



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL OCEAN SERVICE  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
Silver Spring, Maryland 20910

DEC 19 2008

Carolyn R. Boltin, Deputy Commissioner  
South Carolina Department of Health and Environmental Control  
Office of Ocean and Coastal Resource Management  
1362 McMillan Avenue  
Charleston, South Carolina 29405-2029

Dear Ms. Boltin:

Enclosed are the final evaluation findings for the South Carolina Coastal Management Program (SCCMP) for the period from August 2004 through March 2008.

The fundamental conclusion of this evaluation is that the SCCMP is adhering to its programmatic obligations as defined by its approved program document, the terms of federal financial assistance awards, and the Coastal Zone Management Act of 1972, as amended. This evaluation findings document contains eight recommendations, one of which is mandatory. In response to the State's comments on the NOAA draft evaluation findings, we have included in the discussion paragraphs leading to various recommendations some of the factual information you provided. We are pleased to note the progress you outlined in your letter that has been made since the site visit toward addressing some of the recommendations.

We appreciate your cooperation and assistance and that of your staff during the accomplishment of this evaluation and thank you for agreeing to allow staff members from the U.S. General Accountability Office to accompany the evaluation team on the site visit.

Sincerely,

David M. Kennedy  
Director

Enclosure

cc: Elizabeth von Kolnitz, Director, Planning Division, DHEC OCRM  
Marion Page, Director, Finance Division, DHEC OCRM  
Barbara Neale, Director, Regulatory Division, DHEC OCRM  
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Sarah van der Shalie, Coastal Programs Division, NOAA OCRM  
Eddie Fisher, Director, Coastal Stewardship, Coastal Resources, Texas General Land Office



**FINAL Evaluation Findings**  
**South Carolina Coastal Management Program**  
**August 2004 through March 2008**

**December 2008**



Photo Credit: NOAA/Dept. of Commerce



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Office of Ocean and Coastal Resource Management  
National Ocean Service  
National Oceanic and Atmospheric Administration  
United States Department of Commerce

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## I. EXECUTIVE SUMMARY

Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to conduct periodic evaluations of the performance of states and territories with federally approved coastal management programs. This review examined the operation and management of the South Carolina Coastal Management Program (SCCMP or coastal program) by the South Carolina Department of Health and Environmental Control, the designated lead agency, for the period from August 2004 through March 2008.

This document describes the evaluation findings of the Director of NOAA's OCRM with respect to the SCCMP during the review period. These evaluation findings include discussions of major accomplishments as well as recommendations for program improvement. This evaluation concludes that the South Carolina Department of Health and Environmental Control is successfully implementing and enforcing its federally approved coastal management program, adhering to the terms of the Federal financial assistance awards, and addressing the coastal management needs identified in section 303(2) (A) through (K) of the CZMA.

The evaluation team documented a number of SCCMP accomplishments during this review period. In the face of significant staff turnover during this evaluation period, the SCCMP not only has been able to replace staff but added and funded additional positions. Three new divisions have been created to complement the existing three. This has resulted in better internal coordination, some efficiencies of operation, and several proactive, cross-cutting new initiatives, including ocean planning and shoreline change initiatives. Greater coordination and cooperation with external partners has resulted from a variety of mechanisms that the SCCMP initiated or is participating in, and outreach and education to both the general public and technical assistance to local governments has increased and has been well received. The SCCMP is committed to implementing the recommendations contained in the South Carolina Council on Coastal Futures and the Legislative Audit Council reports, and in particular has initiated several procedures and mechanisms to address concerns regarding the permit process. The SCCMP promulgated regulations governing access to marsh islands, and the regulations were passed by the General Assembly.

The evaluation team also identified areas where the SCCMP could be strengthened. The marsh island regulations and any other revisions or amendments to enforceable policies that have not yet been incorporated into the program must be submitted through the program change process. The SCCMP should also evaluate whether a new role for the Coastal Zone Management Appellate Panel is appropriate and, if so, whether that should be approved and incorporated into the program. The SCCMP should ensure that it has a well-functioning permit tracking system that serves its needs and address some of the weaknesses identified in the permitting process.

Other suggestions emphasize opportunities that the SCCMP could take advantage of to strengthen its role in addressing coastal South Carolina's challenges: continue to implement the recommendations of the Council on Coastal Futures and Legislative Audit Council reports;

assume a leadership role to in seeking ways to capitalize and fund the state Beach Renourishment Trust Fund; look for ways to encourage community docks; seek out even more opportunities for activities and partnerships with the two South Carolina national estuarine research reserves to translate science to management and bridge the research community and coastal managers.

## II. PROGRAM REVIEW PROCEDURES

### A. OVERVIEW

The National Oceanic and Atmospheric Administration (NOAA) began its review of the SCCMP in January 2008. The §312 evaluation process involves four distinct components:

- An initial document review and identification of specific issues of concern;
- A site visit to South Carolina, including interviews and a public meeting;
- Development of draft evaluation findings; and
- Preparation of the final evaluation findings, partly based on comments from the State regarding the content and timetables of necessary actions specified in the draft document.

The recommendations made by this evaluation appear in boxes and **bold** type and follow the findings section where facts relevant to the recommendation are discussed. The recommendations may be of two types:

**Necessary Actions** address programmatic requirements of the CZMA's implementing regulations and of the SCCMP approved by NOAA. These must be carried out by the date(s) specified;

**Program Suggestions** denote actions that NOAA's OCRM believes would improve the program, but which are not mandatory at this time. If no dates are indicated, the State is expected to have considered these Program Suggestions by the time of the next CZMA §312 evaluation.

A complete summary of accomplishments and recommendations is outlined in Appendix A.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA §312 (c). Program Suggestions that must be reiterated in consecutive evaluations to address continuing problems may be elevated to Necessary Actions. The findings in this evaluation document will be considered by NOAA in making future financial award decisions relative to the SCCMP.

### B. DOCUMENT REVIEW AND ISSUE DEVELOPMENT

The evaluation team reviewed a wide variety of documents prior to the site visit, including: (1) the 2005 SCCMP §312 evaluation findings; (2) the federally-approved Environmental Impact Statement and program documents; (3) federal financial assistance awards and work products; (4) semi-annual performance reports; (5) official correspondence; and (6) relevant publications on natural resource management issues in South Carolina.

Based on this review and discussions with NOAA's OCRM, the evaluation team identified the following priority issues:

- Program accomplishments since the last evaluation, including changes to the core statutory and regulatory provisions of the SCCMP;
- The effectiveness of the South Carolina Department of Health and Environmental Control (DHEC) in implementing, monitoring, and enforcing the core authorities that form the legal basis for the SCCMP;
- Implementation of the federal consistency process;
- Effectiveness of interagency and intergovernmental coordination and cooperation;
- Effectiveness of technical assistance, training, and outreach to local governments and public outreach and education in order to further the goals of the SCCMP;
- Long-term planning to guide the program in identifying priorities, gaps, and the most effective role for the SCCMP;
- How the SCCMP measures and tracks its success in effectively managing the coast; and
- The state's response to the previous evaluation findings dated December 13, 2005. These included six program suggestions. The SCCMP's assessment of how it has responded to each of the recommendations in the 2005 evaluation findings is located in Appendix B.

### **C. SITE VISIT TO SOUTH CAROLINA**

Notification of the scheduled evaluation was sent to the South Carolina Department of Health and Environmental Control, the SCCMP, members of South Carolina's congressional delegation, and regional newspapers. In addition, a notice of NOAA's "Intent to Evaluate" was published in the *Federal Register* on January 29, 2008.

The site visit to South Carolina was conducted from March 10 – 14, 2008. The evaluation team consisted of L. Christine McCay, Evaluation Team Leader, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management; Sarah van der Schalie, Program Specialist, Coastal Programs Division, Office of Ocean and Coastal Resource Management; and Eddie Fisher, Director of Coastal Protection, Coastal Resources Program Area, Texas General Land Office. Sherry McDonald and Jay Spaan from the U.S. Government Accountability Office (GAO) were observers during the site visit as part of the GAO audit of NOAA's administration of CZMA programs, which includes the evaluation process.

During the site visit the evaluation team met with SCCMP staff, DHEC administrators and staff, representatives of other state agencies, federal agency representatives, local government elected officials and agencies, and representatives of nongovernmental organizations and interest groups. Appendix C lists individuals and institutions contacted during this period.

As required by the CZMA, NOAA held an advertised public meeting on Wednesday, March 12, 2008, at 6:00 p.m. at the South Carolina Department of Natural Resources, Marine Resources Research Institute Auditorium, 217 Fort Johnson Road, Charleston, South Carolina. The public meeting gave members of the general public the opportunity to express their opinions about the

overall operation and management of the SCCMP. Appendix D lists persons who signed in at the public meeting. NOAA's responses to written comments submitted during this review are summarized in Appendix E.

The SCCMP staff members were crucial in setting up meetings and arranging logistics for the evaluation site visit. Their support is most gratefully acknowledged.

### III. COASTAL MANAGEMENT PROGRAM DESCRIPTION

The National Oceanic and Atmospheric Administration (NOAA) approved the South Carolina Coastal Management Program (SCCMP) in 1979. The South Carolina Department of Health and Environmental Control (DHEC) is the lead agency with administrative responsibility for the SCCMP.

The South Carolina coastal zone includes all lands and waters in the eight counties of the state (Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort and Jasper counties) that contain any one or more “critical areas,” which are defined as coastal waters, tidelands, beaches, and the beach/dune system. The coastal program has direct permitting authority over land-disturbing activities in the critical areas of the coastal zone and indirect management authority of coastal resources within the coastal zone outside of the designated critical areas. Indirect authority is exercised through the review and certification of any project requiring a Federal or state permit. State consistency, like Federal consistency authority, ensures that proposed actions are consistent with the policies and procedures of the SCCMP.

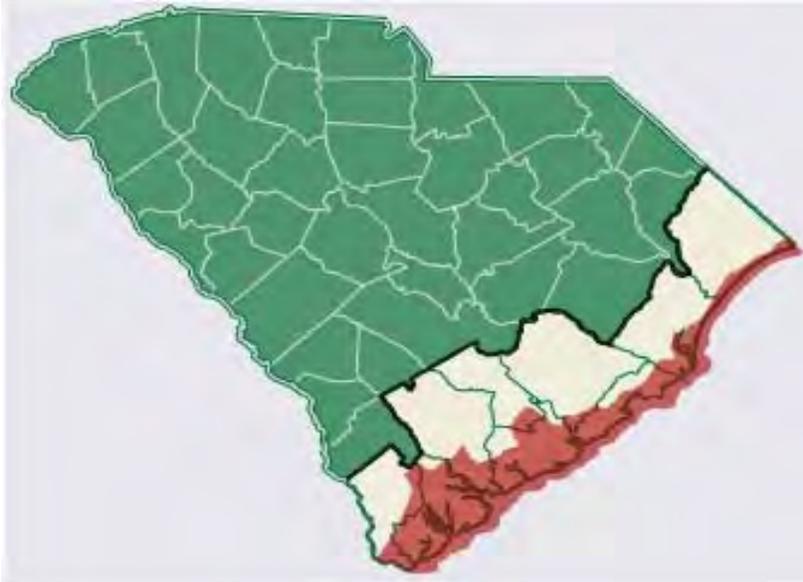
The primary authority for the coastal program is the 1977 Coastal Tidelands and Wetlands Act. It authorized the establishment of the South Carolina Coastal Council to be administered by an executive director and staff, defined the Council’s powers and duties, and provided for the development of a comprehensive coastal management program in South Carolina. In July 1988, the State General Assembly passed the South Carolina Beachfront Management Act. This Act, which was subsequently amended in 1990 and formally incorporated into the federally-approved SCCMP, requires the use of scientific studies of coastal processes to establish precise building setback lines along the coast, bans the future construction of seawalls, limits the size of buildings within the predicted erosion zone, enacts damage assessment procedures, and adopts a policy of retreat away from the erosional beach. The Act requires the adoption of local comprehensive beachfront management plans by local governments.

