

## CALIFORNIA<sup>1</sup>

### *State Authority for Marine Protection*

#### Summary of State Authority

California has several authorities that allow the state to create marine protected areas. The California Marine Life Protection Act and the Marine Managed Areas Improvement Act give the state authority to designate and manage a statewide system of marine protected areas and other types of managed areas. The Acts provide a formal structure for the state to add, remove, or modify managed areas as well as specify the agencies responsible for such processes. The state also can establish ecological reserves over tidal and estuarine environments.

The state has several other management tools available to supplement marine managed areas and ecological reserves. The California Coastal Act allows the state to designate environmentally sensitive habitat areas and protect them from most types of development. The legislature also has designated several state seashores that are protected from most commercial activities. The University of California Reserve System preserves some marine areas for education and research. Lastly, the California Fish and Game Commission has the power to prohibit or restrict fishing on an area-by-area basis.

| SUMMARY                      | Marine Life Protection Act & Marine Managed Areas Improvement Act | Ecological Reserve Provisions                        | California Coastal Act- Environmentally Sensitive Habitat Areas | California State Seashores Provisions                               | University of California Reserve Provisions                                      | Fishery Closures Provisions   |
|------------------------------|---|--|---|---|--|---|
| <b>Legal requirement</b>     | Create several classes of marine protected areas (MPAs)           | Creates reserves on dry or tidal lands and estuaries | Restricts development within environmentally sensitive areas    | Designates state seashores and restricts some commercial activities | Establish reserves used to serve exclusively for education and research purposes | Close certain areas to specific fishing gears or specific fisheries |
| <b>Citation</b>              | CAF&GC § 2850 (1999) (MLPA); CAPRC § 36600 (2000) (MMAIA)         | CAF&GC § 1580 (1968)                                 | CAPRC § 30000 (1976)  | CAPRC § 5001.6 (1974)   | CAEC §§ 92431, 92440 (1976)  | CAF&GC § 702 (1957); CAF&GC § 7652 (1976)                           |
| <b>Designation authority</b> | California Fish & Game Commission &                               | California Fish & Game Commission                    | California Coastal Commission                                   | State legislature   | University of California Regents   | CADFW   |

<sup>1</sup> 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](http://www.eli-ocean.org/mpa).

| SUMMARY                   | Marine Life Protection Act & Marine Managed Areas Improvement Act   | Ecological Reserve Provisions  | California Coastal Act- Environmentally Sensitive Habitat Areas  | California State Seashores Provisions   | University of California Reserve Provisions  | Fishery Closures Provisions                                     |
|---------------------------|---|--|--|---|--|---|
|                           | California Park & Recreation Commission   | & CDFW   |  |   | designate acquired property  |   |
| Enforcement authority     | California Department of Fish and Wildlife (CDFW) & California Department of Parks and Recreation (CADPR)     | CDFW   | California Coastal Commission  | CADPR   | University of California campuses  | CDFW  |
| Jurisdiction & boundaries | Any area beyond mean high-tide line within 3-mile state jurisdiction boundary can be designated               | Any dry or submerged land that is landward of the mean high-tide line, including estuaries, can be an ecological reserve | Act defines “coastal zone” as the area between three-mile state boundary and, in most instances, 1,000 yards landward of mean high-tide line | Designated shorelines landward of mean high-tide                                | The Regents have the authority to attempt to acquire any land, including submerged lands, within the state | Any state fishery within state waters can be subject to closure |
| Prohibited uses           | Specific MPAs can restrict commercial harvest of resources, recreational harvest, or occasionally even access | Resource extraction and access generally are prohibited  | Any development that is not contingent on coastal use or may severely degrade natural resources  | Most commercial extractions of natural resources and improvement are prohibited | Reserves can restrict access or any activity interfering with research and education activities            | Specific gears or fisheries as restricted by CDFW               |
| Permitted uses            | Access and low-impact recreation generally allowed  | Regulations often allow restricted access, recreations, and some resource extractions                                    | Non-development related activities & necessary development with minimal impact   | Recreational activities and commercial fisheries                                | Education and research activities or any other uses as permitted by the managing campus                    | Commercial fishing activities as regulated by CDFW              |

### Marine Life Protection Act and Marine Managed Areas Improvement Act

California passed the Marine Life Protection Act (MLPA) in 1999 to consolidate then-existing state marine protected areas (MPAs) under a single regulatory system, as well as to expand them to encompass the full range of marine ecosystems found along the state's coast.<sup>2</sup> The Act originally mandated the state's Fish and Game Commission to designate a set of no-take reserves, and gave the Commission discretionary power to adopt other MPAs with less stringent prohibition.<sup>3</sup> The state subsequently passed the Marine Managed Areas Improvement Act (MMAIA), which reorganized state MPAs and other state marine managed areas into distinct categories.<sup>4</sup>

