**SOUTH CAROLINA**

*State Authority for Marine Protection*

### Summary of State Authorities

Marine conservation in South Carolina can be achieved through several legal and regulatory authorities. The Heritage Trust Program allows designation of heritage preserves. Like most coastal states, South Carolina also has a federally approved coastal management program. The combination of the coastal development program and other conservation laws allows the state to create conservation areas. Lastly, South Carolina’s Endangered Species Act also provides the state with authority to establish protected areas, though the state has not put this authority into practice. Finally, South Carolina fisheries management authority allows for time-area closures.

<table>
<thead>
<tr>
<th>SUMMARY</th>
<th>Heritage Trust Program</th>
<th>Marine and Estuarine Sanctuaries</th>
<th>CTWA- GAPC and Sanctuaries</th>
<th>Wildlife Management Areas (WMA)</th>
<th>Endangered Species Habitats</th>
<th>Fisheries habitat protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal requirement</td>
<td>Allows designation of heritage preserves</td>
<td>Allows management of marine and estuarine sanctuaries</td>
<td>Allows designation of GAPCs along the coast and allows SCDHEC OCRM to manage estuarine and marine sanctuaries</td>
<td>Restricts take of wildlife within WMAs</td>
<td>Allows acquiring and managing habitats</td>
<td>Allows protection of saltwater and marine habitat for fisheries management</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Citation</th>
<th></th>
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</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Designation authority</th>
<th>South Carolina Department of Natural Resources (SCDNR)</th>
<th>South Carolina Department of Health and Environmental Control (SCDHEC)</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
</table>

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](http://www.eli-ocean.org/mpa).

2 Geographic area of particular concern was a tool identified in regulations; regulation footnotes indicate that the earliest amendment to the South Carolina Coastal Tideland and Wetland Act regulations was recorded in the South Carolina State Register Volume 10, issue No. 6 (1985).

3 First date of establishment of this authority was not determined by authors. However, this provision is part of the South Carolina Marine Resources Act of 2000.
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</tr>
</thead>
<tbody>
<tr>
<td>Enforcement authority</td>
<td>SCDNR</td>
<td>SCDHEC, SCDNR, &amp; University of South Carolina</td>
<td>SCDHEC &amp; local government</td>
<td>SCDNR</td>
<td>SCDNR</td>
<td>SCDNR</td>
</tr>
<tr>
<td>Jurisdiction &amp; boundaries</td>
<td>Any donated land within the state</td>
<td>All coastal areas</td>
<td>Eight coastal counties out to the 3-nautical-mile line</td>
<td>Any area within the state</td>
<td>Any area within the state</td>
<td>Saltwaters of the state including the territorial sea</td>
</tr>
<tr>
<td>Prohibited uses</td>
<td>Activities that may disturb the natural character of a preserve according to preserve-specific regulations</td>
<td>Any activity that is not compatible with the conservation and education purpose of the sanctuaries</td>
<td>Development incompatible with conservation goals of a GAPC or statute, regulations and policies contained in the approved program document</td>
<td>Extractions not compatible with the management objectives of a WMA</td>
<td>Taking of rare or endangered species</td>
<td>None specifically identified by statute</td>
</tr>
<tr>
<td>Permitted uses</td>
<td>Any activity that preserve-specific regulations allow; most public uses</td>
<td>Most public uses, including hunting and fishing</td>
<td>Non-development activities and development as conditioned by SCDHEC</td>
<td>Regulated hunting and fishing</td>
<td>N/A (authority untested)</td>
<td>None specifically identified by statute</td>
</tr>
</tbody>
</table>

**Heritage Trust Program**

South Carolina’s Heritage Trust Program gives the South Carolina Department of Natural Resources (SCDNR) power to acquire and manage lands for the purpose of establishing natural preserves. The purpose of the preserves is to “preserve and protect the natural or cultural character [of the designated area].”

