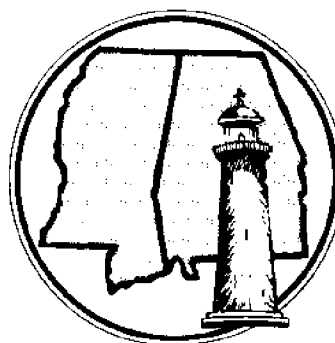


# MISSISSIPPI WETLANDS PROTECTION— PRACTICE AND PROCEDURE

University of Mississippi Law Center

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Mississippi-Alabama  
Sea-Grant Consortium  
MASGP 78-013



MISSISSIPPI WETLANDS PROTECTION  
PRACTICE AND PROCEDURE

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## I. INTRODUCTION

Too long has the general public equated "wetlands" with "wastelands", a breeding place for mosquitoes, useful only as a garbage dump. Dredging for channels or filling for housing and industrial developments were the only options for "productivity". Only recently has man realized that nature cannot condone his riotous exploitation.

This realization has led to authorization by Congress of a number of in-depth studies of estuaries and the coastal zone.<sup>1</sup> Focus on conservation and ecology produced acts such as the Marine Resources, Engineering and Development Act of 1966<sup>2</sup>, the Clean Water Restoration Act of 1966,<sup>3</sup> and the Estuary Protection Act.<sup>4</sup> One such act was the federal Coastal Zone Management Act of 1972<sup>5</sup> which provided incentive for state coastal planning by funding two-thirds of the cost of such plans. This impetus prompted individual states to initiate or revise coastal planning legislation. The Mississippi legislature's response was the passage of the Coastal Wetlands Protection Law in 1973.<sup>6</sup> This paper seeks to furnish a survey of wetlands protection in Mississippi by examination of:

- (a) The importance of wetlands in the estuarine ecosystem;
- (b) Analysis of Mississippi's wetlands protection, the statute and regulatory procedures.
- (c) Comparison of the Mississippi statute with those of Georgia, Alabama and North Carolina.

FOOTNOTES - PART I

1. See, e.g., SECRETARY OF THE INTERIOR, THE NATIONAL ESTUARINE POLLUTION STUDY, S. DOC. NO. 91-58, 91st Cong. 2d Sess. 8 (1970).
2. 35 U.S.C. § 1101, et seq. (1970).
3. 80 Stat. 1246 (codified in scattered sections of 33 U.S.C.).
4. 16 U.S.C. § 1221 (1970).
5. 16 U.S.C. § 1451 et seq. (1972).
6. MISS. CODE ANN. § 49-27-1 et seq. (Supp. 1977).

## II. Significance of Wetlands

Wetlands, marshes, tidelands, estuaries, shorelines: these blur into overlapping and ambiguous terms to the lay reader. Indeed, wetlands are not synonymously defined by legislators or scientists. Mississippi's law defines coastal wetlands as

All publicly owned lands subject to the ebb and flow of the tide; which are below the watermark of ordinary high tide; all publicly owned accretions above the watermark of ordinary high tide and all publicly owned submerged water-bottoms below the watermark of ordinary high tide. The term 'coastal wetlands' shall be interpreted to include the flora and fauna on the wetlands and in the wetlands.<sup>1</sup>

There is no disagreement, however, as to the goal of maintaining a coastal ecosystem at the highest possible level of quality.

The wetlands are a complex estuarine ecosystem in which no part operates independently of any other. An estuarine zone, as defined in the Clean Water Restoration Act of 1966, is

An environmental system consisting of an estuary and those transitional areas which are consistently influenced or affected by water from an estuary such as, but not limited to, salt marshes, coastal and intertidal areas, bays, lagoons, inshore waters and channels.<sup>2</sup>

The generally accepted scientific definition of an estuary is: "a semi-enclosed coastal body of water which has a free connection to the sea; within it sea water is mixed with fresh water from land drainage."<sup>3</sup>

The estuarine zone is an ecosystem, "an environment of land, water and air inhabited by plants and animals that have specific relations to each other."<sup>4</sup> Note that human society is a component of this ecosystem. The Continental Shelf, ocean currents, coast-line slope, river flow, sedimentation, climate, and tide are the dominating environmental factors affecting each estuarine zone.

The basic driving force of the whole ecosystem is the sunlight, for it supplies energy for the growth of plants which in turn supply the nourishment for all life in coastal waters.<sup>5</sup> Zooplankton may eat this plant material - marsh grass, algae, submerged bottom plants or drifting phytoplankton. Fish then eat the zooplankton or sometimes the plant material directly. Birds or people in turn eat the fish. By this food chain energy is transferred from lower to higher forms. The interdependence of the different components or species in the estuarine ecosystem demand that it be managed as one system.<sup>6</sup>

Two-thirds of the species which make up more than ninety per cent of the total seafood harvest of the United States depend wholly or in part on estuaries for their survival.<sup>7</sup> Half of the biological productivity of the world's oceans is along the coasts. Exceeding productivity per unit area of agriculture by a factor of two or more, estuaries are the most productive areas on earth.<sup>8</sup> Aquaculture has great potential for increasing this productivity.<sup>9</sup>

As a part of the ecosystem wetlands have value as nurseries for fish, resting stations for migratory waterfowl, and essential habitat for certain coastal animals and birds, and in the harvesting of shellfish. Their property of retaining contaminants from tidal

water may prevent further transport of pollutants to the sea.<sup>10</sup> Plant productivity in marshes is among the highest in the world, equaling extensively managed agricultural areas. They can take up, convert, store, and supply basic nutrient to the ecosystem and absorb storm water, thus reducing coastal flooding.<sup>11</sup>

Man depends on the ecosystem not only for food but also for living space, industrial development, waste disposal, natural preserves, special government uses, such as military installations, and recreation. At least half of our over 200 million people use this area for fishing, sailing, bird watching, or other recreational activities.<sup>12</sup>

Yet, as noted at the Coastal Zone Workshop in Woods Hole, Massachusetts, 1972, in twenty years dredging and filling have destroyed over a half million acres of important fish and wildlife habitats. In coastal development California alone has lost 67% of its coastal estuarine habitats.<sup>13</sup>

Mississippi's estuarine area extends from Lake Borgne on the west to the Mobile Bay on the east. The Mississippi Sound is edged by a chain of border islands about eight miles offshore. From Mississippi the Pascagoula and Pearl Rivers and St. Louis and Biloxi Bay Systems drain into the Sound. The coastal wetlands, seventy miles in width as the crow flies, contains 436,379 acres held in public trust by the state including water bottoms and 66,931 acres of tidal marsh: 823 acres freshwater, 63,982 acres of salt marsh on the mainland, and 2,126 acres of salt marsh on the barrier islands.<sup>14</sup> A recent in-depth study of the composition of marshes of the state was conducted by Lionel N. Eleuterius, marine botanist with the Gulf Coast Research Laboratory as a part of the Cooperative Gulf of Mexico



Estuarine Inventory and Study. Dr. Eleuterius notes that at present more than 12 per cent of the marshes have been filled for "development": approximately 1,000 acres before 1930; 8,170 acres since 1930. Eleuterius estimates that, at the present rate, there will be a 42 per cent reduction in coastal marsh acreage in Mississippi by 1993.<sup>15</sup>

In 1961 the entire Pascagoula oyster reef, 540 acres of oyster bottom, was permanently closed to shellfishing. At that time daily production was about \$1500 to the fishermen. Biloxi Back Bay, with 350 acres of highly productive oyster reef, is also permanently closed to shellfishing.<sup>16</sup> It is not necessary to document every despoiled acre to realize that the natural ecosystem of our own Gulf coast has an abuse-toleration limit which Mississippians must respect if they are to profit from this irreplaceable resource.

