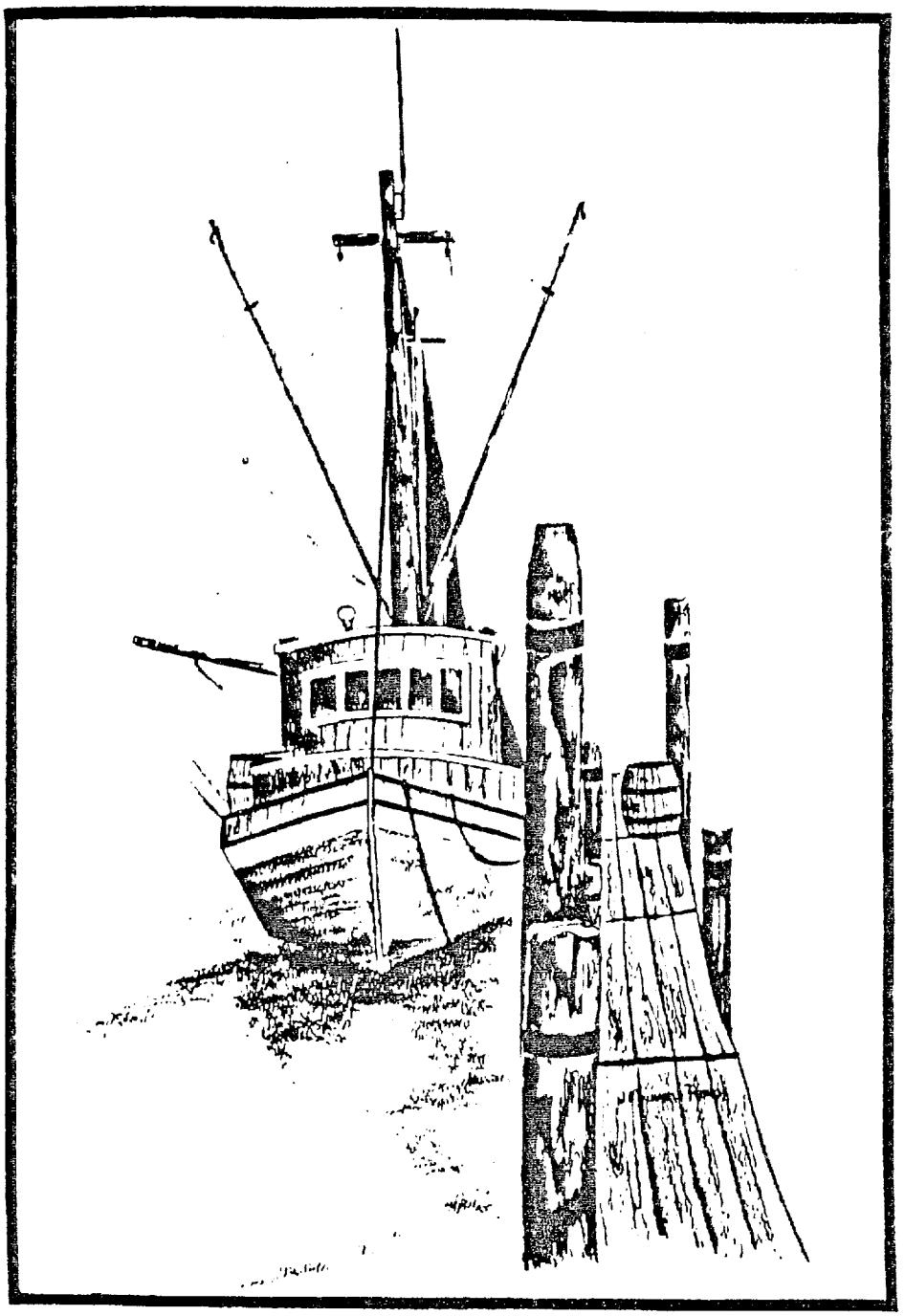
MISSISSIPPI COASTAL PROGRAM

THIRD PRINTING

MISSISSIPPI DEPARTMENT OF WILDLIFE CONSERVATION
Bureau of Marine Resources

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Ocean and Coastal Resource Management



REVISED OCTOBER 1983

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INFORMATION TO READERS

This document is the third printing of the text of the Mississippi Coastal Program, as approved by the Mississippi Commission on Wildlife Conservation on August 22, 1980. The program was approved by the Associate Administrator, Office of Coastal Zone Management, under the provisions of the Coastal Zone Management Act on September 29, 1980. On October 1, the new rules and regulations in Chapter VIII became effective.

This document is the result of several years of program development. The basic structure of the program was set by state legislation passed in early 1979, and was described in a May, 1979 draft of the program. On March 21, 1980 a public hearing draft was issued. Three hearings, one in each county, were held on April 21, 22, and 24, 1980. A Draft Environmental Impact Statement was released on May 12, 1980 and an additional hearing was held on June 16, 1980.

Based on comments received on the Draft Environmental Impact Statement, hundreds of revisions were incorporated into a Final Environmental Impact Statement which was released in August of 1980. This document has been corrected for the errata sheet which appeared with the August, 1980 publication. This printing incorporates all other revisions to the Mississippi Coastal Program through October, 1983.

Please note that the rules, regulations, guidelines and procedures found in Chapter Eight supercede the Wetlands Law, Rules and Regulations adopted by the former Mississippi Marine Resources Council on July 10, 1973 and amended April 15, 1975.

As a final note, Appendices A through F represent a compilation of statutes based on three sources: (i) the Mississippi Code of 1972, (ii) Cumulative Supplements to the Mississippi Code of 1972, (iii) legislation passed during the 1979 session and (iv) HB 94 passed during the 1980 session. The presentation of the appendices is believed to be accurate. However, the reader should note that they are designed for use solely as reference materials for the Mississippi Coastal Program. Editorial errors may have been made during compilation.

MISSISSIPPI COASTAL PROGRAM

OCTOBER 1, 1980

REVISED OCTOBER, 1983

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MISSISSIPPI COASTAL PROGRAM

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GLOSSARY OF TERMS AND ABBREVIATIONS

1. BMR - Bureau of Marine Resources formed from consolidation of Mississippi Marine Resources Council and Mississippi Marine Conservation Commission, effective July 1, 1979.

2. CEIP - Coastal Energy Impact Program.

3. Coastal area - Harrison, Hancock and Jackson counties as well as all adjacent coastal waters. Included in this definition are the barrier islands.

4. DNR - Department of Natural Resources. DNR is governed by a seven member commission created July 1, 1979, from consolidation of the following state agencies: Mineral Lease Commission; Geological; Economic and Topographic Survey; Fuel and Energy Management Committee; Board of Water Commissioners; Air and Water Pollution Control Commission; all regional water authorities; and park commissions. The DNR is presently divided into four Bureaus: Bureau of Geology and Energy Resources; Bureau of Water Resources; Bureau of Recreation and Parks; and Bureau of Pollution Control.

5. DWC - Department of Wildlife Conservation. DWC is governed by a five member commission and was created July 1, 1979, due to consolidation of four state agencies: Game and Fish Commission; Boat and Water Safety Commission; Marine Resources Council; and the Marine Conservation Commission.

6. FCMA - Fisheries Conservation and Management Act.

7. FCZ - Fisheries Conservation Zone.

8. GSMFC - Gulf States Marine Fisheries Commission.

9. LNG - Liquified Natural Gas.

10. MCP - Mississippi Coastal Program - the Mississippi Coastal Zone Management Program, including all maps, illustrations, and descriptions pertaining to it.

11. MCWC - Mississippi Commission on Wildlife Conservation.

12. NMFS - National Marine Fisheries Service.

13. NOAA - National Oceanic and Atmospheric Administration.

14. OCS - Outer Continental Shelf.

15. OCZM - Office of Coastal Zone Management.

16. OSY - Optimal sustainable yield, used in connection with fisheries management.

17. SMA - Special management area.

NOTE: The definitions in the rules, regulations, guidelines, and procedures provide a more detailed explanation of terms used in the program.

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CHAPTER ONE

PROGRAM SUMMARY

Contents

Section 1: Scope of the Mississippi Coastal Program

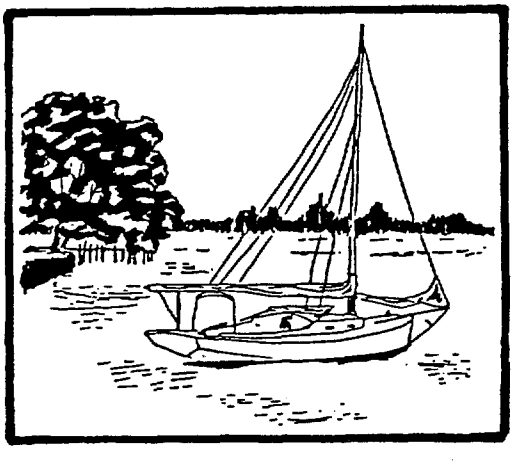
Section 2: Wetlands Management

Section 3: Fisheries Management

Section 4: Policy Coordination

Section 5: Special Management Areas

Section 6: Affirmative Management Activities



CHAPTER ONE: PROGRAM SUMMARY

SECTION 1: SCOPE OF THE MISSISSIPPI COASTAL PROGRAM

The Mississippi Coastal Program is built around ten goals:

1. To provide for reasonable industrial expansion in the coastal area and to insure the efficient utilization of waterfront industrial sites so that suitable sites are conserved for water dependent industry.

2. To favor the preservation of the coastal wetlands and ecosystems, except where a specific alteration of a specific coastal wetlands would serve a higher public interest in compliance with the public purposes of the public trust in which the coastal wetlands are held.

3. To protect, propogate, and conserve the state's seafood and aquatic life in connection with the revitalization of the seafood industry of the State of Mississippi.

4. To conserve the air and waters of the state, and to protect, maintain, and improve the quality thereof for public use, for the propogation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate beneficial uses.

5. To put to beneficial use to the fullest extent of which they are capable the water resources of the state, and to prevent the waste, unreasonable use, or unreasonable method of use of water.

6. To preserve the state's historical and archeological resources, to prevent their destruction, and to enhance these resources wherever possible.

7. To encourage the preservation of natural scenic qualities in the coastal area.

8. To consider the national interest involved in planning for and in the siting of facilities in the coastal area.

9. To assist local governments in the provision of public facilities services in a manner consistent with the coastal program.

10. To insure the effective, coordinated implementation of public policy in the coastal area of Mississippi comprised of Hancock, Harrison and Jackson Counties.

On the whole, these goals promote decisions that balance development with the environment. These decisions are made by the Mississippi Commission on Wildlife Conservation as well as a number of other state agencies. The Commission on Wildlife Conservation acts through the Bureau of Marine Resources (BMR)*. BMR is basically responsible for the "wet" resources of the coastal area. It has direct regulatory control over coastal wetlands, marine fisheries, and certain waterfront industrial sites. Other agencies handle the management of coastal resources on land. These are the Bureau of Pollution Control (air and water pollution), the Bureau of Land and Water Resources (surface and groundwaters) and the Department of Archives and History (historical resources).

This two-tiered system is shown in Figure I-1. (The drawing is highly simplified for illustration purposes). It shows BMR's jurisdiction running from the high tide line seaward. Above high tide, other agencies have regulatory jurisdiction. To insure that the different agencies work together, the coastal program establishes a policy coordination procedure-an interagency review system to coordinate the actions of agencies operating on the coast.

The regulatory functions illustrated in Figure I-1 are described in Chapters III, IV, and V. These figures are essential to managing coastal resources. But management entails more than regulation. Management must also involve affirmative efforts that promote activities which utilize resources in compliance with the program. Accordingly, Chapters VI and VII describe the enhancement efforts of the coastal program dealing with special management areas and affirmative management activities. By regulating development away from fragile coastal resources while encouraging development in areas capable of accommodating it through special area planning, the program will be able to achieve simultaneously the goals of development and environmental preservation.

The remaining sections of this chapter describe the major parts of the coastal program in summary form, and serve as a guide to the rest of the program document.

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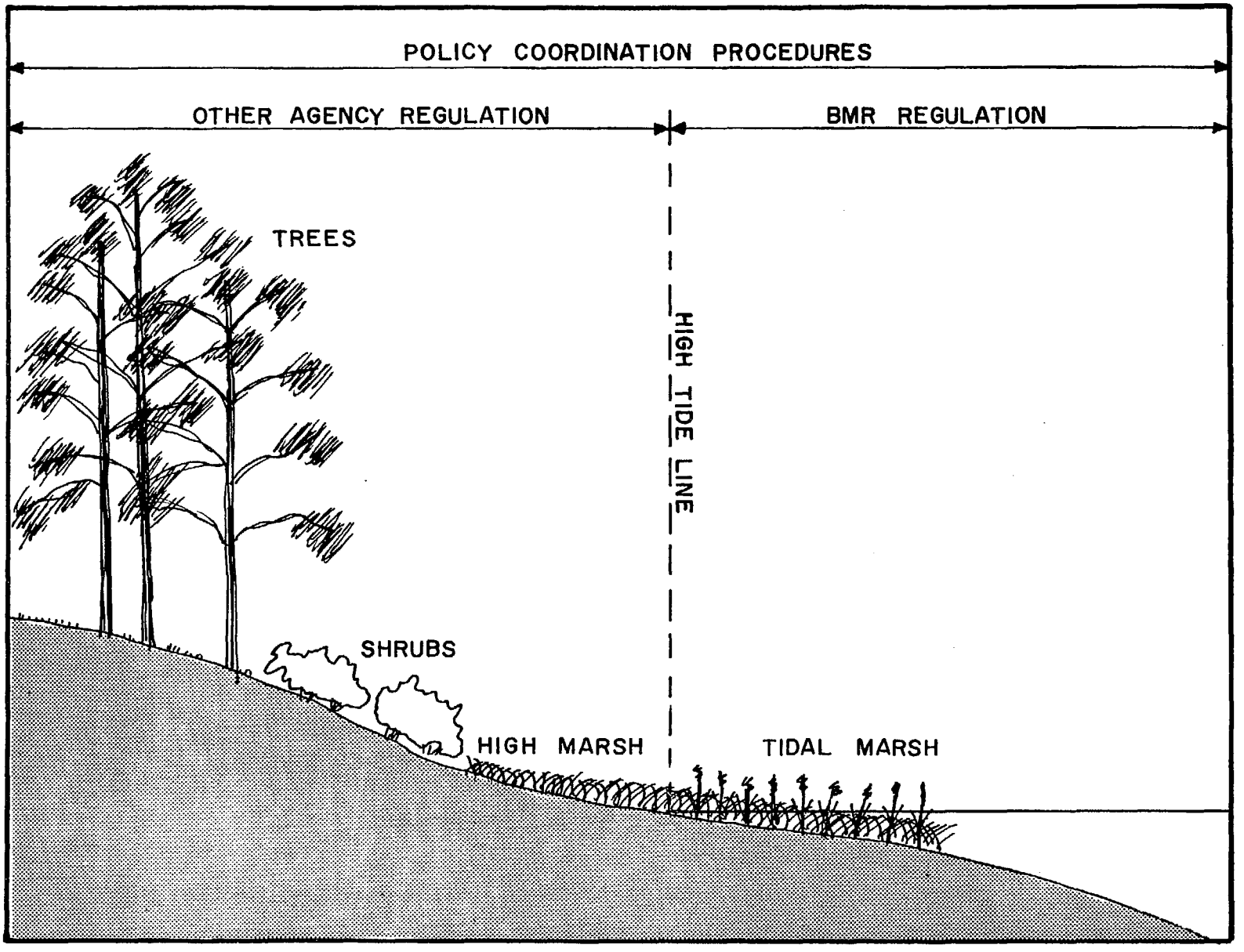
* As a matter of law, the authorities described in this program are exercised by the Mississippi Commission on Wildlife Conservation acting through the Bureau of Marine Resources, a subdivision of the Department of Wildlife Conservation. When the Department of Wildlife Conservation or Bureau of Marine Resources are referred to in this program, the reference should be understood to include the authority of the Mississippi Commission on Wildlife Conservation, unless the context clearly indicates otherwise.

Figure I-1
COASTAL PROGRAM JURISDICTION



SECTION 2: WETLANDS MANAGEMENT

Mississippi's coastal wetlands are an important resource, not just for the state but the nation as well. Wetlands provide livelihoods and recreation for coastal residents. They serve as habitats, and supply nutrients for marine species. They are buffer zones for hurricane protection and shelter for animals. Less widely known is the fact that tidal marshes function as filters, removing pollutants such as sewage and surface run-off which would otherwise move into the Mississippi Sound, degrading the state's marine resources.

While coastal wetlands are important to the ecosystem, they have been highly susceptible to destruction, mostly as a result of man's actions. Many areas of wetlands have been lost through dredging for channels, marinas, and ports, or have been filled to create new land. The disposal of dredge material has resulted in a loss of considerable aquatic habitat.

The Coastal Wetlands Protection Law (also referred to as the "Wetlands Law", and provided in Appendix A) establishes the public policy of preserving coastal wetlands in their natural state, except where an alteration of a specific coastal wetland serves a higher public interest. To carry out this policy, a permitting and compliance review procedure is also authorized by the law. The permitting and review procedure governs the regulated activities defined by the law. The most significant regulated activities are dredging and filling in coastal wetlands. According to the Wetlands Law, filling in coastal wetlands is regulated even if the source of filling is outside of the coastal wetlands. An example of this case would be the uncontrolled erosion of upland fill material into coastal wetlands.

The Wetlands Law was recently amended to include a new regulated activity: the erection of structures on sites designated as suitable for water dependent industry. This new regulated activity was established to reserve waterfront sites for industries which genuinely require water access. By conserving existing waterfront industrial sites, the long-term demand for creating new sites can be reduced, thereby reducing the need for environmentally and economically costly dredging.

Certain agencies, areas, and activities are not required to secure permits to conduct regulated activities in coastal wetlands. However, activities excluded from permits must nonetheless be conducted in compliance with the state's wetlands protection policy.

Most notable among the exclusions are local port and development authorities. This reflects the high priority that industrial and port development has in Mississippi. Another exclusion allows water dependent industry to erect structures on suitable sites for water dependent industry without a permit.

Decisions on permits under the Wetlands Law will be governed by two major regulatory tools. The first is the wetlands use plan which designates the types of activities that are allowable in specific coastal wetlands areas. The second regulatory tool is a set of guidelines that describe how activities affecting coastal wetlands should be conducted to minimize adverse impacts. The wetlands use plan and the guidelines serve as the basis for permit decisions and for reviewing other actions for compliance with the program.

Chapter III of the program describes wetlands management efforts in detail. Wetlands management is implemented by the rules, regulations, guidelines, and procedures in Chapter VIII.

SECTION 3: FISHERIES MANAGEMENT

Commercial and recreational fishing both play important roles on the Mississippi Coast. In 1979, commercial fishing brought an estimated $33 million in dockside value to the Mississippi economy. Approximately, 3,680 people were employed in the commercial fishing industry in 1978. Thousands more are employed in the fishing-related tourism industry. In addition to generating income, fishing is one of the coast's most enjoyed recreational opportunities.

The long term stability of the fisheries for the economic and recreational benefit of the coast is of major concern in the coastal program. The thrust of the program is to manage fishing so that the optimum sustainable yield of the fisheries is maintained. Optimum sustainable yield is important. Fishery productivity is damaged if the resource is over-harvested, but at the same time, the coast would be deprived of employment and income if the fisheries are not utilized at their optimum level.

Chapter IV describes the state's fisheries management efforts. The regulatory management of fisheries is achieved through ordinances that control the quantity and type of marine life harvested. These ordinances work through regulations governing four major facets of fishing: (i) characteristics of the catch such as fish size or shrimp count; (ii) equipment characteristics such as net size and mesh and dredge size; (iii) geographic areas within which certain fishing activities are permissible; and (iv) seasons during which fishing may take place. The wetlands management aspects of the program support fisheries management efforts by protecting habitats.

The regulation of fishing activities through measures such as ordinances is one way of conserving the marine resources, but there are affirmative development efforts which, if employed, can enhance fisheries resources. One such effort is the establishment and improvement of public oyster reefs. In 1979, several natural reefs on the coast were expanded with the placement of clam and oyster shells as cultch material. A developing technology which holds promise for enhancing the industry is transferring oysters from contaminated to sanitary waters for depuration and future public harvesting. Private waterbottom leasing for oyster reefs is currently underway.

Other important affirmative efforts include creating artificial reefs for improved recreational fishing, and an increased focus on the development of mariculture. An ongoing research program supports all fisheries management activities by providing a sound data base for making management decisions.

SECTION 4: POLICY COORDINATION

Mississippi's authority to manage coastal wetlands and fisheries are supplemented by the authorities of other state agencies; these agencies are: the Bureau of Pollution Control, the Bureau of Land and Water Resources, and the Department of Archives and History. Together with BMR, these agencies, called the "coastal program agencies", are responsible for managing coastal resources, for monitoring public decision-making in the coastal area and for insuring that such decisions are made in accordance with the program goals described in Section 1 of this Chapter.

Section 57-15-6 of the Mississippi Code requires all state agencies to carry out their responsibilities in the coastal area in compliance with the program. To facilitate this, a review and policy coordination procedure governing state agencies has been developed, and is described in Chapter V. When the program is approved under the Coastal Zone Management Act, the procedure governing state agency actions will be binding on federal actions as well.

Policy coordination will utilize the existing State A-95 clearinghouse procedure. To accommodate the policy coordination requirements of the coastal program, the A-95 system program coordination will be extended to include state agency actions as well as those by federal agencies. The policy coordination procedures are generally described in Chapter V and are formalized in Chapter VIII.

Through policy coordination all state agencies will have the opportunity to comment on public decisions affecting the coast. BMR will assemble the comments of the coastal program agencies to develop a consolidated coastal program consistency statement. If a coastal program agency makes a regulatory objection to a proposed action, the policy coordination procedures provide for a conflict resolution process. If this fails, enforcement procedures are provided if an agency proceeds in a manner contrary to the program.

It is the intent of the coastal program policy coordination procedures to promote thorough reviews of important actions in the coastal area so that these reviews can fulfill review requirements of both state and federal agencies. Once these review procedures are implemented, BMR expects that new opportunities for federal/state and intrastate coordination will arise. As these opportunities develop, BMR will

execute appropriate interagency agreements to strengthen and improve policy coordination procdures, with the ultimate goal of establishing a one-stop permitting system.

SECTION 5: SPECIAL MANAGEMENT AREAS

The public benefits of utilizing coastal resources must be balanced with the public interest in their preservation. One means of achieving this balance is by regulation to prevent development actions from adversely affecting the public interest. But regulation is limited, and unless accompanied by positive efforts to encourage sound development practices in the coastal area, the balancing of public interests will not be achieved.

To supplement regulation with affirmative management efforts, the program designates "special management areas," and sets up a process for adopting management plans for these areas. The designation of a special management area does not (and by law cannot) impose regulations on an area over and above what is authorized by existing statutes. The effect of a special management area designation is quite the opposite. Area management plans will apply the general regulatory provisions of the program to specific sites.

Area management plans will improve the predictability of permit decisions in designated areas, and will help resolve permit controversies in advance of specific development proposals. When approved as part of this program, special area management plans will serve as the basis for coastal wetlands permit decisions, and will guide other public decisions as well. Specific provisions of approved management plans will prevail over the general provisions of the program. When approved by the federal government as part of this program, area management plans will be recognized as official state policy by federal agencies.

Three general categories of special management areas have been designated. These are port and industrial areas, urban waterfronts and shorefront access areas.

Specific industrial and port areas designated are: Port Bienville Industrial Park, Pass Christian Industrial Park, Bayou Bernard Industrial Park, Pascagoula River Industrial Area, Bayou Casotte Industrial Area, and the proposed Moss Point Industrial Park.

Designated shorefront access areas are: the Harrison County beach, Bay St. Louis-Waveland beach, Pascagoula beach, Deer Island; a group of minor sites are designated as shorefront access areas we well.

Designated as urban waterfronts are: Downtown Waveland (at Coleman Avenue); Bay St. Louis downtown commercial district; Pass Christian harbor and scenic drive; Long Beach commercial area at Jeff Davis

Avenue, including the harbor and adjacent beachfront land; Gulfport Harbor Square; Biloxi downtown redevelopment areas including commercial and recreational small craft harbors; Pascagoula (along Front Street); and Moss Point (along old Highway 63 from O'Leary Lake to the Moss Point City limits).

Chapter VI and Chapter VIII describe special management areas and the planning process in detail.

SECTION 6: AFFIRMATIVE MANAGEMENT ACTIVITIES

Along with the designation of special management areas, affirmative management activities serve to complement the regulatory provisions of the program. These activities are described briefly below; more detail is provided in Chapter VII.

Energy facilities are likely developments in coastal regions because of the availability of good water access to nearby outer continental shelf development. They are economically attractive to any area, but energy facilities can cause adverse environmental impacts such as water pollution, the loss of wetlands, and the degradation of natural scenic qualities. Accordingly, it is important to plan for them. In addition to general planning, the coastal program will provide assistance to local governments to plan and build facilities required as a result of energy developments.

Shoreline erosion is a natural ongoing process caused by both wind and water action. Erosion becomes a problem when man encroaches upon these natural processes. The coastal program will address shoreline problems through wetlands permitting, and will make funds available through the program to restore and preserve beaches which have been subjected to erosion forces. Because management information for shoreline erosion is not complete, funding for erosion studies will be considered under the program.

Marine fisheries research is addressed in the coastal program in three ways. In-house scientific-technical support to provide assistance to the operational divisions of the BMR is one of these. Extramural and in-house research projects and the maintenance of a marine information data base oriented toward management decisions are the other two ways that marine fisheries research is addressed.

The coastal program includes a process for designating areas for preservation or restoration. An area may be nominated by an agency, organization or person. The coastal wetlands use plan provides for perservation and restoration areas.

The development of one-stop permitting to coordinate the processing and issuing of permits and licenses in the coastal area is mandated by Section 57-16-6 of the Mississippi Code. The policy coordination procedures in the program, along with the use of joint applications for wetlands permits provide a process for beginning one-stop permitting. Future work during program implementation will involve legal analyses, interagency agreements, and possibly new legislation.

The preservation of natural scenic qualities on the coast is encouraged through special area management plans, and through the direct actions of state agencies. Chapter VIII, Section 6 provides scenic guidelines for these activities. The guidelines are binding on state agencies. Those individuals carrying out private developments are encouraged, but not required, to consider these guidelines. In addition to developing these guidelines, BMR will render technical assistance to public agencies to encourage the preservation of natural scenic qualities.

Finally, public education efforts are described in Chapter VII. These efforts will be geared generally toward providing the general public with a better understanding of coastal resources, and specifically toward target groups which require more technical information.

CHAPTER TWO

PROGRAM STRUCTURE AND SCOPE

Contents

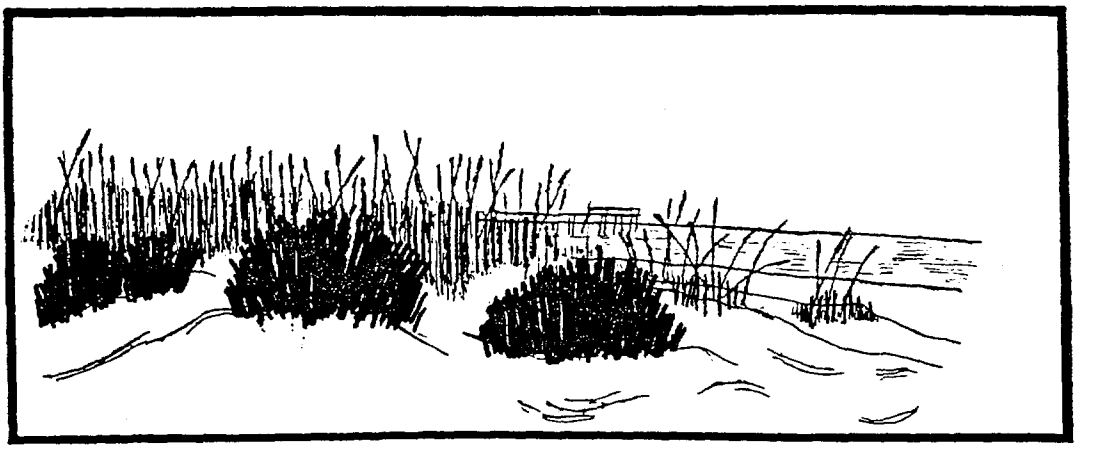
Section 1: Administrative Structure

Section 2: Legal Basis for the Program

Section 3: Jurisdiction of the Coastal Program

Section 4: Scope of the Program

Section 5: Uses and Activities Subject to Management



CHAPTER TWO: PROGRAM STRUCTURE AND SCOPE

SECTION 1: ADMINISTRATIVE STRUCTURE

The Mississippi Commission on Wildlife Conservation (MCWC) is responsible under state law for implementing the Mississippi Coastal Program. MCWC was created in 1978 by legislation which consolidated the functions of 16 state agencies into two new departments, the Department of Wildlife Conservation (DWC) and the Department of Natural Resources (DNR). The reorganization took effect July 1, 1979. Each of the two departments is governed by a statewide commission appointed to staggered terms by the Governor. The Commission on Wildlife Conservation has five members, while the Commission on Natural Resources has seven.

The legislation creating DWC did not establish new substantive authorities for managing marine resources. However, it did provide a unified decision-making structure to manage the marine resources of the state. When passed in 1978, the reorganization legislation consolidated the Mississippi Marine Resources Council and the Mississippi Marine Conservation Commission into the Bureau of Marine Resources (BMR) and created a single administrative entity responsible for the marine resources of the state. In carrying out its responsibilities for implementing the Mississippi Coastal Program, MCWC acts insofar as is practicable under the law through BMR which receives and administers federal funding for the program.

To participate in the implementation of the coastal program, the Governor of Mississippi has established the Coastal Program Advisory Committee. This committee participates in permit reconsiderations (as described on page VIII-15), and performs other advisory duties as the governor may determine.

Figure II-1 illustrates this structure.

SECTION 2: LEGAL BASIS FOR THE PROGRAM

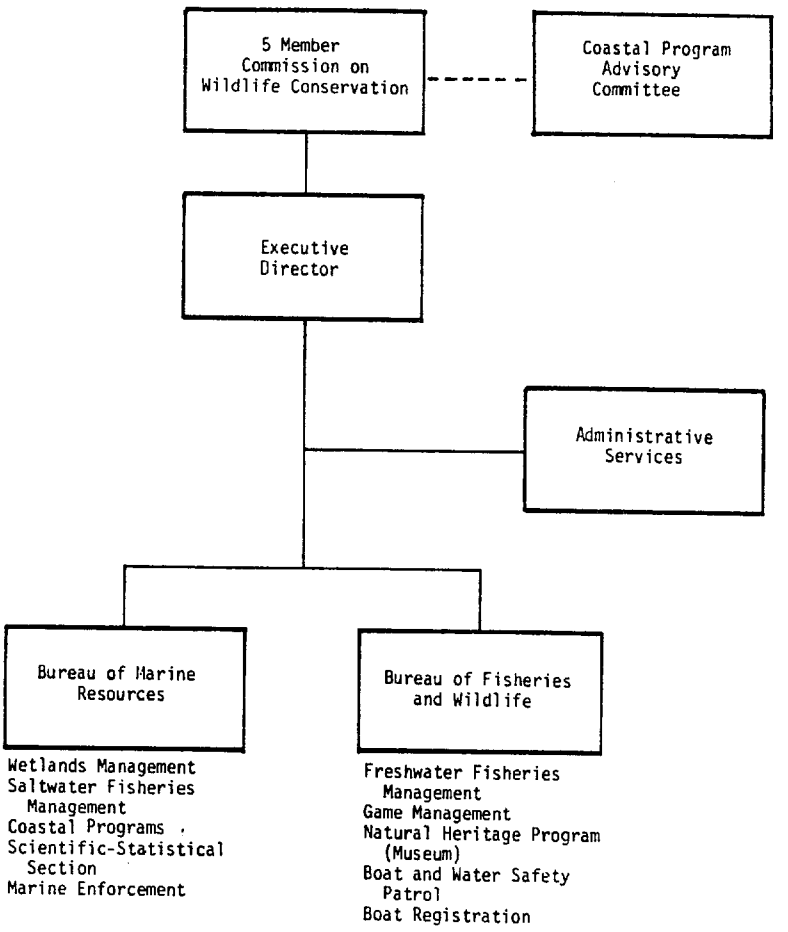
The authorities for implementing the Mississippi Coastal Program have evolved over a period of years. This section provides an overview of these authorities. More details and legal analyses are provided in Chapters III, IV, and V. The Appendices include the text relevant to statutes and Attorney General's opinions. Statutes cited refer to the 1972 Mississippi Codes and Supplements.

AUTHORITIES RELATED TO WETLANDS

Sections 49-27-1 through 49-27-67 of the Mississippi Code establish Mississippi's public policy of wetlands protection, and provide for the regulation of certain activities in state coastal wetlands. (See the Wetlands Law, Appendix A.) This regulatory program is administered by BMR. The

Figure II-1

DEPARTMENT OF WILDLIFE CONSERVATION



regulated activities include: (i) the dredging, excavating or removing of soil, mud, sand, gravel, flora, fauna or aggregate of any kind from any coastal wetland; (ii) the dumping, filling or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind or garbage, either directly or indirectly, on or in any coastal wetlands; (iii) killing or materially damaging any flora or fauna on or in any coastal wetlands; (iv) the erection on coastal wetlands of structures which materially affect the ebb and flow of the tide; and (v) the erection of any structure or structures on suitable sites for water dependent industry.

The Wetlands Law prohibits the conduct of any regulated activity without a permit. Certain activities, areas, and entities are not required to secure permits for regulated activities; however, all parties or agencies so excluded are still required to comply with the public policy of protecting the wetlands.

AUTHORITIES RELATED TO FISHERIES

Sections 49-15-1 through 49-15-69 serves as the basis for fisheries management. (See Appendix C). These statutes establish broad authority for regulating the state's fisheries, the expressed intent of the legislature being to grant "full and ample authority to take such action as may be necessary in order to help protect, conserve, and revitalize seafood life in the State of Mississippi." BMR has administrative responsibility for marine fisheries management.

In addition to regulating the fishing industry, BMR has the authority to enhance the productivity of the state's fisheries by affirmative efforts such as creating new reefs, upgrading existing reefs, and transplanting oysters. Since 1977, when the agency was called the Marine Conservation Commission, BMR has leased waterbottoms for oyster cultivation. In addition to these developmental efforts, BMR maintains an active research program in marine affairs.

NETWORKED AUTHORITIES

The wetlands and fisheries authorities are administered directly by BMR. However, other agencies exercise authorities to implement the coastal program, and these other authorities are made part of the coastal program by virtue of Section 57-15-6. (See Appendix B). This section states that the coastal program should be a statement of consolidated state policy, "incorporating all applicable constitutional provisions, laws, and regulations of the State of Mississippi." This section further requires that all state agencies carry out their responsibilities in compliance with the program. This concept, often called networking, relies on authorities administered through several other agencies: the Bureau of Pollution Control (in DNR), the Bureau of Land and Water Resources (in DNR), and the Department of Archives and History. Together with BMR, these agencies are collectively referred to as the "coastal program agencies."

The effect of Section 57-15-6 is to require all state agencies to consider in their decision making, the breadth of concerns spelled out in the statutory goals of the coastal program. This is in contrast to the situation prior to the enactment of this section when each agency carried out its own narrowly focused policies without the need to comply to broader state concerns.

Described below are the authorities which supplement the authorities exercised directly by BMR in implementing the program.

Pollution Control

Sections 49-17-1 through 49-17-43 of the Mississippi Code constitute the Mississippi Air and Water Pollution Control Law (see Appendix D). The authorities under these statutes, previously exercised by the Air and Water Pollution Control Commission, are now exercised through the Bureau of Pollution Control (BPC).

BPC develops and administers air and water quality standards, and administers a permit system for air and water pollution. The requirements of the Clean Water Act and the Clean Air Act are enforced by BPC under the authorities of the Mississippi Air and Water Pollution Control Law, and are incorporated into the coastal program. In addition to its other functions under state law, BPC administers the National Pollution Discharge Elimination System in Mississippi.

Surface and Groundwaters Authorities

Chapters three and four of Title 51 of the Mississippi Code grant two major authorities implemented by the Bureau of Land and Water Resources: to allocate the surface water which can be withdrawn from Mississippi's streams, rivers and coastal waters, and to control the use of groundwaters. The statute establishing these authorities are found in Appendix E.

Cultural Resources Authorities

One of the goals of the Mississippi Coastal Program is to preserve the cultural resources of the state in accordance with the public policy expressed in Mississippi Code Section 39-7-3. This goal will be carried out by the Department of Archives and History under the authority of the Antiquities Law of Mississippi (Appendix F). Under this law, designated state archeological landmarks "may not be taken, altered, damaged, destroyed, salvaged or excavated without a contract or permit" from the Board of Archives and History (Section 39-7-11). The law applies to landmarks belonging to the state, or to any county, city, or political subdivision; it also provides that important sites situated on private lands may be designated as state archeological landmarks with the written consent of the private landowner.

Other Authorities

Several other authorities in addition to those described above are useful for program implementation. Section 57-15-5 provides for binding interagency agreements to carry out public policy. Section 57-15-6 provides the authority to purchase real and personal property, where necessary to implement the coastal program, as authorized from time to time by the legislature. The development of one-stop permitting is mandated to coordinate the issuance of permits and licenses. Finally, BMR is directed to develop long-term plans for waterfront industrial sites and spoil disposal. This mandate is carried out through special management area planning.

SECTION 3: JURISDICTION OF THE COASTAL PROGRAM

OVERALL JURISDICTION

Section 57-15-6 of the Mississippi Code established Hancock, Harrison, and Jackson Counties as the coastal area in which the Mississippi Coastal Program is binding. The coastal area includes these counties, as well as all adjacent coastal waters. Included in this definition are the barrier islands of the coast, and all waters to the extent of the three mile limit (see Figure II-2). The provisions of the program apply to all state agency actions in the coastal area.

Excluded from the coastal area are lands owned, leased, held in trust, or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers, or agents. However, with the approval of this program under the Coastal Zone Management Act, federal activities affecting the coastal area must be conducted or supported in a manner which is consistent with the program to the maximum extent practicable.

BOUNDARIES OF ADJACENT STATES

The Alabama coastal zone boundary is established along the 10 foot (MSL) contour in Mobile and Baldwin Counties and extends to the northern limit of these counties on each side of the Mobile River system. This boundary was established by Alabama legislative action in 1976 prior to the delineation of Mississippi's proposed boundary. Established by legislation in 1978, Louisiana's northernmost coastal zone boundary extends to Interstate Highway 10 along the western boundary of Mississippi.