Once an area is designated as a heritage preserve, the South Carolina Department of Health and Environmental Control (SCDHEC) will automatically designate it as a “geographical area of particular concern (GAPC)” and restrict development accordingly. Hunting, fishing, and various other disturbances are not allowed in the preserves by default. One heritage preserve, Botany Bay, even bans all public access to certain areas. However, different preserves often carry different degrees of prohibitions and

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6 South Carolina Coastal Council, South Carolina Coastal Program, IV-9 (1979).
regulations, and some do allow fishing and hunting.\textsuperscript{9} Violation of any reserve regulation will result in penalty as well as revocation of permits.\textsuperscript{10}

Heritage preserves generally come from public donation of lands or conservation easements.\textsuperscript{11} First, a land or conservation easement is dedicated to SCDNR by a private land owner. A special heritage trust advisory board then evaluates the merit of accepting the dedication. If the dedication is accepted, SCDNR will publish a draft management plan for the preserve and open the document to public comment. After the public is given the chance to comment on the management plan, the advisory board will finalize the adoption of a new preserve.\textsuperscript{12}

**Marine and Estuarine Sanctuaries**

Two estuarine reserves exist in South Carolina: the Ashepoo-Combahee-Edisto (ACE) Basin National Estuarine Research Reserve and the North Inlet-Winyah Bay National Estuarine Research Reserve (NI-WB).\textsuperscript{13} Under the state’s Coastal Tideland and Wetland Act (CTWA), SCDHEC has the power to manage any marine or estuarine sanctuary that the U.S. Secretary of Commerce designates under the federal Coastal Zone Management Act.\textsuperscript{14} However, through several memoranda of understanding between multiple South Carolina state agencies and the federal government, the responsibility to manage these reserves has been further delegated to other South Carolina state entities. ACE is currently managed by the South Carolina Department of Natural Resources (SCDNR).\textsuperscript{15} NI-WB is managed by the University of South Carolina.\textsuperscript{16}

The management plans for the two reserves suggest that the state strongly prefers a non-regulatory approach to active management, either through direct state ownership of the land or through the purchase of conservation easements.\textsuperscript{17} The plans place strong emphasis on the state’s commitment to allow “traditional” private uses such as fishing as well as upholding conservation interests.\textsuperscript{18} The management plans do not detail any separate state regulation that specifically regulates the two preserves.\textsuperscript{19} Instead, conservation-oriented restrictions are written into the existing legal and regulatory

\textsuperscript{11} S.C.C.A. § 51-17-80 (2013).
\textsuperscript{12} Id.
\textsuperscript{14} S.C.C.A § 50-13-1950 (2013); South Carolina Coastal Program, IV-9 to IV-12 (1979).
\textsuperscript{19} Id
framework. For instance, hunting and fishing restrictions on different components of the reserves, such as Bear Island, are regulated using the state’s power to manage wildlife management areas.\(^{20}\)

The relevant sections of the South Carolina code and regulations do not delineate any specific process by which the public can participate in the process of establishing a national estuarine research reserve within the state. However, record shows that a substantial part of NI-WB was donated to the state as part of a large private holding.\(^{21}\)

**Coastal Tidelands and Wetland Act- Geographic Areas of Particular Concern**

The Coastal Tideland and Wetland Act (CTWA) is the primary statute guiding the state’s coastal development.\(^{22}\) The statute gives the SCDHEC power to regulate the state’s “critical areas.”\(^{23}\) It defines critical areas as all of the state’s coastal water, wetlands, beaches, as well as the transition zones designed to cushion future land loss.\(^{24}\) These include all navigable water containing a measurable quantity of sea water, all areas seaward of mean high-tide, coastal wetlands, mudflats, other integral parts of an estuarine system, and the first row of sand dunes adjacent to the Atlantic Ocean.\(^{25}\) Violation of CTWA carries statutorily mandated penalties.\(^{26}\)

SCDHEC’s regulatory power over critical areas is broad. In general, citizens and public agencies cannot develop in critical areas without permits from SCDHEC.\(^{27}\) SCDHEC can in turn deny or modify the permits based on a variety of policy goals, including conservation of vulnerable natural resources.\(^{28}\) However, most of these restrictions do not create reserve-like protected areas. The regulations contain several exceptions applicable to all projects on a case-by-case basis.\(^{29}\) Furthermore, CTWA only regulates development planning. The statute does not restrict other private activities such as fishing and boating.