FOOTNOTES - PART II

1. MISS. CODE ADNN. §49-27-5 (Supp. 1977).
2. 80 Stat. 1246.
3. E. ODUM, FUNDAMENTALS OF ECOLOGY 352 (1971).
4. SECRETARY OF THE INTERIOR, supra note 1, Part I, p. 1.
5. J. CLARK, COASTAL ECOSYSTEMS: ECOLOGICAL CONSIDERATIONS FOR  
MANAGEMENT OF THE COASTAL ZONE 20 (1974).
6. Id.
7. Fish and Wildlife Service, U.S. Dept. of Interior, 1 NATIONAL  
ESTUARY STUDY 11 (1970).
8. B. KETCHUM, THE WATER'S EDGE: CRITICAL PROBLEMS OF THE COASTAL  
ZONE 12 (1972).
9. Valiela, Green Broders of the Sea, OCEANUS 14 (1976).
10. J. Clark, supra note 5, p. 68.
11. FISH AND WILDLIFE SERVICE, supra note 7, p. 2.
12. Id.
13. B. KETCHUM, supra note 8, p. 11.
14. L. ELEUTERIUS, THE MARSHES OF MISSISSIPPI IN COOPERATIVE  
GULF OF MEXICO ESTUARINE INVENTORY AND STUDY 177  
(J. Christmas, ed. 1973).
15. Id. at 187.
16. Id. at 57.

### III. MISSISSIPPI'S WETLANDS PROTECTION

#### A. Wetlands Protection Law.

The Mississippi coast includes some 436,000 acres of wetlands. The Mississippi Coastal Wetlands Protection Law of 1973<sup>1</sup> sets up a permit program for those wishing to conduct dredge and fill or construction operations in this area. The act sets out application and appeal procedures and the liability of violators.

This program, designed to effectuate the policy of preserving the natural ecosystem, exempts a number of activities, areas, and entities from its regulatory provisions. Under the law the Mississippi Marine Resources Council is charged with permitting and inspection authority and responsibility for promoting public education about the wetlands.

To effectuate the Mississippi Coastal Wetlands Protection Law the Mississippi Marine Resources Council administers a permit system for regulated activities on the wetlands. The Council itself was formed in 1970 and charged with exploration, development, conservation, and marketing of the state's underwater natural resources, especially those in coastal waters.<sup>2</sup> The Council, a sixteen-member panel appointed and chaired by the Governor functions through an Executive Director and a Vice Chairman. Its members include: two members from the House of Representatives, two from the State Senate, one representing the institutions of higher learning, the Research and Development Center, the Universities Marine Center, the Mississippi Marine Conservation Commission, the Gulf Coast Research Laboratory, the Director of the Mississippi Agricultural and Industrial Board, and six members from the public at large.<sup>3</sup>

Any person planning to conduct activities on the wetlands must apply for a permit. Regulated activities include:

. . . the dredging, excavating or removing of soil, mud, sand, gravel, flora, fauna or aggregate of any kind from any coastal wetland; the dumping, filling or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind or garbage, either directly or indirectly, on or in any coastal wetlands; killing or materially damaging any flora or fauna on or in any coastal wetland; and the erection on coastal wetlands of structures which materially affect the ebb and flow of the tide; activities having any of the foregoing effects; and activities from which such effects may be reasonably anticipated.<sup>4</sup>

By statute the wetlands are defined as:

. . . all publicly owned lands subject to the ebb and flow of the tide and which are below the watermark of ordinary high tide and all publicly owned accretions above the watermark of ordinary high tide; and all publicly owned submerged water bottoms below the watermark of ordinary high tide.<sup>5</sup>

From this definition it appears that the act is applicable only to lands subject to the common law public trust doctrine as described in Int'l Paper Co. v. State Highway Dept.<sup>6</sup>

According to the policy statement in the act public policy "favors the preservation of the natural state of the coastal wet-

lands and their ecosystems," allowing alteration only "where a specific alteration of specific coastal wetlands would serve a higher public interest in compliance with the public purposes of the public trust in which coastal wetlands are held."<sup>7</sup>

Environmentalist critics contend that this lofty declaration of purpose is emasculated by the numerous excepted activities, areas, and entities.<sup>8</sup> Others, including those involved in the administration of the permit program, insist that the exceptions are reasonable and point out that exempt agencies are required to advise the council of their activities and to adhere to the policy mentioned above.<sup>9</sup>

The activities, areas, and entities to which the act does not extend are:

1. The accomplishment of emergency decrees of any duly appointed health officer of a county or municipality or of the state, acting to protect the public health;
2. The conservation, repletion and research activities of the Mississippi Marine Conservation Commission, the Mississippi Marine Resources Council, the Mississippi Gulf Coast Research Laboratory, the Mississippi Game and Fish Commission, and the Mississippi-Alabama Sea Grant Consortium when acting through the Mississippi Universities Marine Center.
3. Hunting, fishing, erecting duckblinds, shellfishing and trapping when and where otherwise permitted by law;
4. Swimming, hiking, boating or other recreation that causes no material harm to the flora and fauna of the wetlands;
5. The exercise of riparian rights by the owner of the riparian rights, provided that the construction and maintenance of piers, boathouses, and similar structures are constructed on pilings that permit a reasonably unobstructed ebb and flow of the tide; provided, further, that the riparian owner may reasonably alter the wetland at the end of his pier in order to allow docking of his vessels.

6. The normal maintenance and repair of bulkheads, piers, roads and highways existing on the date of enactment of this act, and all Interstate Highways planned but not yet under construction, and financed in part by Federal Interstate Highway Trust Funds;
7. Wetlands developed in the future by federal, state or county governments for the establishment of a superport or a pipeline buoy terminal for deep-draft, ocean-going vessels, including but not limited to, wetlands adjacent to Petit Bois Island and the Bayou Casotte Channel in Jackson County, Mississippi;
8. The Biloxi Bridge and Park Commission, Biloxi Port Commission, Long Beach Port Commission, Pass Christian Port Commission, Pascagoula Port Commission and any municipal or local port authorities;
9. Wetlands used under the terms of the use permit granted by Chapter 395, Laws of 1954;
10. Any activity affecting wetlands that is associated with or is necessary for the exploration, production or transportation of oil or gas when such activity is conducted under a current and valid permit granted by a duly constituted agency of the State of Mississippi;
11. Activities of any mosquito control commission which is a political subdivision or agency of the State of Mississippi;
12. The Fisherman's Wharf to be constructed in Biloxi and the Buccaneer State Park to be constructed in Hancock County, both by the State Park Commission;
13. Wetlands conveyed by the state for industrial development thereon pursuant to Section 211, Mississippi Constitution of 1890, and pursuant to Section 29-3-61, Mississippi Code of 1972.
14. Coastal wetlands within five (5) feet of private property, provided however that this regulation shall not be construed to affirmatively authorize any action which would otherwise be a regulated activity;
15. The activities of the Hancock County Port and Harbor Commission affecting wetlands within its jurisdiction;
16. The activities of the Harrison County Development Commission affecting wetlands within its jurisdiction;
17. The activities of the Jackson County Port Authority affecting wetlands within its jurisdiction; and

18. The activities of the Mississippi State Port at Gulfport affecting wetlands within its jurisdiction.<sup>10</sup>

In October, 1974, the Council solicited the Attorney General's opinion as to the extent to which the Council must be kept advised of wetlands activities by exempt agencies and the purpose of such advice being given to the Council. The opinion states that the Council "must be advised by those exempt from the permit requirement concerning all activities in which they engage in the wetlands which would otherwise be considered 'regulated activity' but which are associated with and necessary for the carrying out of the particular exempt activity."<sup>11</sup> The purpose of the advice is to allow the Council to determine if the exempt party may be altering the wetlands unnecessarily. Whether or not the exempt agency is acting beyond the scope of its authority then becomes "a factual matter to be determined by the Council."<sup>12</sup>

## B. Regulatory Procedures

### 1. General Procedures

When the Wetlands legislation went into effect July 1, 1973, the Council found itself swamped with a backlog of requests for permits, many patently acceptable. To avoid unnecessary delay and inconvenience in processing for the landowner and the Council, the Legislature amended the law in 1974 to allow the director or his delegate to issue a certificate of waiver after an on-site inspection reveals that the proposed regulated activity has no harmful impact on the environment and makes no substantial change in the wetlands.<sup>13</sup>

For example, a resident owner of a waterfront lot who wants to modify the property will first phone or stop by the Council office to see if he can get a permit for his project. The Marine Projects Manager or one of his two assistants makes an on-site inspection to determine jurisdiction and the impact of the proposed change. This assessment of the impact of the proposed activity determines whether the Director issues a Certificate of Waiver or assists the party in filing an application for a permit.

