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OCEAN AND COASTAL LAW PROGRAM
COMMUNITY LEGAL PROBLEM SERVICES

Title: Wetlands-Related Legislation in the
United States

Requested by: Coastal State Agencies

Prepared by: David A. Crowley, Joel G. MacDonald,
and Gary P. Settles, Research Assistants
in Ocean and Coastal Law

Project No. R/L-5 in the University of Miami Sea Grant
Institutional Program

Report No. FY75-4
December, 1974

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Wetlands-Related Legislation in the United States

Introduction

I. General

Recent years have seen a significant increase in the awareness and appreciation of the general public for the condition of the environment and its relation to the quality of human life. Commensurate with this increased concern has been a growing realization of the need to accord special protection to certain areas that have exceptional importance for the environment in general, but which, because of their delicate nature, are seriously threatened by the demands that modern life has placed upon them. One such area is wetlands, more popularly thought of as marshes, swamps, bogs, flood plains, estuaries, and similar names that may or may not be peculiar to given localities.

Wetlands may be inland or coastal, and the water associated with them may be fresh, salt, or brackish. In their natural state they serve a number of important functions for both man and the general environment. For example, by preserving natural drainage, wetland areas help to prevent destructive erosion; to a significant extent, though not unlimited, they act as filters to prevent water pollution; and their unique ability to absorb and hold large quantities of water makes them

useful for flood barriers and storm and hurricane protection. Their water-holding quality also makes them important as a source of replenishment for underground aquifers. Wetlands are also important wildlife sanctuaries; they are nesting and watering sites for many valuable waterfowl, and are important and fertile fish spawning grounds. Coastal wetlands, especially estuarine areas, are extremely important in this last respect. It has been estimated that at least 65 percent of our nation's commercial fish and shellfish resources and most of our marine sport species are dependent upon the estuarine environment during all or part of their life cycle.¹

In their natural state, wetlands and their associated water areas are used by humans for such varied activities as navigation, boating, fishing, swimming, and other recreational uses including simple enjoyment of their natural scenic beauty. They are also used for aquaculture, and they provide natural laboratories for biological and other scientific research.

With varying degrees of alteration of their natural state, often accomplished by dredging fill material from adjacent water bottoms and depositing it on low-lying land areas, wetlands can be made to serve other purposes. Among these are transportation, port and terminal facilities, mining, exploitation of underlying fossil fuels, agriculture, industrial

development, and residential development. Although the earlier listed uses of wetlands in their natural state conflict to some extent with each other, especially when carried on on a large scale, these latter uses whereby the natural state of the wetlands is significantly altered cause by far the most extensive and long-range damage to the wetlands environment. Likewise, the conflict among various uses is maximized when these latter uses are involved.

For example, dredge and fill operations harm plant and animal life in the surrounding waters by outright physical displacement, by destroying food supplies, and by increasing the turbidity of the water; beach erosion is often caused by improperly located structures; and pollution from domestic, industrial, or agricultural sources, or from the extraction of mineral resources, destroys marine and aquatic life in a variety of ways.² Population increases, especially in the coastal region, serve to compound the problem by increasing the demand for commercial residential, and recreational sites, as well as for heavy industries and deep-port facilities. It has been estimated that 45 percent of the American population presently lives within 50 miles of one of the nation's coastlines, and that this figure will increase to 75 percent by the turn of the century.³ In the past, wetlands have been a desirable place to locate many

of these aforementioned sites because the land could be acquired at very low prices, filled inexpensively (often from nearby state-owned lands) and resold at a substantial profit.

Needless to say, this largely unbridled and unregulated development began to result in the destruction and despoliation of large areas of wetlands (a well-known example is the San Francisco Bay area) and state legislatures gradually responded to the cries of public outrage that followed. To date, nearly all coastal states and many inland states have enacted statutes that purport, in one form or another, to protect and regulate the use of at least some portion of their wetlands. Abstracts of these statutes have been compiled in the appendix. Before proceeding to a discussion of their specific provisions and the common problems they all faced, however, a few generalizations can be made about the overall pattern of state regulation of wetlands currently existing in this country.

First of all, it can safely be stated that a tremendous variety exists with regard to the statutes enacted so far. No two states' statutes are exactly alike, although there is a fair amount of similarity within regional areas. Second, some states deal only with state-owned lands, while others deal with state and private lands. Maryland distinguishes between the two, providing stricter controls over the state lands. Third,

different treatment for salt and fresh water wetlands is the general rule, with most states dealing only with one or the other. By far, coastal wetlands have received the most extensive treatment, probably because of the importance of food production in estuarine areas. Freshwater wetlands have received more treatment in inland states than they have in coastal states but this is often as a part of a larger scheme for the preservation of natural areas. The lack of treatment of freshwater wetlands in coastal states is not readily apparent. At least one coastal state, Alabama, still maintains a declared policy that it is in the interest of the general welfare to promote drainage of freshwater wetlands, notwithstanding its enactment of a comprehensive regulatory scheme for coastal wetlands. A few states, notably Connecticut, have separate acts for inland and coastal wetlands. Fourth, some states differentiate their treatment on the basis of navigability of the associated waters, some treating only navigable waters' wetlands and others both navigable and non-navigable. Apparently this distinction, where made, is based on the greater magnitude of the public interest in navigable waterways. Finally, important differences exist among the states with regard to the methods used to define the boundaries of the protected wetlands and the administrative schemes set up to implement and enforce the legislative policy.

These categories merit treatment in somewhat greater detail.

II. The Problem of Definitions

Although nearly everyone has some idea of what a swamp or marsh looks like, delineating their boundaries for legal purposes can present a significant problem, as is evidenced by the variety of approaches used by the different states.

One group of definitions simply includes "wetlands," "swamps," "overflowed lands," etc. as part of a larger system of protected "natural areas" or "open spaces" or some similar term. The agency in charge of regulating such areas is typically charged with the responsibility of surveying and mapping the area, and depositing copies of the surveys and maps with appropriate local planning agencies. This approach is generally followed by the inland states.

A similar approach includes simply a general description of "swamps," "bogs," etc. whose location is to be designated specifically by a particular state commission, for example, the Department of Ecology. This approach is followed by Washington and New York. Also, other states (e.g., Alabama) sometimes provide for a more precise identification of the boundaries of the area subject to the program to be made by the commission in charge of the program.

Connecticut uses a unique classification system for its

inland wetlands: a system based on soil types designated by the National Cooperative Soil Society as poorly drained, very poorly drained, alluvial, and flood plain.

The remainder of the classification systems generally are based on one of the following, or some combination thereof:

- 1) types of vegetation found in the area (usually there is a list of possibilities, the presence of any one of which will suffice);
- 2) specified distance from a certain water level or specified elevation with reference to a certain water level for certain waterways, upon which a navigability restriction may or may not be imposed. In some states these distances may include the flood plain if its distance or area is greater than would otherwise be included. Also, Virginia uses a factor (1.5) multiplied by the tidal range for the elevation rather than an absolute measure;
- 3) subject to tidal action, either naturally or by artificial waterways, or subject to regular or periodic or occasional flooding (storms and storm tides excepted).