MLPA as amended by MMAIA gives the state power to establish three primary types of MPAs with different levels of protection: state marine reserves (SMRs), state marine parks (SMPs), and state marine conservation areas (SMCAs).<sup>5</sup> It also authorizes the state to implement several other types of marine managed areas.<sup>6</sup> Further, the MMAIA also reinforces the Fish and Game Commission's power to implement special closures.<sup>7</sup>

Take of any living marine resource within marine reserves is prohibited with few exceptions, and access to SMRs and other non-extractive recreational activities may in rare cases be restricted.<sup>8</sup> Special permits to extract living resources for research, restoration, or monitoring purposes may be granted at the discretion of the state.<sup>9</sup> The state has discretion to restrict any take of living resources in SMPs, and commercial take is explicitly restricted.<sup>10</sup> Lastly, the state can implement any combination of prohibitions against recreational or commercial take in SMCAs.<sup>11</sup> For example, take of any living resources within the Reading Rock State Marine Conservation Area is prohibited except for salmon, surf smelt, and Dungeness crab.<sup>12</sup> In contrast, the Russian Gulch State Marine Conservation Area prohibits only the take of bull kelp and giant kelp.<sup>13</sup>

MLPA originally envisioned the state convening a team of experts to develop the new MPA system.<sup>14</sup> Public and regional interests could provide input only toward the end of the process.<sup>15</sup> After unfavorable

<sup>2</sup> Cal. Fish & Game Code § 2850 *et seq.* (2013).

<sup>3</sup> Cal. Fish & Game Code § 2857(c) (2013).

<sup>4</sup> California Public Resources Code § 36600 *et seq.* (2013). MPA categories prior to MMAIA, such as Marine Life Reserves and Ecological Reserves, have been eliminated. *See, e.g.* California AB 2800 Sec. 2 (2000), available at [http://www.dfg.ca.gov/marine/pdfs/binders\\_sc/b3az.pdf](http://www.dfg.ca.gov/marine/pdfs/binders_sc/b3az.pdf) (last visited Sept. 23<sup>rd</sup>, 2013).

<sup>5</sup> California Public Resources Code § 36602(e) (2013).

<sup>6</sup> *See, e.g.* California Public Resources Code §§ 36710(d),(e) (2013).

<sup>7</sup> California Fish & Game Code §§ 36725(a), (e) (2013); California Fish and Game Code § 205 (2013); *see also* California Department of Fish and Wildlife Website- Regional MPA Statistics, available at <http://www.dfg.ca.gov/marine/mpa/statistics.asp> (last visited Aug. 7<sup>th</sup>, 2013) (total of 15 special closures currently in effect).

<sup>8</sup> California Public Resources Code § 36710(a) (2013).

<sup>9</sup> *Id.*

<sup>10</sup> California Public Resources Code § 36710(b) (2013).

<sup>11</sup> California Public Resources Code § 36710(c) (2013).

<sup>12</sup> 14 C.A.A.D.C. § 532(b)(6)(B) (2013) (special exception exists for tribes).

<sup>13</sup> 14 C.A.A.D.C. § 532 (b)(24)(B) (2013).

<sup>14</sup> *See* Christopher Weible, Paul A. Sabatier, and Mark Lubell, A Comparison of a Collaborative and Top-Down Approach to the Use of Science in Policy: Establishing Marine Protected Areas in California, 32 Policy Studies Journal 187 (2004).

<sup>15</sup> *Id.*

reaction from the public, the state modified its strategy and tasked regional stakeholder bodies – with strong scientific guidance – with the responsibility of siting the MPAs.<sup>16</sup>

The Act has since resulted in the designation of 124 MPAs along the California Coast.<sup>17</sup> MPAs are generally managed by either the California Department of Fish and Wildlife or the Department of Parks and Recreation.<sup>18</sup> MLPA does not carry specific penalty provisions, but violation of any part of the Fish and Game code carries mandatory civil penalties.<sup>19</sup>

The designation of the state's MPA network is largely complete.<sup>20</sup> However, the statute gives any entity, public or private, the right to petition the Fish and Game Commission for addition, removal, or modification of MPAs, and the Commission is required to respond to these requests periodically.<sup>21</sup> MLPA requires the Fish and Game Commission to promulgate regulations on the petition process, but as of 2013 no regulations have been established.