LANDWARD EXTENT OF THE COASTAL AREA

To enforce the permitting procedures established in the program in an effective way, and to insure that all activities having direct and significant impacts on coastal waters are included, the coastal area can be

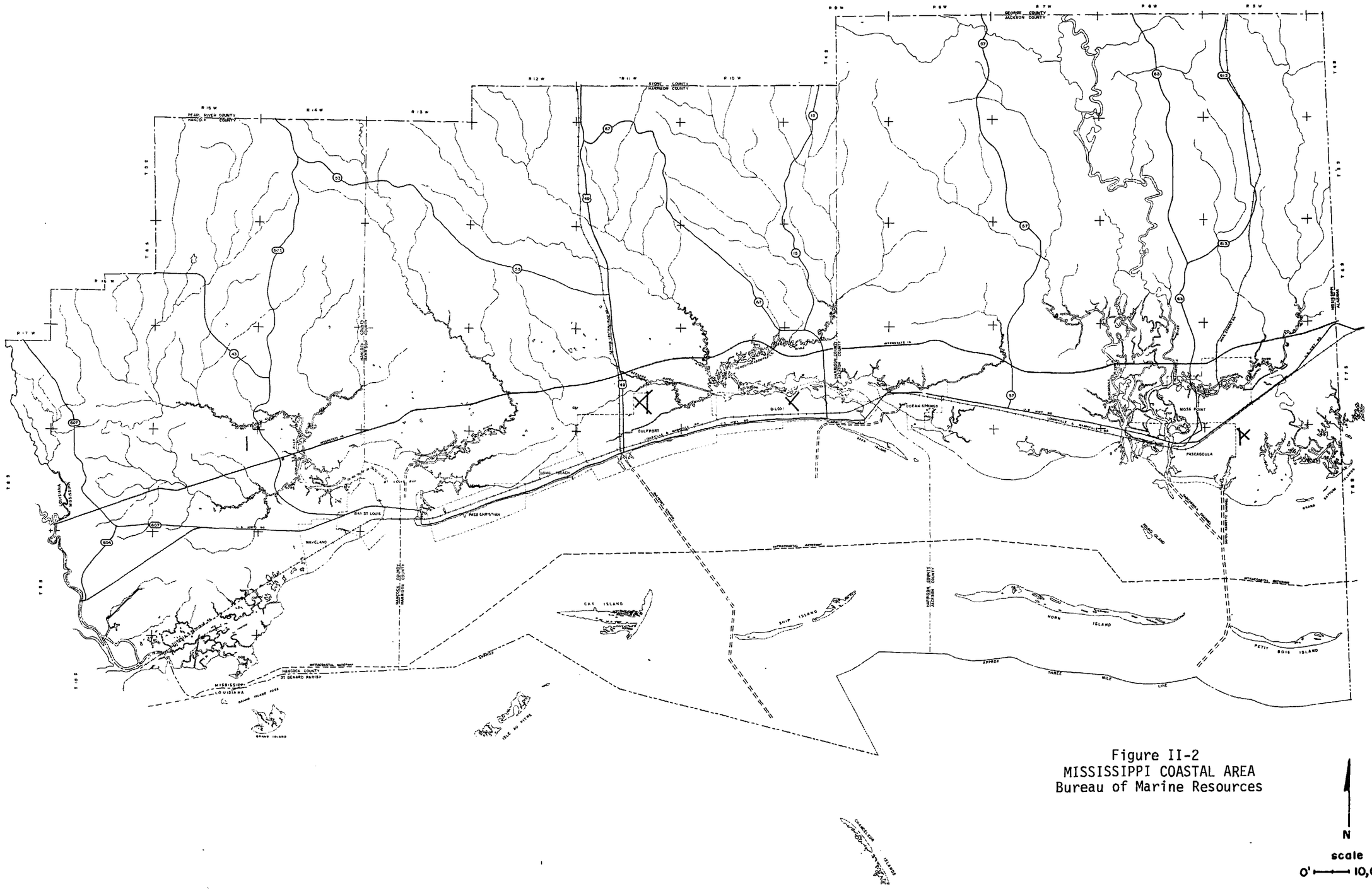


Figure II-2
MISSISSIPPI COASTAL AREA
Bureau of Marine Resources

limited to three coast counties. No known tidal influence extends beyond the three coast counties; therefore, this is a sufficiently extensive designation of a coastal area. Also, this designation has the administrative advantage of being coterminous with political boundaries.

While the Mississippi Coastal Program is binding on all state agency actions in the coastal area, some of the regulatory provisions of the program have more specifically defined landward jurisdictions. (See Figure I-1.) These are summarized below:

1. Wetlands Regulation - This regulatory jurisdiction is limited to areas below the watermark of ordinary high tide, except in two situations: where upland activities are filling into coastal wetlands, and where structures are being erected on suitable sites for water dependent industry. Chapter III and Appendixes A and H provide additional information.

2. Groundwater Regulation - Jurisdiction in this case is limited to designated capacity use areas; however, capacity use areas can be designated anywhere in the coastal area. No such areas are currently designated (see Chapter V and Appendix E).

3. Regulation of Cultural Resources - This authority is applicable only to designated state archeological landmarks, described in Chapter V. Appendix F provides statutory information.

4. Water Quality Certification in Wetlands - The Bureau of Pollution Control certifies water quality for U. S. Army Corps of Engineers' 404 permits. This authority is limited to the waters of the United States. This is described more fully in Corps of Engineers' regulations.

SECTION 4: SCOPE OF THE PROGRAM

During the development of the Mississippi Coastal Program, a number of studies and surveys were completed to determine the important issues requiring management attention in the coastal area. These studies and surveys, itemized in Appendix J, served as the basis for determining the goals of the coastal program, and were legislated in Section 57-15-6. This section of the program describes these goals, and provides an overview of the Mississippi Coastal Program's management efforts aimed at achieving each goal.

GOAL #1: To provide for reasonable industrial expansion in the coastal area and to insure the efficient utilization of waterfront industrial sites so that suitable sites are conserved for water dependent industry.

The coastal area contributes 12.7 percent of Mississippi's manufacturing output. The most intense industrial center on the coast is the Pascagoula-Moss Point area. Many other industrial areas in Harrison and Hancock

Counties provide jobs for coast residents. All three counties work actively to increase industrial development, either through the expansion of existing industries or the location of new facilities.

While it is eagerly sought, industrial development creates conflicts - conflicts between preservation and development as well as conflicts between the various components of economic development. Development necessarily uses, displaces, or replaces natural resources, and therefore conflicts with resource preservation goals. Another source of development conflict is between the various types of development, such as tourism and industrial development. A basic source of these conflicts is the competing demand for coast resources. Both tourism and the fishing industry are dependent on water quality and productivity; but industrial development is often dependent on the privilege of reducing that quality and productivity.

As a matter of state policy, industrial development must play a major role in the management of coastal resources. Accordingly, the thrust of the coastal program is to plan for industrial development activities in areas designated for such use, and to regulate the effects of such development to insure that the impacts on marine resources are minimized. The state's coastal program efforts include long term planning for waterfront industrial development and for spoil disposal. This planning is mandated by Section 57-15-6 of the Mississippi Code.

To carry out this planning, industrial and port areas are designated as special management areas in Chapter VI. The program provides for assistance to local governments to plan for and develop these areas in a manner compatible with the coastal program. Once developed and formally adopted, these area management plans will serve as the basis for permit decisions.

Wetlands management efforts will help conserve the waterfront industrial development potential of the coast by reserving suitable sites for water dependent industry. A permitting procedure for development on these sites (see Chapter VIII) will deter non-water dependent industries from locating on waterfront sites, and will deter water dependent uses from occupying more water frontage than necessary. By reserving suitable sites for water dependent industry, and limiting their development to activities genuinely requiring water access, the coast can get the maximum use out of existing waterfront sites, and can reduce the long-term demand for new sites which would be created at the expense of coastal resources.

The goal of conserving waterfront industrial sites will be furthered by the requirement that all state permitting actions comply with the coastal program. This will bolster wetlands permitting as a tool to manage the use of waterfront sites and access to water by establishing waterfront dependency criteria as a standard for other permits such as effluent discharges and water diversions when they involve development on designated waterfront sites.

GOAL #2: To favor the preservation of the coastal wetlands and ecosystems, except where a specific alteration of a specific coastal wetlands would serve a higher public interest in compliance with the public purposes of the public trust in which the coastal wetlands are held.

Mississippi's coastal wetlands, by law, include tidal marshes and waterbottoms. Because of their value and productivity, these resources have a high priority in the coastal program. Situated in Mississippi are some 436,000 acres of coastal wetlands, of which 65,453 acres are tidal marsh seaward of ordinary high tide. The life cycles of a number of the state's commercially and recreationally valuable seafood are tied to coastal wetlands, and particularly to the tidal marshes. Tidal marshes provide a filtering effect on pollutants. Another important aspect of tidal marshes is the buffer they provide against storm waves before they reach upland areas.

Unfortunately, these areas are just as fragile and susceptible to destruction and damage as they are important to the coastal ecosystem. Most of the destruction and loss has resulted because of man's actions. Many areas of coastal wetlands have been lost through dredging for channels, marinas and ports, or have been filled for new land development. The disposal of dredge material has resulted in a loss of considerable aquatic habitat.

The primary reason for damage to coastal wetlands is that the multiple uses of the wetlands are in competition. Preservation and development conflict simultaneously and the competition between the two is readily apparent in the short term. The long-term competition among uses for the wetlands is not so readily apparent; one use of the wetlands in the present often precludes future uses. For example, the industrial development of coastal wetlands, along with the creation of channels and docks, will prevent the use of that area for other purposes and will render adjacent areas undesirable for all but industrial uses.

The declared public policy of the state is to preserve coastal wetlands, and to allow their alteration only where the higher public interest can be demonstrated. Many uses can lay some claim to serving the public interest. Decisions as to the validity of these claims are made through the management efforts described in Chapter III, Wetlands Management, and formally structured in Chapter VIII.

Chapter VIII includes a coastal wetlands use plan and guidelines for specific activities affecting coastal wetlands.

The wetlands use plan and guidelines serve as the basis for permit decisions, and they are designed to be the application of public policy in coastal wetlands. Clearly, preservation for biological productivity is the dominant public interest in the wetlands. However, wetlands permitting decisions recognize other aspects of the public interest such as navigation, recreation, protection from erosion and other hazards, and the preservation of scenic qualities, many of which themselves directly relate to healthy, productive wetlands ecosystems.

GOAL #3: To protect, propagate, and conserve the state's seafood and aquatic life in connection with the revitalization of the seafood industry of the State of Mississippi.

Protection of the state's seafood is vital to the Mississippi Coast. Commercial fisheries brought approximately $33 million dockside value income to the Coast in 1979. Pascagoula, Biloxi and Gulfport are the leading fisheries processing centers employing many local residents. Employment figures tell only part of the story. Fishing is an important magnet for the local tourism industry, and sportsfishing is enjoyed by thousands of coastal residents.

Marine fisheries in Mississippi have experienced fluctuations in yield. While the optimum sustainable yield has nearly been reached for some harvestable species, the yield of others has been unstable. Additional impediment to fisheries utilization are inadequacy of shore facilities for both commercial and sportsfishing activities, and conflicts between commercial and sport interests.

In addition to its internal conflicts, the seafood industry faces threats from outside of the industry. A major threat to the seafood industry is the destruction of the resource base on which the fisheries depend - the wetlands. While some development of the wetlands carries with it public benefits, destruction of the wetlands is contrary to the best interest of the seafood industry. In this case, the seafood industry is but one party with a claim to the wetlands, but the economic voice of the seafood industry is neither as strong nor as organized as many competing uses.

In response to these issues, the coastal program includes the goal of protecting, propagating, and conserving the state's fisheries resources. The program will carry out this goal in several ways. First, the state's fisheries will be managed by BMR as described in Chapter IV. Second, the resource base of the state's fisheries - the wetlands - will be protected through wetlands management efforts.

BMR is primarily responsible for fisheries management. But in addition to BMR's efforts, the Bureau of Pollution Control will assist in the protection and propagation of the fisheries through its pollution control authority, as described in Chapter V: Policy Coordination. The authority to control water pollution is particularly important to fisheries interests because of the devastating effect water pollution has had on the oyster industry through the closing of major oyster reefs.

GOAL #4: To conserve the air and waters of the state, and to protect, maintain, and improve the quality thereof for public use, for the propogation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate beneficial uses.

The air and waters of the coast have been the object of increasing levels of pollution over the years. Pollution has resulted in threats to human health, and has adversely impacted the coastal economy through its effects on the tourism and the seafood industries. Domestic sewage discharges and industrial waste have been finding their way directly or indirectly into coastal waters, in some cases with inadequate or no treatment. The discharge of a large volume of treated wastewater from proposed regional treatment facilities will significantly contribute to changes in water composition in certain near-shore ecosystems. Other pollution problems include thermal discharges and the disposal of dredge spoil.

While not considered as serious a problem as water quality, the air quality of the coastal area has decreased as the coast has developed.

The management program responds to this goal by incorporating the air and water quality criteria and permitting systems of the Bureau of Pollution Control. The management of air and water quality is described in Chapter V: Policy Coordination.

GOAL #5: To put to beneficial use,to the fullest extent of which they are capable,the water resources of the state, and to prevent the waste, unreasonable use, or unreasonable method of use of water.

The Mississippi Coast has been blessed with an abundant supply of both groundwater and surface waters. But over the years, heavy demands have depleted some groundwaters to the point where surface waters are being tapped. Jackson County is nearing a critical point with its water supply because of intense industrial and municipal drawdowns on groundwater. This is not as serious a problem in Hancock and Harrison Counties.

The immediate solution to groundwater supply problems is the utilization of surface water, but this has its disadvantages. Directing surface water supplies to industrial and municipal use can deprive estuaries of freshwater, thereby altering hydrological and salinity conditions.

The Bureau of Land and Water Resources administers a regulatory system for surface and groundwater utilization. This is described fully in Chapter V: Policy Coordination.

The regulation of surface and groundwater utilization will help prevent the waste of water resources. However, by its prohibitive approach, regulation does not provide affirmative guidance to encourage the beneficial use of water resources. In the coastal program, this affirmative approach is provided in part by the designation of industrial and port areas as special management areas, and in part through assistance programs to local governments.

The solution to water supply problems has traditionally been a concern of local governments, and much time and money has been spent at the local level to develop water supplies. The coastal program will assist local governments in addressing water supply problems in an environmentally sound

way by providing financial assistance for planning and design work. As water demands continue to grow, the program will assist in meeting these demands with particular emphasis being placed on water reuse alternatives.

Under the auspices of the coastal program, Coastal Energy Impact Program Funds (CEIP) can be used to provide funds for eligible water supply projects.

GOAL #6: To preserve the state's historical and archeological resources, to prevent their destruction, and to enhance these resources wherever possible.

Historical and archeological resources are valuable to the coast, in part because of their economic importance for tourism, but more because of the contribution they make to the quality of life in the area. In some cases, these sites are our only links to past civilizations and historic events.

Fortunately, the area's major historic sites are preserved in perpetuity because of their public ownership. A number of archeological sites are also publically owned, and are therefore protected by the Mississippi Antiquities Law (see Appendix F).

Designated state archeological sites (including historical sites) are subject to the control of the Department of Archives and History, whose authority has been incorporated into the program as described in Chapter V. Improved protection of these sites will be achieved through the policy coordination procedure which requires agencies operating in the coastal area to comply with the coastal program goal of historical and archeological preservation.

GOAL #7: To encourage the preservation of natural scenic qualities in the coastal area.

The greatest scenic rosource of the Gulf Coast is the land/water interface with its wide expanses of tidal marsh and its thickly wooded lands proceeding to the water's edge. Modifications to the shoreline's adjacent lands, particularly major developments and facilities, can destroy this scenic beauty.

Other natural scenic resources of the coast include its wooded natural areas and its numerous large (and sometime historic) oak trees. Scenic preservation guidelines have been developed and are provided in Chapter VIII. These guidelines will be enforced through the policy coordination procedure described in Chapter V.

The guidelines will help preserve the remaining scenic vistas of the coast; but much has already been destroyed and would be irretrievable without affirmative efforts to enhance the visual quality of the coastal area. Accordingly, the designation of special management areas will assist local governments and state agencies in developing and implementing projects for scenic improvements as part of the overall development of special management areas. In addition, BMR will provide general technical assistance to public agencies for the preservation of natural scenic qualities.

GOAL #8: To consider the national interest involved in planning for and in the siting of facilities in the coastal area.

During the development of Mississippi's Coastal Program, efforts were made to identify uses and national resources for which there is a prevalent national interest. These were: (i) national defense and aerospace; (ii) energy production and transmission; (iii) recreation; (iv) transportation, ports and navigation; (v) air and water quality; (vi) endangered flora and fauna; (vii) living marine resources; (viii) land resources and conservation; (ix) wetlands; (x) floodplains, erosion hazard areas, barrier islands; (xi) historic and cultural resources; and (xii) wild and scenic river

Resource management policies incorporated into the program parallel national interest considerations (i.e., air and water quality, living marine resources, wetlands, and historic and cultural resources). Other national interest considerations enter the coastal program decision-making process through the policy coordination procedures described in Chapter V and formalized in Chapter VIII. Through these procedures, BMR will review the actions of state agencies in the coastal area for the consideration of the national interest.

GOAL #9: To assist local governments in the provision of public facilities and services in a manner consistent with the coastal program.

Major public works projects are necessary for the development of the coast, but the construction of these facilities can be harmful to the environment because of construction impacts, physical disturbances in sensitive areas, and effluent discharges.

Major public facilities and services of concern to the program include streets, roads, bridges, sewage systems, drainage systems, and water supply systems. While these facilities are the ones of prime importance to the management program, other facilities will be considered as well, but only to the extent that they can demonstrate a clear link to the goals of the coastal program. These include: public buildings, recreation facilities, parking facilities, airports, rail lines, and solid waste disposal facilities.

The coastal program will provide technical and financial assistance to local governments to supplement their traditional role in providing facilities and services. CEIP funds are available under the auspices of the coastal program to construct eligible public facilities. This assistance will be administered as described in Chapter VII: Affirmative Management Activities. In assisting local governments, special management areas will be emphasized. The participation of the program in these areas will help direct major developments toward the overall goals of the coastal program.

GOAL #10: To insure the effective, coordinated implementation of public policy in the coastal area of Mississippi comprised of Hancock, Harrison and Jackson Counties.

Mississippi Code Section 57-15-6 establishing this goal requires all state agencies to conduct their activities in the coastal area in compliance with this coastal program. This mandate for coordinated public policy will be implemented through the policy coordination procedures in Chapter V. In effect, all state agencies with regulatory and other authorities in the coastal area will be operating under the same set of policies expressed in this program.

With approval of the program under Section 306 of the Coastal Zone Management Act, this coordination of public policy will extend to federal activities in the coastal area as well.

SECTION 5: USES AND ACTIVITIES SUBJECT TO MANAGEMENT

Uses and activities were determined to be subject to management under the coastal program based on their effect on water quality, water quantity, bottom disturbances, water pollution, sedimentation (runoff), shoreline erosion, marine aquatic life, and historical and archeological sites. Uses and activities subject to the coastal program are listed below under the appropriate chapter headings.

WETLANDS MANAGEMENT (CHAPTER III)

The following are subject to the coastal program if they occur in coastal wetlands, or if they cause the displacement of coastal waters, artificially alter water levels or currents, or kill or materially damage the flora and fauna of coastal wetlands.

- Docks and piers
- Boat ramps
- Marinas and small craft harbors
- Erosion control structures
- Cables, pipelines and transmission lines
- Roadways
- Railroads
- Airports
- Channels and access canals
- Marsh impoundments
- Watershed impoundments
- Drainage canals and ditches
- Oil and gas exploration and production
- Mineral extraction
- Facilities requiring water for heating or cooling
- Construction on suitable sites for water dependent industry
- Ports
- Sand, gravel, and shell mining
- Power plants
- Sanitary landfills
- Effluent discharges

Dredging, and dredged material disposal
Filling
Site clearing
Pile driving

FISHERIES MANAGEMENT (CHAPTER IV)

Finfishing
Shrimping
Mariculture
Shellfishing
Leasing of waterbottoms for oyster farms
Live bait dealerships

POLICY COORDINATION (CHAPTER V)

When conducted or supported by state or federal agencies in the coastal area, the following are subject to the program.

Construction of sewer systems
Establishments whose operation would increase waste discharges into the state's waters
Construction or use of any new outlet for discharging wastes
Emission of any waste, product, or substance likely to cause air pollution
Construction of any equipment which will cause the issuance of air contaminants
Surface water appropriations
Groundwater wells in excess of 50,000 GPD
Watershed impoundments
Oil, gas, sand, gravel, and shell leasing on state lands and in coastal waters
Alterations to historical and archeological sites
Lease or sale of coastal wetlands
Highway construction
The issuance or renewal of permits, licenses, leases, or similar instruments
Promulgation of rules and regulations
Granting of financial assistance
Planning programs
Research programs
Property acquisition or clearing
Construction projects

CHAPTER THREE

WETLANDS MANAGEMENT

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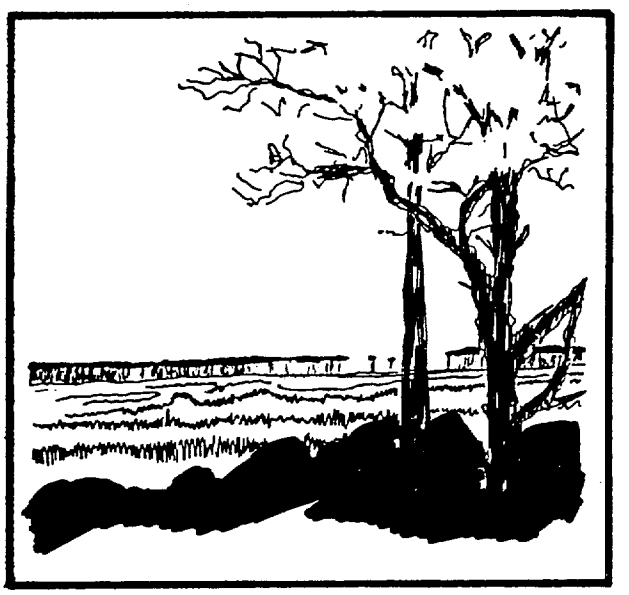
Section 1: Wetlands Legislative History

Section 2: Management Framework



CHAPTER THREE: WETLANDS MANAGEMENT

SECTION 1: WETLANDS LEGISLATIVE HISTORY

ENABLING LEGISLATION

In 1970, the Mississippi Legislature created the Mississippi Marine Resources Council with the broad purpose of exploring, developing, conserving, and marketing the underwater natural resources of the state, particularly those lying offshore in the state's coastal waters. This enabling legislation set the stage for managing marine resources in a comprehensive fashion. Subsequent legislation created the legal tools to carry out this broad mandate.

WETLANDS LAW

In 1973, the legislature passed the Coastal Wetlands Protection Law (also called the Wetlands Law) and designated what was then the Mississippi Marine Resources Council as the agency vested with permitting authority regarding activities affecting the state's coastal waters and wetlands (Appendix A). This law gave the Mississippi Marine Resources Council the ability to protect coastal wetlands through enforceable permitting procedures, regulating activities defined in the Wetlands Law. The law also included a list of agencies, activities, and areas bound by the wetlands protection policy but exempt from permits.

In 1974, an amendment to the Coastal Wetlands Law significantly streamlined the permitting procedures by allowing permit waivers for minor projects. Projects coming under a certificate of waiver are exempt from the need to secure a permit under the Wetlands Law.

FURTHER DEVELOPMENT OF WETLANDS AUTHORITIES

Senate Bill 2498 passed in 1978 strengthened wetlands management by amending Mississippi Code Section 57-15-5 to state that "the Council shall have responsibility for the general management of the state's wetlands." An Attorney General's opinion of May 31, 1978 (Appendix H) describes the implications of this authority.

During the 1978 session, the legislature also passed Senate Bill 2306. This Bill consolidated a number of existing state agencies into two new departments: the Department of Natural Resources (DNR) and the Department of Wildlife Conservation (DWC). The Marine Conservation Commission, the Game and Fish Commission, the Boat and Water Safety Commission, and the Marine Resources Council were consolidated to form DWC. Under the terms of this reorganization, all authority formerly vested in MMRC was transferred to the Mississippi Commission on Wildlife Conservation acting through the Bureau of Marine Resources.

The reorganization did not alter basic authorities, rather, it provided for the authorities of the consolidated agencies to be assumed by the new Commission on Wildlife Conservation. Together, these authorities help form a comprehensive set of tools for coastal resource management. In this respect, the reorganization has strengthened management authorities by establishing a single decision-making structure for activities affecting the coastal wetlands.

1979 LEGISLATION

While the statutes enacted prior to 1979 provide most of the necessary authorities for coastal wetlands management, House Bill 974, passed in 1979, strengthened and expanded the authorities available for effective management. House Bill 974 amended Sections 49-27-5(c) of the Mississippi Code by extending the definition of a regulated activity to include the erecti of structures on sites suitable for water dependent industry. By controlling such uses, the program will be able to manage an important coastal resource - waterfront industrial sites - in conformance with the coastal program goal of conserving suitable sites for water dependent industry. If such sites are reserved for industries requiring water access for their operation, the unnecessary utilization of these sites can be avoided and the long term demand for creating new waterfront sites can be minimized.

House Bill 974 created Mississippi Code Section 57-15-6 to provide for a comprehensive coastal program, one element of which is wetlands management. This legislation requires all state agencies to comply with the coastal program as they carry out their responsibilities in the coastal area. It clearly makes coastal wetlands protection a factor in decision-making and requires state agencies to comply with the public policy of coastal wetlands protection. At the same time the permitting functions of BMR must consider the broad range of policies expressed in the legislation. In effect, House Bill 974 created a comprehensive program by giving all state agencies the responsibility for coastal wetlands protection, even though BMR will exercise the primary administrative responsibility.

Appendixes A and B provide the text of Mississippi Code Titles 49 and 57, updated to include the provisions of House Bill 974 in 1979. Appendix A is also updated to reflect House Bill 94, passed in 1980. This Bill amended 49-27-9 to clarify the permit requirement for waterfront industrial sites.

SECTION 2: WETLANDS MANAGEMENT FRAMEWORK

ACTIVITIES SUBJECT TO MANAGEMENT

Three types of activities are subject to management under the Wetlands Law. The first type is regulated activities physically located in

coastal wetlands; the second type is indirect regulated activities - those activities affecting coastal wetlands by indirect dumping, filling or depositing materials in coastal wetlands; the third type is the erection of structures on sites suitable for water dependent industry.

Regulated Activities in Coastal Wetlands

The following activities conducted in coastal wetlands are subject to the management program: (i) the dredging, excavating or removing of soil, mud, sand, gravel, flora, fauna or aggregate of any kind from any coastal wetland; (ii) the dumping, filling or depositing of any soil, stones, sand, gravel, mud aggregate of any kind or garbage, either directly or indirectly, on or in any coastal wetlands; (iii) killing or materially damaging any flora or fauna on or in any coastal wetland; (iv) the erection on coastal wetlands of structures which materially affect the ebb and flow of the tide; and (v) the erection of any structure or structures on suitable sites for water dependent industry. (Mississippi Code Section 49-27-5)

Indirect Regulated Activities

The Wetlands Law recognizes that indirect dumping, filling, or depositing of materials on or in coastal wetlands is a regulated activity. (Section 49-27-5(c)(ii)). For simplicity, these activities will be referred to as "indirect filling" in the discussion which follows.

A December 14, 1976 Attorney General's opinion helps to clarify that the use of the term "indirectly" extends the authority of the Wetlands Law beyond the coastal wetlands when indirect filling is taking place (see Appendix H). In that opinion, the Attorney General considered the question of whether the Marine Resources Council (now BMR) had jurisdiction over the act of filling in an upland area for a subdivision where the fill material was eroding into and filling adjacent coastal wetlands.

The Attorney General's opinion concluded that the Wetlands Law applies to the filling or depositing of any soil, sand, gravel, etc. indirectly on or in the coastal wetlands.

> "This contemplates affirmative action by the owner of property adjacent to coastal wetlands to cause an artificial erosion into the coastal wetlands, which would bring such an activity within the jurisdiction of the Mississippi Marine Resources Council."

Further, the opinion states that whether the erosion is natural or artificial is a factual determination to be made by the Mississippi Marine Resources Council (now Mississippi Commission on Wildlife Conservation).

Applying similar reasoning to the alteration of drainage patterns affecting the coastal wetlands, such alteration would comprise a regulated activity by virtue of Section 49-27-5(e) which includes in the definition of "filling" the displacement of waters and artificial alterations to water levels or currents. The language of 49-27-5(c) would include the displacement of waters as regulated activity comprising "...filling..., either directly or indirectly, on or in any coastal wetlands;..."

House Bill 974, passed in 1979, reinforces the Attorney General's opinion of December 14, 1976 by changing the language of the statute to show clearly that the Wetlands Law is not limited only to activities in the coastal wetlands, but that it encompasses activities affecting coastal wetlands through indirect filling. House Bill 974 changed Mississippi Code Section 49-27-9 by deleting the qualifier "upon any coastal wetland" as it applied to permit requirements for regulated activities.

Indirect filling within the meaning of the Wetlands Law can be the result of activities such as filling for construction of roads, bridges, parking lots, subdivisions, and individual buildings; clearing land in a way that exposes unvegetated soil subject to erosion into coastal wetlands; and constructing or modifying drainage systems in a way that alters the flow of water to coastal wetlands. While these, and similar, activities are not automatically regulated, parties engaged in these activities should be aware of the possibility of indirect filling and its ensuing permit requirements.

Chapter VIII, Section 2, Part III.N. provides additional detail on indirect regulated activities. The Mississippi Bureau of Pollution Control plays a role in regulating indirect activities. BPC issues the state's water quality certification to the U. S. Army Corps of Engineers for Section 404 permits. This certification (usually called "401") provides for the effective management of activities located in non-tidal wetlands but which have an impact on coastal waters. BPC will participate in wetlands permitting decisions through policy coordination procedures in Chapter I, Section 4.

Construction of Suitable Sites for Water Dependent Industry

Section 49-27-5(c)(v) of the Mississippi Code defines as a regulated activity the erection of any structure or structures on suitable sites for water dependent industry. The law limits suitable sites for water dependent industry to waterfront sites owned by county port authorities, development commissions and port and harbor commissions and to areas that are now or are later made to be within one thousand (1,000) feet of the centerline of any natural or maintained channel having a depth of seven (7) feet or greater at mean low water. Additional sites may be included as suitable sites for water dependent industry with the concurrence of the board of supervisors in the county affected.

In designating suitable sites for water dependent industry, BMR actively consulted local development officials, zoning ordinances, and development plans. In addition, BMR examined the locations of existing navigable channels, the extent of available land, the characteristics of this land, and its access to other means of transportation. This resulted in the identification of candidate sites to be designated as suitable for water dependent industry.

In identifying these sites, BMR weighed most heavily the sites' proximity to waters of navigable depth, the intention being to avoid the designation of new sites which would require new major dredging projects. In addition, sites were considered only if the use of such sites would not conflict with local zoning ordinances.

The final designated site selection followed additional discussions with local development authorities to determine which areas were already developed or were in the process of being developed. In Hancock and Harrison Counties, the final designation of sites (and the designation of additional sites in the future) is covered by interagency agreement. The designations in Jackson County are listed in the program without an intervening agreement.

In requiring permits for regulated activities, Section 49-27-9 excludes certain industrial activities from the need to acquire a permit for building on designated waterfront industrial sites if they meet the requirements for water dependent industry. In doing so, the law encourages water dependent industry to locate on suitable sites by avoiding new regulatory requirements for such industry. Conversely, the law requires regulatory scrutiny of non-water dependent industry seeking to locate on waterfront sites designated as suitable for water dependent industry as a means of conserving these sites.

PERMIT PROCEDURES

The Wetlands Law prohibits the conduct of a regulated activity unless a permit has been issued or the activity is conducted under a valid exclusion. The permitting procedures administered through BMR are described below, and are illustrated in Figure IV-1.

Upon receipt of a joint application for a permit*, the BMR staff reviews the application to determine if all information necessary for an evaluation is included. The application is then checked to determine if a waiver or exclusion is in order. If a permit for the project is required, the processing procedure begins. The law allows 90 days from this determination to act on the permit request.

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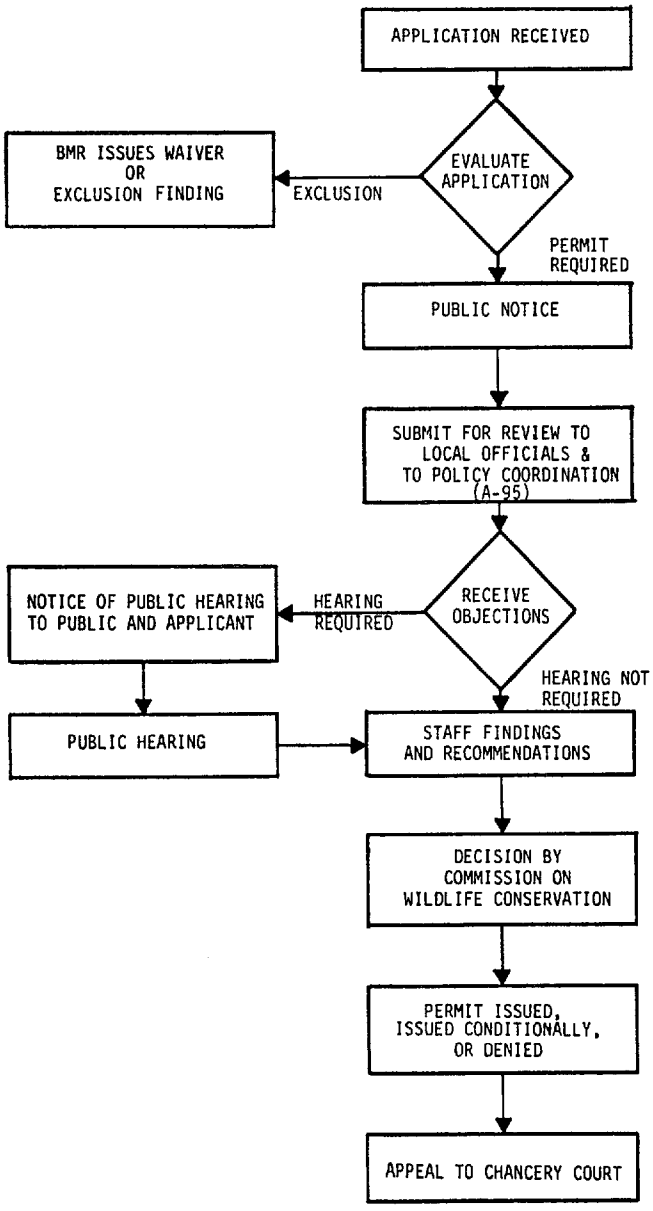
*A joint application form is used by the Corps of Engineers, the Bureau of Marine Resources, and the Bureau of Pollution Control.

FIGURE III-1

WETLANDS PERMITTING PROCEDURE



Within 60 days of receipt of a completed application, BMR issues a public notice describing the project and stating that written ojbections to the permit will be considered. Interested parties have seven days from the date of the last publication of the notice to file written objections. In addition to the public notice, copies of the application are sent to a number of state, county, and municipal organizations and individuals, as required by Section 49-27-31 of the Wetlands Law. The application is also circulated for review by other state agencies in accordance with the policy coordination procedures described in Chapter V.

If a written objection is filed, or if the applicant requests a hearing, a public hearing must be held within 20 days after the closure date for written objections, unless a later date for the hearing is agreed to by all parties. Notice of a public hearing is published and is given to all parties listed in Section 49-27-13 and all known present owners of record of adjacent lands. Documentary evidence offered at the hearing and all related documents become part of the administrative record.

Based on the application contents, on comments received from interested parties on the comments of state agencies resulting from the policy coordination procedure in Chapter V, and on an independent site inspection, the BMR staff will evaluate the proposed activity in accordance with the regulations in Chapter VIII, Section 2. The staff will prepare findings and recommend action to the Commission on Wildlife Conservation. The Commission makes the decision to issue or deny a permit for a proposed activity. This decision may be appealed through chancery court.

DECISION-MAKING CRITERIA

Chapter VIII includes two important tools for making decisions about activities affecting coastal wetlands. The first of these is the coastal wetlands use plan. It specifies allowable uses in the state's wetlands, and shows where activities may take place in the coastal wetlands. Only uses allowable under the use plan may receive a wetlands permit; however, exceptions to the plan may be allowed through a formal revision procedure described in Chapter VIII, Section 1.

The second important decision-making tool is the set of guidelines. These guidelines state how regulated activities should take place. Like the coastal wetlands use plan, the guidelines are binding on permit decisions. However, variances from the guidelines could be granted through the permit process without the need for formal revision procedures.

ENFORCEMENT

The Attorney General at the request of MCWC, a district attorney, or county attorney may initiate civil and/or criminal actions against

an alledged violator of the Wetlands Law, and secure an injunction against any person or persons believed to be in violation of the law. Chapter VIII, Section 2, Part V specifies the procedures and criteria that MCWC will use in requesting action from the Attorney General. Any person who violates the Wetlands Law is liable for restoring the affected coastal wetlands to their prior condition, and the courts may order up to $500 per day for each violation as punitive damages. Each day of a continuing violation consitutes a separate offense. Also, a violation of the law constitutes a misdemeanor punishable by a fine of not less than $100 nor more than $1,000 and/or imprisonment.

EXCLUSIONS

The Wetlands Law recognizes a number of activities, areas and entities excluded from the requirements to obtain a state wetlands permit, but which nonetheless are required to comply with the public policy of wetlands protection as expressed in Mississippi Code Section 49-27-3. The exclusions, as found in the statute and quoted in the regulations found in Chapter VIII, are summarized below:

1. Activities - Emergency decrees; conservation and research activities; hunting, erecting of duck blinds, fishing, shellfishing, trapping, swimming, boating, and other recreational activities; its exercise of riparian rights where the ebb and flow of the tide is not unreasonably obstructed; normal maintenance and repair operations; all interstate highways; and oil and gas activities when permitted by another state agency;

2. Areas - Coastal wetlands developed in connection with a superport; wetlands under a use permit granted by Chapter 395 of Laws of 1954 (an existing power plant ash pond); wetlands conveyed by the state for industrial development pursuant to Section 211 of the Mississippi Constitution and Section 29-3-61 of the Mississippi Code; coastal wetlands within five feet of private property;

3. Entities - Activities conducted by certain entities on wetlands within their perspective jurisdiction are excluded. These entities are the Biloxi Bridge and Park Commission; local port commissions, port authorities, development commissions, and port and harbor commissions; mosquito control commissions, state park commission, and the Mississippi State Port at Gulfport;

4. Regulated Activities Covered by a Certificate of Waiver; and

5. The Erection of structures on suitable sites for water dependent industry, if such activity is a water dependent industry.

Applicability of the Wetlands Law to Exclusions

Mississippi Code Section 49-27-7 clearly requires the activities of exclusions in the Wetlands Law to comply with the public policy of wetlands protection in Section 49-27-3, and requires that BMR be notified of such activities.

An Attorney General's opinion of October 30, 1974, (Appendix I) reinforces the applicability of the wetlands policy to the exclusions. The opinion stated that MMRC (now BMR)

> . . . as the administering agency of the Wetlands Law, may decide whether unnecessary alteration of wetlands is taking place by an exempt party, that is, to an extent greater than is required by the activity which the Legislature has decided is a "higher public interest". Whether the "exempt authority" is being exceeded then becomes a factual matter to be determined by the Council (now the Commission on Wildlife Conservation).