These projects are eligible for a Certificate of Waiver:

1. Construction of indented boat slips provided that they are constructed according to attached drawings, and that the dimensions of the slip are approved by the Director. The dredge material shall be deposited in an approved confined upland area to prevent the sediment from reentering the wetlands or waterbottoms.
2. Construction of a mooring facility at the end of the pier in order to allow for docking of vessels. The dredge material shall be deposited in an approved confined upland area to prevent the sediment from reentering the wetlands or waterbottoms.
3. Construction of concrete ramps or boat ramps requiring less than 100 cubic yards of fill material; and provided that the concrete ramp does not alter or materially damage any coastal wetlands vegetation.
4. Maintenance dredging of existing boat slips and navigation channels involving less than 500 cubic yards of dredge material. The dredge material shall be deposited in an approved confined upland area to prevent the sediment from reentering the wetlands or waterbottoms.
5. The laying of submarine cables, when the emplacement of said cable does not require dredging of more than 500 cubic yards of dredge material or when the cable is buried in the sediment with a waterjet or airjet; or when the cable is laid in an excavated trench and said trench is covered once the cable is in place. Provided further that the laying of the submarine cable does not alter or materially damage any coastal wetlands.
6. Geophysical surveys in coastal wetlands for the exploration of oil and gas when the work is conducted under a



current and valid permit granted by a duly constituted agency of the State of Mississippi.<sup>14</sup>

If the project is not eligible for a Certificate of Waiver, the person seeking to conduct a regulated activity files an application to the United States Corps of Engineers and the Mississippi Air and Water Pollution Control Commission, as well as the Marine Resources Council. The joint application has been in use since early 1977. Prior to that time separate applications were made to the Corps of Engineers and the Marine Resources Council. Public notice and a letter of certification were necessary to secure approval from the Air and Water Pollution Control Commission.

Upon receipt of the current application, a copy is sent to these parties:

1. The chief administrative officer in the municipality or municipalities where any part of the proposed activity will be located;
2. The president of the board of supervisors of any county where any part of the proposed activity will be located;
3. The Director of the State Game and Fish Commission;
4. The county attorney of any county in which any part of the proposed activity will be located or in any county which may be affected by such activity;
5. The district attorney of any judicial district in which any part of the proposed activity will be located or any district which may be affected by such activity;
6. The Director of the Gulf Regional Planning Commission; and
7. The Chairman of the Mississippi Marine Conservation Commission;
8. Or any other federal or state agency, political subdivision or to any person as may be deemed appropriate or necessary by the Council.<sup>15</sup>

The cover letter accompanying each copy of the application provides that any objections to the proposed project be submitted to the Council office in writing within a stipulated time period. A party having no objections or comments on the application may acknowledge receipt by signing and returning the letter.

Within sixty days from receipt of an application, the Council publishes notice of the date on or before which objections must be filed. This notice is published once a week for three consecutive weeks in at least one newspaper of general circulation in the county in which the affected wetlands are located.<sup>16</sup> The statute further requires that the last publication date be not more than seven days prior to the objection deadline.<sup>17</sup> The typical notice adheres to statutory requirements by describing the site of the proposed activity and the project itself.<sup>18</sup>

PUBLIC NOTICE OF APPLICATION  
FOR PERMIT UNDER PROVISIONS  
OF THE COASTAL PROTECTION  
LAW

The Mississippi Chemical Corporation has filed application with the Mississippi Marine Resources Council for a permit to conduct regulated activities under Provisions of the Coastal Wetlands Protection Law, Chapter 27, Mississippi Code of 1972.

The applicant is requesting permission to perform maintenance dredging of two existing docking slips adjacent to Bayou Casotte Harbor, Section 17, Township 8 South, Range 5 West, Jackson County, Mississippi.

The purpose of the project is to maintain 12 feet of

water at the fertilizer dock and at the potash barge unloading slip. All spoil material removed during dredging will be deposited in a designated upland spoil area.

Any objections to the proposed regulated activity must be submitted in writing to the Mississippi Marine Resources Council, P.O. Drawer 959, Long Beach, Mississippi 39560 before 1:00 p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_.

If written objection should be filed or if an applicant requests a hearing, the hearing must be held within twenty days of the objection deadline date unless all parties agree otherwise.<sup>19</sup> The public hearing notice is sent by mail to the objector, the applicant, all the parties to whom the statute requires that an application be sent, and "all known present owners of record of adjacent land as reflected by current tax assessment rolls and all known claimants to water or riparian rights in or adjacent to the coastal wetlands affected."<sup>20</sup>

The burden of proof is on the applicant regardless of whether a hearing is held. Denial of an application automatically entitles the applicant to a hearing.<sup>21</sup>

Applications to dredge existing channels or new channels for navigational purposes have separate requirements. For existing channel maintenance, the Council Rules and Regulations require that the applicant show:

- (a) That such channel was lawfully in existence on the date of enactment of this act and on the date such application was filed;
- (b) That such channel is regularly used for navigational purposes;

- (c) That a permit from the U.S. Army Corps of Engineers, or its successors, was obtained for the original dredging or that such permit was not required;
- (d) That such channel, because of silting or because of the movement of mud, sand, soil or other debris, has become, or is in danger of becoming, impaired for navigational purposes;
- (e) Where and how the spoil shall be disposed of, so as to preserve existing wetlands; and
- (f) Name and address of applicant, complete description of measures to be taken to reduce detrimental off-site effect to the coastal wetlands during and after the proposed activity; permits from any other agency of required.<sup>22</sup>

Applicants seeking to dredge new navigational channels must show to the Council's satisfaction:

- (a) That such channel will be regularly used for navigational purposes;
- (b) That such channel is necessary for access to existing or proposed docks, marinas, yacht basins or other facilities and that there are no other reasonable means of access to such facilities;
- (c) Where and how the spoil shall be disposed of, so as to preserve existing wetlands;
- (d) That such channel will be dredged in such a manner as to have the least detrimental effect on the ecological, economic, recreational and aesthetic value of surrounding coastal wetlands; and
- (e) That such channel shall benefit the public at large or surrounding landowners.<sup>23</sup>

The Wetlands Law further provides that "the Council shall, where practical, require applicants to use existing channels, so as to reduce the coastal wetlands affected."<sup>24</sup>

Within ninety days from receipt of a valid complete application the Council acts to grant a permit as requested or a conditional permit or to deny the application. As of July 1, 1977, 47 permit applications (excluding waivers) had been processed. Of that total

45 (96%) were approved, 30 (64%) with limitations.<sup>25</sup>

ANALYSIS OF PERMIT APPLICATIONS BY FISCAL YEAR<sup>26</sup>

Fiscal Year	Number of Applications Considered	Approved as Submitted		Approved After Modi- fication		Denied	
		Number	Percent	Number	Percent	Number	Percent
1974	12	6	50%	6	50%	0	0
1975	13	2	15%	10	77%	1	8%
1976	11	3	27%	7	64%	1	7%
1977	11	4	36%	7	64%	0	0%

The current fiscal year 1978 extends from July 1, 1977 to June 30, 1978.

Whether the request is granted or denied, the Council must describe the public interest to be affected. In the Mississippi Chemical Corporation request to dredge two existing docking slips, for example, the public interest to be served by issuance stated:

The proposed project is necessary to allow for continued use of the docking facility. Inasmuch as water transportation is vital to the continued operation of the plant, loss of the docking facility would have a significant impact on continued operation of the plant.<sup>27</sup>

In this case the staff of the Council had determined that no coastal wetlands would be destroyed.