### Ecological Reserves

Before 2000, many marine reserves were designated as ecological reserves.<sup>22</sup> MMAIA has eliminated this designation for areas seaward of the mean high-tide line and re-designated them under the new MMAIA framework.<sup>23</sup> However, ecological reserves can still encompass areas landward of the mean high-tide line as well as estuaries, including the federal-state managed national estuarine research reserves (NERRs) designated in California.<sup>24</sup> At least one NERR, the Elkhorn Slough Ecological Reserve, is managed as a California ecological reserve.<sup>25</sup> Access and resource extraction in ecological reserves are prohibited by default, though regulations often allow different types of activities, including fishing, to occur on the reserves with some restrictions.<sup>26</sup>

The reserves are designated by the California Department of Fish & Wildlife (CDFW) with the consent of the Fish & Game Commission, and are managed by the CDFW.<sup>27</sup> The statute itself does not carry penalty provisions.<sup>28</sup> Further, the statute does not provide procedures for the acquisition and designation of ecological reserves other than requiring the approval of the state's Fish and Game Commission.<sup>29</sup> CDFW regulations do not elaborate on the designation process.<sup>30</sup>

---

<sup>16</sup> *Id.*

<sup>17</sup> See California Department of Fish and Wildlife Website- Regional MPA Statistics, available at <http://www.dfg.ca.gov/marine/mpa/statistics.asp> (last visited Aug. 7<sup>th</sup>, 2013).

<sup>18</sup> California Fish and Game Code § 2860 (2013); California Natural Resources Code § 5001.4 (2013).

<sup>19</sup> California Fish & Game Code § 1615 (2013).

<sup>20</sup> See California Department of Fish and Wildlife Website- Regional MPA Statistics, available at <http://www.dfg.ca.gov/marine/mpa/statistics.asp> (last visited Aug. 7<sup>th</sup>, 2013).

<sup>21</sup> California Fish and Game Code § 2861(a) (2013).

<sup>22</sup> See, e.g. 14 C.A.A.D.C. § 632 (b)(56),(57),(58) (2013).

<sup>23</sup> See California AB 2800 Sec. 2 (2000), available at [http://www.dfg.ca.gov/marine/pdfs/binders\\_sc/b3az.pdf](http://www.dfg.ca.gov/marine/pdfs/binders_sc/b3az.pdf) (last visited Sept. 23<sup>rd</sup>, 2013).

<sup>24</sup> See, e.g. 14 C.A.A.D.C. § 630(b)(41) (2013).

<sup>25</sup> 14 C.A.A.D.C. § 630(b)(48) (2013).

<sup>26</sup> California Fish & Game Code § 1583 (2013); 14 C.A.A.D.C. § 630 (2013).

<sup>27</sup> California Fish & Game Code § 1580 (2013).

<sup>28</sup> See California Fish & Game Code § 1580 *et seq.* (2013).

<sup>29</sup> See California Fish & Game Code § 1580 (2013).

<sup>30</sup> See generally 14 C.A.A.D.C. § 630 (2013).

### California Coastal Act Environmentally Sensitive Habitat Areas

The California Coastal Act satisfies federal requirements for grants and federal consistency under the federal Coastal Zone Management Act.<sup>31</sup> The Coastal Act provides the legal structure for local government and the state to plan for and regulate coastal development. The coastal zone as defined includes all of the state's coastal water as well as adjacent land.<sup>32</sup> Violation of any provision of the Coastal Act can lead to civil penalties.<sup>33</sup>

Many of the planning and permitting authorities under the Coastal Act are delegated to local government. Local government must either submit a local coastal plan to the state Coastal Commission for approval or have one prepared for it.<sup>34</sup> Local coastal plans must follow several conservation-oriented policies.<sup>35</sup> Once an approved local coastal plan is in place, the local government must regulate development in accordance with the plan.<sup>36</sup>

The Coastal Act allows local governments to establish "environmentally sensitive habitat areas" (ESHAs).<sup>37</sup> ESHAs are defined as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily degraded by human activities and developments."<sup>38</sup> Developments in these areas are severely restricted.<sup>39</sup> As of 2012, fifteen percent of the California coast is not a part of a local coastal plan.<sup>40</sup> In the event that no certified local coastal plan is in place, the Coastal Commission has the power to designate ESHAs.<sup>41</sup>

Normally, a local government can exercise permitting authority under the Coastal Act even without a certified local coastal plan, as long as it follows additional statutory requirements.<sup>42</sup> However, in instances when local governments abdicate their permitting authorities, as was the case with the Santa Monica Mountains, the Coastal Commission can manage the process, including designating new ESHAs.<sup>43</sup> Developments in areas adjacent to the littoral zone and developments on tidelands,

<sup>31</sup> California Public Resources Code § 30000 *et seq.* (2013).