This concept was supported and strengthened by a 1978 amendment to Mississippi Code Section 57-15-5. The amendment gave MMRC (now BMR) the "responsibility for the general management of the state's wetlands". An Attorney General's opinion of May 31, 1978, stated that this amendment

> . . . adds to the prior enactment so that the activities of exempt parties or agencies in the wetlands must be conducted not only in accordance with the public policy expressed in Section 49-27-3 but, under the new managerial functions of the Council, must also be conducted in a manner consistent with the management plan . . .

Thus, the exclusions in the Wetlands Law are required to follow the public policy of wetlands protection, and required to do so in conformance to a management plan. This management plan is embodied in the rules and regulations for coastal wetlands in Chapter VIII.

Certificate of Waiver

The Wetlands Law provides that a Certificate of Waiver may be issued for projects which are considered minor in nature. The Certificate of Waiver is issued to an applicant after an on-site inspection reveals that the proposed regulated activity will have no direct or significant impact on the environment and will make no substantial change in the coastal wetlands. The regulations provided in Chapter VIII identify projects which qualify for a Certificate of Waiver.

This procedure has been in effect since 1974. Experience has shown that the procedure has greatly reduced time delays for applicants, and conserves staff time as well. Waiver guidelines parallel the guidelines used by the Corps of Engineers in their general permit under Section 404 of the Clean Water Act.

Water Dependent Industry

Activities of water dependent industries do not require permits to erect structures on suitable sites for water dependent industry. This exclusion is fully detailed in the regulations in Chapter VIII. This exclusion does not relieve the exempted activity from the requirements of having a permit for all other regulated activities described in 49-27-5(c)(i) through (iv) (e.g., dredging, filling, dumping). Water dependent industries, when conducting an exempted activity, must still conform to public policy and notification procedures.

JURISDICTION OF THE CORPS OF ENGINEERS

The coastal wetlands permitting function of BMR is often confused with the U.S. Army Corps of Engineers wetlands permitting efforts. State law limits BMR's jurisdiction to the watermark of ordinary high tide. However, the Corps of Engineers' jurisdiction is much more extensive. It extends to all waters of the United States, and includes wetlands above the watermark of ordinary high tide.

CHAPTER FOUR

FISHERIES MANAGEMENT

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Section 2: Problems in Fisheries Management

Section 3: Improving the Fisheries Information Base

Section 4: State/Federal/ Interstate Organizational Relationship

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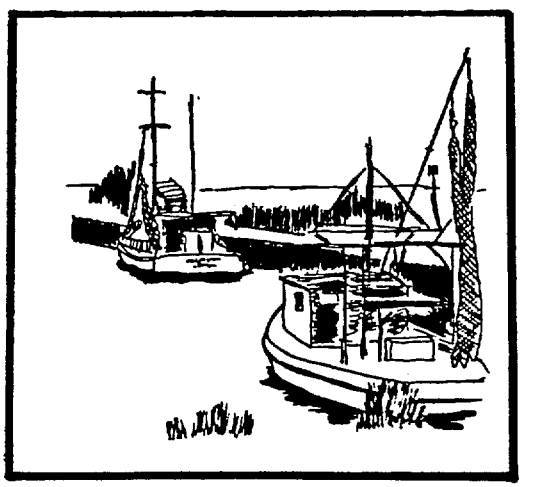


CHAPTER FOUR: FISHERIES MANAGEMENT

SECTION 1: FISHERIES MANAGEMENT AUTHORITIES

Section 49-15-1 of the Mississippi Code states, in part:

> ...The public policy of this state shall be to recognize the need for a concerted effort to work toward the protection, propagation and conservation of its seafood and aquatic life in connection with the revitalization of the seafood industry of the State of Mississippi, which is one of the state's major economic resources and affords a livelihood to thousands of its citizens; and in this connection, it is the intent of the legislature to provide a modern, sound, comprehensive and workable law to be administered by specialists, who are vested with full and ample authority to take such action as may be necessary in order to help protect, conserve and revitalize seafood life in the State of Mississippi.

Appendix C provides the text of the state's seafood statutes. The major authorities included in these statutes are to:

1. Set the standards of measurement to be used in determining legal catch sizes;

2. Regulate the opening and closing of season for the taking for commercial purposes of shrimp, crabs, oysters, and fish.

3. Regulate the size and taking regulations for all types of seafood and culling regulations for oysters;

4. Acquire and dispose of shells, seed oysters, and other materials to effectuate the growth of oysters;

5. Establish enforcement procedures and penalties for violations;

6. Establish minimum specifications for crab traps and require that these traps be marked with appropriate buoys identifying the owners.

7. Prohibit the use of double rigged vessels in the waters of the Mississippi Sound lying between the mainland and the island chain south of the mainland;

8. Establish an open season for menhaden consistent with the statutory directive of such open season;

9. Require all boats used in any operation affected by the regulations of the statutory authority of the commission or by the rules and regulations promulgated by the commission to be licensed even though such boats may operate in other territorial waters. Where any vessel is operating in the waters of Mississippi and some other state, that vessel is deemed to be operating in interstate commerce; and

10. Enact all regulations necessary for the protection, conservation, or propagation of all shrimp, oysters, commercial fish and crabs in the waters of the State of Mississippi.

The authorities described above rest with the Commission on Wildlife Conservation, and are exercised insofar as practicable through BMR. In addition to the direct exercise of fisheries management authority, several other regulatory authorities will assist in protecting and enhancing the coast's fisheries in a less direct manner.

Wet.

The Wetlands Management Chapter (Chapter III) protects the ecological integrity of the fisheries resource base. The proper management of the wetlands will maintain the supply of nutrients to the estuaries on which the commercial fisheries depend.

WQ

The enforcement of water quality standards will also help protect fisheries. These standards are, in part, designed to maintain water quality suitable for marine life. The authority for this enforcement rests with the Bureau of Pollution Control of the Department of Natural Resources.

The State Board of Health controls the construction of septic tanks in areas where the public health will be endangered. This control serves to moderate the amount of untreated sewage effluent finding its way into coastal waters. Other functions of the Board of Health are to control sanitation in the seafood industry, and to determine whether waters are sanitary enough for the taking of oysters for human consumption. The Board of Health is obliged to conduct its activities in a manner consistent with the program by virtue of Section 57-15-6 of the Mississippi Code.

SECTION 2: PROBLEMS IN FISHERIES MANAGEMENT

One of the most significant problems confronting Mississippi's fishermen is the conflict between sport and commercial interests. This problem is, in part, due to the limited resources that cannot support unlimited exploitation by both recreational and commercial fishermen. Another problem is that there is no licensing procedure for saltwater recreational fishermen. This results in an inadequate data base for recreational

fishing decision-making. If the data base were known, then a reasonable optimum sustainable yield (OSY) could be determined. A related problem stems from the lack of sound baseline information. To implement effective fisheries management, it is imperative to know the dimensions of the available resource base.

The destruction of the marine habitat - specifically the coastal wetlands upon which fisheries are so dependent - creates problems in sustaining a high fisheries yield. While some development in the wetlands is in the public interest, the loss of valuable nutrients is harmful to the fishing industry and must be considered.

A number of organizations are designed to assist in fisheries management. But in most cases, marine fishermen and their interests are not adequately represented on fisheries management groups. This is particularly true in relation to the representation that other interests have on these groups.

A problem relating to both commercial and recreational fisheries is the lack of adequate access to the state's coastal resources. The coast's public launching ramps, piers, marinas, and restroom facilities are limited. Presently, fishermen often have to drive long distances to reach these facilities. In addition, problems of fuel costs, availability of ice, availability of dock space, and monetary considerations must be addressed.

SECTION 3: IMPROVING THE FISHERIES INFORMATION BASE

Orderly and productive fisheries management occurs only when objectives are clearly defined, resource management problems are well identified, research to resolve problems is carried through to substantial completion, and indicated management solutions are implemented.

Defining the objectives of a fisheries management program is not a task to be taken lightly. Different sectors make up the fishing interests in the coastal area. Within the narrow context of one sector, the overall objective may simply be to provide for "better fishing". While no one would take issue with such an objective, "better fishing" has different connotations to each sector. To the commercial fishermen, better fishing requires an increase in total landings and/or increase in harvest per unit of effort required. Similarly, better fishing to much of the recreational sector merely implies a decrease in the time between bites. Yet another element which must be considered in the recreational fishery is that a reasonable possibility of catching large fish of quality instead of quantity should be provided.

These objectives are within reach of a well-organized fisheries management program which would strive to develop and enhance those factors which contribute to better fishing while regulating those factors which are detrimental to the resource. The principal factors which fall into these categories are:

1. Habitat degradation - the determination of safe concentrations of toxicants and the regulation of discharges to allowable levels.

2. Habitat destruction - diversion of water flows, ditching and draining, dredging and filling, alteration of barrier islands, dam construction, substrate removal, vegetation removal, bulkhead construction, jetties, breakwaters, and similar structures.

3. Habitat creation - including marsh creation from dredged spoils, creation of seagrass beds, and artificial reef construction.

Emphasis on habitat conservation, protection, creation, and enhancement in a fisheries management program would promote maximum productivity for all species. Nonetheless, harvest factors must be accounted for in order to assure that existing stocks are not being subjected to excessive fishing pressure.

Effective harvest management is difficult, primarily because there is little knowledge regarding the harvest sector, in particularly the recreational fishery. There is a related lack of knowledge regarding the distribution of existing fish populations (stocks). This vital management information should be acquired for in any sound fisheries management program. The information needed can be prioritized on the basis of its relative contribution to the management efforts as follows:

1. First order information is considered to be the minimum information necessary for rational fisheries management. Such information would encompass: (i) the distribution and abundance of the stocks of each species to be managed and the fishing and habitat pressures to which these stocks are subject; (ii) the capacity to measure changes in abundance and fishing pressure; and (iii) the ability to quantify expected surpluses and/or deficits.

2. Second order information would allow more effective management through stocking programs, areal catch limitations, and similar tools. This would require the following additional information: (i) life history knowledge; (ii) size and age structure of stocks; and (iii) behavior of each stock (migrations, etc.).

3. Third order information would provide a predictive capability for a multi-species fishery. It would enable management personnel to assess the effects of major environmental and wetlands modification activities upon year-class strength, spawning success, and recruitment. Such an effort would require in-depth information regarding: (i) ecological relationships between and among species with particular emphasis on overlap, competition, and predation as well as critical habitat identification; (ii) knowledge of density dependent and independent population factors (growth rates, specific mortality, intraspecific competition, etc.); and (iii) the prerequisities for development of a population model for each fishery stock.

SECTION 4: STATE/FEDERAL/INTERSTATE ORGANIZATIONAL RELATIONSHIP

TERRITORIAL SEA MANAGEMENT

The Gulf States Marine Fisheries Commission (GSMFC) was created by Texas, Louisiana, Mississippi, Alabama, and Florida. These states recognized that some species of fish are depleted, and that since many stocks migrated beyond a single state's boundary, corrective action would require some form of interstate agreement. GSMFC was therefore established by mutual state action, and was ratified by the U. S. Congress.

GSMFC promotes dialogue between the states on fishery matters, stimulates research on problems of mutual concern, represents the states before Congress, and secures contracts to conduct management and research work. However, GSMFC is without any authority except as the states might agree to take a unified course of action. Unless a unanimous decision is reached, problems cannot be resolved through this organization. Thus, it is not an appropriate vehicle to resolve major interstate fishing issues.

FISHERIES CONSERVATION ZONE MANAGMENT

Established by Public Law 94-265, the Fishery Conservation and Management Act (FCMA) of 1976 was adopted by Congress in response to the widespread concern that the survival of certain stocks of fish off the coast of this country is threatened, and that other such stocks have been so substantially depleted that they could face similar danger. FCMA made it the policy of the United States to establish a "workable and effective" fisheries management and conservation program based upon the best scientific information available, involving interested states and citizens, and drawing on federal, state, and academic capabilities to carry out research, administration, management and enforcement.

Initiated in March of 1977, the management program adopted as its boundary the already familiar 200 mile limit, also known as the Fisheries Conservation Zone (FCZ). The FCMA provides for the management authority for all species in this zone.

The entities responsible for this massive management effort are the respective regional management councils. Each council is charged with the development of fishery management plans for the species within the ocean waters of its region. These councils are also required to submit periodic reports to the Secretary of Commerce; to review and revise assessments of optimum yield and allowable foreign fishing; to conduct public hearings on development of fishery management plans and on the administration of the act; to establish scientific and statistical committees and necessary advisory panels; and to undertake any activities necessary to carry out FCMA.

The councils have been designed so that they are autonomous from both the federal and state governments. The voting members consist of each state's principal fisheries management official designated by the Governor of that state; the regional director of National Marine Fisheries Service for the area concerned; a "qualified individual" from each state, selected by the Secretary of Commerce from nominations by state governors; and other "qualified individuals" who will be appointed at large, the number of which will vary with the number of states in the council regions. These too, are appointed by the Secretary of Commerce from state governors' nominations.

The fishery management plan of each regional council must conform to six national standards:

1. Conservation and management measures must prevent overfishing but achieve optimum yield for each fishery;

2. Such measures must be based on the best scientific information available;

3. An individual stock of fish must be managed as a unit throughout its range to the extent practicable;

4. The measures must, where practicable, promote efficiency in the use of fishery resources;

5. They must take into account and allow for variations about fisheries, fishery resources, and catches; and

6. Where practicable, they must minimize costs and avoid unnecessary duplications.

Enforcement is the joint responsibility of the National Marine Fisheries Service (dockside) and the United States Coast Guard (at sea).

The development of management and research concepts will depend to a large extent upon cooperation between the National Marine Fisheries Service and the Scientific and Statistical Committee of the Regional Council in the determination of optimal sustainable yields (OSY). The determination of (OSY) for a given fish stock is the basis of any effective fishery management plan. The primary source of data for OSY is the National Marine Fisheries Service (NMFS); thus NMFS constitutes a major artery between the federal government and the regional councils.

INFORMATION MANAGEMENT

NMFS has two separate organizations in the Southeast that serve the South Atlantic and Gulf of Mexico states. One is the Southeast Regional Office centered in St. Petersburg, Florida. The other is the Southeast Fisheries Center headquartered in Miami, Florida. The two Directors report to the National Oceanic and Atmospheric Administration's (NOAA) Assistant Administrator for NMFS in Washington, D.C.

The Southeast Regional Office is concerned with state conservation agencies, recreational interests, the fishing industry, and the general public. It is responsible for planning, organizing, and implementing fishery management and conservation programs. The region also provides administrative and technical support to the Regional Management Council; its Regional Statistical Office in Little Rock, Arkansas publishes the familiar "Mississippi Landings" and "Gulf Coast Shrimp Data."

The Pascagoula Mississippi Laboratory of NMFS develops biological and economic information to support development of underutilized fisheries in the Gulf of Mexico. Current activities include:

1. Assessment and monitoring of Gulf of Mexico resources with emphasis on status, yield potential and abundance of groundfish stocks.

2. Coordinating development of new fisheries.

3. Development of new and improved techniques for efficient and selective harvests.

SECTION 5: METHODS FOR ENHANCING COMMERCIAL AND RECREATIONAL FISHERIES

There are numerous methods and procedures through which a state can improve and enhance the quality and quantity of fisheries in the

Mississippi Sound. Overall enhancement of the fishery will, in turn, make more fish available to be caught by the sport fishermen and for commercial harvest. Following are examples of the activities that will be pursued during the implementation of the coastal program:

1. Revision of ordinances - Presently, there are only a few ordinances which deal with recreational fishing. The vast majority of existing ordinances refer to commercial fishing. In addition, the recodification of existing ordinances will be investigated.

2. Licensing - The licensing of saltwater sport fishermen (as freshwater fishermen are now licensed) is another potential action that will provide for more control over individual species, better enforcement, and will provide for an assessment of recreational fishing to be made. This will require new legislation.

3. Allocation of funds for reserach and development - Presently, funds for research come from several different sources and are applied to various research efforts. Most research monies come from federal sources and unfortunately federal funding is not adequate to cover all areas of needed fisheries management. Increased demand on the natural resources and public accessibility indicate a need for added funds which would be a tremendous help to resource managers. Newly allocated funds can provide an understanding of the biological, economic and social aspects of marine fishing. Particular emphasis should be given to stock assessment, including natural and fishing mortality, growth, and characteristics and value of the industry.

4. Improved coordination among local, state and federal agencies - Presently, there is a severe overlapping of authorities and jurisdiction among existing agencies. This situation produces overlapping research as well as a waste of funds.

5. Increase public access - Mississippi lacks adequate public facilities such as boat launching ramps and piers. These conditions do not provide the angler with suitable opportunity to enjoy the sport of fishing. Funds derived from saltwater fishing licenses could be used to build launching ramps, marinas and other facilities. However, the decision to build such facilities must be made with the constraints of optimum sustainable yield in mind.

6. Protection of natural habitats - All fisheries resources are dependent on a sound environment. It is essential that continued steps be taken to prevent the loss and degradation of the coastal wetlands.

7. Increase the productivity of coastal waters - Enhancement measures are needed to increase the productivity of the marine environment. One method is to restore lost coastal wetlands while reducing the impact of polluting activities in the coastal environment. The establishment of areas as estarine sanctuaries is another affirmative management technique. Other very important methods to increase the productivity of the coastal waters thereby improving fishing is to (i) create reefs, such as the sunken liberty ships now in the Gulf which enhance fishing and (ii) to develop mariculture in the Mississippi Sound.

8. Future technological advances in net, boat and equipment design need to be encouraged. This effort, which could be achieved by research grants, will greatly benefit the commercial fishermen.

9. The commercial fishermen would also benefit from the creation of a fishermen's market.

10. Establish educational programs - Mississippi needs to institute programs which will inform the public about the importance of the marine environment. The programs should include up-to-date changes in laws that pertain to the environment and fisheries.

11. New sales outlets and the utilization of fish species not presently being harvested would help boost the fishing economy.

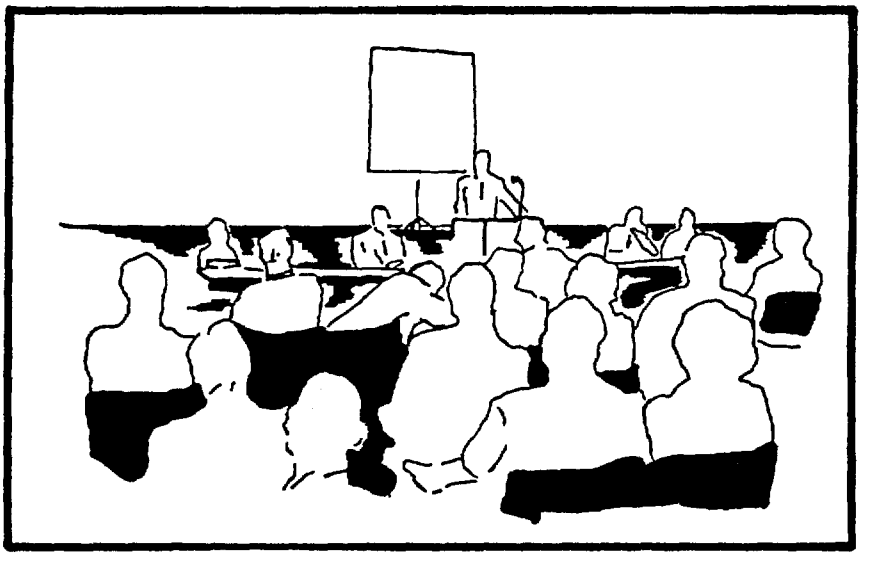
CHAPTER FIVE

POLICY COORDINATION

Contents

Section 1: Background

Section 2: Procedures



CHAPTER FIVE: POLICY COORDINATION

SECTION 1: BACKGROUND

LEGISLATIVE MANDATE

Mississippi Code Section 57-15-6(2) states that the coastal program, built around the ten goals described in Chapter II, should comprise a statement of consolidated state policy in the coastal area, incorporating all applicable constitutional provisions, laws and regulations of the State of Mississippi. Section 57-15-6(3) provides the authority to carry out the coastal program. In relevent part, this statute states that:

> In addition to the powers and duties now conferred upon them by law, all state agencies shall carry out their responsibilities in the coastal area in compliance with the coastal program . . .

To carry out this mandate, Section 57-15-6(3) provides for procedures to review and coordinate decisions affecting the coastal area. The policy coordination procedures described in this chapter are designed to accomplish this. Formal procedures are provided in Chapter VIII, Section 4.

COASTAL PROGRAM AGENCIES

Only four state agency offices are charged with the primary administrative responsibilities for the coastal program: BMR, the Bureau of Pollution Control (in DNR), the Bureau of Land and Water Resources (in DNR), and the Department of Archives and History. These agencies are responsible for reviewing decisions that affect the coastal area, and for commenting on such decisions so that they are made in accordance with the program's goals. Collectively, these agencies will be referred to as the "coastal program agencies". Their responsibilities for policy coordination are described below.

The Bureau of Marine Resources is responsible for reviewing and commenting on proposed state and federal actions with respect to the following aspects of the coastal program:

1. Wetlands protection, as stated in Mississippi Code Section 49-27-3;

2. The efficient utilization of waterfront sites, as stated in Mississippi Code Section 57-15-6(1)(a);

3. Seafood conservation, as stated in Mississippi Code Section 49-15-1;

4. Preservation of natural scenic qualities, as stated in Mississippi Code Section 57-15-6(1)(d);

5. National interest, as stated in Mississippi Code Section 57-15-6(1)(c), and as described in Part I.C.

In addition to these substantive responsibilities, BMR is charged with managing the policy coordination procedures described in this chapter, and has the responsibility to provide assistance to local governments.

The Bureau of Pollution Control is responsible for reviewing and commenting on proposed state and federal actions with respect to preserving air and water quality, as stated in Mississippi Code Section 49-17-3. In exercising this responsibility, the Bureau of Pollution Control establishes as coastal program standards, the provisions of the Clean Water Act and the Clean Air Act, as well as the provisions of state laws and regulations implementing these Acts. In addition, BPC is responsible for the state's water quality certification of Corps of Engineers 404 wetlands permits.

The Department of Archives and History reviews and comments on proposed state and federal actions for their impact on historical and archeological resources, as stated in Mississippi Code Section 51-3-1.

SCOPE OF POLICY COORDINATION

Through policy coordination procedures, the coastal program incorporates applicable laws and regulations of the state, many of which are not under the jurisdiction of BMR. So that the coastal program will not conflict with the jurisdiction of other coastal program agencies, each coastal program agency determines whether a proposed activity complies with the provisions of the coastal program for which it has statutory responsibilities.

BMR does not have authority over other agencies in the exercise of their primary responsibilities. However, all state agencies are required by law to carry out their responsibilities in the coastal area in compliance with the coastal program, unless otherwise prohibited by law. In addition, federal agencies will be bound by these policy coordination procedures under Section 307 of the Coastal Zone Management Act, upon approval of the coastal program under Section 306 of that Act. Chapter VIII, Section 4 provides special coordination procedures for federal actions.

The procedures described in this chapter are for coordination among state and federal agencies. Private parties and local governments will be affected only if they are currently affected by state or federal licenses or permits. These policy coordination procedures will not create new regulatory permits.

SECTION 2: PROCEDURES

Because it is familiar and operational, the state's A-95 notification will be used for policy coordination under the coastal program. The State A-95

Clearinghouse currently operates under the Governor's office as the statewide notification and review system for federal assistance programs in Mississippi. On a weekly basis, the state clearinghouse compiles the projects submitted and publishes a weekly log of projects to serve as notice to interested agencies. Any agency or other interested party wishing to review and comment can secure a copy of the full project description and forward comments to the state clearinghouse. On the basis of these comments, the clearinghouse formulates the state's review of the project.

For the purpose of coastal program coordination, the A-95 system will be extended to include the review of actions by state agencies, as well as the actions of federal agencies. There are a few legal and procedural differences between state and federal policy coordination in the coastal program. Separate provisions for state and federal actions are provided in Chapter VIII, Section 4, and therefore will not be discussed here.

While A-95 provides for a full review of each project, not all actions require the same degree of scrutiny to insure consistency with the program. For this reason, two different types of activities are recognized:

1. Reviewable actions: These are state and federal actions that have a direct and significant impact on coastal waters, or that otherwise affect the goals of the coastal program. Reviewable actions will be subject to the full review and policy coordination procedures. These actions are specifically listed in Chapter VIII, Parts IV and V.

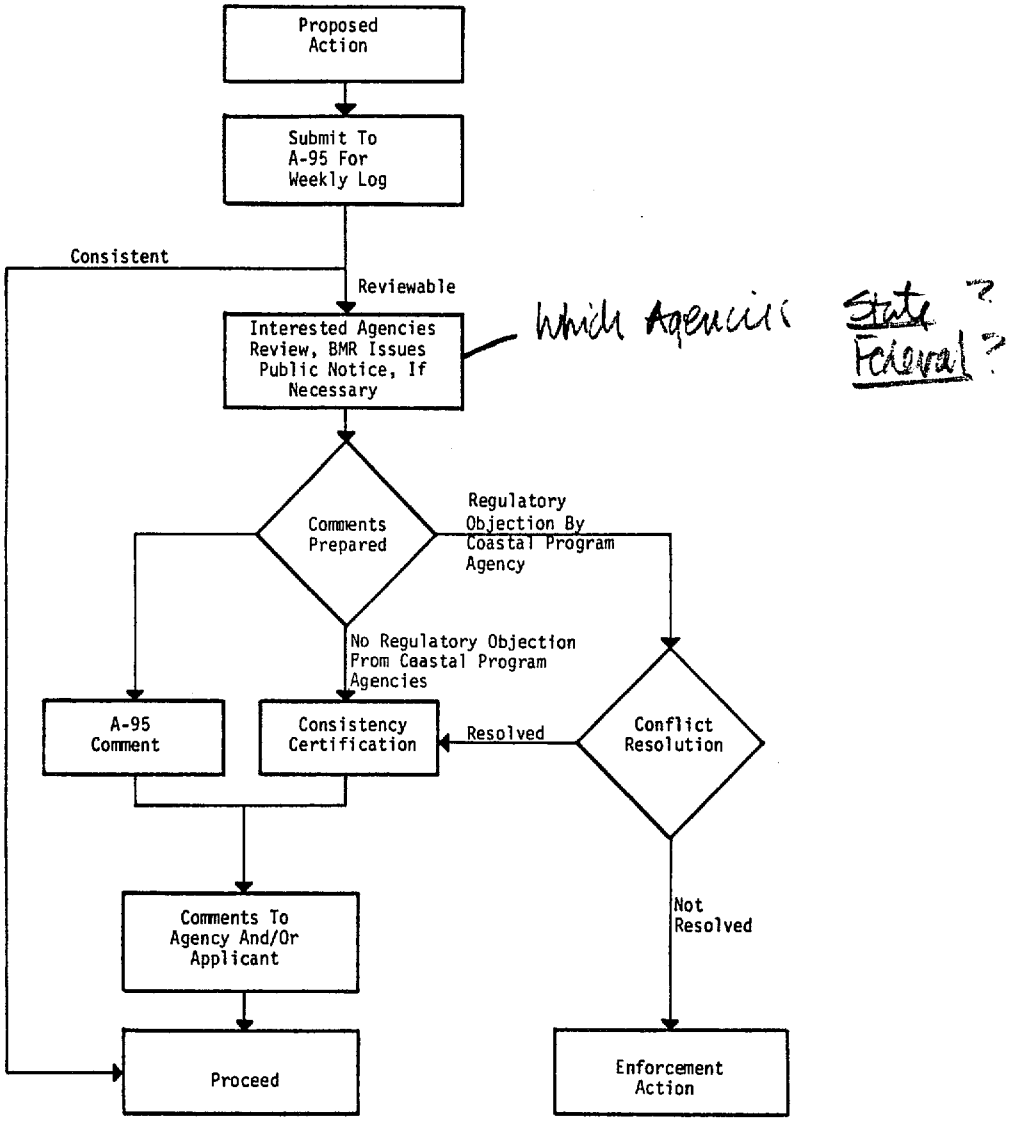
2. Consistent actions: Those actions listed in Parts IV and V of Chapter VIII that have been determined to be consistent with the program by interagency agreement with the commission or by prior review under these policy coordination procedures. Full review and formal consistency certification are not required for consistent actions. However, agencies proposing consistent actions shall insure that these actions are consistent with the program.

Chapter VIII, Section 4, Parts IV and V list state and federal actions that are subject to review or to notification. If an action is not listed, it does not require notice and review through the policy coordination procedures. However, as with consistent actions, proposing these actions shall insure that they are consistent with the program.

Figure V-1 illustrates how the policy coordination system will work through A-95. An agency proposing an action must first determine whether the proposed action is reviewable or consistent to determine whether simple notice or full review is necessary. Consistent actions will require only a notice to the A-95 clearinghouse stating that the proposed action is defined as consistent, and citing the basis of that determination.

Figure V-1

POLICY COORDINATION REVIEW PROCEDURE



Both reviewable and consistent actions will appear on the weekly log of projects distributed across the state. BMR will monitor this log to insure that all actions listed as consistent are properly categorized. The Bureau will also monitor the log to examine projects for which it has statutory review responsibilities and will comment accordingly. The other three coastal program agencies are responsible for monitoring the log for those projects that require review under their respective statutory responsibilities.

Reviewing agencies have a 60 day review period from the time the proposed action is submitted to the state clearinghouse. For surface mining permitting, this period is 45 days because of statutory limitations. If at the end of the review period, an agency has failed to comment, that agency's concurrence can be conclusively presumed.

LIMITATIONS AND CONFLICT RESOLUTION

A reviewing agency may make three types of comments for policy coordination purposes:

1. Regulatory Comments: An agency may make regulatory comments to the extent that it has statutory authority incorporated into the coastal program to regulate or otherwise control an activity. Regulatory comments shall serve as the basis for BMR to issue a consistency certification. By virtue of their enforceability through existing regulatory procedures, regulatory comments must be complied with if a prime agency is to be in compliance with the coastal program. A reviewing agency shall indicate in its review if it is making regulatory comments.

2. Mandatory Considerations: These are issues, policies, or guidelines which must be considered. An agency proposing an action has the discretion to balance mandatory considerations among other factors for which it has responsibility. (Scenic guidelines and national interest are such considerations). To be in compliance with the coastal program, an agency proposing an action must consider in its decision-making the mandatory consideration comments received through the policy coordination procedures.

3. Informational Comments: Informational comments may be made, without limitation, through the policy coordination procedures. An agency may, in its discretion, consider informational comments and determine how to evaluate them with respect to other decision-making factors.

If no coastal program agency objects to the proposed action on the basis of regulatory comments, BMR shall issue a consistency certification. If a coastal program agency has not commented within the allotted review time, its concurrence with the proposed activity will be assumed.

In the event of a conflict between coastal program agencies and the agency proposing an action, the conflict resolution procedures in Chapter VIII, Section 4 are available. If this does not result in a resolution, the governing body of the agency objecting to the action will determine whether the proposed action is consistent with its regulatory authorities. If after such determination the governing body of a coastal program agency objects to a proposed action,then the proposed action shall be considered inconsistent with the coastal program.

TIMING OF REVIEWS

The purpose of the policy coordination procedures is to insure that all actions affecting the coastal area are taken in a manner consistent with the program. Accordingly, proposed actions should be reviewed at the earliest possible stage in decision-making. The differentiation of reviewable and consistent actions encourages early review, because once reviewed in an early stage, a project can proceed withoug having to be reviewed again at the succeeding stages, provided that no major changes have taken place in the proposed activity.

SCOPE OF REVIEW

Policy coordination reviews are to be made by considering the effects of the proposed action the broadest sense. The immediate direct effects of the proposed action must be considered along with the impacts that will be induced by the action. The consideration of induced effects is especially important where infrastructure investments are being considered. Often, unintended effects are induced. If, in the opinion of the reviewing coastal program agency, these unintended effects can be reasonably expected, the reviewing agency can consider these effects in its review.

It is the intent of these policy coordination procedures to provide a single review system sufficiently broad to satisfy the review requirements of all state or federal agencies. For example, the construction of a single facility may require a number of different permits from both state and federal agencies. The policy coordination procedure can serve as the single review mechanism to gather the comments of all concerned agencies for all of the permits in question. In its development of one-stop permitting, BMR will utilize the policy coordination procedures for conducting simultaneous reviews, with the ultimate aim of reaching concurrent decisions.

ENFORCEMENT

State agencies are required to abide by the provisions of the coastal program as a matter of state law. If a state agency proceeds with an action that has been determined to be out of compliance with the coastal program as a result of these policy coordination procedures, BMR will inform the Attorney General for appropriate action.

CHAPTER SIX

SPECIAL MANAGEMENT AREAS

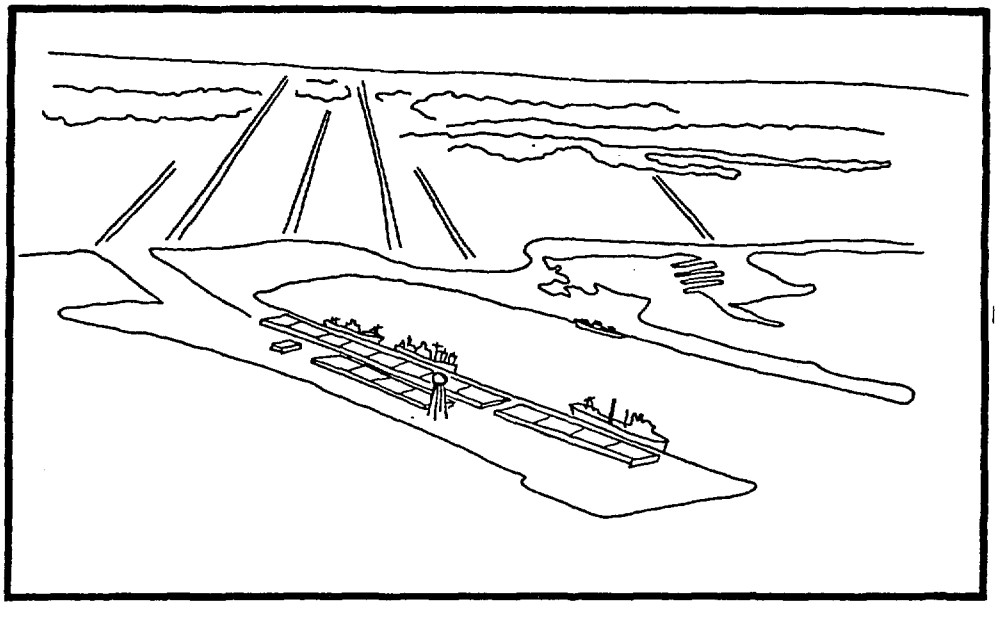
Contents

Section 1: Background on Special Management Areas

Section 2: Industrial and Port Areas

Section 3: Shorefront Access Areas

Section 4: Urban Waterfronts



CHAPTER SIX: SPECIAL MANAGEMENT AREAS

SECTION 1: BACKGROUND ON SPECIAL MANAGEMENT AREAS

Special management areas (SMAs) are areas designated because their economic or recreational opportunities can be effectively realized in an environmentally sound way through site specific planning and management. The purpose of special management designations are:

1. To apply the general provisions of the coastal program to specific geographical areas.

2. To streamline regulatory decisions in these areas through planning for and resolving permit conflicts in advance of individual development projects being implemented.

3. To coordinate regulatory decisions with the affirmative development efforts of the coastal program and of local governments.

4. To provide assistance to local governments to plan for public facilities and services in areas whose use is historically, economically, and culturally tied to coastal waters.

SMA designations do not impose new regulatory authority. SMA designations are voluntary; they require the agreement of the local governments. Moreover, SMAs will require the efforts of local governments if their opportunities are to be fully realized.

During the course of coastal program implementation, SMA plans will be developed for each designated SMA, as funds and staff time permit.* Once completed and officially adopted as part of the coastal program, a SMA plan will be an authoritative interpretation of the coastal program as it applies to a specific site. In permit decisions by the state, the plan will prevail over the more general provisions of the coastal program. Furthermore, as official policy, SMA plans will be recognized by federal agencies in their actions.

The guidelines in Section 5 of Chapter VIII spell out the formal decision-making process for SMA plans to become part of the Coastal Program. Simply put, this process has five steps:

1. BMR enters into an agreement with a governmental entity to develop a SMA plan for a specific site.

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*As of August 1980, no SMA plans had been developed.

2. Appropriate federal agencies will be consulted for participation in plan development. BMR and the local government's staff will jointly develop the plan in cooperation with federal agencies. Public meetings or hearings may be held during the course of plan development.

3. The draft SMA plan from step two will be submitted to the local governing authority, MCWC, and federal agencies for concurrence.

4. A public hearing will be held on the draft plan prior to its formal adoption.

5. Based on public hearing comments, the draft plan will be revised as appropriate, and then submitted to the area's governing authority and MCWC for final approval. Upon final approval by MCWC, the SMA plan becomes state policy as an official part of the Mississippi Coastal Program.

A distinguishing characteristic of SMA plans is that there will be a marriage of regulation and affirmative development efforts. The two go hand in hand in a SMA plan. Through properly planned development efforts, the need for regulation is reduced to a minimum. However, for SMA plans to be used in permit decisions, they must be completed with the same content and level of details as would be required for regulatory purposes. The decisions that go into the plans will have to be based on the same criteria that would be used for permit decisions at both the federal and state level. This sets a deliberately high standard for SMA plans, but high standards are required for SMA plans to be used effectively in decision-making.

The use of SMP plans is not limited to permit decisions. It will be clear from the discussion of designated SMA's in the following sections that local governments play a major role in the physical development and management of SMA's. In this light, SMA plans can be used by local governments to guide their development decisions, and to coordinate the permitting procedures of state and federal agencies with these decisions.

The remainder of this chapter describes each of the three types of special management areas designated: (i) industrial and port areas, (ii) shorefront access areas, and (iii) urban wtaerfronts. Specific sites are designated for each type of area, and a description of how the program will be involved in managing each area is provided.

SECTION 2: INDUSTRIAL AND PORT AREAS

The following industrial and port areas are designated as special management areas and are illustrated in Figure VI-1. These SMA designations apply to general areas. The specific boundaries and development limits of these areas will be determined by SMA plans.

1. Port Bienville Industrial Park: Covering 2,600 acres of county-owned lands, 1,650 acres are divided into industrial sites. A 12 foot channel provides the site with access to the Mississippi Sound and the Intracoastal Waterway via the Pearl River. This park is located approximately 30 miles east of New Orleans, Louisiana. By highway, the park is 16 miles from Interstate I-10 and I-59. The industrial park is managed by the Hancock County Port and Harbor Commission.

2. Pass Christian Industrial Park: This site, covering 190 acres is located north of Pass Christian. Commonly referred to as Bayou Portage, the site is provided with access to the Bay of St. Louis by 8' x 100' channel. A 12' x 160' canal off Bayou Portage creates a number of moderately sized waterfront lots. This industrial park is managed by the Harrison County Development Commission.

