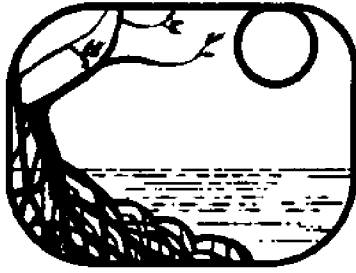


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Wetlands-Related Legislation In the United States

PREPARED BY:

Walter P. Stepien Jr.
Segundo J. Fernandez

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COMMUNITY LEGAL PROBLEM SERVICES
OCEAN AND COSTAL LAW
UNIVERSITY OF MIAMI
SCHOOL OF LAW

SEA GRANT
SPECIAL REPORT #11
MAY, 1977

Sea Grant Special Report No. 11

**WETLANDS-RELATED LEGISLATION IN THE
UNITED STATES**

Community Legal Problems Service

Ocean and Coastal Law

University of Miami School of Law

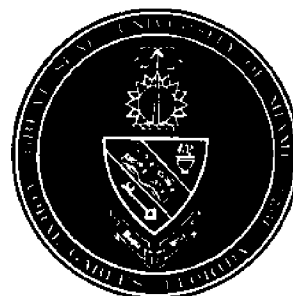
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WALTER P. STEPIEN, SEGUNDO J. FERNANDEZ

Research Assistants in Ocean and Coastal Law

An Update of a 1974 report prepared by
David A. Crowley, Joel G. MacDonald,
and G. Patrick Settles



University of Miami
School of Law

OCEAN AND COASTAL LAW PROGRAM
COMMUNITY LEGAL PROBLEM SERVICES

Title: Wetlands-Related Legislation in the
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Law

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

March, 1977

Wetlands-Related Legislation in the United States

Introduction

I. General

There has been a significant increase in public awareness and appreciation of the condition of the environment and its relation to the quality of human life in recent years. Commensurate with this increased concern is expression of a growing realization of the need to accord special protection to certain areas that have exceptional importance for the environment and which, because of their delicate nature, are seriously threatened by the demands that modern life places 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 and New York, 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.

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 mean 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.⁵ 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" and "conservation easements," such as adopted by Florida) 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.⁶ 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 Amendment XIV (due process) of the U.S. Constitution, when state regulation of a landowner's property becomes so extensive as to deprive him of all reasonable (i.e., economic) 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 Wisconsin Supreme Court, in Just v. Marinette County,⁷ 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, Maryland, Maine, California and Wisconsin have considered the question, and the more recent decisions seem to offer a cautious "yes" as the answer.⁸ This view is supported by most of the prominent commentators in the area.⁹ 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 necessarily invalidate the statute; invalidation occurs only if the statute itself constitutes 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 particular 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 In Connecticut, however, the courts have held that the state has preempted all authority over tidal wetlands and that local zoning ordinances conflicting with state regulation are void. Lauricella v. Planning and Zoning Board of Appeals of Town of Greenwich, 32 Conn. Sup. 104, 342 A.2d 374 (1974).

⁶ 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); Binder, Taking versus Reasonable Regulation: A Reappraisal in Light of Regional Planning and Wetlands, 25 U.Fla.L.Rev. 1 (1972); Comment, The Taking Issue: Potential Obstacle to Natural Resource Management Legislation, 54 Ore.L.Rev. 67 (1975).

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

⁸ See, e.g. C.E.E.E.D. v. California Coastal Zone Conservation Commission, 43 Cal. App. 3d 306, 118 Cal. Rptr. 315 (1974); Potomac Sand & Gravel Co. v. Governor of Maryland, 266 Md. 358, 293 A.2d 241, cert. denied 409 U.S. 1040 (1972).

⁹ See authorities cited supra, note 6.

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

** Indicate enactments
since December, 1974,
publication.

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

development.
regulated activity shall
at, subsequent to the effec-
date of said coastal area
administration program, any
area without a permit...

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es a eight-member
Coastal Area Board
by specified govern-
officials. The
is chosen by and
at the will of the
The Board has
to promulgate and en-
regulations to develop
prehensive coastal area
restoration program in
tion of the national
expressed in the Coas-
one Management Act of
which under \$317 shall

The purpose of this chapter
is to promote, improve and
safeguard the lands and
waters located in the coas-
tal areas of this state
through a comprehensive and
cooperative program designed
to preserve, enhance and de-
velop 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")

AND/OR AUTHORIZATIONS

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STATES

STATUTES

DEFINITIONS

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

No definitions.

