

NEW YORK¹

State Authority for Marine Protection

Summary of State Authorities

The New York Department of Environmental Conservation (DEC) regulates and enforces laws related to the taking of fish, shellfish, and crustaceans. The authority includes regulation of general licensing requirements; size limits; and net, trawl, fish pot, and trap usage. The DEC is authorized to designate seagrass management areas and special management areas for artificial reefs. Also, New York has a program for the protection of tidal wetlands. Lastly, two provisions of the state’s Executive Laws (EXEC) provide for coastal habitat conservation: (1) Article 46 establishes the Long Island South Shore Estuary Reserve; and (2) Article 42 creates a management system for waterfront revitalization programs for coastal areas and inland waterways in the state.

	Special Management Areas	Area-Based Fishery Restrictions	Tidal Wetlands Act	Long Island South Shore Estuary Reserve	Seagrass Management Areas
Legal requirement	Allows designation of special management areas for artificial reefs	Prohibits use of certain type of gear in specified areas	Establishes permitting program for tidal wetlands	Establishes and protects the Long Island South Estuary Reserve	Requires designation of seagrass management areas and protection
Citation	NY ECL § 13-0360 (1996)	NY ECL §§13-03	NY ELC §§ 25-0101—25-0601 (1973)	NY EXEC §§ 960—970 (1993)	NY ELC §§ 13-0701—13-0705 (2012)
Designation authority	DEC	By statute	DEC	By statute	DEC
Management & enforcement authority	DEC & the Commissioner & designees & peace officers	DEC & Marine Resources Advisory Council	DEC & attorney general	Long Island South Shore Estuary Reserve Council	DEC & the Commissioner & designees & peace officers
Jurisdiction & boundaries	Containing artificial reefs or wrecks simulating artificial reefs and surrounding waters within state waters	All state waters	Tidal wetlands	Specific area of estuary	Seagrass areas
Prohibited uses	None specified.	Certain fishing activities that vary according	Prohibits dredge and fill without a	None Specified.	None specified.

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

	Special Management Areas	Area-Based Fishery Restrictions	Tidal Wetlands Act	Long Island South Shore Estuary Reserve	Seagrass Management Areas
		to statute	permit.		
Permitted uses	None specified.	None specified.	Permitted dredge and fill	None specified.	None specified.

Special Management Areas

ECL § 13-0360 allows for the state’s DEC to designate special management areas for marine areas containing artificial reefs or shipwrecks simulating artificial reefs. The provision further authorizes the DEC to “adopt regulations restricting the taking of fish, shellfish and crustacea in any special management area designated... Such regulations may restrict the manner of taking of fish, shellfish and crustacea in such areas and the landing of fish, shellfish and crustacea which have been taken therefrom.”² Interestingly, the New York Legislature placed a sunset clause on the DEC’s adoption of regulations for designated special management areas. The sunset clause was set to elapse on December 31, 2011, but was extended legislatively³ and now will elapse on December 31, 2015.⁴ To date, no special management no regulations pursuant to ECL § 13-0360 have been promulgated and no special management areas have been designated. The DEC, however, has relied on other authority to adopt regulations prohibiting the use fish pots or traps within 500 feet of certain artificial reef sites.⁵ Special Management Area designations may be forthcoming as least one advisory body has urged the DEC to implement them.⁶

Area-Based Fishery Restrictions

In accordance with New York’s fishery provisions, a number of areas are closed to certain types of fishing activities. These include restrictions on the use of trawls,⁷ nets,⁸ and fish pots and traps,⁹ For trawling restrictions, in most instances these area-based prohibitions protect estuaries, river mouths and nearshore waters from trawling. For fish pots and traps, use is prohibited within five hundred feet of any artificial reef.¹⁰

In addition, the Department has authority to make regulations to maintain the long-term health and abundance of marine fish resources and habitats, providing broad authority for place-based fishery protection. The Department must follow specific procedures when development regulations for fisheries management.¹¹ According to the statute, the Department is required to first identify recreational and commercial fisheries interests who may be affected by proposed regulations and consult with them prior to drafting regulations.¹² It must also consult with the Marine Resources

² NY ECL § 13-0360(3).