(3) appears only in combination with (2) or (1) above, but (2) and (1) may exist alone or in combination with each other. Additionally, some states impose minimum size requirements on the area before it will qualify for protection, and some states include provisions whereby the regulatory agency may include specific areas whose protection it has determined to be necessary

for the protection of fish and wildlife.

The vegetation method has been criticized as being imprecise, but arguably it is quite precise: either an area has a certain type of vegetation on it, or it does not. If the vegetation method were coupled with a minimum size requirement and a suitable method for ensuring that the perimeter of the area in question did not go past the vegetation line, the basis for this objection would seem to disappear. Vegetation classifications have the additional advantage of assuring that the area sought to be protected has biological significance.

Classifications based on distance or elevation from a water line are admittedly precise although those based on elevation may be difficult in practice to ascertain. However, as with any classification based on arbitrary numbers, the area that received the protection may not be coincident with the area that needs protection. This classification may include areas that are not wetlands and exclude areas that are.

Connecticut's method based on soil classification is similar to a classification based on vegetation, since it can be expected that in a natural setting specific types of vegetation will be associated with certain types of soil. It may be somewhat broader, however, since presumably it would include areas in which the vegetation has been destroyed by pollution,

III. Administrative Schemes

One general administrative pattern, with minor variations and exceptions, is used by most of the states having wetlands legislation. Under this pattern a state agency (either existing or newly created) is given authority to promulgate rules and regulations controlling activity in wetlands areas in accordance with a specified state policy which usually refers to the value of the fish, wildlife, natural resources, recreation, etc. provided and protected by the area. The statute may specify permissible uses and activities or prohibited ones. A permit is generally required to engage in prohibited (usually termed "regulated") activities. These activities concern dredging and filling for the most part, but also include major types of construction (minor constructions that do not impede the natural flow of water are usually excepted). The applicant may be required to supply sufficient information regarding the activity to allow the agency to evaluate its ecological impact. Usually a public hearing is required before the state agency or local authorities, at least in the case of major projects. If the hearing is before local authorities, provisions for review by the state agency are generally included. The agency may incorporate conditions or restrictions into the permit in most instances. Finally, provisions to ensure procedural due process

are included, such as administrative or judicial review. Payment may be made to the aggrieved party if it is found that the regulation of the use of the property is so extensive as to amount to a taking of the property without just compensation. The agency may also be authorized to grant a variance in such an instance.⁴

Another method used to regulate wetlands is by zoning. This method is popular among the states bordering on the Great Lakes, but has not been used much elsewhere. The general pattern here is that the state enacts guidelines for the local governmental bodies to follow in establishing zoning regulations in regard to wetlands areas. Usually a certain date is specified for adoption of the regulations. If satisfactory regulations have not been adopted by the deadline date, the state adopts its own for the area. Usually a set of model regulations is published with the zoning enabling act, and these are to be adopted if the local governing bodies do not comply.

A hybrid between the two approaches is used by Virginia. There, specified permissible uses are provided in local zoning ordinances. Any other uses require the issuance of a permit from the local zoning authorities.

Another method, used primarily by inland states, is for a commission to be created that is empowered to acquire fee simple

or lesser interests (including "scenic easements") in lands that it deems appropriate for preservation purposes. Typically these commissions are not granted the power of eminent domain for this purpose. This method is ideal, from a theoretical standpoint, for protecting the private property interests of the landowners, but it would obviously be economically impractical or even impossible for a state having large areas of wetlands in the hands of private property owners.

IV. The "Taking" Issue

A complete discussion of the taking issue and all the theories and refinements the judiciary has given to its application in various instances is beyond the scope of this introduction, but it has received considerable elucidation in the legal literature.⁵ Without oversimplifying, it can probably be safely stated that a taking for wetlands purposes occurs, for which the payment of just compensation is required under the fifth amendment of the U.S. Constitution, when governmental regulation of a landowner's property becomes so extensive as to deprive him of all reasonable (i.e., profitable) use of his property. Some regulation is permissible under the police power (health, safety, morals, and general welfare of the community), but it must not be so extensive as to constitute a taking. Needless to say, where this line is to be drawn has been the subject of considerable

litigation. The most recent decision from a state supreme court, Just v. Marinette County,⁶ has adopted as its test for compensability whether the restrictions restrain harmful conduct or whether they secure a benefit not already enjoyed by society. If the former, no compensation is due; if the latter, compensation must be paid.

The relevant question for wetlands regulation is whether the general validity of state developmental controls in wetlands areas can withstand constitutional attack. At present there is insufficient case law to give a final answer to this question. The courts of Massachusetts, Connecticut, Maine, California and Wisconsin have considered the question, and the more recent decisions seem to offer a cautious "yes" as the answer. This view is supported by most of the prominent commentators in the area.⁷ At any rate, it seems clear that courts will rely on zoning principles to determine the reasonableness of land-use restrictions in wetlands areas. It also seems likely that the following considerations will be important: 1) Whether the statute provides for payment of compensation or issuance of a variance in the event a court finds that a taking has occurred; 2) the extent of the loss to the landowner under the restrictions; 3) whether the land has some use in its natural state, or alternate uses permissible under the statute that have some value;

and 4) whether the owner receives a tax benefit by having his land classified as wetlands.

Finally, it should be pointed out that the mere finding that a taking has occurred with regard to one or even several landowners will not invalidate the statute; the statute itself must constitute unreasonable regulation of the land in question. By merely finding a taking in an individual instance, courts do not deny the usefulness of wetlands regulations; they simply determine that society rather than the individual should bear the costs it has imposed on that piece of land.

F O O T N O T E S

¹ Hearings on Estuarine Areas Before the Subcommittee on Fisheries and Wildlife Conservation of the House Committee on Merchant Marine and Fisheries, 90th Cong. 1st Sess., 29 (1967).

² Ausness, Land Use Controls in Coastal Areas, 9 CALIF. W.L. REV. 391, 394 (1973).

³ Id.

⁴ See id. at 409-10.

⁵ For an excellent discussion of the taking issue and its application to wetlands, see Ausness, supra note 2, at 413-18; Ausness, A Survey of State Regulation of Dredge and Fill Operations in Nonnavigable Waters, 8 LAND & WATER L. REV. 65, 72-91 (1973); Comment, The Wetlands Statutes: Regulation or Taking? 5 CONN. L. REV. 64, 72-99 (1972); 86 HARV. L. REV. 1584 (1973).

⁶ 56 Wis. 2d 7, 201 N.W. 2d 761 (1972).

⁷ See authorities cited supra note 5.

A P P E N D I X

S T A T E W E T L A N D S & R E L A T E D S T A T U T E S

STATES

STATUTES

DEFINITIONS

ALABAMA

Ala. Code Title 2,
§§ 273(1)-273(58)

Alabama Water Management Act (Annexing
Land to District, Title 2, §273(44))

Ala. Code Title 8,
§§ 312-320 (Coastal
Areas of Alabama,
Preservation and
Development)

"Coastal Area" means the 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 U.S. 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. "Coastal waters" means those waters, adjacent to the shoreline, which

Declaration of benefits of drainage--the establishing of proper works of improvement for the drainage of wet, swamp, and overflowed lands of the state, and for flood prevention or the conservation, development, utilization and disposal of water within the state is declared to promote the public health, to aid agriculture and to be in the interest of the public welfare and convenience. The state soil conservation committee is hereby charged with the duty of cooperating with persons desiring to form water management districts and of aiding and advising in such development.