SCDHEC can designate specific sections of the state’s coastal zone as “geographic areas of particular concern” (GAPC).\(^{30}\) GAPCs can be designated based on their natural, historical, or cultural value.\(^{31}\) The CTWA regulations and coastal management plan already place various restrictions on coastal development;\(^{22}\) GAPC designations, however, provide an area with even more protection. For instance, SCDHEC must consider any negative impact a use may have on a GAPC.\(^{33}\) Further, activities that would

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\(^{29}\) S.C. Code Regs. § 30-12(G)(2)(g) (2013) (“Applications for dredging in submerged and wetland areas for purposes other than access, navigation, mining, or drainage shall be denied, unless an overriding public interest can be demonstrated.”).


\(^{31}\) South Carolina Coastal Council, South Carolina Coastal Program, IV-2 (1979); see also id.

\(^{32}\) S.C. Code Regs. § 30-11(B) (2013); South Carolina Coastal Council, South Carolina Coastal Program, III-29 to III-37 (1979).

“permanently disrupt” the priority uses of a GAPC are prohibited, and any project that would “interrupt, disturb or otherwise significantly impact” these uses would be “strongly discouraged.”

Any interested citizens, federal agencies, local governments, organizations, or state agencies may nominate potential GAPCs. Once an area is nominated, it will be reviewed by the South Carolina Coastal Council and designated through a majority vote of the council. Designation of a new preserve under the Heritage Trust Program will automatically result in GAPC designation.

Wildlife Management Areas
SCDNR also has the power to designate and manage wildlife management areas (WMAs). These areas are designated for “the protection, propagation, and promotion of fish and wildlife and for public hunting, fishing, and other natural resource dependent recreational use.” Several WMAs, such as the Santee Coastal Reserve, are located on the coast. Many WMAs allow for public hunting and fishing, though in a regulated manner. Violation of these regulations will result in penalties as prescribed by statute. SCDNR has clearly exercised its authority; however, the statute and regulations do not elaborate on the designation process of the WMAs.

Endangered Species
South Carolina Law gives SCDNR the power to acquire and manage lands for the recovery of endangered species. The SCDNR currently lists several whale species as well as the Shortnose Sturgeon as endangered under state law. The agency has not established any management area for these species. Violation of the state endangered wildlife law will result in criminal penalties.

Fisheries Habitat Protection
In accordance with the South Carolina Marine Resources Act of 2000, SCDNR has authority to protect salt waters and marine habitat upon with fish and marine resources are dependent. The Department can take emergency measures to close fisheries “when a natural or man-induced emergency threatens the future or present well-being of a fishery resource or its habitat in a part of or in all of the salt waters...”

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34 Id.
35 South Carolina Coastal Council, South Carolina Coastal Program, IV-2 (1979).
36 South Carolina Coastal Council, South Carolina Coastal Program, IV-2 to 3 (1979).
37 South Carolina Coastal Council, South Carolina Coastal Program, IV-3 (1979).
39 Id at (A).
47 In accordance with S.C.C.A. § 50-5-15 (2013). “Salt waters” mean all waters of the rivers and their tributaries, streams, and estuaries lying seaward of the dividing line between salt water and freshwater and all impounded waters seaward of the dividing line between salt water and freshwater which are intermittently filled or drained by the action of the tide.
of this State.” Furthermore, state waters are divided into three subzones for trawling and SCDNR has authority to “prohibit or allow trawling or other commercial fishing activity in any subzone or specified area therein, in or out of season.”