<sup>32</sup> California Public Resources Code § 30103(a) (2013). In most cases, coastal zone extends landward for 1,000 yards from the mean high-tide line. For major estuaries, important coastal habitats, and recreational areas, the coastal zone can extend to the first major ridgeline parallel to the ocean or 5 miles landward of the mean high-tide line. Finally, the coastal zone can be less than 1,000 yards inland near "developed urban areas." *Id.*

<sup>33</sup> California Public Resources Code § 30820 (2013).

<sup>34</sup> California Public Resources Code § 30400(a) (2013).

<sup>35</sup> California Public Resources Code § 30512(a)(1) (2013).

<sup>36</sup> California Public Resources Code § 30600.5 (2013).

<sup>37</sup> California Public Resources Code § 30240 (2013); *see also* Douda v. California Coastal Commission, 159 Cal.App.4<sup>th</sup> 1181 (2008) (The court treats "environmentally sensitive areas" and "environmental sensitive habitat areas" as interchangeable).

<sup>38</sup> California Public Resources Code § 30107.5 (2013).

<sup>39</sup> California Public Resources Code § 30240 (2013).

<sup>40</sup> California Coastal Commission, Summary of LCP Program Activity in FY 11-12 (2012) available at <http://www.coastal.ca.gov/lcps.html> (last visited Aug. 7<sup>th</sup>, 2013).

<sup>41</sup> *See* Douda v. California Coastal Commission, 159 Cal.App.4<sup>th</sup> 1181, 1192 (2008).

<sup>42</sup> California Public Resources Code § 30600(b)(1) (2013).

<sup>43</sup> Douda v. California Coastal Commission, 159 Cal.App.4<sup>th</sup> 1181 (2008); LT-WR. L.L.C. v. California Coastal Commission 151 Cal.App.4<sup>th</sup> 427 (2007).

submerged lands, and other public trust lands must receive approval from the Coastal Commission regardless of whether a local coastal plan is in place.<sup>44</sup>

The Coastal Act does not provide any specific designation process for ESHAs.<sup>45</sup> However, the Act requires the Coastal Commission to solicit and consider public opinions during both the planning and the regulatory processes.<sup>46</sup> Interested persons must be put on notice when applications for permits that fall under the Commission's jurisdiction have been submitted or when the Commission is voting on new plans.<sup>47</sup> The public has the opportunity either to submit written comments before scheduled Commission hearings or to provide oral testimony during hearings.<sup>48</sup>

### California State Seashores

California state seashores are part of the state parks system and are established by legislation.<sup>49</sup> Commercial resource extraction is generally prohibited in these areas.<sup>50</sup> Fishing is generally allowed unless specifically regulated under other statutes like the MLPA.<sup>51</sup> Further, improvements within state seashores must be "for the purpose of making the areas available for public enjoyment, recreation, and education in a manner consistent with the perpetuation of their natural, scenic, cultural, ecological, and recreational value."<sup>52</sup> The state currently has eleven state seashores with the seaward boundary set at the mean high-tide line.<sup>53</sup> Several of the state seashores also contain estuarine habitats.<sup>54</sup>

The Department of Parks and Recreation has authority to set state seashore boundaries, may revise the boundaries, and shall identify additional lands for inclusion in the system.<sup>55</sup> No regulations exist to further clarify the process for the Department to revise or identify additional lands for inclusion in the Park System. Violation of state park rules and regulations can result in fines up to \$1,000 and a maximum of ninety days in county jail.<sup>56</sup>

### University of California Natural Reserve System

The University of California (UC) currently manages thirty-eight natural reserves across the state.<sup>57</sup> Reserves are primarily used for educational and research purposes.<sup>58</sup> All other uses require permission from university managers.<sup>59</sup> The UC natural reserves are not based on specific statutes, and thus do not

<sup>44</sup> California Public Resources Code § 30601 (2013).

<sup>45</sup> *Id.*

<sup>46</sup> 14 C.A.A.D.C. § 13062 (2013); 14 C.A.A.D.C. § 13515 (2013).

<sup>47</sup> 14 C.A.A.D.C. § 13504 (2013); 14 C.A.A.D.C. § 13524 (2013).

<sup>48</sup> 14 C.A.A.D.C. § 13060 (2013); 14 C.A.A.D.C. § 13525 (2013).

<sup>49</sup> California Public Resources Code § 5001.6(b) (2013).

<sup>50</sup> California Public Resources Code § 5019.62 (2013).

<sup>51</sup> California Public Resources Code § 5001.65 (2013).

<sup>52</sup> California Public Resources Code § 5019.62 (2013).

