

NORTH CAROLINA¹

State Authority for Marine Protection

Summary of State Authorities

North Carolina has some legal authorities for designating areas for marine protection. However, few of these authorities are being used as extensively as they could be to protect the marine environment. The Coastal Reserve Component of the state’s Coastal Area Management Act (CAMA) provides authority to designate coastal reserves and areas of environmental concern. The state’s Natural Preserves Act allows for identification of natural heritage areas as well as nature preserves. Finally, the state’s fishing regulations and endangered species law provide additional mechanisms to protect the state’s marine ecosystems.

SUMMARY	Coastal Area Management Act (CAMA) Coastal Reserve System	CAMA Areas of Environmental Concern (AECs)	Natural Preserves Act	Fisheries management generally	Research Sanctuaries & Nursery Areas	Endangered or Threatened Species
Legal requirement	Authorizes establishment of coastal reserve system	Calls for designation of coastal areas as areas of environmental concern	Authorizes creation of natural heritage areas and nature preserves	Authorizes time/area/gear restrictions and closures	Restricts some types of fishing in nursery areas	Authorizes closing coastal waters to protect endangered and threatened species
Citation	NCGS §§ 113A-129.1-129.3 (1989)	NCGS §§ 113A-113-115.1 (1973)	NCGS §§ 113A-164.1-164.11 (1985)	NCGS § 113-182	15A NCAC §§ 03N.0101-0106, 03R.0103 (1991)	15A NCAC § 03I.0107(b) (1991)
Designation authority	North Carolina Department of Environment and Natural Resources (NCDENR) with advice from the Coastal Resources Commission	North Carolina Coastal Resources Commission (within DENR)	NCDENR, local units of government	NCMFC	North Carolina Marine Fisheries Commission (NCMFC)	North Carolina Fisheries Director

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.

SUMMARY	Coastal Area Management Act (CAMA) Coastal Reserve System	CAMA Areas of Environmental Concern (AECs)	Natural Preserves Act	Fisheries management generally	Research Sanctuaries & Nursery Areas	Endangered or Threatened Species
Management & enforcement authority	NCDENR	NCDENR, local governments	NCDENR	NCDENR	NCDENR	NCDENR
Jurisdiction & boundaries	Coastal counties and state waters	Coastal counties and state waters	State lands and waters	Coastal fishing waters	Estuarine and marine areas	Coastal waters
Prohibited uses	None specified (however goal is to maintain undeveloped coastal land and water areas in a natural state)	None specified by statute	Cannot use nature preserves for purposes inconsistent with the Act	None specified in statute	Some fishing-related restrictions for nursery areas	Fishing activities that are a serious threat to an endangered or threatened species
Permitted uses	Research and education and other public uses such as hunting, fishing, navigation, and recreation, to the extent they are consistent with the primary uses.	None specified by statute	None specified by statute	None specified in statute	Fisheries Director may open secondary nursery areas to shrimp or crab trawling at some times.	None specified by statute

Coastal Area Management Act

The North Carolina Coastal Area Management Act (CAMA) establishes the Coastal Resources Commission, requires local land-use planning in coastal counties, and establishes a program for regulating coastal development.² North Carolina’s coastal zone program has been federally approved in accordance with the federal Coastal Zone Management Act (CZMA).³ CAMA allows for protection of the marine environment through a variety of mechanisms, including the Coastal Reserve System and the establishment of areas of environmental concern (AECs).⁴ The designations of coastal reserves and AECs can occur in coastal areas, including coastal counties and state marine waters.⁵ Violation of CAMA requirements can lead to injunctions, fines, and misdemeanor charges.⁶

² N.C.G.S.A. § 113A-100 *et seq.* (2013); *see also* North Carolina Department of Environment and Natural Resources [hereinafter NCDENR], *CAMA Handbook for Development in Coastal North Carolina* [hereinafter *CAMA Handbook*], available at http://www.oibgov.com/PDF/CAMA_Handbook_for_Development.pdf.

³ N.C.G.S.A. § 113A-129.1(b) (2013); NCDENR, *CAMA Handbook*, *supra* note 2 at 1.

⁴ N.C.G.S.A. §§ 113A-113-115.1, 113A-129.1-129.3 (2013).

⁵ N.C.G.S.A. § 113A-129.2(c) (2013); N.C.G.S.A. § 113A-103(1)(2) (2013).

