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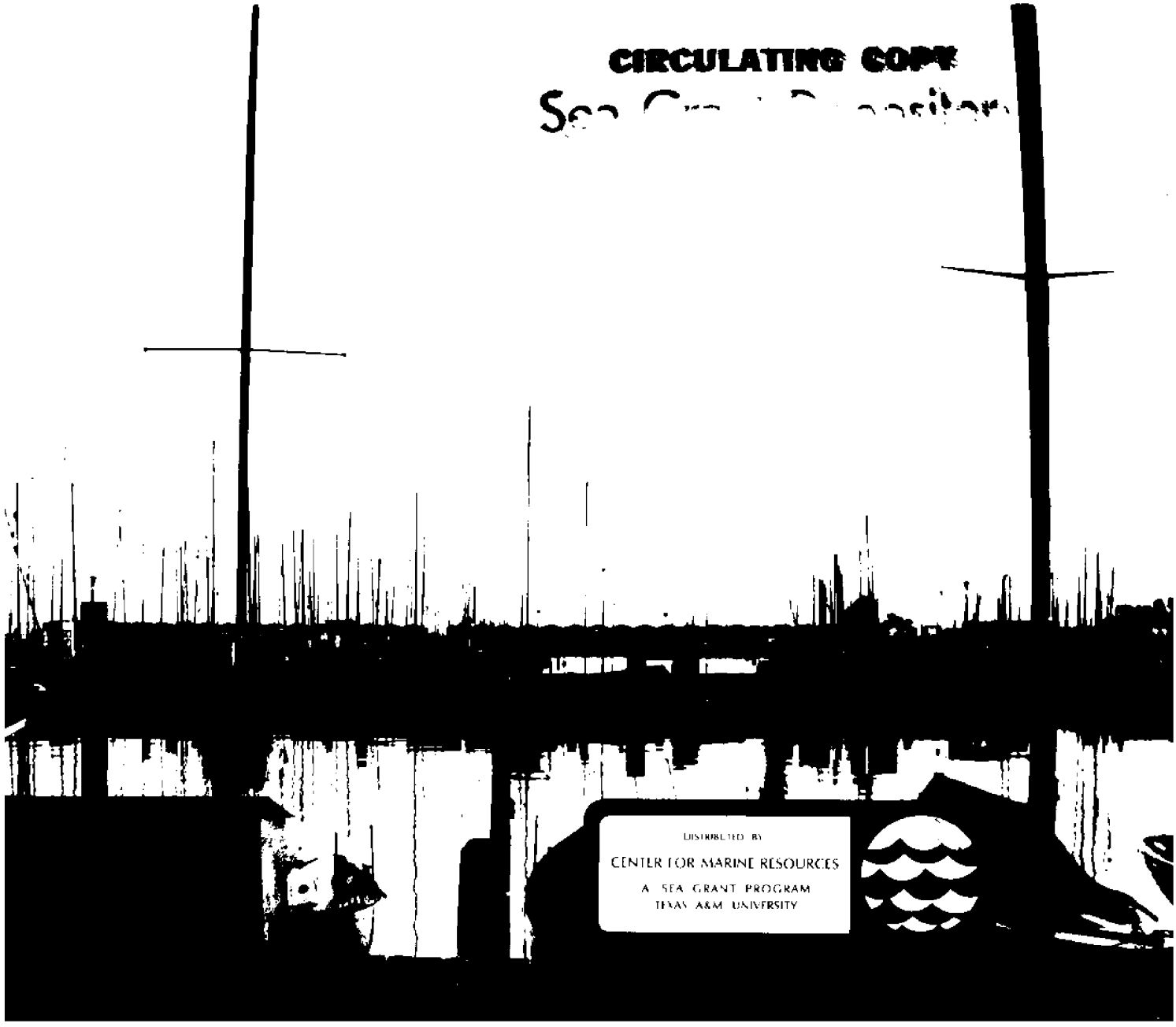
TEXAS LAW INSTITUTE OF COASTAL AND MARINE RESOURCES

Comparative Aspects of Coastal Zone Management: Background Information on the Law of Texas and Other States In View of the Coastal Zone Management Act of 1972



COMPARATIVE ASPECTS OF COASTAL ZONE MANAGEMENT: BACKGROUND INFORMATION ON THE LAW OF TEXAS AND OTHER STATES IN VIEW OF THE COASTAL ZONE MANAGEMENT ACT OF 1972

TEXAS LAW INSTITUTE OF
COASTAL AND MARINE RESOURCES

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FOREWORD

The State of Texas with the passage of its Open Beaches Act in 1957 was the first State to seek to preserve the important right of the public to use the State's beaches. This act was followed by other legislative attempts to preserve Texas' vast coastal zone while developing the potential uses of the coastal waters and adjacent uplands.

In 1972, Congress, recognizing the threat posed by unplanned and unsupervised piecemeal development of the nation's coastal zone, enacted the Federal Coastal Zone Management Act to assist the coastal states financially in developing viable, individual coastal zone management programs. The 63rd Texas Legislature, in response to this act, designated the School Land Board as the State's agent to apply for federal funds under the act to formulate such a coastal zone management plan.

This monograph does not make specific recommendations for a coastal zone management plan, but rather provides background common law and statutory law material to aid in the development of such a program by showing what Texas already has done. The original draft of the paper was submitted to the Senate Interim Beach Study Committee, chaired by Senator A. R. Schwartz, at its final meeting on December 15, 1972, in Galveston, Texas. In the Spring of 1973, the 63rd Legislature enacted the Coastal Public Lands Management Act to provide a starting point for serious coastal resource management, and the paper was revised to reflect these recent changes in Texas' coastal law. This paper was written by Carol Dinkins, J.D., Principal Associate of the Texas Law Institute.

TABLE OF CONTENTS

TABLE OF CONTENTS

APPENDIXES

INTRODUCTION

In 1972, in response to increasing destruction and degradation of coastal wetlands and waters, Congress enacted the Coastal Zone Management Act to provide financial assistance and incentive for states to study, develop and implement comprehensive management programs for their coastal zones. The Act provides for a set of two grants--one for study and planning and another for implementation and initial administration of a coastal management program. In this Act Congress recognizes the importance of coastal zone areas and the increasing demands being put upon these ecogologically sensitive areas and declares a policy to "achieve wise use of the land and water resources of the coastal zone."

The Act defines "coastal zone" as the submerged land and tidal waters, the adjacent shoreland in close proximity, salt marshes, wetlands, and beaches. The State's management program is to include guidelines and standards for public and private uses of lands and waters in the coastal zone. Specifically, the management program is to define what land and water uses are permissible which have a "direct and significant impact on the coastal waters. Before the management program can be approved, it must provide:

> (1) Direct state land and water use planning and regulation; or
>
> (2) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulation . . . proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and opportunity for hearings.

The federal coastal zone act also provides that no license or permit can be granted by a federal agency without the State concuring unless the Secretary of Commerce (who administers the Act) finds the activity is "necessary in the interest of national security."

This act calls for a defined, unified policy in State government by requiring communication between the administering federal agency and a "single agency" to be designated by the Governor of the applicant State. All responsibility for consultation, coordination and administration of federal funds granted pursuant to this act is delegated to this single agency.