<sup>53</sup> California Public Resources Code §§ 5001.6(b), 5019.62 (2013).

<sup>54</sup> California Public Resources Code §§ 5001.6(b)(2),(3) (2013).

<sup>55</sup> California Public Resources Code §§ 5001.6(c) (2013).

<sup>56</sup> California Public Resources Code § 5008 (2013).

<sup>57</sup> See University of California Natural Reserve System Website, available at <http://nrs.ucop.edu/> (last visited Aug. 7<sup>th</sup>, 2013).

<sup>58</sup> See University of California Natural Reserve System Website- Reserve Use Guideline, § 1 available at [http://nrs.ucop.edu/research/guidelines/use\\_guidelines.htm](http://nrs.ucop.edu/research/guidelines/use_guidelines.htm) (last visited Sept. 23<sup>rd</sup>, 2013).

<sup>59</sup> See University of California Natural Reserve System Website- Reserve Use Guideline, § 7 available at [http://nrs.ucop.edu/research/guidelines/use\\_guidelines.htm](http://nrs.ucop.edu/research/guidelines/use_guidelines.htm) (last visited Sept. 23<sup>rd</sup>, 2013).

have specific statutory penalty provisions; however, violation of any UC rule or entry onto UC properties without permission could lead to fine or even imprisonment.<sup>60</sup> The UC Regents have the authority to acquire properties to further the education mandates of the University as well as the power to regulate existing UC property.<sup>61</sup> Several reserves, such as the Carpinteria Salt Marsh Reserve and the Kendall-Frost Mission Bay Marsh Reserve, are located in estuarine environments.<sup>62</sup> Others such as the Scripps Coastal Reserve contain important marine environments.<sup>63</sup> No regulations regarding the designation process of the reserves were identified.

### Fishery Closures

The California Department of Fish and Wildlife has comprehensive regulatory authority over the extraction of living marine resources within state jurisdictional boundaries.<sup>64</sup> The Department has used this authority to close the entire Central Coast to gill net fishing above 60 fathoms.<sup>65</sup> Further, most of the California coast is closed to halibut trawling except for a portion of Santa Barbara County and Ventura County.<sup>66</sup> The statutes and regulations do not contain provisions that allow the public to directly petition for a fishery closure. Violation of the regulations can lead to civil penalties.<sup>67</sup>

### Evaluation of State Authorities<sup>68</sup>

| FACTORS            | MLPA                          | Ecological Reserves                 | CCA- ESHA                           | State Seashores                     | UC Natural Reserves                 | Fishery Closures       |
|--------------------|-------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|------------------------|
| Legal Regime       | Regulatory ★★★★★              | Regulatory ★★★★★                    | Planning/Regulatory ★★★★★           | Regulatory ★★★★★                    | Regulatory ★★★★★                    | Regulatory ★★★★★       |
| Ocean Jurisdiction | All marine water ★★★★★        | Includes estuaries and tidelands ★★ | All marine water ★★★★★ |
| Durability         | Multi-year and adaptive ★★★★★ | Indeterminate ★★                    | Indeterminate ★★                    | Designated by statute ★★★★★         | Indeterminate ★★                    | Intermediate ★★        |

<sup>60</sup> California Penal Code § 626.6 (2013); see also <http://www.ia.ucsb.edu/pa/display.aspx?pkey=1831> (last visited Sept. 23<sup>rd</sup>, 2013).

<sup>61</sup> California Education Code §§ 92431, 92440 (2013).

<sup>62</sup> See <http://nrs.ucop.edu/reserves/carpinteria/carpinteria.htm> (last visited Aug. 7<sup>th</sup>, 2013); see also [http://nrs.ucop.edu/reserves/kendall\\_frost/kendall\\_frost.htm](http://nrs.ucop.edu/reserves/kendall_frost/kendall_frost.htm) (last visited Aug. 7<sup>th</sup>, 2013).

<sup>63</sup> Originally established as a UC reserve in 1965 (see Scripps Coastal Reserve at <http://nrs.ucsd.edu/scripps.html>), the Scripps Coastal Reserve is now part of the MLPA system with joint management with the Department of Fish and Wildlife and the University. DEPARTMENT OF FISH & WILDLIFE, GUIDE TO THE SOUTHERN CALIFORNIA MARINE PROTECTED AREAS 52-53 (2012), available at [http://www.dfg.ca.gov/marine/mpa/scmpas\\_list.asp](http://www.dfg.ca.gov/marine/mpa/scmpas_list.asp).

<sup>64</sup> California Fish and Game Code § 702 (2013); see also generally California Fish and Game Code 700 *et seq.* (2013); see also California Fish and Game Code § 7652 (2013); see also 14 C.A.A.D.C. 150.06(a) (2013).