⁶ N.C.G.S.A. § 113A-126(d) (2013); 15A N.C.A.C. 2J.0100 (2013).

Coastal Reserve System

A primary goal of the Coastal Reserve System is research and education, as well as “to contribute perpetually to the natural productivity and biological, economic, and aesthetic values of North Carolina’s coastal area.”⁷ It allows public uses such as “hunting, fishing, navigation, and recreation,” as long as such activities are consistent with the primary research and education purposes. Improvements and alterations to coastal reserves must be consistent with the reserves’ uses.

While industrial and commercial activities are restricted in reserves, reserves allow fishing and hunting to the extent it is permitted under state law.⁸ Hydraulic clam dredging and target shooting are prohibited in all reserves, as is production of noise that is disruptive to local wildlife and enjoyment of the reserve.⁹ Specific management plans may provide additional restrictions. For example, the Bald Head Woods Coastal Reserve prohibits all hunting in accordance with local ordinance.¹⁰ The Kitty Hawk Woods Coastal Reserve allows for hunting and fishing in its 1998 management plan, though local management authority has contemplated bans.¹¹ The Permuda Island Coastal Reserve, on the other hand, allows for all hunting and fishing, but specifically bans hydraulic dredging for clams.¹²

Areas of Environmental Concern

CAMA calls upon the state to establish Areas of Environmental Concern, and the Coastal Resources Commission is charged with designating geographic areas of the coastal area as AECs.¹³ Specifically, the Commission can designate the following types of areas as AECs: coastal wetlands; estuarine waters; renewable resource areas including watersheds, capacity use areas and prime forest land; fragile or historic areas and areas containing environmental or natural resources of local concern; waterways and lands under or flowed by tidal or navigable waters; natural-hazard areas including sand dunes, beaches, and floodplains among others; areas important for key facilities; Outstanding Resource Waters (ORWs); and Primary Nursery Areas (PNAs).¹⁴ Among these, the latter two, ORWs and PNAs, are designated as such under separate authorities, by the Environmental Management Commission for ORWs and the Marine Fisheries Commission for PNAs.¹⁵

Once an area has been designated as an AEC, the Commission must consider impact to AECs when making development permitting decisions, and PNAs and ORWs that are designated as AECs require public notice and comment opportunities before making a permitting decision (except for minor maintenance and improvement projects).¹⁶ Furthermore, county land use plans “shall give special attention to the protection and appropriate development of areas of environmental concern,”¹⁷ and local ordinances may not be inconsistent with land-use plans related to areas of environmental concern.¹⁸

⁷ N.C.G.S.A. § 113-129.2(b) (2013).

⁸ 15A N.C.A.C. § 070.0202(2) (1988).

⁹ 15A N.C.A.C. § 070.0202(2) (1988).

¹⁰ Division of Coastal Management- NCDENR, 30 Management Plan for the Bald Head Woods Component of the North Carolina Coastal Reserve (1999).

¹¹ Division of Coastal Management- NCDENR, 35 Kitty Hawk Reserves Reserve Management Plan (1998).

¹² Division of Coastal Management- NCDENR, 30 Management Plan for the Permuda Component of the North Carolina Coastal Reserve (1993).

¹³ N.C.G.S.A. §§ 113A-101, 113A-113(a) (2013).

¹⁴ N.C.G.S.A. §113A-113(b) (2013).

¹⁵ N.C.G.S.A. § 113A-113(b) (2013).

¹⁶ N.C.G.S.A. §§ 113A-118.1(a), 188.2 (2013).

¹⁷ N.C.G.S.A. § 113A-110 (2013).

¹⁸ N.C.G.S.A. § 113A-111 (2013).

The Coastal Resources Commission has designed four categories of AECs: (1) the estuarine and ocean system; (2) the ocean hazard system; (3) public water supplies; and (4) natural and cultural resource areas.¹⁹ Within each category are several different types of AECs (Table 1).