Permits may be suspended or revoked if the permittee exceeds the scope of his authorized activity.<sup>28</sup> The Council must afford him reasonable notice in writing and a hearing. The order determining suspension or revocation must be sent within thirty days from the hearing.<sup>29</sup>

## 2. Appeals

The Wetlands Law authorizes appeals by any person aggrieved by the issuance, denial, suspension or revocation of a permit.<sup>30</sup> The person may appeal to the chancery court of any county having jurisdiction over the property involved in the dispute. For the first time, in the fifth fiscal year of operation of the permitting program, an appeal to chancery court is underway.<sup>31</sup>

## 3. Violations

Pursuant to statutory authority<sup>32</sup> the Marine Projects Manager and his staff inspect the wetlands. They conduct preliminary on-site inspections on applications and fly over the area twice a month, take pictures, and chart all activity. If a person is involved in unauthorized activity, the Director serves him with a cease and desist order, as shown below:

### NOTICE

It appears that in apparent violation of the Coastal Wetlands Protection Act, Chapter 345, Mississippi Laws of 1973; you are

(Description of violation)

You are hereby notified and requested to immediately cease and desist from such activity and to advise the Council at the address below by the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_, that you have done so. If you fail to comply with this request and Notice, this matter will be promptly referred to the appropriate enforcement authority for the commencement of legal proceedings against you.

If you ~~feel~~ that our information is incorrect and that you are not acting in violation of the statute; you may, on or before the date above mentioned, appear before the undersigned in person or by counsel and show cause why enforcement proceedings should not be commenced against you. Such meeting may be arranged by contacting the undersigned.

WITNESS my signature this the \_\_\_\_ day of \_\_\_\_\_, 197\_\_.

MISSISSIPPI MARINE RESOURCE COUNCIL<sup>33</sup>

The violator usually comes to the Marine Project Manager's office and asks what must be done to allow the project to continue. First an environmental assessment is in order to see if the wetlands have been damaged to such an extent that restoration is necessary. If so, the matter is referred to the Council. It is within the Council's discretion to refer the violation to the attorney general's office for prosecution, direct the Marine Projects Manager to work out a restoration, or do nothing. The Projects Manager may revise the project so that it will not damage the environment and assist the violator in submitting an application. The Council may issue a permit for restoration. No after-the-fact permits are issued.<sup>34</sup>

#### 4. Coordination With Other State and Federal Agencies

The Marine Resources Council attempts to coordinate its permitting functions with the United States Army Corps of Engineers because they share overlapping jurisdiction. The Rivers and Harbors

Act of 1899 gives the Corps of Engineers jurisdiction over all navigable channels.<sup>35</sup> This coincides with the state agency's authority over "all water bottoms below the water mark of ordinary high tide."<sup>36</sup> The Corps has authority under Section 404 of the 1972 amendments to the Federal Water Pollution Control Act to regulate the disposition of dredged or fill material into United States waters.<sup>37</sup> This jurisdiction was expanded by judicial decision in 1975 to extend to wetlands.<sup>38</sup> The Corps and Congress are considering proposals to delegate to the states some of the Corps' regulatory authority.

The Corps of Engineers publishes public notices of proposed projects before it issues permits. The Council, alerted by the notice, investigates the project and furnishes a coordinated review and position statement. The Council also serves the Governor's Office of Federal-State Programs as the "clearing house" for the coastal zone. The wetlands staff reviews all federally-funded construction projects in the coastal zone under the United States Office of Management and Budget circular number A-95. The Clearinghouse Director in the Governor's Office requests the Council to secure comments from all interested coastal zone state agencies and prepares coordinated Coastal Zone Position Statement. The Statement becomes a part of the State Agency Review to comply with the A-95 circular. Through A-95 review the Corps obtains Council approval on all dredging permits in navigable coastal waters.

Where does the party seeking a permit fit into the regulatory scheme? For example, the Mississippi Chemical Corporation, seeking a permit for maintenance dredging of two slips located at the north



end of Bayou Casotte Harbor near Pascagoula, made application to the United States Corps of Engineers for a permit in August, 1976. The company also sought approval from the Federal-State Programs Clearinghouse in the Office of the Governor and the Mississippi Air and Water Pollution Control Commission. The Clearinghouse requested the Council to coordinate a review and secure comments for a coordinated Coastal Zone Position Statement.<sup>39</sup> A review of the application indicated that the proposed project was a "regulated activity" which required a permit from the Council. The Company then filed for a permit with the Council which had to process the application on its own behalf and then prepare a coordinated position statement reflecting the views of all coastal agencies for the Clearinghouse.

The Council issued the permit for the "regulated activity." Its review for the Clearinghouse reflected approval by the Gulf Coast Research Laboratory, the Mississippi Marine Conservation Commission and Southern Mississippi Planning and Development District.<sup>40</sup> The Clearinghouse then recommended to the Corps of Engineers that it approve the project.<sup>41</sup>

Pursuant to the Corps of Engineers public notice, the project was also reviewed by the Land and Water Resource Development Planning Supervisor of the Fish and Wildlife Service, United States Department of the Interior, in accordance with provisions of the Fish and Wildlife Coordination Act.<sup>42</sup> The Supervisor recommended that the permit be denied unless the applicant agreed to several conditions.<sup>43</sup> However, after a telephone conversation with a member of the Regulatory Functions Branch of the Corps of Engineers, the

Planning Supervisor agreed to revise its previous recommendations so as not to invoke the Memorandum of Understanding<sup>44</sup> between the Corps of Engineers and the Fish and Wildlife Service.<sup>45</sup>

The Regional Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, United States Department of Commerce also reviewed the project. The Director advised the Corps of Engineers:

We have reviewed the following public notices regarding applications for Department of the Army permits. Based on information in the notices and our experience with similar projects, we believe the proposed work may adversely affect fishery resources for which the National Marine Fisheries Service is responsible. However, because of current workload, our biologists are unable to adequately investigate the proposed projects. Therefore, we cannot offer specific comments at this time.<sup>46</sup>

The final disposition by the Corps of Engineers was approved without restriction six months after application. By approval of the project, details of the projected activity had been submitted to at least twenty-eight parties or agencies, including Council members, for consideration.<sup>47</sup>

So to expedite the procedure for work in Mississippi requiring Department of the Army permits, the Corps of Engineers, in cooperation with the Mississippi Air and Water Pollution Control Commission, Mississippi Marine Resources Council and United States Environ-

mental Protection Agency, has adopted a general permit program for certain categories of work.<sup>48</sup> The categories are comparable to the structures and activities eligible for Mississippi Marine Resources Council waivers. Anytime any one has this type project he will file an application with the three agencies, the Marine Resources Council will inspect and decide if a waiver is in order. If so, the Council issues a waiver, and sends a copy of the waiver to the Corps of Engineers and the Air and Water Pollution Control Commission. Within fifteen to twenty days after application, the party should be able to proceed. This system is scheduled to become operative early in 1978.

Shown below is a chart showing wetlands administration activities for the years 1974, 1975, 1976 and 1977.

#### WETLANDS ADMINISTRATION ACTIVITIES

<u>Type of Activity</u>	<u>Fiscal Year</u>			
	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>
Project Reviews	60	45	52	92
Applications, MMRC	9	22	29	41
Corps of Engineers Reviews )		55	79	78
)))	82			
Federal-State A-95 )		30	51	35
Violations	<u>13</u>	<u>12</u>	<u>11</u>	<u>3</u>
Totals	164	164	222	249

FOOTNOTES - PART III

1. MISS. CODE ANN. § 49-27-1, et seq. (Supp. 1977).
2. MISS. CODE ANN. §§ 57-15-5, 57-15-7 (1972).
3. MISS. CODE ANN. § 57-15-11 (1972).
4. MISS. CODE ANN. § 49-27-5(c) (Supp. 1977)
5. MISS. CODE ANN, § 49-27-5(a) (Supp. 1977).
6. 271 So.2d 395 (Miss. 1972). See also Note, 44 MISS. L.J. 322 (1973).
7. MISS. CODE ANN. § 49-27-3 (Supp. 1977).
8. See, e.g., Abbott and Holmes, A Survey of Federal and Mississippi Law with an Examination of Its Effect on Land Development, 45 MISS. L.J. 821 (1974).
9. MISS. CODE ANN. § 49-27-7(s) (Supp. 1977).
10. MISS. CODE ANN. § 49-27-7 (Supp. 1977).
11. Letter from A. F. Summer, Attorney General, to Joel Blass (October 30, 1974).
12. Id.
13. MISS. CODE ANN. § 49-27-7(s) (Supp. 1977).
14. Certificate of Waiver for Minor Regulated Activities in the Coastal Wetlands, Marine Resources Council (1977).
15. Mississippi Marine Resources Council, Rules and Regulations for Coastal Wetlands Protection Act, (hereinafter referred to as MMRC RULES), Sec. V-A at 5 (1975). Mailing to the first seven parties is required by statute. MISS. CODE ANN. § 49-27-13 (Supp. 1977).
16. MISS. CODE ANN. § 49-27-15 (Supp. 1977).

