

FLORIDA¹

State Authority for Marine Protection

Summary of State Authorities

Florida has a number of statutes that grant state agencies authority to protect the marine environment. The Florida Department of Environmental Protection has authority to develop, manage, and enforce different types of conservation areas with varying degrees of protection, including State Parks, Aquatic Preserves and sea turtle nesting habitat. State Parks and Aquatic Preserves may both be used to protect offshore marine waters within the state’s jurisdiction. Florida’s Fish and Wildlife Conservation Commission has additional species-based authority to protect marine areas, including authority over the state’s fisheries and Wildlife Management Areas.

	State Parks	Aquatic Preserves	Marine Turtle Protection Act	Fisheries Management, Area Closures	Florida Forever Act
Legal requirement	Allows designation of State Parks	Allows designation of Aquatic Preserves	Protects sea turtle nesting habitat	Allows restrictions for fisheries management	State acquisition program for conservation land
Citation²	FLA. STAT. §§ 258.001 <i>et seq.</i> (1949)	FLA. STAT. §§ 258.35 <i>et seq.</i> (1975)	FLA. STAT. § 379.2431 (1953)	FLA. STAT. §§ 379.2401 <i>et seq.</i> (1983)	FLA. STAT. §§ 259.105 <i>et seq.</i> (1999)
Designation authority	Florida Department of Environmental Protection (FDEP)	FDEP	By statute	Florida Fish & Wildlife Conservation Commission (FWC) & by statute	FDEP, Division of State Lands’ Bureau of Land Acquisition
Management & enforcement authority	FDEP, Division of Recreation and Parks	FDEP, Florida Coastal Office	FDEP (permitting), FWC (enforcement)	FWC	FDEP
Jurisdiction & boundaries	All state waters	All state waters	Beaches and dunes	All state waters	Estuaries, coastal lands, beaches and dunes
Prohibited uses	Not specified by statute	Oil and gas drilling, most types of construction and dredging without a permit	Taking of sea turtles, possession of nests, eggs, hatchlings, etc.	FWC has authority to develop rules related to use	None specified
Permitted uses	Recreational uses like swimming, fishing and boating	Recreational uses like swimming, fishing and boating	None specified	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.

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

By federal law, Florida’s jurisdiction over its coastal waters extends three nautical miles seaward on the Atlantic coast and nine nautical miles seaward on the Gulf coast.³ The state follows the public trust doctrine, and its Constitution declares that submerged land beneath state water bodies is state property to be managed in the public interest.⁴ The mean high-water line marks the boundary between public trust land and private property.⁵ Florida has also placed a moratorium on the sale of submerged lands to private parties, though leasing is allowed.⁶

State Parks

The Florida Department of Environmental Protection’s (“FDEP”) Division of Recreation and Parks regulates and controls the operation of state parks.⁷ The Division administers the parks for purposes including “the protection and preservation of their natural features.”⁸

The Division has rulemaking authority over “any activity that lessens the safety or recreational experience of the visiting public or lessens the natural or cultural value of the park.”⁹ Takings of plants or animals from State Parks are generally prohibited, but fishing generally is allowed “where substantial fish and wildlife habitat and resources exist.”¹⁰

For example, the John Pennekamp Coral Reef State Park protects approximately 70 square nautical miles of mangrove swamp and coral reef habitat.¹¹ Recreational activities like boating and fishing are permitted within the park.

Aquatic Preserves

Through the Florida Aquatic Preserve Act of 1975, Florida created aquatic preserves in order to protect in perpetuity the state’s most exceptional underwater lands.¹² Florida has 41 aquatic preserves, encompassing approximately 2.2 million acres, and all but four of the preserves are located on the coast.¹³

The Florida Coastal Office, housed within FDEP, is responsible for administering the state’s aquatic preserves.¹⁴ The Act states that preserves “shall be managed primarily for the maintenance of essentially natural conditions, the propagation of fish and wildlife, and public recreation, including

³ See Submerged Lands Act of 1953, 43 U.S.C. §§ 1301–1315.