The SCCMP was further refined by the State in 1993 with the codification of a number of existing guidelines, policies, and plans. These refinements included wetland and dock master planning required as part of consistency certification, freshwater wetland mitigation guidelines, procedures for the conduct of Special Area Management Plans, the developed State Beachfront Management Plan, and the notification and procedural process for appeals of state and Federal consistency certification. The stormwater management guidelines, in place since 1984, were incorporated into the South Carolina Stormwater Management and Sediment Reduction Act of 1991. Regulations to implement this statute became effective in 1992.

In 1993, the South Carolina General Assembly passed the State Restructuring Act (SRA), which abolished the Coastal Council; transferred the Council’s executive director and staff to the DHEC into what is now called the South Carolina Office of Ocean and Coastal Resource Management (SC OCRM); and created the Coastal Zone Management Appellate Panel (AP) to serve as an advisory council to DHEC, with members of the Coastal Council becoming members

of the AP and continuing to serve until their terms expire. The role of permit decision-making was assumed by SCCMP staff.

## **SOUTH CAROLINA COASTAL MANAGEMENT PROGRAM BOUNDARIES**



The Coastal Zone (white) is comprised of coastal waters and submerged bottoms seaward to the state's jurisdictional line as well as the lands and waters of the eight coastal counties. The Critical Area (red) is defined as all tidelands, coastal waters, beaches and oceanfront sand dune systems.

## **IV. REVIEW FINDINGS, ACCOMPLISHMENTS, AND RECOMMENDATIONS**

### **A. OPERATIONS AND MANAGEMENT**

#### **1. Organization and Administration**

The SCCMP has undergone significant personnel and administrative changes since the last evaluation. Although there may have been some institutional memory loss with the changes in senior staff, the new staff is energized and brings new perspectives to coastal management issues in South Carolina. Many people with whom the evaluation team met, including those who are displeased with the regulatory aspects of the coastal program and have issues and concerns, spoke highly of the staff.

Eight new staff positions have been created and funded to handle increased workloads and new functions and tasks assumed by the SCCMP. A new program structure has resulted in better internal coordination and some efficiencies of operation. There are now six divisions, three of which are new:

- Regulatory Programs
- Planning
- Public Information and Technical Services
- Science and Policy (new)
- Finance (new)
- External Affairs and Enforcement (new)

The new Science and Policy Division is responsible for bringing the best science and information to the SCCMP for short-term decision-making and long-term policy development. The Division also works to strengthen the linkage between the research community and the SCCMP's research needs. Much of the work this new division has accomplished since its creation and the last evaluation is discussed elsewhere in this document.

The new Finance Division has consolidated finance and administrative functions that were traditionally conducted in SC OCRM's Columbia office and located them in the main Charleston office. This allows for better interaction between the program and finance staff, particularly regarding the management of CZMA grants. The Division has established standard operating procedures for contract management, personnel, procurement, and other administrative functions of the Division to improve communication and efficiency.

The new External Affairs and Enforcement Division was established to enhance the interactions with internal and external customers and to better coordinate and streamline enforcement efforts. A new position, Special Assistant for External Affairs, serves as lead coordinator on implementation of recommendations in both the SC DHEC Legislative Audit and the Council on

Coastal Futures reports (discussed elsewhere in this document). The Enforcement Section of this new Division has added personnel in the main Charleston office as well as regional offices to address permit violations in a more timely manner, has developed a streamlined referral process for permitted and unpermitted incident investigations, and has increased the resolution of violations through use of a consent process rather than only administrative enforcement orders.

Precisely because the SCCMP's new structure with six divisions has already begun to produce cross-cutting initiatives and interconnections between and among the work of the divisions (much of which is discussed throughout other sections of this document), the evaluation team was impressed with the potential for even more interconnections and shared efforts.

**ACCOMPLISHMENT: In the face of significant staff turnover during this evaluation period, the SCCMP not only has been able to replace staff but added and funded eight additional staff. Three new divisions have been created to complement the existing three. This has resulted in better internal coordination, some efficiencies of operation, and several proactive, cross-cutting new initiatives to address the challenges facing coastal South Carolina, with the potential for even more interconnections and shared efforts.**

## 2. Grants Management

The new Finance Division has consolidated finance and administrative functions that were traditionally conducted in the SC OCRM's Columbia office and has located them in the main Charleston office. This allows for better interaction between the program and finance staff, particularly regarding the management of CZMA grants. The Finance Division actively manages an annual budget of approximately \$24 million that includes open CZMA awards, state base and supplemental funding, earned revenues generated by critical area and stormwater permit application fees, and other grant awards. (Not all of this funding goes toward coastal program administration and operation.) During this evaluation period the SCCMP submitted cooperative agreement applications and semiannual performance reports in a timely manner.

## 3. Appellate Panel

The Coastal Zone Management Appellate Panel is a 14-member body created by the State Restructuring Act to hear appeals of contested critical area permits issued by the SCCMP. The Panel consists of six members, one from each congressional district in the state, who are elected by members of the South Carolina General Assembly; and eight members, one from each of the eight coastal counties, who are elected by members of the General Assembly representing their respective counties. The terms for all members are four years.

With the passage of Act No. 387, effective July 1, 2006, the Appellate Panel's function to hear appeals was eliminated. The SCCMP staff permit decisions are now reviewed by the DHEC Board of Health and Environmental Control (Board), which is responsible for overseeing all of DHEC's operations. The Appellate Panel still exists to advise the DHEC Board, although the terms of all members except one have expired. During the site visit, the evaluation team and the

SCCMP staff discussed what kind of role, if any, the Appellate Panel should have in the coastal program and if NOAA approval (through the program change process) would be necessary to change the Panel's function.

**PROGRAM SUGGESTION: The SCCMP should evaluate possible new roles the Coastal Zone Management Appellate Panel could play in the coastal management program and work with NOAA OCRM to determine whether approval through the program change process is necessary to change the Panel's function.**

#### 4. Use of Technology

The previous evaluation findings dated December 2005 contained a program suggestion recommending that the SCCMP develop a stronger technical assistance function. During this current evaluation period, the SCCMP has made an effort to improve its technical infrastructure, access to resources, and technical capacity among staff. Its network capacity has been expanded, and outdated computers and peripheral equipment have been replaced. The SCCMP has also made some modifications to the DHEC permitting database called EFIS (environmental facility information system). Other changes have yet to be made, but the modifications are improving the SCCMP's ability to record, monitor, and report on permitting activities. The section of this document entitled "Permitting" contains further discussion about EFIS and the SCCMP's need for a highly functioning permit tracking system.

The SCCMP is also working on, or has completed, several data layers relevant to shoreline change and coastal management studies within a geographic information system. These include coastal island and marsh upland delineation; estuarine marsh delineation; beachfront feature delineation; primary dune and setback delineation; tidal creek-dock, bridge, and hardened structure delineation; and high resolution aerial imagery for priority areas of the coast.

In 2006 the SCCMP partnered with NOAA's Coastal Services Center to create an ArcGIS extension and marsh island data set that, in conjunction with supporting data layers (endangered species, protected lands, culturally significant sites, etc.), becomes the *Marsh Islands Decision Tool*, which can analyze environmental sensitivity and development potential of individual marsh islands using a standard set of parameters (island size, distance from mainland, proximity to sensitive habitats, etc.). This tool was very valuable in the regulatory recommendation process conducted by the Marsh Islands Advisory Committee; this process is discussed in the "Coastal Habitats" section of these findings. It is currently being used on a case-by-case basis by SCCMP staff when marsh island permit applications are received and is also used to generate data for the national CZMA performance measurement system.

The SCCMP contracted to create an ArcGIS extension and supporting data sets to assist with the delineation of existing and newly constructed docks. The SSCMP Regulatory Division uses this *Dock Buildout Tool* to assist in visualizing impacts from various dock build-out scenarios and identifying areas of high, low, and potential dock build-out. The SSCMP does not use output from the tool as a determining factor in the permit decision-making process, however. The dock

buildout tool has been offered to local governments as a voluntary option for comprehensive planning and waterbody management efforts, and to date, several have utilized the tool.

**ACCOMPLISHMENT: The SCCMP is improving its technical infrastructure and technical capacity and has created the *Marsh Islands Decision Tool* and *Dock Buildout Tool* to assist coastal managers.**

## 5. Council on Coastal Futures and Legislative Audit Council Reports

In 2002 the DHEC Board appointed 19 people from many sectors of the South Carolina coastal community to serve on the Council on Coastal Futures. The Council was charged to document priority issues and concerns related to coastal management; and to recommend actions, programs, and measures to meet the goals of the South Carolina CZMA and improve the SCCMP. The Council's report, entitled *Setting a New Course for the Coast*, was published on May 30, 2004, and includes 18 recommendations, addressing regulatory processes (5 recommendations), assistance to local governments (3), and coastal resource management issues (10). The report was made public just a few months before the 2004 evaluation site visit, and the Evaluation Final Findings dated December 2005 recommended that the Council's report be used to guide the SCCMP's activities in the near and long term.

During this evaluation period (fall of 2007), a new position was created in the SCCMP. The duties of this position, Special Assistant for External Affairs, involve serving as lead coordinator on the SCDHEC Legislative Audit and the Council on Coastal Futures reports and all associated recommendations and implementation. The recommendations of the Council on Coastal Futures are being used to help direct CMP activities, and updates are periodically given to the SCDHEC Board on the status of the recommendations.

The SCCMP has implemented or is in the process of implementing some report recommendations, and some of these are addressed throughout this findings document. For example, in response to the recommendation to improve internal DHEC coordination and explore additional permit process efficiencies, the SCCMP has taken several actions that are discussed at length in the "Permitting" section of this document. Recommendations to provide assistance and technical expertise to local governments are being addressed by a variety of activities mentioned elsewhere in this document, including: assistance to the Town of Folly Beach in the development of a comprehensive onsite septic system management ordinance; to the Town of Bluffton in the development of a waterbody management plan for the May River; to the City of Isle of Palms in the development of its comprehensive beach management plan; and the development of the *Onsite Septic System Management Tool Kit* CD for all local governments. Other recommendations, such as the development of statewide legislation for managing freshwater wetlands or encouraging the construction of community docks in lieu of multiple private docks, are "works in progress," for which the SCCMP has taken some steps and should continue its efforts.

In response to Recommendation 18 of the Council on Coastal Futures report, recommending that the SCCMP establish formal partnerships with state research institutions that focus on solutions

and prioritization of research efforts, the SCCMP created its Science and Policy Division. The Division has, among other activities, produced and disseminated “State of the Knowledge” reports in cooperation with research communities to synthesize existing research and policy information and to highlight continuing priority research needs; has formed two issue-based advisory committees with strong representation from academic institutions to increase dialog between the research and management communities on shoreline change and ocean resource issues; and has led several nationwide research priority initiatives dealing with climate change information and spatial data and information needs assessments through involvement with the Coastal States Organization.

The South Carolina General Assembly Legislative Audit Council completed a review of the state’s process for issuing water quality permits and certifications as administered by the Department of Health and Environmental Control’s offices of Ocean and Coastal Resource Management and Environmental Quality Control. The Legislative Audit Council concentrated on efficiency, organizational structure, compliance inspections, water quality standards, and ethics. The report, published in February 2007, contains a total of 23 recommendations addressing three broad areas: 1) the process for reviewing applications; 2) compliance inspections, performance measures regarding state waters, and riparian buffers; and 3) ethics-related issues. For those areas and recommendations that are under the purview of the SCCMP, staff agreed with all recommendations and has begun implementing those for which it already has sufficient fiscal and staff resources. There is further discussion of this report and its recommendations under the “Permitting” section later in this document.

**ACCOMPLISHMENT: The SCCMP is committed to implementing the recommendations contained in the South Carolina Council on Coastal Futures and the Legislative Audit Council reports and has begun to do so.**

**PROGRAM SUGGESTION: The SCCMP is urged to continue its implementation of the recommendations contained in the South Carolina Council on Coastal Futures and the Legislative Audit Council reports and to use those recommendations to guide SCCMP short- and long-term activities and programs.**

## 6. Measuring Success and Measurable Results

NOAA, the state coastal management programs, and the national estuarine research reserves have created the Coastal Zone Management Act (CZMA) Performance Measurement System to track national indicators of the effectiveness of state coastal management programs and national estuarine research reserves in achieving CZMA and strategic objectives. The performance measurement system was devised to provide flexibility and accommodate varying management structures and differing coastal priorities across coastal states. The system consists of a suite of contextual indicators to provide information on environmental and socioeconomic factors influencing program actions, and a set of performance measures to assess how well states are achieving CZMA objectives. The six categories of performance measures include: coastal

habitats, coastal hazards, coastal water quality, coastal dependent uses and community development, public access, and government coordination and decision-making. Measures will be aggregated across programs for a national and regional picture of coastal zone management. The SCCMP participates in this effort, collecting data for the performance measures and submitting it to OCRM. It is also involved in the development of the DHEC agency strategic plan and is trying to match the national performance indicators to appropriate sections of the strategic plan if possible.