3. Bayou Bernard Industrial Park: Encompassing a total of 1,450 acres, this waterfront industrial area is located on Bayou Bernard and just south of Interstate 10 and east of Highway 49. The park is served by a 12' x 150' canal from Big Lake in Back Bay Biloxi to Bayou Bernard and has approximately 500 acres of waterfront sites remaining for new development.

4. Pascagoula River: Together with the Bayou Casotte Industrial Area described in number five below, the Pascagoula River Industrial Area is managed by the Jackson County Port Authority. This area includes the massive shipbuilding facilities on both the west and east banks, the grain elevator, public terminals, and several industrial sites on the west bank of the river. The area is served by a 38' channel upstream of the bridge. South of the shipyard is a large spoil island which Jackson County intends to develop.

5. Bayou Casotte: The most intense concentration of heavy industries on the coast, the Bayou Casotte Industrial Area is served by a 38' channel, with studies underway to deepen it. The area is heavily developed, but potential industrial sites exist on both sides of the channel, including the area known as Greenwood Island. In connection with Bayou Casotte's development, the possibilities of channel depth and realignment at Petit Bois Island need to be examined.

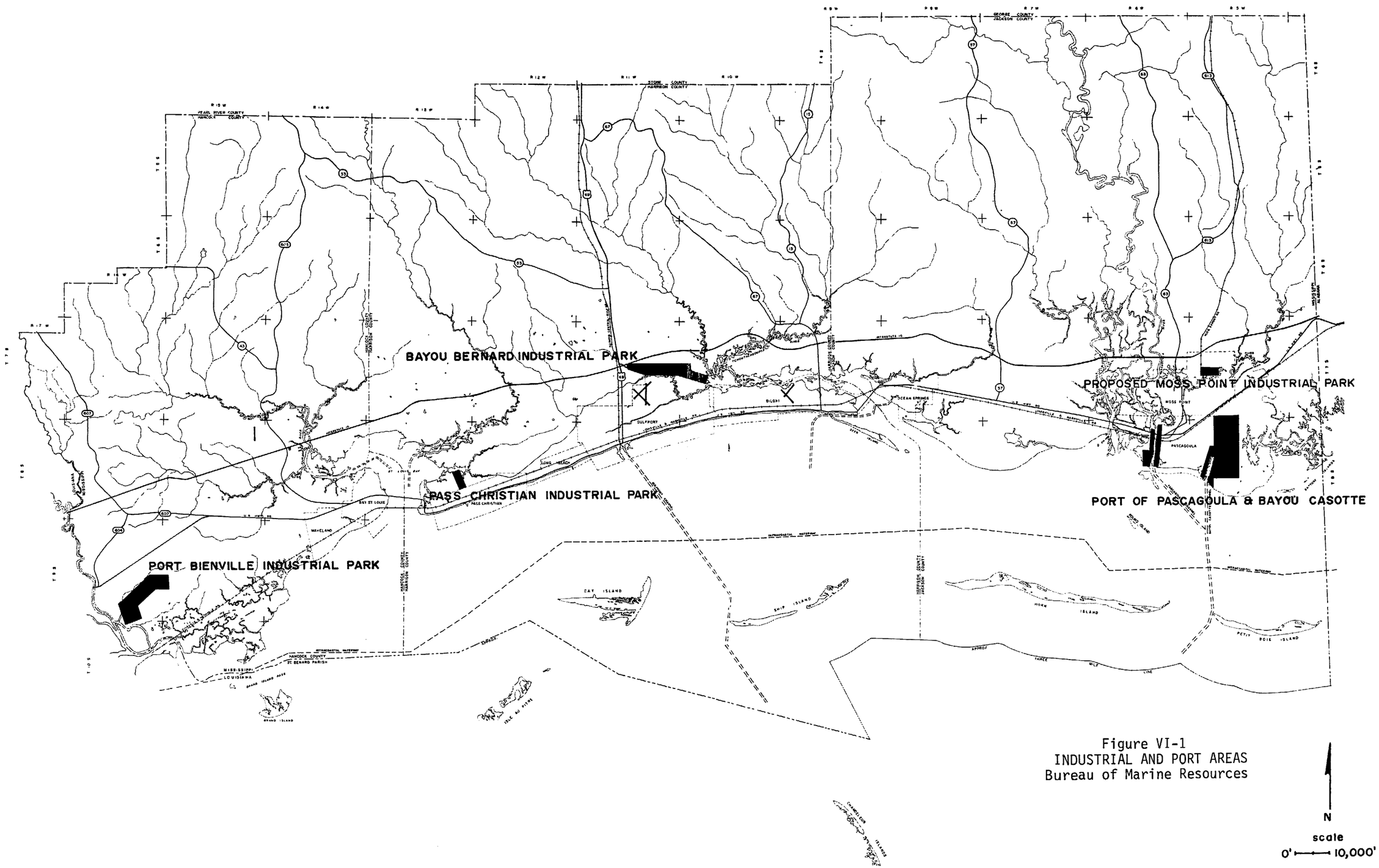


Figure VI-1
INDUSTRIAL AND PORT AREAS
Bureau of Marine Resources

6. Proposed Moss Point Industrial Park: Moss Point and Jackson County are planning to develop an industrial park on the Escatawpa River near the new Highway 63 bridge. In planning for this park, the development potential of land sections 16 through 22 along the Escatawpa River should be investigated, with particular reference to the sequence of development. An additional consideration in this area is the effect of the Mobile (Tanner William) Reservoir on water levels at the site.

MANAGEMENT CONCERNS

The development of industrial and port areas require balancing environmental and developmental goals. Discussed below are the industrial and port management concerns that must be considered area management plans.

Wetlands Protection

Waterfront industrial development and port operations, by their very nature, require physical access to the water. Inevitably, this results in wetlands alterations. The environmental problems of industrial development are compounded by the fact that many existing channels, roads, railroads and utility systems were built before the current awareness of the importance of wetlands. As a result, infrastructure was often built with the intent of utilizing, not preserving wetlands because they were regarded as cheap, unproductive, insect-breeding eyesores. In an effort to make efficient use of existing public investment, new industrial and port development is likely to put strong development pressure on presently unspoiled wetlands. Area management plans can be used to direct development to minimize this harm to the wetlands and to provide for appropriate mitigation measures.

Industrial Expansion and Efficient Waterfront Utilization

Waterfront industrial sites and ports are costly - both environmentally and economically. Accordingly, it is important to minimize the need for new waterfront sites by utilizing existing waterfront space as fully as possible. High utilization of waterfront sites will mean that the greatest development potential will be realized for a given level of wetlands destruction. This holds impacts to a minimum, and can save money by reducing the growth in demand for dredging. Regulations under the Wetlands Protection Law can encourage high waterfront utilization; but area management plans provide a more affirmative way to encourage this and to direct development away from sensitive resources. Through this type of planning, the need for regulation can be reduced.

In promoting the efficient utilization of waterfront sites, care must be taken to insure that safety is considered. Safety requirements are often such that buffer areas are necessary. Sound planning can help minimize the loss of development potential due to safety requirements.

Conservation of Water Resources Air and Water Quality

Uncontrolled industrial effluent and emissions are major threats to the environment. Also, industrial water consumption can be a threat because of the large quantities of water diverted for process and cooling purposes. Existing regulatory efforts cover these problems; these efforts can be coordinated with affirmative planning and development efforts so that industrial development can take advantage of consolidated pollution control and industrial water reuse, and can make water supply systems more cost effective.

Historical and Archeological Preservation

Industrial and port development often occurs in proximity to historical and archeological sites. Area management plans, on a detailed basis, can identify such sites so that development patterns can avoid disturbing such sites.

Scenic Preservation

Any development tends to disturb natural scenic qualities, and because of sheer size, industrial and port development tends to be more pronounced in its scenic impact. Area management plans can be used to program scenic preservation and mitigation measures into development proposals. At the same time, area management plans can take advantage of the visual opportunities that some developments offer.

National Interest

Economic development as well as natural preservation issues involve the national interest. Area management plans will promote a balanced approach to these often conflicting interests. Energy development is a major issue of national interest involved in industrial and port development because many industrial concerns in the coastal area support the offshore oil and gas industry. Area management plans will reduce development conflicts and permit delays, thereby expediting this vital national interest. Another major issue of national interest is the consideration of impacts on threatened and endangered species. SMA plans can help minimize these impacts.

Local Governmental Assistance and Policy Coordination

Local governments are heavily involved in industrial port development. The coastal program can assist these governments in planning such developments in a manner compatible with sound resource management.

Also, since area management plans will be developed with the participation of federal and state regulatory agencies, the plans will serve as the common policy basis on which funding decisions will be made.

MANAGEMENT RESPONSE

During program implementation, area management plans will be developed in conjunction with local authorities for each designated industrial and port area. (BMR will program funds in its annual budget for area management plans to be developed during that budget year.) Each industrial or port area plan will have three major elements:

1. An area development plan: This would show the limits of development, and would establish guidelines for the development that is planned in the area. Because of the uncertainty associated with development in a specific area, there will have to be some flexibility in the development plan within a designated area even though the development limits would have to be firm. Examples of what a development plan might specify would be the volume of dredging allowed within an area, the wetland area that could be filled, the linear extent of bulkheading, the length and orientation of new canals, and circulation requirements to promote water quality.

2. A dredged material plan: Dredged material disposal is the major problem associated with industrial and port development. A long-term dredged material plan will be developed for each designated area on the basis of analysis suitable for regulatory decisions, and would provide the location of spoil areas as well as a dredged material program to insure adequate capacity to support the area development plan. The dredged material plan will consider the requirements of the site itself, as well as the channels leading to it. Since the Corps of Engineers is currently involved in its own planning programs for dredged material, these SMA plans will be drawn in close cooperation with the Corps.

3. A mitigation program: The development of industrial and port areas inevitably results in environmental alterations. The effects of these alterations can be reduced by a mitigation program that compensates for environmental losses that result from an area's development. A mitigation program could include a variety of measures, such as in-kind replacement for wetlands destroyed, restoration of previously impacted areas, or enhancement of unproductive areas. Mitigation programs will be developed in close consultation with the U. S. Fish and Wildlife Service and the Corps of Engineers so that mitigation can be coordinated with major dredging projects.

Once an area management plan for a designated area is adopted as part of the program, it becomes state policy. If approved at the federal level,

SMA plans must be recognized in federal regulatory processes as valid statements of state policy. To reinforce the usefulness of SMA plans in federal permitting, specific interagency agreements will be sought with the appropriate federal agencies.

Local authorities involved in the plans' formulation will play a role in carrying them out in their traditional role as developers and industrial promoters. Since the plans are not limited to addressing regulatory problems, they can be used by local governments to complete much of the early planning work necessary for public facilities.

PRIORITIES OF USE

The lowest priority of use within a designated industrial and port area is non-water dependent industry. Specific area management plans will detail other uses and priorities on a site-specific basis.

SECTION 3: SHOREFRONT ACCESS AREAS

The purpose of shorefront access and protection planning is to insure that the water resources of the coast will be readily available to the public. While shorefront access is typically thought of as beach access, the coastal program expresses a much wider concern. The availability of beaches is a relatively minor problem on the coast. The major shorefront access concerns on the coast are access to water for recreational boating, access for fishing, access for passive visual enjoyment of the waterfront, and the general quality of access facilities on the coast. The lack of facilities such as parking, restrooms, fishing piers, and boat ramps effectively reduces shorefront access.

STATE POLICY AND SHOREFRONT ACCESS

Shorefront access is a consideration in a number of important state policies incorporated into the coastal program. First, access to coastal wetlands is part of the public interest in preserving coastal wetlands according to Mississippi Code Section 49-27-3. Second, one of the expressed purposes of the state's policy on water pollution, Mississippi Code Section 49-17-3, is to protect the water for recreational purposes. A necessary corollary of this policy must be to promote access so that recreational benefits can be enjoyed. Third, the protection and enhancement of shorefront access for visual purposes is fulfilling one of the basic goals of the coastal program - to preserve the natural scenic qualities of the area, as expressed in Mississippi Code Section 57-15-6(1). Finally, local governments traditionally provide shorefront access facilities for their citizens. BMR assistance in this effort is mandated by Section 57-15-6(1)(e).[1]

DESIGNATED SHOREFRONT ACCESS AREAS

A number of shorefront access areas are designated as special management areas. Specifically, four major coast beaches, (Harrison County, Bay St. Louis-Waveland, Ocean Springs, Pascagoula) and Deer Island are designated for special management as shorefront access areas. In addition, a number of minor access sites have been identified and prioritized for specific improvements, even though SMA plans will not be developed for such minor sites.

MAJOR BEACHES

For the purpose of this program, the term "beach" is defined as land areas without vegetation, consisting of unconsolidated soil material extending landward from the mean low tide to a point where any one or combination of the following occurs: (i) vegetation; (ii) a distinct change in predominant soil particle size; or (iii) a change in slope or elevation which alters the physiographic land form and constitutes the transition into dunes, wetlands or uplands.

The four major beaches designated as special management areas are described briefly below.

1. Harrison County Beach: This 26 mile man-made beach spans the length of Harrison County. Constructed in 1951, this beach was designed for protection of the seawall. It is the most accessible beach on the coast due to its proximity to the population centers of Gulfport and Biloxi. Highway 90 provides access to the beach, but there are serious parking shortages along the length of the beach. There are some fishing piers and boat ramps along the beach, but more of each are needed. A major problem with the beach is that southerly winds continually blow sand off the beach onto the adjacent highway. Also, shoreline erosion takes its toll, and since natural processes do not replace this sand, periodic replenishment is required. A related problem is that the sand blown onto the highway creates a traffic hazard and requires costly removal. The Harrison County Beach is controlled and maintained by Harrison County.

2. Bay St. Louis-Waveland Beach: Located in Hancock County, this beach has excellent access from Beach Boulevard, but like the Harrison County Beach, parking is a problem, and public access opportunities via piers and boat ramps are lacking. This beach is maintained and controlled by Hancock County.

3. Ocean Springs Beach: This beach is located in Ocean Springs along the Biloxi Bay. It is accessible to the public but because it is not paralleled by a major highway, the beach is somewhat more difficult to reach than the Harrison and Hancock County Beaches. There is a shortag of both fishing piers and boat ramps along the beach, thus limiting the beach usage to sunbathing or surf fishing. The beach is managed and maintained by Jackson County while the city provides maintenance for the piers.

4. Pascagoula Beach: This beach was constructed for the protection of the seawall. The situation with this beach is almost identical to the Ocean Springs Beach in that both are situated off Highway 90 and both have limited usage. As is the case in Ocean Springs, the county is responsible for maintenance of the beach while the City of Pascagoula has maintenance authority for piers.

Each of these four beaches are shown in Figure VI-2. Other beaches not designated as SMA's are also shown in the figure.

The coastal program expresses several management concerns for beaches. It is imperative that beaches be maintained, primarily for public recreation benefits. When properly maintained, beaches protect the shore from storms, and are visual resources because of their natural scenic quality at the land/water interface.

When left to nature, certain coastal beaches serve as nesting areas for the Least Tern and provide habitat for other wildlife.

An important federal court decision, U.S. v. Harrison County, 399 F. 2nd 485 (5th Cir. 1968) safeguards public access to the 26 miles of man-made beach in Harrison County.

In 1951, in response to federal and state legislation, Harrison County entered into a contract with the United States whereby Harrison County received federal assistance to construct protective sand beaches "on bottoms then under water", subject to the provisions that such beaches be dedicated in perpetuity to the public use. After a 26 mile beach was built, disputes arose regarding access to it. As a result, the United States brought suit. In U.S. v. Harrison County, supra, the court of appeals granted injunctive relief "against interference with the rights of the general public to the use of the beach as herein enunciated.

As a result of this case, the Harrison County Board of Supervisors was given jurisdiction for the maintenance and administration of the sand beach. Accordingly, any SMA plan for this beach must recognize the authority of the board of supervisors, and must provide for a review of plan recommendations by the federal court, if deemed appropriate by the Harrison County Board of Supervisors.

While judicial decisions such as U.S. v. Harrison County are useful in protecting shorefront access. The guidelines used in wetlands permitting (see Chapter VIII, Section 2) insure that developments and activities along the shoreline can be prevented from reducing public access.

The loss of large amounts of sand resulting from wind and wave action creates a need for periodic replenishment of major beaches. This problem needs to be addressed in the development of SMA plans. Affirmative efforts should center on reducing the wind erosion by various techniques such as the planting of vegetation on the beach or the erection of "sand fences" along the seawall. Limiting the erosion of sand by wind action will assist in eliminating two costly problems: the need for beach nourishment and the removal of sand from the adjacent highway.

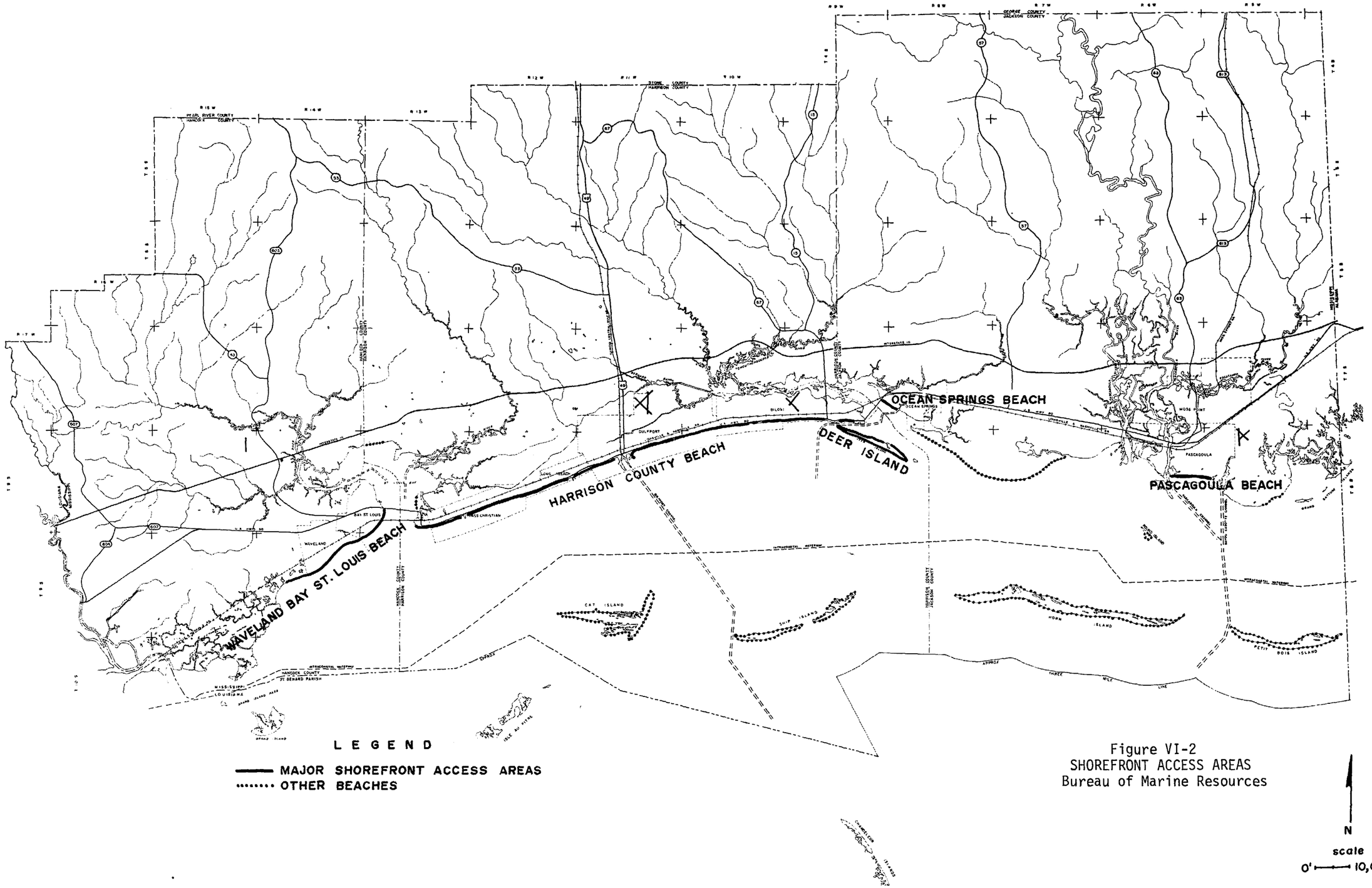


Figure VI-2
SHOREFRONT ACCESS AREAS
Bureau of Marine Resources

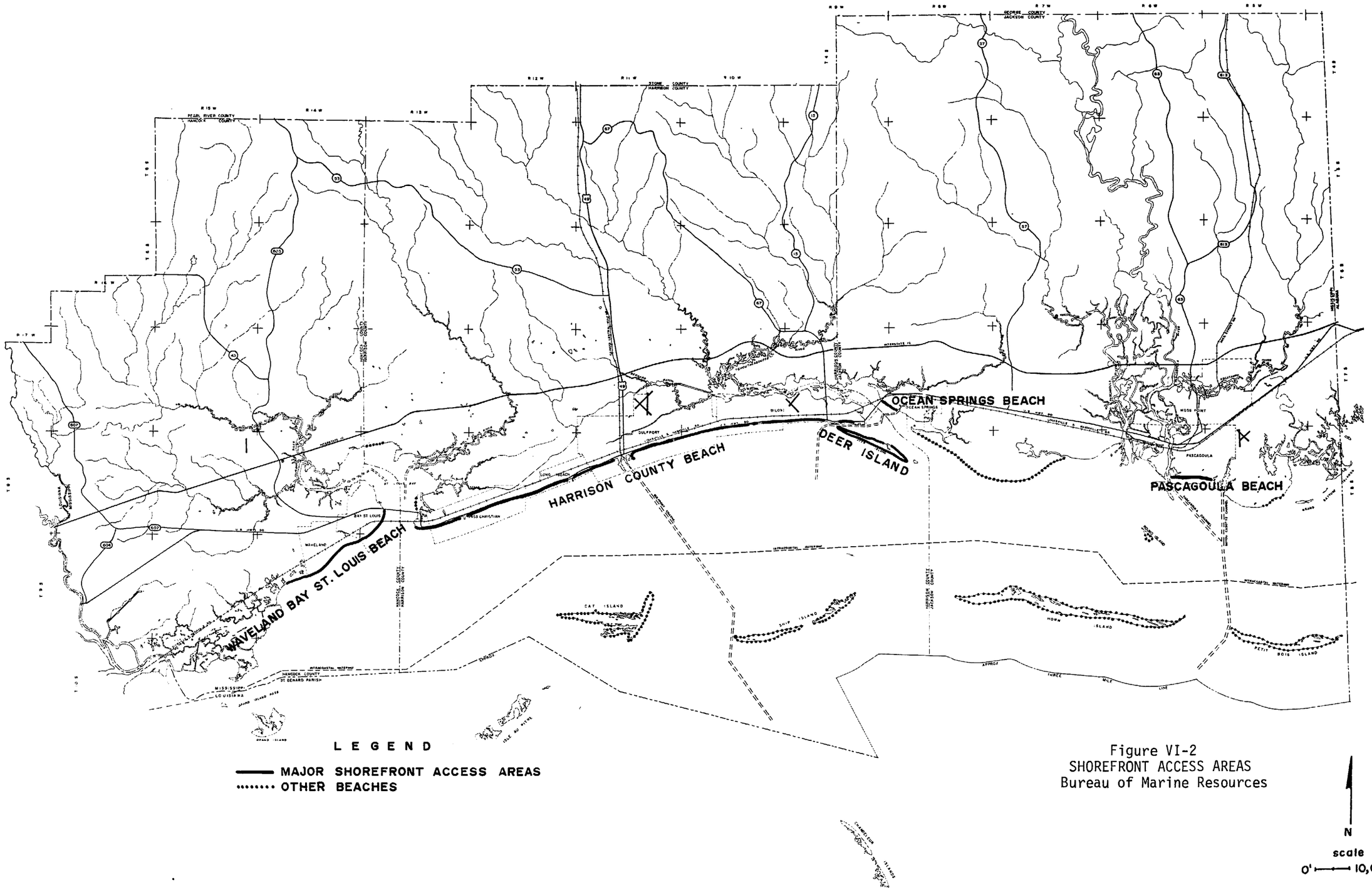


Figure VI-2
SHOREFRONT ACCESS AREAS
Bureau of Marine Resources

Coastal Energy Impact Program funds can be used to assist in the construction of many of the enhancement features such as boat ramps and parking facilities. The coastal program can also provide assistance for plans and studies to determine ways to reduce beach erosion or improve public access.

DEER ISLAND

Due to its closeness to Biloxi, and because it faces imminent development, Deer Island is designated as a special management area. Located just a few hundred yards from the mainland of Biloxi, this island is a unique, as yet undeveloped resource with enormous potential for public recreation, research and education. However, most of it is privately owned and therefore would have to be purchased if it is to be devoted to public use.

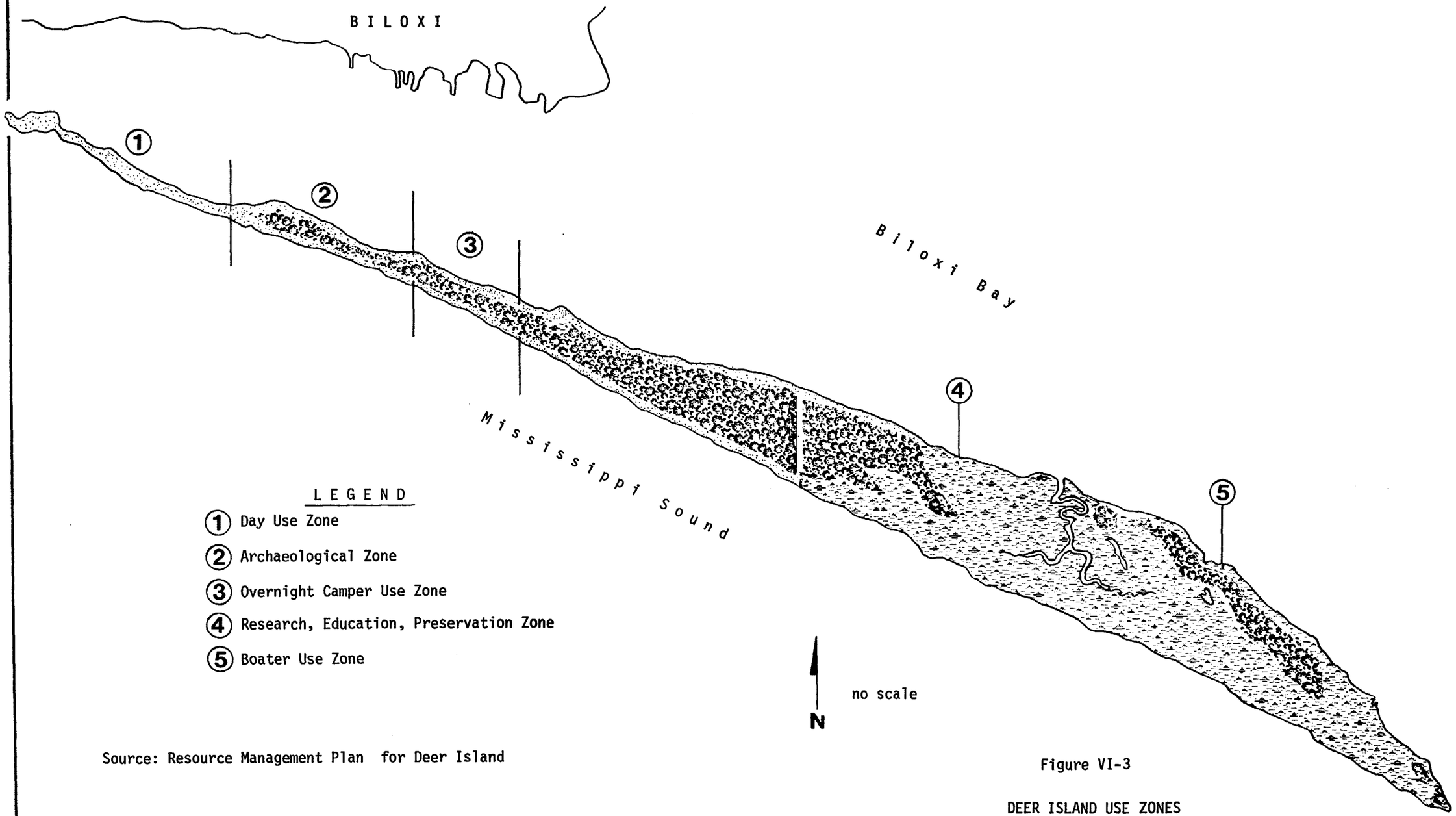
A master plan for the use of Deer Island has already been developed by the Deer Island Study Committee - an ad hoc group formed by the City of Biloxi to develop the plan. This committee, having completed its job, has dissolved. In its place, Friends of Deer Island has been formed as a non-profit corporation dedicated to the preservation and purchase of the island. The Nature Conservancy (another non-profit group organized to purchase lands for conservation) is working with Friends of Deer Island to purchase the island.

The preliminary Deer Island Management Plan will serve as the basis for an area management plan to provide recreational and service facilities required by island visitors in a manner consistent with the coastal program. The master plan divides the island into the five management zones shown on Figure VI-3. These zones were established on the basis of management objectives, the significance and type of resources within each area, and recreational characteristics of each area. These zones are described below:

1. Day Use Zone: This zone will be for visitor use and park operations. It will have to be intensively managed, and possibly expanded through beach replenishment.

2. Archeological Zone: Prehistoric Subzone: A very important recreational resource, but one that has often been overlooked, is the prehistoric settlement of Deer Island. This zone is comprised of archeological features which underline more recent human occupation structures. Management emphasis will be placed on interpretation and preservation of these resources.

   Historic Subzone: This subzone is comprised of historically significant remnants of significant cultural resources. Management emphasis will be placed on the interpretation of these sites unless such action causes unacceptable degradation of the natural resources or processes.



Source: Resource Management Plan for Deer Island

Figure VI-3

DEER ISLAND USE ZONES

Bureau of Marine Resources

3. Overnight Use Zone: This zone will be managed for primitive walk-in camping. A limited number of sites will be established until acceptable visitor use levels can be reliably established. Contained unit or backpacking stoves will be allowed.

4. Research, Education, Preservation Zone: All land and water within this zone will be dedicated to scientific research and educational programs; therefore, no management actions will be allowed that might interfere with this use. This zone will be considered as a possible estuarine sanctuary.

5. Boater Use Zone: This zone has traditionally been used by all types of boaters and fishermen. Continued day use will be allowed if the litter and fire problem can be resolved. Overnight camping will be provided for on a reservation basis.

PRIORITIES OF USE

For major beach areas, the lowest priority of use is development that impedes public access or preservation. Highest priority of use will be the exercise of riparian rights commensurate with public access. Additional priorities will be determined by area management plans.

MINOR ACCESS SITES

In order to improve public access to the beaches and coastal waters, BMR has designated and prioritized a number of specific sites along the coastline for improvements, based on a study completed during program development by Gulf Regional Planning Commission. Table VI-1 provides a detailed list of these sites and identifies the general nature of the improvements recommended at each site. Sites in addition to those in Table VI-1 will be evaluated and designated by the same method used for the existing sites as described below.

SITE SELECTION PROCEDURE FOR MINOR ACCESS SITES

A public opinion survey was published in all local newspapers, and additional forms were made available at marinas, sporting goods stores, and bait and tackle shops throughout the coastal area. While not a technically rigorous effort, the survey provided valuable information on user perceptions of access problems. The response included:

1. Inadequate boat launching facilities, restrooms, public parks, camping areas, picnic areas, fishing piers, parking, and insufficient public land.

2. Lack of bicycle paths, nature trails, freshwater swimming and canoeing areas.

TABLE VI-1

AREAS REQUIRING ACCESS IMPROVEMENT

Area/Location	Rating Value	Acquire Row/Site	Construct-Repair-Extend	Boat Ramp/Holding Pier	Access Road	Parking Area	Park or Recreation Area	Protective Facilities	Fishing Pier	Lights	Jetty/Bulkhead	Dredging	Pedestrian Overpass	Docking	Walkway	Shelter/Comfort Stations	Other Improvements
Pearl River/Devil's Swamp																	
Logtown Rd. Landing	30	*		*	*	*	*										*
Poverty Point Arch. Site	28				*	*		*									*
Pearlington Landing	32			*		*											
Ansley																	
Bayou Cadet Landing	36			*		*											
Waveland/Bay St. Louis																	
American Legion Pier	39			*		*			*	*							*
Ladner Memorial Pier	39			*					*								*
St. Louis Bay																	
Blue Meadow Landing	32			*	*	*											
Bayou Portage Landing	37			*	*	*			*								
Pass Christian/Wolf River																	
Rouses Bridge Landing	36			*	*	*	*										
Pass Christian/MS. Sound																	
Smallcraft Harbor	44			*		*								*			
Beach (3 sites)	47					*											
Fishing Pier	37					*			*				*				
Long Beach/MS. Sound																	
Small Craft Harbor	44					*	*							*	*		
Beach (3 sites)	46					*											
Gulfport/Bayou Bernard																	
Gulfport Lake Landing	36			*	*	*											
James Hill Park	41			*	*	*											
Gulfport/MS Sound																	
Small Craft Harbor	52					*			*				*	*			
Courthouse Rd. Pier	43			*		*			*			*					
Gulfport Beach (3 sites)	53					*											
Westside Fishing Pier	42					*				*							
Biloxi/MS Sound																	
Biloxi Beach (2 sites)	54					*							*				
Kuhn Street Landing	39				*	*											
Oak St. Landing	39				*	*											
Internat'l Plaza Landing	41			*		*						*					
Biloxi Fishing Piers (4)	45					*			*								
Main Street Overpass	31												*				
Back Bay/Biloxi																	
Howard Mem. Hosp. Landing	38	*			*	*			*								*
Popp's Ferry Brid. Isl.	48			*		*	*		*								*
Hiller Park	49					*						*					
Big Lake Rd. Fishing Pier	36					*			*								*
Back Bay/Biloxi Bay																	
Martin Bayou	36	*				*											*
Crescent Shore Boat Ramp	38	*		*		*											*
Old Fort Bayou																	
Old Fort Bayou (2 sites)	46	*				*											*
Ocean Springs/GIIS																	
Inner Harbor Boat Ramp	40			*		*				*		*				*	
Inner Harbor Park	49						*		*							*	*
Gulf Park Area																	
Simmons Bayou	38											*					
Belle Fontaine																	
Pt. Aux Chenes Beach	36	*		*		*			*								*
Graveline Bayou Boat Rmp.	30	*		*	*	*											*
Graveline																	
Old Shell Landing	36	*		*	*	*	*									*	*
W. Pascagoula R. (2 sites)																	
Sioux Bayou/W Pas. Riv.	32	*		*		*							*				*
Gautier																	
Graveline Rd. Boat Rmps.	39	*		*	*	*											*
Pascagoula River																	
Pascagoula Rr Fish. Pier	40					*			*								*
Krebs Boat Ramp	38			*		*											*
Escatawpa River																	
Escatawpa River North		*		*	*	*	*										*
Escatawpa River South	35	*		*	*	*											*
Escatawpa R. Boat Ramp	30			*	*	*											*
Pascagoula/Bayou Casotte																	
Anderson Point	55	*		*		*				*	*					*	*
Bayou Chico	29	*		*	*	*											*

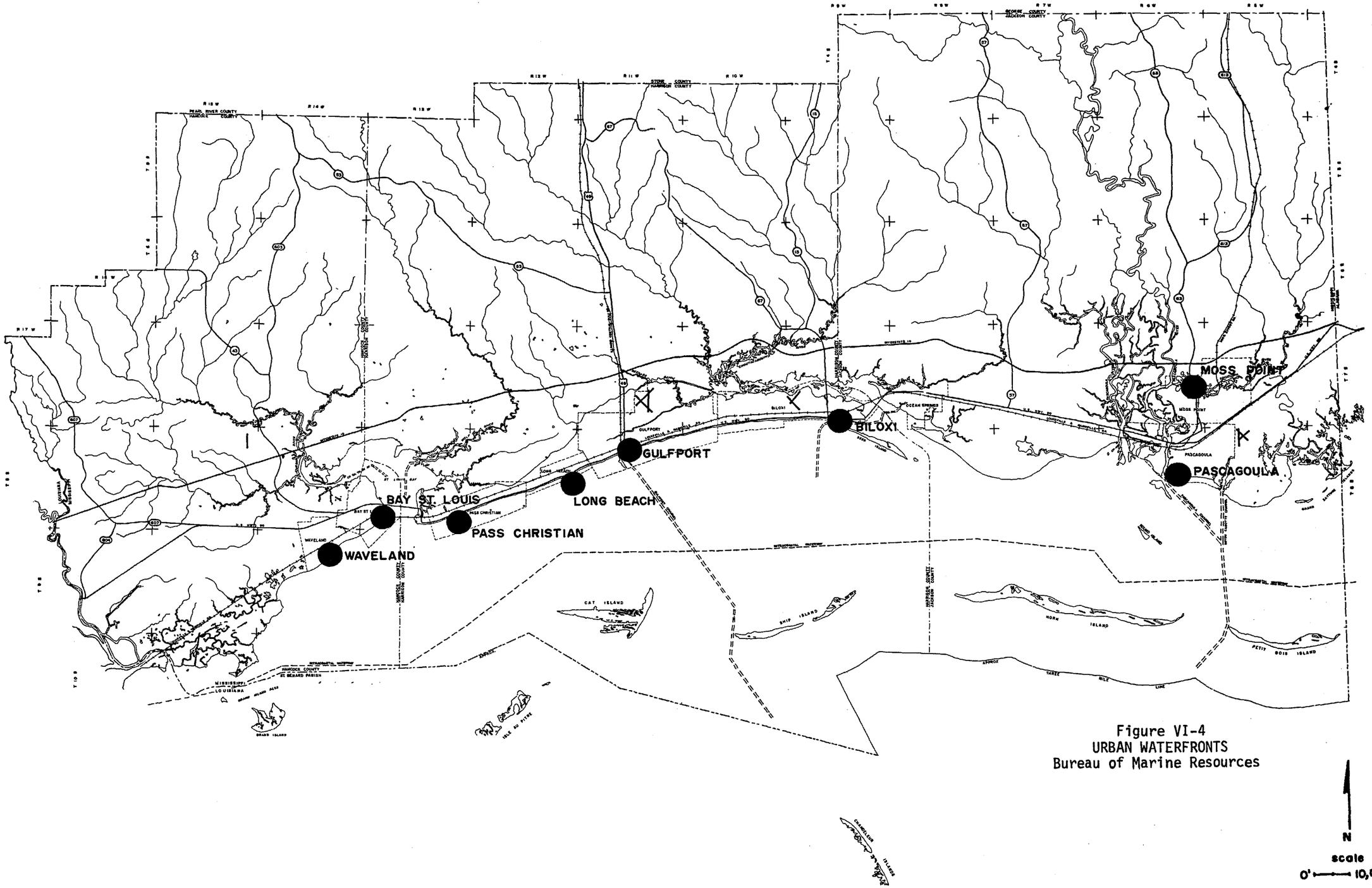


Figure VI-4
URBAN WATERFRONTS
Bureau of Marine Resources

3. Substandard access roads, inadequate signalization, and traffic congestion.

4. Cost of commercial facilities.

5. Lack of deep water channels and inadequate marking of existing boat channel.

6. Shallow water at existing boat launching facilities.

7. Unsafe pedestrian access.

8. Inaccessibility of certain offshore islands.

The public opinion survey established a clear public expression of the need for upgraded shorefront access. As the next step, site designation and priorities were established. The criteria for selecting candidate sites requiring upgraded physical access are shown below. All five requirements must be met.