⁴ FLA. CONST. art. X, § 11.

⁵ See *id.*; see also FLA. STAT. § 161.051 (1999) (stating Florida holds title to lands below the mean high-water line).

⁶ FLA. STAT. § 253.03.

⁷ FLA. STAT. §§ 258.001 *et seq.* (1949).

⁸ FLA. ADMIN. CODE ANN. r. 62D-2.013(1).

⁹ *Id.* r. 62D-2014.

¹⁰ *Id.* r. 62D-2.013.

¹¹ Fla. Div. of Recreation & Parks, John Pennekamp Coral Reef State Park, <http://www.floridastateparks.org/pennekamp/default.cfm> (last visited May 19, 2013).

¹² FLA. STAT. §§ 258.35–.46 (1975).

¹³ Fla. Dep’t of Env’tl. Prot., Florida’s Aquatic Preserves, <http://www.dep.state.fl.us/coastal/programs/aquatic.htm> (last visited Apr. 16, 2013).

¹⁴ Significant budgetary reductions caused CAMA to close four offices on the Gulf coast in 2011, but the Tampa Bay office was reopened in 2012. Fla. Dep’t of Env’tl. Prot., CAMA Office Closures, http://www.dep.state.fl.us/coastal/office_closures.htm/ (last visited July 10, 2011); Fla. Dep’t Env’tl. Prot., DEP to Celebrate Re-opening of Tampa Bay Aquatic Preserves Office, <http://content.govdelivery.com/bulletins/gd/FLDEP-629330> (Dec. 17, 2012). The four offices were: Tampa Bay, Milton/Northwest Florida, Central Panhandle/St. Joseph Bay, and Jacksonville/Northeast Florida. FDEP states that it chose the offices because they will be easiest to reopen if more funding becomes available. There is no monitoring or active management of the preserves located within the jurisdictions of the closed offices.

fishing where deemed appropriate.”¹⁵ All aquatic preserves benefit from certain protections, such as prohibitions on oil and gas drilling, and on most types of construction and dredging without a permit. Other protections are specified through site-specific management plans that are approved by the Board of Trustees of the Internal Improvement Trust Fund.¹⁶

Most of the coastal preserves protect estuaries and marshes, but some also cover marine habitat. For example, the Big Bend Seagrasses Aquatic Preserve is the largest aquatic preserve and protects estuarine habitat.¹⁷

Marine Turtle Protection Act

Building on the species-specific protection provided by the Florida Threatened and Endangered Species Act, Florida enacted legislation that specifically protects sea turtle habitat through the use of area-based conservation measures. The Florida Fish & Wildlife Conservation Commission is responsible for enforcing statutory penalties associated with the taking of sea turtles and sea turtle eggs and destroying sea turtle nests pursuant to the Marine Turtle Protection Act. Additional statutory authority is granted to FDEP to consider the impacts on sea turtles when considering a permit for beach restoration, beach renourishment, or inlet sand transfer. Whenever a person applies to FDEP for a construction permit in turtle habitat, the Department must include whatever conditions are necessary to protect sea turtles.¹⁸ For example, FDEP may order construction activities to take place outside of nesting season.

Perhaps more important, under the Act it is a felony to take a sea turtle, which includes “significant habitat modification or degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering.”¹⁹

Fisheries Management, Area Closures

The Florida Fish and Wildlife Conservation Commission (“FWC”) is tasked with managing the state’s marine fisheries.²⁰ Several prohibitions on harmful fishing gear, such as gill nets, are mandated by statute; commercial fishermen may only use purse seines to catch shrimp and specified species of fish. The statute also directs the Commission to draft fisheries management plans that meet several goals, such as ensuring the continued health and abundance of marine species populations.