Existing Areas of Environmental Concern ²⁰	
(1) Estuarine and Ocean System	<ul style="list-style-type: none"> • Public Trust Areas • Estuarine Waters • Coastal Shorelines • Coastal Wetlands
(2) Ocean Hazard System	<ul style="list-style-type: none"> • Ocean Erodible AEC • High Hazard Flood AEC • Inlet Hazard AEC
(3) Public Water Supply AEC	<ul style="list-style-type: none"> • Small Surface Water Supply Watershed AEC • Public Water Supply Wellfields
(4) Natural and Cultural Resource AECs	<ul style="list-style-type: none"> • Coastal Complex Natural Areas • Coastal Areas that Sustain Remnant Species • Unique Coastal Geologic Formations • Significant Coastal Archaeological Resources and Significant Coastal Historical Archaeological Resources

For each type of AEC, specific regulations apply that constrain development activities in order to protect key characteristics of the AECs.²¹ For example, for Estuarine Waters, Coastal Wetlands, and Public Trust Areas, “location, design and construction of [the] project must give highest priority to conserving the biological, economic and social values” of such areas.²² Further, projects must cause the least possible damage to the productivity and integrity of key habitats, must not significantly increase sedimentation, must not create stagnant water bodies, and more.²³

The Natural and Coastal Resource AECs are specifically designed to protect environmental or cultural resources.²⁴ According to the *CAMA Handbook* that provides guidance to coastal managers and developers, only two Natural and Coastal Resource AECs have been designated to date.²⁵ That said, any person can nominate an area as a Natural and Coastal Resource AEC.²⁶

¹⁹ NCDENR, *CAMA Handbook*, *supra* note 2 at 3-4.

²⁰ *Id.* at 4-9.

²¹ *Id.* at 10-30.

²² *Id.* at 10.

²³ *Id.*

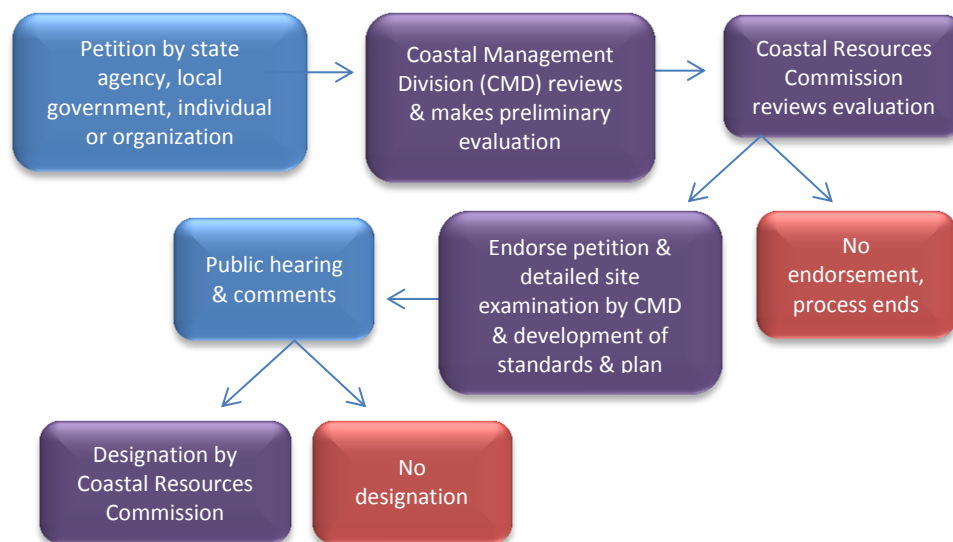
²⁴ 15A N.C.A.C. §§ 07H.0501, 07H.0502.

²⁵ *Id.* at 16.

²⁶ *Id.*

All AECs are subject to a biennial review, and an AEC may be deleted or modified.²⁷ However, an AEC can be deleted only if the “conditions upon which the original designation was based shall have been found to be substantially altered.”²⁸

Any public or private entity may petition to have a coastal area designated as a Natural and Cultural Resource AEC.²⁹ Once the petition has been filed with the DENR, the Coastal Management Division (CMD) makes a preliminary evaluation of the merit of the petition together with input from affected land owners and local governments.³⁰ Upon completion of the evaluation, the Coastal Resources Commission decides whether to endorse and proceed with a more detailed examination of the proposed site.³¹ The CMD undertakes the detailed review, including site-specific management standards and a management plan, if applicable.³² These documents would then be opened to public commenting in counties that will be affected by the new listing.³³ After public hearings and consideration of comments, the CRC may designate the new Natural and Cultural Resource AEC.³⁴



Nature Preserves Act

North Carolina’s Nature Preserves Act provides authority for the Department of Environment and Natural Resources to maintain a Natural Heritage Program and designate natural heritage areas, and to establish a natural heritage plan.³⁵ The Natural Heritage Program is designed to serve as an inventory of natural heritage areas in order to support land-use decisions and facilitate protection of resources.³⁶

The Nature Preserves Act also provides the state with authority to accept the dedication of nature preserves on donated private lands deemed by the Secretary of DENR as “outstanding natural areas.”³⁷

²⁷ N.C.G.S.A. § 113A-115(c) (2013).

