

SOUTH CAROLINA¹

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.

SUMMARY	Heritage Trust Program	Marine and Estuarine Sanctuaries	CTWA- GAPC and Sanctuaries	Wildlife Management Areas (WMA)	Endangered Species Habitats	Fisheries habitat protection
Legal requirement	Allows designation of heritage preserves	Allows management of marine and estuarine sanctuaries	Allows designation of GAPCs along the coast and allows SCDHEC OCRM to manage estuarine and marine sanctuaries	Restricts take of wildlife within WMAs	Allows acquiring and managing habitats	Allows protection of saltwater and marine habitat for fisheries management
Citation	SCCA § 51-17-10 (1976)	SCCA § 50-13-1950 (1962)	SCCR § 30-(D)(24) (1985) ² ; SCCR § 48-39-50	SCCA § 50-11-2200 (1988)	SCCA § 50-15-50 (1976)	SCCA § 50-5-20(B) (2000) ³
Designation authority	South Carolina Department of Natural Resources (SCDNR)	South Carolina Department of Health and Environmental Control (SCDHEC)	SCDHEC	SCDNR	SCDNR	SCDNR

¹ This state chapter is part of a 23-state assessment of state and local authority for marine protection. It should be read in conjunction with the Executive Summary, Introduction and Methodology Chapters in order to fully understand the scope and approach. Other chapters are available at www.eli-ocean.org/mpa.

² 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.

SUMMARY	Heritage Trust Program	Marine and Estuarine Sanctuaries	CTWA- GAPC and Sanctuaries	Wildlife Management Areas (WMA)	Endangered Species Habitats	Fisheries habitat protection
Enforcement authority	SCDNR	SCDHEC, SCDNR, & University of South Carolina	SCDHEC & local government	SCDNR	SCDNR	SCDNR
Jurisdiction & boundaries	Any donated land within the state	All coastal areas	Eight coastal counties out to the 3-nautical-mile line	Any area within the state	Any area within the state	Saltwaters of the state including the territorial sea
Prohibited uses	Activities that may disturb the natural character of a preserve according to preserve-specific regulations	Any activity that is not compatible with the conservation and education purpose of the sanctuaries	Development incompatible with conservation goals of a GAPC or statute, regulations and policies contained in the approved program document	Extractions not compatible with the management objectives of a WMA	Taking of rare or endangered species	None specifically identified by statute
Permitted uses	Any activity that preserve-specific regulations allow; most public uses	Most public uses, including hunting and fishing	Non-development activities and development as conditioned by SCDHEC	Regulated hunting and fishing	N/A (authority untested)	None specifically identified by statute

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.⁴ The purpose of the preserves is to “preserve and protect the natural or cultural character [of the designated area.]”⁵

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.⁶ Hunting, fishing, and various other disturbances are not allowed in the preserves by default.⁷ One heritage preserve, Botany Bay, even bans all public access to certain areas.⁸ However, different preserves often carry different degrees of prohibitions and

⁴ S.C.C.A. § 51-17-10 *et seq.* (2013).

⁵ S.C.C.A. § 51-17-80(1) (2013).

⁶ South Carolina Coastal Council, South Carolina Coastal Program, IV-9 (1979).

⁷ S.C.C.A. 50-11-2200(C) (2013).

⁸ See Botany Bay Regulation (4), available at https://www.SCDNR.sc.gov/mlands/managedland?p_id=57 (last visited Feb. 25, 2013).

regulations, and some do allow fishing and hunting.⁹ Violation of any reserve regulation will result in penalty as well as revocation of permits.¹⁰

Heritage preserves generally come from public donation of lands or conservation easements.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.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).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.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).¹⁵ NI-WB is managed by the University of South Carolina.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.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.¹⁸ The management plans do not detail any separate state regulation that specifically regulates the two preserves.¹⁹ Instead, conservation-oriented restrictions are written into the existing legal and regulatory

⁹ See S.C. Code Regs. § 123-40(1.2) (2013); *see also* S.C. Code Regs. § 123-204 (2013).