[N]o regulated activity shall affect, subsequent to the effective date of said coastal area administration program, any coastal area without a permit... (\$315 exempts certain areas, activities, etc.) "Regulated activity" means any of the following activities: the dredging, excavating or removing of soil mud, sand, gravel, flora, fauna or aggregate of any kind from any coastal area; the dumping, filling or depositing of any soil, stones, sand, gravel,

Creates an eight-member Alabama Coastal Area Board filled by specified governmental officials. The chairman is chosen by and serves at the will of the governor. The Board has power to promulgate and enforce regulations to develop a comprehensive coastal area administration program in recognition of the national policy expressed in the Coastal Zone Management Act of 1972, which under §317 shall

The purpose of this chapter is to promote, improve and safeguard the lands and waters located in the coastal areas of this state through a comprehensive and cooperative program designed to preserve, enhance and develop such valuable resources for the present and future well-being and general welfare of the citizens of this state. (This policy is expanded in §313, "State Policy")

ALABAMA (Cont'd.)

contain a measurable quantity or percentage of sea water, including but not limited to, sounds, bays, lagoons, bayous, ponds and estuaries. "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The Board shall provide for the development of a comprehensive coastal area administration program...[which] should include at least the following: a. Identification of the boundaries of the coastal area subject to the program....

ARKANSAS

A.S.A. §§9-1401-9-1416 (Supp. 1973)

No definitions.

CALIFORNIA

West's Ann. Pub. Res. Code § 27000 (Supp. 1974)

All state coastal wetlands are included in the definition of coastal zone.

ADMINISTRATIVE SCHEMES

mud, aggregate of any kind or garbage, either directly or indirectly, on or in any coastal areas; killing or materially damaging any flora or fauna on or in any coastal area; and the creation on coastal areas of structures which materially affect the ebb and flow of the tide.

include, inter alia, identification and evaluation of the state's coastal resources, determination of present and potential uses and conflicts, definition of permissible uses and priority of uses, and designation of areas of particular concern within the coastal area. It has power under §316(i) to acquire interests in land by eminent domain when necessary, and to cause the state of Alabama to initiate actions against violators of this chapter under §320.

A state system of natural areas is hereby established; it shall consist of lands, waters, and interests therein acquired and administered as hereinafter provided. Among the categories eligible for inclusion in the system are swamps, overflow lands, flood plains, or wetlands of unusual aesthetic or ecological quality.

The Arkansas Environmental Preservation Commission shall choose lands, waters, and interests to be acquired by purchase, gift, demise, grant, dedication or otherwise, but not by eminent domain. It shall establish and supervise policies, rules, and regulations for the selection, acquisition, management, protection and use of the system.

It is the policy of Arkansas to preserve, to the fullest extent possible, geological, archaeological, paleontological, ecological, biological, and recreational areas and to promote as wide a range of choice as possible among beneficial uses of the environment.

Similar activities as outlined in wetlands statutes are prohibited unless authorized by permit.

This act is administered on a permit system controlled by both state and regional commissions. Permits are issued only if the proposed work is consonant with the overall coastal conservation plan and with state policy set out in the act.

CONNECTICUT

C.G.S.A. §22a-28 to
22a-45 (1974-1975
Supp.)

"Wetland" means those areas which border on or lie beneath tidal waters, such as, but not limited to banks, bogs, salt marsh, swamps, meadows, flats or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters, and whose surface is at or below an elevation of one foot above local extreme high water; and upon which may grow or be capable of growing some, but not necessarily all, of the following: Salt marsh grass, spike grass, black grass, etc.

"Inland Wetlands" means land, including submerged land, not regulated pursuant to sections 22-7h to 22-70, inclusive, of the 1969 supplement to the general statutes, as amended, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and flood plain by the National Cooperative Soils Survey.

No regulated activity shall be conducted upon any wetland without a permit (dredging, filling, construction, etc.)

The commissioner of environmental protection shall make an inventory of all tidal wetlands. Applications are submitted to the commissioner and copies are sent to chief administrative officer of the area of the proposed work as well as to the chairman of the conservation commission and shellfish commission of the area. If the project may have a significant impact on the wetland, a public hearing is held.

Certain permitted operations and uses in these areas are enumerated. Regulated activity must still be regulated by permit.

Commissioner may promulgate such rules and regulations as are necessary to protect these wetlands and watercourses. Any municipality, either by itself or through a board or commission may acquire wetlands and water courses within its territorial limits by gift or purchase, in fee or lesser interest.

The commissioner shall consider the effects of the proposed work with reference to the public health and welfare, marine fisheries, shell fisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in the act.

- a) environmental impact of the proposed action.
- b) alternatives to the proposed action.
- c) relationship between short term uses of the environment and the maintenance and enhancement of long term productivity.
- d) irreversible and irretrievable commitments of resources which would be involved in the proposed activity.
- e) the character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened.
- f) the suitability or unsuitability of such activity to the area for which it is proposed.

DEFINITIONS

STATUTES

STATES

FLORIDA F.S.A. § 166.411

F.S.A. § 170.01

F.S.A. § 253

West. F.S.A. § 373

ADMINISTRATIVE SCHEMES

Municipalities are authorized to exercise the power of eminent domain for reclaiming and filling when lands are low and wet, or overflowed altogether or at times, or entirely or partly.

Any city, town, or municipal corporation may provide for the drainage and reclamation of wet, low or overflowed lands.

The Trustees of the Internal Improvement Trust Fund in whom the title to submerged lands and swamp and overflowed lands rest control by permit the right of any person to fill in such lands. The Trustees can sell this land if it is in the public interest, that is, if the development proposals are consonant with established practice as determined by D.N.R.

The act provides for the division of the state into water management districts. The act is administered by the Div. of Interior Resources of the Dept. of Natural Resources whose task it is to survey the areas and conduct research in water use and quality and prevent salt water intrusion from spoiling fresh water resources. The Dept. shall develop a water use plan to control the use of these waters and related substrate areas. The Dept. may also promulgate rules and regulations

FLORIDA (Cont'd.)

F.S.A. § 375

GEORGIA

G.C.A. §§ 45-136-45-147 (1970)

"Coastal marshlands" means any marshlands or salt marsh in the state of Ga., within the estuarine area of the state, whether or not the tide waters reach the littoral areas through natural or artificial water-courses. Marshlands shall include those areas upon which grow one, but not necessarily all, of the following: saltmarsh grass, black grass, high-tide brush. The occurrence and extent of salt marsh peat at the undisturbed surface shall be conclusive evidence of the extent of a salt marsh or a part thereof.

to carry out the provisions of this act.

The Div. of Recreation and Parks of the Dept. of Natural Resources has the power to develop and execute a comprehensive multipurpose outdoor recreation and conservation plan for this state. The division is empowered and authorized to acquire lands (wetlands), water areas and related resources to implement the provisions of this act.

No person shall remove, fill, dredge or drain or otherwise alter any marshlands in this state within the estuarine area thereof without first obtaining a permit from the Coastal Marshlands Protection Agency.