³ NY S4973-2011.

⁴ NY ECL § 13-0360(3).

⁵ 6 NYCRR Section 40.6.

⁶ See, e.g., *Final Report from the New York State Seagrass Task Force: Recommendations to the New York State Governor and Legislature*, December 2009, p. 35.

⁷ NY ECL § 13-0341.

⁸ ECL § 13-0343.

⁹ ECL § 13-043-a.

¹⁰ ECL § 13-043-a.

¹¹ NY ECL §13-0105.

¹² NY ECL §13-0105(2).

Advisory Council.¹³ Once drafted, the Council may take comments from the fishing industry and must give its advice to the Department as to whether the regulations should be adopted, not adopted, or adopted with revisions.¹⁴ Based on these recommendations, state policy, and public comment, the Department is to make its final decision on the regulations.¹⁵

Tidal Wetlands Act

New York's Tidal Wetlands Act establishes a permitting program for activities that may substantially impair or alter the natural condition of a tidal wetland.¹⁶ It is New York's policy "to preserve and protect tidal wetlands, and to prevent their despoliation and destruction, giving due consideration to the reasonable economic and social development of the state."¹⁷ The law directs the DEC to inventory all tidal wetlands in the state,¹⁸ to confer with local governments to establish programs for their protection, and to adopt land-use regulations¹⁹ governing the uses tidal wetland areas.²⁰ The Act regulates all activities "within or immediately adjacent to inventoried wetlands which may substantially impair or alter the natural condition of the tidal wetland area,"²¹ but specifically exempts from regulation under the statute the "depositing or removal of the natural products of the tidal wetlands by recreational or commercial fishing, shellfishing, [or] aquaculture...where otherwise legally permitted." All regulated activities are subject to a mandatory permitting requirement.²² State tidal wetland permits are supplemental to any permits required under the Clean Water Act or other statutory permitting scheme. The DEC administers the tidal wetlands permit program and may deny a permit or may impose condition on a permit to ensure uses compatible with the public interest, marine fisheries, and the preservation of tidal wetlands.²³

Seagrass Protection Act

In 2012, the New York Legislature enacted the Seagrass Protection Act, which requires the DEC to designate seagrass management areas and to regulate activities that threaten such areas. The statute directs the DEC to develop a seagrass management plan in "consultation with local governments, representatives of recreational boating interests, the marine industries (including commercial and recreational shell fishermen, and commercial shell fish farmers), affected property owners, and other stakeholders" for each designated seagrass management area.²⁴

The sweep of the Seagrass Protection Act partially overlaps with DEC's authority under the Tidal Wetlands Act (see previous), but the Seagrass Protection Act accords additional authority to the DEC to restrict terrestrial and marine activities that may impair seagrass or seagrass restoration efforts.²⁵ Unlike

¹³ *Id.*

¹⁴ NY ECL §13-0105(3).

¹⁵ *Id.*

¹⁶ See, generally, NY ELC §§ 25-0101—25-0601.

¹⁷ NY ECL § 25-0102.

¹⁸ The DEC's inventory of tidal wetland area maps can be found at <http://twi.ligis.org/>.

¹⁹ The land-use regulations promulgated pursuant to the Tidal Wetlands Act are codified at 6 NYCRR Part 661.

²⁰ NY ECL §§ 25-0201, 25-0301, & 25-0302.

²¹ NY ECL § 25-0401 catalogs the full list of regulated activities as "any form of draining, dredging, excavation, and removal either directly or indirectly, of soil, mud, sand, shells, gravel or other aggregate from any tidal wetland; any form of dumping, filling, or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind; the erection of any structures or roads, the driving of any pilings or placing of any other obstructions, whether or not changing the ebb and flow of the tide, and any other activity within or immediately adjacent to inventoried wetlands which may substantially impair or alter the natural condition of the tidal wetland area."

²² NY ECL § 25-0403.

²³ *Id.*

²⁴ NY ECL § 13-0705(2).

²⁵ NY ECL § 13-0705(3).

the Tidal Wetlands Act,²⁶ the Seagrass Protection Act does not establish a new permitting scheme. The DEC has yet to designate any seagrass management areas.