In addition to the Federal Coastal Zone Management Act, other existing federal laws and administrative guidelines and regulations exert pressure on the State for a comprehensive coordination and review authority to mesh with the federal requirements embodied in federal statutes such as the Rivers and Harbors Act of 1899, the 1972 Amendments to the Federal Water Pollution Control Act and the National Environmental Policy Act of 1969. The guidelines for preparation of environmental impact statements for "major federal actions significantly affecting the environment" promulgated by the Council on Environmental Quality pursuant to NEPA repeatedly refer to the necessity of soliciting and obtaining comments, review and recommendations of appropriate state and local agencies. These requests generally are channeled through the office of the Governor of the interested State.

Apart from the federal pressures of coordination and unity of policy on the State level, federal laws and regulations pertaining to the coastal zone require extensive public participation. For instance, the Council on Environmental Quality in its guidelines for decision-making where there might be a significant environmental effect from a proposed federal project require mechanisms for obtaining views of federal, State and local agencies and also note the responsibility of the federal agencies to develop procedures which provide for dissemination of information to the public and for soliciting the views of interested parties. Such procedures must include public hearings where practicable. Furthermore, the Coastal Zone Management Act expressly conditions grants on there having been public hearings in conjunction with the development of the applicant state's coastal management program, further specifying that 30 days notice be given of public hearings and that all relevant documents and studies be made available to the public.

The environmental impact statements, public notices and similar requirements necessitate much supervision and paperwork by both the federal and the state governments. As the public becomes more aware of these mechanisms and the agencies and courts construe the nature of all those activities "significantly affecting the environment", the burden increases. Therefore, any expansion of duties to meet environmental concern should provide the minimum statutory additions necessary to achieve state coordination and responsibility to the electorate to avoid a financial and administrative burden so great that it retards the

development of the state's resources and its economic well-being.

II. Focusing on Texas

The Texas coastal zone includes 622 square miles of coastal marsh and 2100 square miles of bays and estuaries, as well as thousands of acres of adjacent land and upland. The estuarine zones presently are highly susceptible to destruction from various causes including dredging, landfill, industrial effluent discharges into tributary waters, and runoff from upland of polluted water. (An estuary is a semi-enclosed coastal water body with a free connection to the open sea and in which sea water is diluted with fresh water from land drainage. The entire estuarine zone includes the biological transition zones--salt meadows, coastal marshes, intertidal areas, and tidal freshwater habitats. According to an EPA study, five of the six leading commercial fish species by weight--over one-half of the United States commercial fish tonnage in 1967--are estuarine dependent.) In Texas, according to a study prepared by the Governor's Office, most of the Texas fishery is based upon estuarine-dependent species such as menhaden, shrimp and oysters.

Texas was one of the first states to enact any significant coastal legislation when it passed the Texas Open Beaches Act in 1957. Since that time other measures have recognized various problems of Texas' coastal zone and moved toward solutions.

In 1969 the Texas Legislature in Senate Concurrent Resolution 38 indicated its awareness of a need to initiate some comprehensive assessment of coastal activities to assure development yet avoid undue destruction of coastal resources. SCR 38 directed the Interagency Council on Natural Resources and the Environment, a consortium of State agencies chaired by the Governor, to "make a comprehensive study of the State's submerged lands, beaches, islands, estuaries and estuarine areas." This directive is the basis of the studies of the Coastal Resources Management Program in the Office of the Governor. In May of 1971 SCR 8 detailed the nature of one part of this study by directing the Coastal Resources Management Program to work with the Texas Law Institute of Coastal and Marine Resources on legal problems of coastal management. SCR 9 required a legal analysis of the institutional authority and responsibility necessary for the proper implementation of a Coastal Resources Management Program.

III. Protection Available from Common Law Remedies

Before investigating statutory measures, it should be noted that the common law could provide some measure of protection for the coastal zone. Under the common law doctrine of public trust, the State holds title to navigable waters and the subjacent lands in trust for the benefit of its citizens. In accordance with its position as trustee, the state must protect the rights of the public in such areas. Although courts of other States have extended the public trust doctrine to protect such public rights as fishing, bathing and aesthetics, the full extent of the public trust doctrine has never been judicially explored in Texas.

The United States Supreme Court has protected the public trust in navigable waters and the subjacent lands. In 1892, the Court in a landmark decision upheld the concept of protection of the public interest in a resource when the State engages in any conduct which may reallocate the resource to more restricted use or to use by private parties. (*Illinois Central Rr. Co. v. Illinois, 146 U.S. 387 (1892).*

Some jurisdictions, notably Wisconsin, have clearly delineated the scope of their public trust. The Wisconsin Supreme Court has held that public trust lands can be devoted to private uses only if there is a clear justification for the change. (See e.g., *In re Trempealeau Drainage Dt.*, 131 N.W. 838 (1911) and *In re Crawford County Levee & Drainage Dt. No. 1*, 196 N.W. 874, *cert. denied*, 264 U.S. 598 (1924). But the Wisconsin Attorney General's Office has actively sought to prevent certain activities not consistent with the public trust--and, perhaps even more importantly, the Wisconsin courts, although willing to accept the expertise of the administrative agencies, will, when necessary, force an agency to demonstrate that it indeed has the expertise and concern for the public interest it claims. (*See e.g., Town of Ashwaubenon v. Public Serv. Comm'n*, 125 N.W.2d 647 (Wisc. 1964).

In Texas, the cases clearly indicate that private individuals cannot sue to enforce the public trust. (*San Antonio Conservation Soc'y v City of San Antonio*, 250 S.W.2d 259 (Tex. Civ. App.--Austin 1952, writ ref'd). In that case the court held that the plaintiffs had no "justiciable interest" and that "only lawfully constituted guardians of the public interest" may maintain actions for the redress of injuries to the charm and beauty of a river. In another case, a suit to enjoin the Parks and Wildlife Commission from permitting shell dredging in areas near live oyster reefs, the court held that associations of commercial fishermen had

no standing and furthermore, that the suit was one against the State without its consent. (*Texas Oyster Growers' Assoc. v. Odom*, 385 S.W.2d 899 (Tex. Civ. App.--Austin 1965, writ ref'd n.r.e.). A federal district court also has ruled in a similar suit by a conservation organization that not only was this a suit against the State without its consent, but that plaintiffs had no standing to sue. (*National Audubon Soc'y, Inc. v. Johnson*, 317 F. Supp. 1330 (S.D. Tex. 1970).

Most cases in which the Attorney General has sued to enforce the public trust doctrine are cases in which title to public domain was transferred without proper authorization or where public land is being used in such a way as to conflict with public rights or where the public is being denied access to its domain. Although the Texas courts subscribe to the principle that public trust lands must be expressly granted, the judicial interpretations of this theory are not easily reconcilable. (Compare *Humble Pipe Line Co. v State*, 2 S.W.2d 1018 (Tex. Civ. App. 1928 writ ref'd) and *State v. Arkansas Dock & Channel Co.*, 365 S.W.2d 220 (Tex. Civ. App.--San Antonio 1963 writ ref'd) with *Dincans v. Keeran*, 192 S.W. 603 (Tex. Civ. App. 1917 no writ history); *State v. Bradford*, 121 Tex. 515, 50 S.W.2d 1065 (Tex. Sup. 1932) and *Wilemon v. Dallas Levee Imp. Dt.*, 264 S.W.2d 543 (Tex. Civ. App.--Dallas 1953), *cert. denied* 348 U.S. 829 (1954).