¹⁰ S.C. Code Regs. § 123-105(F) (2013); S.C. Code Regs. § 123-30 (2013).

¹¹ S.C.C.A. § 51-17-80 (2013).

¹² *Id.*

¹³ See South Carolina Department of Natural Resources, Ashepoo-Combahee-Edisto (ACE) Basin National Estuarine Research Reserve Management Plan 2011-2016 (2011), *available at* http://nerrs.noaa.gov/Doc/PDF/Reserve/ACE_MgmtPlan.pdf (last visited Apr. 15, 2013); *see also* North Inlet – Winyah Bay National Estuarine Research Reserve, North Inlet – Winyah Bay National Estuarine Research Reserve Management Plan 2011-2016 (2011), *available at* http://nerrs.noaa.gov/Doc/PDF/Reserve/NIW_MgmtPlan.pdf (last visited Apr. 15, 2013).

¹⁴ S.C.C.A. § 50-13-1950 (2013); South Carolina Coastal Program, IV-9 to IV-12 (1979).

¹⁵ South Carolina Department of Natural Resources, Ashepoo-Combahee-Edisto (ACE) Basin National Estuarine Research Reserve Management Plan 2011-2016, 17 (2011).

¹⁶ North Inlet – Winyah Bay National Estuarine Research Reserve, North Inlet – Winyah Bay National Estuarine Research Reserve Management Plan 2011-2016, 151(2011).

¹⁷ See South Carolina Department of Natural Resources, Ashepoo-Combahee-Edisto (ACE) Basin National Estuarine Research Reserve Management Plan 2011-2016, 76 (2011); *see also* North Inlet – Winyah Bay National Estuarine Research Reserve, North Inlet – Winyah Bay National Estuarine Research Reserve Management Plan 2011-2016, 40 (2011).

¹⁸ See South Carolina Department of Natural Resources, Ashepoo-Combahee-Edisto (ACE) Basin National Estuarine Research Reserve Management Plan 2011-2016, 95 (2011); *see also* North Inlet – Winyah Bay National Estuarine Research Reserve, North Inlet – Winyah Bay National Estuarine Research Reserve Management Plan 2011-2016, 40 (2011).

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 Tideland 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;³² 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

²⁰ See S.C. Code Regs. § 123-40 1.2(N) (2013).

²¹ See North Inlet – Winyah Bay National Estuarine Research Reserve, North Inlet – Winyah Bay National Estuarine Research Reserve Management Plan 2011-2016 (2011).

²² S.C.C.A §§ 48-39-10 to -220 (2013).

²³ S.C.C.A § 48-39-80(A) (2013).

²⁴ S.C.C.A § 48-39-10(J) (2013).

²⁵ S.C.C.A §§ 48-39-10(E)-(I) (2013).

²⁶ S.C.C.A § 48-39-170 (2013).

²⁷ S.C.C.A § 48-39-130(A) (2013).

²⁸ S.C.C.A § 48-39-150(A)(3) (2013).

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.”).

³⁰ S.C. Code Regs. § 30-1(D)(24) (2013)

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).

³³ S.C. Code Regs. § 30-11(C)(3) (2013).

“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.”³⁴

Any interested citizens, federal agencies, local governments, organizations, or state agencies may nominate potential GAPCs.³⁵ Once an area is nominated, it will be reviewed by the South Carolina Coastal Council and designated through a majority vote of the council.³⁶ Designation of a new preserve under the Heritage Trust Program will automatically result in GAPC designation.³⁷