Long Island South Shore Estuary Reserve

Article 46 of New York's Executive Laws establishes the Long Island South Shore Estuary Reserve ("the Reserve") and protects and manages the Reserve as a single integrated estuary.²⁷ The Reserve extends from West Bay in Nassau County to the Shinnecock Bay in Suffolk County. From south to north, the Reserve stretches from the mean high tide line on the ocean side of the barrier island to the inland drainages that pour into the estuary.²⁸

In creating the Reserve, the New York Legislature also established the South Shore Estuary Reserve Council ("the Council") to assist in developing and implementing a comprehensive management plan for the Reserve.²⁹ The Council is to be made-up of twenty-three voting members representing diverse interests including local government officials, environmental organizations, charter boat operators, fishermen, researchers, and developers. In addition, the statute creates four advisory committees—a citizens advisory committee, a technical advisory committee, a management advisory committee, and a local government advisory committee—to help guide the Council in the preparation and implementation of its comprehensive management plan.³⁰ The Secretary of State is charged with chairing the Council.³¹

The purpose of the comprehensive management plan "is to make recommendations to integrate and coordinate existing programs and studies; mitigate pollution; balance preservation, recreation and economic development; protect appropriate existing investment; and protect the natural resources."³² In 2001, the Council adopted a comprehensive management plan for the Reserve.³³ The comprehensive management plan provides a blueprint for the long-term protection of the Reserve with over seventy-

²⁶ NY ECL § 25-0401(1).

²⁷ NY EXEC § 961. The statute states:

[T]he purpose of this article is to provide a means for public and private interests to act collectively and pool resources and expertise to: integrate and coordinate existing programs and studies; identify and make recommendations to mitigate pollution sources in order to maintain or enhance water quality, maximize natural productivity and improve management of shellfish harvest areas to insure economic viability and minimize health risk; make recommendations on policies designed to balance the preservation of natural resources while providing adequate access and use of resources for the public as well as stability for water dependent businesses and tourism; make recommendations on methods to protect the value of existing public and private investment that has already been made in the region; and provide direction for state and local governments to protect, preserve and properly manage the unique natural resources of the South Shore estuary for the benefit of existing and future generations.

NY EXEC § 961-A.

²⁸ NY EXEC § 962.

²⁹ NY EXEC § 964.

³⁰ NY EXEC § 965.

³¹ NY EXEC § 964.

³² NY EXEC § 966(1).

³³ Long Island South Shore Estuary Reserve Comprehensive Management Plan, April 12, 2001, available at <http://www.dos.ny.gov/communitieswaterfronts/pdfs/SSERCMP.pdf>.

five action recommendations;³⁴ however, it does not independently provide a basis for the regulation of fishing or other recreational activities.³⁵

Other Programs

Hudson River Estuary Management Program

Section 11-0306 of New York's Environmental Conservation Laws provides for the creation of an estuary management program for the Hudson River estuarine district ("the District").³⁶ The provision defines the District expansively to "include the tidal waters of the Hudson River, including the tidal waters of its tributaries and wetlands from the federal lock and dam at Troy to the Verrazano-Narrows."³⁷ The law also creates an advisory committee, consisting of eleven or more members representing commercial fishing, sportsmen, research, conservation, and recreation interests, with which the DEC is to consult on regulatory and policy matters affecting the District.³⁸ A person from within the DEC must be appointed Hudson River estuary coordinator to assist with the implementation and development of the estuary management program.

The Hudson River estuary management program intersects with protections afforded under the National Estuarine Research Reserve System. In addition to the Hudson River estuarine district, the estuary management program establishes "a Hudson River estuarine sanctuary for the purpose of protecting areas of special ecological significance within the Hudson River estuarine district and associated shorelands,"³⁹ but designates the four sites currently comprising the Hudson River national estuarine research reserve (HRNERR) as the initial Hudson River estuarine sanctuary.⁴⁰ The statute directs the DEC to administer "the Hudson River national estuarine research reserve program as a program of the department for the purpose of operating the estuarine sanctuary."⁴¹