For any alteration of the marshlands an application for a permit shall be filed with the State Game and Fish Comm. Such application shall include a plan or drawing showing the applicant's proposal, the manner or method by which such proposal shall be accomplished, and a certificate from the local governing body stating that proposal is not violative of any zoning law, ordinance or local restriction. The Commissioner notifies all adjoining landowners of the application. If it's not contrary to public interest, a permit shall be issued.

Considerations are whether or not:

- 1) any unreasonably harmful obstruction to or alteration of the natural flow of navigational water will result;
- 2) any unreasonably harmful or increased erosion, shoaling of channels or stagnant areas of water will be created;
- 3) any unreasonable interference with the conservation of fish, shrimp, oysters, crabs and clams or other natural resources will result, so as to be contrary to public interest.

STATES

STATUTES

DEFINITIONS

HAWAII

15 H.R.S. § 205-2 to
205-37 (1973 Supp.)

"Shoreline" means the upper reaches of the wash of waves, other than storm or tidal waves, usually evidenced by the edge of vegetation growth, or the upper line of debris left by the wash of the waves.

ILLINOIS

S.H.A. Ch. 19

No definition.

IOWA

I.C.A. §§ 111 D.1-
111 D.5 (Supp. 1970)

"Conservation easement" means an easement in, servitude upon, restriction upon the use of, or other interest in land owned by another. It shall be transferable to any other public body authorized to acquire conservation easements; it shall be perpetual unless expressly limited to a lesser term, or unless released by the holder thereof, or unless a change of circumstances shall render such easement no longer beneficial to the public.

PROHIBITED ACTS
AND/OR AUTHORIZATIONS

STANDARDS FOR
USE AND DEVELOPMENT

ADMINISTRATIVE SCHEMES

No one may remove sand, coral, rock, soil, or other beach material for any purpose other than reasonable domestic use, within the shoreline area or within 1000 feet seaward of it or in ocean water 8.30 or less feet in depth. No structure or any portion thereof including but not limited to seawalls, groins, and revetments, shall be permitted within the shoreline area.

This land use commission statute empowers the commission to establish inter alia, conservation districts. The commission has ancillary zoning power and power to set shoreline setback lines which may be pushed back further by the counties.

It is unlawful to make any fill or deposit of rock, earth, sand, or other material, or any refuse matter of any kind or description or build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, bridge, or other structure over, under, or within 50 feet of any navigable water within the Port District without a permit.

The plans, profiles, and specifications for any structure fill, or deposit must be submitted to one of the regional port districts in the state. If approved, the regional port district shall issue a permit.

The state conservation commission, the Iowa Natural Resources council, any county conservation board, and any city or town or agency thereof may acquire conservation easements in land.

The agencies may acquire the conservation easements by purchase, gift, contract, or other voluntary means, but not by eminent domain. A conservation easement shall clearly state the extent and purpose.

Conservation easements may be acquired to preserve scenic beauty, wildlife habitat, riparian lands, wetlands, or forests, promote outdoor recreation, or otherwise conserve for the benefit of the public the natural beauty, natural resources, and public recreation facilities of the state.

LOUISIANA

L.S.A. § 56:1690

Acquisition of Beds and Bottoms by State Park Commission.

L.S.A. §§ 41:1501
et seq.

Lease of Bays and Coves for recreational purposes

L.S.A. §§ 56:1841-
56:1849 (Natural
and Scenic Rivers
System)

"Natural and scenic river" means a river, stream or bayou or segment thereof that is in a free-flowing condition, that has not been channelized, cleared and snagged within the past twenty-five years, realigned, inundated, or otherwise altered and has a shoreline covered by native vegetation and has no or few man-made structures along its banks.

L.S.A. §§ 51:1361-
51:1365
(Louisiana Coast and
Marine Resources Con-
servation and Devel-
opment

The term "coastal zone" shall mean the lands, waters, tide and submerged lands, bays, estuaries, marshes, coastal and intertidal areas, harbors, lagoons, inshore waters, and channels landward of the outer limit of the territorial sea of the U.S. or of the State of Louisiana, or of other waters subject to the jurisdiction of La. where greater than the territorial sea of the U.S., and extending inward to the landward extent of marine influences. The term

No agency of the state government shall authorize or concur in plans of local or federal agencies that would detrimentally affect whether, directly or indirectly, a natural or scenic river or upon which the full and equal consideration of the stream's potential as a natural or scenic area with aesthetic values has not been discussed and evaluated. ... Evaluation of projects affecting natural or scenic streams shall rest upon an agency other than the construction agency.... Channelization, clearing and snagging, channel realignment and reservoir construction of those rivers and streams included within this system are hereby prohibited.

The administrator of this system shall be the Louisiana Wildlife and Fisheries Commission. Neither the administrator nor any state official shall take action to have any stream or river within this system included in the national Wild and Scenic River System without prior approval of the legislature.

This system shall be administered for the purposes of preserving, protecting, developing, reclaiming and enhancing the wilderness qualities, scenic beauties and ecological regimen of certain free-flowing streams or segments thereof. This system shall further be administered for the purpose of preserving aesthetic, scenic, recreational, fish, wildlife, ecological, archaeological, geological, botanical, and other natural and physical features and resources found along these streams or segments thereof.

None. (Merely creates an advisory commission for the purpose of aiding the governor and the legislature in developing a Louisiana Coastal Zone Management Plan.)

\$1363 creates the Louisiana Advisory Commission on Coastal and Marine Resources, composed of 10 members from various areas specifically delineated in the act. These are appointed by and serve at the will of the governor. The Commission's responsibilities under \$1365, inter alia, are to study the interest and

A Louisiana Coastal Zone Management Plan shall be developed so as to contribute, among others, to the following objectives:
1) The orderly and responsible development and utilization of coastal and marine resources;
2) The protection of the values of natural systems

LOUISIANA (Cont'd.)

"landward extent of marine influences" means the area extending landward from the high water mark which in contemplation of human activities and natural ecology may be considered to come under the influence of the adjacent sea.

MAINE

M.R.S.A. Title 12
§ 4701-4709

"Wetland" is defined as any swamp, marsh, bog, beach, flat or other contiguous lowland above extreme low water which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity.

MARYLAND

Md. C.A. Art. 66C
§§ 718-730

"State wetlands" means all land under navigable waters of the state below the mean high tide which is affected by the regular rise and fall of the tide. "Private wetlands" means all lands not considered state wetlands bordering or lying beneath tidal waters which are subject to regular or periodic tidal action and which support aquatic growth.

role of the state of La. in the orderly, long-range conservation and development of the state's coastal zone, marine environment and coastal and marine resources, and the interest and role of the state in developing related research programs necessary to describe and predict ongoing natural phenomena and human activities which relate to the coastal zone, marine environment, and coastal and marine resources.

in the coastal zone, providing for accommodation of developmental uses in ways which minimize destruction of the values of natural systems;

3) The advancement of education, research and training in the marine sciences, and the expansion of human knowledge of the coastal zone, marine environment and coastal and marine resources....

No person, agency or municipality shall remove, fill, dredge or otherwise alter any coastal wetland, or drain or deposit sanitary sewage into or on any coastal wetland without first obtaining a valid permit.

Applications are sent to the local municipal officer and with the Board of Environmental Protection at least 60 days before proposed alteration is to commence. A public hearing is then held.