CALIFORNIA

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

All state coastal wetlands are included in the definition of coastal zone. "Coastal Zone" extends seaward to the outer limit of state jurisdiction, including all islands, and inland to the highest elevation of the nearest coastal mountain range or, in certain counties, 5 miles from the mean high tide line. "Development" means the placement of any structures; discharge of any material,

PROHIBITED ACTS
AND/OR AUTHORIZATIONS

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.

ADMINISTRATIVE

SCHEMES

include, inter-cation and ear alia, identifi- state's coasw, lation of the determinational resources, potential uses of present and definition of s and conflicts, and priority pmissibile uses nation of areaf uses, and desig- concern withas of particular It has power et the coastal area. acquire inter under \$316(i) to eminent domainests in land by and to cause t when necessary. bama to initiate he state of Ala- violators of ate actions against \$320. This chapter under

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.

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

The Arkansas

Heritage Natural Commission shall choose lands, Commission shall interests to Waters, and purchase, gifts acquired by dedication or, demise, grant, not by eminent otherwise, but shall establish domain. It policies, rules, and supervise tions for these, and regula- sition, management, acqui- sition, management, protection and use of thment, protection of system.

This act is a permit system administered on a both state and controlled by missions. Per regional com- only if the permits are issued consonant with proposed work is coastal conse, the overall with state potvation plan and the act. Policy sec out in

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.

Objectives of the legislation include the maintenance, restoration and enhancement of the overall quality of the coastal zone environment, including its amenities and aesthetic values, and the continued existence of

CALIFORNIA (Cont'd.)

grading, dredging or extraction of any material; change in density or intensity of use, including subdivision and lot splits.

** West's Ann. Pub. Res.
Code § 5001.6 (Supp.
1976)

Establishes "State Seashores" which are coastline areas with frontage on the ocean or bays possessing outstanding natural or scenic characteristics, as well as recreational, historical archaeological or geologic values. May include underwater areas within them, but not solely. Ten such seashores established by 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.

optimum populations of all species of living organisms.

Improvements undertaken shall be for the purpose of making the areas available for public enjoyment, recreation and education; all others are prohibited. Improvements must enhance the values for which the state seashore was created.

Shall be administered by the State Park and Recreation Commission; shall consist of units acquired by the park system.

The purpose of state seashores shall be to preserve outstanding natural, scenic, cultural, ecological and recreational values of the California coastline.

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.

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.

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

- 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.

CONNECTICUT (Cont'd.)

DELAWARE

** Del. Code Title 7,
§§ 6601-20 (1975)

Wetlands are lands above mean low water and at or below an elevation of 2 feet above local mean high water, which now or within this century have been subject to tidal action or connected to tidal waters, and which are capable of growing any one of an enumerated list of vegetations. Also included are freshwater swamps, bogs, or marshes of over 400 acres not currently used for agriculture, upon which fresh water stands most of the time, and which would require intensive artificial drainage for agricultural use.

purchase, in fee or lesser interest.

- 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.

Any activity in wetlands requires a permit unless specifically exempted. No permit will be granted until the local government zoning approval has been obtained. "Activity" is defined as any dredging, draining, filling, bulkheading, and construction of any kind. Exempted are authorized mosquito control activities, directional aids to navigation, duck blinds, footbridges, boundary stakes, wildlife nesting structures, grazing of domestic animals, haying, hunting, fishing and trapping. Expansion and extension of preexisting uses are treated in the same manner.

Administration is by the Department of Natural Resources and Environmental Control. All wetlands are to be inventoried and designated on official maps after public hearing. Upon receipt of a permit application the Department will advertise it and may hold a public hearing. Environmental and aesthetic impact, land use, impact of support facilities, effective on comprehensive planning, and economic effect must be considered before issuance of a permit. Appeal is to a Wetlands Advisory Board and then to the courts.

The coastal area of Delaware is declared to be the most critical area for present and future quality of life, and preservation of coastal wetlands to be crucial to this end. The public policy of the state therefore is to preserve and protect the public and private wetlands and to prevent their despoilation and destruction consistent with the historic right of private ownership of lands.

STATES

STATUTES

DEFINITIONS

FLORIDA

**

F.S.A. § 161

"Coastal construction" includes any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore processes.

F.S.A. § 166.411

F.S.A. § 170.01

**

F.S.A. § 177.25 et seq.

The Coastal Mapping Act standardizes definitions for "apparent shoreline", "mean high water line", and establishes the mean high water line as the boundary between privately owned uplands and state sovereignty lands.