### Evaluation of State Authorities

<table>
<thead>
<tr>
<th>FACTORS</th>
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<th>CTWA- GAPC</th>
<th>WMA</th>
<th>Endangered Species</th>
<th>Fisheries Habitat Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Regime</td>
<td>Regulatory</td>
<td>Regulatory</td>
<td>Planning</td>
<td>Regulatory</td>
<td>Regulatory</td>
<td>Regulatory</td>
</tr>
<tr>
<td>Ocean Jurisdiction</td>
<td>Extends to tidal lands</td>
<td>Estuarine</td>
<td>Extends to wetlands, beaches, &amp; dunes/beaches between high-water mark and setback line</td>
<td>Has been extended to estuarine environment</td>
<td>Potentially any endangered species habitat</td>
<td>All salt waters and territorial sea</td>
</tr>
<tr>
<td>Durability</td>
<td>In perpetuity</td>
<td>Indeterminate (designation and removal of designation fall to federal government administrative decisions)</td>
<td>Indeterminate</td>
<td>Indeterminate</td>
<td>Indeterminate</td>
<td>Indeterminate</td>
</tr>
<tr>
<td>Consistency</td>
<td>Mandates year-round protection</td>
<td>Mandates year-round protection</td>
<td>Authorizes year-round protection</td>
<td>Authorizes year-round protection</td>
<td>Authorizes year-round protection</td>
<td>Authorizes year-round protection</td>
</tr>
<tr>
<td>Habitat</td>
<td>Goal is habitat protection</td>
<td>Goal is habitat protection</td>
<td>Goal is habitat protection</td>
<td>Byproduct is habitat protection</td>
<td>Byproduct is habitat protection</td>
<td>Byproduct is habitat protection</td>
</tr>
<tr>
<td>Enforcement</td>
<td>Regulatory penalty</td>
<td>Regulatory penalty</td>
<td>Statutory civil penalty</td>
<td>Statutory criminal penalty</td>
<td>Statutory criminal penalty</td>
<td>No MPA-specific enforcement language</td>
</tr>
</tbody>
</table>

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51 For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.
CTWA and other conservation laws give South Carolina authority to regulate development and other activities related to coastal natural resources. The state’s endangered species law also provides a potentially strong but untested option for marine conservation. However, most protected areas within South Carolina allow for public extractive activities such as hunting and fishing. Further, most conservation laws in South Carolina do not provide mechanisms for the public to petition for or otherwise provide a clear path to participate in designating new reserves on existing public lands.

**Local Authority for Marine Protection**

**Summary of Local Authority**

In South Carolina, local governments have great latitude to plan for coastal development within their jurisdictions. However, the state does not provide its localities with any other specific authority to designate marine conservation areas.

<table>
<thead>
<tr>
<th>SUMMARY</th>
<th>CTWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal requirement</td>
<td>Restricts development in accordance with local governments’ conservation measures</td>
</tr>
<tr>
<td>Citation</td>
<td>SCCA § 48-39-100 (1977)</td>
</tr>
<tr>
<td>Designation authority</td>
<td>Local government</td>
</tr>
<tr>
<td>Management &amp; enforcement authority</td>
<td>Local government</td>
</tr>
<tr>
<td>Jurisdiction &amp; boundaries</td>
<td>Any coastal area within local jurisdictions</td>
</tr>
<tr>
<td>Prohibited uses</td>
<td>Development not compatible with local conservation interests</td>
</tr>
<tr>
<td>Permitted uses</td>
<td>Development as permitted by local management plans</td>
</tr>
</tbody>
</table>
Coastal Tideland and Wetland Act

CTWA requires SCDHEC to develop the state’s coastal management plan in conjunction with local governments.\textsuperscript{53} Local governments can create local coastal management plans and submit them to SCDHEC.\textsuperscript{54} Once a local government’s plan has been approved, it is free to pass ordinances accordingly.\textsuperscript{55}