Wildlife Management Areas

SCDNR also has the power to designate and manage wildlife management areas (WMAs).³⁸ 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.”³⁹ Several WMAs, such as the Santee Coastal Reserve, are located on the coast.⁴⁰ Many WMAs allow for public hunting and fishing, though in a regulated manner.⁴¹ Violation of these regulations will result in penalties as prescribed by statute.⁴² SCDNR has clearly exercised its authority; however, the statute and regulations do not elaborate on the designation process of the WMAs.⁴³

Endangered Species

South Carolina Law gives SCDNR the power to acquire and manage lands for the recovery of endangered species.⁴⁴ The SCDNR currently lists several whale species as well as the Shortnose Sturgeon as endangered under state law.⁴⁵ The agency has not established any management area for these species. Violation of the state endangered wildlife law will result in criminal penalties.⁴⁶

Fisheries Habitat Protection

In accordance with the South Carolina Marine Resources Act of 2000, SCDNR has authority to protect salt waters⁴⁷ and marine habitat upon which fish and marine resources are dependent.⁴⁸ 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

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).

³⁸ S.C.C.A. § 50-11-2200 (2013).

³⁹ *Id.* at (A).

⁴⁰ See SCDNR website, available at https://www.dnr.sc.gov/mlands/managedland?p_id=61 (last visited Jul. 24th, 2013).

⁴¹ See S.C. Code Regs. § 123-40 (2013) *generally*; see also S.C. Code Regs. § 123-40(1.2)(VV) (2013); see also S.C. Code Regs. § 123-204(V) (2013).

⁴² S.C.C.A. § 50-11-2200(E) (2013).

⁴³ See S.C.C.A. § 50-11-2200 *et seq.* (2013); see also S.C. Code Regs. § 123-40 (2013); see also S.C. Code Regs. § 123-200 (2013).

⁴⁴ S.C.C.A. § 50-15-50 (2013).

⁴⁵ S.C. Code Regs. § 123-150 (2013).

⁴⁶ S.C.C.A. § 50-15-80 (2013).

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.”

⁴⁸ S.C.C.A. § 50-5-20 (2013).

of this State.”⁴⁹ 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.”⁵⁰

*Evaluation of State Authorities*⁵¹

FACTORS	Heritage Trust Program	Marine and Estuarine Sanctuary	CTWA- GAPC	WMA	Endangered Species	Fisheries Habitat Protection
Legal Regime	★★★★ Regulatory	★★★★ Regulatory	★★★ Planning	★★★★ Regulatory	★★★★ Regulatory	★★★★ Regulatory
Ocean Jurisdiction	★ Extends to tidal lands	★★ Estuarine	★ Extends to wetlands, beaches, & dunes/beaches between high-water mark and setback line	★★ Has been extended to estuarine environment	★★★★ Potentially any endangered species habitat	★★★★ All salt waters and territorial sea
Durability	★★★★ In perpetuity ⁵²	★★★ Indeterminate (designation and removal fall to federal government administrative decisions)	★★★ Indeterminate	★★★★ Indeterminate	★★★★ Indeterminate	★★★★ Indeterminate
Consistency	★★★★ Mandates year-round protection	★★★★ Mandates year-round protection	★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection
Habitat	★★★ Goal is habitat protection	★★★ Goal is habitat protection	★★★ Goal is habitat protection	★★ Byproduct is habitat protection	★★ Byproduct is habitat protection	★★ Byproduct is habitat protection
Sector	★★★★ Mandates multi-sector	★★★★ Mandates multi-sector	★★★★ Mandates multi-sector	★ Authorizes single-sector	★★★★ Mandates multi-sector	★ Authorizes single-sector
Enforcement	★★ Regulatory penalty	★★ Regulatory penalty	★★★ Statutory civil penalty	★★★★ Statutory criminal penalty	★★★★ Statutory criminal penalty	★ No MPA-specific enforcement language

⁴⁹ S.C.C.A. § 50-5-32(A) (2013).

⁵⁰ S.C.C.A. § 50-5-85 (2013).

⁵¹ For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.

⁵² S.C.C.A. § 51-17-80(2) (2013).