F.S.A. § 253

The permitted uses and operations are enumerated. Upon the establishment of coastal construction setback lines, coastal construction is thereafter prohibited except as provided; driving on or over sand dunes and damage to it or the vegetation growing seaward is specifically prohibited.

A permittee may not:
Natural Resources
constructive
Trust
Beach and Seaside Schemes

STANDARDS FOR
USE AND DEVELOPMENT

SCHEMES

Districts are established by ordinance. The Department of Planning and Community Development has the authority to issue permits for the use of land in the following categories:

Municipalities are created and to exercise the power of eminent domain for the preservation of lands when lands are preserved or are overflown or entirely.

Any city, town or village may exercise the power of eminent domain for the preservation of lands when lands are preserved or are overflown or entirely.

D.N.R. is the state agency. A program is provided for the and surveying of lands owned by the State.

The Trustee of the Improvement the title to swamp and or control by any person The Trustee of the Improvement

No map or survey prepared after enactment of the act shall be admissible as evidence in any legal proceeding unless it is made in accordance with the standards prescribed by the

Trustee of the Improvement
Trustee of the Improvement
Trustee of the Improvement

FLORIDA (Cont 'd.)

** F.S.A. § 258

"Aquatic Preserve" means an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition. These may be set up for biological, aesthetic, or scientific reasons.

West. F.S.A. § 373

if it is in the public interest, that is, if the development proposals are consonant with established practice as determined by D.N.R. [Note: These powers, duties & functions of the Board of Trustees of the Internal Improvement Trust Fund were transferred to the Departments of Natural Resources and Environmental Regulation by Fla. Session Laws ch. 75-22, §§ 10, 15 (1975)]

No further dredging and filling of submerged lands shall be approved except in certain limited circumstances after permitting by the Board of Trustees of the Internal Improvement Trust Fund. Drilling, mining, and other private activities are also excluded.

The aquatic preserves shall be administered by the Board of Trustees of the Internal Improvement Trust Fund. The Board may designate additional areas other than those in the statute, subject to confirmation by the legislature.

It is the intent of the legislature that the state-owned submerged lands in areas which have exceptional biological, aesthetic and scientific value be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations.

The act provides for the division of the state into water management districts. The act is administered by the Dept. of Environmental Regulation 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 to carry out the provisions of this

FLORIDA (Cont'd.)

F.S.A. § 375

** F.S.A. § 380

"Development" means the carrying out of any building or mining operation or the making of any material change in the use or appearance of any structure on land and the dividing of land into three or more parcels. The act also defines "areas of critical state concern" and "developments of regional impact."

PAGINAL ERROR

NO PAGE A-14 and A-15

development will be generated; and
f) the unique qualities of particular areas of the state.

A conservation easement may prohibit or limit any number of activities, including construction, dumping, removal of vegetation, excavation and dredging or acts or activities detrimental to the land or water areas.

Conservation easements may be acquired by any governmental body or agency in the same manner as other interests in property except by eminent domain.

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 Department of Natural Resources.

For an alteration of the marshlands an application for a permit shall be filed with the Bd. of Natural Resources, Coastal Marshlands Protection Committee. 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 Committee 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. § 205A-1 to
205A-32 (1975 Supp.)

"Development" includes activities of a total cost exceeding \$25,000, including construction waste discharge, dredging, grading and extrac- tion of materials, change in density or inten- sity of use, including subdivision.

15 H.R.S. § 205-2 to
205-37 (1975 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.

PROHIBITED ACTS
AND/OR AUTHORIZATIONS

STANDARDS FOR
USE AND DEVELOPMENT

ADMINISTRATIVE SCHEMES

Similar activities as outlined in coastal zone management acts are prohibited unless authorized by permit.

The Department of Planning and Economic Development prepares the Coastal Zone Management Program. The state Land Use Commission has the authority to administer land and water use regulations in coastal zones as well as control development. The state and counties are empowered to obtain land in fee simple to achieve conformance with the coastal zone plan. Special management areas may be designated.

The effective planning, management, beneficial use, protection and development of the coastal zone.

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 interalia, conservation districts. The Commission has ancillary zoning power and power to set shoreline setback lines which may be pushed back further by the counties.

ILLINOIS

S.H.A. Ch. 19, § 65

No definition.

** S.H.A. Ch. 19, §§ 1141-1146
(Supp. 1975)

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.