17. Id.
18. MMRC, Public Notice of Application for Permit under provisions of the Coastal Wetlands Protection Law (n.d.).
19. MISS. CODE ANN. § 49-27-15 (Supp. 1977).
20. MISS. CODE ANN. § 49-27-15, -17 (Supp. 1977).
21. MISS. CODE ANN. § 49-27-19 (Supp. 1977).
22. MMRC Rules, supra note 15, Sec. IV-B-3 at 5 (1975). Requirement (a) is the only requirement set forth by statute. MISS. CODE ANN. § 49-27-11(2) (Supp. 1977). The reference in MISS. CODE ANN. § 49-27-25 (Supp. 1977) to old channels under subsection (b) of § 49-27-11 is apparently incorrect. The reference in the original law was to Ch. 385, Sec. 6(c), MISS. LAWS 1973, which lists six application requirements for drilling an existing channel. The section was deleted from the statute in 1974 and incorporated in the Rules and Regulations.
23. MMRC Rules, supra note 15, § IV-B-4, at 5 (1975).
24. MISS. CODE ANN. § 49-27-27 (Supp. 1977). The reference to subsection (c) of section 49-27-11 is apparently incorrect. The reference in the original law was to Ch. 385, Sec. 5(d), MISS. LAWS 1973, which lists the special application requirements for new channels. This section was deleted in the 1974 amending process and later incorporated in the Rules and Regulations.
25. Mississippi Marine Resources Council, Facts Regarding MMRC's Coastal Wetlands Protection and Management Program (1977).
26. Id.

27. Mississippi Marine Resource Council, Permit No. 76-010  
(Jan, 18, 1977).
28. MISS. CODE ANN. § 49-27-33 (Supp. 1977).
29. MISS. CODE ANN. § 49-27-37 (Supp. 1977).
30. MISS. CODE ANN. § 49-27-39 - 49-27-49 (Supp. 1977).
31. Interview with Joseph I. Gill, Marine Projects Manager for :  
the Mississippi Marine Resources Council, in Long Beach  
(Oct. 21, 1977).
32. MISS. CODE ANN. § 49-27-63 (Supp. 1977).
33. MMRC, Cease and Desist Order, (n.d.).
34. Interview with Joseph I. Gill, Marine Projects Manager for  
the Mississippi Marine Resources Council in Long Beach  
(Oct. 21, 1977).
35. Rivers and Harbors Appropriations Act of 1899, 33 U.S.C.  
§ 403 (1970).
36. MISS. CODE ANN. § 49-27-5(a) (Supp. 1977).
37. Federal Water Pollution Control Act Amendments of 1972,  
Sec. 404, 33 U.S.C. Sec. 1344 (1970) provides in part  
that:
  - (a) The Secretary of the Army, acting  
through the Chief of Engineers, may issue  
permits, after notice and opportunity for  
public hearings for the discharge of dredged  
or fill material into the navigable waters at  
specified disposal sites.
38. National Resources Defense Council v. Callaway, 392 F.Supp.  
685 (D.D.C. 1975). See Guidelines in 40 Fed. Reg. 31320  
et seq. (July 25, 1975).

39. Letters from E. A. May, Jr., Clearinghouse Director to J. E. Thomas (Sept. 23, 1976).
40. Letter from J. E. Thomas to E. A. May, Jr., Clearinghouse Director (Jan. 26, 1977).
41. Memo from Milton Baxter, State Clearinghouse for Federal Programs, to Colonel Charlie Blalock, District Engineer, U. S. Corps of Engineers, Mobile, Ala. (Jan. 31, 1977).
42. Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq. (1970).
43. Letter from Thomas S. Talley, Field Supervisor, to Colonel Charlie Blalock, District Engineer, U. S. Corps of Engineers, Mobile, Alabama, (Nov. 10, 1976. The conditions were:
  1. That the applicant agrees not to expand the present spoil site beyond its existing limits without first consulting the U. S. Fish and Wildlife Service.
  2. That the applicant agrees to establish a spoil recycling program which would perpetuate the utilization of the present disposal site.
  3. All wetlands west of the present diked area not be encroached upon or subjected to alteration or elimination by future work.
44. Memorandum of Understanding Between the Secretary of the Interior and the Secretary of the Army of July 13, 1967, 39 Fed. Reg. 12,133 (April 3, 1974).
45. Letter from Thomas S. Talley, Field Supervisor, to Colonel Charlie Blalock, District Engineer, U. S. Corps of En-

gineers, Mobile, Ala. (Dec. 8, 1976).

46. Letter from William H. Stevenson to Colonel Charlie Blalock, District Engineer, U. S. Corps of Engineers, Mobile, Ala. (Sept. 30, 1976).
47. The parties or agencies include: MMRC Council members (16). Chief Administrative officer, municipality; president of Jackson County Board of Supervisors; Jackson County Prosecuting Attorney; Director Dept. of Archives and History; Executive Director, State Game and Fish Commission; Gulf Regional Planning Commission; District Attorney; Mississippi Marine Conservation Commission; Gulf Coast Research Laboratory Environmental Affairs Committee; Southern Mississippi Planning and Development District; Water Quality Division, Air and Water Pollution Control Commission; Corps of Engineers; Fish and Wildlife Land and Water Resource Development Planning Division, Panama City, Florida; and the National Marine Fisheries Service of NOAA.
48. Dept. of the Army, Mobile Dist. Corps of Engineers General Permit Notice MS76G000008 (1977).



IV. OTHER STATE WETLANDS LEGISLATION - COMPARISON  
WITH MISSISSIPPI.

A. Introduction

To better understand how Mississippi's wetlands legislation compares to other state efforts an analysis has been made of three other regional states - Georgia, Alabama and North Carolina. The striking characteristic of wetlands legislation across the United States is its diversity.<sup>1</sup> But the format of Georgia, Alabama and North Carolina is similar enough to Mississippi to lend itself to a chart comparison. This comparison is not exhaustive.

B. Georgia

Mississippi Code Ann.  
Supplement (1977)  
§§ 49-27-1 - 49-27-69

Georgia Code Ann.  
§§ 45-136 -  
45-147

Type of System	Permit
Definition of Coastal Wetlands	§ 49-27-5
Administered by	§ 49-27-5 (g)
Policy Statement	§ 49-27-3

Permit

Any marshlands or salt marsh in the state, within the estuarine area of the state, whether or not the tide waters reach the littoral areas through natural or artificial water courses, including areas upon which grow one, but not necessarily all, of the following: saltmarsh grass, black grass, high-tide bush. Occurrence and extent of salt marsh peat at the undisturbed surface shall be deemed to be conclusive evidence of the extent of a salt marsh or a part thereof. 45-137(a).

Seven member Department of Natural Resources. 45-138.

Agency to consider public interest in passing on application. Public interest is deemed to be:

- (1) Whether or not any unreasonably harmful obstruction to or alteration of the natural flow of navigational water within such areas will arise as a result of the proposal.
- (2) Whether or not unreasonably harmful or increased erosion, shoaling of channels or stagnant areas of water will be created to such an extent as to be contrary to the public interest.
- (3) Whether or not the granting of a permit and the completion of the applicant's proposal will unreason-

Mississippi Code Ann.

Georgia Code Ann.

ably interfere with the conservation of fish, shrimp, oysters, crabs and clams or any marine life or wildlife or other natural resources, including but not limited to water and oxygen supply to such an extent as to be contrary to the public interest. 45-140(e).

Application Fee \$10 Application Fee  
\$35 Cost of publication  
of public notice.

\$25 for each acre of land affected, not to exceed \$500 regardless of number of acres affected. 45-140(b) (7).

Contents of Application \$ 49-27-11

Does not expressly require estimate of cost, description of public benefits, description of measures to be taken to reduce detrimental off-site effects, or completion date.