The one case in which the Attorney General sued under the public trust doctrine to enjoin pollution of public navigable waters appears to have been decided primarily on the basis of public nuisance. (*Goldsmith & Powell v. State*, 159 S.W.2d 534 (Tex. Civ. App.--Dallas 1942, writ ref'd). Furthermore, because the Texas courts have been unwilling to circumvent agency decisions in matters under their particular jurisdiction, it may be difficult to convince a court that in some instances activities such as shell dredging conducted pursuant to a permit from some State agency should be held to violate the public trust. Of course, if someone is exceeding the limits of a lawful permit, the agency should take the necessary measures to enforce the permit or revoke it.

Where there is a permit from a State agency, another solution may be possible. Several Texas courts have held in private and public nuisance actions that a permit from a municipality cannot be a defense to a nuisance suit; because the governmental body itself cannot commit a public nuisance, it likewise cannot authorize anyone else to do so (*Houston Transportation Co. v. San Jacinto Rice Co.*, 163 S.W. 1023 (Tex. Civ. App.--El Paso 1914, no writ history) and *City of Belton v. Baylor Female College*, 33 S.W. 680 (Tex. Civ. App. 1896, no writ history). See also *Hill v. Villarreal*, 362 S.W.2d 348 (Tex. Civ. App.--Waco 1962, writ ref'd n.r.e.);

Dworkin v. Town of Lakeview, 327 S.W.2d 351 (Tex. Civ. App.--Beaumont 1959, no writ history) and *City of Corsicana v. King*, 3 S.W.2d 857 (Tex. Civ. App.--Waco 1928, writ ref'd).

In a similar situation, however, the Texas Supreme Court, three judges dissenting, held that an activity authorized by law cannot be a public nuisance because the legislature is the best judge of what is in the public interest, provided the legislature has the constitutional power to act. In this case, the legislature had enacted a law and assigned to the Railroad Commision the duty of implementing it. Because the defendant was acting in accordance with lawful regulations for the Railroad Commission, the Court found that this activity authorized by law could not give rise to a common law right of action although it otherwise might constitute an actionable common law nuisance (*Dudding v. Automatic Gas Co.*, 193 S.W.2d 517 (Tex. Sup. 1946).

IV. Legislative Action Pertinent to Use of the Texas Coastal Zone

Besides the coastal management study instituted pursuant to SCR 38, discussed in the introduction, the Texas Legislature has enacted other laws relative to specific aspects of coastal use.

A. Texas Open Beaches Act

The earliest far-reaching legislation pertinent to coastal areas is probably the Texas Open Beaches Act, the first such legislation in any state. This Act declared a state policy that non-remote beaches fronting on Gulf waters shall be open to use by the public up to the vegetation line where the public has acquired a prescriptive right of use or easement to such area. More importantly, the Act establishes a presumption that the public has the right of using the dry sand portion of the beaches to the line of vegetation; thus the Act shifts to the landowner the burden of proof on showing there is no prescriptive right of use in the public. The only appellate court case, under this act *Seaway Company v. State*, could have been decided as it was, giving the public the right to use the beach at issue there, even absent the Open Beaches Act because the State proved up a long period of use as a highway by the public. (*Seaway Co. v. State*, 375 S.W.2d 923 (Tex. Civ. App.--Houston 1964, writ ref'd n.r.e.).

The Legislature has amended the Act several times to allow Commissioners Courts of Counties fronting on the open Gulf of Mexico to exercise some control over use of the public beaches, particularly for safety in vehicular traffic use and littering. The 1965 amendments, besides permitting the counties to regulate traffic, provided State funds to assist counties in the cleaning and maintenance of public beaches. In 1969 the Act was amended to make unlawful the denial of access to beaches by posting signs; to establish a public policy that fixed business establishments seaward of the vegetation line are undesirable but mobile business establishments can be licensed by the Parks and Wildlife Department; and to provide for the creation of beach park boards. This year the Legislature provided for greater protection of sand dunes on barrier islands by permitting County Commissioners Courts to establish dune protection lines within 1000 feet of the line of mean low tide inside which recreational vehicular traffic would be prohibited in the dunes and also requiring permits for excavation and other activities which might disturb the vegetation and stability of the dunes. The 63rd Legislature also amended the Act to prohibit on public beaches the sale of commodities in glass containers and to provide that the "clean and maintain" portion of the act allowing State funds for beaches would include employment of lifeguards and beach patrols. Earlier portions of the Act were amended to clarify the definition of "public beach".

> 'Public beach' shall mean any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, to which the public has acquired the right of use or easement to or over such area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

Almost a decade after Texas passed the Open Beaches Act, Oregon enacted a similar statute. However, when a case brought under the Oregon Open Beaches Act was appealed to the Oregon Supreme Court, that Court went even further, holding that the ancient English common law doctrine of custom applied to public use of the dry sand portion of the Pacific Coast beaches so that the public has a right to use all such beaches. The import of this holding is that while a prescriptive right must be proven as to each specific portion of the beach (as in Texas), the doctrine of custom encompasses all such beaches, and once applied, the issue should be settled for all the beaches along Oregon's coastline.

B. Reagan-De La Garza Act

Two years later, in 1961, the Legislature enacted the Reagan-De La Garza Act, declaring a State policy that State-owned submerged lands and islands in the Gulf Coast area and their natural resources "shall be so managed and used as to insure the conservation of such lands and resources and their development and utilization in the public interest." To effectuate this policy statement, the Legislature authorized the formation of a Submerged Lands Advisory Committee to assist the School Land Board in executing the many duties outlined by the Act. The scope of this Act was so broad that had its directives ever been implemented, Texas would long since have had a coastal management program.

The Act declared that natural resources of salt water lakes, bays, inlets or marshes within tidewater limits shall be conserved, and this general policy statement does not limit the mandate simply to public lands (although the opening statement was couched in terms of public lands). The Act also gave the mandate that "unauthorized encroachment upon and use of" state-owned submerged lands and islands is to be prevented, requiring the Board to investigate unauthorized encroachment and use, and refer all such cases to the Attorney General who was directed to institute prompt legal action to enjoin it.

The principal thrust of the Act as a coastal conservation act, however, lies in its mandate that the Board develop a "continuing comprehensive Submerged Lands Management Program." Incidental to formulation of the management program, the Board was to survey state-owned lands, study the potential uses of the submerged lands, and also study coastal engineering problems of erosion. Considering the broad language of the act, had all these directives been fulfilled, Texas would now have a coastal resources management program.

Two aspects of the Act, however, might have had a grave effect on any true coastal resource management program. The Act provided for establishing bulkhead lines in the water, and littoral owners could conduct any work inside these bulkheads without obtaining any consent from the State. This would have left no control at all over wetlands areas had any bulkhead lines been established. Secondly, the Act provided for leasing of submerged lands for industrial uses. The Act provided clue as to what kinds of industrial uses this encompassed, and no guidelines were given or required.

Finally, the Act designated the School Land Board as the representative of the State in all matters conducted with the Federal Government concerning submerged lands and islands.

This should have alleviated the consistent inability to deal with Rivers and Harbors Act § 403 permit applications forwarded to the State for approval or disapproval.

Unfortunately, the apparent good intentions of this Act were never carried out at all. The Act was not funded; no action was taken under it; no criteria and no continuing comprehensive coastal management was ever developed. The Act has now been amended by a coastal public lands act passed in 1973 and discussed infra.