The SCCMP is also taking steps to account for its success with measurable results. It has developed a database to track enforcement cases, has been able to measure the time it takes for various steps in the enforcement process, and has been able to decrease the time to complete some of those steps. Some of these address issues raised in the Legislative Audit Council report. The SCCMP established a quality process improvement team composed of seven staff members to identify ways to improve the DHEC EFIS database for tracking data and information to serve the SCCMP's needs. Currently the EFIS database is used to track permit data as well as best management practice (BMP) implementation for the Coastal Nonpoint Program. The SCCMP hopes that information derived from databases can be used to show progress and improvement as well as to identify the need for additional or different resources.

## **B. PUBLIC ACCESS**

Tourists and South Carolina residents alike are drawn to the coastal beaches, and coastal tourism is a major source of local and state revenue and job opportunities. Beaches also offer residents and tourists a variety of recreational opportunities. However, public access to beaches depends upon the availability of publicly owned beachfront property and 'amenities' or improvements that make those beaches accessible – parking, restroom facilities, signage, handicapped accessibility issues, piers, dune walkovers, etc. Acquiring coastal property is expensive, as is providing appropriate and necessary improvements.

During the period covered by this evaluation, the SCCMP contracted with Clemson University to conduct a recreational needs assessment to evaluate visitor needs and the economic impacts of beach use. A second phase of the recreational needs analysis was recently completed to gather data on local beach users versus out-of-town users surveyed during the first phase and to focus on assessing the perspectives of locals on the development and maintenance of additional beach access points and associated amenities. As part of the contract, Clemson developed a *Beach User Decision-making Support Tool* to assist coastal managers with management strategies. Ultimately, this tool should provide baseline, supporting information as local governments address beachfront management planning issues.

The SCCMP also has funded coastal access improvement grants. To address the problem of increasing financial difficulty for local governments to purchase or develop land for public access, the South Carolina General Assembly created the Coastal Access Improvement Program (CAIP) in 1994 to provide a reliable funding source to improve public access. CAIP is funded annually with critical area permitting fees. The SCCMP administers the program, and the required match from local governments is used to provide some of the non-federal match for

South Carolina's CZMA cooperative agreement awards. Some of the CAIP projects completed during this evaluation period include:

- City of North Myrtle Beach: constructed two ADA-accessible beach walkovers
- City of Folly Beach: renovated existing walkovers, resurfaced and designated 18 parking spaces, and cleared right-of-way that had been encroached at two public beach access sites
- Georgetown County: installed new signs, cleared overgrowth in the right-of-way, and renovated the parking area with pervious surface
- Town of Edisto Beach: installed boundary fencing at 15 beach access points and placed 12 new permanent trash receptacles
- Charleston County Park & Recreation Commission: replaced public restrooms at a county park with a facility meeting standards of the Americans with Disabilities Act.

### **C. COASTAL HABITAT**

Issues involving coastal habitat and resources are dealt with through permitting or in numerous activities that the SCCMP has initiated. Other sections of this findings document address many of these aspects. Since the last evaluation, however, there are two specific coastal habitat issues with which the SCCMP has dealt that are addressed here.

#### Isolated Wetlands

South Carolina does not have statewide legislation protecting freshwater wetlands. Like many other states, it depended upon the U.S. Army Corps of Engineers' assertion of federal jurisdiction over certain isolated wetlands based on the presence of migratory birds to protect many of the state's freshwater wetlands. The U.S. Supreme Court's decision in 2001 in the SWANCC case (Solid Waste Agency of Northern Cook County (IL) v. Army Corps of Engineers) overturned that assertion, thus leaving many of South Carolina's freshwater wetlands without protection. The SCCMP addresses some freshwater wetland protection through its certification authority over other state permits in the coastal zone. Recently its ability to protect isolated freshwater wetlands has been challenged in state court; at the time of the issuance of these findings, there has been no final decision. The DHEC has been unable to adopt freshwater wetland regulations. [In South Carolina, even if an agency has statutory authority to promulgate regulations, any proposed regulations or regulatory changes must be approved by both the Governor and the General Assembly. Proposed freshwater wetland regulations have not successfully navigated that system.]

The South Carolina Council on Coastal Futures, appointed in 2002 by the DHEC Board, spent significant time considering this issue, and recommended the development of statewide comprehensive legislation in its Final Report issued in May 2004. Both regulations promulgated by DHEC and a wetland bill submitted by the South Carolina Association of Realtors were introduced in the 2004 session of the General Assembly but did not get through the legislative process.

This was followed by a recommendation in the 2005 Section 312 evaluation findings suggesting that the SCCMP develop freshwater wetland legislation for consideration by the Governor and

General Assembly, which would be a more comprehensive approach. Since the last evaluation the DHEC conducted a series of stakeholder meetings throughout the state as part of the process of developing freshwater wetland legislation. The DHEC developed proposed legislation, and in 2006 a wetland bill was introduced that had widespread support from a variety of stakeholder groups, but it, too, did not get through the legislative process. Thus, the DHEC has not been able to develop and successfully navigate freshwater wetland regulations or legislation through the legislative and gubernatorial approval process.

Some local governments are attempting to address isolated wetland protection at the local level, but it has been very difficult for them to do so successfully. Several groups and communities with whom we met stressed the need for the state to address freshwater wetland protection. However, at least one community, as well as DHEC and SCCMP officials, indicated passing such legislation during the next several years would be challenging.

**PROGRAM SUGGESTION: NOAA OCRM encourages the SCCMP to continue to make state legislators and others aware of the importance of freshwater wetland legislation and be watchful for an appropriate time to re-introduce proposed legislation.**

#### Marsh Islands

There are almost 3,500 marsh islands in South Carolina, many of which are undeveloped and whose coastal habitats are relatively undisturbed because there is no bridge access to them. Regulations written in the early 1990s governed access to small islands in the coastal zone until February 2005, when the South Carolina Supreme Court declared the regulations invalid because they were too vague. Even before that decision, issues of vagueness had arisen during permitting with regard to demonstration of ownership and the lack of a definition of public need. The previous evaluation findings recommended the SCCMP continue to address issues surrounding the development of marsh islands. After the state Supreme Court decision, the issue became even more urgent. Prospective developers, the environmental community, and regulators charged with making permitting decisions all needed unambiguous, precise regulations.

The DHEC convened a Marsh Islands Advisory Committee in mid-2005, which was charged to prepare recommendations that could be used to formulate regulations to protect the quality of the coastal environment and promote economic and social improvement of the coastal zone. The Committee's six members were drawn to represent a wide range of stakeholders. The Committee members reached consensus on recommendations and also proposed regulatory changes that were supported by all members. The proposed changes were used by the SCCMP to promulgate regulatory amendments that were passed by the General Assembly. The regulations became effective in June 2006. At the time of the evaluation site visit, the SCCMP had reviewed or was currently reviewing applications for 15 bridges of varying widths and lengths—five were withdrawn or cancelled, one was granted, and nine were under review.

**ACCOMPLISHMENT: The SCCMP convened a Marsh Islands Advisory Committee and promulgated regulations governing access to South Carolina's marsh islands. The regulations were passed by the General Assembly.**

## D. WATER QUALITY

One of the major mechanisms by which the SCCMP addresses and protects the quality of South Carolina waters is through permitting, which is discussed elsewhere in this document. The SSCMP has also developed a Coastal Nonpoint Pollution Control Program according to Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990. The coastal management program received conditional approval from NOAA and EPA for the Program in February 1998 and has been working to address the remaining conditions since then. When NOAA and EPA make the decision to fully approve a state coastal nonpoint program, they develop a Full Approval Decision Memo and publish a notice of intent in the Federal Register. A 30-day public comment period is provided before full approval is granted. The 30-day comment period was in place during the evaluation site visit, and NOAA and EPA issued their full approval on March 27, 2008, just two weeks after the site visit.

There are other non-regulatory actions through which the SCCMP addresses water quality. The coastal program produced and distributed an *Onsite Septic System Management Tool Kit* CD for local governments. It is a compilation of work done during this evaluation period as well as in the years before. The CD includes information about: septic system planning and maintenance, pilot programs the SCCMP conducted for inspections, inspector training, and ordinances; how to start a local septic system management program; homeowner education; sample ordinances; and sources of expert help.

In February 2005 the SCCMP held a workshop focused on the benefits of low impact development to improve water quality through stormwater management. The SCCMP worked with the City of Folly Beach to draft a comprehensive onsite septic system management ordinance, which was passed and became effective in June 2005.

The South Carolina Marine Association and the SCCMP cooperatively administer a Clean Marina Program. The Program certifies those marinas and boatyards that meet prescribed environmental performance criteria by using best management practices to protect and improve water quality at the facilities. In April 2007 the SCCMP and South Carolina Marine Association produced the *South Carolina Clean Marina Guidebook 2007*.

**ACCOMPLISHMENT: The SCCMP's Coastal Nonpoint Pollution Control Program received full approval from NOAA and EPA. The SCCMP provides technical assistance to local governments to help them address water quality issues and also administers the state's Clean Marina Program.**

In July of 2004, a hypoxia event occurred in the coastal waters of Long Bay, localized around Myrtle Beach. Coastal hypoxia events are episodes of low dissolved oxygen (DO) concentrations that affect water quality and can significantly impact biological communities in the coastal ocean. In response to the event, the SCCMP convened a workshop in September 2004 with a broad range of concerned scientists and local management agencies to discuss what was known about the event and to coordinate research and monitoring activities in Long Bay. In addition to the representatives from the SCDHEC-OCRM, the workshop included participants

from the DHEC Bureau of Water, the Department of Natural Resources Marine Resources Division, the South Carolina Sea Grant Consortium, the Coastal Carolina University Center for Marine and Wetland Studies, the University of South Carolina Baruch Institute, the Carolinas Coastal Ocean Observing and Prediction System, and the North Inlet-Winyah Bay National Estuarine Research Reserve.

Participants discussed the range of factors that might contribute to hypoxia events in the region. However, sufficient data and information were not available to determine the relative importance of these factors in the July 2004 event. This lack of information was addressed by forming an interagency group to develop cooperative research efforts and management responses. As a result of this interagency effort, the Long Bay Near-Shore Water Quality Management Project was initiated. The research and cooperative efforts of the partners have resulted in a better understanding of what drives water quality dynamics in Long Bay – a combination of physical oceanographic drivers (upwelling and stratification) and stormwater discharges from urban areas. The Project partners now have a better baseline of ambient conditions in order to evaluate pre- and post-conditions for any additional stormwater discharges or infrastructure changes in the area. They will also be able to immediately and effectively coordinate research and responses in the event of another significant low DO event.

**ACCOMPLISHMENT: The Long Bay Near-Shore Water Quality Management Project has been a successful partnership among coastal researchers and managers and continues to provide data and information for responses to hypoxia events.**

## **E. COASTAL HAZARDS**

The risk of both chronic and episodic shoreline erosion is high in South Carolina, often resulting from the high risk (and occurrence) of meteorological hazards -- tropical storms and hurricanes, storm surge, and flooding. Rapid beachfront development and lack of beach management planning also exacerbate coastal erosion. Thus, shoreline management in South Carolina has been a high priority for the SCCMP both before and during this evaluation period. The state's official policy toward preserving and restoring its beaches is retreat and renourishment.