²⁸ *Id.*

²⁹ 15A N.C.A.C. 7H.0503(b) (2013).

³⁰ 15A N.C.A.C. 7H.0503(c) (2013).

³¹ 15A N.C.A.C. 7H.0503(d) (2013).

³² 15A N.C.A.C. 7H.0503(e) (2013).

³³ 15A N.C.A.C. 7H.0503(f) (2013); N.C.G.S.A. § 113A-115 (2013).

³⁴ 15A N.C.A.C. 7H.0503(g) (2013).

³⁵ N.C.G.S.A. §§ 113A-164.1 et seq. (2013)

³⁶ Natural Heritage Program, at <http://www.ncnhp.org/>.

³⁷ N.C.G.S.A. § 113A-164.6 (2013)

Also, state-owned lands may be dedicated as nature preserves with approval by the governor and the Council of State.³⁸ While “land” is not defined in this Act, “natural area” is defined to include land and water whether publicly or privately owned.³⁹ Assuming all natural areas have the potential to be designated as preserves, and recognizing that state marine waters are publicly owned, it would seem possible for the state to utilize its nature preserve authority to protect the marine environment.

A private entity, the state, or a local government may offer its land to the state as a nature preserve.⁴⁰ The Heritage Advisory Committee within DENR will then submit a report detailing the legal and natural characteristics of the land to the DENR Secretary. The Secretary then has the power to accept the land as a heritage preserve and to designate accordingly.⁴¹ Once designated, the conservation status of a preserve can be extinguished only when an “imperative and unavoidable public necessity” exists and “no prudent alternatives” exist.⁴² Several management principles apply to nature preserves, including maintaining the essential natural character of the preserve, restrictions on destruction of flora and fauna, and pollution restrictions, among others.⁴³

Fisheries Management—General

The North Carolina General Statutes give the state’s Marine Fishery Commission broad regulatory power to manage the state’s fisheries, including time, place, and methods of fishing, among others.⁴⁴ This authority has been used to establish a variety of fishery-based regulations that protect marine ecosystems. For example, fisheries regulations prohibit the use of nets during certain times of the year and prohibit trawling in some places year-round.⁴⁵ Shellfish and oysters provide another example: in accordance with regulations, the Fisheries Director has authority to declare shellfish management areas, which, once declared, restrict some types of fishing activities.⁴⁶ Similarly, use of trawls, long haul seines, and swipe nets is prohibited in oyster sanctuaries.⁴⁷ Many other regulations address time and area closures based on gear type and fishing activity.

Fisheries Management—Specific Place-Based Protection (Research Sanctuaries and Primary Nursery Areas)

The Fisheries Director has authority to regulate all fishing activities within research sanctuaries and artificial reefs.⁴⁸ These restrictions may be in place for no more than one year before the Fisheries Director is required to renew such restrictions at his or her discretion.⁴⁹ Further, anytime a restriction is placed or renewed, the Director must justify its benefit against the economic hardships the restriction might create.⁵⁰

The North Carolina Marine Fishery Commission can protect important estuarine and marine fish species through the designation of primary nursery areas (PNAs), which once established may also be

³⁸ N.C.G.S.A. § 113A-164.8 (2013)

³⁹ N.C.G.S.A. § 113A-164.3 (2013)

⁴⁰ 15A N.C.A.C. 12H.0302(d) (2013).

⁴¹ 15A N.C.A.C. 12H.0302 (2013).

⁴² 15A N.C.A.C. 12H.0307 (2013).

⁴³ 15A N.C.A.C. 12H.0402 (2014) (however exceptions possible when expressly provided in the articles of dedication for the preserve).

⁴⁴ N.C.G.S.A. §113-182 (2014).

⁴⁵ 15A N.C.A.C. § 3J.0202 (2014)

⁴⁶ 15A N.C.A.C. § 3K.0103 (2014)

⁴⁷ 15A N.C.A.C. § 3K.0209 (2014)

⁴⁸ 15A N.C.A.C. 03I.0109 (2014).

⁴⁹ 15 A.N.C.A.C. 03I.0109 (a)(2) (2014).