Four sites within the Hudson River estuary were set aside as the Hudson River National Estuarine Research Reserve in 1982 for the purpose of estuarine research, stewardship, and education.⁴² The four sites span almost 5,000 acres and include upland terrain as well as brackish tidal wetlands.⁴³ The sites comprising the Hudson River National Estuarine Research Reserve are 1) Stockport Flats, 2) Tivoli Bays, 3) Iona Island, and 4) Piermont Marsh.⁴⁴ While the Hudson River estuarine sanctuary program is administered by the DEC, the Hudson River National Estuarine Research Reserve is operated as a partnership between New York State and the National Oceanic and Atmospheric Administration. The National Oceanic and Atmospheric Administration helps provide funding and management assistance to the DEC.

Waterfront Revitalization of Coastal Areas and Inland Waterways

³⁴ *Id.*

³⁵ NY EXEC § 969. The provision reads, "Limitations on the regulation of hunting, fishing and recreational activities. Nothing in this article shall be interpreted to authorize the regulation of hunting, fishing, trapping, possession of wildlife or other recreational activities in the reserve, except as otherwise provided by law."

³⁶ NY ECL § 11-0306(2).

³⁷ NY ECL § 11-0306(1).

³⁸ NY ECL § 11-0306(3).

³⁹ NY ECL § 11-0306(5).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See <http://www.dec.ny.gov/lands/4915.html>, last visited May 1, 2013.

⁴³ See <http://www.hrnerr.org/about-hudson-river-national-estuarine-research-reserve/>, last visited May 1, 2013.

⁴⁴ See <http://nerrs.noaa.gov/Reserve.aspx?ResID=HUD>, last visited May 1, 2013.

The New York State Coastal Management Program (CMP) was developed pursuant to the Coastal Zone Management Act of 1972 and approved by the U.S. Secretary of Commerce on September 30, 1982.⁴⁵ In 1981, New York’s Waterfront Revitalization of Coastal Areas and Inland Waterways Act (the Waterfront Act) was enacted in part to implement the federal Coastal Zone Management Act at the state level.⁴⁶ The Waterfront Act functions to coordinate policy with proposed State agency actions to achieve the wise use and protection of the State’s coastal resources. The CMP and the Waterfront Act encourage local governments to prepare local waterfront revitalization programs consistent with specific coastal policy guidelines⁴⁷ and allows the Secretary of State to provide assistance in developing such programs.⁴⁸

A local waterfront revitalization program provides a comprehensive use plan for a community’s waterfront and waterfront resources. Among other things, local waterfront revitalization plans must address to the extent “commensurate with the particular circumstances of [the] local government”, the redevelopment, public access, coastal resource protection, water quality, and boating, fishing, and swimming interests.⁴⁹ The statute provides a funding mechanism for approved waterfront revitalization programs.⁵⁰

Evaluation of State Authorities⁵¹

FACTORS	Special Management Areas	Area-Based Fishery Restrictions	Tidal Wetlands Act	Seagrass Management Areas	Long Island South Shore Estuary Reserve
Legal regime	★★★★ Regulatory	★★★★ Regulatory	★★★★ Regulatory	★★★★ Regulatory and Planning	★★★ Planning
Ocean jurisdiction	★★★ Subset of marine waters	★★★★ All marine waters	★ Tidal	★★★ Subset of marine waters	★★★ Subset of marine waters ⁵²
Durability	★ Sunset provision elapsing 12/31/15	★★★★ Some in perpetuity (or as specified by regulation)	★★ Indeterminate	★★ Indeterminate	★★ Indeterminate, but calls for bi-annual review of the

⁴⁵ The CMP is described in a document entitled *State of New York Coastal Management Program and Final Environmental Impact Statement*.

⁴⁶ NY EXEC § 921. The network of laws NY uses to implement the CZMA is more thoroughly and comprehensively described in *State of New York Coastal Management Program and Final Environmental Impact Statement*, Section 6, August 1982; with changes made to incorporate routine program changes approved in 1983 and 2001. For an overview of the Coastal Management Program, see Nicholas A. Robinson, ed., *The Treatise on New York Environmental Law* sec. 4.23.