1. The site is not a designated sanctuary.

2. The area is public, or can be acquired fee simple or otherwise for public use.

3. Current access is not adequate or appropriate as evidenced by either a survey or similar instrument or by the use of a standard formula relating population to usage.

4. The provision of a new or improved access is consistent with federal, state and local plans.

5. Controls can be established to prevent increased usage from damaging the area.

Once a site was designated as a candidate for access improvements, it was rated on a ten point scale for each of the following criteria:

1. Extent of non-local use.

2. Intensity of use by local citizens.

3. Ecological/environmental value.

4. Value for recreation.

5. Aesthetic value.

6. Cultural value.

7. Proximity to population centers.

The values of these seven criteria were summed up to determine the site's priority rating.

SECTION 4: URBAN WATERFRONTS

Urban waterfronts are designated as SMA's because they provide unique economic and social benefits to the coast at locations that provide important opportunities for public access to the waterfront. Even though many urban waterfronts have lapsed into decline, they are still near high density population centers and offer excellent access and economic opportunities to large numbers of people. They often include historical points of interest and provide unique visual opportunities to the public.

SPECIFIC SITES

Identified below and shown in Figure VI-4 are the eight areas designated as urban waterfronts.

1. Waveland (at Coleman Avenue)
2. Bay St. Louis (Downtown commercial district)
3. Pass Christian (Harbor and scenic drive area from city hall to Hancock Bank)
4. Long Beach (Beach commercial area at Jeff Davis and the beach to encompass the harbor and adjacent beachfront land)
5. Gulfport Harbor Square
6. Biloxi (Downtown redevelopment areas including commercial and recreational smallcraft harbors)
7. Pascagoula (Along Front Street)
8. Moss Point (Downtown along old Highway 63 from O'Leary Lake to the Moss Point city limits)

MANAGEMENT CONCERNS AND RESPONSES

There are five principal interests of the coastal program concerning urban waterfronts: (i) assistance should be given to local governments in the development and upgrading of these five areas; (ii) historic and/or cultural resources in urban waterfront areas need to be preserved; (iii) improved access to the waterfront in areas of high population concentration should be improved; (iv) the flood hazards associated with urban waterfront development needs to be considered; and (v) the actions of federal, state and local governments should be coordinated with the private development efforts of private parties in urban waterfronts.

Identified below are elements to be considered in area management plans for urban waterfronts:

1. Establishment of water-oriented uses and activities.

2. Increased public access to the shorefront.

3. Increase the visual quality of the area and provide a safer environment.

4. Encourage appropriate land and water uses in the area.

5. Encourage the rehabilitation and renovation of old structures within the waterfront as a means of preserving the coast's heritage.

6. Encourage concentration of urban development in or adjacent to the urban waterfront for the improved utilization of public facilities and coastal resources, giving full consideration to flooding and other natural hazards.

Redevelopment or rehabilitation of urban waterfronts often requires clearance of substandard structures, the renovation of other structures, and providing for increased traffic circulation and parking. Activities of this nature are generally undertaken by local governments. The coastal program will provide planning assistance to local governments for designated urban waterfronts, and may provide some implementation assistance through CEIP. Specific urban waterfront areas for which planning assistance will be provided are to be identified annually. Implementation assistance will be handled through the Mississippi CEIP Allocation Process.

PRIORITIES OF USE

The highest priority for use in urban waterfronts are those uses which will provide additional access to the water, will restore areas for their historical significance, or will improve the area's economy. Uses of lowest priority are those which do not increase public access. Other priorities will be based on specific area management plans.

CHAPTER SEVEN

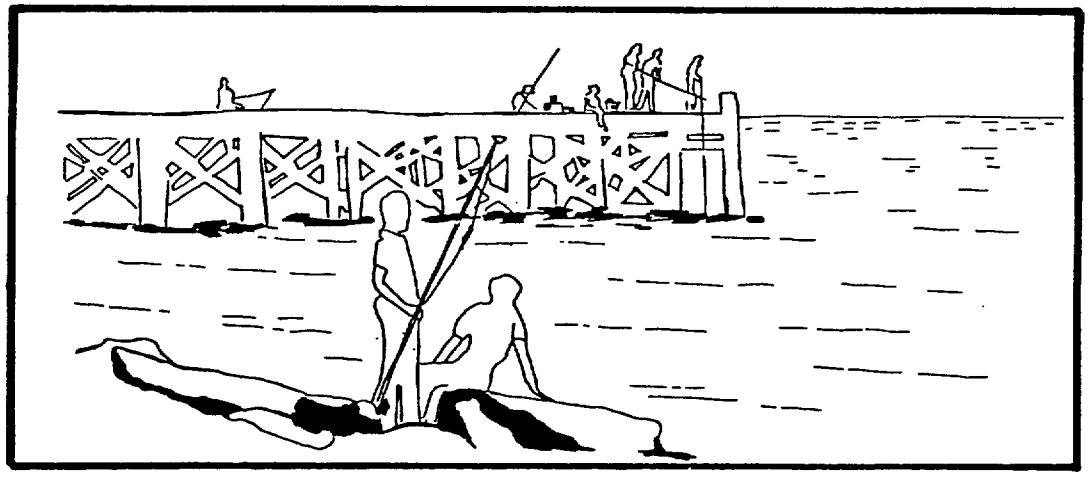
AFFIRMATIVE MANAGEMENT ACTIVITIES

Contents

Section 1: Energy Facility Planning Process

Section 2: Shoreline Erosion and Mitigation

Section 3: Other Management Activities



CHAPTER SEVEN: AFFIRMATIVE MANAGEMENT ACTIVITIES

SECTION 1: ENERGY FACILITY PLANNING PROCESS

Energy facilities are prominent on the coast because of good water access and nearby outer continental shelf development. While Coastal locations are economically attractive for energy facilities, they often can result in adverse impacts on coastal waters. Not only can the energy facility itself alter the environment, but induced development such as support facilities, increased manpower and population, and added construction all have significant effects on the environment. In addition, energy facilities cause changes in socioeconomic patterns through new labor force demands, alterations to local tax structure, and by dislocating indigenous industries.

Energy facilities are important in the program from two perspectives. From the first viewpoint, energy facilities usually create a range of environmental impacts, including air emissions and water effluents, groundwater drawdowns, alterations to the wetlands, and the degradation of natural scenic qualities on the coast. These impacts are not unique to energy facilities; they are the impacts associated with any major industrial development. Because of this, energy facilities are not singled out in the program for special regulatory attention. Instead, the impacts of energy facilities will be managed as would be the impacts of other industrial activities, through the use of the regulatory authorities described in Chapters III, V and VIII.

From a second viewpoint, the coastal program is concerned about the national interest in the development and siting of energy facilities. Accordingly, the coastal program provides for the consideration of the national interest through the policy coordination procedures in Chapter V, and provides assistance to local governments to plan and build facilities required as a result of energy developments. Chapter IX discusses national interest more thoroughly.

ENERGY FACILITIES LIKELY TO AFFECT THE COAST

Studies conducted during the development of the coastal program indicate that new energy facility developments will be limited. In coming to this conclusion, the development potential of the following types of energy facilities was examined:

1. Electric power plants (fossil and nulcear)
2. Petroleum refineries and associated facilities
3. Gasification plants
4. Liquified natural gas (LNG) facilities
5. Uranium enrichment or nuclear fuel processing facilities
6. Offshore oil and gas facilities (including platforms, assembly plants, storage depots, tank farms, crew and supply bases,and refining complexes)

7. Petroleum transfer facilities, including deepwater ports
8. Pipelines and transmission facilities
9. Associated terminals for all of the above
10. Onshore oil and gas wells

Of these facilities, the only ones likely to affect the coastal area in the forseeable future are a LNG terminal, and offshore oil and gas support facilities.

A site in Bayou Casotte is presently under active consideration for a LNG facility. While a final decision on the site has not been made, this potential energy facility raises a number of issues of concern to the coastal program. Public agencies having jurisdiction over the proposed facility have met with representatives of the company proposing the plant, and are now awaiting more definitive information about the facility to begin special planning efforts. Major impacts expected from this facility include wetland alterations, heating water intake and discharge, and the utilization of a large waterfront site. Also associated with this facility will be the construction of a natural gas pipeline that will be crossing several wetland areas.

Oil and gas support facilities will depend on the productivity of new discoveries off the Mississippi Coast. The key factor affecting the location of support facilities is proximity to offshore oil and gas development sites. Offshore tracts near Mississippi have not attracted much interest from the oil and gas industry; however, some remote sites are active, and in some cases are more accessible from the Mississippi Coast than from other OCS support areas.

The Pascagoula-Moss Point area, the East Biloxi Industrial Park, and the Bayou Bernard Industrial Park are the coastal area's most attractive sites for the OCS industry because of excellent water access. Supplementing the fundamental requirement of access is the advantage of existing OCS-related industries able to supply materials and equipment, and a trained labor force in the area.

A number of industries supporting offshore drilling operations have located in the Port Bienville Industrial Park in Hancock County. These industries are supporting non-OCS offshore drilling in the nearby waters of Louisiana, and there is a strong potential for growth at Port Bienville for this type of industry.

Because of the locational advantages of the Mississippi Coast, the LNG facility and the oil and gas support facilities described above are the most likely to affect the area. Other energy facilities are less likely to impact the coast for the reasons discussed in the following paragraphs.

New electric power plant sites are unlikely for the coast because of existing and projected excess electrical generating capacity. With the construction of the second of two new units at the Victor Daniels Power Plant in Jackson County, the area's demand for electricity will be satisfied for many years, even with the anticipated growth in population

and energy consumption. Also, the Victor Daniels site itself provides space for additional capacity. Therefore, the likelihood of a new electric power plant site on the coast is small.

The coast's only refinery, located in Pascagoula, imports 50% of its crude oil from the Middle East, the remainder being domestic offshore crude. If new oil is discovered in the coastal area, it will most likely supplant the Middle East oil being refined. If capacity in excess of the refinery's existing capacity is necessary, the site provides for plant expansion. Therefore, additional refinery sites are not projected for the coast, nor are any new petroleum transfer facilities expected. Earlier planning efforts for a deepwater port off the Mississippi Coast have been discontinued.

Pipelines and associated facilities presently located in the coastal area can adequately handle additional loads of crude oil. Company officials for the major pipelines landing in Pascagoula indicated that the existing 234,000 barrel per day pipeline capacity will accommodate new OCS wells. Along with natural gas pipelines landing in Hancock County this oil pipeline serves the declining production of the Gulf area. New discoveries are expected to fill the gaps in existing capacity rather than to require new major pipelines affecting the coastal area. The exception to this will be the line to carry the gas from the proposed LNG facility in Jackson County to the existing interstate gas distribution system in Hancock County.

Gasification plants, uranium enrichment facilities, and nuclear fuel processing facilities are unlikely for the coast because raw materials are not economically available.

As for onshore oil and gas wells, Hancock County has recently experienced major developmental drilling in the Waveland Gas Field. However, this development has tapered off, and to date has not had a direct and significant impact on coastal waters.

METHODS FOR ANTICIPATING IMPACTS

Several mechanisms will be used to anticipate the impacts of potential energy facilities, both for regulatory or planning purposes.

Well developed notification mechanisms are firmly established for regulatory purposes. Since the burden of notifying public agencies will rest with an energy facility proposing activity causing environmental impacts, there is no need to establish a special mechanism to bring energy facilities under the provisions of this program.

In its role as Mississippi's liaison with federal agencies and the public for OCS development, BMR is in the position to receive timely information from OCS lessees and operators concerning the development of any oil and gas fields. With this information in hand, planning can then determine the need for new facilities, and can assess suitable sites. Relevant information will be forwarded to local and regional officials for the benefit of their planning efforts.

Another source of information about potential energy facilities is the energy companies themselves. Companies proposing major energy facility developments typically contact state agencies on an informal basis early in their planning efforts. This kind of relationship enables public and private concerns to plan concurrently for energy facility impacts.

To keep abreast of new energy developments that would not otherwise come to the attention of BMR, statewide energy agencies will be consulted on a regular basis.

ASSESSING SITE SUITABILITY AND RESULTING IMPACTS

The regulatory authorities of several existing state agencies will be utilized to assess the suitability of potential sites for energy facilities. Each of several agencies (described below) is responsible for assessing a particular aspect of site suitability through its regulatory procedures. For example, the Bureau of Pollution Control is responsible for assessing the impacts of site development on water and air quality. Similarly, the Bureau of Marine Resources is responsible for site assessment with respect to the state's policies on marine resources management.

Each agency is required to carry out its primary responsiblities in compliance with the coastal program. This is insured through the policy coordination procedures of the program, described in Chapter V. Through policy coordination, the individual regulatory functions of separate state agencies are tied together into a comprehensive network for assessing the suitability of a site for energy development.

Detailed discussions of the authorities related to the development of energy facilities are to be found in Chapter III, Chapter V, and in Chapter VIII. These authorities are summarized below.

Water and Air Pollution

The Bureau of Pollution Control administers air and water quality in Mississippi. Standards for both air and water quality are enforced through a permitting system. Under Sections 49-17-28 and 49-17-29 of the Mississippi Code (see Appendix D), any energy facility seeking to discharge wastes or pollutants into the waters of the state, or to discharge emissions into the air, must secure a permit to conduct such activities.

Alterations to the Wetlands

BMR administers the state's policy of wetlands preservation. Energy facilities proposing to alter wetlands must either obtain a permit, or as excluded activities must comply with the public policy and the procedures discussed in Chapter III.

Development of Waterfront Industrial Sites

The coastal legislation defines the erection of structures on suitable sites for water dependent industry as a regulated activity under the Wetlands Law. Any energy facility utilizing a designated site for water dependent industry must follow the procedures described in Chapter III and formalized in Chapter VIII to insure that the use of the site conforms to guidelines on the conservation of waterfront sites.

Utilization of Surface or Groundwaters

Any energy facility proposing to divert surface waters anywhere in the coastal area or to utilize groundwaters in designated capacity use areas must first obtain a permit through the Bureau of Land and Water Resources. This Bureau's responsibility for water resources is to insure that they are put to beneficial use to the fullest extent of which they are capable and that the waste, unreasonable use, or unreasonable method of use of water is prevented. This authority is particularly important for energy facilities because they are often major consumers of water for industrial processes.

While the regulatory authority for capacity use areas exists in statute, it has not yet been implemented in the coastal area, since no capacity use areas have been designated.

Disturbances to Historical Landmarks

The Department of Archives and History administers the State Antiquities Law which provides that "all sites, objects, buildings, artifacts, implements and locations of historical, archeological, scientific or educational interest...may not be taken, altered, damaged, destroyed, salvaged or excavated without a contract or permit..."(Section 39-7-11, Mississippi Code). On publicly owned sites, and in cases where private landowners have delegated the management of their sites to the state, the department has direct permit control over the siting of a facility to the extent that the facility will affect a designated archeological site. In other cases, the department can manage historical resources through the policy coordination procedures in Chapter V.

OTHER REGULATION OF ENERGY FACILITIES

In addition to the management of energy facility impacts, certain aspects of energy development are managed directly. The Bureau of Geology and Energy Resources manages the mineral resources on all state owned lands. Any oil and gas drilling on state owned waterbottoms must be conducted under a lease from the Commission on Natural Resources.

The Mississippi Oil and Gas Board regulates by permit the exploration, production and transfer of oil and gas. The board regulates the many

technical aspects of oil and gas production. Like all state agencies, the Oil and Gas Board is bound by the coastal program; however, Mississippi law vests the board with exclusive authority for permitting oil and gas operations.

PUBLIC INVOLVEMENT

Public involvement in the decisions of the regulatory agencies described above is provided for and is an integral part of regulatory procedures. Each regulatory procedure incorporated into the program has public notice and hearing requirements built into the decision-making process either through specific enabling legislation or through the Mississippi Administrative Procedures Law (Mississippi Code Section 25-43-1 through 25-43-19).

PLANNING FOR ENERGY FACILITIES AND CEIP ASSISTANCE TO LOCAL GOVERNMENTS

While it is state policy to protect the environment from the adverse impacts of developments such as energy facilities, it is also in the best interest of the state to develop its mineral resources in an orderly fashion. To this end, the coastal program provides for affirmative efforts by the state and local governments to plan for energy facility development, and to mitigate any adverse impacts.

The Coastal Energy Impact Program (CEIP) figures prominently in the state's efforts to plan for energy facilities. Administered by BMR in Mississippi, CEIP recognizes that the primary impacts of energy facilities are felt at the local level, and that local governments are in the best position to handle these impacts. Accordingly, the majority of CEIP funds are available to local governments.

In addition to the expenditure of CEIP funds, the coastal program has designated certain industrial areas of the coast as special management areas. Because of the availability of utilities and transportation, new onshore energy facilities are likely to locate in these designated areas. In conjunction with local governments, the program will plan for the environmentally sound development of these areas, and will explicitly plan for accommodating the expansion of energy related activities as part of the coast's overall industrial development.

SECTION 2: SHORELINE EROSION AND MITIGATION

The length of Mississippi's tidal shoreline is estimated to be 369 miles. This includes the shorelines of the barrier islands, the mainland coast, bays, rivers and creeks to the head of tidewater or to a point where tidal waters narrow to a width of 100 feet. South of the coastal area's mainland is a chain of barrier islands forming the seaward boundary of the Mississippi Sound. These islands are separated by wide, shallow passes, and are characterized by the typical barrier island cross section showing beaches, dunes, woods, and marshes.

In the early periods of the coast's development, natural processes formed this configuration of the shore. At that time, man's impact upon the shoreline was minimal, usually confined to the vicinity of harbors. As transportation improved and basic industry changed, more people settled in coastal areas. As shoreline areas developed, it became necessary to protect them from erosion. Clearly, the problem of erosion is a problem of man encroaching on natural processes.

EXISTING EROSION PROJECTS

To protect U. S. Highway 90 along the shoreline in Harrison County, a step-type seawall was constructed in 1925-1928 from Henderson Point to Biloxi Bay. Because of structures such as factories, harbors, hotels and restaurants located at the shoreline, the seawall is discontinuous in several places. The seawall acted to accelerate the erosion of the small beaches that remained after seawall construction by curtailing the land derived source of beach material.

The seawall and roadbed were dangerously undermined during the 1947 hurricane. To prevent this from reoccurring, a beach was created along the seawall in 1951-1953. The artificial beach has been nourished twice since that time.

In Hancock County a step-type seawall extends from near the mouth of the Jourdan River to the Bay-Waveland Yacht Club and from the head of Ulman Avenue in Bay St. Louis to Bayou Caddy. The construction of a beach adjacent to the seawall has met with little success; only remnants are left in most areas.

With the exception of portions of Ocean Springs and Pascagoula, there are no seawalls in Jackson County. In Ocean Springs an artificial beach has been constructed and refurbished on several occasions. The last refurbishment of the beach utilized sand from an upland site because a source of suitable sand was not available nearby. A small beach contained by concrete groins has been constructed near the east end of the seawall in Pascagoula. Erosion near the mouth of the Pascagoula River has occurred due to the amplification of the littoral currents by the seawall.

BEACH EROSION FORCES

The Mississippi Coast is considered a "terraced deltaic plain". The absence of extensive natural beaches along the mainland attests to the relatively low wave energy regime. But in spite of this, erosion is an ever-present problem. Beach erosion is caused by a number of forces working either independently or in conjunction: waves, storms, and wind.

Waves generated by winds blowing over the water cause most of the damage to coasts. Wave size depends upon the fetch, or the distance the wind blows over the sea in generating waves. Generally, the longer the fetch, the stronger the wind; and the longer the wind blows, the larger the waves.

As a wave moves shoreward, it begins to "feel" the bottom and may pile up and break up before reaching the shore. When the waves breaks, turbulence stirs up bottom sediments, which are then subject to littoral transport. Short steep waves tend to tear the beach down and long swells tend to rebuild the beaches.

Hurricanes or severe storms moving over the ocean near the shore may greatly change beaches. Associated storm surges raise the water level and expose to wave attack higher parts of the beach not ordinarily vulnerable. Storms also generate large, steep waves that carry major quantities of sand from the beach to the nearshore bottom.

Wakes of boats and ships have the same effect on the shoreline as storm-generated waves. If a vessel passes so close to shore that dissipative forces have insufficient time to reduce the wave energy, the wake attacks the shoreline just as steep wind waves.

Wind also plays an important role in beach erosion. The southeast winds prevalent in the warmer months blow sand from the beaches to the adjacent roadways where it is periodically collected and trucked away. The north winds during the winter months find very little sand remaining to return to the beach, and since wind strength is reduced by landward structures and vegetation, the beach does not replenish itself from the shore.

Sand once was available to the shores from streams, rivers, and coastal erosion. However, because of development in watershed areas and along previously eroding shores, large areas of our coast now receive little or no sand through natural geological processes.

WATERFRONT EROSION AND ACCRETION AREAS

Waterfront erosion and accretion areas are shown in Figure VII-1. The numbered descriptions below are keyed to the erosion areas identified in Figure VII-1.

1. The stretch of shoreline from Bay St. Louis to Bayou Caddy bordering Mississippi Sound has primarily low elevations inland. A long fetch to the southeast permits sizable wind waves to attack the shoreline. Littoral transport appears to be predominantly to the west. The artificially-constructed beach has proven to be of short duration because storm tides permit wave action far up on the berm of the beach. Some wind erosion is noticeable, but it is not excessive.

2. The west shoreline of St. Louis Bay is attacked by wind traveling to the southwest and northwest - the dominant directions for this area.

3. The north and northwest shores of St. Louis Bay are eroding under wave attack.

4. The Henderson Point area near Pass Christian exhibits a seasonal reversal in littoral drift.

5. The east side of Gulfport Small Craft Harbor is an extensive area of accretion. The presence of the harbor structure interrupts the natural westward drift of sand. Eventually, the beach will extend to the southern end of the small craft harbor where it will become a problem for channel maintenance.

6. The Broadwater Marina also is an area of accretion because it constitutes a barrier to the westward transport of beach sands.

7. Both sides of Deer Island are eroding. While there are no reliable figures on the amount or rate of erosion, inspection shows it to be considerable. Stormy weather has caused the erosion of the west tip of the island; at times the tip is washed over.

8-11. The northeast shore of Biloxi Bay is eroded by wind and waves during normal high tides or storn-induced tides. Transport along Area 10, Ocean Springs, artificially constructed beach, is both offshore and westward. The low beach profile is inadequate to withstand wave attack during times of elevated water levels.

12. Bellfontaine Beach is being eroded by a combination of wind, waves, and the loss of natural source of materials for beach nourishment. Parts of this area have been developed.

13. The Greenwood Island area of Bayou Casotte bears the brunt of waves generated over a long fetch from the southeast through Petit Bois Pass. This area is under consideration for changes through port development.

14. Part of the abandoned ancient Escatawpa Delta is coming under increasing erosive action by waves as the remnants of the once protective Grand Batture chain of islands disappears.

15. The once extensive Grand Batture island chain has almost disappeared. The creation of Petit Bois Pass by hurricanes has permitted the attack by waves with an extensive fetch. The landward source of refurbishment materials disappeared long ago.

16. Round Island is subject to attack by waves from the east, southeast, south and southwest. The shores are extensively eroded, and the landmark lighthouse is in danger of succumbing to the sea.

17-20. Petit Bois, Horn, Ship and Cat Islands are frequently buffeted by storm-generated waves on both the seaward and mainland sides. Because of the predominant winds from the eastern sector, the net transport is westward. Hurricanes and severe storms erode the berm and dunes; Hurricane Camille severed Ship Island, creating what is locally known as Camille Cut.

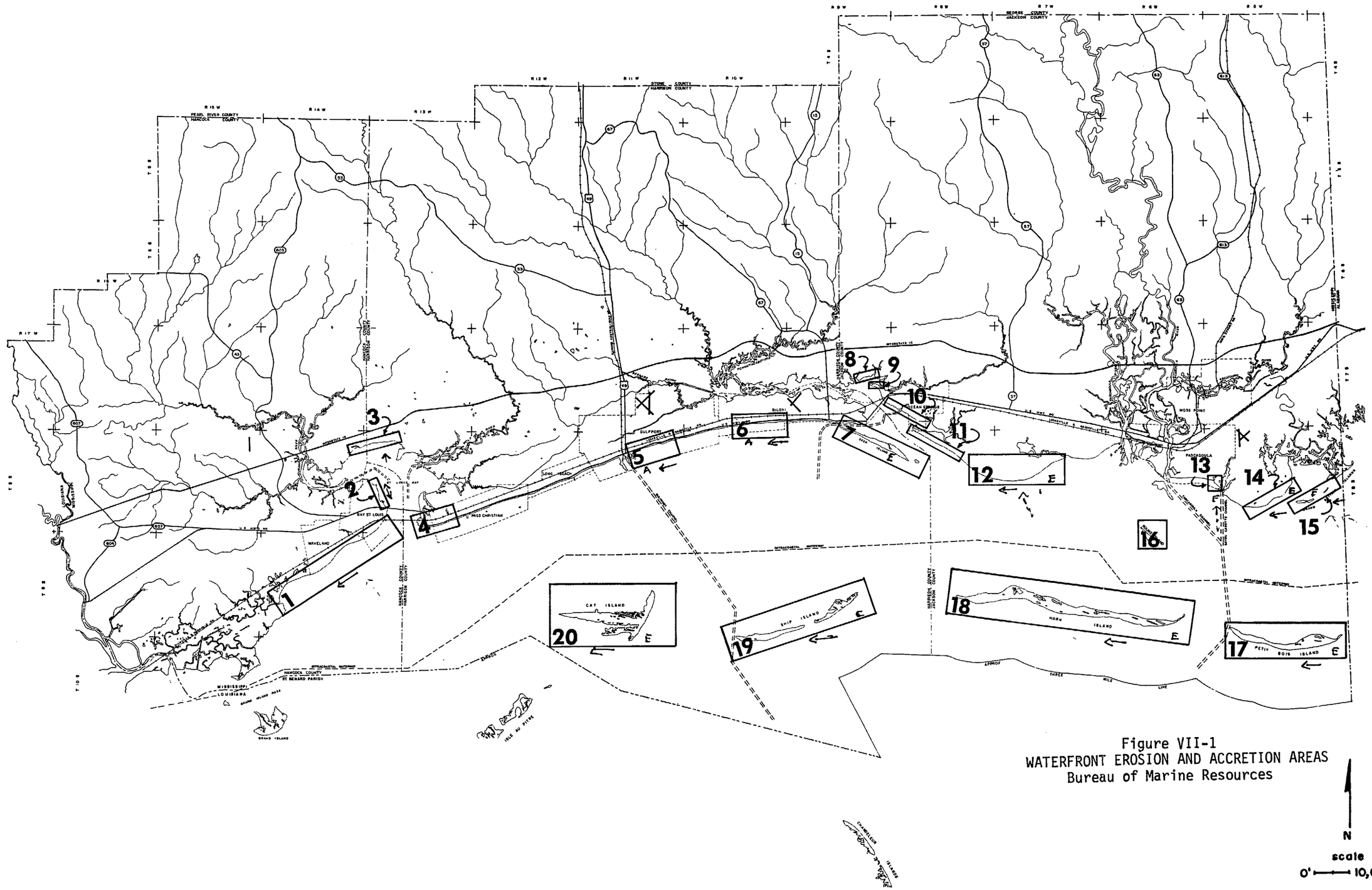


Figure VII-1
WATERFRONT EROSION AND ACCRETION AREAS
Bureau of Marine Resources

INFORMATION NEEDS FOR SHORELINE EROSION MANAGEMENT

Accurate, long range assessment of shoreline erosion needs to be based on specific research. Subjects needing research are: (i) wave refraction diagrams, (ii) long term changes in the shoreline, (iii) wind transport, (iv) littoral transport rates, (v) wave spectra, (vi) source materials for beach nourishment, and (vii) erosion by boat wakes.

Research into these areas will be conducted during the implementation of the coastal program and in conjunction with ongoing marine research efforts.

ENFORCEABLE POLICIES AND OTHER MANAGEMENT TECHNIQUES

Policies for shoreline erosion will be enforced through wetlands permitting described in Chapter III. The guidelines are designed to reduce the erosive effects of shorefront structures. They will be enforced as described in Chapter VIII. Examples of structures and activities that the wetland guidelines in Chapter VIII control are marinas, bulkheads and seawalls and channels.

Support for erosion control projects will come primarily from the Corps of Engineers and from local governments. Relative to the Corps' participation, support for erosion control will be directly provided through projects such as beach replenishment, and indirectly through dredged material disposal techniques that have the effect of erosion control by replenishing eroding shorelines. Such material disposal techniques will be specifically considered as options in long-term planning for dredged material disposal to be done during program implementation. (See the section on industrial and port areas in Chapter VI for a discussion of the relationship between dredged material disposal plans and area management plans.)

Funds under 306 of the CZMA will be considered for use in planning erosion control efforts. It is anticipated that these funds will be used to restore and preserve those beaches in the area that have been subject to severe wind erosion. Such projects will be carried out with local governments playing a lead role.

Other sources of potential funding for shoreline erosion mitigation include: Farmers Home Administration, Soil Conservation Service, Department of Housing and Urban Development, Heritage Conservation and Recreation Service, Federal Highway Administration, State of Mississippi, Regional Waterway Districts and various institutions such as the Nature Conservancy.

SECTION 3: OTHER MANAGEMENT ACTIVITIES

PUBLIC FACILITIES ASSISTANCE

Public facilities such as sewer, water, and drainage systems present the

SECTION 2, PART IV.E.

E. The coastal wetlands use plan is divided into use districts. These districts and the allowable uses within each district are described below.

1. "I" Districts: Industrial Development

   a. Areas so designated may be used for activities associated with water dependent industrial development.

   b. Allowable uses or activities in an industrial development district are the construction of piers, docks, wharfs, dolphins, bulkheads, skids, marine launchways, dry docks, graving docks, launching ramps, hoists, cranes, submarine cables or pipelines, water intake or effluent discharge structures, other similar structures necessary to water dependent industrial development, dredging necessary to carry out the construction of these facilities, and filling necessary for water dependent industrial development. Uses allowed in "C" and "G" districts are also allowable.

2. "C" Districts: Commercial Fishing and Recreational Marinas

   a. These areas are designated to accommodate developments necessary to support commercial fishing or recreational marinas and associated activities.

   b. Allowable uses or activities are commercial fishing and recreational marinas, shorefront finfish and shellfish processing facilities, ice plants and boat repair facilities for commercial fishing and recreational use, the construction of piers, docks, dolphins, bulkheads, wharfs, launching ramps, hoists or cranes, other similar structures necessary for commercial fishing and recreational marina use and dredging and filling necessary to accommodate these uses. Activities allowed in "G" districts are also allowable.

3. "G" Districts: General Use

   a. These are wetland areas where only minor alterations are allowed when such alterations do not adversely affect recreation, swimming, fishing, and the natural scenic qualities of the wetlands.

   b. Allowable uses or activities are the construction of piers, docks, bulkheads for non-commercial purposes; other similar structures, submarine cables and pipelines; launching ramps; oyster farming, transportation facilities developed under a plan reviewed and found to be consistent under the policy coordination procedures in Section 4; overhead transmission lines; beach nourishment activities; reasonable dredging

4. A public hearing may be held on the study to receive comments from interested parties.

5. A final preservation or restoration proposal will be adopted and implemented through the program.

In cases where preservation or restoration involves property acquisition, the management of the property may be delegated to an appropriate state agency. Where the preservation or restoration area is in the coastal wetlands, the use plan in Chapter VIII will be modified accordingly. The plan already includes preservation designations to keep large areas of coastal wetlands in their natural state. Estuarine sanctuary designations under CZMA will be considered for designated preservation areas.

ONE-STOP PERMITTING

The 1979 coastal program legislation mandated that one-stop permitting be developed to coordinate the processing and issuing of permits, licenses and other such instruments in the coastal area. Currently, a joint permit application form is used by the state and federal agencies regulating wetlands in Mississippi. The application was developed in March of 1979 by the Mississippi Marine Resources Council (now BMR), the Mississippi Air and Water Pollution Control Commission (now the Bureau of Pollution Control), and the U. S. Army Corps of Engineers. The use of this form is continuing though the form has changed to reflect the July 1, 1979, reorganization of the agencies involved.

The use of the joint permit form is one step toward one-stop permitting. Another step is the policy coordination procedures described in Chapter V. The notification and review procedures promote the simultaneous review of activities in the coastal area by several permitting agencies. The policy coordination procedures provide the framework for the next step in one-stop permitting - simultaneous decisions.

Because of the widely varying requirements among different permitting procedures in the coastal area, one-stop permitting cannot be instituted immediately. During program implementation, legal analyses, interagency agreements, and new legislation will be developed to implement one-stop permitting.

PRESERVATION OF NATURAL SCENIC QUALITIES

Section 57-15-6 of the Mississippi Code states that one of the goals of the coastal program is "to encourage the preservation of natural scenic qualities in the coastal area". To carry out this mandate, the program includes scenic guidelines in Chapter VIII. These guidelines must be considered by state agencies, and with the approval of the coastal program under the Coastal Zone Management Act, must be considered by federal agencies as well. Private parties are encouraged, but not required, to consider these guidelines.

In planning for the development of special management areas, as described in Chapter VI, these scenic guidelines will be considered. It is expected that they will be particularly relevant for planning in urban waterfronts.

To encourage the preservation of natural scenic qualities, BMR shall make technical assistance available to public bodies in Mississippi.

PUBLIC INFORMATION AND EDUCATION EFFORTS

Public knowledge of coastal resources is critical to sound management in the coastal area. There is a need in Mississippi's coastal area for a higher public awareness of coastal ecology, as well as the need for a better understanding of regulatory, statutory, and common law constraints on activities in the coastal area.

BMR will consider the following types of public information and education efforts for support through the Mississippi Coastal Program.

1. Educational programs through local school systems in conjunction with science curricula.

2. Publication of informational brochures to describe coastal resources and their management.

3. Distribution of information to realtors, surveyors, lawyers, title-insurance companies, and developers to describe relevant laws, regulatory provisions, and technical data. Since these professions and businesses frequently deal with development at the waters edge, better information will allow them to serve the public in a more informed manner at the earliest stages of property acquisition and development proposals.

4. Distribution of frequent news releases to keep the public informed of new developments concerning coastal resources.

5. The publication of a periodic newsletter.

6. Making BMR personnel available to make formal presentations to organizations about coastal resource management.

7. Up to date mapping of natural resources of significance so that the public and governmental agencies can know where these resources are located, and coordinate their activities. Resources which should be mapped are: tidal and non-tidal wetlands, bottomland hardwoods, 100 year and 500 year floodplains (both coastal and riverine) and high hazard areas, beaches and dunes, natural and man-made islands, notable flora and fauna habitats, and outstanding coastal river segments.

CHAPTER EIGHT

RULES, REGULATIONS, GUIDELINES AND PROCEDURES

Contents

Section 1: General

Section 2: Wetlands Management

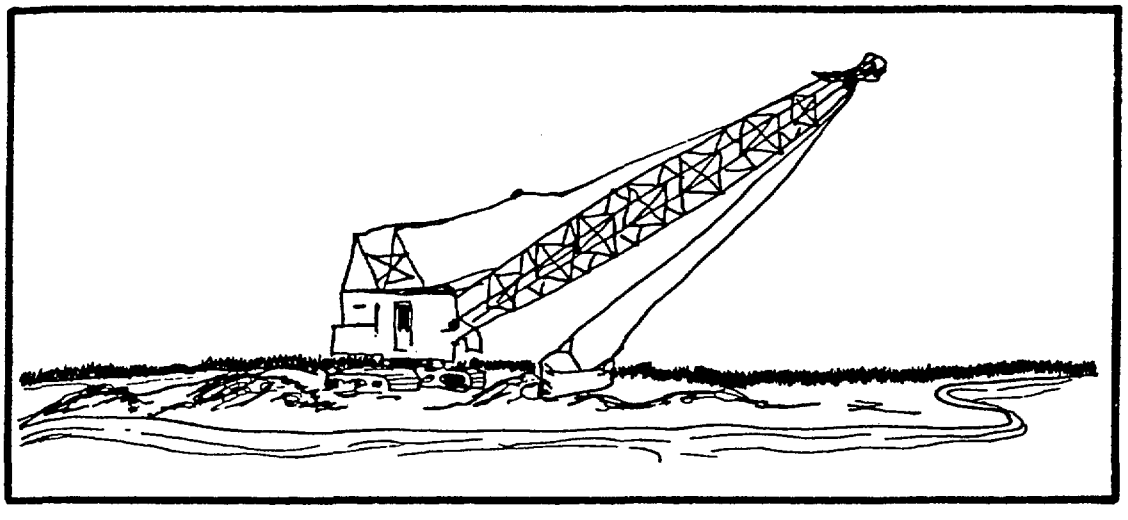
Section 3: Fisheries

Section 4: Policy Coordination

Section 5: Special Management Areas

Section 6: Scenic Guidelines

Section 7: National Interest



CHAPTER EIGHT: RULES, REGULATIONS, GUIDELINES AND PROCEDURES

SECTION 1: GENERAL

PART I. INTRODUCTION

A. PURPOSE AND ORGANIZATION

1. The purpose of these rules, regulations, guidelines, and procedures is to provide the administrative mechanism to carry out state policy in the coastal area in a coordinated manner, as stated in Section 57-15-6(1), Mississippi Code of 1972, and to carry out related statutes. Collectively, these rules, regulations, guidelines, and procedures describe how the Mississippi Commission on Wildlife Conservation, acting through the Bureau of Marine Resources, will carry out its powers and duties in the coastal area.

2. These rules, regulations, guidelines, and procedures are divided into sections, designated by arabic numerals. Each section is divided into Parts designated by Roman numerals, which in turn are subdivided into upper case letters, then arabic numerals, then lower case letters, then lower case Roman numerals. Where sections are cross referenced, it shall be assumed that the provision is part of the same superior subdivision as the provision in which the reference is made, unless otherwise indicated.

3. Statutory cites refer to the Mississippi Code of 1972 and its cumulative supplements.

B. ORGANIZATION AND OPERATION OF THE BUREAU OF MARINE RESOURCES

1. The Bureau of Marine Resources (BMR) is a subdivision of the Mississippi Department of Wildlife Conservation (DWC), which is governed by the Mississippi Commission on Wildlife Conservation. Insofar as is practicable under the provisions of Chapter 4, Title 49, Mississippi Code of 1972, MCWC shall function through BMR.

2. The Director and administrative office of BMR are located in Long Beach, Mississippi on the Gulf Park Campus of the University of Southern Mississippi.