All local jurisdictional limits in South Carolina are extended to the low tideline by law.\textsuperscript{56} South Carolina has adopted a home-rule framework, which gives local government great discretion in exercising police and regulatory powers.\textsuperscript{57}

CTWA language specifically stresses the importance of a comprehensive coastal management plan.\textsuperscript{58} The statute also required all local governments to submit any coastal-related ordinance to SCDHEC for review when CTWA first came into effect.\textsuperscript{59}

The town of Kiawah was able to establish conservation areas within its municipal boundary through the CTWA process, as well as critical habitat areas for endangered sea birds within its boundary.\textsuperscript{60} The town’s coastal management plan has been approved by SCDHEC.\textsuperscript{61} The town municipal code currently prohibits any residential or commercial constructions in zones classified as conservation districts or park and recreation districts.\textsuperscript{62} The code also prohibits activities such as vehicle and foot traffic within sea bird critical habitats through cooperation with SCDNR.\textsuperscript{63}

The County of Beaufort provides another model for establishing coastal conservation areas within South Carolina. There are currently multiple open space preserves within Beaufort County.\textsuperscript{64} Several of these preserves border the Atlantic Ocean.\textsuperscript{65} The most recent local management plans suggest that the county is pursuing a policy of actively acquiring properties for conservation purposes.\textsuperscript{66} The county is able to exclude residential and commercial developments from these areas through the CTWA process.\textsuperscript{67} Further, since the county holds either titles or conservation easements to these lands, it is also able regulate private activities for conservation purposes.\textsuperscript{68}

\footnotesize
\begin{itemize}
\item S.C.C.A § 48-39-100 (2013).
\item S.C.C.A § 4-9-30(14) (2013).
\item S.C.C.A. § 4-9-45 (2013); S.C.C.A. § 5-7-140 (2013).
\item S.C.C.A. § 4-9-10 et seq. (2013).
\item S.C.C.A. § 48-39-100(B) (2013).
\item D.H.E.C. Website, \url{http://www.scDHEC.gov/environment/ocrm/local_beach_plans.htm} (last visited Feb. 25, 2013)
\item Beaufort County, Southern Beaufort County Regional Plan, 3 (2007); Beaufort County, Northern Beaufort County, South Carolina Regional Plan, 38 (2007).
\item Beaufort County, Southern Beaufort County Regional Plan, 3-4 (2007); Beaufort County, Northern Beaufort County, South Carolina Regional Plan, 64 (2007).
\item Beaufort County, Southern Beaufort County Regional Plan, (2007); Beaufort County, Northern Beaufort County, South Carolina Regional Plan, (2007).
\item Beaufort County, Southern Beaufort County Regional Plan, 3-4 (2007).
\end{itemize}
Cities and counties in South Carolina enjoy great discretion when planning for and regulating developments within their jurisdictions due to CTWA. However, South Carolina does not provide its local entities with any specific power to regulate private activities for conservation purposes. To achieve comprehensive conservation, local governments must work with state authorities that can regulate private activities, or they must rely on their general police and regulatory powers.

### Evaluation of Local Authorities

<table>
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<tbody>
<tr>
<td>Legal Regime</td>
<td>Planning</td>
</tr>
<tr>
<td>Ocean Jurisdiction</td>
<td>Extends to low-tide line</td>
</tr>
<tr>
<td>Durability</td>
<td>Indeterminate</td>
</tr>
<tr>
<td>Consistency</td>
<td>Year-round</td>
</tr>
<tr>
<td>Habitat</td>
<td>Habitat-specific according to local discretion</td>
</tr>
<tr>
<td>Sector</td>
<td>Multi-sector</td>
</tr>
<tr>
<td>Enforcement</td>
<td>Statutory civil penalty</td>
</tr>
<tr>
<td>Extent(scope)</td>
<td>Multiple sites with possible expansion</td>
</tr>
<tr>
<td>Process</td>
<td>Specific public process</td>
</tr>
</tbody>
</table>