** I.C.A. §§111B.1 to
111B.13 (Supp. 1975)

A "state preserve" means an area of land and/or water dedicated under this statute for maintenance as nearly as possible in its natural state which has unusual flora,

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 Division of Water Resource Management of the Dept. of Transportation is to conduct studies with the view of preventing erosion of the shore of Lake Michigan and enter into such projects with federal and state agencies.

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.

A State Board is created which may recommend acquiring lands and/or waters and designate them as state preserves to be

IOWA (Cont'd.)

fauna, geological, archeological, scenic or historical features of scientific or educational value.

LOUISIANA

** L.S.A. §§ 34:3101-
34:3116

Creation of a State Offshore Terminal Authority. "Coastal Waters of Louisiana" are defined as "those waters extending three nautical miles from the coastline, or beyond to the extent of the jurisdiction of the State of Louisiana."

L.S.A. §§ 41:1501
et seq.

Lease of Bays and Coves for recreational purposes.

** L.S.A. §§ 49:213.1-
49:213.6

State and Local Resources Management Act establishes the Louisiana Coastal Commission for the purpose of aiding the legislature in developing coastal zone management programs.

held in public trust; acquisition is by the state conservation commission.

The Authority has exclusive jurisdiction over all phases of growth and development of offshore terminal facilities; the Authority has the right to acquire, lease, sublease, grant, purchase or otherwise over coastal waters, water bottoms or wetlands or other lands in order to effectuate offshore terminal development. Throughout all aspects of offshore terminal development an environmental protection plan shall be adopted and followed.

A purpose of the Act is to "protect environmental values and Louisiana's unique coastal marshland ecosystem through the adoption of an environmental protection plan."

The Register of the State Land Office may lease on behalf of the state any state submerged lands to only local government or state agency for public recreational purposes.

None

\$213.2 establishes the Commission, composed of 21 members from various areas specifically delineated in the Act, representing parishes, industry, landowners, and conservationists. The ownership, construction, and operation of offshore terminal facilities are to be considered within the state and local coastal resources management program.

LOUISIANA (Cont'd.) L.S.A. § 56:1690

Acquisition of Beds and Bottoms by State Park Commission.

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.

MAINE

** Tit. 38 § 471-478

"Coastal wetland" is defined as all tidal and subtidal lands including all areas below any identifiable debris line left by tidal action, all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water habitat, and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity.

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.

No dredging, filling, draining or other construction may be done in any coastal wetland without first obtaining a permit from the Board of Environmental Protection.

The state's Board of Environmental Protection is to administer the permitting program.

Permits may be granted if the applicant demonstrates to the satisfaction of the Board that its activity will not unreasonably interfere with existing recreational and navigational uses; nor cause unreasonable soil erosion; nor unreasonably interfere

STATES _____ S

MAINE (Cont'd.)

** Tit.

MARYLAND _____ ** Md.
§ 8-

with the natural flows of any waters, nor unreasonably harm wildlife or freshwater, estuarine or marine fisheries; nor lower the quality of any waters.

The legislature, from time to time, may designate certain coastal islands or groups of coastal islands for inclusion in coastal island trusts, to be administered by coastal island trust commissions. These commissions are to develop and maintain comprehensive plans to preserve, restore, utilize, and develop the commercial, natural, historic and recreational values of the islands in the trust.

Any land clearing or construction is prohibited in the Beach Erosion Control District unless approved by the Department of Natural Resources and only for maintenance projects designed to benefit the District.

A Beach Erosion Control District is created, to be administered by the Dept. of Natural Resources.

To protect the Atlantic Coast beaches of the State and the Beach Erosion Control District, and maintain the integrity and continuity of the dunal system, to provide for shore erosion and sediment control and storm protection, and to minimize structural interference with the littoral drift of sand and any anchoring vegetation.

MARYLAND (Cont'd.) ** Md. Ann. Code N.R.
 §§ 9-101 et seq.

"State wetlands" means any land under tidal waters of the state below the mean high tide, affected by the regular rise and the tide. "Wetlands" of this category come "private wetlands" upon valid conveyance by the state. "Private wetlands" means land not considered "state wetland" bordering on or lying beneath tidal waters, which is subject to regular or periodic tidal action and supports aquatic growth.

MASSACHUSETTS

M.G.L.A. C.130 § 105

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

** M.G.L.A. C.132A
 §§ 13-16

Four ocean and coastal sanctuaries are established: Cape Cod Ocean Sanctuary, Cape Bay Ocean Sanctuary, Cape and Islands Ocean Sanctuary and North Shore Ocean Sanctuary.