<sup>65</sup> 14 C.A.A.D.C. § 104.1 (2013).

<sup>66</sup> California Department of Fish and Wildlife, California Commercial Fishing- Commercial Fishing Digest 2013-2014, 101 (2013).

<sup>67</sup> California Fish and Game Code § 2585 (2013).

<sup>68</sup> For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.

|                       |   |  |   |  |  |  |
|-----------------------|---|--|---|--|--|--|
| <b>Consistency</b>    | Year-round protection authorized ★★★                  | Year-round protection required by statutes ★★★★★       | Mandated year-round ★★★★★   | Mandated year-round ★★★★★                              | Mandated year-round ★★★★★  | Authorizes year-round protection ★★★★★   |
| <b>Habitat</b>        | Statute designed to encompass multiple habitats ★★★★★ | Habitat protection as part of conservation goals ★★★★★ | Habitat protection as a specific goal of environmentally sensitive habitat area ★★★★★ | Habitat protection as part of conservation goals ★★★★★ | Reserves acquired to protect habitats for education and research ★★★★★ | Habitat protection as byproduct ★★       |
| <b>Sector</b>         | Mandates multi-sector compliance ★★★★★                | Mandates multi-sector compliance ★★★★★                 | Mandates multi-sector compliance on developments ★★★★★                                | Mandates multi-sector compliance ★★★★★                 | Mandates multi-sector compliance ★★★★★                                 | Mandates single sector compliance ★★     |
| <b>Enforcement</b>    | Statutory civil penalty ★★★★★                         | Regulatory penalty exists ★★                           | Statutory civil penalty ★★★★★   | Statutory criminal penalty ★★★★★                       | No MPA-specific penalty provision ★                                    | Statutory civil penalties ★★★★★          |
| <b>Extent (scope)</b> | Multiple sites with possible expansion ★★★★★          | Multiple sites with possible expansion ★★★★★           | Multiple sites with possible expansion ★★★★★  | Multiple sites, but no mechanism for expansion ★★      | Multiple sites with possible expansion ★★★★★                           | Multiple sites, expansion possible ★★★★★ |
| <b>Process</b>        | Public petition process for expansion mandated ★★★★★  | No public process specified ★★                         | Specific public participation processes ★★★★★   | No public process specified ★★                         | No public process specified ★★   | No public process specified ★★           |

Between its MPAs and ecological reserves, California has substantial authority to create and manage MPAs in both estuarine and open water environments. The state can regulate most private activities with its MLPA, ecological reserves, and fishery management authorities, while the Coastal Act allows the state to manage developments along the coast. The UC’s ability to acquire and manage lands as reserve also gives the state, specifically the Regents, significant flexibility to manage properties as they see fit. While the MLPA allows for the public to petition for changes to the MPA system, in the absence of regulations or guidance, the specific path of public participation remains somewhat unclear. In contrast, the Coastal Act has substantial public participation mechanisms but lacks a public petition process to designate new areas for marine protection.

*Local Authority for Marine Protection*

**Summary of Local Authorities**

The California Coastal Act gives local governments significant authority over regulation of coastal development. The state also makes funds available for local government to acquire lands for conservation, including coastal wetlands. The state legislature in the past also has authorized specific local governments to manage and protect submerged coastal lands for conservation purposes.

| SUMMARY                                       | California Coastal Act-Environmentally Sensitive Habitat Areas   | Habitat Conservation Fund                                  | Seal Rock Marine Mammal Reserve   |
|---|--|--|---|
| <b>Legal requirement</b>                      | Restricts development in environmentally sensitive habitat areas   | Funds local efforts to acquire reserves                    | Prevents public access into seal habitats   |
| <b>Citation</b>                               | CAPRC § 30000 (1976)   | CAF&GC § 2780 (1990)                                       | State of California Act of 2009 Ch. 19 § 1(a) (2009)  |
| <b>Designation authority</b>                  | Local government & California Coastal Commission   | Local government   | State Legislature   |
| <b>Management &amp; enforcement authority</b> | Local government   | Local government   | City of San Diego   |
| <b>Jurisdiction &amp; boundaries</b>          | Local government boundaries vary   | Any area within local government jurisdictional boundaries | Areas adjacent to and north of Seal Rock in La Jolla as well as immediately adjacent submerged lands; city has only exercised power up to mean high-tide line |
| <b>Prohibited uses</b>                        | Any development that is not contingent on coastal use or that may severely degrade important natural resources | As prohibited by local government management plans         | Access for general public   |
| <b>Permitted uses</b>                         | Non-development related activities & necessary development with minimal impact                                 | As allowed by local government management plans            | Access by city employee for reserve-related work  |