C. Interagency Planning

In 1967, the 60th Legislature in HB 276 designated the Governor as Texas' Chief Planning Officer and authorized him to establish interagency planning councils. Pursuant to this authorization the Governor established the Interagency Council on Natural Resources and the Environment (ICNRE), a consortium of 12 State agencies, to coordinate the development of Texas' water, recreation and environmental quality programs. This Interagency Council is responsible for the Coastal Resources Management Program discussed earlier. As a complement to SCR 38 initiating the Coastal Resources Management Program, the Legislature declared a moratorium on the sale or leasing of the surface estate in Texas' state-owned submerged lands, beaches and islands pending the final report of the Coastal Resources Management Program. This Report has been completed and was submitted to the 63rd Legislature. The Interagency Council declared its committment to continuation of a coastal resources management effort but did not propose a comprehensive or detailed program although it advocated "strong coordinated action by existing regulatory agencies." The INCRE report also suggested several specific statutory changes and identified other coastal problems needing extensive detailed study.

D. Texas Coastal and Marine Council

In 1971, the Legislature by Statute established the Texas Marine Council to serve as an advisory group to "assist in the comprehensive assessment and planning of marine-related affairs" not only within the State but in its federal and international marine-related affairs as well. The Council is composed of 12 members appointed by the Governor, Lieutenant Governor and Speaker of the House to

represent government, education, industry and the public.

E. Sale and Leasing of State Lands to Navigation Districts

The 63rd Legislature in SB 274 revoked the right of navigation districts to purchase fee title to submerged lands, but provides that the districts may in the future lease such lands within their boundaries "for purposes reasonably related to the promotion of navigation." The Act defines "navigation" as including activities appropriate to promotion of marine commerce including fishing and recreational boating. In applying for a lease a district must show its plans and a timetable and include a draft environmental impact statement. The School Land Board, as the agency administering this Act, may waive the impact statement under certain specified circumstances. The School Land Board must circulate the application among interested State agencies and also hold a public hearing in the county wherein the land is situated. When the lease has been approved, the Board sets the consideration to be paid. Districts which have obtained lands by patent in the past are prohibited hereafter from disposing such lands except in accordance with the terms of the Act.

V. Texas' New Coastal Public Lands Management Act

The 63rd Legislature repealed the Reagan-De La Garza Act and enacted a Coastal Public Lands Management Act in response to the ICNRE Coastal Resources Management Program report. This Act does not establish a coastal management program, but instead calls for more study and planning. The administering agency is the School Land Board--the Governor, Commissioner of the General Land Office, and the Attorney General.

The policy statements and proposed studies very clearly are directed only at public lands, and the act repeatedly states that private rights will not be impaired or affected. Although other acts such as the one promoting protection of beach sand dunes and the one prohibiting sale of land to navigation districts and providing for leasing only (both discussed supra) indicate a legislative desire to increase protection of the coastal area, the coastal public lands management act appears to draw back somewhat from the

never-utilized authority and policies of the now-repealed Reagan-De La Garza Act. The repealed act declared a State policy to protect natural resources; the new act states a policy to protect the natural resources of public lands. The repealed act prohibited unauthorized structures and contained a mandatory removal provision; the new act, while prohibiting future construction of such "squatters' shacks" provides a detailed licensing and permitting procedure to allow those already in existence to remain. The new act requires the Board to investigate any complaints of unauthorized construction or structures and refer cases warranting judicial remedy to the Attorney General who "shall immediately initiate judicial proceedings for the appropriate relief."

The Coastal Public Lands Management Act designates the School Land Board as the agency to deal with the federal government. The Act requires the School Land Board to develop a "continuing comprehensive coastal public lands management program" (emphasis added), which "in compliance with the [federal] Coastal Zone Management Act of 1972" an inventory of public lands, an analysis of the potential uses to which public lands and waters might be put, guidelines on use priorities, a definition of permissible uses, and other recommendations (emphasis added). The federal act, however, does not limit its scope simply to public lands; it calls for development of a management program to include public and private uses of land and water in the coastal zone and defines "coastal zone" as including coastal waters and adjacent shorelands "strongly influenced by each other" and also including "transitional land, intertidal areas, salt marshes, wetlands, and beaches." This zone extends inland only to the extent necessary to control uses of shoreland which would have a "direct and significant impact on the coastal waters," and seaward to the outer limit of the United States territorial sea. The first stage federal grants for development of the program call for a definition of permissible land and water uses; the second stage administrative grants require direct land and water use planning and regulation. The Texas Act may not contain sufficient latitude in its directives to the School Land Board to qualify for grants under the federal act.

The Texas Coastal Public Lands Management Act has additional features which may be a beginning of a coastal management program other than studies, however. Specifically exempted from its coverage are dredging on privately owned land, land canals constructed on privately owned lands, and piers constructed by a littoral owner out from his land which do not exceed 100 feet in length and 25 feet in width. The Board must hold public hearings in developing the management program, and it can acquire (not by condemnation) coastal

lands for various public purposes. It also can grant permits for certain ennumerated structures which may be built on submerged lands and also grant leases and easements for specified types of purposes.

VI. Moving Forward--Setting Goals; Defining Criteria

In formulating its own unified coastal management program, Texas first must define its goals--what does the State want to preserve along its Gulf coast? The most readily identifiable, important features are the aesthetic quality of the beaches, marshes, bays and open gulf waters; the quality and abundance of birds, fish and other aquatic and marine-dependent life; the quality of recreational opportunities such as boating, skiing, swimming and fishing; and a high degree of water quality. Concurrently, the State wants to protect its economy by not hampering unduly industrial and municipal development and expansion. Because economic growth and coastal preservation inevitably will conflict in certain instances, there must be a balancing of the two values with a decision as to which will take precedence in each instance of conflict.

Once the State has defined its goals, specific criteria for coastal zone activities must be developed so such activities will conform with the overall plan for preservation of the coastal zone. Texas needs a coastal zone management authority rather than a State-wide land use authority because coastal zone activities are marine-oriented, primarily affecting the marine environment and require a technology and understanding of problems distinct from those applicable to land-oriented activities.

The criteria developed to guide decision-making related to coastal use should be simple, specifically relating to the coastal waters and lands submerged beneath them so as to limit and make readily-identifiable those activities to be supervised. The principal activities which would be affected are industrial discharges and dumping into State gulf waters, bays and close tributary waters (which must be regulated exclusively under the 1972 amendments to the Federal Water Pollution Control Act); landfill activities; dredging and disposal of dredge spoil; changes in fresh water flow into the estuaries; exploration and production of oil and gas; sale and mining of shell, gravel, sand, and marl; and navigational improvements. The goals of the State should be established by the constitution or by statute, perhaps within

the framework of a general policy statement. The criteria developed to achieve these goals should be established by an agency or group of agencies in a manner similar to the promulgation of rules and regulations so they can be adapted easily and efficiently to changing uses of the coastal zone, desired alteration of areas not determined to be environmentally critical, and developing technology, yet be legally enforceable.

Local government units (municipalities, special purpose districts, and counties) should be consulted to develop an overall state plan providing for orderly development and assuring preservation of duly designated environmentally critical areas. Local and regional governmental bodies must have a role in any overall planning situation because they are most familiar with the social and economic problems of their localities as well as with the ecology and natural beauty of their regions. A state-level planning agency, however, is also necessary because it has the breadth of perspective to comprehend Texas' larger needs.