Approval may be withheld when it would threaten the public safety, health or welfare, would adversely affect the value or enjoyment of the property of abutting owners, or would be damaging to the conservation of public or private water supplies or of wildlife or freshwater, estuarine or marine fisheries.

It shall be unlawful for any person to dredge or fill on state wetlands except with a permit. Also permit required for such activities not permitted by rules on private wetlands.

The Dept. of Public Works in consultation with the Sec. of Natural Resources and with interested state and local agencies and after a public hearing issues a permit if certain criteria are met. The Sec. of Natural Resources may adopt regulations governing dredging and filling.

The Sec. shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, economic benefits, the protection of life and property from flood, hurricanes and other natural disasters and the public policy set forth in this act. A-16

MASSACHUSETTS

M.G.L.A. C.130 § 105

"Coastal wetland" shall mean any bank, marsh, swamp, meadow, flat or other low land subject to tidal action or coastal storm flowage and such contiguous land as the commissioner reasonably deems necessary to affect by any such order in carrying out the purposes of this section.

MICHIGAN

M.C.L.A. §§ 281.631-
281.645 (Supp. 1971)

- (1) "Environmental area" means an area of the shoreland determined by the Dept. on the basis of studies and surveys to be necessary for the preservation and maintenance of fish and wildlife.
- (2) "High risk area" means an area of the shoreland which is determined by the commission on the basis of studies and surveys to be subject to erosion.
- (3) "Land to be zoned" means the land in that state which borders or is adjacent to a Great Lake or a connecting waterway situated within 1000 feet landward from the ordinary high water mark.
- (4) "Shoreland" means the land, water and land beneath the water which is in close proximity to the shoreline of a Great Lake or a connecting waterway.

M.C.L.A. §§ 281.951-
281.965 (Supp. 1972)

"Bottomland" means the land area of an inland lake or stream which lies below the ordinary high-water mark and which may or may not be covered by water.

None.

The Commission of Conservation with the approval of the Board of Natural Resources may adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering or polluting coastal wetlands.

Promotion of the public safety, health and welfare, and protecting public and private property, wildlife, marine fisheries.

The Mich. Water Resources Commission and the Mich. Dept. of Natural Resources shall have made studies of the shoreland to determine the high risk areas, the environmental areas, the areas of the shorelands requiring protection from erosion, and the areas of marshes and fish and wildlife habitat areas which should be protected by shoreland zoning. The Commission and Dept. shall recommend appropriate use regulations to protect high risk areas and environmental areas.

The Commission shall propose a plan for the use and management of shoreland. The plan shall include recommendations which shall provide procedures for the resolution of conflicts arising from multiple use, fostering the widest variety of beneficial uses, provide criteria for the protection of shorelands from erosion or inundation. The recommendations and policies of this plan shall serve as a guideline for establishing zoning ordinances. As of April 1, 1974, counties, cities, villages, and townships were able to zone any shoreland and land to be zoned within their respective jurisdictions. Any zoning ordinances regulating a high risk area or an environmental area shall be submitted to the Commission for approval or disapproval.

Standards have not yet been incorporated into the statute.

A person without a permit from the Mich. Dept. of Natural Resources shall not:
a) Dredge or fill bottomland;

Application for a permit shall be made to the Dept. which submits copies for review to the Dir. of Public Health, the city, lake or stream and upon The Dept. shall consider the possible effects of the proposed action upon the inland

MICHIGAN (Cont'd.)

MINNESOTA

M.S.A. §§ 105.485,
396.03, 396.051
(Supp. 1969)

"Shoreland" means land located within the following distances from the ordinary high water elevation of public water:

- 1) Land within 1000 feet from the normal high water mark of a lake, pond, or flowage;
- 2) Land within 300 feet of a river or stream on the landward side of flood plain delineated by ordinance on such a river or stream, whichever is greater.

MISSISSIPPI

Miss. Code § 57-15-5

Marine Resources Council, Planning for Development and Utilization.

- b) Construct, enlarge, extend, remove or place a structure on bottomland;
- c) Construct, dredge, commence, extend or enlarge an artificial canal, channel, ditch, lagoon, pond or lake or similar waterway where the purpose is ultimate connection with an existing inland lake or stream, or where any part of the artificial waterway is located within 500 feet of the ordinary high water mark of an existing inland lake or stream.

village, or township and the county where the project is to be located, the local soil conservation district, the local watershed council, the local port commission, and those persons required to be included in the application. Unless a written request is filed with the Dept. within 20 days after submission, the Dept. may grant the application without a public hearing where the project is located.

waters from which or into which its waters flow and the uses of all such waters, including uses for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce and industry.

The Commissioner of Natural Resources shall promulgate model standards and criteria, other than a model ordinance, for the subdivision, use, and development of shoreland in municipalities and in unincorporated areas.

The Commissioner shall promulgate model standards and criteria, including but not limited to the placement of structures in relation to shorelines and roads, the placement and construction of sanitary and waste disposal facilities, designation of types of land uses, preservation of natural shorelands through the restriction of land uses, and a model ordinance. Each county and municipality must adopt shoreland conservation ordinances, and if the Commissioner finds that they fail to meet minimum requirements, he shall adapt the model ordinance after a public hearing.

No specific standards are incorporated into the statute.

MISSISSIPPI (Cont'd.) Miss. Code §§49-27-1
et seq.
(Coastal Wetlands Protection Law)

"Coastal wetlands" means 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.

No regulated activity shall affect any coastal wetlands without a permit unless excluded by §49-27-7. ["Regulated activity" means any of the following activities: 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 wetland; killing or materially damaging any flora or fauna on or in any coastal wetlands; and the erection on coastal wetlands of structures which materially affect the eff and flow of the tide. "Dredging" means the removal or displacement by any means of soil, sand, gravel, shells or other material, whether of intrinsic value or not, from coastal wetlands. "Filling" means either the displacement of waters by the deposition into coastal wetlands of soil, sand, gravel, shells or other material; or the artificial alteration of water levels or water currents by physical structures, drainage ditches or otherwise.]

The Miss. Marine Resources Council is vested with exclusive power to review applications for permits to conduct regulated activity under §49-27-9 and grant or deny such permits. It may also impose conditions or limitations on the granting of such permits under §49-27-29. It shall adopt any necessary rules and regulations for implementation of this ch. under 49-27-59. It shall also inspect the coastal wetlands periodically to determine whether violations have been or are being committed under §49-27-63, and it may under §49-27-51 request the attorney general of Miss. to initiate civil and/or criminal actions provided in this chapter against violators.

"It is declared to be the public policy of this state to favor the preservation of the natural state of the coastal wetlands and their ecosystems and to prevent the despoliation and destruction of them, except 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.

STATES

STATUTES

DEFINITIONS

MISSOURI

V.A.M.S §§ 67.870-69.910
(Supp. 1971)

"Open space" or "open area" means any space or area the preservation or restriction of the use of which would...promote conservation of soils, wetlands, beaches or marshes.