3. This set of rules, regulations, guidelines, and procedures describes the general course and method of operation for MCWC and BMR. From time to time, informational material may be published to illustrate and explain these rules, regulations, guidelines, and procedures.

SECTION 1, PART I.B.

4. Persons desiring notice of pending applications under these rules, regulations, guidelines, and procedures may notify BMR of their name and mailing address. BMR shall cause a copy of the weekly log of activities affecting the coastal area to be provided to such persons. The weekly log is described in Section 4. Persons desiring to be heard with respect to specific applications may do so through the several public hearing provisions in these rules, regulations, guidelines and procedures.

5. All rules and other written statements of policy or interpretations formulated, adopted, or used by MCWC and BMR in the discharge of its official duties, and all final orders, decisions and opinions shall be available for public inspection and copying at cost.

PART II: PROMULGATION AUTHORITY

A. WETLANDS MANAGEMENT

The rules, regulations, guidelines and procedures for wetlands management in Section 2 are promulgated under the authority of Mississippi Code Sections 49-27-59 and 49-4-9(b), with reference to Section 57-15-6(1), which mandates among other things that guidelines and procedures be established to insure the efficient utilization of waterfront industrial sites.

B. FISHERIES MANAGEMENT

The rules and regulations for fisheries management in Section 3 are promulgated pursuant to Mississippi Code Section 49-15-1 through Sections 49-15-69, under the specific authority of Section 49-15-15(3)(k). (Note: Section 3 is reserved for the future codification of fisheries management ordinances.)

C. POLICY COORDINATION

The policy coordination procedures in Section 4 are promulgated under the authority of Mississippi Code Section 57-15-6(f).

D. SPECIAL MANAGEMENT AREAS

Guidelines for special management areas in Section 5 are promulgated under the authority of Mississippi Code Section 57-15-6(1), pursuant to the coastal program goals in 57-15-6(1)(a) through (f), and pursuant to the mandate in 57-15-6(5) to prepare a long-term plan for the development of suitable sites for water dependent industry.

E. SCENIC PRESERVATION

Scenic preservation guidelines in Section 6 are promulgated under the authority of Mississippi Code Section 57-15-6(1)(d).

SECTION 1, PART III.

F. NATIONAL INTEREST

National interest guidelines in Section 7 are promulgated under the authority of Mississippi Code Section 57-15-6(1)(c).

PART III: DEFINITIONS

A. MCWC: The Mississippi Commission on Wildlife Conservation.

B. BMR: The Mississippi Bureau of Marine Resources, an administrative subdivision of the Department of Wildlife Conservation.

C. Coastal area: Hancock, Harrison, and Jackson Counties.

D. Coastal Program: The consolidated statement of state policy in the coastal area, as prescribed by Mississippi Code Section 57-15-6, including all descriptive materials, maps, figures, and the like.

E. Coastal Wetlands: 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. The term coastal wetlands shall be interpreted to include the flora and fauna on the wetlands and in the wetlands; however, it shall not be interpreted to include private property which is above the watermark of ordinary high tide.

F. Coastal Wetlands Protection Law or Wetlands Law: Mississippi Code Sections 49-27-1 through 49-27-69.

G. Tidal marsh: Areas of vegetated lands from the watermark of ordinary high tide seaward to a point where the vegetation ceases to exist.

H. Waterbottoms: Coastal wetlands from the seaward limit of tidal marsh to the limit of the territorial sea, exclusive of spoil islands and other accretions above ordinary high tide.

I. Dredging: The removal or displacement by any means of spoil, sand, gravel, shells or other material, whether of intrinsic value or not, from coastal wetlands.

J. Filling: The displacement of waters by disposition into coastal wetlands of soil, sand, gravel, shells, or other material. Also, the artificial alteration of water levels or water currents by physical structures, drainage ditches or otherwise.

K. Regulated Activities: Dredging, excavating or removing of soil, mud, sand, gravel, flora, fauna, or aggregate of any kind from any coastal wetlands; the dumping, filling or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind or garbage, either directly or indirectly, on or in any coastal wetlands; killing or materially damaging any flora or fauna on or in any coastal wetlands; and the erection on coastal wetlands of structures which materially affect the ebb and flow of the tide; and the erection of

any structure on suitable sites for water dependent industry. The use of the term "indirectly" in this definition covers the possibility of activities located outside of coastal wetlands which cause dumping, filling, or depositing in coastal wetlands.

L. Suitable Sites for Water Dependent Industry:

1. Hancock County

   a. Spoil sites three and four, Port Bienville Industrial Park;

   b. Lots 1, 6, 7, 8 in Port Bienville Industrial Park; and

   c. Public area at turning basin and Road C-1, Port Bienville Industrial Park.

2. Harrison County

   a. Lots 2, 3, 9, 10, 11, 12, 13, and the diked spoil disposal areas on both the west and east sides of the ship service channel in the Pass Christian Industrial Park;

   b. Harrison County Development Commission Spoil Disposal Area A-2, and the adjacent 11.6 acre Parcel 1, Lots 2, 5, 8, 9, 10, 11, 12, 13, 14; Spoil Area C, and Spoil Area C-1, all in the Bernard Bayou Industrial District.

3. Jackson County

   a. Land owned by Jackson County fronting on the Bayou Casotte channel;

   b. Privately owned lands fronting on Bayou Casotte and within 1,000 feet of the centerline of the Bayou Casotte channel, excluding production sites occupied by industrial or manufacturing activities on October 1, 1980.

   c. Land owned by Jackson County fronting on the East Pascagoula River or the Escatawpa River downstream of Kreole (as indicated by the U. S. Army Corps of Engineers navigation project map); and

   d. Privately owned lands, zoned for industrial use, fronting on the East Pascagoula or the Escatawpa River and within 1,000 feet of the centerline of the channel downstream of Kreole excluding production sites occupied by industrial or manufacturing activities as of October 1, 1980.

SECTION 1, PART III.

M. SMA: A special management area designated under Section 5.

N. Coastal Program Agencies: The Bureau of Marine Resources, the Bureau of Pollution Control, the Bureau of Land and Water Resources, and the Department of Archives and History. These agencies have administrative responsibilities for implementing the goals of the coastal program.

O. Major Coastal Rivers and Streams: The Pearl River, Wolf River, Little Biloxi River, Red Creek, Black Creek, Pascagoula River, Escatawpa River, and Big Biloxi River.

P. Person: Any natural person, partnership, joint stock company, corporation, unincorporated association or society, or the state and any agency thereof, or any county, municipality, or political subdivision, or any other corporation or any character whatsoever.

Q. Director: The Director of the Bureau of Marine Resources.

R. Feasible: Capable of being done, considering technological, safety and financial constraints.

S. Repair and maintenance: Restoring or preserving facilities or structures to their original condition.

T. Water dependent industry: Those commercial, industrial, or manufacturing activities which, for purposes basic to their existence, must occur or locate on or adjacent to the estuaries, sounds, channels, shores or marshlands of the coast.

U. Coastal Program Advisory Committee: That group appointed by and serving at the pleasure of the Governor of Mississippi to participate in the implementation of the coastal program, and to perform other advisory functions, as determined by the Governor.

PART IV: REVISIONS

A. REVISIONS AT THE INITIATIVE OF MCWC

1. Any revision shall be preceded by a notice of a public hearing in a newspaper having general circulation throughout the affected area at least three times for three consecutive weeks. The first notice shall appear at least thirty days prior to the hearing date. Notice shall also be provided through the policy coordination procedure in Section 4. Copies of the proposed revision shall be made available at the office of BMR when the public hearing notice is first published.

2. Where the proposed revision concerns the regulated activity in Mississippi Code Section 49-27-5(c)(v), BMR shall serve

a copy of the proposed revision upon the board of supervisors and port authority, development commission, or port and harbor commission in Hancock, Harrison, and Jackson Counties at least 60 days prior to the public hearing.

3. Following the public hearing, the Mississippi Commission on Wildlife Conservation shall consider the proposed revision in light of the public hearing comments, and may make changes as it deems appropriate.

4. Before becoming effective, any revision shall be published at least once a week for three consecutive weeks in a newspaper having general circulation throughout the State of Mississippi and shall be filed with the Secretary of State at least thirty days prior to its effective date.

5. The Mississippi Commission on Wildlife Conservation may make revisions to these rules, regulations, guidelines and procedures (including the coastal wetlands use plan) irrespective of the federal government's approval under the Coastal Zone Management Act of 1972, as amended. However, federal approval of revisions is desirable so that the revisions may be enforced through the federal consistency provisions of Section 307 of the Act, and so that financial assistance may be secured to implement the revisions.

B. REVISIONS AT INITIATIVE OF OTHER PARTIES

Parties other than the Mississippi Commission on Wildlife Conservation desiring to revise or contest the making of any rule, regulation, guideline, or procedures shall observe the following procedures:

1. Proposed revisions or contests shall be filed in writing with BMR along with any explanatory material deemed appropriate by the party requesting the change.

2. BMR shall evaluate the proposed revision and shall report its findings to the Mississippi Commission on Wildlife Conservation.

3. The Mississippi Commission on Wildlife Conservation shall determine whether the proposed revisions, or some variation thereof, have merit. It may then institute the procedure for revisions under Part IV. If the Mississippi Commission on Wildlife Conservation declines to implement a requested change, the party requesting the change shall be notified of the Mississippi Commission on Wildlife Conservation's decision and the reasons thereof.

C. CORRECTIONS

MCWC may issue corrections to these rules, regulations, guidelines, and procedures without public hearing by carrying out the requirements

of Part IV. A.4. above. Corrections shall be limited to obvious compilation errors, errors in cross references, and changes in nomenclature.

SECTION 2: WETLANDS MANAGEMENT

PART I: GENERAL

A. APPLICABILITY

This section applies to activities affecting coastal wetlands, and construction on suitable sites for water dependent industry. It is designed to carry out Mississippi Code Section 49-27-3 and Section 57-15-6(1)(a).

1. Mississippi Code Section 49-27-3 reads as follows:

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

2. Mississippi Code Section 47-15-6(1)(a) reads as follows:

   To provide for reasonable industrial expansion in the coastal area and to insure the efficient utilization of waterfront industrial sites so that suitable sites are conserved for water dependent industry.

B. PERMITS REQUIRED

A regulated activity shall not be conducted without a permit unless excluded by Mississippi Code Section 49-27-7 or 49-27-9. These exclusions are described in Part II. Even though these exclusions do not require permits under the Wetlands Law, they are required by the Wetlands Law to comply with the public policy of wetlands protection in Mississippi Code Section 49-27-3. Further, all exclusions shall notify BMR in accordance with Part II.C.

C. APPLICATION PROCEDURE

1. Unless excluded in Part I.B., every person proposing to conduct or causing to be conducted a regulated activity shall make application for and secure a permit. Every person granted a permit to conduct regulated activities must be in strict conformance with the conditions of any permit that may be granted by MCWC.

SECTION 2, PART I.C.

2. Permit applications shall be submitted to BMR on prescribed forms. One copy of the application shall be submitted along with an application fee of $10.00 plus the cost of publication, payable to MCWC.

3. An application for presently non-existing work shall include:

   a. The name and address of the applicant;

   b. The names and addresses of the present owners of record of adjacent land as determined by current tax assessment rolls, and of known claimants of riparian or water rights in or immediately adjacent to the coastal wetlands, or a certificate that after diligent search and inquiry the said names and addresses could not be found;

   c. A detailed description of the proposed activity and a map, drawn to an appropriate and uniform scale showing by section, township and range or by latitudinal longitudinal coordinates, the location and area of the coastal wetlands to be affected; the boundaries and ownership of adjacent uplands indicating the location and area of existing and proposed fill, excavation or other regulated activities; showing the location and size of any proposed channel and dredged material disposal site; showing all existing and proposed structures including those on adjacent uplands; describing the type of equipment to be used and the means of equipment access to the activity site; and, in the case of construction on suitable sites for water dependent industry, showing the location of the proposed structure relative to the waterfront and information related to the permit criteria in Part I.E.3.

   d. An estimate of the cost of the activity;

   e. The primary purposes of the project, including contemplated future projects; the intended effects of the project, if it is designed to induce additional development; and any unintended effects that may reasonably be anticipated;

   f. If the project involves wetland alterations, a description of any public benefit to be derived from the proposed project dependent upon the proposed activity; and the extent of public use of such proposed project;

   g. A complete description of measures to be taken to reduce detrimental off-site effects to the coastal wetlands during and after the proposed activity;

   h. The expected completion date of the proposed activity and of the project dependent upon the activity;

i. An environmental assessment of the proposed regulated activity, and of the final project dependent on it, shall be provided. An environmental impact statement treating the same activity in the same area and supplied to other federal or state agencies for considering a permit may satisfy this requirement. The assessment shall address the projects effect on the wetlands and upon the life dependent upon them; and

j. A certification that a permit from the Bureau of Pollution Control has been applied for or that such permit is not required; that a permit from the United States Army Corps of Engineers has been applied for or that such permit is not required; that permits or other certificates of compliance with applicable minicipal or county building codes and zoning ordinances have been applied for or are not required.

   Compliance with certification required herein may be met by submitting to BMR copies of applications for permit or certification to federal, state or local agencies accompanied by a statement by the applicant that all necessary applications have been filed or that a permit or certification from such agencies is not required. The use of the joint BMR/U. S. Army Corps of Engineers form shall be sufficient to meet this certification requirement as it applies to a permit from the U. S. Army Corps of Engineers.

4. An application for dredging an existing navigational channel need only show the name and address of the applicant, and that the channel was lawfully in existence on July 1, 1973 and on the date the application is filed. An applicant for dredging an existing navigational channel is encouraged to provide information in addition to that required above so that MCWC will have sufficient information for its decision in the event that regulated activities other than dredging are involved.

5. Multiple regulated activities associated with the same project shall be included on one permit application.

D. APPLICATION PROCESSING

1. Upon receipt of an application, BMR shall provide a copy of the application to the affected public officials listed in Mississippi Code Section 49-27-13, and to the State A-95 Clearinghouse to satisfy the policy coordination procedures of Section 4.

SECTION 2, PART I.D.

2. Public Notice

   a. BMR shall publish notice of a date by which written objections to any application must be filed. Publication shall be no later than 60 days from the receipt of a completed application.

   b. Notice shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper of general circulation in the county of the affected wetlands. The last publication shall be made not more than seven (7) days prior to such date.

   c. The published notice shall describe the site of the proposed activity and shall give a description of the proposed regulated activity.

3. Hearings

   a. If written objection is filed, or if the applicant requests a hearing, then a hearing must be held within twenty (20) days after the date by which objections must be filed unless a later date for the hearing is agreed to by all parties.

   b. A notice describing the date, time and place for the said hearing shall be sent by U. S. mail, postage prepaid, to each of the objectors and to the applicant at the address furnished to BMR by said parties. A copy of such notice shall be published at least one (1) time in one (1) newspaper having general circulation in the county of the affected wetlands.

   c. The following parties shall be notified of a hearing by the Bureau prior to the date for the hearing, but a failure to meet this requirement shall not invalidate any permit granted thereafter:

      i. All of those parties who are sent copies in accordance with Part I.D.1. of this section;

      ii. All known present owners of record of adjacent land by current tax assessment rolls and all known claimants to water or riparian rights in or adjacent to the coastal wetlands affected area.

4. Objections

   a. Any person who files a written objection may appear at the public hearing and be heard;

b. The burden of proof shall be on the applicant, whether a hearing is held or not; provided, however, no application shall be denied without giving the applicant a right to a hearing according to the provisions of the Wetlands Law.

5. Oral testimony at hearings shall be recorded, but shall not be required to be transcribed except in the event of appeal.

6. Any permit granted shall expire on such date and on such terms and conditions as determined by the Commission on Wildlife Conservation for such permit.

E. BASIS FOR DECISIONS

1. MCWC shall base all of its decisions generally on the rules, guidelines, and procedures found in this section, and specifically on the findings and recommendations of BMR. The basis of MCWC's decisions shall be made part of its minutes.

2. Decision Factors

In making recommendations for regulated activities other than those described in Part I.E.3. below, BMR shall evaluate the proposed activity against the public policy of wetlands protection in Mississippi Code Section 49-27-3. Preference is to be given to preserving the coastal wetlands in their natural state, and that the burden of demonstrating the higher public interest in altering wetlands rests with the party proposing the alteration. In evaluating the public interest and making recommendations, BMR shall consider and make findings on the following:

a. Applicable legislative and judicial statements of public interest.

b. The coastal wetlands use plan in Part IV of this section. Permits shall be granted only for projects allowed by the use plan. To petition for a change in the coastal wetlands use plan, an applicant must follow the procedures in Section 1, Part IV;

c. The guidelines in Part III of this section. The applicable guidelines must be followed unless the applicant specifically requests and justifies a variance. Variances may be granted in the discretion of the Commission, based on findings and recommendations from BMR. Approval of a variance must be based on one or more of the following; that

i. The impacts on coastal wetlands would be no worse than if the guidelines were followed;

ii. The variance would be temporary, with restoration to conform with the guidelines taking place within a period specified in a permit, which period shall be no less than 30 days nor more thab 120 days following completion of the activity.

iii. No feasible, alternative sites or construction techniques are available, there is a significant public benefit in the activity, and a public hearing has been held; or

iv. The activity requires a waterfront location, there is a significant public benefit in the activity, and a public hearing has been held.

A public hearing held as part of a permit or decision process that may now be required under state or federal law, and that is referenced in Section 4, Part IV or V, shall be sufficient to meet the requirements in iii or iv above, provided such hearing has addressed the issue of a variance;

* d. Precedent setting effects and existing or potential cumulative impacts of similar or other development in the project area;

e. The extent to which the proposed activity would directly and indirectly affect the biological integrity and productivity of coastal wetlands communities and ecosystems;

f. The full extent of the project, including impacts induced by the project, both intended and unintended but reasonably anticipated;

g. The extent of any adverse impact that can be avoided through project modifications, safeguards, or other conditions, (e.g. piers in lieu of channel dredging);

alternatives h. The extent of alternative sites available to reduce unavoidable project impacts;

water dependency i. The extent to which a proposed activity requires a waterfront location;

j. The preservation of natural scenic qualities, as specified in Section 6;

k. The national interest, as specified in Section 7;

l. Comments received through the Mississippi Coastal Program policy coordination procedure, and comments received through public hearings; and

m. The provisions of approved SMA plans. Specific provisions of area management plans shall prevail over the considerations in Part I.E.2.b. through l. above.

3. Construction on Suitable Sites for Water Dependent Industry

In cases where a permit is required for the erection of structures on suitable sites for water dependent industry, because the structure is being built by a non-water dependent industry, BMR shall consider the following in making its recommendations, along with comments received through the policy coordination procedures:

a. Factors in favor of granting a permit:

i. Technical and economic requirements; great weight will be given to granting permits for expansions of industries located on the waterfront, where such expansion involves the use of product outputs; by products, or common production facilities;

ii. Where failure to grant permit would render site unsuitable for beneficial uses;

iii. Where the proposed structure would not impair future waterfront industrial development of site;

iv. Good faith plans for waterfront uses (plans for speculative wetland filling shall not be considered "good faith";

v. Uncommonly high ratio of new jobs to the area of the site proposed for development; and

vi. Where special area management plan provides for the activity in question.

b. Factors for conditioning or denying a permit:

i. Where alternative, feasible sites exist;

ii. Where siting is not required on technical or economic grounds;

iii. Where permit would result in an activity inconsistent with the Mississippi Coastal Program; and

iv. Where a permit would result in an activity injurious to public health and safety.

F. RECONSIDERATION AND APPEAL

An applicant, or any person, corporation, municipal corporation, county, or interested community group authorized by Mississippi Code Section 49-27-39 to take an appeal to chancery court may request MCWC to reconsider a permit decision. A copy of such request shall be provided to the Coastal Program Advisory Committee, which shall advise MCWC of its recommendations with respect to the permit. MCWC shall consider the request, along with the advisory committee's recommendation, and may secure any additional information it deems necessary, either through BMR or through testimony from interested parties. Any party named herein may appeal from MCWC's decision to chancery court in accordance with Mississippi Code Section 49-27-39 through 49-27-49.

G. PERMIT CONDITIONING

1. In granting a permit, the Commission may provide for such conditions as may be necessary to insure compliance with the coastal program.

2. As a condition of granting a permit, the Commission may require mitigation as a means of minimizing net adverse impacts on coastal wetlands. The magnitude of any mitigation requirement shall be reasonably related to the magnitude of the activity under consideration.

3. Where an area management plan is in force, the Commission will not require mitigation above and beyond that called for in the plan. In the absence of an area management plan, mitigation will be determined on a case-by-case basis.

4. Except for permits for old channels under Section 49-27-25, Mississippi Code of 1972, the Commission may require a performance bond to secure compliance with a permit.

H. CHARGE FOR METERIALS

1. A permittee or his agent shall compensate the State of Mississippi for all material removed from coastal wetlands at a rate to be determined by the Director of BMR based on a fair market value of the material removed. This regulation shall not be construed as authorizing or promoting the direct sale of material from coastal wetlands. The purpose of this regulation is to insure that the State of Mississippi is fairly compensated for materials removed from coastal wetlands in conjunction with the conduct of a regulated activity.

SECTION 2, PART I.H.2.

2. Public agencies will not be charged for material removed from coastal wetlands when the material is uded for a public project, provided such material is not sold or converted to non-public use.

PART II: EXCLUSIONS

The activities, areas, and entities described in this part are excluded from the need to secure a permit for regulated activities. When conducting what would otherwise be regulated activities, exclusions must comply with the public policy of wetlands protection in Mississippi Code Section 49-27-3, and must notify BMR in accordance with the provisions of Part II.C.

A. MISSISSIPPI CODE SECTION 49-27-7 EXCLUSIONS

The following activities, areas, and entities are excluded from the need to secure a permit for regulated activities (defined in Section I, Part I.K.)

1. The accomplishment of emergency decrees of any duly appointed health officer of a county or municipality or of the state, acting to protect the public health;

2. The conservation, repletion and research activities of the Mississippi Commission on Wildlife Conservation, the Mississippi Gulf Coast Research Laboratory and the Mississippi-Alabama Sea Grant Consortium;

3. Hunting, fishing, erecting duckblinds, shellfishing and trapping when and where otherwise permitted by law;

4. Swimming, hiking, boating or other recreation that causes no material harm to the flora and fauna of the wetlands;

5. The exercise of riparian rights by the owner of the riparian rights, provided that the construction and maintenance of piers, boathouses, and similar structures are constructed on pilings that permit a reasonably unobstructed ebb and flow of the tide; provided, further that the riparian owner may reasonably alter the wetland at the end of his pier in order to allow docking of his vessels;

6. The normal maintenance and repair of bulkheads, piers, roads and highways existing on the date of enactment of this act, and all interstate highways planned but not yet under construction and financed in part by Federal Interstate Highway Trust Funds;

7. Wetlands developed in the future by federal, state or county governments for the establishment of a superport or a pipeline buoy terminal for deep-draft, ocean going vessels, including but not limited tok wetlands adjacent to Petit Bois Island and the Bayou Casotte Channel in Jackson County, Mississippi;

8. The Biloxi Bridge and Park Commission, Biloxi Port Commission, Long Beach Port Commission, Pass Christian Port Commission, Pascagoula Port Commission and any municipal or local port authorities;

9. Wetlands used under the terms of the use permit granted by Chapter 395, Laws of 1954;

10. Any activity affecting wetlands that is associated with or is necessary for the exploration, production or transportation of oil or gas when such activity is conducted under a current and valid permit granted by a duly constituted agency of the State of Mississippi;

11. Activities of any mosquito control commission which is a political subdivision or agency of the State of Mississippi;

12. The Fisherman's Wharf to be constructed in Biloxi and the Buccaneer State Park to be constructed in Hancock County, both by the State Park Commission;

13. Wetlands conveyed by the state for industrial development thereon pursuant to Section 211, Mississippi Constitution of 1890, and pursuant to Section 29-3-61, Mississippi Code of 1972;

14. Coastal wetlands within five (5) feet of private property;

15. The activities of the Hancock County Port and Harbor Commission affecting wetlands within its jurisdiction;

16. The activities of the Harrison County Development Commission affecting wetlands within its jurisdiction;

17. The activities of the Jackson County Port Authority affecting wetlands within its jurisdiction;

18. The activities of the Mississippi State Port at Gulfport affecting wetlands within its jurisdiction;

19. Regulated activities which in the judgement of the director or his delegate, after an on-site inspection, have no harmful impact on the environment and which make no substantial change in the wetlands, may be issued a certificate of waiver from the Director of the Bureau of Marine Resources.

    a. Activities eligible for a certificate of waiver shall be those described as eligible for a general permit from the U. S. Army Corps of Engineers under Section 404 of the Clean Water Act, and under Section 10 of the Rivers and Harbors Act.

b. A certificate of waiver may be issued only if the activity complies with the applicable provisions of all sections of these rules, regulations, guidelines and procedures.

c. Certificate of waiver shall be requested on forms provided by BMR.

d. Issuance and acceptance of the waiver does not relieve the applicant from the requirements of obtaining a permit from the U. S. Army Corps of Engineers, the Department of Natural Resources, nor from the necessity of compliance with other applicable state or local laws, ordinances and zoning regulations.

B. CONSTRUCTION ON SUITABLE SITES FOR WATER DEPENDENT INDUSTRY

Mississippi Code Section 49-27-9 exempts the following from the need to secure a permit to erect structures on suitable sites for water dependent industry. However, this exemption does not cover other regulated activities such as dredging and filling as defined in Section 1, Part I.K.

1. The construction of a home, fishing camp, or similar structure by an individual on his own property.

2. Water dependent industry. (See Part II.E. for water dependent industry criteria.)

C. NOTIFICATION REQUIREMENTS

1. Parties proposing to conduct activities covered by the exclusions in Part II, A and B shall notify BMR, stating the provisions of these regulations under which the proposed activity is excluded, and providing information that demonstrates compliance with these regulations. Either of the following means of notification may be used:

a. Joint wetlands permit application forms used by BMR and the U. S. Army Corps of Engineers. If a Corps of Engineers permit is required for the activity, notice to BMR shall be provided at the same time and on the same forms as used for the Corps of Engineers permit.

b. If the activity is part of a proposed action submitted for review under the policy coordination procedures in Section 4 whether the action is a permit or a direct development activity by a state or federal agency, notification through the policy coordination procedures may be used.

2. Upon receiving a notification as provided above, BMR shall prepare a set of findings in accordance with Part II.D and E. These

findings shall be prepared within 30 days of BMR receiving notice. A copy of the findings shall be provided to the party proposing the excluded activity. Findings on exclusions will be used by BMR and the Commission to carry out their respective administrative responsibilities under the Wetlands Law, particularly under Section 49-27-51 and under the wetlands management authority in Mississippi Code Section 57-15-5.

3. The purpose of the notification required under Part II.C.1. is to insure that BMR and the Commission are fully advised of all activities in the coastal wetlands. Since BMR and the MCWC are fully advised of the exclusions described in Part II.A.2. through 4., parties conducting these excluded activities are not required to notify BMR.

D. FINDINGS ON MISSISSIPPI CODE SECTION 49-27-7 EXCLUSIONS

For exclusions under Mississippi Code Section 49-27-7, BMR shall make findings as to whether the proposed activity is in compliance with the public policy of wetlands protection in Mississippi Code Section 49-27-3. Such findings shall be based on the criteria in Section 2, Part I.E.2. a through k. A negative finding shall result in enforcement action, as provided for in Part V.

E. FINDINGS FOR CONSTRUCTION ON SUITABLE SITES FOR WATER DEPENDENT INDUSTRY

Upon notice from parties proposing to erect structures on suitable sites for water dependent industry, BMR shall make a finding as to whether the proposed activity is the construction of a home, fish camp, or similar structure by an individual on his own property, or as to whether the proposed activity is a water dependent industry within the meaning of Mississippi Code Section 49-27-5(h), BMR shall find the following to be water dependent industry:

1. Water access facilities, including piers, docks, wharfs, dolphins, skids, marine launchways, drydocks, graving docks, launching ramps, hoists, and cranes; also included are water intake structures, effluent discharge structures, and attendant pipeline corridors 50 feet or less in width;

2. Ports and associated facilities, both public and private, including water access facilities, fuel terminals, warehouses in support of port operations, bulk material handling facilities for both dry and liquid materials, tanks and silos used in material transfer operations from or to waterborne transport, grain elevators, open storage areas in support of port operations, trailer marshalling yards, any facilities designed to accommodate cargo moving in domestic or international waterborne commerce, and facilities constructed as part of a corridor from the waterfront to an inland activity which either ships or receives goods and raw materials by waterborne commerce.

3. The following are water dependent industry to the extent that they comply with the siting criteria in Part II.E.4.

   a. Commercial and sportfishing facilities, including finfish and shellfish processing plants and large commercial docking facilities;

   b. Shipbuilding and repair for barges, cargo vessels, combat ships, dredges, tugboats, floating drydocks, ferry boats, landing ships, marine lighters, marine rigging, passenger-cargo vessels, trawlers, sailing vessels, submarine tenders tankers, towboats, houseboats, and other marine vessels and transportation;

   c. Fabrication of steel and concrete structural assemblies or components requiring water transport because of their size, including barge sections, ship sections, large metal buoys, offshore platforms and sub-assemblies, bridge sections, hoists, trusses, beams, and other such structural components; and

   d. Commercial, industrial or manufacturing activities that receive or ship raw materials or products by waterborne commerce.

4. Siting Criteria Applicable to Part II.E.3.

   The activities in Part II.E.3. are water dependent if they meet the criteria in either a, b, c or d below.

   a. The production site is on the landward side of its water access facility and has its smaller dimension on the waterfront.

      i. The production site is that area occupied by manufacturing facilities, including material storage yards, piping, conveyors, other handling facilities used in production, and outbuildings housing related manufacturing activities. Administration and other detached buildings not integrally related with production processes shall be located either within the production site or on its landward side.

      ii. The waterfront shall be the general shoreline of the site, notwithstanding inlets, finger canals, and the like. On corner lots, and on other parcels having more than one shoreline, the waterfront shall be a shoreline on which a water access facility is located.

   b. To the extent that technical, safety, or economic requirements prevent compliance with Part II.E.4.a., a water dependent industry may site in accordance with such requirements in lieu of the criteria in Part II.E.4.a.

i. Technical requirements must be based on professionally accepted design standards or on physical requirements that stem from the size, weight, or configuration of raw materials or finished products;

ii. Safety requirements must be based either on laws, rules, regulations or ordinances promulgated by a public entity, or on safety standards promulgated by trade, industrial, or engineering associations; and

iii. Economic requirements shall exist when compliance with Part II.E.4.a will preclude an activity's products from being competitive in its usual markets. The demonstration that compliance with Part II.E.4.a. is simply more costly than other alternatives will not in and of itself be considered economic requirement.

c. Where existing roads, rail lines, structures, or other physical barriers prevent an activity from complying with Part II.E.4.a. by restricting the size of the area available for production facilities, structures may be built in a larger area to the extent necessary to accommodate the production facilities.

d. Where a suitable site for water dependent industry is covered by special management area plans incorporated into the Mississippi Coastal Program, and where the plan specifically treats water dependency criteria, the provisions of the special management area plan shall be used in lieu of the siting criteria in Part II.E.4.a. through c.

PART III: GUIDELINES FOR REGULATED ACTIVITIES

The following guidelines shall be observed for the specified activities. Nothing in these guidelines shall be construed to require standards more stringent than those required by the Federal Water Pollution Control Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, the regulations adopted pursuant thereto.

A. DOCKS AND PIERS

1. Docks and piers shall be constructed on pilings;

2. To minimize the necessity of dredging, docks and piers shall be of sufficient length to reach navigational depths adequate for the proposed use of the dock or pier;

3. Docks and piers shall be constructed in a manner that does not restrict access to public beach areas.

4. Docks and piers shall not create a hazard to navigation in waterways.

B. BOAT RAMPS

1. Boat ramps shall be located in areas which do not require the destruction of coastal wetlands vegetation, and which require minimum dredging to reach adequate water depths; both initial and maintenance dredging shall be considered.

2. Residues from parked vehicles shall not be allowed to damage the coastal wetlands.

3. Fill for boat ramp surfaces shall be the minimum necessary to meet project requirements and shall not exceed 100 cubic yards of fill material (concrete, shell, etc.).

C. MARINAS, BOAT BASINS, AND BOAT SLIPS

1. Marinas shall be located in areas where minimal initial and maintenance dredging will be required.

2. Design shall not disrupt currents or restrict the tidal flow.

3. Marinas shall be located at least 1,000 feet from shellfish harvesting areas or seagrass beds.

4. More efficient utilization of existing marina space is preferable to new marina construction. Open dockage extending to deep water is preferable to the excavation of boat basins. Excavation of basins in uplands is preferable to excavation in coastal wetlands.

5. Turning basins and navigation channels shall not be designed to create sumps that would result in long-term degradation of water quality. For example, the depth of boat basins and access channels shall not exceed that of the receiving body of water, and shall not be located in areas of poor circulation.

6. Marinas shall not be sited in areas of known high siltation and high shoaling rates.

7. Permanent spoil disposal sites shall be set aside in non-wetlands areas for use in initial construction and future maintenance.

8. Indented boatslips with angled sides shall be used in preference to keyhole boatslips.

9. Boat basins shall provide for water circulation by being designed for tidal flushing with angled sides, or similar means.

10. Innovative solutions to increased demands for new mooring, dockage, and storage space, including dry stack storage, alternative slip mooring configurations are encouraged.

11. See also Bulkheads, Seawalls, Breakwaters, Jetties and Groins (III.G.) Dredged Material Disposal (III.H.) and Filling Other than Dredged Material Disposal (III.O.).

D. BULKHEADS AND SEAWALLS

1. For erosion control, non-structural methods shall be used in preference to structural methods. Vegetation as a non-structural method shall be used in preference to structural methods of sloping (3:1) rip-rap, and rip-rap shall be used in preference to vertical seawalls. Vertical face bulkheads may be used only in low energy areas such as canals, bayous, tidal rivers, protected ports and harbors

2. Structural methods may be used only when there is a reasonable probability of controlling erosion at the immediate site, and where the structure will not significantly increase erosion in nearby areas.

3. Vertical face structures shall be aligned no further waterward than mean high tide, and constructed so that reflective wave energy does not destroy adjacent wetlands habitat.

4. Vertical face structures intended to replace failed erosion control structures that are beyond repair shall not extend more than 24" waterward from the base of a failed structure.

5. Breakwaters and jetties shall be constructed in a manner which allows for tidal flow and flushing.

6. Groins to trap sediments shall be allowed only as a means to reduce shoaling of navigable channels and boat basins.

7. For breakwaters, groins and jetties the vertical or sloped surface area of the structure created below mean high tide shall be greater than the waterbottom surface area displaced by the structure.

E. CABLES, PIPELINES AND TRANSMISSION LINES

1. Permanent open water canals in marshlands for installation shall not be used.

2. Where dredging is required in marshland, all excavation shall be backfilled with the excavated material after installation of the appropriate structure, with care taken to maintain the original marsh floor elevation in both the excavated area and spoil area. Spoil shall be temporarily stockpiled in discontinuous banks so that sheet flow is not interfered with.

3. After dredging and backfilling is complete, all altered marshland shall be sprigged with characteristic marsh vegetation.

4. In open water areas, spoil shall be deposited in discontinuous piles on opposite sides of the excavation, which shall be backfilled after project completion.

5. Alignments of new projects shall be designed to use existing rights-of-way.

6. Projects shall be aligned along the least environmentally damaging route (e.g. avoid submerged grass, shellfish beds, artificial reefs, hard banks, etc.).

7. Projects shall be aligned to avoid shipwrecks and areas of unique historical and cultural interest.

F. TRANSPORTATION

1. Bridging shall be used in preference to filling to create road beds, railways, and other transportation facilities. Suitable erosion control methods shall be used on bridge approaches.

2. Structures shall be designed to preserve natural waterflow and circulation regimes and to prevent excessive shoaling.

3. Except for the construction of replacement bridges and approaches, transportation improvement projects shall generally follow existing alignments in coastal wetlands.

4. Transportation facilities shall be designed to accommodate other public utilities, thus avoiding other unnecessary wetland alteration. An example would be the use of existing rights-of-way and bridges to accommodate cables, transmission lines or pipelines.

G. CHANNELS AND ACCESS CANALS

1. Alignment of channels and canals shall make maximum use of natural or existing channels to minimize initial and maintenance dredging requirements.

2. Alignments shall avoid shellfish beds, areas of submerged and emergent vegetation and archeological and historical sites.

3. Permanent spoil disposal sites shall be designated for initial construction as well as future maintenance dredging for all canal or channel projects.

4. Access canals shall be designed to insure adequate flushing and shall not create stagnant pockets; they shall use existing drainage patterns to maximum advantage; they shall be of uniform

depth, or become gradually shallower proceeding from the receiving body of water; they shall be no deeper than the parent body of water and where feasible, shall be aligned with prevailing summer winds to increase circulation.

5. Construction of channels and access canals shall be conducted in a manner that minimizes turbidity and dispersal of dredged materials into adjacent coastal wetlands, and on schedules that minimize interference with fish and shellfish migration and spawning.

6. Designs shall not alter significantly tidal circulation patterns, create change in salinity regimes, or change related nutrient and aquatic life distribution patterns.

7. New canals for waterfront lots must be constructed from the mean high tide line landward and must be open to a major waterway at two or more points.

8. Dead-end canals shall not be permitted except where water flow is sufficient to flush the canal on a regular basis.

H. DREDGED MATERIAL DISPOSAL

1. All dredged material shall be viewed as a potential reusable resource, and all disposal plans should include provisions for access to such resources. For example, materials suitable for beach replenishment, construction, or other purposes (sanitary landfill, agricultural soil improvement, etc.) shall be used immediately for such purposes or stockpiled in existing disposal areas or other non-wetland areas for later use.

2. Existing upland disposal areas shall be used to the fullest extent possible. Examples include raising the height of containment embankments to increase the holding capacity of the disposal area, and the application of modern engineering techniques to render the material suitable for useful purposes.

3. Disposal dikes shall be shaped and stabilized immediately upon construction to minimize erosion and dike failure, and outfalls shall be positioned to empty back into the dredged area.

4. Permanent, upland disposal sites or deep water disposal sites shall be used in preference to coastal wetland disposal.

5. Areas containing submerged vegetation or regularly flooded emergent vegetation shall not be used for dredged material disposal.

6. Toxic and highly organic materials shall be disposed of in a manner that prevents their harmful release into the environment.

7. New spoil disposal proposals shall include a maintenance plan for the shorter of fifty years or the life of the project.

I. IMPOUNDMENTS AND OTHER WATER LEVEL CONTROLS

1. Tidal Marsh Impoundments

a. New tidal marsh impoundments are prohibited except where a proposed impoundment is part of a plan adopted by the Commission following the same procedures used for promulgating regulations, or approved through the policy coordinatior procedures in Section 4.

b. Proposals to repair or replace existing impoundment structures will be allowed only if all other applicable guidelines are met and the use for which the impoundment was originally created is its current use.