Texas needs a single agency to be responsible for planning and review of coastal zone management as is amply demonstrated by past experience with multiple agency regulation. There is a lack of both communication and coordination with overall planning among agencies because the diverse agencies (such as the General Land Office, the Parks and Wildlife Department, the Railroad Commission and the various navigation districts) cannot hope to fulfill their own functions and at the same time develop the degree of familiarity with all the problems of the other agencies necessary to formulate comprehensive plans. There is no formal system of checks and balances enabling agencies to review permits issued by other agencies to whom the proposed activity appears harmful. At this time the only available review is by the judiciary--a long, expensive and frequently impossible task because of the procedural difficulty of suing a state official acting in his official capacity. Finally, the agencies which presently issue various permits are unable to police properly to assure compliance. The enforcement of permits should have some overall policing to assure that established standards actually are met.

In summary, what Texas needs to do to achieve coastal protection is:

(a) lodge ultimate responsibility for balanced development as well as protection of the overall coastal ecological system with one body;

(b) provide overall planning and coordination;

(c) provide unified, constant policing and enforcement of permits and regulations;

(d) provide a system of checks and balances and a veto power;

(e) provide for a review process other than the courts; and

(f) assure participation in the federal coastal zone management program and a smooth transition to the implementation stage.

The unusual organization of Texas' executive department fragments authority among various elected officials--the Governor, the Commissioner of the General Land Office, the Attorney General and the Railroad Commissioners--as well as other officials appointed by the Governor, usually for terms longer than his own. The fact that these officials receive a mandate directly from the electorate makes all somewhat independent in their actions, and it could be difficult for the Legislature to change any long-established policies of independence. There is, however, authority for statutory, legislative alteration of the powers and duties of most of these officials. Because of the ancient doctrine in both the common law and civil law that the sovereign holds navigable waters and the subjacent lands in trust for all people, executive activities in connection with these trust properties generally are subject to whatever policy the legislature determines to be in the best interest of the public.

In 1887, in a case involving land patents granted by the Governor and the Land Commissioner, the Texas Supreme Court held that these two officials have no power to disregard the legislative will as manifested in duly enacted laws concerning the public domain:

> . . . The power to determine what part of the public domain shall be appropriated to specific purposes, and thus be withdrawn from appropriation by individuals, except as this may be limited by the constitution, rests with the legislature; and neither the Governor nor the Commissioner of the General Land Office have any power to determine whether such discretionary power has been wisely exercised, nor to disregard the legislative will manifested by a law passed in the manner

> prescribed by the constitution, and, in defiance of it, to issue patents for land thus withdrawn from individual appropriation. (*Day Land & Cattle Co. v. State*, 4 S.W. 865 (Tex. Sup. 1887).

Several years later, the Texas Court of Civil Appeals in interpreting the ruling of *Day Land & Cattle Co.* and applying it to a similar fact situation, ruled that "The powers of all officers are defined and conferred by law . . .." (*Galveston, H. & S.A. Ry. v. State*, 36 S.W. 111 (Tex. Civ. App. 1896, writ ref'd). The Austin Court of Civil Appeals in 1913 affirmed this holding: "The Commissioner of the land office has no authority, except such as is conferred upon him by law." (*State v. Post*, 169 S.W. 401 (Tex. Civ. App.-- Austin 1913, rev'd on other grounds, 171 S.W. 707).

Both the Texas courts and the U. S. Court of Appeals for the Fifth Circuit have held that the Railroad Commission is a creature of the Legislature and not of the Constitution. The Dallas Court of Civil Appeals in 1923 in a case termed "well-considered" by the Fifth Circuit, *City of Denison v. Municipal Gas Co.*, (257 S.W. 616, affirmed by the Texas Supreme Court in 3 S.W.2d 794,) held that the Constitution "embodies neither a requirement nor a restriction upon the Legislature as to the creation of a Railroad Commission," and further says:

> Only a strained construction, and one which the words do not import but rather exclude, could shape the language of this section of article 10 into a requirement that the Legislature must establish a Railroad Commission, or any other body exclusively clothed (emphasis added) with the power to deal with the subject over which the Legislature is enjoined therein to exercise its power and authority. The section does not create the Railroad Commission, nor does it require that such office shall be established by the Legislature.

The powers and duties of the Parks and Wildlife Department clearly can be altered by the Legislature:

> The Game and Fish Commission, now State Parks and Wildlife Department, is a creature of the Legislature, possessing only such powers as are delegated to it, expressly and impliedly, by the Legislature. . . . It is elementary

> that the Legislature may withdraw from an administrative agency it has created any or all of the powers delegated, for authority to give includes authority to take away. Moreover, delegated powers may be withdrawn by preemption as well as by express declaration. When the Legislature acts with respect to a particular matter, the administrative agency may not so act with respect to the matter as to nullify the Legislature's action even though the matter be within the agency's general regulatory field.
>
> There is little case law announcing the rule last stated, no doubt because it is self-evident. (*State v. Jackson*, 376 S.W.2d 341 (Tex. Sup. 1964).

VII. Solutions Devised by other States

The varying degrees of regulatory controls and stages of development of a coastal zone management program among the coastal states can be traced to the different geographic characteristics among regions and also to the degree a particular region has been developed for residential, industrial and other commercial uses. In the Gulf Coast area, for example, development of land areas near coastal estuaries has begun only recently, so Texas, Louisiana and Mississippi are only in the study and planning stages of their coastal resource management. On the Atlantic coast, however, pressures of increased population and development have prompted more action from the state legislatures and administrative agencies. Therefore, the Atlantic states have more extensive and comprehensive wetlands programs but aim primarily at protection of the primary valuable resources, not at comprehensive coastal zone management. Because the Pacific coast has few estuaries, the emphasis in that region has tended more toward preservation of the beaches for public use. Under one comprehensive program, however, the San Francisco Bay Conservation and Development Commission has instituted a major regulatory program to supervise development and prevent dimunition of the bay by dredging and landfill. The Great Lakes, because they are composed of fresh water, have no estuaries; therefore, Michigan and Minnesota have exacted zoning statutes primarily to prevent undue erosion aggravated by excessive development of coastal areas. Wisconsin has enacted comprehensive wetlands zoning provisions.

Although coastal states presently are searching for the best manner of protecting their coastal zones, the solutions adopted to date vary greatly within certain discernible trends ranging from total administrative reorganization to admonitions that coastal counties zone unincorporated areas. The acts of a general nature will be discussed first, then those acts designed exclusively for protection of the coastal zone.

A. Administrative Reorganization

A complete administrative reorganization requires major, comprehensive changes in the administrative structure and the applicable statutes. These reorganization programs put all pollution control programs under one agency so that the planning, regulation and enforcement will be comprehensive, not fragmented and piecemeal. The legislatures of Illinois, New York and Washington created a single agency with overall responsibility for environmental quality. The powers of the old agencies, together with additional powers were given the new bodies. In all three states the Governor appoints and can dismiss the principal personnel of the newly-created agency (Environmental Protection Agency in Illinois; Department of Environmental Conservation in New York; Department of Ecology in Washington).