Marsh,
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PROHIBITED ACTS
AND/OR AUTHORIZATIONS

No dredge or filling permitted without a license. Riparian owners may not be deprived their riparian rights.

are
for
Con-
large

No construction in coastal lands of access driveways unrestricted land unless allows the flow of the tide

permitted
A number of prohibited activities enumerated in each section of each sanctuary, including construction, removal of sand gravel, or minerals, discharge of any waste, and commercial advertising.

Management may adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering or polluting coastal wetlands.

Sanctuaries are under the care and control of the Dept. of Natural Resources. The Dept. may issue permits for certain temporary educational and scientific purposes. Other state permitting programs are allowed to apply, such as extraction of sand and gravel for shore protection or beach restoration.

ADMINISTRATIVE SCHEMES
STANDARDS FOR
USE AND DEVELOPMENT

The Secretary of Natural Resources and the Board of Public Works administer the dredge and fill licensing program for state wetlands. To protect the public safety, health, welfare, wildlife and marine fisheries, the Secretary may promulgate rules and regulations governing dredging, filling, removing or otherwise altering or polluting private wetlands.

It is the public policy of the state, taking into account varying ecological, economic, developmental, recreational and aesthetic values, to preserve the wetlands and prevent their despoilation and destruction.

wet-

The Commission of Environmental Management with the approval of the Board of Environmental

Promotion of the public safety, health and welfare,

MICHIGAN

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

(1) "Environmentally sensitive area" means an area of the shoreline which is determined by the Dept. on the basis of its natural resources and surveys to be subject to special preservation and maintenance or that is subject to special preservation and maintenance of fish and wildlife.

(2) "High water mark" means an area of the shoreline which is determined by the Dept. on the basis of its natural resources and surveys to be subject to special preservation and maintenance or that is subject to special preservation and maintenance of fish and wildlife.

(3) "Land in the water" means an area of the shoreline which is determined by the Dept. on the basis of its natural resources and surveys to be subject to special preservation and maintenance or that is subject to special preservation and maintenance of fish and wildlife.

(4) "Shoreland" means an area of the shoreline which is determined by the Dept. on the basis of its natural resources and surveys to be subject to special preservation and maintenance or that is subject to special preservation and maintenance of fish and wildlife.

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

"Bottom land" means 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.

"Bottom land" means 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.

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, foster 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.

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

Application for a permit shall be made to the Dept. which submits copies for review to the Dir. of Public Health, the city, 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

State, in accordance with the

STANDARDS FOR
USE AND DEVELOPMENT

Standards have not yet been incorporated into the code.

The Dept. shall consider the possible effects of the proposed project upon the inland fishery stream and upon water quality which or into which waters flow and the uses of such waters, including recreation, and wildlife, aesthetic, local government, agriculture, commerce and indus-

try. In such waters, including recreation, and wildlife, aesthetic, local government, agriculture, commerce and indus-

MICHIGAN (Cont'd.)

MINNESOTA

M.S.A. §§ 105.485
(Supp. 1976)

"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 §§ 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.

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 coas-

"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

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

ADMINISTRATIVE SCHEMES

STANDARDS FOR
USE AND DEVELOPMENT

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 ebb 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 disposition 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.]

tal 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.

public trust in which coastal wetlands are held.

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

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

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.

MISSOURI (Cont'd.)

NEW HAMPSHIRE

** N.H.R.S.A.
C. 107:8-a

** N.H.R.S.A.
C. 149:8-a

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

ADMINISTRATIVE SCHEMES

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.

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 New Hampshire Port Authority shall be responsible for initiating measures to prevent the contamination of the state seacoast area by oil or other matter which may be discharged from a seagoing vessel.

No dredging, filling, excavation or construction in or on the border of the surface waters of this state unless applicant receives written permission from the New Hampshire Water Supply and Pollution Control Commission.

Detailed plans concerning proposed activity must be submitted to the Commission for approval at least thirty days prior to the proposed undertaking. The Commission is to consider applications in light of established water pollution standards.

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.)

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 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. 1976)

"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.

** N.J.S.A. 13:19-1 to
19-21

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, hurricanes and other natural disasters and the public policy set forth in this act.

No construction in the coastal area until a permit has been secured from the Commissioner of Environmental Protection.

Application for a permit to be made to the commissioner, which shall include an environmental impact statement. This statute is supplemental and does not apply to those portions of coastal areas regulated pursuant to enforceable orders under the Wetlands Act, C. 13:9A-1 et seq. A Coastal Area Review Board is set up, consisting of the Commissioners of Environmental

NEW JERSEY (Cont'd.)