2. Watershed Impoundments

Impoundments of rivers and bayous alter the quality, quantity, and timing of freshwater flows into estuaries as well as block migration of fishery resources. Such impoundments are prohibited except where a proposed impoundment is part of a plan adopted by the Commission following the same procedures used or promulgating regulations, or approved through the policy coordination procedures in Section 4.

J. DRAINAGE CANALS OR DITCHES

1. Drainage canals from upland development shall not be extended through marshlands (except where land subsidence has severely lowered the developed lands). Rather, they shall terminate at the landward edge of the marsh, to allow filtration through the marsh. A spreader canal along the uplands adjacent to marsh may be used to allow sheetflow through the marsh.

K. OIL AND GAS EXPLORATION AND PRODUCTION

1. In Tidal Marshes:

a. Directional drilling from existing sites, canals, bayous, deeper bay waters, or non-marsh locations shall be used in preference to temporary roads. Temporary roadbeds (preferably plank roads) to provide access from land shall be used in preference to dredging canals for access to well sites.

b. Proposed road alignments shall use upland or already disturbed marsh areas.

c. Borrow pits in wetlands, if necessary for construction purposes, shall be dredged adjacent to, and on alternating sides of the road being constructed.

d. All streams shall be bridged or provided with culverts to prevent alterations to the natural drainage patterns.

e. Culverts or similar structure shall be installed under the road at appropriate intervals (never more than 250 feet apart) to prevent blockage of surface drainage or tidal flow, with all culvert openings being subsequently maintained.

f. No hydrocarbons, hydrocarbon-containing substances, drilling muds, drill cuttings, and toxic substances shall be allowed to flow into tidal marshes.

g. Upon completion or abandonment of wells in coastal marshes, all unnecessary equipment shall be removed; the well site, levees, roads and work areas shall be restored to the conditions that supported the type of tidal marsh that existed prior to development.

2. On Waterbottoms

a. Existing navigable waters shall be used for access to oil and gas extraction sites in preference to new dredging.

b. Environmentally sensitive areas, including oyster reefs, submerged grass beds and other productive shallow water areas shall be avoided when siting extraction facilities. Also, directional drilling should be employed when the shorelines of barrier islands or beaches, small fishing banks, hard banks or reefs would otherwise be disturbed.

c. To maintain the integrity of small fishing banks, (generally 500 acres or less) and their accessibility to sport and commercial fishermen, no structures shall be placed either temporarily or permanently on the top of these banks.

d. No hydrocarbons or hydrocarbon-containing substances such as oil based drilling mud, oil-contaminated drill cuttings, oil residues, or other toxic substances shall be allowed to flow into the water or onto the seafloor.

e. For exploration and production activities in close proximity to oyster reefs, seagrass beds, fishing areas or hard banks containing reef building organisms, the following shall be observed:

i. Uncontaminated drill cuttings shall be shunted away from sensitive areas and discharged at or near the bottom, or shall be transported to shore or to less sensitive offshore locations. Usually shunting is only effective when the point of the shunted discharging can be placed deeper than the area of the

bank being protected. Bulk discharge of drilling muds and mud activities to the marine waters is unacceptable.

ii. Drilling and production structures, and oil pipelines shall not be placed within one mile of the bases of live reefs.

f. All facilities, obstructions, or debris which could impair recreational or commercial fishing shall be removed or terminated beneath the waterbottom. Whenever this is not practicable, they shall be marked by a lighted buoy to prevent fouling of fishing gear.

g. All pipelines placed in coastal wetlands shall be buried.

L. OTHER MINERAL EXTRACTION

Extractions of marine mineral resources (sand, gravel, shell, phosphates, etc.) from coastal wetlands within 1,500 feet of tidal marshes or within one mile of the base of live reefs is prohibited except for obtaining cultch material or material for beach replenishment.

M. FACILITIES REQUIRING WATER FOR COOLING OR HEATING

1. Once-through cooling systems shall not be used in areas where fishery organisms are concentrated, specifically in estuaries, inlets and small coastal embayments.

2. Intake and discharge facilities shall be sited in areas of low organism concentrations.

3. Intakes shall be designed to minimize impingement. If offshore intakes are employed, velocity caps or similar means shall be used to produce horizontal intake currents with a maximum velocity of ½ fps at the intake screen.

4. All discharges shall meet the requirements in the "State of Mississippi Water Quality Criteria for Intrastate, Interstate, and Coastal Waters".

5. Industrial water reuse shall be encouraged to minimize adverse impacts from intake and discharge lines that may be situated in coastal wetlands.

N. ACTIVITIES AFFECTING COASTAL WETLANDS

1. Activities affecting coastal wetlands, but located outside of coastal wetlands shall not affect the following characteristics to a greater extent than would otherwise be allowed under Part III.A. through M.

a. The natural supply of sediment and nutrients to the coastal wetlands;

b. The natural temperature regimes that are part of the ecosystem of coastal wetlands;

c. Salinity regimes;

d. Sediment transport processes;

e. Water flow and natural circulation; and

f. The long-term biological productivity of the coastal wetlands' ecosystem.

2. Activities Likely to Affect Coastal Wetlands

Activities in the coastal area requiring a Section 404 permit from the U. S. Army Corps of Engineers for discharges into navigable waters of the United States, their tributaries, and adjacent wetlands are highly likely to affect coastal wetlands by altering the characteristics in Part III.N.1. above. These activities would constitute regulated activities under Mississippi Code Section 49-27-5(c) (ii) and (iii). Where such activities are conducted outside of coastal wetlands, proper application to the U. S. Army Corps of Engineers shall constitute sufficient notification to BMR and the Commission.

3. The activities listed below are not likely to affect coastal wetlands when located outside of the navigable waters of the United States, their tributaries, and adjacent wetlands. Therefore, MCWC shall not assert authority over these activities under the Wetlands Law when these activities are conducted using generally accepted construction practices.

a. Road resurfacing, repairing and maintenance;

b. Repair and maintenance of sewer, water and drainage systems;

c. Installation of new drainage structures such as culverts, catch basins, inlets, and junction boxes where the tributary acreage involved is less than 900 acres and where the point of outfall for drainage system is not altered; and

d. Construction activities involving less than four acres of land clearing where the path of drainage flow from the site to mean low water has an average slope of less than 2%.

SECTION 2, PART III.O.

O. FILLING OTHER THAN DREDGED MATERIAL DISPOSAL

1. Permanent filling of coastal wetlands because of potential adverse and cumulative environmental impacts is discouraged.

2. Areas containing submerged vegetation or regularly flooded emergent vegetation shall not be filled.

3. Fill material shall be non-toxic and either stabilized or of sufficient size as to not be displaced during typical storm tides. Beach nourishment does not require stabilization.

4. Fill proposals to eliminate existing poor water quality conditions (filling of dead-end canals, keyhole boatslips, etc.) shall be considered.

5. See also Boat Ramps (III.B.), Bulkheads, Seawalls, Breakwaters, Jetties and Groins (III.D.), Transportation (III.F.), Oil and Gas Exploration and Production (III.K.) and Activities Affecting Coastal Wetlands (III.N.).

PART IV: COASTAL WETLANDS USE PLAN

A. Figures VIII-1, 2, 3, and 4 depict the coastal wetlands use plan that serves as the basis for permitting. These figures represent in summary form the official coastal wetlands use plan maintained at the office of BMR at a scale of 1" - 4,000' for each county in the coastal area and 1" - 10,000' for the Mississippi Territorial Sea.

B. The wetlands use plan described in this part is an authoritative interpretation of the wetlands protection policy in Section 2, Part I.A. The plan has been developed pursuant to Section 47-27-65(c), Mississippi Code of 1972, which requires that an overall plan for the use of wetlands be included in the coastal program. The plan has also been developed in response to the Commission's responsibility for the general management of the state's wetlands. The coastal wetlands use plan presented in this part is binding only on wetlands below the watermark of ordinary high tide.

C. A permit shall not be issued for a regulated activity unless such activity is associated with a use allowed in the coastal wetlands use plan. MCWC will not consider the exclusions under Part II of this section to be in compliance with the public policy of wetlands protection unless the activity in questions is allowable under the coastal wetlands use plan.

D. Special management area plans adopted pursuant to Section 5 shall override the coastal wetlands use plan.

SECTION 2, PART IV.E.

E. The coastal wetlands use plan is divided into use districts. These districts and the allowable uses within each district are described below.

1. "I" Districts: Industrial Development

   a. Areas so designated may be used for activities associated with water dependent industrial development.

   b. Allowable uses or activities in an industrial development district are the construction of piers, docks, wharfs, dolphins, bulkheads, skids, marine launchways, dry docks, graving docks, launching ramps, hoists, cranes, submarine cables or pipelines, water intake or effluent discharge structures, other similar structures necessary to water dependent industrial development, dredging necessary to carry out the construction of these facilities, and filling necessary for water dependent industrial development. Uses allowed in "C" and "G" districts are also allowable.

2. "C" Districts: Commercial Fishing and Recreational Marinas

   a. These areas are designated to accommodate developments necessary to support commercial fishing or recreational marinas and associated activities.

   b. Allowable uses or activities are commercial fishing and recreational marinas, shorefront finfish and shellfish processing facilities, ice plants and boat repair facilities for commercial fishing and recreational use, the construction of piers, docks, dolphins, bulkheads, wharfs, launching ramps, hoists or cranes, other similar structures necessary for commercial fishing and recreational marina use and dredging and filling necessary to accommodate these uses. Activities allowed in "G" districts are also allowable.

3. "G" Districts: General Use

   a. These are wetland areas where only minor alterations are allowed when such alterations do not adversely affect recreation, swimming, fishing, and the natural scenic qualities of the wetlands.

   b. Allowable uses or activities are the construction of piers, docks, bulkheads for non-commercial purposes; other similar structures, submarine cables and pipelines; launching ramps; oyster farming, transportation facilities developed under a plan reviewed and found to be consistent under the policy coordination procedures in Section 4; overhead transmission lines; beach nourishment activities; reasonable dredging

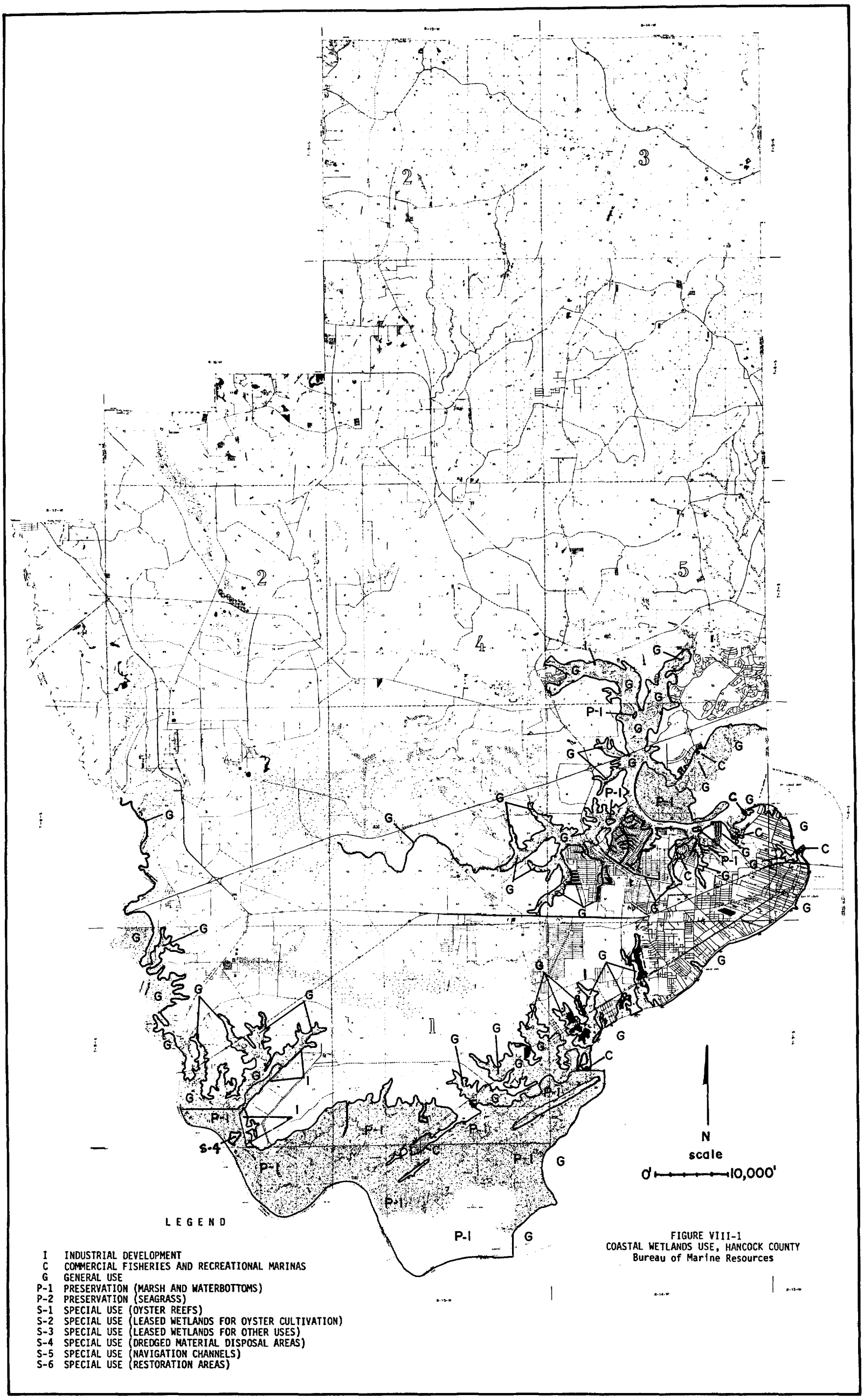


FIGURE VIII-1
COASTAL WETLANDS USE, HANCOCK COUNTY
Bureau of Marine Resources

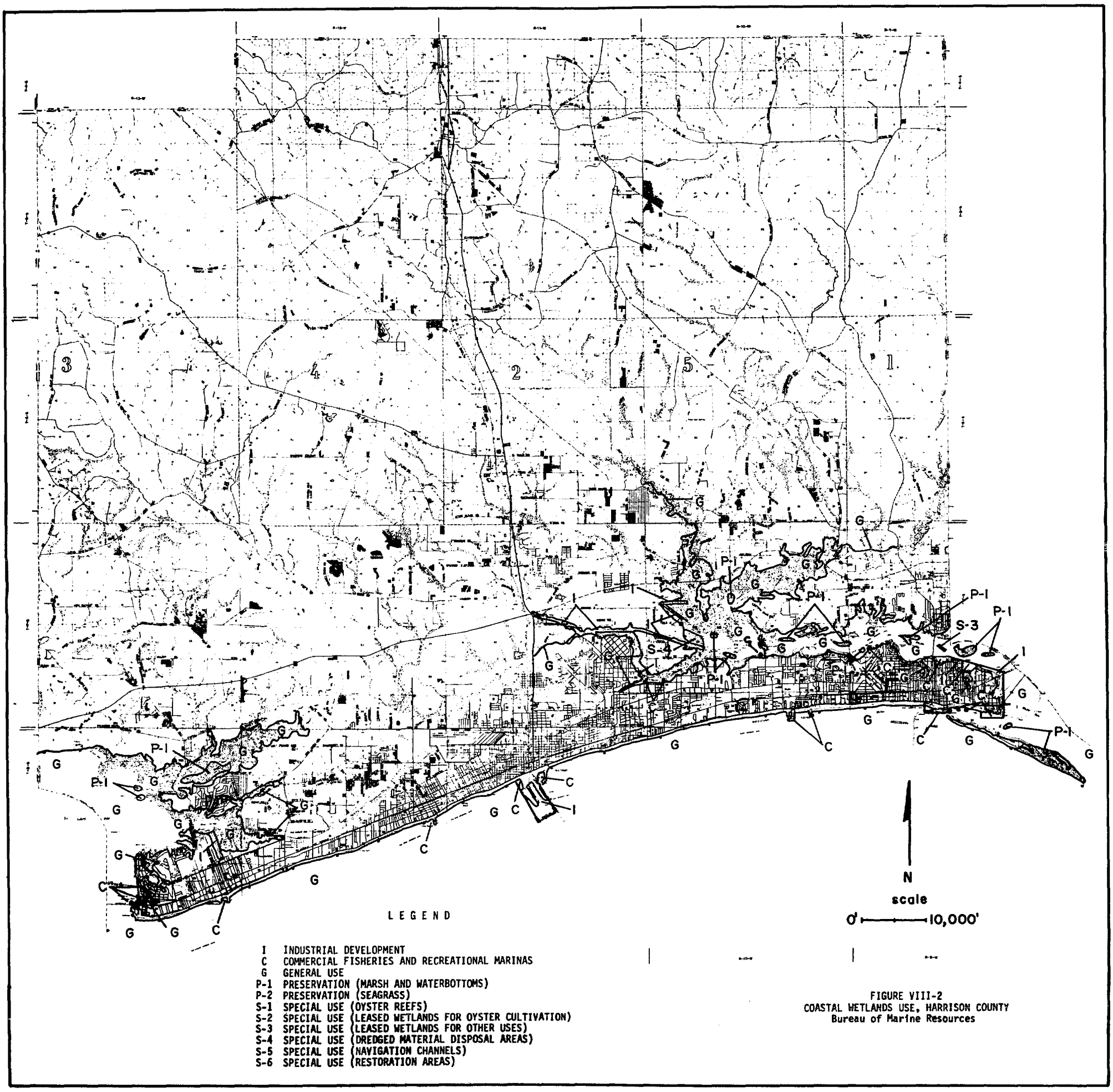


FIGURE VIII-2
COASTAL WETLANDS USE, HARRISON COUNTY
Bureau of Marine Resources

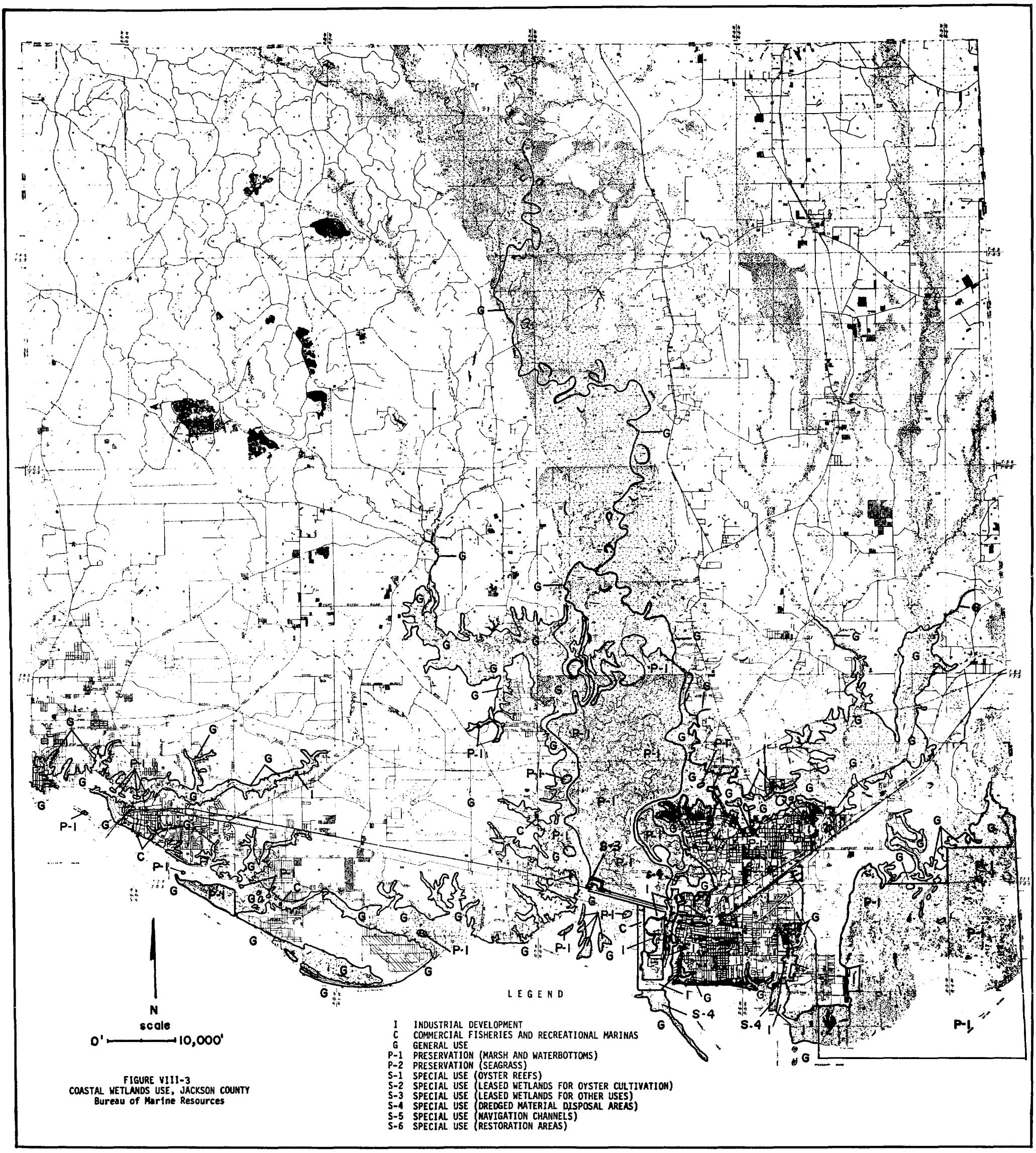
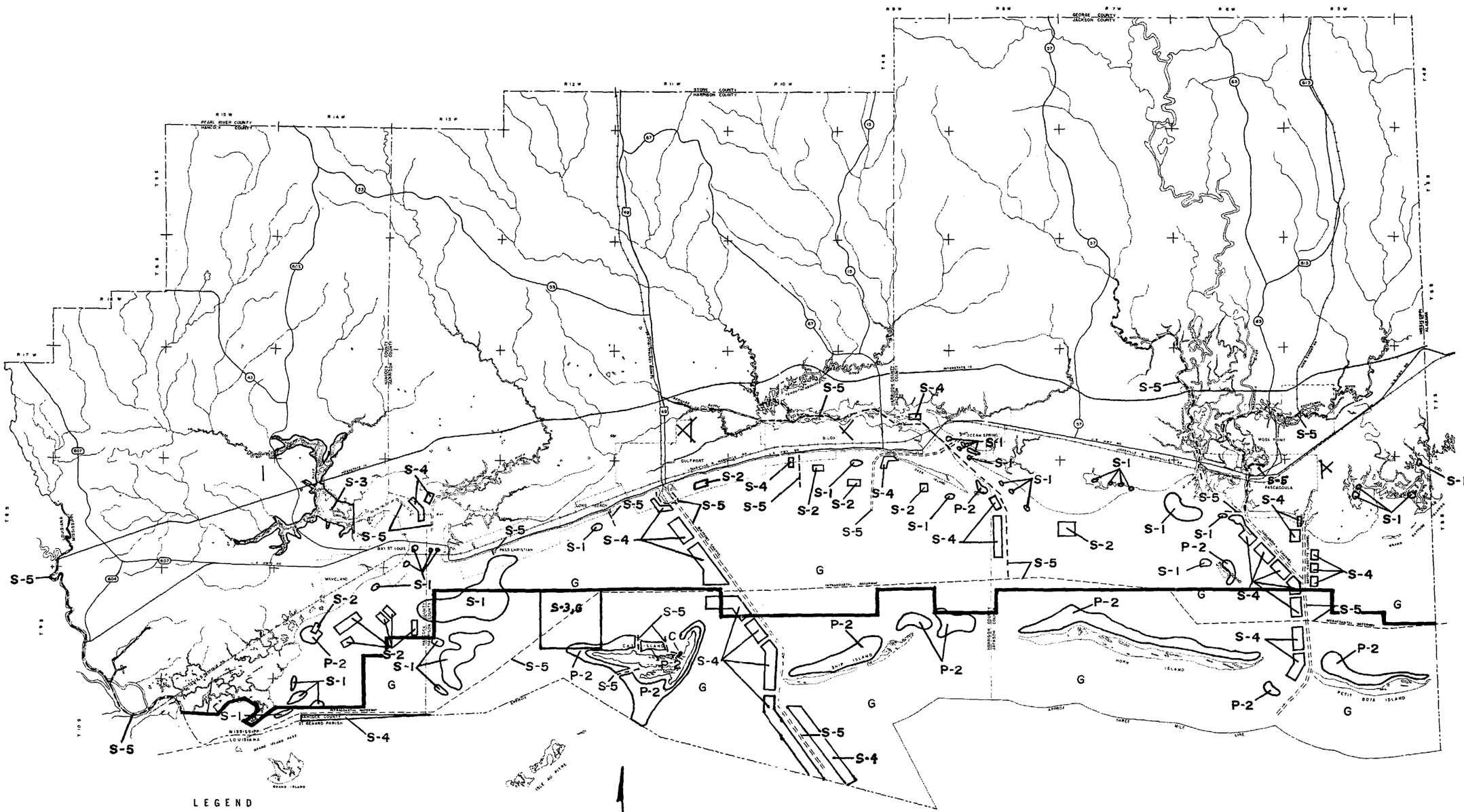


FIGURE VIII-3
COASTAL WETLANDS USE, JACKSON COUNTY
Bureau of Marine Resources



LEGEND

I INDUSTRIAL DEVELOPMENT
C COMMERCIAL FISHERIES AND RECREATIONAL MARINAS
G GENERAL USE
P-1 PRESERVATION (MARSH AND WATERBOTTOMS)
P-2 PRESERVATION (SEAGRASS)
S-1 SPECIAL USE (OYSTER REEFS)
S-2 SPECIAL USE (LEASED WETLANDS FOR OYSTER CULTIVATION)
S-3 SPECIAL USE (LEASED WETLANDS FOR OTHER USES)
S-4 SPECIAL USE (DREDGED MATERIAL DISPOSAL AREAS)
S-5 SPECIAL USE (NAVIGATION CHANNELS)
S-6 SPECIAL USE (RESTORATION AREAS)

Northern Limits of Lease Sale Area #1

N

scale
0' — 10,000'

FIGURE VIII-4
COASTAL WETLANDS USE, COASTAL WATERS
Bureau of Marine Resources

and filling necessary to accommodate the above uses; and dredging of sand and gravel.

c. All wetlands not otherwise designated shall be considered as general use areas.

4. "P" Districts: Preservation

a. To maintain coastal wetlands for the benefit of their natural productivity, significance, no permanent alterations shall be allowed in "P" districts.

b. Allowable uses are activities such as fishing, oystering, swimming, hunting, trapping, scientific or educational pursuits and other passive recreation.

c. Where a "P" district adjoins private property, the riparian owner may construct a pier to gain water access.

d. Marsh and adjacent waterbottom areas designated for preservation are indicated by map code "P1"; map code "P2" designates seagrass beds.

5. "S" Districts: Special Use

a. Natural and artificial oyster reefs (S1): Only seafood harvesting operations as provided for by law shall be allowed.

b. Leased wetlands for oyster cultivation (S2): Only seafood harvesting by the leaseholder shall be allowed. Oyster leases let by BMR shall become an S2 designation on the Coastal Wetlands Use Plan Map.

c. Leased wetlands for other purposes (S3): Uses specified in a lease from the State of Mississippi shall be allowed; also allowed are those uses allowed in I., C., and G. districts, where such districts are designated in the Coastal Wetlands Use Plan provided that they do not interfere with the uses allowed under the lease. All public trust wetlands within Lease Sale Area #1 (see Coastal Wetlands Use Plan map) may be leased from the Department of Natural Resources. Only those wetlands actually leased and that are designated for I., C., or G districts will carry an S3 designation. To determine allowable areas within Lease Sale Area #1 for the siting of oil and gas drilling structures refer to the September 16, 1982 Memorandum of Agreement between the Department of Natural Resources, the Department of Wildlife Conservation and the State Oil and Gas Board. Leases let by the Secretary of State and the Department of Natural Resources for projects reviewed and approved by the Mississippi Commission on Wildlife Conservation through the Bureau of Marine Resources shall become an S3 designation on the Coastal Wetlands Use Plan Map. This designation is in addition to the original use designation.

SECTION 2, PART IV.E.5.

d. Dredged material disposal areas (S4).

e. Navigation channels (S5).

f. Restoration areas (S6): This classification is reserved; no such designations have yet been made.

F. EXISTING USES, REPAIRS AND MAINTENANCE

All uses in coastal wetlands being legally conducted as of the adoption of this section shall be allowed to continue to the extent provided under existing legal authorization. Repair and maintenance of such uses shall also be allowed.

G. REVISIONS

Revisions to the coastal wetlands use plan must be made in accordance with the provisions of Section 1, Part IV.

H. ACCURACY OF MAPS AND REPORTING OF ERRORS

The coastal wetlands use plan is intended to depict those wetlands below the watermark of ordinary high tide. In broad, flat marsh areas, and where the shoreline is subject to change, the plan, as depicted, will be less accurate than in areas with steep and stable shorelines. Activities which are entirely on private property and which are not indirectly dumping, filling, or depositing in coastal wetlands are not regulated by virtue of the wetlands use plan. MCWC requests that errors or omissions be reported to BMR.

PART V: ACTIONS AGAINST VIOLATORS

A. INTRODUCTION

Mississippi Code Section 49-27-51 authorizes the attorney general to initiate action against violators of the Wetlands Law at the request of MCWC. This part establishes the guidelines and procedures by which MCWC shall request the attorney general to take action under Section 49-27-51. BMR is responsible for inspection activities to insure that the Wetlands Law is upheld. Individuals are requested to report to BMR any apparent violations of the Wetlands Law.

B. PROCEEDING IN VIOLATION OF A VALID PERMIT

If a permittee exceeds the scope of activities as set forth in his permit application, or if he does not substantially comply with one or more of the conditions or limitations set forth in the permit, the following procedures shall be followed:

SECTION 2, PART V.B.

1. BMR shall issue a notice (by mail and/or by posting at the site of the regulated activity) requesting that the activity cease and notifying the permittee that the apparent permit violation will be brought before the next meeting of MCWC.

2. Upon recommendation from BMR, MCWC shall give notice and hold a hearing on subject of suspending or revoking the permit in question; such notice and hearing are provided for in Mississippi Code Section 49-27-15 through 49-27-21 and in Part I.D. of this section.

3. Procedures for action against a permittee will be halted if the permittee makes satisfactory arrangements to bring the activity into conformance with the permit.

4. If a permittee proceeds contrary to a suspension or revocation of a permit, the attorney general shall be requested to initiate action immediately.

C. OTHER VIOLATIONS

1. The procedures in Part V.C.2. below shall apply to any of the following apparent violations of the Wetlands Law:

   a. Parties proposing to conduct or causing to be conducted a regulated activity without a required permit;

   b. Exclusions (described in Part II) proceeding without proper notice;

   c. Exclusions (described in Part II) proceeding under an adverse finding of compliance with the Wetlands Law. (Findings are described in Part II.D. and E.).

2. Procedures for Violations in Part V.C.1. Above

   a. BMR shall issue a notice by mail and/or by posting the notice at the site of the regulated activity in question. The notice shall request the affected party to cease and to contact BMR to resolve the apparent violation. The notice shall also inform the affected party that the apparent violation shall be brought before the next meeting of the Commission.

   b. Upon recommendation from BMR, MCWC shall determine whether action is warranted and shall request the attorney general to initiate action against the apparent violation.

   c. These procedures shall be halted if the affected party makes satisfactory arrangements to bring the apparent violation into compliance with the Wetlands Law.

SECTION 3: FISHERIES MANAGEMENT

(Note: This section is reserved for the future codification of fisheries management ordinances.)

SECTION 4: POLICY COORDINATION

PART I: OVERVIEW

A. INTRODUCTION

The procedures in this section are promulgated to carry out public policy coordination under Mississippi Code Section 57-15-6. Through these procedures, the coastal program incorporates applicable laws and regulations of the state, many of which are not under the jurisdiction of BMR. So that the coastal program will not conflict with the jurisdiction of other coastal program agencies, these agencies shall determine whether a proposed activity complies with the provisions of the coastal program for which such agencies have statutory responsibilities. BMR does not have authority over other agencies in the exercise of their primary responsibilities. However, Mississippi Code Section 57-15-6(3) requires all state agencies to carry out their responsibilities in the coastal area in compliance with the coastal program, unless otherwise prohibited by law. In addition, federal agencies will be bound by these policy coordination procedures under Section 307 of the Coastal Zone Management Act, upon approval of the coastal program under Section 306 of that Act.

B. TYPES OF ACTIONS

1. Actions listed in Parts IV and V of this section shall be subject to policy coordination procedures. Two distinct types of actions are recognized by these procedures: reviewable and consistent action.

   a. Reviewable actions are those actions listed in Parts IV and V that are subject to notification, review, and the formal issuance of a consistency determination. All actions listed in Parts IV and V shall be considered reviewable unless otherwise determined to be consistent.

   b. Consistent actions are those actions listed in Parts IV and V that have been determined to be consistent with the program by interagency agreement with the MCWC or by prior review under these policy coordination procedures. Full review and formal consistency certification are not required for consistent actions. However, agencies proposing consistent actions shall insure that these actions are consistent with the program.

2. Agency actions not listed in Parts IV and V are not subject to these policy coordination procedures. However, state and federal

agency actions taken pursuant to laws adopted after the promulgation of these procedures shall be subject to review until a determination is made to the contrary.

C. NOTIFICATION

1. State agencies proposing actions specified in Part IV shall notify the State A-95 Clearinghouse on forms provided by the clearinghouse in accordance with the timetable in C.2. below. Federal agencies and federal permit applicants proposing actions subject to federal consistency (see Part V) shall notify the State A-95 Clearinghouse unless otherwise provided for under 15 CFR 930.

2. Timing

   a. Agencies proposing reviewable actions shall submit such actions for review at least 60 days prior to such action, provided that surface mining permits issued through the Mississippi Department of Natural Resources shall have a 45 day review period so that reviews under these policy coordination procedures do not conflict with the statutory review time for such permits.

   b. Agencies proposing consistent actions shall notify the A-95 Clearinghouse upon initiation of such action.

D. WEEKLY LOG OF PROJECTS

The State A-95 Clearinghouse shall issue a weekly log of project notices. Coastal program agencies shall monitor this log for actions requiring review. The BMR will monitor the log to determine if a public notice should be issued for the proposed action.

E. COASTAL PROGRAM AGENCY REVIEW

Coastal program agencies shall monitor notices of actions affecting the coastal area, shall review and comment on those actions related to their respective statutory responsibilities. Reviewing agencies may make three types of comments for policy coordination purposes:

1. Regulatory Comments: An agency may make regulatory comments to the extent that it has statutory authority incorporated into the coastal program to regulate or otherwise control an activity. Regulatory comments shall serve as the basis for BMR to issue a consistency certification. By virtue of their enforceability through existing regulatory procedures, regulatory comments must be complied with if a prime agency is to be in compliance with the coastal program. A reviewing agency shall indicate in its review if it is making regulatory comments.

2. Mandatory Considerations: These are issues, policies, or guidelines which must be considered. An agency proposing an action

has the discretion to balance mandatory considerations along other factors for which it has responsibility. The scenic guidelines and national interest considerations in Sections 6 and 7 are such considerations. To be in compliance with the coastal program, an agency proposing an action must consider in its decision-making the mandatory consideration comments received through the policy coordination procedures.

3. **Informational Comments:** Informational comments may be made, without limitation, through the policy coordination procedures. An agency may, at its discretion, consider informational comments and determine how to evaluate them with respect to other decision-making factors.

F. OTHER AGENCIES

Agencies other than coastal program agencies are encouraged to review and comment on proposed actions, but such comments shall be considered as informational comments.

G. EXTENT OF REVIEW

Agencies reviewing proposed actions shall consider the direct effects of the proposed action, as well as the indirect or induced effects. If, in the opinion of the reviewing agency, unintended induced effects can be reasonably expected, the reviewing agency shall consider these effects in its review.

PART II: COASTAL PROGRAM AGENCY RESPONSIBILITIES

A. BUREAU OF MARINE RESOURCES

1. The Bureau of Marine Resources shall keep a written record of all coastal program agency comments, and shall prepare a consistency certification based on these comments. The Bureau shall also be responsible for monitoring consistent action notifications to insure that the proposed actions are in conformance with interagency agreements and prior reviews.

2. BMR shall review and comment with respect to wetlands protection, as stated in Mississippi Code Section 49-27-3. BMR shall base this review on the rules, regulations, guidelines, and procedures in Section 2.

3. BMR shall review and comment with respect to the efficient utilization of waterfront sites, as stated in Mississippi Code Section 57-15-6(1) (a). BMR shall base this review on the water dependent industry guidelines in Section 2, Part II.E.

4. BMR shall review and comment with respect to seafood conservation as stated in Mississippi Code Section 49-15-1.

SECTION 4, PART II.A.

5. BMR shall review and comment with respect to the preservation of natural scenic qualities, as stated in Mississippi Code Section 57-15-6(1)(d) and in accordance with the guidelines in Section 6. Comments made for the preservation of natural scenic qualities are not regula-ory; however, they are mandatory considerations.

6. BMR shall review and comment with respect to the national interest as stated in Mississippi Code Section 57-15-6(1)(c), and as described in Section 7 of these regulations. Comments on the national interest are not regulatory; however, they are mandatory considerations.

B. The Bureau of Pollution Control shall review and comment on the proposed state and federal actions with respect to preserving air and water quality, as stated in Mississippi Code Section 49-17-3. This review shall consider as program standards the provisions of the Clean Water Act and the Clean Air Act, as well as the provisions of state laws and regulations implementing these Acts.

C. The Department of Archives and History shall review and comment on proposed actions with respect to the coastal program goal of preserving historical and archeological resources, as stated in Mississippi Code Section 39-7-3. The state's comprehensive historic preservation plan will be considered in this review;

D. The Bureau of Land and Water Resources shall review and comment on proposed state and federal actions with respect to the coastal program goal of conserving water resources, as stated in Mississippi Code Section 51-3-1. Water occurring in any watercourse, lake, or other natural water body in the coastal area is among the basic resources of this state and subject to appropriation in accordance with applicable state statutes. The Bureau will review and comment on ground-water withdrawals to the extent that coordination and limited regulation would be necessary to protect the interest and rights of residents or property owners in accordance with Section 51-4-5, Mississippi Code of 1972.

PART III: CONSISTENCY FINDINGS AND ENFORCEMENT

A. CONSISTENCY CERTIFICATION

1. BMR shall issue a coastal program consistency certification if no coastal program agency has objected to the proposed action on the basis of regulatory comments. If a coastal program agency has not commented within the allotted review time, its concurrence with the proposed activity will be assumed.

2. Conditional consistency certifications may be issued by BMR on the basis of regulatory comments that specify conditions. The proposed action will be considered in compliance with the coastal program only if the specified conditions are met. A

conditioned consistency certification allows a proposed action to proceed without the need for additional review, provided that the specified conditions are met.

3. A consistency certification may be withheld without prejudice if a coastal program agency finds that there is insufficient information to make affirmative regulatory comments, and if the consistency determination cannot be reasonably conditioned. A reviewing agency making such a finding shall state specifically the additional information necessary to make regulatory comments.