23

Does require a copy of the deed under which applicant claims title, names and addresses of adjacent landowners, permit from local political subdivision. 45-140(b).

Parties receiving a copy of application \$ 49-27-13

Each member of Department of Natural Resources. 45-140(c)

Hearing \$\$ 49-27-15 - 49-27-19

No express provision for hearing before Board's initial determination.

Public inspection of evidence \$ 49-27-21

No provision.

Imposition of limitation on permit. \$ 49-27-29

Conditional permits to be issued at discretion of majority of Board. 45-140f, h

Suspension Revocation \$ 49-27-33

Permit may be revoked for non-compliance or for violation of

Mississippi Code Ann.

Georgia Code Ann.

terms. 45-140(i)

Notice to  
applicant

§ 49-27-37

Written notice of revocation must  
be furnished holder. 45-140(i).

Recording of  
reasons for  
actions.

§ 49-27-35

Reasons must be given in writing  
when a conditional permit is  
issued 45-140(h). No express  
provision that public interest  
affected be recorded.

Appeal

§§ 49-27-39 - 49-27-49

Any person aggrieved or adversely  
affected by order has right to  
hearing pursuant to Georgia Ad-  
ministrative Procedure Act. After  
exhausting administrative remedies,  
party may seek judicial review.  
45-140(j).

Jurisdiction

§ 49-27-53

Jurisdiction to restrain violations  
lies in superior court of county  
in which land or any part thereof  
lies.

Liability of  
violators

§ 49-27-55

No provision for restoration. D.N.R.  
may impose civil penalty not to  
exceed \$1,000 for each violation  
and fine not over \$500 for each day  
violation continues. 45-142b  
Violator guilty of a misdemeanor.  
45-145.

Rules and  
Regulations

§ 49-27-59

Council has authority to promulgate  
rules but must publish notice of  
hearing in paper of coastal counties  
for 2 consecutive weeks and hold

Mississippi Code Ann.

Charges for material removed under permit \$ 49-27-61

Investigations and report of violations. \$ 49-27-63

Evaluation of coastal wetlands \$ 49-27-65

Georgia Code Ann.

two public hearings before rules become effective. 45-139.

No provision.

State Game and Fish Commission has this responsibility. Reports made to D.N.R. 45-141.

No similar provision.

The Georgia wetlands law also provides for posting of permits (45-144) and suspension of provisions in the event of emergency (45-147).

Georgia authorities question whether the Georgia Coastal Marshlands Protection Act delegates to a state agency the right to zone.<sup>3</sup> If it does, they raise doubts as to the constitutionality of delegating this right to a state agency.

Georgia recently revised its Constitution, clarifying the validity of general laws affecting land use, natural resources and environmental planning.<sup>4</sup> The next step would be passage of a comprehensive environmental protection plan.

### C. Alabama

In 1973 Alabama passed an act for preservation, enhancement, and development of its coastal area. The act included permit provisions practically identical to the Mississippi Wetlands law. That act has since been repealed and superceded by another with, ostensibly, the same objective.<sup>5</sup> To date there has been no litigation under the new law.

Miss. Code Ann.  
§§ 49-27-1 - 49-27-69  
(Supp. 1977)

Ala. G. Stat. No. 534 (1976)  
(All sections references are  
to 1976 Ala. Act No. 534)

Type of System	Permit
Coastal area definition	Coastal wetlands § 49-27-5

Permit

"Coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder strongly influenced by each and in proximity to the shorelines of Alabama, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches. The area extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Sec. 3.a.

Administered by § 49-27-5(g)

Alabama Coastal Area Board. To avoid duplicity, no permit required from Board if a permit is secured from Alabama Water Improvement Commission, Alabama Air Pollution Commission, Alabama Oil and Gas Board, Alabama Department of Conservation and Natural Resources, or any other agency with jurisdiction within coastal area. Sec. 8a.

Public policy § 49-27-3

The encouragement of counties and municipalities in the exercise of their responsibilities, consideration to uses such as the establishment of harbor facilities, and cooperation among local, state, regional and federal agencies. Sec. 2.

Exemptions § 49-27-7

Permissible uses comparable to MS 49-27-7 a, b, c, d, g plus uses incidental to enjoyment of dwelling; maintenance and repair activities of railroads, utilities, telephone, gas electricity, water, and sewage service; use of any land for agricultural purposes, normal private road construction; and completion of developments having prior approval. Sec. 4.

Permit required to conduct regulated activity-filling and form of application fee. § 49-27-9

No permit required from Coastal Area Board if activity required a permit from any other agency having jurisdiction within the coastal area. Such other permits must be in compliance with the management program of the Board. Sec. 8.

Application-Contents § 49-27-11

Requirements not in statute.

Application - copy to be mailed to parties. § 49-27-13

Not given. Statute does provide for Board to receive an information copy of applications for Federal permits.

Application - Objections, Hearing §§ 49-27-15 - 49-27-21

No provision for procedure in objecting to application or requesting hearing on proposed activity before Board has acted. General program goals include "adequate provision for public notice, public hearing, and judicial review as provided for under

Miss. Code Ann.

Ala. G. Stat. No. 534

Alabama law." Sec. 6(h).

Imposition of conditions or limitations on grant of permit. \$ 49-27-29

Appeals section provides for appeal from issuance of permit or conditional permit.

Suspension or revocation of permit after notice and hearing. \$ 49-27-33

State, district attorney, or county attorney may initiate any action against party in violation of program. Sec. 12.

Time \$ 49-27-37

If the Coastal Area Board is requested by another permit-granting agency to determine compliance of an application, it must act within 45 days of the request. Sec. 8a.

Appeal from order of council \$\$ 49-27-39 - 49-27-49

Appeal open to any aggrieved party. Written protest within 30 days of Board's action necessary for appeal. Chairman of Board to have "wide discretion" in appeal proceedings. Sec. 11. If appeal is denied by Board, party has access to Circuit Court of county in which affected property is located. Court's policy same as Mississippi \$ 49-27-39(b). Sec. 11c.

Actions against violators - who may initiate. \$ 49-29-51

State of Alabama at request of Board, district attorney or county attorney having jurisdiction.

Jurisdiction and venue. \$ 49-27-53

Identical to Mississippi. Sec. 12a

Civil liability of violators. \$ 49-27-55

Civil liability, restoration, not set out in statute. Clause identical to 49-27-55 included.



Miss. Code Ann.

Fines and penalties \$ 49-27-57

Rules and Regulations \$ 49-27-59

Overall use plan \$ 49-27-65

Ala. G. Stat. No. 534

Not set out in statute.

Board to determine additional permissible uses. Sec. 4. Board to develop and promulgate such rules as necessary to effectuate act. Sec. 7.

Board to provide for development of comprehensive program. Sec. 6.

D. North Carolina

The North Carolina Coastal Area Management Act of 1974<sup>6</sup> authorizes the Coastal Resources Commission to designate geographic areas of the coastal zone as areas of environmental concern. Coastal wetlands are among the areas the Commission may so designate.<sup>7</sup> A permit is required for any development in such areas. The task of administering such a program, in which various agencies have overlapping jurisdiction and a duplicity of requirements, is a problem not unique to North Carolina,<sup>8</sup> which ranks third among the contiguous states in total estuarine land.

Miss. Code Ann.  
§§ 49-27-1 -  
49-27-69 (Supp.)

Gen. Stat. N.C. §§ 113A-100-128 (1975)  
113-225 113-229  
113-230

Type of System      Permit  
  
Marshlands -      Coastal wetlands  
Definitions      § 49-27-5

Permit

Any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tides reach the marsh-land areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which are grown some, but not necessarily all, of the following salt marsh and marsh plant species: Smooth or saltwater Cordgrass, Black Needlerush Glasswort, Salt Grass, Sea Lavender, Bulrush, Cattail, Salt-Meadow Grass and Salt Reed-Grass.  
113-229 (n) (3).

Administered by      §49-27-5(g)

Dept. of Natural Resources, 113-229(a).

Miss. Code Ann.

Policy statement § 49-27-3

Exemptions § 49-27-7

Contents of Application § 49-27-11

Parties receiving copies § 49-27-13

Notice of date for filing objections. § 49-27-15

Gen. Stat. N.C.