NEW HAMPSHIRE

N.H.R.S.A.
C. 483:A:1a-A:6

The areas affected by this act are defined to include: Wherever the tide ebbs and flows it shall apply to all lands submerged or flowed by mean high tide as locally determined, and in addition to those areas which border on tidal waters, such as, but not limited to banks, bays, salt marsh, swamps, meadows, flats or other lowlands subject to tidal action, whose surface is at an elevation not exceeding three and one-half feet above local mean high tide and upon which grow or are capable of growing some, but not necessarily all of the following: salt meadow grass, spike grass, black grass, etc. Wherever fresh water stands or flows and in all areas above tidal waters not included in the above, it shall apply to those portions of great ponds or lakes created by the raising of the water level of the same whether by public or

The state or any county having a population in excess of 200,000, or any county adjoining or city not within but adjoining such county, may expend public funds for any interest in land herein described for the purpose of acquiring, maintaining, improving, protecting, limiting the future use of, or otherwise conserving and properly utilizing open spaces and areas within such counties, or cities, and the acquisition of such interests in land shall be deemed for a public purpose.

The Missouri State Park Board and any county in excess of 200,000 may acquire by purchase gift, grant, bequest, devise, or otherwise, the fee, development right or restrictive covenant, conservation easement, covenant or other contractual right in land or water rights located within such counties or cities. No private property shall be acquired by eminent domain unless the State Park Board or city or county adopt a plan for conservation of open spaces embracing such property hold a public hearing, and receive the report of state or county or city planning agency.

The State Park Board or city or county may acquire interest in land or water rights located within such counties or cities necessary or appropriate to maintain, improve, protect, limit the future use of, or otherwise conserve and properly utilize these open spaces and areas.

No person shall excavate, remove, fill or dredge any bank, flat, marsh, or swamp in and adjacent to any waters of the state without written notice of his intention to excavate, remove, fill or dredge to the water resources board.

Notice is filed with the water resources board and with the town clerk who sends copies to the selectman, mayor or city manager, the municipal planning board and the municipal conservation commission.

Permits are issued if the proposed work is consonant with the funding of public purpose (i.e., public good and welfare) as set out in the act.

NEW HAMPSHIRE (Cont'd.)

private structure and to all surface waters and to their banks or shores and fresh water bogs.

NEW JERSEY

N.J.S.A. 13:9A-1 to
A-10 Supp. 1974-75)

"Coastal wetland" means any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of New Jersey, etc. including those areas now or formerly connected to tidal waters whose surface is at or below an elevation of one foot above local extreme high water, and upon which may grow or is capable of growing some, but not necessarily all, of the following: salt meadow grass, spike grass, black grass, etc.

NEW YORK

E.C.L. 25.0101 et seq.
(Supp. 1974-75)

"Tidal wetlands" shall mean and include:

- a) those areas which border on or lie beneath tidal waters, such as, but not limited to, banks, bogs, salt marsh, swamps, meadows, flats or other low land subject to tidal action, including those areas now or formerly connected to tidal waters;
- b) all banks, bogs, meadows, flats and tidal marsh subject to such tides, and upon which grow or may grow some or any of the following: salt hay, black grass, salt-worts, etc.

E.C.L. 51.0701
(Supp. 1974-75)

Land and lands under water which may be permanently, temporarily or intermittently covered with fresh or salt water and commonly

No person shall conduct any regulated activity (i.e., dredging, filling excavating, construction, etc.) without a permit.

The Commission of Environmental Protection shall make an inventory of all tidal wetlands. He shall also adopt, modify or repeal orders regulating, altering or polluting coastal wetlands. Applications are sent to the commissioner but are open for inspection at the office of the Dept. of Environmental Protection.

The commissioner shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shell fisheries, wildlife, and protection of life and property from flood, hurricane and other natural disasters and the public policy set forth in this act.

No person shall drain, dredge, fill, excavate, remove either directly or indirectly any soil, mud, sand, shell, gravel, or other aggregate from any tidal wetland; dump or deposit, soil stones, sand, gravel, mud, rubbish, or fill of any kind; erect any structures or roads; drive any pilings or place any other obstructions, whether or not they change the ebb and flow of the tide; or conduct any other activity within or immediately adjacent to tidal wetlands which may substantially impair or alter the natural condition of the tidal wetland area.

An inventory of all tidal wetlands shall be drawn up with incidental rules and land use regulations. A moratorium is placed on all tidal wetlands' alteration until the rules and regulations have come into effect. This program is to be a cooperative effort between the commissioner of environmental conservation and affected cities, towns, and counties. Applications are sent to the commissioner and he in turn forwards a copy to the chief administrative officer of the local municipality.

The commissioner shall consider the compatibility of the proposed activity with reference to the public health and welfare, marine fisheries, shell fisheries, wildlife, flood and hurricane and storm dangers, and the land use regulations promulgated under this act.

With money raised by the environmental quality bond act the state is empowered to initiate inter alia, wetlands restoration and preservation projects.

NEW YORK (Cont'd.)

referred to as flood basins or flats, meadows, marshes, shrub swamps, wooded swamps, swamps or bogs.

NORTH CAROLINA

N.C.G.S. § 113.230
(Supp. 1973)

"Coastal wetlands" shall mean any marsh as defined in G.S. 113-229(n)(3) (below); as amended, and such contiguous land as the Director reasonably deems necessary to affect by any such order in carrying out the purposes of that section.

N.C.G.S. § 113-229
(Supp. 1973)

"Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tides reach the marshland 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 grow some, but not necessarily all, of the following salt marsh and marsh plant species: smooth or salt water cordgrass, black needlerush, glasswort, salt grass, sea lavender, bulrush, saw grass, cattail, salt-meadow grass, and salt reed-grass.

The Director of the Dept. of Conservation and Development may from time to time, adopt, amend, modify, or repeal orders regulating, restricting, or prohibiting dredging, filling, removing or otherwise altering coastal wetlands.

The Director before adopting, repealing, etc. any order shall hold a public hearing thereon in the county in which the coastal wetlands to be affected are located, giving notice thereof to interested state agencies and each owner of wetlands. After the adoption of the order, any owner may, within 90 days of receiving notice of any such order, petition the superior court to determine whether such order so restricts the use of his property as to deprive him of the practical uses thereof and is therefore an unreasonable exercise of the police power.

Before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or state-owned lakes, the party or parties desiring to do such shall first obtain a permit from the N.C. Dept. of Conservation and Development.

The purposes are to promote the public safety, health, and welfare, and to protect public and private property, wildlife and marine fisheries.

Application for a permit shall be made to the N.C. Dept. of Conservation & Development; it shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel and the disposal area. All adjoining owners of riparian property shall be served with a copy of the application, and each shall have 30 days to file written objection to the granting of the permit. Permit applications shall be circulated among all state agencies having

The Dept. may deny an application for a dredge and fill permit upon finding:

- 1) that there will be significant adverse effect on the use of the water by the public, or
- 2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owner; or
- 3) that there will be significant adverse effect on public health, safety, and

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DEFINITIONS

NORTH CAROLINA (Cont'd.)

OHIO R.C. §§ 1507.01-
1507.99 (1953) No definition.

OREGON Oregon Laws 1973,
C. 80 No definition.

PENNSYLVANIA 16 P.S.A § 11941 No definition.

jurisdiction over the subject matter of the project. In the absence of findings of adverse effects, a permit shall be granted.

welfare; or

4) that there will be significant adverse effect on the conservation of public and private water supplies;

or

5) that there will be significant adverse effect on wildlife or fresh water, estuarine, or marine fisheries.