NEW YORK

** E.C.L. 24.0101
et seq.

"Freshwater wetlands" means lands and waters of the state as shown on the freshwater wetlands map and containing any of a number of features, including marshes, swamps, sloughs, bogs and flats, supporting aquatic or semi-aquatic vegetation, as well as lands and submerged lands containing remnants of vegetation that is not aquatic or semi-aquatic that have died because of wet conditions over a sufficiently long period, provided that a maximum seasonal water depth of six feet is not exceeded.

E.C.L. 25.0101 et seq.
(Supp. 197

"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.

ADMINISTRATIVE SCHEMES

Protection, Labor and Industry, and Community Affairs to hear appeals from decisions of the Commissioner of Environmental Protection.

No person shall conduct any of the regulated activities without a permit.

Local governments may set up freshwater wetlands protection laws or ordinances pursuant to this statute. The state may preempt jurisdiction over such wetlands which by reason of their size or special characteristics are appropriately to be administered by the state rather than local governments. Applications for permits shall be made to the local government entity or the state, as appropriate. A Freshwater Wetlands Appeals Board is created to review appeals from decisions by the state or local governments.

The local government or the commissioner shall consider the effect of the proposed activity with reference to the public health and welfare, fishing, flood, hurricane and storm damages, and protection or enhancement of the several functions of the freshwater wetlands and the benefits derived therefrom as set forth in section 24-0103 of the statute.

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

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

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.

NEW YORK (Cont'd.)

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

NORTH CAROLINA

N.C.G.S. § 113.230
(1975)

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

N.C.G.S. § 113-229
(1975)

"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

any other activity within or immediately adjacent to tidal wetlands which may substantially impair or alter the natural condition of the tidal wetland area.

commissioner and he in turn forwards a copy to the chief administrative officer of the local municipality.

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

The Secretary of Natural and Economic Resources may from time to time, adopt, amend, modify, or repeal orders regulating, restricting, or prohibiting dredging, filling, removing or otherwise altering coastal wetlands.

The Secretary 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 Natural

Application for a permit shall be made to the N.C. Dept. of Natural & Economic Resources; 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

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

NORTH CAROLINA (Cont'd.)

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.

** N.C.G.S. § 113A-113
(1975)

"Development" means any activity in an area of environmental concern involving construction, excavation, dredging, filling, dumping, bulkheading, driving of pilings, alteration of land or water bottoms.

ADMINISTRATIVE SCHEMES

and Economic Resources.
The statute was amended in 1975 to provide for issuance of special emergency dredge and fill permits.

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

- 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 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.

Special emergency dredge and fill permits may be issued only when life or structural property is in imminent danger as a result of rapid recent erosion or sudden failure of a man-made structure.

The Coastal Resources Commission is empowered to designate coastal wetlands as defined in §113-230(a), as areas of environmental concern.

A permit is required for any development, as defined herein, in an area of environmental concern. Permits cannot be granted or denied until public notice and hearing for major developments, or under an expedited procedure for minor developments.

Permits shall be denied for developments in coastal wetlands which contravene an order that has been or could be issued pursuant to §113-230.

STATES	STATUTES	DEFINITIONS
OHIO	R.C. §§ 1507.01-1507.99 (1953)	No definition.
OREGON	O.R.S. §§ 197.005-.010, .230 (1975)	No definition.
PENNSYLVANIA	16 P.S.A § 11941	No definition.
RHODE ISLAND	** G.L.R.I. §§ 2-1-13-2-1-17 (Supp. 1975)	A coastal wetland shall mean : bordering on the tidal waters whether natural or artificial lands contiguous thereto, but more than fifty yards inland t the Director of Natural Resou deem reasonably necessary to I salt marshes for the purpose c Salt marshes include areas up some, but not necessarily all

PROHIBITED ACTS
AND/OR AUTHORIZATIONS

ADMINISTRATIVE SCHEMES

STANDARDS FOR
USE AND DEVELOPMENT

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.

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.

In preparing and adopting state-wide planning goals & guidelines, the Dept. of Land Conservation & Development and the Land Conservation & Development Commission shall give priority consideration to, inter alia, tide marsh and wetland areas.