South Carolina's Beachfront Management Act requires that beachfront counties, cities, and towns (a total of 18) prepare local comprehensive beach management plans, in coordination with the SCCMP. Once adopted by the community, local beach management plans are then submitted to the SCCMP for review and state approval. The SCCMP is responsible for ensuring that beachfront communities develop, implement, and update their local beach management plans and provides both staff to serve as a community liaison and provide technical assistance. As a mechanism to advance the state's policy supporting beach renourishment, the Beachfront Management Act states that if a local government wishes to participate in the state bonding programs available for beach renourishment or other beach funding programs (those programs that can supply state dollar match for federal beach renourishment funding), the local government must have adopted a comprehensive beach management plan.

During this evaluation period, the SCCMP reviewed and streamlined its method for updating and approving local comprehensive beach management plans and coordinated with three coastal communities on revisions to their local plans. Staff also worked extensively with the City of Isle of Palms, which had never developed a comprehensive beach management plan. A series of initial emergency orders to property owners in the Wild Dunes development area in Isle of Palms to address shoreline erosion was followed by enforcement action and ultimately resulted in consent orders. Rather than continue to address erosion through a series of reactive, stopgap measures, the City and SCCMP staff worked to develop and approve a beach management plan to identify more effective, long-term solutions. The City received final approval of its plan just four weeks after the evaluation site visit.

During this evaluation period the SCCMP provided funding to the North Inlet/Winyah Bay National Estuarine Research Reserve to evaluate a shoreline stabilization alternative to hard structures that is intended to promote vegetation and limit impacts to water quality and interference with coastal processes. It will be interesting to note in the next evaluation period just what lessons were learned from this project and whether those outcomes have relevance to permitting regulations or criteria.

In the years since the passage of the 1988 South Carolina Beachfront Management Act, the state has experienced rapid beachfront growth and development; a series of coastal storms has affected South Carolina's coast; chronic erosion has continued; new technologies and methods (e.g., spatial data, GIS) have become available; and a growing body of research on shoreline change and sea level rise has shown possible negative effects on the state's coast line. As a result, the SCCMP developed a multi-year Shoreline Change Initiative in 2007 to organize existing data collection and research efforts, identify additional research needs, and formulate policy options to guide the management of South Carolina's estuarine and beachfront shorelines.

A Shoreline Change Advisory Committee, comprised of a broad cross-section of coastal stakeholders, has been appointed, has an established work plan and meeting schedule, has been meeting regularly, and should conclude its business by the end of 2008. Research and data acquisition based on the Committee's recommendations will occur in following years. Pending the Committee's recommendations, the Committee could continue in its advisory capacity beyond 2008. Alternatively, a 'blue ribbon' panel or committee could be created, with members appointed by the DHEC Board, which would be similar to the 1987 Blue Ribbon Committee on Beachfront Management. That 1987 Committee recommended changes to the 1977 South Carolina CZMA, which resulted in the passage of the 1988 Beachfront Management Act. A new blue ribbon panel could likely take similar action.

**ACCOMPLISHMENT: The SCCMP continues to work with local governments in the revisions to local comprehensive beach management plans and worked with the City of Isle of Palms to develop its initial comprehensive beach management plan. The SCCMP has also initiated a multi-year Shoreline Change Initiative to organize existing data collection and research efforts, identify additional research needs, and formulate policy options to guide the management of South Carolina's estuarine and beachfront shorelines in light of continued pressures on those resources.**

Tourists as well as residents generate significant monies and are a major factor in the state's economy because of the state's beaches. Thus, maintenance of healthy beaches is a critical issue. One of the most significant concerns facing the state and local governments as they deal with emergency beach renourishment following storms and long-term, cyclical, planned beach maintenance is the high cost involved and the need for state funding to provide cost sharing for federal beach renourishment funding. The South Carolina General Assembly recognized this need and established the State Beach Renourishment Trust Fund in 2000. However, the General Assembly has never appropriated funds to capitalize the Trust Fund. Meanwhile, based on annual beach monitoring conducted by the SCCMP, the number of beach areas characterized as being healthy based upon sand volume and width has declined. The Council on Coastal Futures recognized this as a serious issue and recommended that the state capitalize and adequately fund the State Beach Renourishment Trust Fund. The SCCMP is in agreement with this recommendation, but it is not in a position to address it alone. The NOAA OCRM encourages the SCCMP to play a leadership role in working with the South Carolina Governor's Office, the General Assembly, and coastal local governments to capitalize and fund the state's Beach Renourishment Trust Fund. There could be a leadership role for a Shoreline Change Initiative 'blue ribbon' panel or the existing advisory committee to assume on this issue as well.

**PROGRAM SUGGESTION: The SCCMP should assume a leadership role in working with the Governor's Office, coastal local governments, members of the General Assembly, chambers of commerce, and others to capitalize and fund the State Beach Renourishment Trust Fund.**

## **F. COASTAL DEPENDENT USES AND COMMUNITY DEVELOPMENT**

One of the issues brought to the attention of the evaluation team by almost everyone with whom the team met is the proliferation of single family docks. It is not a new issue—the Council on Coastal Futures received input and considered the issue from 2002 to 2004 and included two recommendations to DHEC; and the CZMA Section 312 evaluation findings dated December 2005 also included a discussion and recommendation. New marinas are prohibited in South Carolina waters classified for shellfish harvesting. Because many coastal waters are classified this way, the locations where marinas and community docks can be sited are limited. Community docks, which are limited in size because of the marina definition, are often not large enough to meet the demand from a subdivision, so single or private docks are the water access of choice. This was a concern during the last evaluation as well. The evaluation findings dated 2005 included a program suggestion that the SCCMP conduct an assessment of current regulations, guidelines, and permitting practices related to the installation of docks in state coastal waters.

The SCCMP's critical area regulations contain mechanisms to address environmental impacts on water resources, and DHEC's land disturbance authority under the National Pollutant Discharge Elimination System program contains other regulatory mechanisms that address development practices. SCCMP has developed a dock build-out tool that can assist in the delineation of existing and newly constructed docks. As noted in a previous section entitled "Use of Technology," the SSCMP Regulatory Division uses this tool to assist in visualizing impacts from

various dock build-out scenarios and identifying areas of high, low, and potential dock build-out. The SSCMP does not use output from the tool as a determining factor in the permit decision-making process, however. The dock build-out tool has been offered to local governments as a voluntary option for comprehensive planning and waterbody management efforts, and to date, several have utilized the tool. Nevertheless, dock development, particularly the increasing number of single family docks, continues to be a challenge. Local government officials and some individuals discussed the effects of shading and other natural resource concerns, and increased boat traffic and hazardous navigation, particularly on small creeks.

The SCCMP does require a dock master plan as part of its regulatory review for new subdivisions. The state's Critical Area Permitting regulations were revised in 2005 to allow the DHEC to consider more than one community dock for a subdivision if a sufficient number of private docks are eliminated. Although community docks can be an alternative to multiple individual docks, there are still few incentives for individual property owners to work together to achieve that goal. NOAA-OCRM recognizes these efforts of the SCCMP to date and encourages the program to continue working toward solutions to address dock proliferation.

**PROGRAM SUGGESTION: The SCCMP should continue to evaluate the current permitting system for docks, look for new mechanisms or changes to regulations to encourage community docks, and seek ways to provide incentives to individual landowners to cooperate with each other toward that end.**

The SCCMP staff has also worked with local governments and communities on planning efforts related to community development. A Special Area Management Plan (SAMP) is defined in a 1980 amendment to the SC Coastal Zone Management Act (SC CZMA) as a "comprehensive plan for providing for natural resource protection and reasonable coastal dependent economic growth...." During this evaluation period the SCCMP completed the Cooper River SAMP, which focused on three primary issues in the area: cultural resources management, water based recreation, and natural resources management. The need to balance the multiple uses of this area and limit potential conflict was very important to Berkeley County officials, local landowners, and other stakeholders in the area.

The SCCMP has also been assisting the Town of Bluffton with the development of a Waterbody Management Plan for the May River. Bluffton recently expanded its territory by 32,000 acres through annexation of four tracts of primarily undeveloped land, becoming the fifth largest town in South Carolina (by land area). These recent annexations have created a challenge for government officials and citizens to preserve the Town's rich historical heritage and character. Different users of the May River place importance on different values that the river generates. The Waterbody Management Plan was designed as a way to identify and address the effects of competing uses on the river. A major theme of the project was identifying and advancing realistic options that would preserve the river and its uses into the future. The Waterbody Management Plan for the May River provided an opportunity for the compilation and review of existing information from a variety of sources, and for an analysis based on goals and objectives established for the project. This analysis resulted in the identification of potential issues and conflicts between users, user groups, and the environmental conditions that were identified for

protection. Ultimately, the Waterbody Management Plan identified specific tasks and recommendations that should be implemented over the next five years that would be the most likely to achieve the various project goals and objectives. [The Waterbody Management Plan was adopted by the town in May after the evaluation site visit.]

## **G. GOVERNMENT COORDINATION AND DECISION-MAKING**

### **1. Federal Consistency and Program Changes**

In order for any coastal management program to concur or disagree with a determination of federal consistency with that program's enforceable policies submitted as part of a proposed federal action, those enforceable policies must be incorporated in the program. This occurs either at the time of initial program approval or later in time through the program change process. New policies or changes or amendments to existing policies must be submitted to NOAA for approval and incorporation.

The SCCMP is not up-to-date with regard to submittal of program changes to address changes in enforceable policies. Regulations have been promulgated and adopted that address access to marsh islands that have not yet been incorporated in the coastal program. In an earlier section of these findings, OCRM has suggested that the SCCMP evaluate the possible role the Coastal Zone Management Appellate Panel could or should play in the coastal management program and work with NOAA-OCRM to determine whether any approval through the program change process is necessary to change the Panel's function. The SCCMP also needs to determine whether any other changes to enforceable policies have been made that have not been formally incorporated into the program. [Since the evaluation site visit, the SCCMP has completed the first step in this process by working with NOAA-OCRM to confirm an accurate list of all the existing program changes that have already been approved and incorporated into the SCCMP.]

**NECESSARY ACTION: By December 30, 2009, the SCCMP must submit all changes to enforceable policies that are not incorporated into the SCCMP to OCRM through the program change process. At a minimum this includes the marsh island access regulations. If the SCCMP identifies a new role for the Appellate Panel and the SCCMP and OCRM determine that the change should be incorporated into the coastal management program, that change must be submitted by December 30, 2011.**

During the site visit, one local government with whom the evaluation team met raised a concern about unintended consequences arising from some of the enforceable policies of the SCCMP. In this local government, the definition of "primary oceanfront sand dune" in the critical area permitting regulations used by the SCCMP is actually allowing construction and development closer to the water and beach. In this instance, an emergent dune closer to the ocean and in front of the primary dune has reached the size definition of a primary dune and thus becomes the primary dune for permitting purposes. Building now occurs at a distance behind this dune rather than the original primary dune, placing development closer to the water. The SCCMP may wish to investigate whether this is a unique and isolated incident or may be more widespread, and whether there are other unintended consequences arising from any of the coastal program's

enforceable policies (e.g., do the size and placement limitations on community docks actually encourage the proliferation of single or private docks). The SCCMP could solicit reports from local governments or its compliance or enforcement staff about such situations, the Science and Policy Division could undertake such a study, or the shoreline change committee could review the situation.

## 2. Permitting

The South Carolina coastal zone includes all lands and waters in the eight counties of the state (Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort and Jasper counties) that contain any one or more “critical areas” which are defined as coastal waters, tidelands, beaches, and the beach/dune system. The SCCMP has direct permitting authority over land-disturbing activities in the critical areas of the coastal zone. A permit is required prior to any alteration to the critical areas; these activities can include docks, bulkheads, boat ramps or other alterations such as filling or dredging.

South Carolina's beaches are within the critical area. Using historic shoreline and present-day profile information, OCRM designates a baseline and setback line along the coast. The baseline is typically placed at the crest of the primary sand dune (the dune immediately adjacent to the ocean), while the setback line is demarcated landward of the baseline. The setback line's distance from the baseline varies along the coast. It is determined by the annual erosion rate in that particular area. These lines are revised every 10 years as required by the South Carolina Coastal Zone Management Act (the next revision period is 2008-2010). All construction seaward of the setback line requires an authorization or permit from the SCCMP.

