

EXECUTIVE SUMMARY

This ELI Report examines key legal tools in the twenty-three U.S. coastal states, including both state and local laws for protecting marine areas. Its scope ranges from strict no-take marine protected areas (MPAs) or reserves to other, less restrictive forms of place-based marine protection. Thus, rather than attempt to classify protection authorities using one or more existing definitions of “marine protected area,” we developed an evaluation framework to characterize the kind and extent of protection each law may potentially provide. This evaluation matrix considers the following elements, explained in detail below: legal regime, ocean jurisdiction, durability, consistency, habitat goal, sector application, enforcement tools, scope of designation, and process for expansion.

We intend this report to be of use and interest to planners, states, and localities tasked with or interested in developing and implementing MPAs; NGOs and others who support MPA development and implementation; and members of the public or others who want to know more about the existing legal frameworks for coastal and marine protection. The report focuses on the actual and potential application of these legal authorities to the coastal and marine environment; it does not attempt to assess the effectiveness of their application or the quality of the protections in practice.

Key Observations

States, rather than local governments, retain most of the authority to protect states’ marine waters. In general, state mechanisms for area-based protection diminish the farther one moves from the shore, both on paper and in practice. In other words, there are a greater number of legal tools available to protect marine habitats such as tidal areas, seagrass beds, wetlands, and estuaries, than tools to protect offshore environments. Many states have broad laws, such as the authority to establish state parks or preserves, which do not explicitly restrict protection to the terrestrial and freshwater environment, but have only been used to protect those environments in practice.

The ways that MPAs are or can be created vary by state and by law. Some laws provide robust mechanisms for public participation, including petition processes for designating marine protected areas. For example, the California Marine Life Protection Act allows any person to nominate a potential marine protected area. In other states, the state agency or related commission has authority to undertake the designation process, which includes public participation mechanisms. Still other states rely on direct legislative acts to establish marine protected areas, as is the case for many types of marine protected areas in Alaska.

State Government Authority

States have jurisdiction to manage and conserve living and non-living marine resources from the shore to three nautical miles from shore (with the exception of Florida and Texas, whose boundaries extend nine miles from shore in the Gulf of Mexico).¹ Within these ocean areas, states have broad authority to protect coastal and marine areas.

Many states have specific statutes that create protected areas in the ocean, ranging from multi-site adaptive programs to single-site, non-adaptive designations. All coastal states have some area-based fisheries management tools that are used to varying degrees to regulate fishing in state waters. Many coastal states also have laws that protect certain specified types of habitat, especially coastal wetlands,

¹ Submerged Lands Act, 43 U.S.C. § 1301 et seq.; Texas and the West Coast of Florida have state waters that extend nine miles from shore.

estuaries, and tidal areas, through heightened permitting restrictions. All coastal states, except Alaska,² have coastal zone management programs that are used to varying degrees to protect ocean areas, and many states have other sector-specific laws that may protect some or all state waters from certain types of harm.

Multi-sector marine protection tools. At one end of the spectrum, state laws like the California Marine Life Protection Act establish a multi-site approach that limits multiple ocean uses, includes a mechanism for public petition for expansion (or adaptation) of protected areas, and targets broad protection of representative habitats. At the other end of the spectrum, some states have only single-site protections with no mechanism for adaptation or expansion. Although such laws lack expansion mechanisms, they can provide substantial and long-lasting protection; for example, the Kaha`olawe Island Reserve creates a two-mile wide ocean reserve around the entire island.

Area-based fishery management tools. States use area-based fishery tools to limit fishery impacts to habitat and species. These may be seasonal restrictions to protect spawning aggregations, such as the Striped Bass Spawning Area designations in Delaware; or they may be year-round restrictions, such as Connecticut's fishing restrictions in Long Island Sound, which prohibit the use of nets.

Permit-based habitat restrictions. States often identify specific types of habitat they seek to protect and restrict activities in those habitats through permitting programs. For example, New York's Tidal Wetlands Act restricts impacts to inventoried wetlands and requires tidal wetland permits for development activities in those areas.

Coastal zone programs. States may use their coastal zone management authority to protect specific ocean areas through plan-based tools. For example, Rhode Island has established special area management plans (SAMPs) for the Narrow River area, the Salt Ponds, and the ocean. Such designations include protection, management, and restoration requirements.

Local Government Authority

Not surprisingly, states have much stronger and more comprehensive authority to protect ocean and coastal ecosystems than do local governments. The extent of local government authority depends on each state's approach to local government, with "home rule" states providing localities the authority to regulate activities that the state does not. Local government authorities typically derive from land-use planning authority, which varies in how far it extends into the marine environment. Some states grant localities the authority to conduct some planning and management of the marine environment in accordance with the state's coastal zone management programs.

In some instances, local authority stops at the shoreline and protection approaches are limited to beaches and estuaries. In other instances, local authority extends into the marine environment. For example, Alaska has provisions that allow municipalities to manage all tide and seabed waters to the three-mile limit of state waters.

² See Alaska chapter for more information.