⁵⁰ 15 A.N.C.A.C. 03I.0109 (a)(3) (2014).

designated as AECs under CAMA.⁵¹ Once designated, it is unlawful to use trawl nets, long haul seines, swipe nets, dredges, or mechanical methods for clam or oyster harvest.⁵² Further, if an area is recognized as an AEC, development activities may be further restricted.⁵³ Finally, the law prohibits activities such as mechanically assisted fish harvesting and any unpublicized residential development within PNAs.⁵⁴ North Carolina has an inventory of over a hundred PNAs.⁵⁵

North Carolina Endangered Wildlife Regulation

The North Carolina Fisheries Director currently holds the power to regulate fishing activities in endangered species' habitats.⁵⁶ This power came from a 1979 agreement between the various state agencies responsible for the protection of endangered species and other natural resources.⁵⁷ The state Fishery Director may ban any fishing activities that constitute a threat to any endangered species listed under the state law or federal Endangered Species Act.⁵⁸

Evaluation of State Authorities⁵⁹

FACTORS	CAMA Coastal Reserve System	CAMA AECs	Natural Preserves Act	Fisheries Management generally	Research Sanctuaries & Nursery Areas	Endangered or Threatened Species
Legal Regime	★★★★ Regulatory	★★★★ Regulatory	★★★★ Regulatory	★★★★ Regulatory	★★★★ Regulatory	★★★★ Regulatory
Ocean jurisdiction	★★★★ Includes state marine waters	★★★★ Includes state marine waters	★★★★ Likely includes any marine waters	★★★★ Includes state marine waters	★★★★ Includes state marine waters	★★★★ Includes state marine waters
Durability	★★★ Multi-year and adaptive	★★★ Multi-year and adaptive	★★★★ In perpetuity	★ Sunset after 1 year unless action taken	★★ Indeterminate	★★ Indeterminate
Consistency	★★★★ Mandates year-round protection	★★★★ Mandates year-round protection	★★★★ Mandates year-round protection	★★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection
Habitat	★★★ Goal is habitat protection	★★★ Goal is habitat protection (in some instances)	★★★ Goal is habitat protection	★★ Byproduct is habitat protection	★★★★ Goal is habitat protection	★ Species-specific
Sector	★★★	★★★	★★★★	★	★	★

⁵¹ N.C.G.S.A. §113A-113(b)(9) (2014).

⁵² 15A N.C.A.C. §03N.0104 (2014).

⁵³ 15A N.C.A.C. 07B.0702 (c)(2)(B)(i)(III) (2014); Holland Consulting Planners, Inc., Brunswick County Core Land use plan 74-75 (2006).

⁵⁴ N.C.G.S.A. §§ 113-118.2 & 187 (d)(5); 15A N.C.A.C. 03N.0104 (2013).

⁵⁵ 15A N.C.A.C. 03R.0103 (2013).

⁵⁶ 15A N.C.A.C. 03I.0107 (2013).

⁵⁷ *Supra* at note **Error! Bookmark not defined.**; see also N.C.G.S.A. §113A-331 *et seq.* (2013)..

⁵⁸ *Id.*

⁵⁹ For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.

FACTORS	CAMA Coastal Reserve System	CAMA AECs	Natural Preserves Act	Fisheries Management generally	Research Sanctuaries & Nursery Areas	Endangered or Threatened Species
	Authorizes multi-sector	Authorizes multi-sector	Authorizes multi-sector	Authorizes single-sector	Authorizes single sector	Authorizes single-sector
Enforcement	No protected-area-specific provisions ★	No protected-area-specific provisions ★	No protected-area-specific provisions ★	No protected-area-specific provisions ★	No protected-area-specific provisions ★	No protected-area-specific provisions ★
Extent (scope)	★★★★★ Multiple sites with expansion possible	★★★★★ Multiple sites with expansion possible	★★★★★ Multiple sites with expansion possible	★★★★★ Multiple sites with expansion possible	★★★★★ Multiple sites with expansion possible	★★★★★ Multiple sites with expansion possible
Process	★★★★ Specific public participation process	★★★★ Specific public petition process	★★★★ Specific public petition process	★★ No specific public process	★★ No specific public process	★★★★ Specific public petition process

North Carolina can create marine protected areas under several statutes. Many of these management tools are linked to CAMA, which affords some protection against development activities. However, while the evaluation chart shows broad state regulatory authorities across multiple sectors for the entire North Carolina coast, the state is typically selective in banning or regulating private activities. Further, activities such as recreational fishing and hunting are often allowed inside protected areas.