The SCCMP has indirect management authority of coastal resources within the coastal zone outside of the designated critical areas. Indirect authority is exercised through the review and certification of any project requiring a state permit. State consistency, like Federal consistency authority, ensures that proposed actions are consistent with the policies and procedures of the SCCMP. With the exception of certain exempt activities, construction/land disturbance activities in the coastal zone require a stormwater management and sediment control permit. The SCCMP administers the stormwater management program in the eight coastal counties, and DHEC's Bureau of Water implements the program in the other counties in South Carolina.

During the period covered by this evaluation, stormwater permitting increased by approximately 50%. However, funding and staff numbers have not increased until very recently when two staff positions and a stormwater coordinator position were added. The number of permit applications for alterations in the critical areas has been more static, but the complexity of the permit application sites and coastal resource issues are increasing – the ‘easy’ sites and issues have been dealt with – requiring more staff time for project reviews, public hearings, appeals, and state Freedom of Information requests.

In almost every regulatory coastal program, concerns are raised about timeliness of permit issuance; compliance and enforcement; lack of consistency or coordination in permit application review, compliance, and enforcement; ability to track permit application status and compliance or enforcement action status; and influence upon permit application review and issuance. The

SCCMP is no exception, and some people with whom the evaluation team met did discuss these concerns. The Legislative Audit Council studied these issues and others with regard to permitting and certification in its report published February 2007, as did the Council on Coastal Futures, which included some similar recommendations in its report published May 2004.

The SSCMP has taken steps to address some of these issues during this evaluation period. Staffing numbers, which influence many of the permitting issues, had not kept pace with an increase in permit applications, but several staff positions have just been added to the Regulatory Division. The Division has created or participates in several mechanisms by which intra-agency and inter-agency coordination are enhanced for the permitting process:

- It initiated project analysis meetings in late 2005 for projects that have unique circumstances, possible precedent-setting implications, and/or multiple permits and certifications from the SCCMP. Legal staff, senior management, as well as staff from the Science and Policy, Planning, and Public Information divisions often participate to share in a broad and comprehensive discussion of a proposed permit or action.
- Over the past two years, the SCCMP has combined the staff that historically reviewed and issued federal consistency certification for Army Corps of Engineers freshwater wetland permits with the staff that issues critical area permits. This allows for a more comprehensive review by one project manager of proposed impacts to both salt and freshwater wetland systems.
- The SCCMP participates in monthly pre-application interagency meetings, at which all state and federal regulatory and resource agencies are assembled. This provides an applicant with the opportunity to present a proposed project and obtain feedback from the agencies prior to application submittal.
- Regulatory staff members meet quarterly with the DHEC's Office of Environmental Quality Control staff who issue Federal Clean Water Act Section 401 Water Quality Certifications. (Section 401 requires that the State issue certification for any activity which requires a federal permit and may result in a discharge to state waters. This certification must state that applicable effluent limits and water quality standards will not be violated by the activity authorized by the federal permit.) This allows for coordination of Departmental actions on permits undergoing coastal zone consistency review as well as those requiring direct permits from the SCCMP.

The Division has set up a quality process improvement team composed of seven SCCMP staff to identify additional ways to improve the DHEC permitting database called EFIS (environmental facility information system) to more specifically serve the SCCMP's needs, and not just for the Regulatory Division. EFIS does some of the tracking the SCCMP needs, but the process improvement team is identifying deficiencies and articulating the modifications needed to EFIS to perform needed functions. Some of the areas that the team is considering include: how to define the 'backlog' of permit applications; how to identify and track internal review clocks for permits; whether and how EFIS can help the SCCMP track state performance measures for the National CZMA Performance Measurement System; whether EFIS should be replaced by something different to specifically serve the SCCMP's needs; and how EFIS can generate quarterly and monthly reports based on information in the system.

It is a very basic but necessary function for the SCCMP to be able to keep track of all permits it processes, know where each permit application is in the process, know due dates and deadlines, and track actions taken. At a minimum and with that information, the SCCMP could determine timeliness of permit-related activities and deadlines, substantiate the numbers of permit applications, justify the need for existing or additional staff positions, or determine the cost and/or effectiveness of permit programs. Whether the SCCMP is able to use the EFIS database or needs to establish its own unique database, it is important for the coastal program to be able to track permits.

[Since the evaluation site visit, the SCCMP staff has been able to modify EFIS to separate state and federal certification procedures and associated time clocks and to establish permit-specific automated time clocks for state certification and stormwater permitting. Automated time clocks for state critical area permitting and federal certification may be in place by the end of the year.]

**PROGRAM SUGGESTION: The SCCMP should have a well-functioning permit tracking system for the permits it issues. The tracking system could be the DHEC EFIS database, if that database can be improved or modified, or a system unique to the SCCMP, so long as it specifically serves the SCCMP's needs.**

The SCCMP has also separated its permitting compliance function from the enforcement function. Permit compliance remains in the Regulatory Division, but enforcement is now the responsibility of the External Affairs and Enforcement Division. This appears to be a positive move for both applicants and staff. The Regulatory Division implemented a Compliance Initiative Program that has resulted in field compliance inspections on thousands of project sites to monitor compliance with permitted activities. The Enforcement Section has developed an EXCEL spreadsheet to track enforcement cases, and has had 250-300 open cases at any one time. It is developing a uniform enforcement policy and a 'civil penalties' matrix to help establish consistency in enforcement decisions.

Enforcement activities involve both incident or complaint response and enforcement. Some staff have been added in both the main and regional offices to respond to incident/complaint response. Since then, incident investigation response times have decreased from an average of 21 days to 14 days; the time to issue a notice of violation has decreased from three months to approximately three weeks.

Most enforcement actions deal with critical area permits and can result in either administrative enforcement orders or consent orders. In almost 90 percent of cases when a notice of violation has been issued, enforcement conferences are used. The SCCMP has increased the resolution of violations through the consent process rather than through the application of civil penalties only. It has found that consent on the part of the violator/respondent results in a faster return to compliance, produces a formal consent order that is an easily enforceable document in circuit court, and saves SCCMP staff time and resources.

**ACCOMPLISHMENT: The SCCMP has added additional staff to the Regulatory Division and created an External Affairs and Enforcement Division. The SCCMP has initiated several processes and mechanisms to address concerns about timeliness of permit issuance, compliance and enforcement; lack of consistency or coordination in permit application review, compliance, and enforcement; and the ability to track permit application status and compliance or enforcement action status.**

Some of the changes and advances noted above were initiated prior to, but address some of the recommendations in, the February 2007 publication of the Legislative Audit Council's report entitled "A Review of Water Quality Permits and Certifications Issued by the South Carolina Department of Health and Environmental Control." This report addressed efficiency in and technical review of applications, organizational structure, compliance inspections, performance measures regarding South Carolina waters, and ethics related issues. This last issue was not directed toward existing employees or their actions but instead involved concerns such as post-employment restrictions on former state government employees and inconsistent filing of statements of economic interest by DHEC and coastal zone management Appellate Board members.

In its response to the Legislative Audit Council report, the DHEC indicated that, without exception, it concurred with the recommendations addressed to the Department (some recommendations were addressed to the General Assembly or others) and would make every effort to implement them, given the time and appropriate resources. Many of the recommendations involve the establishment of review time frames, written policies and standard operating procedures, and annual performance goals; additional training for regulatory and compliance staff; and publication of multi-year data and performance targets. The NOAA OCRM has reviewed the report and discussed its contents with the SCCMP. We are in general agreement with many of the report's recommendations and support the SCCMP's decision to implement those for which it has staff and financial resources. We encourage this implementation and have included a recommendation in the form of a Program Suggestion in the section of this Findings document entitled "OPERATIONS AND MANAGEMENT – Council on Coastal Futures and Legislative Audit Council Reports."

At the time of the issuance of these evaluation findings, the SCCMP faces a legal challenge to the validity of the policies it applies to permits and state consistency determinations outside of the critical areas but in the coastal zone. The SCCMP denied a stormwater permit within the coastal zone (but not within the critical area) because the proposed project would have an impact on an area of isolated wetlands and thus violated policies identified in the SCCMP that related to general resource values or to wetlands. The permit application otherwise was consistent with the South Carolina Storm Water Management and Sediment Reduction Act and met all requirements of the stormwater regulations. The DHEC Board upheld the permit denial.

The applicant then appealed the decision to the South Carolina Administrative Law Court, challenging the applicability of the wetlands policies to isolated freshwater wetlands and the program's overall authority to apply coastal management program policies outside of the critical area because they have not been promulgated as regulations in compliance with the state's

Administrative Procedures Act. The administrative law judge decided in favor of the plaintiff. The State has appealed the decision and the case has proceeded to the South Carolina Supreme Court. The DHEC and the SCCMP are very concerned about the case and possible repercussions, depending upon the decision from the Supreme Court.

### 3. Programmatic Coordination and Partnerships

The new structure of the SCCMP has already led to greater coordination between and among the divisions. The Science and Policy Division, in particular, sees its responsibility for bringing the best science and information to the SCCMP for short-term decision-making and long-term policy development as a clear directive to coordinate and cross divisional boundaries. The Division has established a formal process for requests from the Regulatory staff to ask specific “science” questions. It has assisted the Regulatory Division with tracking and evaluating the monitoring plans and reports that are associated with permits, certifications, and/or enforcement actions and has provided research synthesis and recommendations in support of permitting decisions (32 requests and responses in 2007).

The SCCMP has developed and maintained strong partnerships with many federal and state agencies, educational institutions, and nongovernmental organizations. The U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, South Carolina Sea Grant Consortium, South Carolina Department of Natural Resources, South Carolina Department of Archives and History, ACE Basin and North Inlet-Winyah Bay National Estuarine Research Reserves, Carolina Coastal Conservation League, and the South Carolina Environmental Law Project have worked with the SCCMP on permit reviews and on initiatives such as the Marsh Islands Advisory Committee, Shoreline Change Initiative, and Long Bay Near-Shore Water Quality Management Project, which have been discussed in earlier sections of this document. Several of the SCCMP staff serve on a variety of interagency committees, workgroups, or other agency management entities (e.g., Sea Grant Consortium Advisory Board, South Carolina Aquatic Invasive Species Task Force, Center for Hazard Resilient Coast). There are two other specific projects that involve multiple partners and coordination:

#### Marine Debris Initiative:

The SCCMP is leading the South Carolina Marine Debris Initiative, in partnership with the South Carolina Marine Association, to provide a cohesive framework that will help agencies and organizations establish partnerships, leverage resources, educate key populations and make a measurable difference in marine debris reduction. Marine debris is any man-made object discarded, disposed of, or abandoned that enters the coastal or marine environment. This includes everything from derelict vessels to candy wrappers. South Carolina state and local government agencies, nonprofit organizations, and community groups have supported a variety of critical area marine debris-related activities. However, these activities have generally been organized independently and not undertaken or quantified to achieve coast-wide debris reduction goals. Under the framework of the Initiative, individual organizations will continue to undertake activities best suited to their abilities while working collectively towards the same overarching goals.

The South Carolina Marine Debris Plan outlines the overarching marine debris issues that impact South Carolina, and creates four categories into which all marine debris falls: litter, derelict fishing gear, abandoned vessels and structures, and post-storm debris. It also provides a framework for activities that can be undertaken to address these four categories. The activities fall into four general groups: prevention; research, monitoring and source identification; cleanup and removal; and coordination. The Clean Marina Program falls under this umbrella Marine Debris Initiative and was discussed under the Water Quality section of this document; the Adopt-A-Beach program will be mentioned in the section following this.

The SCCMP has been particularly involved in the Abandoned Vessel Removal Program. Several times each year, the SCCMP, the South Carolina Department of Natural Resources (DNR), the U.S. Coast Guard, and the U.S. Army Corps of Engineers receive requests to remove sunken and/or abandoned derelict vessels. These agencies have regulatory authority over boating, tidal marsh areas, and open water areas along South Carolina's coast. In 2004, these four agencies agreed to create the Marine Debris and Abandoned Vessel Removal Task Force to coordinate efforts to manage debris removal and to raise public awareness about the problem.