**California Coastal Act Environmentally Sensitive Habitat Areas**

As described previously, the Coastal Act gives a local government significant discretion to designate environmentally sensitive habitat areas. The Act does not specify the entity in charge of designating

ESHAs.<sup>69</sup> However, the court has construed the statute as allowing local governments to designate ESHAs while synthesizing or amending their local coastal plans.<sup>70</sup>

Local plans must be approved at the local as well as the state level. The Coastal Act regulations contain several requirements for the local approval processes. Local governments must notify the public and conduct a public hearing. Decision makers must approve the plan or amendment before formal submission to the Coastal Commission.<sup>71</sup>

Once a local plan or amendment has been properly submitted, the Executive Director of the Coastal Commission must provide a summary of the new coastal plan or amendment and provide notice to the public and any interested individuals.<sup>72</sup> Within 60 days after the initial submission, the Coastal Commission must hold a hearing to decide whether any substantial issue exists and warrants further deliberations.<sup>73</sup> The public has the opportunity to provide input at or before the hearing.<sup>74</sup> If substantial issues regarding the adequacy of the new plan or amendment arise, the Coastal Commission must hold a new round of hearing within 90 days of the initial submission to adjudicate the issue, accompanied by a new round of public commenting.<sup>75</sup>

Local governments can amend a certified local coastal plan through the same procedure as submitting a new plan for certification.<sup>76</sup>

### Habitat Conservation Fund

The California Wildlife Protection Act of 1990 created the Habitat Conservation Fund.<sup>77</sup> The program allows the state to fund acquisition of habitats of threatened or endangered species for conservation purposes.<sup>78</sup> Eligible habitats can include brackish or salt marshes.<sup>79</sup> The program is administered by several agencies, including the Coastal Conservancy and the Department of Parks and Recreation.<sup>80</sup> Money from the conservation fund can be transferred to a local government's conservation efforts, as long as a formal management plan is drawn up.<sup>81</sup> Once properties are acquired, local governments can manage reserves as landowners.

The Habitat Conservation Fund gives local government the option to acquire lands adjoining the coast but landward of mean high-tide line for conservation purposes. For example, the Douglas Family

---

<sup>69</sup> See *Douda v. California Coastal Commission*, 159 Cal.App.4<sup>th</sup> 1181, 1192 (2008).

<sup>70</sup> *Id.*

<sup>71</sup> 14 C.A.A.D.C. § 13510 (2013).

<sup>72</sup> 14 C.A.A.D.C. §§ 13523-13525 (2013).

<sup>73</sup> 14 C.A.A.D.C. § 13529 (2013).

<sup>74</sup> 14 C.A.A.D.C. §§ 13525-13526 (2013).

<sup>75</sup> 14 C.A.A.D.C. §§ 13530-13533 (2013).

<sup>76</sup> 14 C.A.A.D.C. § 13551 (2013).

<sup>77</sup> California Fish & Game Code § 2780 *et seq.* (2013).

<sup>78</sup> California Fish & Game Code § 2786 (2013).

<sup>79</sup> California Fish & Game Code § 2785(g) (2013).

<sup>80</sup> California Fish & Game Code § 2787 (2013).

<sup>81</sup> California Fish & Game Code § 2789 (2013).

Preserve was acquired in part through the Fund.<sup>82</sup> The preserve is owned and operated by the City of Santa Barbara and contains both a beach and an upland portion.<sup>83</sup> Activities that create significant disturbance such as overnight camping and off-road vehicles are not allowed in the preserve.<sup>84</sup> The Department of Parks and Recreation’s website indicates that the Department has made \$2 million dollars available each year for local conservation projects until the program sunsets in 2020.<sup>85</sup>

**Seal Rock Marine Mammal Reserve**

Casa Beach, also known as Children’s Pool, is a marine mammal reserve located in northwest La Jolla.<sup>86</sup> Public access is prohibited above the mean high-tide line.<sup>87</sup> The state granted the submerged and tidal lands immediately adjacent to the area to the city in 1931.<sup>88</sup> In 2009, the original grant of authority was modified to allow the city to designate the submerged land as a “marine mammal park.”<sup>89</sup> Violation of city codes can give rise to civil penalties or even arrests.<sup>90</sup>