⁴⁷ 19 NYCRR Part 600.5 provides the coastal policy regulations. 19 NYCRR Part 600.6 provides the coastal policies for Long Island Sound. The coastal policies govern state agency consistency with LWRPs. 19 NYCRR PART 600.5-.6 Federal consistency is governed by the state’s Coastal Management Program, which Exec L. Art. 42 partially implements.

⁴⁸ NY EXEC § 915

⁴⁹ *Id.*

⁵⁰ NY EXEC § 918.

⁵¹ For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.

⁵² Even though the protected area is referred to as the Long Island South Shore *Estuary* Reserve (emphasis added), it extends beyond brackish waters into marine areas outside that which would be traditionally considered estuarine. For a rough map showing the extent of the Reserve, see <http://www.fws.gov/r5snep/area/SSER.html>.

					management plan
Consistency over time	☆☆☆ Authorizes year-round protection	☆☆☆☆ Mandates year-round protection (for statutory designations)	☆☆☆☆ Mandates year-round protection	☆☆☆ Authorizes year-round protection	☆☆ Indeterminate
Habitat protection	☆☆☆ Habitat protection	☆☆☆☆ Habitat Protection	☆☆☆☆ Habitat protection	☆☆☆ Habitat protection	☆☆☆ Habitat protection
Sector	☆ Authorizes single-sector protection	☆☆ Mandates (or authorizes) single-sector protection	☆☆☆☆ Mandates multi-sector protection	☆☆☆ Authorizes multi-sector protection	☆☆☆ Authorizes multi-sector protection
Enforcement	☆ No MPA-specific enforcement	☆ No specific enforcement provision identified	☆☆☆☆ MPA-specific statutory includes criminal penalties	☆ No MPA-specific enforcement	☆ No MPA-specific enforcement
Extent (scope)	No sites currently designated	☆☆☆☆ Multi-site, expansion mechanism by regulation	☆☆ Multi-site, no specific expansion mechanism	No sites currently designated, but mandates designation of sites	☆ Single MPA, no expansion mechanism
Process for designation or expansion	☆☆ No MPA-specific public process	☆☆☆☆ Specific public process for developing fisheries regulations	☆☆☆☆ Specific public process for designating tidal wetlands	☆☆ No process specified	No mechanism for expansion

Local Authority for Marine Protection

Summary of Local Authorities

As a starting point, county authorities are prohibited from exercising powers to protect, preserve or propagate fish, game, wildlife or shellfish within the county unless specifically authorized by law. Three separate statutory provisions of New York law give some authority to local governments to regulate the coastal and marine environment. Local governments have waterfront land-use planning authority, and the Waterfront Act authorizes local regulation of wharves, docks, moorings, piers, jetties, platforms, breakwaters or other structures to a distance of 1,500 feet from shore. The Tidal Wetlands Act allows the state and its agencies to contract with villages, towns, cities, or counties to manage tidal wetlands within their local jurisdiction. Also, navigation laws give local government the authority to regulate speed, anchoring, mooring, and operation of vessels within 1,500 feet from shore. Lastly, the Lands Underwater of Gardiner's and Peconic Bays provision of New York's Environmental Conservation Law gives the Suffolk County management and regulatory authority over Gardiner's and Peconic Bays underwater lands and allows the County to establishing leasing programs for shellfish cultivation in

these underwater zones.

	Waterfront Revitalization of Coastal Areas and Inland Waterways Act	Tidal Wetlands Act	Regulation of vessels in nearshore waters	Lands Underwater of Gardiner's and Peconic Bays
Legal requirement	Regulation of waterfront structures including piers and jetties, among others	Management of tidal wetlands	Regulation of vessels within 1,500 feet from shore	County authority to lease waters for shellfish cultivation
Citation (including year)	NY EXEC §§ 915, 917, 918, 920, & 922 (1981)	NY ECL § 25-0301 (1973)	NY CLS Nav § 46-a (1972); NY CLS Town §130(17) (1932)	NY ECL § 13-0302 (2004)
Designation authority	By statute	DEC	Local legislative body of a city or board of trustees of a village	By statute
Management & enforcement authority	Local Governments	DEC cooperative agreements with NY villages, towns, cities, or counties	Local legislative body of a city or board of trustees of a village	County of Suffolk
Jurisdiction & boundaries	Within 1,500 feet from the shore.	Tidal waters	Within 1,500 feet from the shore.	Submerged lands of Gardiner's and Peconic Bays except submerged lands within 1,000 feet of the high water mark
Prohibited uses	Uses may not violate approved coastal management policies.	None specified.	None specified.	None specified.
Permitted uses	None specified.	None related to local authority but state permit requirement	None specified.	Permitted shellfish cultivation

