

INTRODUCTION

Background

There is no universal definition for the term "marine protected area." The International Union for Conservation of Nature (IUCN) defines a marine protected area (MPA) as "[a] clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values."¹ According to President Clinton's Marine Protected Areas Executive Order, an MPA is "any area of the marine environment that has been reserved by federal, state, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein."² According to the National MPA Center, MPAs in the U.S. range from fully protected no-take reserves to areas that prohibit or limit some types of uses while allowing many others (e.g., fisheries or oil/gas development restrictions).³

As noted in the Clinton Executive Order, federal, state, and local governments may be involved in MPA designation and management. Federal authority to designate MPAs includes, for example, development of national marine sanctuaries under the National Marine Sanctuaries Act and establishment of marine monuments by presidential proclamation under the Antiquities Act. Further, some sector-based laws, such as the Magnuson-Stevens Fishery Conservation and Management Act, which regulates federal fisheries, and the Clean Water Act, which regulates discharges of pollutants, allow for place-based protection related to a single activity or issue.

While substantial research and analysis has focused on the federal authorities for marine protected areas, less attention has been paid to state authority. Some state laws may require MPA development and implementation, including designations that fully protect an area. Other state laws may allow designation of areas for full or partial protection. Combined, these state laws may contribute to lasting protection for the marine environment.

Local government authority to designate and manage MPAs has attracted even less attention. In some states, local governments may play various roles in MPA processes, from banning specific uses in local waters to engaging in the designation and implementation of MPAs. For example, San Juan County in Washington State used its authority to ban jet-skis and personal watercraft in some marine waters, and the Washington State Supreme Court upheld the ban. In 1970, the San Diego City Council designated approximately 6,000 acres of submerged lands as an underwater park.

State and local governments' willingness to protect and restore marine resources can be demonstrated both by recent MPA designations—for example, implementation of California's Marine Life Protection Act and Oregon's recently enacted law to create marine reserves—and by other measures to better manage marine resources—for example, Massachusetts's marine spatial planning law and Rhode Island's application to the marine environment of Special Area Management Plan provisions under the Coastal Zone Management Act.

¹ See, e.g., IUCN, Guidelines for Applying the IUCN Protected Area Management Categories to Marine Protected Areas (2012).

² Executive Order 13158 (May 26, 2000).

³ See National Marine Protected Area Center, at <http://marineprotectedareas.noaa.gov/>.

Project Goals and Objectives

The authors, with support from the Waitt Foundation, in partnership with the Ocean Conservancy, and in consultation with an advisory team, developed this baseline 23-state report of state and local laws relevant to designating and managing areas for coastal and marine conservation.

The goal of this report is to:

- (1) Provide ocean and coastal managers, policy-makers, and advocates with a comprehensive overview of place-based laws and regulations for marine protection at the state and local levels;
- (2) Critically examine the potential degree of marine protection provided by different laws and regulations using a defined evaluation matrix; and
- (3) Identify ways that communities, local NGOs, and others can engage in the process of designating areas for coastal and marine protection.

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 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.

Each state section provides an overview summary of selected state and local authorities, with corresponding tables to share key information about each law evaluated; a short narrative description of each law's key aspects and, where relevant, a description of the ways the public can participate in designating areas for conservation; and evaluation tables that further characterize and compare each state and local authority considered.

METHODOLOGY

Scope of Assessment

The authors examined the **twenty-three coastal states** in the U.S. but did not evaluate U.S. territories or the Great Lakes states, which were beyond the scope of the project. However, it would be beneficial to evaluate these programs as well to further characterize approaches for marine protection in the U.S.

The authors only examined **state and local authorities**, not federal authorities. In some instances, namely coastal zone management under the Coastal Zone Management Act and estuary management under the National Estuarine Research Reserve system, there is some linkage between state and federal law. In these instances, the authors focused on the states' legal implementation mechanisms and explained the federal law only to the extent necessary to provide the reader with an understanding of the framework.

The authors included the following **types of habitats and ecosystems** as part of the coastal and marine areas considered: beaches, estuaries, bays, and coastal waters and submerged lands out to the seaward boundary of state waters. Essentially, we included all laws targeting areas that are partially or entirely inundated with brackish or marine waters as within the scope of the project. We took this approach for two reasons: (1) the critical interconnection between the coastal and marine environments, with beaches providing, for example, nesting habitat for sea turtles and estuaries providing important nursery grounds for marine fishes; and (2) most local authorities for protecting coastal and marine ecosystems are limited to coastal environments and near-shore waters.

While this assessment attempts to be **comprehensive** in that it identifies and evaluates the key state and local authorities for coastal and marine protection in all twenty-three coastal states, it does not identify *all* authorities that exist in a state. Instead, the authors strove to identify the primary approaches, and where multiple similar approaches were taken (e.g., multiple statutory provisions creating single-site marine protected areas), the authors selected representative examples.

We evaluated a subset of the many different **legal approaches** to coastal and marine protection and focused specifically on laws that allowed for place-based designation and management of ocean resources. Within this realm, we considered laws designed for preservation of entire ecosystems, and single-sector laws such as fisheries management restrictions, species-based protection, and land-use management. We excluded laws that applied generally across all marine waters of a state—for example, water quality standards or prohibitions on oil and gas development. However, we recognize the importance of these broad approaches for marine protection and their crucial importance as part of the full framework of protection.

Finally, we included laws that have never been used for marine protection but arguably provide the authority to take action—i.e., we identified new ways to use old laws. In many instances, these laws are conservation-oriented laws that by their terms apply to all state land and water, but in practice have only been used to protect terrestrial or freshwater environments.