The Commission also has broad rulemaking authority.²¹ FWC protects fisheries through its permitting program, and various area-based regulations that establish gear restrictions, catch limits, and seasonal closures.²² For example, harvesting food shrimp is prohibited year-round in a portion of Monroe County,²³ and during April to May in the inshore waters of Nassau, Duval, St. Johns, Putnam, Flagler, and Clay counties.²⁴

¹⁵ FLA. ADMIN. CODE ANN. r. 18-20.001. Regulations relevant to the management of Aquatic Preserves can be found in FLA. ADMIN. CODE ANN. rs. 18-20, 18-21.

¹⁶ *Id.* § 258.41.

¹⁷ FLA. STAT. § 258.395.

¹⁸ FLA. STAT. § 379.2431 (1953).

¹⁹ *Id.* § 379.2431(1)(c)(2).

²⁰ FLA. STAT. §§ 379.2401 *et seq.* (1983).

²¹ *Id.* § 379.2401.

²² FLA. ADMIN. CODE ANN. rs. 68B-1 *et seq.*

²³ *Id.* r. 68B-31.0136.

²⁴ *Id.* r. 68B-31.0155.

Florida Forever Act

The Florida Forever Act provides funding to acquire, enhance, or manage natural ecosystems, giving special priority to protecting habitat of imperiled species.²⁵ The Act declares that “[t]he State must play a major role in the recovery and management of its imperiled species through the acquisition, restoration, enhancement, and management of ecosystems that can support the major life functions of such species.”²⁶ It may include acquisition of beach or dune habitat above the mean high water line.

Once acquired under the Act or other means, lands may benefit from various protective designations, including Wildlife Management Areas (“WMAs”). FWC has rulemaking authority over all WMAs, and manages these areas “to sustain the widest possible range of native wildlife in their natural habitats.”²⁷ These lands primarily conserve terrestrial habitat, but may include coastal areas.

Other Authorities

Florida State Comprehensive Planning Act

The Florida State Comprehensive Planning Act mandates creation of a comprehensive plan that promotes habitat-related goals.²⁸ The state comprehensive plan then guides local planning efforts (see below). Planning goals specifically related to coastal and marine resources include: (1) not subsidizing development in high-hazard coastal areas; (2) preventing adverse impacts from development to coastal, marine, and dune resources; (3) protecting and restoring the long-term productivity of marine fisheries habitat; and (4) preventing development and other activities that disturb coastal dune systems, while facilitating damaged coastal dune restoration.²⁹ The Planning Act also includes policies to “[p]rohibit the destruction of endangered species and protect their habitats.”³⁰ The goals in the Florida State Comprehensive Plan, while in statute, are aspirational.

Evaluation of State Authorities³¹

FACTORS	State Parks	Aquatic Preserves	Marine Turtle Protection Act	Fisheries Management, Area Closures	Florida Forever Act
Legal Regime	★★★★★ Regulatory	★★★★★ Regulatory	★★★★★ Regulatory	★★★★★ Regulatory	★★★ Incentive-based
Ocean Jurisdiction	★★★★★ All marine waters	★★★★★ All marine waters	★ Beach, tidal	★★★★★ All marine waters	★ Beach, tidal
Durability	★★★★★ In perpetuity	★★ Indeterminate	★★ Indeterminate	★★ Indeterminate	★★★ Indeterminate
Consistency	★★★★★ Mandates year-	★★★★★ Mandates year-	★★★★★ Authorizes year-	★★★★★ Authorizes year-	★★★ Site-specific

²⁵ FLA. STAT. §§ 259.105–259.1052 (1999). Imperiled species are defined as any plant or animal listed under the federal Endangered Species Act or by the State through the FWC or the Department of Agriculture and Consumer Services. *Id.* § 259.105(2)(a)(11). Florida has several other programs that make use of state-owned lands to protect, manage, or restore habitat for native or imperiled species, the details of which can be found in a report that FWC is statutorily mandated to submit to the legislature. FLA. STAT. § 253.034(15); FLA. FISH & WILDLIFE CONSERVATION COMM’N, THE ROLE OF STATE CONSERVATION LANDS IN IMPERILED SPECIES CONSERVATION AND MANAGEMENT (2010), <http://myfwc.com/media/140429/theroleofstateconservationlands.pdf>.