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

The Director of Natural Resources is to designate coastal wetlands, the ecology of which is not to be disturbed, and only uses consonant with the purposes of this act are allowed. Applications are submitted to the Director who notifies abutting owners, the town council conservation

The public policy of the state is to preserve the purity and integrity of coastal wetlands. In acting upon applications the Director shall consider the value of the coastal wetlands to the public health, marine fisheries, wildlife, & A-46

RHODE ISLAND (Cont'd.)

enumerated list of vegetation. The occurrence and extent of saltmarsh peat at the undisturbed surface shall be construed to be true evidence of the extent of a salt marsh.

** G.L.R.I. §§ 2-1-18-
2-1-25

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.

** G.L.R.I. § 11-46.1-1
(Supp. 1975)

An intertidal salt marsh is prima facie presumed to be those areas upon which grow some, but not necessarily all, of an enumerated list of vegetation, and upon which exists salt marsh peat.

ADMINISTRATIVE SCHEMES

commission, planning board, zoning board, and any other agency or individual who he believes has an interest. A public hearing may be held.

and protection from hurricane disasters.

No person, firm, or company, corporation, town, municipal or city, agency, fire district, non-profit organization, other individual, or may excavate, drag, place trash, garbage, highway runoff, ditches, sewage, borrow, gravel, peat or other material, divert water flow, of dike, dam, add to or take from, wise alter the character of any fresh water out first obtained from the Dir. of Natural Resources.

A request may be made prior to application for an on-site determination that the wetlands act applies. If so, an application must be submitted, abutting landowners and relevant local government bodies notified. A public hearing may be held before final decision and issuance of a permit.

Approval is granted if in the opinion of the Dir. it is in the best public interest and the local or abutting town councils have not objected.

Any person who dumps, deposits mud, dirt upon, or who excavates, disturbs the ecology of tidal salt marshes and part thereof, withing a permit from the Department of Natural Resources shall be fined \$500 for each offence, 1/2 of goes to the compliance (cont'd.)

The Dir. of Natural Resources shall refuse to issue a permit if in his judgement the dumping or depositing of mud, dirt or rubbish or excavation would disturb the ecology of intertidal salt marshes.

RHODE ISLAND (Cont 'd.)

** G.L.R.I. §§ 46-23-1 et seq.
(Supp. 1975)

TEXAS

** T.S.A. Art. 5415e-2
(Supp. 1976)
(Coastal Waterway Act
of 1975)

"Coastal marshes and similar areas" means those soft, low-lying watery or wet lands and drainage areas in the coastal areas of the state which may or may not be subject to the ebb and flow of the tide but which are of ecological significance to the environment and to the maintenance, preservation, and enhancement of wildlife and fisheries.

Anyone who violates a cease and desist order shall be fined \$50.00 per day of continuing violation. Restoration may also be ordered.

The Coastal Resources Management Council has authority over land uses and activities in which there is a reasonable probability of conflict with a plan or program for resources management as damage to the coastal environment. These include, inter alia, intertidal salt marshes.

The Council is authorized to issue, modify or deny permits for dredging, filling, or any other physical alteration of intertidal salt marshes.

None

The State Highway Commission shall act as the nonfederal sponsor of the Gulf Coast Intracoastal Waterway within Texas. The coastal public lands and the coastal marshes and similar coastal areas located on both publicly and privately owned lands are vital elements of the state's economy, and to the maintenance, preservation, and enhancement of the environment, wildlife, and fisheries.

Prior to approval or implementation of any plan for acquisition of property for expanding the Waterway, the Commission after notice and hearing must determine that the proposed plan will not unjustifiably waste publicly or privately owned natural resources, nor have permanent substantial adverse impact on the environment, wildlife or fisheries.

TEXAS (Cont'd.)

T.S.A. Art. 5415f
(Supp. 1976)

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

T.S.A. Art. 5415e-1
(Supp. 1976)
(Coastal Public Lands
Management Act of
1973)

"Coastal area" refers to the geographic area comprising all the counties of Texas having any tidewater shoreline including that portion of the bed and waters of the Gulf of Mexico within the jurisdiction of the State of Texas.

"Coastal public lands" means all or any portion of state-owned submerged lands, the waters overlying those lands, and all state-owned islands or portions of islands in the coastal area.

..."submerged lands" means any land extending from the boundary between the lands of the state and littoral owners seaward to the low water mark on any salt water lake, bay, inlet, estuary, or inland water within the tidewater limits, and any land lying beneath such a body of water, but shall, for the purposes of this act only exclude beaches bordering on, and the waters of, the Open Gulf of Mexico, and the lands lying beneath such waters.