*Evaluation of Local Authorities*

| FACTORS                   | CCA-ESHA  | Habitat Conservation Fund                      | Seal Rock Marine Mammal Reserve                       |
|---------------------------|---|--|---|
| <b>Legal Regime</b>       | ★★★★★<br>Planning/Regulatory                    | ★★★★★<br>Regulatory                            | ★★★★★<br>Regulatory                                   |
| <b>Ocean Jurisdiction</b> | ★★<br>Includes estuaries and tidelands          | ★★<br>Applicable to salt marshes               | ★★★★<br>Specific grant over a portion of marine water |
| <b>Durability</b>         | ★★<br>Indeterminate                             | ★★<br>Indeterminate <sup>91</sup>              | ★★★★★<br>Grant memorialized in statute <sup>92</sup>  |
| <b>Consistency</b>        | ★★★★★<br>Mandated year-round                    | ★★★★★<br>Authorizes year-round                 | ★★★★★<br>Authorizes year-round                        |
| <b>Habitat</b>            | ★★★<br>Habitat protection as a specific goal of | ★★★★★<br>Habitat protection as a specific goal | ★★★<br>Species-specific protection (seal),            |

<sup>82</sup> See Senate Bill 893 (1996) (highlighting the role of habitat conservation fund in background) available at [http://leginfo.ca.gov/pub/95-96/bill/sen/sb\\_0851-0900/sb\\_893\\_cfa\\_960820\\_205340\\_asm\\_floor.html](http://leginfo.ca.gov/pub/95-96/bill/sen/sb_0851-0900/sb_893_cfa_960820_205340_asm_floor.html) (last visited Sept. 23<sup>rd</sup>, 2013).

<sup>83</sup> See City of Santa Barbara, Douglas Family Preserve Management Plan (1999) available at <http://www.santabarbaraca.gov/services/planning/erd/resource/douglas.asp> (last visited Sept. 23<sup>rd</sup>, 2013).

<sup>84</sup> See City of Santa Barbara, Douglas Family Preserve Management Plan, 2-8 (1999) available at <http://www.santabarbaraca.gov/services/planning/erd/resource/douglas.asp> (last visited Sept. 23<sup>rd</sup>, 2013).

<sup>85</sup> See Department of Parks and Recreation website, available at [http://www.parks.ca.gov/?Page\\_id=21361](http://www.parks.ca.gov/?Page_id=21361) (last visited Aug 9<sup>th</sup>, 2013); California Fish & Game Code § 2787(f) (2013).

<sup>86</sup> See City of San Diego website <http://www.sandiego.gov/lifeguards/beaches/pool.shtml> (last visited Sept. 23<sup>rd</sup>, 2013).

<sup>87</sup> San Diego Municipal Code § 63.1001 (2013).

<sup>88</sup> State of California Act of 1931 Ch. 937 § 1 (1931).

<sup>89</sup> State of California Act of 2009 Ch. 19 § 1(a) (2013).

<sup>90</sup> San Diego Municipal Code §§ 12.0803-12.0805 (2013); San Diego Municipal Code § 12.0105 (2013).

<sup>91</sup> See California Fish & Game Code §§ 2780, 2785(a) (2013) (states that the “intent” of the California Wildlife Protection Act of 1990, which the Habitat conservation fund is a part of, is to “keep certain lands in open space and natural conditions,” but the act does not explicitly require habitats be kept as conservation areas in perpetuity).

<sup>92</sup> California Senate Bill 428 Ch. 19 § 1 (2009) (granted submerged land “to be forever held by said City of San Diego and its successors in trust...”).

| FACTORS               | CCA-ESHA   | Habitat Conservation Fund  | Seal Rock Marine Mammal Reserve   |
|-----------------------|--|--|---|
|                       | environmentally sensitive habitat area           |  | habitat protection incidental due to access prohibition   |
| <b>Sector</b>         | ★★★★★<br>Mandates multi-sector compliance        | ★★★★★<br>Authorizes multi-sector compliance when local governments regulate as land owners | ★★★★★<br>Mandates multi-sector compliance   |
| <b>Enforcement</b>    | ★★★★<br>Statutory civil penalty                  | ★★★<br>Regulatory penalty exists when local governments regulate as landowners             | ★★★<br>Penalty within ordinance as a result of state-granted ownership over certain submerged lands |
| <b>Extent (scope)</b> | ★★★★★<br>Multiple sites with possible expansions | ★★★★★<br>Multiple sites with possible expansions   | ★<br>Single site, no expansion  |
| <b>Process</b>        | ★★★★<br>Specific public participation process    | ★★★<br>No specific public process  | ★★★<br>No specific public process   |

California lacks statutes that give local governments general powers to designate and manage marine protected areas. However, the state does have statutes that give local governments authority to regulate coastal developments or manage reserves as landowners. In specific instances, the state has also given local governments specific areas of submerged lands for conservation purposes.