²⁶ *Id.* § 259.105(2)(a)(11).

²⁷ FLA. ADMIN. CODE ANN. rs. 68A-15.004 *et cet.*; see also Fla. Fish & Wildlife Comm’n, What are Wildlife Management Areas?, <http://www.myfwc.com/viewing/recreation/wmas/> (May 19, 2013).

²⁸ FLA. STAT. §§ 186.001 *et seq.* (1972).

²⁹ *Id.* § 187.201(8).

³⁰ *Id.* § 187.201(9).

³¹ For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.

	round protection	round protection	round protection	round protection	
Habitat	★★★★ Habitat protection goal	★★★★ Habitat protection goal	★★★ Species-specific	★★★ Byproduct is habitat protection	★★★★ Habitat protection goal
Sector	★★★★★ Mandates multi-sector protection	★★★★★ Mandates multi-sector protection	★★★★★ Mandates multi-sector protection	★★★ Authorizes single-sector protection	★★★★★ Authorizes multi-sector protection
Enforcement	★★★★★ Grants DEP authority to enforce chapter & arrest offenders or issue citations	★★★★★ Grants the Board of Trustees of the Internal Improvement Trust Fund the authority to enforce chapter & issue statutorily specified civil penalties	★★★★★ Specifies authority to enforce the act through civil and criminal penalties, and taking a sea turtle is a third degree felony	★★★★★ Grants FWC authority to enforce chapter & arrest offenders or issue citations	Voluntary, with assistance/incentives
Extent (Scope)	★★★★★ Multi-site, potential expansion	★★★★★ Multi-site, potential expansion	★★★ Multi-site, no expansion mechanism (law applies to any sea turtle habitat)	★★★★★ Multi-site, potential expansion	★★★★★ Multi-site, potential expansion
Process for designation or expansion	★★★ No MPA-specific public process	★★★ No MPA-specific public process	★★★ No MPA-specific public process (expansion by turtles increasing habitat range)	★★★ No MPA-specific public process	★★★★★ Specific process for public to donate property to the state for conservation

Local Authority for Marine Protection

Summary of Local Authorities

Florida grants to counties jurisdiction over the state’s marine waters. This authority has been little utilized by local governments, but two other laws authorize local protection of coastal and estuarine areas. Under the Community Planning Act, local governments must adopt comprehensive plans that promote marine habitat protection and conservation. The Beach and Shore Preservation Act allows counties’ Boards of County Commissioners to develop and implement beach and shore preservation plans.

	Community Planning Act	Beach and Shore Preservation Act
Legal requirement	Land use planning policies	Land use planning policies
Citation³²	FLA. STAT. §§ 163.3161 <i>et seq.</i> (1975)	FLA. STAT. § 161.25-.45 (1965)
Designation authority	Local governments	Board of County Commissioners
Management & enforcement authority	Local governments & Florida Department of Economic Opportunity/Division of Community Development	Board of County Commissioners

³² The citation date provided is the earliest date of enactment and does not reflect subsequent amendments unless otherwise noted. The enactment date is meant to inform the reader of how long the protection authority has existed.

