etb and flow, the salt marsh safeguards coastal communities and military installations from storm energy and floodwaters and serves as vital habitat for the fish and wildlife that support coastal businesses, state economics, and a unique way of life. The Southeast Regional Partnership for Planning and Sustainability (SERPAS) is working together with diverse partners from North Carolina, South Carolina, Georgia, and Florida and beyond to conserve this great expanse of salt marsh, helping it move with rising waters and ensuring its benefits for future generations.

Why Are Salt Marshes Important?

Salt marshes are the ecological guardians of the coast, providing natural protection and resilience benefits valued at about \$1.8 million/km2 per year. Marshes also reduce erosion, stabilize shorelines, filter upland runoff, and, along with other coastal wetlands, moderate the climate by absorbing almost 8.1 million tons of carbon dioxide in the U.S. each year. Salt marshes support popular species, such as redfish, blue crab, and black duck that are crucial to recreational and commercial fishing, hunting, birding, and related coastal businesses.

The salt marsh that protects South Atlantic communities and military installations faces increasing pressures from rising seas and poorly planned developments. For example, without proper planning to allow for its natural movement inland to higher ground as sea level rises, salt marsh will drown and its benefits to coastal populations will be lost. Preserving the connectedness of this ecosystem is vital. Regional, interstate collaboration is needed to conserve the 1-million acre stretch of economically and ecologically valuable salt marsh.

How the Initiative Works

The South Atlantic Salt Marsh initiative (SASMI) uses a voluntary, collaborative, and non-regulatory approach that complements each state's existing programs to conserve the South Atlantic salt marsh. The initiative is inspired by the successful regional conservation effort known as America's Longleaf Restoration Initiative. Using that approach, SERPPAS will bring together additional local, state, and lederal interests, scientists, non-governmental organizations, coastal communities, public and private landowners, and other interested stakeholders to develop and implement an integrated, coordinated, and locused regional conservation plan. A diverse Steering Committee will over see the conservation plan development. A larger Salt Marsh Coalition of regional salt marsh experts and relevant stakeholders will be involved through the plan's development, including attending a collaborative, cross-discipline workshop. The workshop will be held in early 2022 and will build the framework for the conservation plan. The initiative will add value to orgoing efforts and help actives landscape-scale conservation of one of the last wast areas of salt marsh in the United States, nearly the size of Grand Canyon National Park.

A/HAT IS SERDIA

The Southeast Regional Partnership for Planning and Sustainability (SERPPAS) is a voluntary collaboration among leaders from natural resources, working lands and environmental protection agencies from the Southeastern states of NC, SC, GA, RL, AL and MS; regional leaders from their federal agency counterparts; and leaders from the Department of Defense and leaders from the Services in the Southeast. Formed in 2005, SERPPAS is an unconventional partnership that harnesses strategic planning and collaborative decision-making between public and private partners to support the military mission, conserve key habitats and species, sustain rural economies and industries, and foster better coordination among local, state, and federal stakeholders in the region.







How to Get Involved:

To learn more about the SERPPAS South Atlantic Salt Marsh Initiative and potential opportunities to get involved, please contact the SERPPAS South Atlantic Salt Marsh Initiative Coordinator, Mallory Eastland, located in Greenville, NC. Phone: 936-788-3548 and email: mallory eastland@ae.tamuedu







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Key Background

Modeled on the America's Longleaf Restoration Initiative. Guiding principles:

- Partnerships and collaboration on a regional scale. Build on current efforts such as State Wildlife Action Plans, Species Recovery Plans, coastal resilience plans, military installation programs, etc.
- **Involvement by Public and Private Sectors.** Seek participation from public and private groups managing and using marsh and adjacent upland areas.
- Strategic, science -based approach.
- Conservation Plan as Framework and Catalyst. development of a Conservation Plan by the end of 2022 is intended to provide a regional framework for salt marsh conservation, identify the most significant actions needed to conserve this habitat, and serve as a catalyst to advance conservation and restoration.





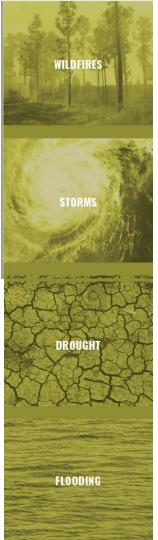












Engineering With Nature® for Climate Resilience on Military Installations

THE UNIVERSITY OF GEORGIA-FORT BENNING PARTNERSHIP

CURRENT PROJECTS OF THIS PARTNERSHIP INCLUDE:

- Assessing opportunities for EWN projects both inside the installation and across adjacent communities;
- Assessing opportunities to reduce wildfire risk and drought vulnerability;
- Supporting Fort Benning in applying the Army Climate Assessment Tool (ACAT);
- Building improved models of stormwater systems and other infrastructure;
- Evaluating potential operational efficiencies that can improve resilience planning and EWN project implementation; and
- Conducting additional inventories and assessments to understand the root causes of vulnerabilities on the installation and across adjacent communities.

With a focus on community engagement and interconnections with essential communities, the UGA/Fort Benning partnership is building a replicable model to increase the long-term capacity at Fort Benning for system level resilience planning that fully leverages opportunities for Engineering With Nature.



Thank you!

Shana Jones

Associate Public Service Faculty, Carl Vinson Institute of Government & Georgia Sea Grant Law Program shanaj@uga