The primary advantage is that responsibility for the actions of these people lies with the Governor, the highest elected official of the State and through him to the electorate. This type of organization decreases the number of special-interest agencies and interagency commissions which have contributed to the inefficiency and ineffectiveness of state pollution and environmental management programs. This system also provides a unified approach for dealing with the federal government, avoiding fragmentation. Grant moneys, study programs, environmentally-oriented development and planning programs are all channeled through this central agency, thus preventing uneconomical duplication of effort and providing coordination and unified direction. In addition to the administering agency, each of these states created an advisory board (Institute for Environmental Quality in Illinois; Council of Environmental Advisors in New York; Ecological Commission in Washington) to advise the Governor on matters of environmental quality. Numerous other states, both coastal and inland, have unified their pollution control efforts and the appendix lists references to the relevant statutes.

B. Environmental Policy Acts

Several states such as Wisconsin, Indiana, California, Maryland and Montana have enacted legislation which announces a State policy to protect the environment and requires preparation of environmental impact statements for certain State projects. These impact statements generally must include the same type of information as is required by the Federal Council on Environmental Quality for NEPA section 102 statements. Wisconsin even requires impact statements for private projects. The California Supreme Court recently ruled that the California Environmental Quality Act (Public Resources Code §§ 21000-21151) governs not only purely governmental projects but also any private activity that is regulated by issuance of government permits so that if the environmental effects might be significant, an environmental impact statement must be prepared. (*Friends of Mammoth v. Mono County*, 4 E.R.C. 1543 (Calif. Sup. Ct. 1972).

C. Land Use Acts

A few states such as Hawaii, Vermont and Colorado have adopted total land use programs. Special commissions, appointed by the Governor, set the criteria for development. The acts rely on local governmental units (principally the counties) to set restrictions by zoning. The Governor or his representative may be authorized to act when the counties refuse to do so. Florida and Virginia have recently enacted programs for designating critical environmental areas.

D. Environmental Protection Acts

Florida, Massachusetts, Indiana, Illinois, Minnesota, Michigan and Washington have adopted legislation to permit state or local officials and even private citizens much opportunity to enforce environmental standards through civil, equitable and criminal suits. These acts primarily serve as procedural guides, and they generally limit the permissible extent of relief available. All of these acts contain statements of procedure by which the Attorney General, any political subdivision of the State (except in Indiana), or any citizen (Massachusetts requires 10 domiciliaries) can institute a civil action (only Illinois and Washington provide a criminal sanction also) against anyone (including State agencies and officials) for violating the terms of the Act. All these acts provide for injunctive relief, and all (except Michigan) require that the complaint be filed first with the State agency responsible for the act or omission complained of or with the natural resources board

of the State. Under the Florida, Illinois, Michigan and Washington acts the plaintiff can recover court costs and attorney fees, and under the Massachusetts law the plaintiff can recover court costs including expert witness fees but excluding attorneys fees. The majority of the acts require the plaintiff to post a $500.00 bond at the discretion of the court. In Florida and Minnesota an action under the statute cannot be maintained if the activity complained of is conducted pursuant to a valid state permit or certification. In Massachusetts and Minnesota the damage caused and complained of must be a violation of a statute, ordinance or regulation whose major purpose is to protect the environment. The Michigan Act, which is the most liberal, declares its purpose is to protect the public trust in the State's natural resources.

E. Site Location Laws

Maine and Delaware have taken very definite measures by enacting statutes to control site location of development projects of a specified size and type. Delaware flatly prohibits construction of heavy industry and port facilities within a 6 mile strip of its coast. (Dela. Code § 7001 et seq.). The Maine statute requires developers and subdividers of developments in excess of 20 acres to notify the Environmental Improvements Commission and demonstrate that the development will have no adverse environmental effect, show that they have the financial and technical ability to meet State air pollution standards, and to receive commission approval prior to development (38 Maine Rev. Stat. Ann. §§ 481-488). The Maine Supreme Judicial Court upheld the constitutionality of the law as being a reasonable exercise of the State's police power. (*In Re Spring Valley Development*, 5 E.R.C. 1127 (Feb. 9, 1973).

F. Wetlands Regulation

The primary method by which States protect their wetlands, marshes and estuaries are regulation of site locations, zoning to restrict development which would adversely affect ecologically sensitive areas, and regulation of dredge and landfill activities in these areas. Some coastal States merely have simple laws requiring permits for proposed dredge and fill activities; other coastal States recently have enacted comprehensive wetlands protection measures.

(1) Simple Dredge and Fill Regulation

New York prohibits any excavation or fill work in navigable waters unless the Natural Resources Commission has ascertained the effect such proposed work would have on navigation, health, safety and natural resources and issued a permit allowing the work. (New York Conservation Laws § 429-b (McKinney 1967).

North Carolina has enacted a statute which appears to be comprehensive but which basically simply requires the riparian owner to apply to the Department of Administration for an easement to conduct landfill activities. This act does, however, contain a statutory declaration of legal effect on property boundaries of fill, accretion and erosion. (N.C. Laws Chap. 146-1).

California requires written permission from the State Lands Commission for any dredge and fill work and erection of structures on State lands submerged beneath navigable waters. (Calif. Public Resources Code, § 6303.1).

(2) Zoning

Those States which have employed some manner of zoning to protect their coastal areas are Delaware, Florida, Hawaii, Wisconsin and Washington.

Florida and Hawaii have statutes which call for the Counties to provide the requisite regulation by establishing land "setback" lines after local public hearings. Prohibited activities (principally dredging and excavation) are not allowed seaward of these lines. The Florida act specifically allows authorization for construction of piers. (Fla. Stat. § 161.053, chap. 280 and Hawaii Rev. Stat. § 205-31).

The Washington Shoreline Management Act requires a permit for all work (with certain exceptions such as single family dwellings not over 35' high) landward 200 feet from the ordinary high water mark (generally the vegetation line) and all marshes, swamps and flood plains. The Act relies extensively on local government to formulate master plans and thereafter enact zoning provisions and administer the necessary regulatory programs. (Wash. Rev. State. ch. 90.58).

Wisconsin has two statutes relating to zoning and protection of shorelands on navigable waters. (Wisc. Stats.

§§ 59.971 and 144.26). The legislature required the Department of Natural Resources to promulgate standards and criteria for shoreland regulation under § 144.26. Section 59.971 permits counties to enact ordinances to meet these criteria by zoning lands within 1000 feet of the normal high-water mark of lakes and ponds and 300 feet from a navigable river or stream. County zoning ordinances must be approved by the Department of Natural Resources, and the Department may enact an ordinance for those counties refusing to do so. The Act declards that to "aid in the fulfillment of the states' role as trustee of its navigable waters" the shoreland zoning regulations:

> . . . [s]hall further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.

In *Just v. Marinette County*, 201 N.W.2d 761 (1972) a case in which riparian owners desired to fill in swampland, the Wisconsin Supreme Court upheld as constitutional these statutes:

> An owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others. The exercise of the police power in zoning must be reasonable and we think it is not an unreasonable exercise of that power to prevent harm to public rights by limiting the use of private property to its natural uses.

The court dismissed the landowner's argument that their property value had been severely diminished, finding that the value was not based on the use of the land in its natural state but on its value for use as a dwelling site after filling. The court held that value based upon changing the character of the land with harm to public rights is not a controlling factor.