Promoting the public safety, health and welfare, and protecting public and private property, wildlife and marine fisheries. 113-230(a). See also Goals of CAMA 113-102(b).

Functions of N. C. Dept. of Human Resources and local health departments that are engaged in mosquito control for the protection of the health and welfare of people of the coastal area. Section not to impair riparian rights of ingress and egress to navigable waters. 113-229(m).

Detailed plat of area in which work will take place, disposal area, copy of instrument under which applicant or ageing owner claims adjoining property. 113-229(b).

Owners of each tract of riparian property adjoining that of applicant. 113-229(d). Applications for permits circulated among all state agencies and in discretion of Secretary of Natural and Economic Resources, appropriate federal agencies.

Adjacent riparian owners have 30 days from date of service of copy of application to file written objections. 113-229(d). Referral to Marine Fisheries Commission if state agency or applicant disagree with Department action. Matter must be considered within 90 days of Department action. 113-229(f).

Notice of hearing § 49-27-17

By registered or certified mail to all persons entitled thereto. If by publication in a newspaper in a county where any part of land affected by a proposed project is located, or if no qualified newspaper in that county, in any adjoining county or in a county in the same judicial district once a week for three consecutive weeks.

The notice of service by publication shall (i) designate the department of State government having jurisdiction to initially grant or deny dredge and fill permits hereunder, and identify the General Statutes section under which the permit has been sought; (ii) be directed to the owner sought to be served; (iii) identify the name and post-office address of the permit applicant; (iv) indicate whether the proposed project will involve dredging or filling or both; (v) indicate the county(ies) and township(s) in which the proposed project will be located, together with any further information descriptive of the location which the Department may wish to include; (vi) state where and at what hours a copy of the application may be obtained or inspected; and (vii) indicate the time limit for filing of objections with the Department by the owner, pursuant to subsection (d) of this section. 113-229(g) (10).

Evidence shall be taken by the review commission from all interested persons, who shall have the right to be represented by counsel, 113-229(f),

Appearance at § 49-27-19  
hearing by person  
filing objection.  
Applicant's burden  
of proof.

Miss. Code Ann.

Findings, reasons  
and descriptions  
to be recorded by  
council. § 49-27-35

Copies of order  
to be sent to  
parties - time. § 49-27-37

Appeal § 49-27-39

Actions against  
violators who  
may initiate. § 49-27-51

Gen. Stat. N.C.

Full and complete record of proceedings at any hearing. 113-229(g)(2).

All decisions or orders to be supported by competent, material, and substantial evidence upon consideration of the whole record. § 113-229(g)(6).

After hearing, review commission shall afford the parties 20 days to submit proposed findings of fact and conclusions of law and any brief. Record shall show review commission's ruling with respect to each such requested finding of fact and conclusion of law. § 113-229(g)(7).

Department and review commission shall give notice to all interested parties of their formal actions, including findings upon applications and calling of review commission meetings, announcement of decisions and setting of hearing date. 113-229(g)(8). All required notices to be given by registered or certified mail. 113-229(g)(9).

Action upon application for permit shall be within 90 days after filing. Failure to act within 90 days means automatic approval. 113-229(e).

Any state agency or the applicant may appeal review commission's ruling to the superior court of county where the land or any part thereof is located. 113-229(f).

Secretary of Natural and Economic Resources may institute civil action in superior court for damages, injunctive, or other relief. § 113-229(1).

The burden of proof shall be on the person or agency at whose instance the hearing is being held. 113-229(g)(5).

Record of Hearing. § 49-27-21

Full and complete record of any hearing to be taken by reporter appointed by review commission or by some other method approved by the Attorney General. Any party to the proceedings is entitled to a copy of record for payment of cost. 113-229(g)(2).

Denial of permit. § 49-27-23

N.C. lists these specific findings as reasons for denial of permit:

"significant adverse effect of the proposed dredging and filling on:

(1) the use of water by the public;

(2) the value of enjoyment of the property of any riparian owner;

(3) public health, safety, and welfare;

(4) conservation of public and private water supplies;

(5) wildlife or fresh water, estuarine or marine fisheries.

In the absence of such findings, a permit shall be granted." § 113-229(e).

Conditions, Limitations §§ 49-27-25, 49-27-27  
49-27-29

Permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest. 113-229(e).

Suspension or revocation after notice and hearing. § 49-27-33

Notice and hearing before issuance of any order controlling wetlands activities. § 113-230.

Jurisdiction and venue. § 49-27-53

Any state agency or applicant may appeal from ruling of review commission to the superior court of the county where the land or any part thereof is located. 113-229(f).

§ 49-27-55

Provision for "such other and further relief as said court may deem proper, to prevent or recover from any damage to any lands or property which the State holds in the public trust. . . ." 113-229(1).

Fines and penalties § 49-27-57

Any person, firm, or corporation violating statute is guilty of a misdemeanor. Punishment by fine not to exceed \$500 or by imprisonment of not more than 90 days or both. 113-229(k).

Each day's continued operation constitutes a separate offense. 113-229(k).

Rules and Regulations § 49-27-59

Secretary of Natural and Economic Resources, with approval of Marine Fisheries Commission, may adopt, amend, modify, or repeal orders regulating, restricting, or prohibiting dredging, filling, removing, or otherwise altering coastal wetlands. 113-230(a).

Public hearing in county affected. Notice to interested State agencies and each owner or claimed owner by certified or registered mail 21 days in advance. 113-230(b).

Upon adoption order, plat of lands affected, and list of owners to be filed in register of deeds office in county in which land is located. Copy of order to be mailed to each

Miss. Code Ann.

Gen. Stat. N.C.

owner of affected land. 113-230(c).

Appeal procedure: within 90 days after notice owner may petition to certify himself as owner and for court to determine if the order constitutes a taking without compensation. 113-230(f).

No provision.

Charges for materials removed under permit. \$ 49-27-61

Investigations and reports of violations. \$ 49-27-63

Evaluation of wetlands - Education of public. \$ 49-27-65

Exclusion from assessment for ad valorem taxes. \$ 49-27-67

Disposition of fees. \$ 49-27-69

Implied because penalties are stipulated.

Evaluation inherent in administrative duties of Department of Natural and Economic Resources. \$ 113-226(a).

No provision.

All money credited to, held by, or to be received by the Department of Natural and Economic Resources in respect of the conservation of marine and estuarine resources must be deposited with the Department. \$ 113-226(b).



FOOTNOTES - PART IV

1. For an abbreviated survey of wetlands programs see Stepien and Fernandez, Wetlands Related Legislation in the United States, (University of Miami Sea Grant Special Report # 11, May 1977).
2. GA. CODE ANN. §§ 45-136 - 45-147 (1974).
3. Abbott, Some Legal Problems Involved in Saving Georgia's Marshlands, 7 GEORGIA STATE BAR J. 27 (1970). See also, Futrell, The Hidden Crisis in Georgia Land Use, 10 GEORGIA LAW REVIEW 53 (1975).
4. GA. LAWS 1976, p. 1198, at 1218.
5. ALA. G. STAT. No. 534 (1976).
6. N.C. GEN. STAT. § 113A-100 (1975).
7. N.C. GEN. STAT. § 113A-113 (1975).
8. Schoenbaum and Rosenberg, The Legal Implementation of Coastal Management: the North Carolina Model, 1976 DUKE LAW J. 1 (1976). This article is an in-depth analysis of the North Carolina CAMA.

## V. CONCLUSION

Although the Mississippi Wetlands Law includes the components of an effective wetlands program as presented in the Sea Grant analysis of Coastal Zone Management programs,<sup>1</sup> some limitations of our present permitting system are self-evident. By its nature a permitting program regulates prospective activity. No retro-active permits are issued to control existing operations. The Mississippi Marine Resources Council attempts to cope with this problem by issuing permits for restoration when violators seek to comply with the system.