No person shall build or construct a beach or erect groins or other structures necessary to arrest erosion along the Ohio shoreline of Lake Erie from the shore into Lake Erie without a permit.

Plans for such structures shall be submitted to the chief engineer of the Dept. of Natural Resources. If such plans are approved by the Dept., it shall issue a permit.

No standards.

Certain "activities" such as dredging, filling, etc. are prohibited unless authorized by permit.

The primary aim of this act is to develop a comprehensive state-wide plan which coordinates land use with outlined state policy and interrelates all functional natural systems and activities relating to the use of the land. This is to be administered by state, county, and local bodies.

No standards.

Counties are empowered to enter into covenants with landowners to preserve such "open space" land as wetlands.

RHODE ISLAND

F.L.R.I. Title 2 § 2-1-13
to 2-1-24 (Supp. 1973)

A "Coastal wetland" shall mean any salt marsh bordering on the tidal waters of the state, whether or not the tide water reaches the littoral areas through natural or artificial water courses, and such uplands contiguous thereto, but extending no more than fifty yards inland therefrom, as the director shall deem reasonably necessary to protect such salt marshes for the purposes of this act. Salt marshes include those areas upon which grow some, but not necessarily all of the following: salt meadow grass, spikegrass, etc. Fresh water wetlands shall include, but not be limited to, marshes, swamps, bogs, rivers, river and stream flood plains and banks, areas subject to flooding or storm flowage, areas where ground water, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for a significant part of the year, that portion of any bank which touches any inland waters.

TEXAS

T.S.A. Art. 5415f

State-owned submerged lands and islands;
sale or leasing of surface estate; moratorium
(expired May 31, 1973)

land lake or stream, or where any part of the artificial waterway is located within 500 feet of the ordinary high water mark of an existing inland lake or stream.

Dept. within 20 days after submission, the Dept. may grant the application without a public hearing where the project is located.

The Commissioner of Natural Resources shall promulgate model standards and criteria, other than a model ordinance, for the subdivision, use, and development of shoreland in municipalities and in unincorporated areas.

The Commissioner shall promulgate model standards and criteria, including but not limited to the placement of structures in relation to shorelines and roads, the placement and construction of sanitary and waste disposal facilities, designation of types of land uses, preservation of natural shorelands through the restriction of land uses, and a model ordinance. Each county and municipality must adopt shoreland conservation ordinances, and if the Commissioner finds that they fail to meet minimum requirements, he shall adapt the model ordinance after a public hearing.

No regulated activity shall affect any coastal wetlands without a permit unless excluded by §49-27-7. ["Regulated activity" means any of the following activities: 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

The Miss. Marine Resources Council is vested with exclusive power to review applications for permits to conduct regulated activity under §49-27-9 and grant or deny such permits. It may also impose conditions or limitations on the granting of such permits under §49-27-29. It shall adopt any necessary rules and regulations for implementation of this ch. under 49-27-59. It shall also inspect the coastal

"It is declared to be the public policy of this state to favor the preservation of the natural state of the coastal wetlands and their ecosystems and to prevent the despoliation and destruction of them, except where a specific alteration of specific coastal wetlands would serve a higher public interest in compliance with the public purposes of the

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DEFINITIONS

MISSISSIPPI (Cont'd.)

Miss. Code § 57-15-5 Marine Resources Council, Planning for
et seq. Development and Utilization.

MISSOURI

V.A.M.S §§ 67.870-67.910
(Supp. 1976)

"Open space" or "open area" means any space
or area the preservation or restriction of
the use of which would...promote conservation
of soils, wetlands, beaches or marshes.

PROHIBITED ACTS
AND/OR AUTHORIZATIONS

STANDARDS FOR
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ADMINISTRATIVE SCHEMES

Any person desiring to acquire rights in the surface estate in any coastal public land shall make application in writing to the board in the form prescribed by the board.... The board may grant the following interests in coastal public lands for the indicated purposes:

- 1) Leases for public purposes [recreation, estuarine preserves, wildlife refuges, scientific research];
- 2) Easements for purposes connected with ownership of littoral property [construction of piers and other structures];
- 3) Permits authorizing limited continued use of heretofore unauthorized structures on coastal public lands, not connected with ownership of littoral property [subject to specific policies, conditions, and exceptions laid out in §10];
- 4) Channel easements to the holder of any surface or mineral interest in coastal public lands, for purposes necessary or appropriate to the use of such interests.

The School Land Board is hereby designated the executive agency of the state charged with the administration, implementation, and enforcement of the provisions of this Act. The planning division and other staff of the General Land Office shall assist the board in the discharge of its responsibilities and duties under this Act; and the commissioner is authorized to employ such additional personnel in the General Land Office as may be necessary for the board to perform such functions effectively.

The surface estate in the coastal public lands of this state constitutes an important and valuable asset dedicated to the permanent school fund and to all the people of Texas. It is the declared policy of this state that such estate be managed pursuant to the following policies:

- a) The natural resources of the surface estate, including natural aesthetic values and value for the protection and nurture of all types of marine and wildlife, shall be preserved.
- b) Public uses take priority over uses limited to fewer individuals.
- c) The public interest in navigation in the intracoastal waters shall be protected.
- d) Unauthorized use of coastal public lands shall be prevented.
- e) Development of the surface estate now allowed unless the public interest is not significantly impaired thereby.
- f) Leaseholds and lesser interests or exchange of coastal public lands for littoral property are the only surface estates in coastal public lands that

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DEFINITIONS

TEXAS (Cont'd.)

T.S.A. Art. 4413(38) (Coastal and Marine Council)	None.	(Merely creates an advisory board.)
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VIRGIN ISLANDS

12 V.I.C §§ 401-407 (Supp. 1971)

"Shorelines" mean the area along the coast-
lines of the Virgin Islands from the seaward
line of low tide, running inland a distance
of fifty (50) feet; or to the extreme seaward

shall be alienated.
g) Vested rights shall be protected subject to the police power.

None.

The Texas Coastal and Marine Council is created in §1 to cooperate and assist in the comprehensive assessment and planning for coastal resources management and other marine-related affairs affecting the state. It shall, under §3, serve as an advisory body to cooperate with and assist the legislature, state and federal agencies, and political subdivisions with respect to the above. It consists of 16 members, 4 of whom are appointed by the governor and 6 of whom are appointed each by the Lt. governor and the Speaker of the House of Representatives from specified areas under §2. The council chooses its own director, who serves at the will of the council [§3(e)], and it may hold public hearings [§3(b)] and may carry out such activities as may be deemed necessary or desirable in furtherance of the purposes of this Act [§3(h)].

No person, firm, corporation, association or other legal entity shall create, erect, maintain, or construct any obstruction, bar-

The Dept. of Conservation and Cultural Affairs shall maintain and supervise the shoreline, shall promulgate rules

Standards are:

1) will not interfere with the right of the public individually and collec-

VIRGIN ISLANDS (Cont'd.)

boundary of natural vegetation which spreads continuously inland; or to a natural barrier; whichever is the shortest distance. Wherever the shore is extended into the sea by filling or dredging, the boundary of the shoreline shall remain at the line of vegetation as previously established.