Michigan is only in the study and planning stage of its Shorelands Protection and Management Act. The Department of Natural Resources will formulate a master plan and criteria to protect the land, water and submerged lands in close

proximity to the shoreline of a Great Lake or connecting waterway. After adoption of the master plan, cities and counties will zone shoreland uses. (Mich. Stat. § 281.631).

(3) Comprehensive Wetlands Acts

The States of Connecticut, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey and Rhode Island have enacted comprehensive coastal wetlands protection acts. All four acts prohibit dredge and fill activities in marshy areas subject to tidal action without a permit from the specified State agency.

Except for Massachusetts where the Department of Natural Resources establishes the criteria, the wetlands acts themselves establish the criteria of protection of public health and welfare, protection of marine fisheries and wildlife and protection from natural disasters. The Maryland Act even provides for preservation of recreation and aesthetic values.

The Massachusetts scheme provides for the Department of Natural Resources after extensive local public hearings to issue "protective orders" applying to each parcel of land in the wetlands areas to prohibit or restrict any development, alteration or pollution of wetlands. The Act provides exceptions for special use or conditions, primarily small scale use such as boat slips and private beaches. If the Superior Court, upon petition by the affected landowner within 90 days of the issuance of the protective order, finds the protective order to constitute an unreasonable taking, the State can resort to eminent domain proceedings. (Coastal Wetlands Act of 1965, 130 Mass. Gen. Laws Ann. § 105 (1970 Supp.)

The Maryland Wetlands Act distinguishes between State wetlands (land under navigable waters below the line of mean high tide) and private wetlands (all lands not State lands bordering on or under tidal waters subject to periodic tidal action and supporting aquatic growth). The Act requires permits for dredge and fill activities on State-owned lands, and the Secretary of Natural Resources can issue rules and regulations to promote public health and welfare; to protect public and private property; and to protect marine fisheries and wildlife from any harm which might occur from dredging and landfill activities on private lands. Specific lawful uses of wetlands include the exercise of riparian rights on private land to perserve water access and to prevent erosion. (Md. Stat. Art. 66C § 718).

The New Jersey Wetlands Act of 1970 regulates dredging, draining, excavation, dumping, discharge and erection of obstructions on any coastal wetlands without a permit. Anyone violating the act is subject to a $1,000 fine and payment of restoration costs. (N.J. Public Law 1970, Chap. 272).

Rhode Island prohibits all cities, towns, persons and corporations from using restricted coastal wetlands below the mean high water mark without a permit from the Department of Natural Resources. The Department also regulates those activities landward for which there is a reasonable probability of conflict with Department programs, specifically power plants, chemical or petroleum processing, minerals extraction, shoreline protection, sewage treatment, solid waste disposal and shoreline protection. (R.I. Gen. Laws, § 46-23-1)

The Connecticut, Georgia, Maine and New Hampshire statutes follow a similar format. All prohibit dredge, fill, excavation, and drainage activities in wetland areas without a permit. The criteria for all States provide for protection of public health and welfare, marine fisheries and wildlife. The New Hampshire criteria also include recreation and aesthetics. These acts require general notice to the public as well as specific notice for the abutting landowners. Public hearings must be held prior to the granting of the permit. Several of the Acts, to assure with specificity those swamp and marsh areas meant to be included within the Act, name about 15 kinds of marsh grass which might grow therein. In New Hampshire, if on appeal of the applicant the court finds the denial of a permit unreasonable, the court can assess damages against the State, and payment will give the State a "negative easement" designed to prohibit the landowner from conducting unapproved activities. At its option the State through eminent domain can purchase the tract in fee simple. (Conn. Gen. Stat. Ann § 22a-28 (Supp. 1972); Georgia Code Ann., § 45-140; Maine Stat. Title 12, § 4701; New Hampshire Title 12, 483-A:1)

These Acts all may be subject to question as to constitutionality--all may foster situations of "unreasonable taking without just compensation." Indeed, in *State v. Johnson*, 265 A.2d 711 (Maine 1970) the Act itself was upheld as not unconstitutionally vague, but regulations promulgated by a municipality to enforce the Act were struck down on a constitutional question. For a discussion of the questionable constitutional validity of the Georgia Act, see 7 Georgia L. Rev. 563 (1971).

Thus, the three major types of wetlands protection programs are

(a) a permit system applicable to specified activities;

(b) a program of acquisition of wetlands areas threatened by development;

(c) a system of issuing protective or restrictive orders on wetlands areas to limit uses and protect vitality.

Most coastal states combine aspects of these programs, but the model would employ all three methods. The danger of the permit approach exclusive of restrictive orders is that it may allow the area to be eaten away by small concessions to development on a case-by-case basis.

VIII. Conclusion

Texas, although originally one of the first states to be concerned with questions of protection of its coastal areas, still must move forward to achieve true protection of its vast coastal zone. The federal aid which should be available under the Coastal Zone Management Act of 1972 hopefully will provide the final impetus for a complete coastal resource management program for Texas.

APPENDIX I

STATE SHORELANDS AND WETLANDS ACTS

Delaware, Coastal Zone Act, Ch. 7, Title 7 Dela. Code § 7001 et seq. (1971).

Connecticut, Gen. Stat. Ann § 22a-28 (Supp. 1972).

Florida, Coastal Construction Law, Ch. 280 Fla. Stat. § 161.053 ERS.2141 and Environmental Land & Water Management Act of 1972, Env. Rep. Solid 1146:2101.

Massachusetts, Coastal Wetlands Act of 1965, 130 Mass. Gen. Laws Ann § 105 (1970 Supp.).

Georgia Code Ann. § 45-140.

Maryland, Wetlands Myd. Code 66C, § 718 et seq.

Maine, Title 12 § 4701.

Michigan, Shorelands Protection & Management Act, E/R Solid 1211:2121.

New Hampshire, Title 12, § 483-A:1.

Rhode Island, Coastal Resources Management Law, E/R Solid 1301:0201.

Wisconsin, Water Resources Act of 1966, Wisc. Stat. Ann. § 144.26(1).

Hawaii, Shoreline Setback Act, Haw. Rev. Stat. § 205-31.

Washington, Shoreline Management Act, Wash. Rev. Stat. Ch. 90.58, Env. Rep. Solid 1341:2141.

North Carolina Gen. Stat. § 146-6 (b) (c) (1964).

New Jersey Wetlands Act of 1970, ER W/L 851:0201.

New York Conservation Law, § 429-b (McKinney 1967).

APPENDIX II

STATE LAWS FOR CITIZENS' SUITS

Connecticut Environmental Protection Act,
Env. Rep. Air 331:0051.

Florida Environmental Protection Act,
Env. Rep. Air 346:0121.

Illinois Environmental Protection Act,
Env. Rep. Air 366:0101.

Massachusetts Environmental Cause of Action Law,
Env. Rep. Air 406:0201.

Michigan Environmental Protection Act,
Env. Rep. Air 411:0121.

Minnesota Environmental Rights Act,
Env. Rep. Air 416:0201.

APPENDIX III

STATE LAWS REQUIRING ENVIRONMENTAL IMPACT STATEMENT

California Environmental Quality Act, Env. Rep. Air 321:0201.

Connecticut Environmental Protection Act, Env. Rep. Air 331:0051.

Maryland, Citation not yet available.

Nebraska Environmental Protection Act, Env. Rep. Air 436:0101.

New Mexico Environmental Quality Council Act, Env. Rep. Air 456:0061.