In September 2004, the SCCMP received funding from NOAA's Office of Response and Restoration to begin implementation of a marine debris removal project in the Charleston estuary area. Removal operations for vessels and large debris items were conducted at 17 sites. Additional funding was available in 2005, and 12 vessels were removed. With funding in 2006, cost-sharing partnerships with local municipalities were developed. In a partnership with the Town of Hilton Head, 12 vessels were removed in 2006, and in 2007 a partnership with the City of Georgetown resulted in the removal of eight vessels. The South Carolina General Assembly provided supplemental funding to the SCCMP in 2007 to continue the program, and operations have been ongoing in 2008.

#### Ocean Planning Initiative:

In South Carolina the state coastal zone and state management authority extend seaward for three nautical miles. State marine waters include critical habitats for commercially and recreationally important fisheries, as well as significant mineral and sand resources. Due to their proximity to land, state waters are also subject to a growing range of human activities, ranging from aquaculture, to sand mining, to submerged cables, to energy facilities. There is a need for cooperation among government agencies to clarify and coordinate ocean resource policies and improve and increase predictability in decision making.

To better prepare and respond to these challenges, the SCCMP developed a strategy as part of its Section 309 Assessment and Strategy for 2006 – 2010 to explore research and planning issues related to ocean resources in South Carolina. A four-person steering committee and SCCMP staff met during early 2008 to help plan and scope out the effort. They established a 10-member Ocean Planning Work Group with representatives from federal and state agencies and academic institutions. The Work Group will meet with experts and stakeholders on various issues over the course of the next several years to develop a plan to guide future ocean research, data collection and mapping; policies and decisions of agencies with ocean authorities; and ocean education programs. The SCCMP prepared a synthesis report on other coastal states' efforts and experiences in ocean management to support the potential development of an ocean management

plan for South Carolina. [The Work Group held its first meeting approximately one month after the evaluation site visit in early April and an ocean mapping workshop for South Carolina later that month.]

**ACCOMPLISHMENT: The SCCMP has begun an ocean planning initiative to increase cooperation among government agencies, clarify and coordinate ocean resource policies, and improve and increase predictability in decision making. It is involved in a wide range of other coordinated activities and partnerships that effectively increase the reach and range of the SCCMP's involvement in coastal management.**

The evaluation team met with staff from both the ACE Basin and North Inlet-Winyah Bay National Estuarine Research Reserves during the site visit. The SCCMP has strong partnerships with both Reserves, and some of their partnership activities have been mentioned in this document. Staff from the Planning Division and the Science and Policy Division serve as NERR Advisory Committee members. The Science and Policy Division jointed with the two reserve coastal training program coordinators, the South Carolina Sea Grant Consortium, the University of South Carolina, and others to develop a seminar series entitled "Low Impact Development Stormwater Management Practices: Design and Installation Demonstrations." The SCCMP and partners are producing a DVD of the workshop and will distribute it to interested parties. The SCCMP also recently funded an alternative shoreline hardening pilot project at North Inlet-Winyah Bay.

There are even more potential opportunities for coordination and partnership with the creation of the SCCMP's Science and Policy Division. Both the Division and the Reserves aim to provide the best available science and research for coastal management, decision-making, and policy development. The SCCMP's work across the Planning and the Communication and Technical Resources divisions to make science and research available to both citizens and coastal management decision-makers coincides at many points and complements the work of the Coastal Training Program and education programs at the Reserves. OCRM encourages the SCCMP to seek out more areas of coordination and partnership with the Reserves.

**PROGRAM SUGGESTION: OCRM encourages the SCCMP to seek out more opportunities for cooperative activities and partnerships with the ACE Basin and North Inlet-Winyah Bay National Estuarine Research Reserves, particularly as it relates to the translation of science to management and to bridging the research community and coastal managers.**

#### 4. Public Participation and Outreach

As is evident from many of the sections above, the SCCMP reaches out to citizens, organizations, and local governments in numerous ways, both proactively and in response to specific needs or requests. The local government officials with whom the evaluation team met were all appreciative of the assistance and outreach they received from the SCCMP. Although various officials expressed a need for even more SCCMP permitting and enforcement staff, they

were glad to receive both planning and technical assistance help, particularly for local comprehensive plan elements, beach management plans, waterbody management plans, and ordinance development. Because so much planning in South Carolina occurs at the local level, the SCCMP is encouraged to maintain and expand its outreach and assistance efforts to local governments wherever possible.

The SCCMP has been active in administering South Carolina's Adopt-A-Beach Program. The program is part of the larger Marine Debris Initiative but is the element in which the general public, local businesses, and community and civic organizations are most actively involved. There are currently approximately 40 groups whose efforts at adopting and cleaning up specific sections of beach are administered by the SCCMP. Each group signs a partnership agreement and agrees to clean up the specific section of adopted beach at least twice a year for a five-year period. The SCCMP provides a sign at the location indicating the name of the group that has adopted the beach section and records and maintains all beach clean-up form records.

The SCCMP has also established a partnership with the South Carolina Coastal Information Network. The network emerged as a result of a number of coastal outreach institutions and constituencies working in partnership to enhance coordination of coastal community outreach efforts in South Carolina. The South Carolina Sea Grant Consortium has constructed and maintains a website, whose purpose is to maximize the efficient delivery of quality training and educational material to coastal decision-makers, community planners, local officials, and the public. The Network itself does not provide on-line training and educational materials or store raw data, but it serves as a clearinghouse of training events and information products conducted or produced by the members of the Network. The website provides a calendar of outreach events, links to collaborating partners, and links to event publications for further information.

The SCCMP maintains a web page on the Department of Health and Environmental Control's website that is well-populated, fairly user-friendly, and does contain some archival materials in addition to current publications, resources, links to other websites, and various forms and applications. The website is not yet able to accept permit applications electronically, which would be of benefit to the public.

During this evaluation period the SCCMP staff developed a South Carolina Department of Labor, Licensing, and Regulation-certified educational course for realtors on coastal and state laws and regulations, coastal management projects, and permitting processes.

**ACCOMPLISHMENT: The SCCMP actively seeks to involve all elements of the public in the protection and management of South Carolina's coast through a wide range of mechanisms and activities. It provides opportunities for participation and learning, and coastal local government officials and staff are very pleased with the technical assistance and information that the SCCMP provides to them.**

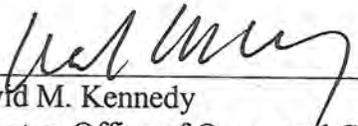
## V. CONCLUSION

For the reasons stated herein, I find that the State of South Carolina is adhering to the programmatic requirements of the Coastal Zone Management Act and its implementing regulations in the operation of its approved SCCMP.

The SCCMP has made notable progress in the following areas: Organization and Administration; Use of Technology; Council on Coastal Futures and Legislative Audit Council Reports; Coastal Habitat; Water Quality; Coastal Hazards; Permitting; Programmatic Coordination and Partnerships; and Public Participation and Outreach.

These evaluation findings also contain eight (8) recommendations: one (1) Necessary Action that is mandatory and seven (7) Program Suggestions. The State must address the Necessary Action by the date indicated. Program Suggestions should be addressed before the next regularly-scheduled program evaluation, but they are not mandatory at this time. Program Suggestions that must be repeated in subsequent evaluations may be elevated to Necessary Actions. Summary tables of program accomplishments and recommendations are provided in Section VI.

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

  
\_\_\_\_\_  
David M. Kennedy  
Director, Office of Ocean and Coastal  
Resource Management

12/19/08  
\_\_\_\_\_  
Date

## VI. APPENDICES

### Appendix A. Summary of Accomplishments and Recommendations

The evaluation team documented a number of the SCCMP's accomplishments during the review period. These include:

Issue Area	Accomplishment
Organization and Administration	In the face of significant staff turnover during this evaluation period, the SCCMP not only has been able to replace staff but added and funded eight additional staff. Three new divisions have been created to complement the existing three. This has resulted in better internal coordination, some efficiencies of operation, and several proactive, cross-cutting new initiatives to address the challenges facing coastal South Carolina, with the potential for even more interconnections and shared efforts.
Use of Technology	The SCCMP is improving its technical infrastructure and technical capacity and has created the <i>Marsh Islands Decision Tool</i> and <i>Dock Buildout Tool</i> to assist coastal managers.
Council on Coastal Futures and Legislative Audit Council Reports	The SCCMP is committed to implementing the recommendations contained in the South Carolina Council on Coastal Futures and the Legislative Audit Council reports and has begun to do so.
Coastal Habitat	The SCCMP convened a Marsh Islands Advisory Committee and promulgated regulations governing access to South Carolina's marsh islands. The regulations were passed by the General Assembly.
Water Quality	The SCCMP's Coastal Nonpoint Pollution Control Program received full approval from NOAA and EPA. The SCCMP provides technical assistance to local governments to help them address water quality issues and also administers the state's Clean Marina Program.
Water Quality	The Long Bay Near-Shore Water Quality Management Project has been a successful partnership among coastal researchers and managers and continues to provide data and information for responses to hypoxia events.

Coastal Hazards	The SCCMP continues to work with local governments in the revisions to local comprehensive beach management plans and worked with the City of Isle of Palms to develop its initial comprehensive beach management plan. The SCCMP has also initiated a multi-year Shoreline Change Initiative to organize existing data collection and research efforts, identify additional research needs, and formulate policy options to guide the management of South Carolina’s estuarine and beachfront shorelines in light of continued pressures on those resources.
Permitting	The SCCMP has added additional staff to the Regulatory Division and created an External Affairs and Enforcement Division. The SCCMP has initiated several processes and mechanisms to address concerns about timeliness of permit issuance, compliance and enforcement; lack of consistency or coordination in permit application review, compliance, and enforcement; and the ability to track permit application status and compliance or enforcement action status.
Programmatic Coordination and Partnerships	The SCCMP has begun an ocean planning initiative to increase cooperation among government agencies, clarify and coordinate ocean resource policies, and improve and increase predictability in decision making. It is involved in a wide range of other coordinated activities and partnerships that effectively increase the reach and range of the SCCMP’s involvement in coastal management.
Public Participation and Outreach	The SCCMP actively seeks to involve all elements of the public in the protection and management of South Carolina’s coast through a wide range of mechanisms and activities. It provides opportunities for participation and learning, and coastal local government officials and staff are very pleased with the technical assistance and information that the SCCMP provides to them.

In addition to the accomplishments listed above, the evaluation team identified several areas where the program could be strengthened. Recommendations are in the form of Program Suggestions and Necessary Actions. Areas for improvement include:

<b>Issue Area</b>	<b>Recommendation</b>
Appellate Panel	PROGRAM SUGGESTION: The SCCMP should evaluate possible new roles the Coastal Zone Management Appellate Panel could play in the coastal management program and work with NOAA OCRM to determine whether approval through the program change process is necessary to change the Panel’s function.

<p>Council on Coastal Futures and Legislative Audit Council Reports</p>	<p>PROGRAM SUGGESTION: The SCCMP is urged to continue its implementation of the recommendations contained in the South Carolina Council on Coastal Futures and the Legislative Audit Council reports and to use those recommendations to guide SCCMP short- and long-term activities and programs.</p>
<p>Coastal Habitat</p>	<p>PROGRAM SUGGESTION: NOAA OCRM encourages the SCCMP to continue to make state legislators and others aware of the importance of freshwater wetland legislation and be watchful for an appropriate time to re-introduce proposed legislation.</p>
<p>Coastal Hazards</p>	<p>PROGRAM SUGGESTION: The SCCMP should assume a leadership role in working with the Governor’s Office, coastal local governments, members of the General Assembly, chambers of commerce, and others to capitalize and fund the State Beach Renourishment Trust Fund.</p>
<p>Coastal Dependent Uses and Community Development</p>	<p>PROGRAM SUGGESTION: The SCCMP should continue to evaluate the current permitting system for docks, look for new mechanisms or changes to regulations to encourage community docks, and seek ways to provide incentives to individual landowners to cooperate with each other toward that end.</p>
<p>Federal Consistency and Program Changes</p>	<p>NECESSARY ACTION: By December 30, 2009, the SCCMP must submit all changes to enforceable policies that are not incorporated into the SCCMP to OCRM through the program change process. At a minimum this includes the marsh island access regulations. If the SCCMP identifies a new role for the Appellate Panel and the SCCMP and OCRM determine that the change should be incorporated into the coastal management program, that change must be submitted by December 30, 2011.</p>
<p>Permitting</p>	<p>PROGRAM SUGGESTION: The SCCMP should have a well-functioning permit tracking system for the permits it issues. The tracking system could be the DHEC EFIS database, if that database can be improved or modified, or a system unique to the SCCMP, so long as it specifically serves the SCCMP’s needs.</p>
<p>Programmatic Coordination and Partnerships</p>	<p>PROGRAM SUGGESTION: OCRM encourages the SCCMP to seek out more opportunities for cooperative activities and partnerships with the ACE Basin and North Inlet-Winyah Bay National Estuarine Research Reserves, particularly as it relates to the translation of science to management and to bridging the research community and coastal managers.</p>

## **Appendix B. Response to Previous (2005) Evaluation Findings**

**Program Suggestion:** SCCMP is commended on the work of the Council on Coastal Futures report and it is recommended that the report be used to guide SCCMP activities in the near and long term. In so doing, it is suggested that an oversight body be created to assure that the work anticipated by the report is carried forth. As a part of this a review of the permit review and issuance process to more adequately reflect what is actually being permitted should be carried out. It is suggested that on conditional and modified projects a letter should be sent to the applicant to require the modification of the permit application to reflect the change before there is approval of the permit. The use of mediation as a mechanism to resolve permit disputes and appeals is supported.