Overarching Limitation

New York law explicitly prohibits county boards of supervisors and county legislative bodies from “exercise[ing] powers (other than powers to appropriate money), vested in them or by any other law, to provide for the protection, preservation or propagation of fish, game, wildlife, or shellfish within the county, or to prescribe or enforce collection of penalties for the violation thereof.”⁵³ The exception to this requirement is if New York has expressly provided counties the authority under the Fish and Wildlife Law to take such actions.

Waterfront Revitalization of Coastal Areas and Inland Waterways

As noted above, New York’s Coastal Management Program and Waterfront Revitalization of Coastal Areas and Inland Waterways Act, encourage local governments to prepare waterfront revitalization programs consistent with specific coastal policy guidelines.⁵⁴ Generally, the program provides state assistance to local governments that engage in the waterfront revitalization planning process.⁵⁵ The

⁵³ ECL § 11-0111.

⁵⁴ See Coastal Management Program for policies.

⁵⁵ NY EXEC § 915.

statute provides various mechanisms for the state to provide data, and technical and financial assistance to participating local governments.⁵⁶ NY EXEC § 922 also authorizes municipalities to “to regulate the construction, size and location of wharves, docks, moorings, piers, jetties, platforms, breakwaters or other structures” with some limitations;⁵⁷ however, any such municipal regulations must be reviewed and approved by the secretary of state in conjunction with the adoption of a Harbor Management Plan before taking effect.⁵⁸

Tidal Wetlands Act

The Tidal Wetlands Act establishes a permitting requirement for activities that may substantially impair or alter the natural condition of a tidal wetland.⁵⁹ While the permitting program operates at a state level, the law mandates the DEC to confer with local governments in setting up management programs to safeguard particular tidal wetland areas.⁶⁰ One provision of the statute authorizes the DEC to “enter into cooperative agreements with any village, town, city or county, or with any one or more of them, for the purpose of preserving, maintaining and enhancing” tidal wetlands within its jurisdiction.⁶¹ This provision also allows for state personnel and funding to be applied at the local level to those villages, towns, cities, or counties that have entered in cooperative management agreements with the State of New York.⁶²

Regulation of Vessels in Nearshore Waters

The Navigation Law provides local legislative bodies of cities or boards of trustees of villages the authority to regulate speed and operation of vessels, anchoring or mooring, and garbage removal; and designate and regulate public anchorage areas.⁶³ Similarly the Town Law gives towns the authority to regulate speed and operation of vessels; restrict and regulate anchoring and mooring; restrict and regulate sewage and garbage disposal; and designate and regulate public anchorage areas within 1,500 feet from shore.⁶⁴

Lands Underwater of Gardiner’s and Peconic Bays

This provision of New York law cedes title to Suffolk County about 100,000 acres of underwater land for the County to operate a leasing program for shellfish cultivation. The leasing program covered under this provision extends to all underwater lands under Gardiner’s and Peconic bays beyond one thousand feet of the high water mark.⁶⁵ This provision specifically authorizes Suffolk County to adopt and implement a shellfish aquaculture lease program for this area.

While the provision requires the Suffolk County to adopt regulations before leasing underwater lands, the County’s regulations only govern the operation of the leasing program and do not extend to the regulation of shellfish cultivation directly.⁶⁶ The County’s program controls the location of shellfish farms

⁵⁶ NY EXEC §§ 917, 918, & 920.