New York Environmental Conservation Law, Env. Rep. Water 861:0081.

Rhode Island Coastal Resources Management Council, Env. Rep. Solid 1301:0201.

Washington State Environmental Policy Act, Env. Rep. Air 541:0201.

APPENDIX IV

REORGANIZATION LAWS

Alaska Dep't of Environmental Conservation Act, Env. Rep. Air 306:0101.

Connecticut Environmental Protection Act, Env. Rep. Air 331:0051.

Florida Air & Water Pollution Control Act, Env. Rep. Air 346:0101.

Illinois Environmental Protection Act, Env. Rep. Air 366:0101.

Indiana Environmental Management Act, Env. Rep. Air 371:0201.

Iowa Dep't of Environmental Quality Act, Env. Rep. Air 376:0101.

Minnesota Pollution Control Agency Law, Env. Rep. Air 416:0101.

Nebraska Environmental Protection Act, Env. Rep. Air 436:0101.

New Jersey Dep't of Environmental Protection Act, Env. Rep. Air 451:0081.

New Mexico Environmental Improvement Act, Env. Rep. Air 456:0051.

New York Environmental Conservation Law, Env. Rep. Water 861:0081.

North Carolina Water & Air Resources Act, Env. Rep Water 866:0101.

Ohio Environmental Protection Agency Law, Env. Rep. Water 876:0051.

Pennsylvania Dep't of Environmental Resources, Env. Rep. Water 891: 0051.

South Carolina Pollution Control Law, Env. Rep. Air 506:0101.

Washington Environmental Quality Reorganization Act, Env. Rep. Air 541:0081.

APPENDIX V

MATERIALS ON COMMON LAW REMEDIES

1. Bryson & Macbeth, *Public Nuisance, The Restatement (Second) of Torts, and Environmental Law*, 2 Ecology L.Q. 241 (1972).

2. Comment, *Environmental Law--Expanding the Definition of Public Trust Uses*, 51 N.C.L. Rev. 316 (1972).

3. Comment, *Private Fills in Navigable Waters: A Common Law Approach*, 60 Calif. L.Rev. 225 (1972).

4. Note, *Public Trust Doctrine Bars Discriminatory Fees to Non-Residents for Use of Municipal Beaches*, 26 Rutgers L.Rev. 179 (1972).

5. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L.Rev. 471 (1970).

6. Wade, *Environmental Protection, the Common Law of Nuisance and the Restatement of Torts*, 8 Forum 165 (1972).

APPENDIX VI

COMMENTARIES ON OPEN BEACHES LAW

1. Comment, *California Beach Access: the Mexican Law and the Public Trust*, 2 Ecology L.Q. 571 (1972).

2. Comment, *Public Access to Beaches*, 22 Stan. L. Rev. 564 (1970).

APPENDIX VII

MATERIALS DISCUSSING STATUTES

1. Bartke, *Dredging, Filling & Flood Plain Regulation in Michigan*, 17 Wayne L. Rev. 861 (1971), 18 Wayne L. Rev. 1515 (1972).

2. Beck, *Survey of North Dakota Environmental Law*, 49 N.D.L. Rev. 1 (1972).

3. Binder, *Taking Versus Reasonable Regulations: A Reappraisal in Light of Regional Planning & Wetlands*, 25 U. of Fla. L.Rev. 1 (1972).

4. E. Bradley & J. Armstrong, *A Description and Analysis of Coastal and Shoreland Management Programs in the United States* (Univ. of Michigan Sea Grant Technical Report No. 20, 1972).

5. Brion, *Virginia Natural Resources Law and the New Virginia Wetlands Act*, 30 Wash. & Lee L. Rev. 19 (1972).

6. Comment, *Comments on the California Rule-Making Process and the Effects Thereon of the California Environmental Quality Act of 1970*, 5 U.C.D.L. Rev. 309 (1972).

7. Comment, *Environmental Protection in Illinois: A Comparison of State Laws*, 1973 Urban L. Ann. 353.

8. Comment, *Land-Use Management in Delaware's Coastal Zone*, 6 U. Mich. J.L. Ref. 251 (1972).

9. Comment, *The Laws Pertaining to Estuarine Lands in South Carolina*, 23 S.C.L. Rev. 7 (1971).

10. Comment, *Marylands Wetlands: The Legal Quagmire*, 30 Md. L. Rev. 240 (1970).

11. Comment, *Wetlands Statutes: Regulation or Taking?* 5 Conn. L. Rev. 64 (1972).

12. Cramton & Boyer, *Citizen Suits in the Environmental Field: Peril or Promise*, 2 Ecology L. Q. 407 (1972).

13. Finnell, *Saving Paradise: The Florida Environmental Land and Water Management Act of 1972*, 1973 Urban L. Ann. 103.

14. Heath, *Estuarine Conservation Legislation in the United States*, 5 Land & Water Rev. 370 (1970).

15. Heath, *Estuarine Conservation Legislation in the States*, 5 Land & Water L. Rev. 351 (1970).

16. Howard, *State Constitutions and the Environment*, 58 Va. L. Rev. 193 (1972).

17. Knight, *Proposed Systems of Coastal Zone Management: An Interim Analysis*, 3 Natural Resources Lawyer 599 (1970).

18. Note, *Coastal Wetlands in New England*, 52 Boston U.L. Rev. 724 (1972).

19. Note, *Legislation--The Delaware Coastal Zone Act*, 21 Buffalo L. Rev. 481 (1972).

20. Rice, *Estuarine Land of North Carolina: Legal Aspects of Ownership, Use and Control*, 46 N.C.L. Rev. 779 (1968).

21. Note, *The Minnesota Environmental Rights Act*, 56 Minn. L. Rev. 575 (1972).

22. Note, *Regulation and Ownership of the Marshlands: The Georgia Marshlands Act*, 5 Ga. L. Rev. 563 (1971).

23. Schoenbaum, *Public Rights and Coastal Zone Management*, 51 N.C.L. Rev. 1 (1972).

24. Symposium, *California's Coastline*, 47 Calif. State B.J. 402-426 (1972.

25. Symposium, *Connecticut Conservation and Environmental Quality Law*, 46 Conn. B.J. 376 (1972).

26. Sax & Conner, *Michigan's Environmental Protection Act of 1970: A Progress Report*, 70 Mich. L. Rev. 1003 (1972).

APPENDIX VIII

TEXAS LAW INSTITUTE PUBLICATIONS

Summary of Selected Legislation Relating to the Coastal Zone (published by the Institute).

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Texas Seashore Boundary Law: The Effect of Natural and Artificial Modifications by Carol Eggert Dinkins, 10 Hous. L. Rev. 43 (1972).

Texas Navigation Districts and Regional Planning in the Gulf Coast Area by G. Sidney Buchanan, 10 Hous. L. Rev. 533 (1973).

Legal Assurance of Adequate Flows of Fresh Water into Texas Bays and Estuaries to Maintain Proper Salinity Levels by Corwin Johnson, 10 Hous. L. Rev. 598 (1973).

Reliance on Government Initiative: The Achilles' Heel in Urban Air Pollution, Student Comment, 9 Hous. L. Rev. 999 (1972).

Overview of Texas Land Use Law, by John Mixon (published by and available from the Office of the Governor).

Publications which are no longer available can be ordered from the University of Houston Law Library for the cost of copying.