The jurisdiction of the Mississippi Marine Resources Council is confined only to the wetlands, reducing the Council's ability to regulate any activity outside the wetlands that adversely affects them. Should the activity originate in a neighboring state, there has been no opportunity for the Council to comment or complain about the effect on our wetlands. The Council has had to deal with disgruntled Mississippi residents near the state line who complain of damage to their property due to a sister state's lack of regulation. Mississippi fishermen have yet to feel the detrimental effect of non-regulation on the shrimp, crabs and to some extent oysters that bed in Louisiana wetlands and migrate to become part of Mississippi's fishery harvest.<sup>2</sup>

Overlapping jurisdiction and needless duplication of efforts, notably by the Corps of Engineers and the Council, is another short-coming. The fact that the Council must have Corps approval but the federal agency may proceed without state approval for activity affecting state property does not enhance relations. The joint

application form and the forthcoming general permit for minor structures and activities are inter-agency attempts to simplify the procedure. A cursory reading of the file of a case history of an application<sup>3</sup> may leave the reader wondering where the safeguards end and the paper shuffling begins. An investigation of the taxpayer dollars expended in this effort would probably lead one to wonder whose interests are being protected.

The Legislative Audit Committee, in reviewing the operation of the Council at the end of the 1975 fiscal year, reported:

The Council's wetlands permit program is positive and beneficial. Through informal contacts with coastal building authorities, the manager of the program has developed a highly productive, effective and efficient system of obtaining notification of dredging, filling, and building activities in the wetlands area.<sup>4</sup>

With the enactment of the Coastal Zone Management Program, the permitting system is to be expanded. From investigation it seems the permitting program does operate "efficiently" within the confines of the law. This is not at issue. The question is the adequacy of the law.

On its face, the Wetlands law is riddled with exemptions.<sup>5</sup> While some authorities involved in the administration of the law defend these exemptions, other ecologically concerned citizens are alarmed by them. Shortly after the enactment of our present statutes, Abbott and Holmes wrote in a survey of environmental law:

An examination of the large geographic areas exempted together with the blanket exemptions given

to the activities of most of the political subdivisions which affect the wetlands can only lead one to believe that the Council has been armed with a pea shooter and sent out to slay a dragon.<sup>6</sup>

One authority notes that priorities with respect to management practices in the Coastal Zone, nationwide, have been (1) what is profitable economically, (2) what is politically palatable, (3) legal implications, and (4) environmental considerations, in that order.<sup>7</sup> This order of priorities can be largely attributed to the public's long-held view equating wetlands with wastelands, and the difficulty in adequately evaluating the value of marshland in dollars and cents.<sup>8</sup>

While most riparian land owners would espouse a concern for the environment, that concern would become inversely proportionate to the personal economic sacrifice involved if that person were to be deprived of a lucrative development in the interest of conservation. If an individual landowner cannot be compensated by sharing in the benefits of a restriction on the use of his property, he is being charged with more than his just share of the cost of the program.<sup>9</sup> Fortunately, in Mississippi, largely through the efforts of the staff of Mississippi Marine Resources Council, some riparian owners and developers recognize that they have actually profited by the restrictions. Some developers who were antagonistic at the outset of the permit program now concede benefits, such as assuring prospective owners access to a relatively unpolluted waterfront, which a short period of unbridled "development" would destroy.

Education of the public is necessary to erode the "wetlands-wastelands" notion. The Council, charged with the responsibility under the Wetlands law,<sup>10</sup> has its staff speak to school and civic groups. Other environmental groups, such as Save the Bay are vocal in defending wetlands preservation.

The Council has accepted \$82,000 as the value of an acre of marshland<sup>11</sup> and ecologists warn, each acre of marshland lost increases the value of remaining marshland until a limit is reached beyond which further destruction of marshland would be catastrophic.<sup>12</sup> There is a flaw inherent in attaching a price tag to values of an esthetic nature. Consider the rise in the value of property when a view or access to water sports and fish and game preserves is added.

The difference between the value of marshland to an individual owner and its value to society left in its natural state should prompt the Government, state or national, to induce the landowner to leave the land "undeveloped." Paying the owner not to develop, as in "soil banks," is one of several options.<sup>13</sup> Although a discussion of the variety of land use controls is beyond the scope of this paper, it is primary that just as the wetlands must be considered as an integral part of the total estuarine environment, the administrative program regulating activity there can only be judged in the context of the entirety of legal controls affecting the coastal zone.<sup>14</sup>

The Mississippi Legislature will soon consider a Coastal Zone Management Program. This may be the opportunity for our legislators to re-order priorities, to determine that any mistakes made be made in favor of the environment, to revamp the present permitting statute

and rid it of emasculating exceptions, and to extend the jurisdiction of the regulatory agency to cover all coastal wetlands.<sup>15</sup>

FOOTNOTES - PART I

1. E. Bradley and J. Armstrong, A Description and Analysis of Coastal Zone and Shoreland Management Programs in the U.S. 27 (Sea Grant Technical Report No. 20, 1972).
2. Interview with Joseph I. Gill, Marine Projects Director, Mississippi Marine Resources Council, at Long Beach, MS (Oct. 21, 1977).
3. See, e.g., Application of Mississippi Chemical Corporation "Proposed Maintenance Dredging, Bayou Casotte, Jackson County, Mississippi," (Aug. 16, 1976) on file with Mississippi Marine Resources Council.
4. Mississippi Marine Resources Council, Annual Report, July 1, 1974 - June 30, 1975.
5. MISS. CODE ANN. § 49-27-7 (Supp. 1977).
6. G. Abbott and E. Holmes, A Survey of Federal and Mississippi Environmental Law With an Examination of its Effect on Land Development, 45 MISS. L.J. 821 (1974).
7. COOPER, BASIC ECOLOGICAL CONSIDERATIONS - COASTAL ZONE RESOURCE MANAGEMENT 127 (1971).
8. For a look at divergent opinions as to the determination of value of wetlands, compare Walker, Wetlands Preservation and Management on Chesapeake Bay: The Role of Science in National Resource Policy, 1 J. OF COASTAL ZONE MANAGEMENT 75 (1973), with Odum and Skjei, The Issue of Wetlands Preservation and Management: A Second View, 1 COASTAL ZONE MANAGEMENT J. 151 (1974). See also, Comment,

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Economics, Science and Beyond, 1 COASTAL ZONE MANAGEMENT  
J. 227 (1974).

9. See, e.g., State v. Johnson, 265 A.2d 711 (Miss. 1970).
10. MISS. CODE ANN. § 49-27-65(b) (Supp. 1977).
11. Mississippi Marine Resources Council, Annual Report, July 1, 1975 - June 30, 1976, quoting E. Odum, The Pricing System, GEORGIA CONSERVANCY MAGAZINE 10 (1973).
12. Id., Odum at 11.
13. For a discussion of various methods to regulate land use see: LAW CENTER, THE UNIVERSITY OF MISSISSIPPI 1 LEGAL REQUIREMENTS AND CONSIDERATIONS INHERENT IN COASTAL ZONE MANAGEMENT IN MISSISSIPPI 83 (1976).
14. For evaluation of Coastal Zone Management programs, including wetlands, see Healy, Saving California's Coast: The Coastal Initiative and Its Aftermath, 1 COASTAL ZONE MANAGEMENT J. 365 (1974); Swanson, Coastal Zone Management from an Administrative Perspective: A Case Study of the San Francisco Bay Conservation and Development Commission, 2 COASTAL ZONE MANAGEMENT J. 31 (1975); McCrea and Feldman, Interim Assessment of Washington State Shoreline Management, 3 COASTAL ZONE MANAGEMENT J. 119 (1977); Englander, Feldman and Hershman, Coastal Zone Problems: A Basis for Evaluation, 3 COASTAL ZONE MANAGEMENT J. 217, contains synopses of seven coastal evaluation efforts.



15. Although the Mississippi statute § 49-27-5 (Supp. 1977) restricts coastal wetlands to "publicly" owned wetlands, there is authority that all wetlands are publicly owned. See Comment, The Mississippi Public Trust Doctrine Public and Private Rights in the Coastal Zone, 46 MISS. L.J. 84 (1975). For a recent discussion of the Georgia situation see R. Richards, The Georgia Foreshore and State v. Ashmore: the Legislature Giveth and the Judiciary Taketh Away, 7 ENVIRONMENTAL LAW 153 (1976).