Local Authority for Marine Protection

Summary of Local Authority

North Carolina’s local governments explicitly lack authority to regulate the conservation of marine and estuarine resources. Specifically, Section 113-133 of the General Statutes abolishes “all special, local, and private acts and ordinances regulating the conservation of marine and estuarine resources.” However, county jurisdiction extends over estuarine waters, and the extent of ocean authority varies depending on charters. CAMA establishes coastal county land-use planning authorities, and local governments can donate properties to the state to become nature preserves. Further, municipal corporations’ ability to designate bird sanctuaries can also provide some spatial protection.

SUMMARY	CAMA AECs	Bird Sanctuary
Legal requirement	Allows designation of AECs	Allows designation of bird sanctuaries
Citation	NCGS § 113A-109 (1974)	NCGSA § 160A-188 (1951)

Designation authority	Local governments	Local governments
Management and enforcement authority	Local governments, DENR	Local governments
Jurisdiction & boundaries	All the state’s coastal land and water under the jurisdiction of local authorities	All the state’s coastal land and water under the jurisdiction of local authorities
Prohibited uses	Development activities incompatible with local land-use plans	Any activities that can harm protected birds
Permitted uses	Development as permitted by local land-use plan	Taking of birds that are considered pests

Land Use Planning and Ordinances

North Carolina gives counties and cities the authority to adopt zoning and development regulation ordinances.⁶⁰ In addition, CAMA provides coastal counties the authority to develop coastal land-use plans that serve as the criteria for permitting decisions.⁶¹ Such plans must be consistent with state guidelines for the coastal area, and permits may not be issued that are inconsistent with guidelines.⁶² The guidelines must “give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern.”⁶³ Similarly, land-use plans must “give special attention to the protection and appropriate development of areas of environmental concern.”⁶⁴ Therefore, local government plays a role in protection of AECs but does not have specific authority to delegate such areas.

Many local land-use plans specifically describe coastal wetlands, estuaries, and other AECs within their boundaries.⁶⁵ The plans also describe areas off-limits to commercial and industrial development.⁶⁶ Once the state approves a coastal land-use plan, the local government can exercise permitting authority in accordance with that plan.

Bird Sanctuaries

North Carolina law gives incorporated towns and cities the authority to create bird sanctuaries within city limits.⁶⁷ To the extent that bird sanctuaries may fall in coastal areas such as beaches and dunes, these areas may afford some coastal protection. Under this law, no person can take or otherwise harm protected bird species without special permits from the state.⁶⁸ However, the law does not provide for any other restrictions, and it specifically exempts taking of birds that are considered pests.⁶⁹

⁶⁰ N.C.G.A. §§ 153A-340, 160A-381 (2014).

⁶¹ N.C.G.A. § 113A-106 (2014).

⁶² N.C.G.A. § 113A-108 (2014).

⁶³ N.C.G.A. § 113A-107 (2014).

⁶⁴ N.C.G.A. § 113A-110 (2014).

⁶⁵ Holland Consulting Planners, Inc., 54 Brunswick County Core Land use plan (2006); Holland Consulting Planners, Inc., 64-79 Hyde County, NC CAMA Core Land use plan (2008).

⁶⁶ Holland Consulting Planners, Inc., 61, 74 Brunswick County Core Land use plan (2006); Holland Consulting Planners, Inc., 92-93 Hyde County, NC CAMA Core Land use plan (2008).

⁶⁷ N.C.G.S.A. § 160A-188 (2014).

⁶⁸ *Id.*

⁶⁹ *Id.*

Evaluation of Local Authorities

FACTORS	CAMA Land Use & AECs	Bird Sanctuary
Legal Regime	Planning ★★★★	Regulatory ★★★★
Ocean jurisdiction	Minimal extension into the marine environment, includes estuarine ★★	Limited to within city limits ★
Durability	Indeterminate ★★	Indeterminate ★★
Consistency	Mandates year-round protection ★★★★	Mandates year-round protection ★★★★
Habitat	Partial goal is habitat protection ★★★★	Species-specific ★
Sector	Multiple sectors ★★★★	Multiple sectors ★★★★
Enforcement	No MPA-specific provisions ★	No MPA-specific enforcement ★
Extent/ scope	Multiple sites with expansion possible ★★★★	Multiple sites with expansion possible ★★★★
Process	Public process for designation of AECs ★★★★	No specific public process ★★