**Response:** A new position was created in the SCDHEC-OCRM office in the fall of 2007. The duties of this position, Special Assistant for External Affairs, involve serving as lead coordinator on the SCDHEC Legislative Audit and the Council on Coastal Futures Report and all associated recommendations and implementation. The recommendations of the Council on Coastal Futures report are being used to help direct CMP activities and updates are periodically given to the SCDHEC Board on the status of the recommendations.

This position is also serving as a liaison between the SCDHEC-OCRM office and the SCDHEC Environmental Quality Control (EQC) office. These two offices will identify and address all cross program issues, including permitting processes, and recommend new or revised policies and procedures to better address any identified issues. SCDHEC-OCRM participates in SCDHEC EQC standing subject-area committees to continue to share information across programs. Specific standing subject-area committees are as follows: Compliance, Outreach and Education, Enforcement, Permitting, Public Participation, Monitoring, Employee Retention and Career Development.

SCDHEC-OCRM Regulatory Division staff coordinate closely with EQC staff through regularly scheduled “coordination” meetings, which allow for consolidated Departmental comments to be provided to the applicant through all stages of review. This provides the consultant as well as the owner with a comprehensive response to their request and allows for any clarification to the Department to be done as a whole so all parties are on “the same page”. Staff, in most instances, are meeting and corresponding with applicants and agents concerning modifications to their requests prior to taking action. Staff also copies the applicants on correspondence directed to their consultants to ensure they are aware of information or concerns staff may have with the pending request.

In July of 2006, a new appeals process was enacted with the passage of 2006 Act No. 387. This new process provided for the final Department decision to be made by the SCDHEC Board if applicants or the public request a review of the staff decision. In these instances, the Board now sits as a review panel and can render the final Department decision if a dispute or controversy exists over the staff decision. This process allows for the parties to come before the full Board, a smaller panel, or an appointed individual to hear the matter and render a decision. Since this review process is not as formal as the former appeal process and the Board review now comes

prior to the Administrative Law Court hearing, it allows for a higher degree of flexibility much like mediation. Formal binding or non-binding mediation is still an option for any willing party or parties.

**Program Suggestion:** The SCCMP should conduct an assessment of current regulations, guidelines, and permitting practices related to the installation of docks in State coastal waters. Development practices should also be a part of this review. Concurrently, a body of stakeholders should be assembled to develop an understanding of the issues surrounding private docks and to develop mechanisms to deal with the environmental consequences of the existing regulations.

**Response:** Every five years, the Department reviews all regulations and determines if changes are needed. In addition to this mandatory review, SCDHEC-OCRM initiates changes to its regulations as needed. These changes can be the result of Board, public or staff initiation. As with any regulatory change SCDHEC undertakes, all proposed changes go through a rigorous public process that allows for public notice and input. Since the last 312 review, the SCDHEC-OCRM Critical Area Regulations have had two substantive revisions including the Marsh Island regulations. Stakeholder groups are routinely used as a part of the SCDHEC regulation promulgation process. The critical area regulations contain mechanisms to address environmental impacts on water resources and the Department's current land disturbance authority under the NPDES program contains other regulatory mechanisms that address development practices. In addition to SCDHEC-OCRM's regulatory and certification role in the coastal zone of South Carolina, SCDHEC's Environmental Quality Control Deputy Area has broad authority to address water quality concerns related to development activities under its regulatory authority.

**Program Suggestion:** SCCMP is encouraged to continue to address the issues surrounding the development of marsh islands.

**Response:** In the early 1990s, regulations were written that governed access to small islands in the South Carolina coastal zone (R.30-12(N)). These regulations were used until February 2005 when the state Supreme Court declared them invalid due to vagueness. Due to this ruling, SCDHEC proposed changes to its Critical Area Regulations to ensure consistent and effective review of applications for access to islands. A Notice of Proposed Regulation was published in the *State Register* on October 28, 2005.

To assist in developing regulatory changes, SCDHEC convened a stakeholder advisory group to address the major issues surrounding access to islands. Information was presented to the advisory committee including the number, sizes, and locations of islands as well as an ecological characterization conducted by the Department of Natural Resources. The findings of this study can be viewed at [www.csc.noaa.gov/id/DNR\\_Final\\_1\\_report\\_December.pdf](http://www.csc.noaa.gov/id/DNR_Final_1_report_December.pdf)

The Marsh Islands Advisory Committee was composed of six members:

Mr. Mitchell Bohannon, P.E., Thomas & Hutton Engineering Co., and Chairman, SC Tourism Council

Mr. Jimmy Chandler, President, SC Environmental Law Project  
Mr. Robert L. Clement, III, Clement, Crawford & Thornhill, Inc., and President Elect, SC Association of Realtors  
Mr. Will Cleveland, Buist, Moore, Smythe and McGee, and Vice-Chair, SC Coastal Conservation League  
Ms. Patty Richards, Palmetto Bluff Foundation owned by Crescent Resources (the development arm of Duke Energy)  
Mr. Matt Sloan, Daniel Island Company

The official charge to the committee stated: *“The current regulations that address access to marsh islands were written in the early 1990s. They have not proven to be adequate in giving guidance to either would-be developers of these islands, those in the environmental community who are concerned about development, or regulators in making permitting decisions. With almost 3,500 marsh islands located in South Carolina, it is important that the state have controls in place to manage this resource. For that reason, as a first step to developing new regulations, SCDHEC appoints this advisory committee and asks that you write recommendations that can be used to formulate regulations that will carry out the mandate of [DHEC] “to protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone and of all the people of the State.”*

SCDHEC published a Notice of Drafting in the *State Register* on April 29, 2005 to initiate the statutory process and inform the public of the intent to amend the regulations. All meetings of the Marsh Island Advisory Committee were open to the public and announced via the SCDHEC website. In addition, broadcast and print media and other interested parties were mailed notice of each meeting.

After six meetings between July and September 2005, the committee reached consensus on recommendations, which were reflected in the proposed regulatory changes. These regulatory changes were supported by all committee members.

The proposed regulatory changes:

- 1) added definitions for coastal island and bridge,
- 2) deleted the existing regulations for access to small islands,
- 3) provided criteria for determining the eligibility of an island for a bridge permit,
- 4) established project standards for the evaluation of bridge permits,
- 5) provided for regulation of existing causeways and bridges, and
- 6) addressed permitting of non-vehicular bridges for use by the general public.

On October 6, 2005, the SCDHEC Board granted staff approval to public notice the proposed regulations and to conduct a staff informational forum. A Notice of Proposed Regulation was published in the *State Register* as Document 3006 on October 28, 2005. Notice of intent to promulgate these regulations was also published on the Department’s Internet sites.

Details on the administrative procedures for promulgating these regulatory amendments are included in the Presiding Official’s Report. The General Assembly passed the regulations in April 2006, and the regulations were made effective in June 2006. The final regulations can be

found at <http://www.scstatehouse.net/regs/3006.doc>

After the passage of the regulations, the Department has reviewed or is currently reviewing applications for 15 bridges of varying widths (4' to 20' wide) and lengths to access sensitive coastal islands. Of the 15 applications, five applications were either withdrawn or cancelled, one was granted, and nine are currently under review.

**Program Suggestion:** SCCMP is encouraged to develop a strategy to expand information and outreach on SCCMP programs, issues and opportunities. In so doing, the Council on Coastal Futures report should be one of the foundation documents of the strategy.

**Response:** SCDHEC-OCRM has continued to enhance and expand its communication and outreach program through the implementation of an internal outreach plan and through fostering collaborative relationships to maximize the efficient delivery of agency products and services.

In 2005, SCDHEC-OCRM completely restructured its website as part of an agency-wide effort to improve usability and access to information. SCDHEC-OCRM has received very positive feedback from the regulated community on the improvements, particularly the online Public Notices and document clearing house. SCDHEC-OCRM has also used the website to promote program achievements and raise public awareness of coastal issues, such as abandoned vessels and the Clean Marina Program. Recently, SCDHEC -OCRM was invited to appoint a staff representative to serve on the agency's web development task force. Based on the results of this task force, additional content improvements and enhancements will be implemented.

SCDHEC-OCRM has also reevaluated its public educational material. In addition to developing a style brand for its documents, SCDHEC-OCRM is steadily updating its most popular publications to ensure the most up-to-date information is available to its constituents.

#### **SC Coastal Information Network**

In 2006, SCDHEC-OCRM joined a new initiative among state agencies, academic institutions and regional governments to improve the efficient delivery of coastal management information and training opportunities for coastal decision makers. With financial and logistical support from SCDHEC-OCRM, the S.C. Coastal Information Network published its new web-based clearinghouse in late 2007 ([www.sccoastalinfo.org](http://www.sccoastalinfo.org)).

#### **Workshops and Education**

In 2005, SCDHEC-OCRM assembled staff experts to conduct a series of half-day training sessions on state and coastal laws and regulations for real estate professionals. SCDHEC-OCRM had previously identified real estate agents and brokers as a regular source of inquiries about coastal permitting, and also as a vehicle to get pertinent information into the hands of property owners. Due to overwhelming demand, SCDHEC-OCRM decided to continue to offer the course as an SC-LLR certified course for continuing education for real estate professionals. SCDHEC-OCRM also presents sections of course material on request. Since 2005, nearly 1,000 realtors have received training on state and coastal laws and regulations.

SCDHEC-OCRM has also increased its support of coastal science education in elementary and intermediate schools. In addition to its annual \$2,000 competitive grant for public schools, SCDHEC-OCRM has become a sponsor of Camp Wildwood Year III. Camp Wildwood is an intensive outdoor oriented camp administered by the South Carolina Garden Club and the SC Department of Natural Resources that is designed to develop natural resource leadership training. The Year III curriculum focuses on coastal environment and management issues. To support this endeavor, SCDHEC-OCRM provides financial assistance, curriculum and staff time for field instruction.

### **Marine Debris Outreach & Education**

#### ***Curriculum Development – Newspapers in Education***

In August 2007, production and distribution of a 16-page newspaper insert entitled, “Turning the Tide on Trash” was completed through a partnership consisting of SCDHEC-OCRM, South Carolina Sea Grant, College of Charleston and the Charleston Post and Courier Newspaper. The insert, part of the Post and Courier’s *Newspapers in Education* program, was included in 250,000 (est.) general circulation newspapers and subscriptions as well as directed to approximately 2,000 coastal public school teachers who instruct approximately 40,000 middle school students. The content was designed to meet state educational standards as a science curriculum supplement.

Building on the success of the *Newspapers in Education* project, SCDHEC-OCRM is currently assisting in the development and production of a related project through a continued partnership with South Carolina Sea Grant and the affiliated Center for Ocean Sciences Excellence in Education (COSEE) South East. In order to bring the content and message to a larger regional audience, Sea Grant/COSEE has forged partnerships with resource agencies in Georgia and Mississippi to produce an Educator’s Guide to Marine Debris. Using the framework and selected content from “Turning the Tide on Trash”, the Educator’s Guide will explore the challenge of marine debris in the Southeastern region of the United States and provide curriculum supplements and activities for use in middle and high school science classes.