Evaluating Laws

One criticism of the term “marine protected areas” is that it is applied to many different types of protected areas, some of which have robust, all-encompassing protections; while at the other end of the spectrum, some areas lack any specific protection measures at all. Rather than trying to develop a single working definition of a marine protected area and applying it to all laws, the authors, in consultation

with the advisory team, developed an evaluation matrix that considers several factors in determining the applicability and strength of each law for coastal and marine protection. Specifically, as illustrated and explained below, we considered the legal regime, ocean jurisdiction, durability, consistency, habitat goal, sector application, enforcement tools, scope of designation, and process for expansion (Table 1.).

Table 1. Evaluation Matrix for Determining Strength of Coastal and Ocean Protection Laws

	★★★★	★★★	★★	★	
Legal Regime	Regulatory	Planning	Incentive-based	Voluntary	
Ocean Jurisdiction	All marine waters	Subset of marine waters (beyond brackish)	Estuarine	Beach, tidal only	
Durability	In -perpetuity	Multi-year & adaptive	Indeterminate	Annual or seasonal	Sunset
Consistent through time	Mandates year-round protection	Authorizes year-round protection	Indeterminate	Seasonal or short-term	
Habitat	Goal = representative or multiple habitats	Goal = habitat protection	Byproduct = protecting habitat	Species-specific	
Sector	Mandates multi-sector	Authorizes multi-sector	Mandates single sector	Authorizes single-sector	Managed
Enforcement	MPA-specific, Statutory language includes criminal penalties	MPA-specific, Statutory civil penalties specified	Some MPA-specific enforcement language	No MPA-specific enforcement language	Not enforceable (voluntary compliance)
Extent (scope)	Multi-site with expansion possible	Single site, expansion possible	Multi-site, no expansion mechanism	Single MPA, no expansion mechanism	No existing MPA but authority to create
Process for expansion	Petition for development or expansion of protected area	Specific public process for development & expansion of protected area	No MPA-specific public process	Tool for emergency response	

Legal Regime. This factor evaluates whether the law is a regulatory, planning, incentive-based, or voluntary system, ranking a regulatory system as the most robust approach and a voluntary system as the least robust approach. We defined a regulatory system as one that has specific enforceable laws or rules associated with it and that requires compliance. A planning system is one that may designate areas for protection but does not require specific compliance with the plan, including, for example, land-use plans in the absence of enforceable ordinances. Incentive-based systems include laws and regulations that provide monetary or other incentives for protection but do not mandate a particular outcome, and voluntary systems lack any requirements or incentives for action.

Ocean Jurisdiction. This factor determines the reach of the law into the marine environment. The highest-ranking and most comprehensive jurisdiction includes all marine waters of the state. Second is a subset of marine waters beyond the land-sea interface (e.g., beyond estuaries and beaches). Third are laws that target estuarine environments only, and fourth are laws that protect only beach environments.

Durability. Durability is a measure of the long-term status of the designation. The highest-ranked laws are those that mandate protection “in perpetuity.” Second are laws that call for multi-year protection and allow some measure of adaptability. Third are laws that do not explicitly indicate the length of a designation—these typically allow for regulators to designate an area for protection for one or more sectors, but do not mandate a particular time period for the designation. Annual or seasonal laws are those that allow designation of, or actually designate, an area as protected for a year or less and then require some type of regulatory or legislative action to continue. Finally, laws that have fixed sunset provisions are considered the least durable.

Consistency through Time. Rather than measure how long the protective designation applies, this factor examines how the designation applies during its lifespan. From highest to lowest, the criteria are: (1) mandates year-round protection; (2) authorizes year-round protection; (3) indeterminate; and (4) seasonal or short-term.

Habitat. The habitat factor is used to determine whether the law targets protection of representative or multiple habitats (highest ranking), habitat protection without consideration of representative habitats, some other type of primary protection that incidentally results in habitat protection, or species-specific protection (lowest ranking).

Sector. The sector factor is used to evaluate whether the law is multi-sector or single-sector in its application. For example, fisheries designations usually only apply to fisheries activities and not to other human uses of the space. In contrast, some types of reserves regulate all human uses and activities. This factor also considers whether the law imposes mandatory requirements and whether it authorizes single or multi-sector regulation.

Enforcement. The enforcement factor focuses on whether the law contains: (1) explicit criminal penalties associated with violating the protection requirements, (2) explicit civil penalties for violations, (3) some area-specific enforcement requirements (but lacking specific penalties), (4) no area-specific enforcement provisions but other, general enforcement provisions apply (e.g., department-wide or program-wide enforcement provisions that are not specific to protected areas), or (5) the law is not enforceable (e.g., incentive-based, planning, or voluntary programs).

Extent (scope). We used the extent factor to evaluate how many sites are protected or can be protected under a particular authority. These categories, ranging from most to least robust, are: (1) multi-site with expansion possible, (2) single site with expansion possible, (3) multi-site with no expansion mechanism, (4) single site with no expansion mechanism, and (5) potential authority to establish marine protection, but that authority has never been utilized.

Process for expansion. This factor determines the public’s role in the designation process and whether proactive mechanisms exist for expansion of marine protection. The most robust processes are those that allow anyone to petition for designation or expansion of a protected area. Next are processes that lack a petition process, but do have an MPA-specific public process for designation and/or expansion of protected areas. Third are authorities that have no specific process for designation and/or expansion (but would have to follow usual public participation requirements, such as notice-and-comment requirements for fisheries regulation development). The final category includes tools that allow emergency protection measures with no required public process.