Jurisdiction & boundaries	Estuaries, coastal lands, beaches and dunes	Estuaries, coastal lands, beaches and dunes
Prohibited uses	None specified	None specified
Permitted uses	None specified	None specified

Counties in Florida have jurisdiction over the state’s marine waters, the boundaries of which are defined by statute.³³

Community Planning Act

Florida’s Local Government Comprehensive Planning and Land Development Act requires county and municipal governments to adopt local comprehensive plans that comply with the state plan.³⁴ Local governments must incorporate coastal zone protection into their local plans, guiding local decisions towards the following goals: “[c]onserv[ing], appropriately us[ing], and protect[ing] fisheries, wildlife, wildlife habitat, and marine habitat[, and using] ecological planning principles and assumptions in the determination of permitted goals.”³⁵

In 2011, the Florida Legislature overhauled the process for developing and amending local comprehensive plans. Previously, the state planning office was tasked with approving all plans and most plan amendments,³⁶ but the new legislation amended this process.³⁷ Rather than having a mandatory duty to review and approve plan amendments, the Florida Department of Economic Opportunity’s Division of Community Development now has the option to review certain plan amendments and object. If the local government then adopts an amendment over the state planning agency’s objection, the state may subsequently demand compliance with the state plan through an administrative process.³⁸

Beach and Shore Preservation Act

The Beach and Shore Preservation Act creates a framework for planning and funding local beach preservation programs.³⁹ A Board of County Commissioners may develop and implement beach and shore preservation plans.⁴⁰ Further, counties may create Beach and Shore Preservation Districts to fund beach enhancement projects through special property taxes or bond measures.⁴¹ Federal grants may also be available to counties and districts wishing to preserve coastal lands.⁴²

Other Authorities

Several coastal local governments in Florida also have created dedicated sources of funding for acquiring conservation lands, which can include beach and dune lands above the mean high water mark. Local governments, with voter approval, have financed these activities with bonds and property tax revenues.⁴³ The amount of revenue generated by these local initiatives varies widely, with some local

³³ FLA. STAT. §§ 7.01 *et seq.* (1824).

³⁴ FLA. STAT. §§ 163.3161 *et seq.* (1975).

³⁵ *Id.* § 163.3177.

³⁶ TOM PELHAM, FLORIDA COMPREHENSIVE PLANNING SYSTEM ENCOUNTERS STORMY WEATHER (2011), http://www.americanbar.org/content/dam/aba/publications/state_and_local_law_news/pelham_summer11.authcheckdam.pdf.

³⁷ *Id.*

³⁸ FLA. STAT. § 163.3184.

³⁹ FLA. STAT. § 161.25–161.45 (1965).

⁴⁰ *Id.* § 161.28.

⁴¹ *Id.* §§ 161.37–161.38.

⁴² *Id.* § 161.33.

⁴³ Conservation Almanac, Florida LandVote Data, <http://www.conservationalmnanc.org/secure/almanac/southeast/fl/lvdata.html> (last visited Apr. 17, 2013).

governments having created large pools of dedicated funding. For example, a 2008 ballot measure in Hillsborough County authorized raising a \$200 million bond for acquiring and preserving habitat.⁴⁴ Although this mechanism has been commonly employed on Florida’s peninsula, it is not as common for local governments to preserve coastal land on the panhandle.⁴⁵

Evaluation of Local Authorities

FACTORS	Community Planning Act	Beach and Shore Preservation Act
Legal Regime	Planning ★★★	Incentive-based ★★★
Ocean Jurisdiction	Beach, tidal only ★	Beach, tidal only ★
Durability	Indeterminate ★★★	Indeterminate ★★★
Consistency	Authorizes year-round protection ★★★	Indeterminate ★★★
Habitat	Habitat protection goal ★★★	Byproduct is habitat protection ★★★
Sector	Authorizes multi-sector protection ★★★	Authorizes multi-sector protection ★★★
Enforcement	No MPA-specific enforcement ★	Voluntary, with assistance/ incentives
Extent (scope)	Shoreland-by-shoreland, local management ★	Multi-site, potential expansion ★★★★★
Process for expansion	No MPA-specific public process ★★★	No MPA-specific public process ★★★

⁴⁴ *Id.*

⁴⁵ Conservation Almanac, Land Conservation in Florida, <http://www.conservationalmnac.org/secure/almanac/southeast/fl/fl.html> (last visited Apr. 17, 2013).