FACTORS	Heritage Trust Program	Marine and Estuarine Sanctuary	CTWA- GAPC	WMA	Endangered Species	Fisheries Habitat Protection
Extent (scope)	★★★★ Multi-site, expansion possible	★★★★ Multi-site, expansion possible	★★★★ Multi-site, expansion possible	★★★★ Multi-site, expansion possible	No existing protected area but authority to create	★★★★ Multi-site, expansion possible
Process	★★★ Specific public participation process	★★ No MPA-specific public process	★★★ Specific public participation process	★★ No MPA-specific public process	★★ No MPA-specific public process	★★ No MPA-specific public process

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.

SUMMARY	CTWA
Legal requirement	Restricts development in accordance with local governments’ conservation measures
Citation	SCCA § 48-39-100 (1977)
Designation authority	Local government
Management & enforcement authority	Local government
Jurisdiction & boundaries	Any coastal area within local jurisdictions
Prohibited uses	Development not compatible with local conservation interests
Permitted uses	Development as permitted by local management plans

Coastal Tideland and Wetland Act

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

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

CTWA language specifically stresses the importance of a comprehensive coastal management plan.⁵⁸ The statute also required all local governments to submit any coastal-related ordinance to SCDHEC for review when CTWA first came into effect.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.⁶⁰ The town's coastal management plan has been approved by SCDHEC.⁶¹ The town municipal code currently prohibits any residential or commercial constructions in zones classified as conservation districts or park and recreation districts.⁶² The code also prohibits activities such as vehicle and foot traffic within sea bird critical habitats through cooperation with SCDNR.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.⁶⁴ Several of these preserves border the Atlantic Ocean.⁶⁵ The most recent local management plans suggest that the county is pursuing a policy of actively acquiring properties for conservation purposes.⁶⁶ The county is able to exclude residential and commercial developments from these areas through the CTWA process.⁶⁷ Further, since the county holds either titles or conservation easements to these lands, it is also able regulate private activities for conservation purposes.⁶⁸

⁵³ S.C.C.A § 48-39-100 (2013).

⁵⁴ S.C.C.A § 48-39-350 (2013).

⁵⁵ S.C.C.A § 4-9-30(14) (2013).

⁵⁶ S.C.C.A. § 4-9-45 (2013); S.C.C.A. § 5-7-140 (2013).

⁵⁷ S.C.C.A § 4-9-10 *et seq.* (2013).

⁵⁸ S.C.C.A. §§ 48-39-20 & -30 (2013).

⁵⁹ S.C.C.A § 48-39-100(B) (2013).

⁶⁰ Town of Kiawah Island, 2012 Local Comprehensive Beach Management Plan, 15-19 (2012).

⁶¹ D.H.E.C. Website, *available at* http://www.scsdhec.gov/environment/ocrm/local_beach_plans.htm (last visited Feb. 25, 2013)

⁶² Town of Kiawah Island Municipal Code §§ 12-61 to 12-102 (2013).

⁶³ Town of Kiawah Island Municipal Code § 16-604 (2013); Town of Kiawah Island, 2012 Local Comprehensive Beach Management Plan, 15 (2012)..

⁶⁴ Beaufort County, Southern Beaufort County Regional Plan, 3 (2007); Beaufort County, Northern Beaufort County, South Carolina Regional Plan, 38 (2007).

⁶⁵ *Id.*

⁶⁶ Beaufort County, Southern Beaufort County Regional Plan, 3-4 (2007); Beaufort County, Northern Beaufort County, South Carolina Regional Plan, 64 (2007).

⁶⁷ Beaufort County, Southern Beaufort County Regional Plan, (2007); Beaufort County, Northern Beaufort County, South Carolina Regional Plan, (2007).

⁶⁸ Beaufort County, Southern Beaufort County Regional Plan, 3-4 (2007).

Evaluation of Local Authorities

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

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.