#### ***Marine Debris Awareness Initiative***

With grant support from the National Fish and Wildlife Foundation, SCDHEC-OCRM fostered partnerships and initiated a series of projects in 2007 designed to educate the public about the many perils of marine debris. Over Memorial Day and the July 4<sup>th</sup> holiday weekends, SCDHEC-OCRM aired an entertaining coast-wide public service announcement that used a grouchy fish’s perspective to encourage beachgoers and boaters to be responsible for their trash. You can join the over 92,000 radio listeners who heard the message by visiting our website at: <http://www.scdhec.gov/environment/ocrm/>

This grant also provided an opportunity to forge partnerships with the South Carolina Aquarium and the SC Department of Natural Resources. The South Carolina Aquarium built on the high visibility of its acclaimed turtle hospital by producing a poster and table top exhibits that illustrates the effects of marine debris on habitat and species.

Additionally, aquarium staff purchased and installed over 1700 turtle excluder devices on recreational crab traps during public education events. The Aquarium also expanded its Barrier

Island Internship program by partnering with rental agencies to distribute educational information for vacationers about marine debris and what they can do to prevent it.

The SC DNR was awarded funding to expand its monofilament fishing line collection and recycling program. Under this grant, over 50 new collection bins were installed at boat landings and waterfront parks throughout the coast. DNR estimates that with these additional bins, they will be able to collect and recycle over 800 additional pounds of fishing line each year.

**Program Suggestion:** SCOCRM should assess staffing needs to allocate support where necessary and assure full staffing to meet emerging information technology requirements in the regional offices as well as Charleston. Steps should be taken to assure coordination of project reviews within DHEC and with Federal and local partners where appropriate. A Strategy to assure that institutional knowledge is not lost should be developed.

**Response:**

**Technical Capacity**

With programmatic support from NOAA, SCDHEC-OCRM has made a concerted effort to improve its technical infrastructure, access to resources and technical facility among staff. A significant increase in the number of staff based in the Charleston office required a number of upgrades in our overall technical capacity. Over the last several years, SCDHEC-OCRM has expanded its network capacity, replaced outdated computers and peripheral equipment and has worked with the DHEC Central Office on a plan to migrate files and system operations to a new server based on a Microsoft operating system.

**Database Improvements and Digital Document Management**

Through established agency contractual agreements, SCDHEC-OCRM has made a number of modifications to the agency environmental permitting database, EFIS. Though the database remains a work in progress, these modifications have improved SCDHEC-OCRM's ability to record, monitor and report permitting activities.

Proper preparation for natural disasters and other catastrophic events is a critical component of the agency's ability to recover and continue the implementation of the coastal zone management program. SCDHEC-OCRM has identified the need to maintain an electronic back-up copy of all permit and program related documents and files. To that end, SCDHEC-OCRM has been making a concerted effort to scan and digitally archive inactive permitting files and large format plans. In 2008, SCDHEC-OCRM will implement a Continuity of Operations Plan for permit documents through a coordinated effort among technical, administrative and permitting staff. This process will provide an up-to-date digital copy of on-site hardcopy final file documents that are securely stored off-site, but can be accessed remotely. Over the course of the next several years, this initiative will expand to include other valuable program file assets, including historical Mylar aerial photos, final grant products and other documents.

**GIS Development**

SCDHEC-OCRM has continued toward the completion of several data layers relevant to shoreline change and coastal management studies. Current projects include:

- Coastal Island and Marsh Upland Delineation (complete)
- Estuarine Marsh Delineation (complete)
- High Resolution Aerial Imagery – (complete)
- Beachfront Feature Delineation (complete)
- Tidal Creek Delineation Dock, Bridge and Hardened Structure Delineation
- Primary Dune and Set Back Delineation

SCDHEC-OCRM has also completed a contractual agreement with Pictometry for the acquisition of high-resolution, three-dimensional imagery for priority areas of the coast. This data will allow for more detailed analysis of shoreline structures and features and will augment existing GIS analysis capabilities.

#### Marsh Islands Decision Tool

In 2006, SCDHEC-OCRM partnered with NOAA-CSC to create an ArcGIS extension and marsh island data set using 1999 NAPP imagery. The data set features delineations for mainland in the OCRM critical area, sea islands, barrier islands, marsh islands, spoil islands, bridges and causeways. The extension uses the marsh islands data set in conjunction with supporting data layers (endangered species, protected lands, culturally significant sites, etc.) to analyze environmental sensitivity and development potential of individual marsh islands using a standard set of parameters (island size, distance from mainland, proximity to sensitive habitats, etc.). This tool was extremely valuable in the regulatory recommendation process conducted by the Marsh Islands Advisory Committee.

#### Dock Build Out Tool

SCDHEC-OCRM contracted with PhotoScience to create an ArcGIS extension and supporting data sets to assist with the delineation of existing and newly constructed docks. This valuable tool also assists in the determination of compliance for existing docks, evaluation of new dock applications, analysis of overall dock impacts, and identifying areas of high, low and potential dock build-out. The tool has not yet been fully integrated into the regulatory process, but will likely go into use after a determination is made as to its position within workflow processes of the regulatory staff.

#### **Charleston Port Authority (not listed as a program suggestion)**

The SC State Ports Authority is focusing on port expansion on the old Navy Base in Charleston. Their basic focus is on port development and does not address ancillary uses associated with port expansion. A subset of the area Council of Governments (COG) is working with the Ports Authority on the development of the expanded Port. In all of this, timing is key; the Port Authority has initiated a portion of the demolition necessary for construction, and SCDHEC-OCRM (SW) have an application under review for site preparation/grading and two ponds. It will take another 18 months of consolidation & 2 years to construct (2001/12). This allows for the transportation elements to be entered into the State transportation process, but the timing is close and there is little room for delays along the planning and permitting pathways.

## **Appendix C. Persons and Institutions Contacted**

### South Carolina Department of Health and Environmental Control (DHEC)

Earl Hunter, Commissioner

### South Carolina Coastal Management Program (DHEC Office of Ocean and Coastal Resource Management {OCRM})

Carolyn Boltin, DHEC Deputy Commissioner, OCRM

Marvin Pontiff, DHEC Assistant Deputy Commissioner, OCRM

Barbara Neale, Director of Regulatory Programs

Braxton Davis, Director of Science and Policy

Elizabeth von Kolnitz, Director of Planning

Marian Page, Director of Finance

Rheta Geddings, Director of External Affairs and Enforcement

Elizabeth Dieck, OCRM Chief Counsel

Dave Pierce

Heather Kellerman

Bill Eiser

Shawn Kiernan

### State Agency Representatives

Elizabeth Johnson, Deputy State Historic Preservation Officer, Department of Archives and History

Robert Boyles, Deputy Director, Marine Resources Division, Department of Natural Resources

Phil Maier, Manager, ACE Basin National Estuarine Research Reserve, Department of Natural Resources

Rebekah Szivak, ACE Basin National Estuarine Research Reserve, Department of Natural Resources

### Federal Agency Representatives

Tina Hadden, Chief, Regulatory Division, Charleston District U.S. Army Corps of Engineers

Tim Hall, U.S. Fish and Wildlife Service

### Local Government Representatives

Henry Johnston, Mayor, Town of Bluffton

Bill Workman, Town Manager, Bluffton

Tim Bennett, Assistant Town Manager, Bluffton

Jeff McNesby, Director of Environmental Protection, Bluffton

Kim Jones, Natural Resources Manager, Bluffton

Curtis Coltrane, Assistant Town Manager, Town of Hilton Head Island

Charles Cousins, Director of Planning, Hilton Head Island

Jill Foster, Assistant Director of Planning, Hilton Head Island

Sally Krebbs, Natural Resources, Hilton Head Island

Sarah Skieten, Natural Resources, Hilton Head Island

Shea Farrar, Senior Planner, Hilton Head Island

Academic/Educational Representatives

Wendy Allen, Manager, North Inlet/Winyah Bay National Estuarine Research Reserve,  
University of South Carolina

Rick DeVoe, Executive Director, South Carolina Sea Grant Consortium

Other Organizations and Representatives

Walter Warren, Thomas and Hutton Engineering

Jimmy Chandler, South Carolina Environmental Law Project

Amy Armstrong, South Carolina Environmental Law Project

Dana Beach, South Carolina Coastal Conservation League

Nancy Vinson, South Carolina Coastal Conservation League

Robert Clement, Clement, Crawford and Thornhill

## **Appendix D. Persons Attending the Public Meetings**

The public meeting was held on Wednesday, March 12, 2008, at 6:00 p.m. at the South Carolina Department of Natural Resources, Marine Resources Research Institute Auditorium, 217 Fort Johnson Road, Charleston, South Carolina. In addition to staff members from the SCCMP, the following members of the public attended the meeting:

Charles McCart  
Tricia Schmidt  
Patrick Rogers

## **Appendix E. NOAA's Response to Written Comments**

NOAA received written comments regarding the South Carolina Coastal Management Program. Each of the letters is part of the official record of the evaluation and is briefly summarized below, followed by NOAA's response.

**Mr. Wayne Beam**  
**Beam & Associates**  
**Columbia, South Carolina**

**Comment:** The evaluation team thanks Mr. Beam for his comments. Mr. Beam notes that he has been associated with the SCCMP for many years. [He served as the executive director of the South Carolina Coastal Council until the Council was abolished and the coastal program was transferred to the Department of Health and Environmental Control.] He comments about the policies of the South Carolina Coastal Management Program that apply in the coastal zone, but outside the critical area, to permits and consistency determination. He indicates that those policies that are applied were never promulgated as regulations, and in his opinion, this has led "...to arbitrary and capricious decision making..." by the SCCMP. He asks that NOAA require the SCCMP to promulgate these policies as regulations.

**NOAA's Response:** As these findings indicate, a case dealing with this issue is currently before the South Carolina Supreme Court. It is not appropriate for NOAA to comment on the issue while it is under litigation.

**Ms. Maggie Ridge, President**  
**St. Paul's Preservation Society**

**Comment:** Ms. Ridge states her concerns with what she believes to be abuses of the exemption for silviculture activities from the Clean Water Act (CWA) and the Coastal Zone Management Act (CZMA). She discusses a case in which she indicates the developer of a proposed private landfill was allowed under the exemption to log large areas for pre-construction of the site with resultant impacts to wetlands and with much stormwater runoff. She believes that stricter regulations should be applied by the CWA and the CZMA.

**NOAA's Response:** The evaluation team thanks Ms. Ridge for her comments. The Clean Water Act is administered by the US Environmental Protection Agency, not NOAA, and exemptions authorized by the Act are not subject to interpretation or negotiation by NOAA or the state of South Carolina. Unless captured or otherwise addressed by state law, there are provisions for exemptions from the CWA for silvicultural activities that could potentially allow land disturbing activities and impacts to wetlands. As this findings document has noted, there is no state law or regulation specifically governing isolated freshwater wetlands in South Carolina, a situation for which NOAA has included recommendations in this and previous evaluation findings. Ms. Ridge may wish to contact the South Carolina congressional delegation with regard to amendments or changes she feels are needed to the federal Clean Water Act or the Coastal Zone Management Act and members of the South Carolina General Assembly to share her concerns about lack of state protection for isolated freshwater wetlands.

**Mr. Paul Kenny**

**Pawleys Island, South Carolina**

**Comment:** Mr. Kenny raises concerns about several permits and how he believes the South Carolina Coastal Management Program erred in either issuing the permit or the consistency determination, or should have more quickly responded to information about illegal activity and followed with enforcement action. He believes most of the problems are due to understaffing and believes that the future of wetland protection in South Carolina does not look good because of that.

**NOAA's Response:** The evaluation team thanks Mr. Kenny for his letter and comments. NOAA OCRM agrees with Mr. Kenny that many of the concerns he raised are a function of understaffing in the South Carolina Coastal Management Program. As noted in these findings, we are hopeful that the additional positions the coastal program has obtained recently for project management and enforcement will resolve many of the timely and thorough permit review, compliance, and enforcement issues Mr. Kenny has raised. We have shared this letter with the SCCMP, and the staff is aware of his concerns.