12 V.I.C. §§ 121-125
(1965)

"Natural watercourse" means any stream with a reasonably well-defined channel, and includes streams which have a permanent flow, as well as those which result from the accumulation of water after rainfalls and which regularly flow through channels formed by the force of the water.

VIRGINIA

V.C.A. §§ 62.1-13.1-
62.1-13.20 (Supp. 1972)

"Wetlands" means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in the county, city, or town in question; and upon which is growing on July 1, 1972, or grows thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass, saltmeadow hay, saltgrass, black needlerush, saltwort, sea lavender, marsh elder, groundsel bush, wax myrtle, sea oxeye, arrow arum, pickerelweed, big cordgrass, rice cutgrass, wildrice,

PROHIBITED ACTS
AND/OR AUTHORIZATIONS

rier, or restraint of any nature whatsoever upon, across or within the shorelines which would interfere with the right of the public individually and collectively, to use and enjoy any shoreline. No sand, rock, mineral, marine growth or other natural product of the ocean, excepting fish and wildlife, shall be taken from the shorelines without a permit.

No landowner or other person shall cause or aid in the cutting or injury of any tree or vegetation within 30 feet of the center of any natural watercourse, or within 25 feet of the edge of such watercourse, whichever is greater, without the written permission of the Commissioner of Agriculture.

The following uses of and activities on wetlands are permitted, if otherwise permitted by law:

- a) the construction and maintenance of non-commercial catwalks, piers, boathouses, fences, duckblinds, wildlife management shelters, footbridges, etc., provided they are constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the marsh;
- b) cultivation and

ADMINISTRATIVE SCHEMES

and regulations governing their use, shall classify the use of all areas on the shoreline, and may issue permits for shoreline construction.

The Commissioner of Agriculture must issue written permission in order to cut or injure trees or vegetation adjacent to watercourses.

Counties, cities, and towns are authorized to adopt a model ordinance for zoning wetlands to set forth activities and uses permitted on wetlands. The recommended model is set forth in the statute. For uses other than those permitted, an application for a permit must be filed with the local wetlands board. It shall include a detailed description of the

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USE AND DEVELOPMENT

tively, to use and enjoy any shoreline;

- 2) any structure erected will be open to the free passage of the general public;
- 3) will not jeopardize the public need for healthful, safe, and esthetic surroundings and environment;
- 4) similar construction is impossible on alternative sites above the line of vegetation of the shoreline.

The Commissioner shall grant such permission only where it appears to him that the proposed cutting or injuring is necessary for purposes of access to, or development of, the property.

The following standards shall apply to the use and development of wetlands:

- 1) Wetlands of primary ecological significance shall not be altered so that the ecological systems in the wetlands are unreasonably disturbed;
- 2) Development in Tidewater Virginia, to the maximum extent possible, shall be concentrated in wetlands of

VIRGINIA (Cont'd.)

bulrush, spikerush, sea rocket, southern wildrice, cattails, threesquares, button-bush, bald cypress, black gum, tupelo, dock, yellow pond lily, marsh fleabane, royal fern, marsh hibiscus, beggar's ticks, smartweeds, arrow-head, sweet flag, and switch grass.

The wetlands of Back Bay and its tributaries shall mean all marshes subject to regular or occasional flooding by tides, including wind tides, provided this shall not include hurricane or tropical storm tides and upon which one or more of the above vegetation species are growing or grows thereon subsequent to the passage of this amendment.

WASHINGTON

R.C.W.A. 90.58
(Supp. 1973)

"Wetlands" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; and all marshes, bogs, swamps, floodways, river deltas, and flood plains associated with the streams, lakes and tidal waters which are subject to the provisions of this chapter.

PROHIBITED ACTS
AND/OR AUTHORIZATIONS

harvesting of shellfish and worms; c) noncommercial outdoor recreational activities; d) cultivation and harvesting of agricultural or horticultural products, grazing and haying; e) conservation, repletion, and research activities of conservation agencies; f) the construction or maintenance of aids to navigation authorized by governmental authority; g) emergency decrees of health officers; h) normal maintenance, repair or addition to presently existing roads, highways, etc. provided that no waterway is altered and no additional wetlands are covered. Any person who desires to use or develop any wetland within the county, city, or town other than for those activities specified above, shall first file an application for a permit with the wetlands board and shall send copies to the Commission and the Virginia Institute of Marine Sciences.

No development (dredging, filling, dumping, construction) is permitted except where authorized by a permit.

STANDARDS FOR
USE AND DEVELOPMENT

ADMINISTRATIVE SCHEMES

proposed activity and a map of the wetlands affected; the location, width, depth and length of any proposed channel and disposal area; the primary purpose of the project and any secondary purposes, including further projects; the public benefit to be derived from the project; and a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects. After holding a public hearing the board shall vote on it. Until the county, city, or town adopts the wetlands zoning ordinance, applications are to be filed with the Va. Marine Resources Commission.

lesser ecological significance, in wetlands which have been irreversibly disturbed before July 1, 1972, and in areas of Tidewater Virginia apart from the wetlands.

Wetlands are just a part of the Shoreline Management Act which provides for local and state cooperation in developing a master plan for the shoreline by development of local programs by municipalities which are tendered to state for approval. This approval is based on the guidelines and policy set forth in the act. The standards are primarily those embodied in other wetland legislation and in addition, the recognition and protection of statewide interest over local interest, preservation of the natural character of the shoreline, the resulting long term over short

WASHINGTON (Cont'd.)

WISCONSIN

W.S.A. §§ 144.26 (1965);
59.971 (Supp. 1965);
59.91

"Shorelands" are all lands within the following distances from the normal high water elevation of navigable waters as defined in 144.26(2)(d): 1000 feet from a lake, pond, or flowage; 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater. If the navigable water is a glacial pothole lake, the distance shall be measured from the high watermark thereof.

"Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages, and other water within the territorial limits of this state, including the Wisconsin portion of boundary waters which are navigable under the laws of this state.

term benefits, increasing public access to publicly owned areas of the shoreline, and increasing recreational opportunities for the public in the shoreline.

To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans and authorize municipal shoreland zoning regulations for the efficient use, conservation, development, and protection of this state's water resources. The regulations shall relate to lands under, abutting or lying close to navigable waters.

The Wis. Dept. of Natural Resources shall make studies, establish policies, and prepare a comprehensive plan or a guide for the application of municipal ordinances regulating navigable waters and their shorelines. The plan shall be based on a use classification of navigable waters and their shorelands throughout the state. The Dept. shall consult with the governing bodies of municipalities to secure voluntary uniformity of regulations so far as practicable. By January 1, 1968, all counties must by ordinance have zoned all shorelands in their unincorporated areas within the distances set out in the shorelands definition. These ordinances shall not require approval or be subject to disapproval by any town or town board. If any county hasn't adopted an ordinance or if the Dept. determines that the adopted ordinance fails to meet minimum standards, the Dept. shall adopt such an ordinance.

Standards:

- 1) Domestic uses shall be generally preferred;
- 2) Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source;
- 3) Areas in which the existing or potential economic value of public, recreational or similar uses exceeds the existing or potential economic value of any other use shall be classified primarily on the basis of the higher economic use value;
- 4) Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility;
- 5) Use dispersion within an area shall be preferred over concentrations of uses or their undue proximity to each other.