⁵⁷ NY EXEC § 922(1). For limitations on this authority, see NY EXEC §§ 922(2),(3). Such limits include “other structures, temporary or permanent, in, on or above waters and the use of surface waters and underwater lands within a city, town or village or bounding a city, town or village to a distance of fifteen hundred feet from the shore.”

⁵⁸ NY EXEC § 922(2).

⁵⁹ See, generally, NY ECL §§ 25-0101—25-0601.

⁶⁰ NY ECL § 25-0301(1).

⁶¹ NY ECL § 25-0301.

⁶² NY ECL § 25-0301(3).

⁶³ NY CLS Nav §46-a.

⁶⁴ NY CLS Town § 130(17).

⁶⁵ NY ECL § 13-0302(1).

⁶⁶ The authority to regulate the shellfish cultivation and aquaculture within the state’s jurisdiction is reserved to the State of New York. See, NY ELC §§ 13-0319 & 13-0302(4).

through the issuance of leases within a formally adopted Shellfish Cultivation Zone⁶⁷ and the extent and intensity of use through limits on lease size and number. The County was required to implement its leasing program before December 31, 2010 or else the County’s leasing authority under the law would expire.⁶⁸

In 2009, pursuant to ELC § 13-0302, Suffolk County established its Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay through Suffolk County Local Law No. 25-200.9.⁶⁹ The County’s program establishes a 29,969-acre Shellfish Cultivation Zone.⁷⁰ The program provides access to marine space for private, commercial shellfish aquaculture ventures.

Before Suffolk County leases bottomland for shellfish cultivation, a determination must first be made that these are not bottomlands where shellfish are present in sufficient quantity and quality to support significant hand raking or harvesting, where bay scallops are produced regularly on a commercial basis or where leasing will result in a significant reduction of established commercial finfish or crustacean fisheries.

Evaluation of Local Authorities

FACTORS	Waterfront Revitalization of Coastal Areas and Inland Waterways	Tidal Wetlands Act	Regulation of vessels in nearshore waters	Lands Underwater of Gardiner's and Peconic Bays
Legal regime	★★★★ Regulatory ⁷¹	★★★★	★★★★	★★★★
Ocean Jurisdiction	★★★ Subset of marine waters (1,500 meters from shore)	★★	★★★	★★★ Subset of marine waters (bays)
Durability	★★ Indeterminate	★★	★★	★★ Indeterminate ⁷²
Consistency over time	★★ Indeterminate	★★	★★	★★ Indeterminate
Habitat protection	★★★ Habitat protection can be a	★★★★	★★	★★ Byproduct=protecting

⁶⁷ NY ECL § 13-0302(3). “Leases may be issued only within areas designated as shellfish cultivation zones on a map or maps to be prepared and approved by the county of Suffolk.”

⁶⁸ NY ECL § 13-0302(3).

⁶⁹ Suffolk County Local Law No. 25-200.9; Suffolk County Code Chapter 475, Article II.

⁷⁰ Regulations related to Suffolk County’s Shellfish Aquaculture Lease Program can be found at <http://www.ecode360.com/14946121>.

⁷¹ As it pertains to local MPA authority, NY EXEC § 922 is primarily planning-based, but it does authorize the municipal regulation of the “construction, size and location of wharves, docks, moorings, piers, jetties, platforms, breakwaters or other structures...”

⁷² There was a 12/31/10 sunset clause on the County’s ability to establish a shellfish cultivation leasing program, but since Suffolk County met that deadline, the County now has the ability to regulate its leasing program presumably indefinitely. NY ECL § 13-0302(3).

	component		protection	habitat
Sector	 Authorizes multi-sector	 Authorizes multi-sector	 Authorizes single-sector	 Authorizes single sector
Enforcement	 No area-specific enforcement	 MPA-specific statutory includes criminal penalties	 No area-specific enforcement	 Some MPA specific enforcement
Extent (scope)	 Multi-site, no specific expansion mechanism	 Multi-site, no specific expansion mechanism	 Multi-site with expansion possible	 Single MPA, no expansion mechanism
Process for designation or expansion	 Specific public process for development of waterfront revitalization area	 Specific public process for designating tidal wetlands, but no process for expansion	 No MPA-specific process specified by statute	 No MPA-specific public process