Pending delivery of the final report of the Interagency Natural Resources Council to the Legislature covering its comprehensive study and recommendation concerning the state's lands, beaches, islands, estuaries, and estuarine areas...there is hereby declared a moratorium and suspension of the sale or leasing of, and of the establishment of any bulkhead line on, the surface estate of any state-owned submerged lands, beaches, and islands for any purpose under any existing law of this state.

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

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 coastal public land this state constitute important and valuable set dedicated to the benefit of the people of Texas, the declared policy of the state that such estate managed pursuant to following policies:

- a) The natural resource surface estate, including natural aesthetic and value for the people and nurture of all marine and wildlife, be preserved.
- b) Public uses take over uses limited to individuals.

STATES

STATUTES

DEFINITIONS

TEXAS (Cont'd.)

T.S.A. Art. 4413(38)
(Coastal and Marine
Council)

None. (Merely creates an advisory board.)

ownership of and exceptions laid out in \$10]; surface or mineral 4) Channel easement public lands, der of any surface or approp- interest in case of such inter- for purposes priate to them; ests.

- c) The public interest in navigation in the intracoas- tal waters shall be protec- ted.
- d) Unauthorized use of coas- tal public lands shall be prevented.
- e) Development of the sur- face estate now allowed un- less 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 shall be alienated.
- g) Vested rights shall be protected subject to the police power.

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 subdi- visions with respect to the above. It consists of 16 mem- bers, 4 of whom are appointed by the governor and 6 of whom

None.

None.

TEXAS (Cont'd.)

VIRGIN ISLANDS

12 V.I.C §§ 401-407
(Supp. 1976)

"Shorelines" mean the area along the coastlines of the Virgin Islands from the seaward line of low tide, running inland a distance of fifty (50) feet; or to the extreme seaward 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
(Supp. 1976)

"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.

are appointed each by the governor and the Speaker of the House of Representatives. It is the duty of the council to select the director, who shall serve at the will of the council. It is the duty of the council to hold public hearings [§3(b)] and may [§3(c)] hold 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, barrier, 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 water-

The Dept. of Conservation and Cultural Affairs shall maintain and supervise the shorelines, shall promulgate rules and regulations governing their use, shall classify the shorelines, shall issue permits for shore construction.

The

shall not interfere with the right of the public to use and enjoy the shoreline. Any structure erected thereon shall be open to the free use of the general public. It shall not jeopardize the health and esthetic surroundings and environment; 1) when construction is underway, on alternative sites above the shoreline. 2) any structure shall grant passage only where the public has the right to pass; 3) wise cutting or injuring of trees for purposes of safety; 4) signs; 5) impose on sites; 6) vegetation.

such as it appears proposed is ne

The Commissioner of Conservation and Cultural Affairs shall issue written permission in order to cut or injure trees or vegetation adjacent to watercourses.

VIRGIN ISLANDS (Cont'd.)

VIRGINIA

V.C.A. §§ 62.1-13.1-
62.1-13.20 (1973)
(Supp. 1976)

"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, 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.

PROHIBITED ACTS
AND/OR AUTHORIZATIONS

course, or within 25 feet of the edge of such watercourse, whichever is greater, without the written permission of the Commissioner of Conservation & Cultural Affairs.

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, duck-blinds, 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 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

ADMINISTRATIVE SCHEMES

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 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.

STANDARDS FOR
USE AND DEVELOPMENT

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

VIRGINIA (Cont'd.)

** V.C.A. §§ 10-187-10-196
(Supp. 1976)

"Critical environmental area" means an area of natural, scenic and historic value including but not limited to wetlands, marshlands, shorelands and floodplains of rivers, lakes and streams....

WASHINGTON

R.C.W.A. 90.58
(Supp. 1975)

"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.

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.

The Commission and wetlands boards are empowered to investigate and prosecute all violations of any order or wetlands ordinance. An injunction may issue to enjoin unlawful acts and effect the restoration of the wetlands involved.

The Div. of State Planning and Community Affairs is directed to develop criteria for identification of critical environmental areas, delineate the areas and surrounding protective zones, and present findings to the Governor and General Assembly not later than December 1, 1977.

Critical environmental areas must be preserved and protected. Methods are to be developed by which the standards shall be applied and the development and use of land around such critical environmental areas be controlled. These methods must recognize both state and local prerogatives.

The standards to be developed may include, but are not limited to, types of permitted uses, density or intensity of development, air and water quality standards or other performance standards. To the degree possible such standards should be stated in performance terms.

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

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

WISCONSIN

W.S.A. §§ 144.26 (1974);
59.971 (Supp. 1976);
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.

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.