4. If a coastal program agency objects to a proposed action through its regulatory comments, then such action shall not be considered in compliance with the coastal program. The agency proposing the action may use the conflict resolution procedure in Part III.B. to resolve coastal program compliance disputes.

5. At times, an action subject to review may not be ripe for a determination of coastal program consistency by virtue of being insufficiently specific about the activity's location and impacts. In this case, reviewing agencies shall provide comments on mandatory considerations and shall make appropriate informational comments. The action shall proceed subject to further coordinatio with agency requesting same.

6. BMR shall initiate enforcement action as specified in Part III.D. for either of the following events:

   a. An agency proceeds with its proposed action over an adverse regulatory comment from a coastal program agency.

   b. An agency refuses to consider the mandatory considerations raised during the policy coordination process.

B. CONFLICT RESOLUTION PROCEDURE

1. When an agency elects to utilize this conflict resolution procedure, the objecting coastal program agency shall reduce its objection to writing, specifying in clear and concise terms the issues that must be resolved to achieve compliance with the coastal program. Representatives of the conflicting agencies shall meet to resolve the specified issues. A representative of BMR shall be made available upon request to assist in the resolution.

2. If such a meeting does not result in resolution, the governing body of the agency objecting to the action will determine whether the proposed action is consistent with its regulatory authorities. If the governing body of a coastal program agency objects to the proposed action, then it shall be considered out of compliance with the coastal program.

3. Any interested party may petition the governing body of the objecting coastal program agency, or the Commission on Wildlife Conservation to hold a hearing on an action determined to be inconsistent to hear any new information that should be brought to bear on the subject. The Commission or board may, in its discretion, hold such a hearing. If held by the Commission on Wildlife Conservation, the Commission shall state its recommendations for the record. However, a coastal program agency commenting within the purview of its primary jurisdiction shall prevail in its regulatory comments.

4. Conflicts involving the actions of federal agencies shall be resolved according to the provisions of 15 CFR 930.

C. FEDERAL CONSISTENCY CERTIFICATION

Section 307 of the Coastal Zone Management Act provides different types of consistency review procedures for different categories of federal actions. These consistency reviews are described below. Part V provides a specific listing of the federal actions contemplated by these procedures.

1. Direct Federal Activities and Development Projects

   a. Federal agencies are strongly encouraged to provide consistency determinations through the State A-95 Clearinghouse at the earliest practicable time in planning of an activity, preferably before the activity or project reaches a decision stage likely to restrict the evaluation of alternative approaches. In any case, the consistency determination shall be provided to BMR at least 90 days before final approval of the federal activity or project.

   b. The consistency determination should contain the following:

      i. A brief statement indicating whether or not the proposed activity or project will be undertaken in a manner consistent to the maximum extent practicable with the Mississippi Coastal Program;

      ii. A detailed description of the activity or project, associated facilities and related coastal area effects;

      iii. Comprehensive data and information sufficient to support the federal agency's consistency statement.

   c. Based on the comments of other coastal program agencies, and on its review under its responsibilities, BMR shall inform the federal agency of its agreement or disagreement with the federal agency's consistency determination at the earliest practicable time, but in no case later than 45 days following the receipt of federal notification, unless an extension has

been granted. BMR's agreement with a federal consistency certification shall be in the form of a coastal program consistency certification as provided for in Part III.A Coastal program consistency may be presumed if no response is received within the 45 day comment period. BMR may request and shall be given one 15 day extension; longer or additional extensions may be granted by the federal agency.

d. If BMR disagrees with a federal agency's consistency determination, BMR will respond to the agency with the reasons for disagreement and any necessary supporting information. The response will describe:

   i. How the proposed activity will be inconsistent with specific elements of the coastal program;

   ii. Alternative measures, if feasible, which could be adopted by the federal agency to make the proposed action consistent; and

   iii. The nature and necessity of additional information that would be necessary to determine the consistency of the activity or development.

e. BMR will send copies of its objections to the affected federal agency and to NOAA.

f. In the event of disagreement, BMR will utilize the remaining portion of the 90 day review period to attempt to resolve its differences with the federal agency.

2. Federal Licenses and Permits

a. Except for OCS related permits and licenses described in detail in OCS plans, applicants for federal licenses or permits described in Part V or for renewals or amendments to such licenses or permits shall provide a certification that the proposed activity is consistent with the coastal program. The certification shall be provided to the State A-95 Clearinghouse in the following form:

   "The proposed license/permit complies with the approved Mississippi Coastal Program and will be conducted in a manner consistent with such program."

   This certification must be accompanied by supporting information in accordance with 15 CFR 930.57.

b. Based on comments of other coastal program agencies, BMR shall notify the federal agency and the applicant of its concurrence or objection to the consistency certification

in an accepted form. Concurrence shall be provided in the form of a coastal program consistency certification.

3. OCS Exploration, Development and Production Activities

a. OCS plans submitted to the U. S. Secretary of the Interior for Outer Continental Shelf exploration, development and production and all associated federal licenses and permits described in detail in such OCS plans, shall be subject to a determination of their consistency with the coastal program. Department of the Interior's OCS prelease sale "activities", such as determination of tracts to be offered and choice of lease sale stipulations are subject to consistency determination under Part III.C.1.

b. When satisfied the proposed activity described in detail in the OCS plan meets the federal consistency requirements, the OCS lessee or operator shall declare in a consistency certification to the Secretary of the Interior as follows:

"The proposed activities described in detail in this plan comply with the approved Mississippi Coastal Program and will be conducted in a manner consistent with such plan".

c. The Secretary of the Interior or his designee shall provide to the State A-95 Clearinghouse a copy of the OCS plan (excluding any proprietary information) and a consistency certification.

d. BMR will utilize the review process described under Federal Licenses and Permits for purposes of consistency review of OCS exploration, development and production activities. Any Department of the Interior OCS prerelease sale activities, such as determination of tracts to be offered and choice of leases sale stipulations, will be reviewed under the process described in the Direct Federal Activities section.

e. At the earliest practicable time, but within 60 days, the BMR will notify the person and federal agency whether the coastal program concurs with or objects to the consistency certification. Concurrence shall be in the form of a coastal program consistency certification as provided for in Part III.A.

f. In the event BMR issues an objection to the person's OCS plan certification, it will accompany its objection with reasons and supporting information concerning each activity which the state finds to be inconsistent with the coastal program. The objection will include a statement informing the person of a right to appeal to the Secretary of Commerce.

SECTION 4, PART III.C.4.

4. Federal Assistance to State and Local Governments

   a. Federal assistance to state and local governments for projects significantly affecting the coastal area may not be granted until the activity is determined to be consistent with the coastal program or unless the Secretary of Commerce finds that the proposal meets the objectives of the federal Coastal Zone Management Act or is necessary in the interest of national security.

   b. Coastal program agencies shall use the A-95 Clearinghouse to monitor proposed federal assistance projects in the coastal area.

   c. Within 60 days after receipt of the information required for a consistency review, BMR shall notify the federal agency and the applicant whether the coastal program concurs or objects to the consistency certification. Concurrence shall be in the form of a coastal program consistency certification.

   d. In the event of an objection on grounds of inconsistency with the coastal program, BMR shall accompany the objection with reasons and supporting information.

D. ENFORCEMENT

1. When any state or federal agency proceeds with an action found to be out of compliance with the coastal program as a result of these policy coordination procedures, BMR shall prepare a set of findings describing the proposed actions and its conflicts with the coastal program.

2. This set of findings shall be provided to the Attorney General with a request for appropriate action; a copy of the findings shall also be provided to the agency involved in the proposed action.

PART IV. STATE AGENCY ACTIONS SUBJECT TO REVIEW

Part IV specified those state agency actions in the coastal area that are subject to the policy coordination procedures of this section. Some of these actions are reviewable and therefore subject to the entire review procedure; some may be considered consistent, and therefore subject only to notification. State agencies are encouraged to determine by interagency agreement those actions that are consistent.

A. BUREAU OF POLLUTION CONTROL (including the Commission on Natural Resources and Permit Board)

1. Issuance of new air or water pollution permits;

2. Renewal of such permits;

3. Substantive regulatory changes, including but not limited to changes in the designation of water quality areas, and modifications to water quality parameters for these areas;

4. Financial assistance administered through the Bureau;

5. The review and approval of plans and specifications for sewage collection systems for new subdivisions, extensions of municipal systems, and for new or expanded privately or publically owned wastewater treatment facilities;

6. Procedural changes in rules and regulations.

B. BUREAU OF GEOLOGY AND ENERGY RESOURCES

1. The leasing of any state owned minerals in the coastal area at least 60 days prior to the advertisement for such lease;

2. Plans or programs for mineral leasing;

3. Surface mining permits (subject to 45 day review period only);

4. Permit and lease renewals; and

5. Assessment documents by the Department of Natural Resources Rules and Regulations Governing Leasing for Production or Extraction of Oil, Gas and other Minerals from State-Owned Lands.

C. BUREAU OF LAND AND WATER RESOURCES

1. Issuance of water withdrawal or impoundment permits either in the coastal area or on major coastal rivers and streams in George, Stone, or Pearl River Counties when these water diversions are not returned to the stream upstream of the coastal area;

2. Delineation of capacity use areas for groundwater;

3. Issuance of permits for groundwater utilization in capacity use areas;

4. Permit renewals.

D. BUREAU OF PARKS AND RECREATION

1. Planning programs for park acquisition and development land acquisitions;

2. Land acquisitions;

3. Plans and specifications for park development (review should take place at preliminary plan stage);

5. Construction of parks.

SECTION 4, PART IV.

E. DEPARTMENT OF ARCHIVES AND HISTORY

1. Acquisition of real or personal property in the coastal area;

2. Issuance of permits for state archeological landmarks;

3. Renewal of permits.

F. SECRETARY OF STATE (LAND COMMISSIONER)

1. Any lease of state owned or public trust lands;

2. Renewals of such leases.

G. BOARD OF HEALTH

1. Promulgation of rules and regulations for hazardous waste disposal and for sanitary landfills;

2. Substantive changes in such rules and regulations;

3. Issuance of permits for hazardous waste disposal sites and sanitary landfills;

4. Renewal of permits.

H. STATE HIGHWAY DEPARTMENT

1. Planning programs for new or improved highway systems;

2. Plans and specifications for new construction (review should take place at the preliminary plan state);

3. Acquisition of land;

4. Right of way clearing;

5. New construction projects;

6. Maintenance work that requires dredging or filling in wetlands;

7. Grants, loans, or other forms of assistance awarded by the department;

8. Landscaping and scenic enhancement projects;

9. Removah of roadside hazards and obstacles where natural scenic qualities are affected;

10. Widening and overlay projects requiring fill in wetlands.

I. STATE BUILDING COMMISSION

1. Planning programs to determine long-term building needs.

2. Plans and specifications for the construction of buildings (review should take place at preliminary design phase);

3. Land and other property acquisition; and

4. Construction of projects.

J. INSTITUTIONS OF HIGHER LEARNING

1. Building programs; and

2. Annual Sea Grant work program.

K. BUREAU OF MARINE RESOURCES

1. Wetlands permits and renewals;

2. Planning, research, acquisition and construction grants;

3. Changes in rules, regulations, guidelines and procedures;

4. Adoption of special area management plans; and

5. Oyster reef creation projects and oyster leases.

L. DEPARTMENT OF ECONOMIC DEVELOPMENT

1. Certificates of public convenience and necessity issued in conjunction with industrial development efforts;

2. Financial assistance to local governments and private parties;

3. Construction activities at the Mississippi State Port at Gulfport.

M. OIL AND GAS BOARD

Permits issued for oil and gas operations in coastal wetlands, unless such operation has been considered during the review of a proposed lease in coastal wetlands.

N. PUBLIC SERVICE COMMISSION

Certificates of public convenience and necessity issued in connection with construction activities of public utilities in the coastal area.

PART V. FEDERAL ACTIONS

The listing of federal actions in this part includes both reviewable and consistency actions. Federal agencies are encouraged to determine by interagency agreement those actions that can be considered consistent.

SECTION 4, PART V.

A. DIRECT FEDERAL ACTIVITIES AND ENFORCEMENT PROJECTS

1. U. S. Army Corps of Engineers

   a. Dredging, channel works, breakwaters, other navigation works, erosion control structures, flood protection, beach replenishment and dams within the coastal area and on or in major coastal rivers and streams.

   b. Proposed federal acquisitions within the coastal area.

2. Department of the Interior

   a. Proposed Bureau of Land Management OCS lease sales, including pre-lease sale activities.

   b. Proposed National Park Service acquisitions within the coastal area.

   c. Proposed U. S. Fish and Wildlife Service activities.

3. Department of Defense

   Location and design of new or enlarged defense installations within the coastal area.

4. Department of Transportation

   a. Location and design of new or enlarged Coast Guard stations, bases and lighthouses within the coastal areas.

   b. Location and design of aviation communication and air navigation facilities within the coastal area.

   c. Railroad expansions, new construction, abandonments or establishment of new routes within or affecting the coastal area.

5. General Services

   a. Proposed federal government property acquisition and building construction within the coastal area.

   b. Disposal of surplus federal lands within the coastal area.

6. National Marine Fisheries Service (and Gulf of Mexico Fisheries Management Council)

   Preparation and approval of plans and implementing mechanisms pursuant to management of fisheries within 200 nautical miles jurisdiction.

7. Department of Energy

   Fossil fuel power plant conversion orders.

B. FEDERAL LICENSES AND PERMITS

1. Environmental Protection Agency

   a. Permits and licenses required under Sections 402 and 404 of the Federal Water Pollution Control Act of 1972 and Amendments.

   b. Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality.

2. U. S. Army Corps of Engineers

   a. Permits and licenses required under Section 9 and 10 of the Rivers and Harbors Act of 1899.

   b. Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (Ocean Dumping).

   c. Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and Amendments.

3. Nuclear Regulatory Commission

   Permits and licenses required for siting construction and operation of nuclear power plants, fuel processing, and disposal of nuclear wastes.

4. Bureau of Land Management

   a. Permits and licenses required for mining of public lands and pipeline corridors pursuant to the OCS Lands Act, if such permits and licenses have not been previously reviewed under an OCS plan.

   b. Grants of authority for activities on federal lands or with respect to federal mineral ownership in the coastal area.

5. Geological Survey

   a. Permits and licenses under the Mineral Leasing Act of 1920, as amended and supplemented acquired Lands Mineral Leasing Act of 1947 Geothermal Steam Act of 1970.

   b. Permits to drill, rights of use and easements for construction and maintenance of pipelines, gathering and flow lines and associated structures, described in detail in OCS plans.

6. U. S. Coast Guard

   a. Permits for construction of bridges under 33 USC 401, 4591-507, and 525-534.

   b. Permits for deepwater ports (33 CFR 158 et sel.).

7. Federal Energy Regulatory Commission

   a. Licenses for non-federal hydroelectric projects and primary transmission lines under the Federal Power Act, including projects in the coastal area and on major coastal rivers and streams in Pearl River, George, and Stone Counties.

   b. Orders for interconnection of electric transmission facilities under the Federal Power Act.

   c. Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities including both interstate pipelines and LNG terminal facilities under the Natural Gas Act.

8. Department of Energy

   Authorization for import or export of natural gas.

9. Fish and Wildlife Service

   Endangered species permits pursuant to the Endangered Species Act.

C. FEDERAL ASSISTANCE

All projects involving federal financial assistance to state and local governments in the coastal area through grants or contractual agreements, loans, subsidies, guarantees, insurance, or other forms of financial aid except federal revenue sharing shall be subject to policy coordination under this section.

SECTION 5: SPECIAL MANAGEMENT AREAS

PART I: INTRODUCTION

A. PURPOSES

The purposes of special management area designation are:

1. To apply the general provisions of the coastal program to specific geographical areas.

2. To streamline regulatory decisions in these areas through planning for and resolving permit conflicts in advance of individual development projects being implemented.

3. To coordinate federal and state regulatory decisions with the affirmative development efforts of the coastal program and of local governments.

4. To provide assistance to local governments and state agencies to plan for public facilities and services in areas whose use is historically, economically, and culturally tied to coastal waters.

B. LIMITATIONS

A SMA designation does not authorize the imposition of new regulatory authorities. SMA designations are not mandatory and shall not be construed to require local governments to agree to a plan for an area. SMA plans shall not be adopted by MCWC without the concurrence of the local government or state agency having jurisdiction.

PART II: SMA DESIGNATIONS AND PLANS

A. DESIGNATING SPECIAL MANAGEMENT AREAS

1. Those SMAs identified in the coastal program as of the date these procedures and guidelines are adopted are hereby designated as SMAs.

2. The following process shall be used to designate additional SMAs:

   a. An area may be nominated by a concerned agency, organization, or person. The nomination must include a specific description of the area and a justification for the nomination.

   b. BMR will conduct an examination of the nomination to determine its merits, and more specifically to determine whether a SMA designation is needed to manage the area properly in light of the purposes specified in Part I. A public hearing may be held at the discretion of the director. After completing its examination of the nomination, BMR shall make a recommendation to MCWC as to whether the nominated areas should be designated as a SMA.

c. MCWC, in its discretion, shall act on BMR's recommendation.

B. DEVELOPING AND ADOPTING SMA PLANS

1. The responsible local government and MCWC acting through BMR shall enter into an agreement to develop a SMA plan. The agreement may be at the initiative of either party. The agreement shall state the scope of work to be performed, the responsibilities of the parties involved, and the nature of any involvement with other agencies or consultants.

2. Federal agencies, particularly the U. S. Army Corps of Engineers, the Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency, shall be consulted and involved in the early stages of planning. BMR and the local government shall jointly develop a draft of the plan in cooperation with federal agencies, with BMR providing general oversight. During the course of the plan's development, public hearings or meetings may be held. If private lands are included in a SMA, a hearing shall be held.

3. The draft SMA plan shall be submitted to the local government or state agency and the MCWC for concurrence, and shall be submitted to appropriate federal agencies as well.

4. A public hearing shall be held on the draft plan prior to its formal adoption. Such a hearing shall be advertised and held in the manner specified in Section 1, Part IV.A.

5. Based on the comments received during the public hearing, the draft plan will be revised as appropriate, and considered for final approval by the local government or agency involved, and MCWC. Upon final approval by the MCWC, a notice shall be published at least once a week for three weeks. The notice shall describe the contents of the proposal.

6. When approved according to these procedures, the specific provisions of a SMA plan shall prevail over the more general provisions of the coastal program.

C. CONTENT OF PLANS

1. SMA plans shall define the boundaries of the area, and shall provide a clear description of how the physical development of the area is to be managed.

2. SMA plans shall recognize environmental and economic factors, and where a plan is intended to prevail over the more general provisions of the coastal program, the plan shall include analyses of environmental impacts and alternatives comparable to that ordinarily required for permit decisions.

SECTION 5, PART II.C.

3. SMA plans shall specify the implementation responsibilities of local, state, and federal agencies, and shall include any interagency agreements and similar instruments necessary for carrying out the plan.

SECTION 6: GUIDELINES FOR THE PRESERVATION OF NATURAL SCENIC QUALITIES

PART I: INTRODUCTION

A. PURPOSE

The purpose of this Section is to provide guidance for state and federal agencies to encourage the preservation of natural scenic qualities of the coastal area. Private parties and local governments are encouraged, but not required to consider these guidelines.

B. APPLICABILITY

All state and federal agencies carrying out responsibilities in the coastal area are to consider these guidelines in their decision-making under the provisions of Mississippi Code Section 57-15-6.

C. SMA PLANS

Where a conflict arises between these guidelines and a SMA plan approved under the provisions of Section 5, the provisions of the SMA plan shall prevail.

D. PROFESSIONAL SERVICES

Landscape architects and other design professionals should be consulted for major projects in the coastal area to address the preservation of natural scenic qualities. The guidelines are not intended to substitute for professional judgement but rather to point out design considerations, and to provide general guidance when design professionals are not utilized.

PART II: GENERAL GUIDELINES

A. VISUAL ACCESS

1. Sites in areas of scenic importance or traditionally public viewing points should be avoided by new developments. This is particularly true for large scale developments.

2. The provision of public access to the shore, both physical and visual is encouraged. Easements for public viewing and waterfront access at property sidelines should be considered.

3. Where visual buffer areas are created by design or as a result of building setbacks, public access should be provided to these open lands for passive recreational use and view access. Institutional developments easily lend themselves to this type of access.

4. Highways and other public facilities near the shore should be carefully designed to take advantage of waterfront views.

5. Public access areas should be provided in port areas and small craft harbors, subject to safety and security requirements. Public facilities such as restaurants and fish houses, should be provided to allow the public to enjoy the sights and activities of ports and harbors.

B. VISUAL BUFFERS

1. Facilities with strong utilitarian or harsh visual character should be buffered by trees and other planting, fencing, earth berms, and creative grading. Within industrial areas, individual sites do not require vegetated buffers between them.

2. Tree planting and other vegetative screening should be employed at public edges to reduce the visual impact.

3. Campgrounds should provide for privacy in individual sites through ample vegetative planing and screening.

4. Mobile home courts and parks should be similarly planted and screened; units should be clustered and common open space provided. No trailers should be allowed in beach area.

C. BUILDING EXTERIORS

1. In the case of large-scale facilities, building mass should be broken into component units, if this would permit some units to be better integrated into site topography. Roof form and silhouette should be varied and styled to harmonize with the surrounding landscape and to blend with the natural tree line.

2. Except in highly developed areas, structures should reflect the natural surroundings and typical colors of existing coastal architecutre. Earth colors and sky blue can be universally used for general surfaces; black, navy blue, and battleship gray are appropriate for industrial or other building types which are meant to recede visually.

3. Building materials and texture should reflect surrounding natural materials. Articulation of elements on facades and the use of wood or slatting of synthetic materials are ways in which this may be accomplished.

4. Administration buildings and all structures whose design is not restricted by operational criteria should be designed to blend with surroundings, in terms of height, silhouette, mass, materials and color.

5. Blighted and derelict facilities should be removed, restored or rehabilitated for new uses to reduce the degradation of natural scenic qualities.

D. GENERAL LANDSCAPING

1. Natural vegetation shall be preserved wherever practicable. It is the intent of this guideline to require the deliberate consideration of preserving natural vegetation through good design. Landscaping should be used to enhance, not replace, natural scenic qualities.

2. Living plant materials should be used to harmonize structures with the landscape. Unsightly facilities should be masked with foreground plantings to be made less readily visible from the shore or water.

3. Earth berms, mounds and other topographic modifications should be used to mask unsightly structures where this would blend with the surrounding terrain. Where hilly or rolling topography occurs naturally, earth forming should be used to enclose and conceal utilitarian structures and facilities.

4. Plantings should be used to stabilize shoreline erosion and to screen development along roads and other access routes. Species, planting patterns, massing, and plant heights should be compatible with the structural masses they are intended to disguise or enhance.

5. Thinning of trees preferable to clear-cutting.

6. Natural shrubbery and trees such as live oaks should be preserved when practicable, and where removed, replaced with other vegetation equally effective with respect to natural scenic qualities.

7. Special consideration should be given in the design of new developments for maintenance, care and long range health of the natural vegetation.

8. Cluster and planned unit development should be encouraged to

insure preservation of natural scenic qualities. These developments should be guided by long-range plans which integrate the public natural areas in different developments to form a continuous public system of open space.

9. Planting of mature plant specimens should be done in urban fringe areas to maintain vegetative continuity.

10. Tree preservation ordinances, sign ordinances, and minimum landscape ordinances for commercial structures should be adopted for urban and semi-urban areas.

E. SITE FURNITURE

1. The shore environment is particularly sensitive to the visual intrusions caused by billboards, utility poles and transmission lines, fences, and other similar fixtures.

2. Fencing, wastebaskets, park benches and lighting fixtures should be designed and built of materials which reflect the character of the coast, both in historic and architecturally valuable urban areas and in new developments.

3. Signing controls should be applied in all commercial areas to limit height, size, and lettering coverage of signs on buildings and those along roadsides and highways.

F. UTILITIES

Utility lines should be underground where practicable, and those located above ground should be designed and located so that they avoid scenic areas, blend with the surrounding landscape or are screened from public view. These guidelines recognize that it is not practicable to locate high voltage transmission lines underground.

PART III: GUIDELINES FOR SCENIC AREAS

A. BEACHES

1. Permanent structures should not be built on the open beach itself except facilities such as piers, public restrooms, and lifeguard stations.

2. Beaches should be well supplied with trash receptacles and sanitary facilities.

SECTION 6, PART III.A.

3. When additional parking is needed in high beach use areas, the new parking areas should be set back from the beach and safety devices for highway crossings should be used where appropriate. The parking lots should be marked and concealed with plantings, trees, earth mounds and berms.

B. ISLANDS AND DUNES

1. Any structure should blend visually with the natural landscape and should extend above the natural silhouette of the island, excluding lighthouses and aids to navigation.

2. Except for low visually unobstrusive access facilities such as boardwalks and piers, structures should not be built seaward of primary dunes, and should not destroy primary dune vegetation.

3. New development should not destroy dune vegetation, prevent natural movement of sand or conflict the visual dune forms.

4. Vehicular and pedestrian traffic in dune areas should be channeled to those locations designed to handle the usage.

C. SHORELINES

1. Development, particularly tall structures, should be set back from the edge of natural coastal waters, rivers and bayous to preserve the visual quality of the waterbody, and to protect shoreline vegetation.

2. New structures should not extend seaward farther than adjacent structures in the area.

3. Facilities which are not dependent on a waterfront location should be located away from the shore, for environmental as well as aesthetic reasons.

4. The natural appearance and visual attractiveness of the shoreline should be maintained. The upland vegetation against which wetlands are generally viewed should be maintained in the natural state, and structures built at the edge of coastal wetlands in predominantly undeveloped areas should be designed to blend with the surrounding area.

SECTION 7: GUIDELINES FOR THE CONSIDERATION OF THE NATIONAL INTEREST

In addition to the national interest reflected in existing state policies incorporated into the coastal program, state agencies shall consider the following aspects of the national interest:

SECTION 7

A. The need for national defense and to establish and maintain facilities necessary to accomplish this;

B. National energy policy;

C. The need to improve public recreational opportunities;

D. The national need for transportation, including ports and navigation;

E. The protection of endangered flora and fauna, including those species listed in Table VIII-1. BMR shall consult with the Mississippi Natural Heritage Program and the U. S. Fish and Wildlife Service concerning projects which may affect endangered flora and fauna.

F. The consideration of wild and scenic rivers and the coordination of activities affecting such rivers with efforts under the Wild and Scenic Rivers Act;

G. The reduction of the loss of life and property damage from natural hazards, including flooding and erosion. In this connection, consideration shall be given to protecting the physical integrity of Mississippi's barrier islands so that they may continue to shelter the coastal area from the devastation.

TABLE VIII-1

ENDANGERED (E) OR THREATENED (T) VERTEBRATES OF MISSISSIPPI

SPECIES	DESIGNATION	
	State	Federal
Atlantic Sturgeon (Acipenser oxyrhyncus)	E	-
American Alligator (Alligator mississippiensis)	E	E
Southern Hog-nosed Snake (Heterodon simus)	E	-
Rainbow Snake (Farancia erythrogramma)	E	-
Eastern Indigo Snake (Drymarchon corais couperi)	E	T
Black Pine Snake (Pituophis melanoleucus lodingi)	E	-
Atlantic Green Turtle (Chelonia mydas mydas)	E	T
Atlantic Loggerhead Turtle (Caretta caretta caretta)	E	T
Atlantic Ridley Turtle (Lepidochelys kempii)	E	E
Hawksbill Turtle (Eretmochelys imbricata)	E	E
Leatherneck Turtle (Dermochelys coriacea)	E	E
Eastern Cougar (Felis concolor)	E	E
Brown Pelican (Pelecanus occidentalis)	E	E
Bald Eagle (Haliaeetus leucocephalus)	E	E
Peregrine Falcon (Falco peregrinus)	E	E
Mississippi Sandhill Crane (Grus canadensis pulla)	E	E
Red-cockaded Woodpecker (Picoides borealis)	E	E
Southern Coal Skink (Eumeces anthracipinus pluvialis)	T	-
Yellow-blotched Sawback Turtle (Graptemys flavimaculata)	T	-
Manatee (Trichechus manatus)	E	E
Black Bear (Ursus americanus)	T	-
Blue Whale (Balaenoptera musculus)	E	E
Bowhead Whale (Balaena mysticetus)	E	E
Finback Whale (Balaenoptera physalus)	E	E
Humpback Whale (Megaptera novaeangliae)	E	E
Right Whale (Balaena glacialis)	E	E
Sei Whale (Balaenoptera borealis)	E	E
Sperm Whale (Physeter catodom)	E	E

Note: Mississippi does not have any endangered or threatened species of invertebrates designated.

CHAPTER NINE

FEDERAL REQUIREMENTS

Contents

Section 1: Index to Federal Requirements

Section 2: Uses Subject to Management

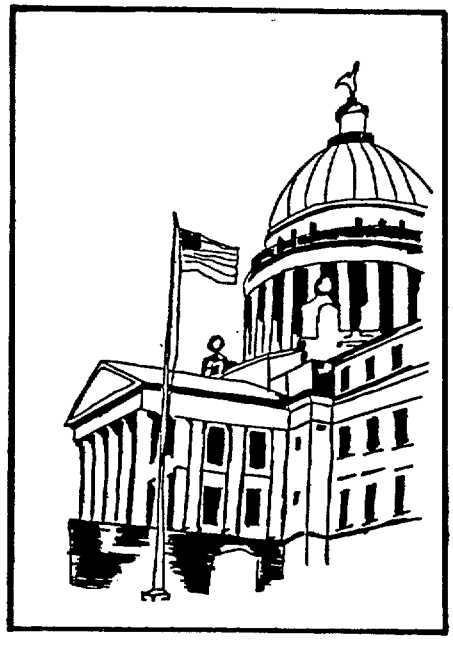
Section 3: Boundaries

Section 4: Special Areas and Priorities of Use

Section 5: Authorities and Organization

Section 6: Participation in Program Development

Section 7: National Interest



CHAPTER IX: FEDERAL REQUIREMENTS

SECTION 1: INDEX TO FEDERAL REQUIREMENTS

Table IX-1 provides a quick reference for determining how the provisions of the Mississippi Coastal Program meet federal requirements for approval under Section 306 of the Coastal Zone Management Act. Table IX-1 directs the reader to various sections and chapters of the program wherein the federal requirements are met. In cases where the requirements are not covered in the main body of the program (Chapters I through VIII), the succeeding sections of this chapter describe how the requirements are met.

SECTION 2: USES SUBJECT TO MANAGEMENT

IDENTIFICATION OF USES

An identification of the activities and uses subject to management in the MCP is provided in Section 5, Chapter II, along with references to appropriate sections of the MCP where explanations of how the activities and uses will be managed are to be found. Various sections of the MCP describe how the activities and uses will be managed, identify enforceable policies, legal authorities and other management techniques. In addition, Chapter VIII, Rules, Regulations, Guidelines, and Procedures, describes the standards that will be used in making decisions as to how activities and uses will be allowed, conditioned, modified, encouraged, or prohibited.

USES OF REGIONAL BENEFIT (15 CFR 923.12)

The Mississippi Coastal Program is concerned about specific uses of regional benefit to the extent that local land and water use regulations may unreasonably restrict or exclude them. The statutory authority for establishing such regulations in Mississippi is found in Section 17-1-1 through 17-1-37 of the Mississippi Code establishing zoning, planning, and subdivision regulations for local governments. This is supplemented by the Airport Zoning Law, Section 61-7-1 through 61-7-29. The restrictions that local governments can place on uses of regional benefit include the control of land use and the control of height, size, coverage, setbacks, open spaces, and population density.

These regulations are frequently developed from the limited point of view of protecting local interests. But the authority to issue local land use controls is not without constraints. This power is necessarily subject to the limitations imposed by legislative and judicial decisions. Through

TABLE IX-1

INDEX TO FEDERAL REQUIREMENTS

Requirements	Sections of Approval Regulations	Location of Description in Document (CHAPTER/SECTION)
Sec. 306(a), which includes the requirements of Sec. 305:		
305(b)(1): Boundaries	923.31, 923.32 923.33, 923.34	IX/3
305(b)(2): Uses subject to management	923.11	II/5, IX/2
305(b)(3): Areas of particular concern	923.21, 923.22, 923.23	IX/4
305(b)(4): Means of control	923.41	IX/5
305(b)(5): Guidelines on priorities of uses	923.21	VI/2, VI/3, VI/4
305(b)(6): Organizational structure	923.46	II/1
305(b)(7): Shorefront planning process	923.24	VI/3
305(b)(8): Energy facility planning process	923.13	VII/1
305(b)(9): Erosion planning process	923.25	VII/2
Sec. 306(c), which includes:		
306(c)(1): Notice; full participation; consistent with Sec. 303	923.58, 923.51 923.55, 923.3	IX/6
306(c)(2)(A): Plan coordination	923.56	IX/6
306(c)(2)(B): Continuing consultation mechanisms	923.57	IX/6
306(c)(3): Public hearings	923.58	IX/6
306(c)(4): Gubernatorial review and approval	923.48	IX/5 letter of endorsement
306(c)(5): Designation of recipient agency	923.47	II/5 letter of endorsement
306(c)(6): Organization	923.46	IX/1
306(c)(7): Authorities	923.41	IX/5
306(c)(8): Adequate consideration of national interests	923.52	VIII/4, IX/7
306(c)(9): Areas for preservation/restoration	923.22	VII/3
Sec. 306(d), which includes:		
306(d)(1): Administer regulations, control development; resolve conflicts	923.41	IX/5
306(d)(2): Powers of acquisition, if necessary	923.41	IX/5
Sec. 306(e), which includes:	923.42, 923.43, 923.44	IX/5
306(e)(1): Technique of control	923.12	IX/2
306(e)(2): Uses of regional benefit		
Sec. 307, which includes:		
307(b): Adequate consideration of Federal agency views	923.51	IX/6
307(f): Incorporation of air and water quality requirements	923.45	VIII/4, IX/5

statutes and judicial actions, Mississippi can assure that uses of regional benefit will not be unreasonably restricted by local land use regulations.

For the purpose of the Mississippi Coastal Program, uses of regional benefit are defined as those facilities or activities that benefit more than one unit of government, with particular attention paid to uses that local regulations may restrict because the adverse impacts of the facility accrue to the local area while the benefits are delivered to a wider constituency. It is in such a case that local regulations are most likely to restrict uses because the external benefits of the use are not enjoyed entirely by the local community.

Using these criteria, the following uses of regional benefits have been identified for the Mississippi Coastal Program.

ENERGY FACILITIES

- Power Plants and Associated Facilities
- Energy Distribution and Transmission Systems
- LNG Facilities
- Onshore Facilities and Industries Supporting Offshore Energy Developi

RECREATION FACILITIES

- Federal and State Parks
- Major Public Beach Areas

TRANSPORTATION

- Major Highways
- Railroads
- Airports
- Ports

These different uses involve different assurances that unreasonable restrictions at the local level will not stand, and therefore, are treated separately below:

Power Plants

Studies completed in the development stages of the Mississippi Coastal Program indicate that no new power plants are likely to be constructed in the coastal area.. The coast presently has a surplus of generating capacity; this surplus will continue for the next decade. This situation is only reinforced by the construction of the second of two steam generating units in Jackson County. Section 1 of Chapter VII (the energy facility planning process) elaborates on this subject, and demonstrates the adequacy of existing sites to meet projected need.

In the unlikely event that a new power plant is constructed on the coast, local land use regulations may restrict its construction through zoning, either directly by prohibiting it as a use, or indirectly by omission from the ordinances. In this case, the power plant interests may petition for a rezoning. (Section 17-1-15). Failing in administrative channels, the power plant may petition to have the issue settled in court.

Before constructing a power plant, a utility must first secure a certificate of public convenience and necessity from the Public Service Commission (Section 77-3-11). With this legislative recognition of public need in hand, a utility has a judicially defined claim to a rezoning based on the case of Hattiesburg v. Pittman. In this case the Mississippi Supreme Court found, inter alia, that the most important reason justifying the petitioner's request for rezoning was that they showed "the public need of the improvements." The court ruled the city's refusal to rezone was "manifestly arbitrary and capricious and unsupported by any substantial evidence." While this case dealt with the need for sleeping accommodations in the city, the court clearly stated that the public need criteria was the most important in overturning the city's refusal to rezone.

This case shows that the power company would have a stong claim to a zoning change if there is a public need.

Energy Distribution and Transmission Systems

These systems enjoy the right of eminent domain under the provisions of Section 11-27-47 of the Mississippi Code.

LNG Facilities, Onshore Facilities, and
Industries Supporting Offshore Energy Development

All of these uses of regional benefit are essentially industrial activities requiring industrial sites. To assure that these uses are not unreasonably restricted, it is adequate to show that sufficient sites are available, and that if local ordinances are changed, these changes will not result in an insufficient number of sites.

The table below, adapted from an early report of the Mississippi Marine Resources Council's - Mississippi Outer Continental Shelf Impact Study, shows the current available supply of industrial sites on the coast.

NAME OF SITE	AVAILABLE ACRES
HANCOCK COUNTY	
Port Bienville Industrial Park	1,169
Stennis Field Industrial Park	40
HARRISON COUNTY	
Pass Christian Industrial Park	96
Long Beach Industrial Park	500

HARRISON COUNTY (Continued)	
Bayou Bernard Industrial Park	501
East Harrison County Industrial Park	50
JACKSON COUNTY	
Ocean Springs Industrial Park	9
Mississippi Power Company Industrial Park	1,850
Brickyard Bayou Industrial Park	575
Escatawpa River Industrial Park	1,750
West Bank Industrial Site No. 2	65
West Bank Industrial Site No. 1	6
Bayou Casotte Industrial Park	
Site No. 1	261
Site No. 2	643
Site No. 3	800
Site No. 4	830
Site No. 5	1,440
Site No. 6	22
Site No. 7	25
Site No. 8	20
Site No. 9	293
Site No. 10	184
Potential LNG Site (Estimated)	200
TOTAL	11,329

Based on the Mississippi Outer Contintental Shelf Impact Study on local industry sources, the following site demands for these uses of regional benefit were estimated:

OCS related facilities and industries	284 acres
Non-OCS Offshore related facilities and industries	200 acres
LNG Facility	200 acres
TOTAL	684 acres

Compared to the 11,329 acres available, the 684 acre demand for uses of regional benefit clearly can be met. As long as local regulations cannot unreasonably restrict these sites, adequate assurances for uses of regional benefit can be made.

All of the sites listed are either currently unzoned, or are zoned industrial. The unzoned areas in Hancock and Harrison Counties are included in comprehensive plans for the area, and are designated as industrial uses in these plans. Since the establishment of zoning in these areas would have to be based on a comprehensive plan (Section 17-1-9 of the Mississippi Code), these areas should be zoned for industrial use when such regulations are established. The same section of the law requires that any zoning regulations must be made with reasonable consideration of the characteristics of the district and its suitability for particular uses. Since all of the industrial sites mentioned are in already developed industrial areas, any newly established zoning must recognize the fact that these must be zoned for industrial uses.

In the case of sites already zoned for industrial use (the East Harrison County Industrial Park and all sites in Jackson County), rezoning to other uses can take place only if it can be shown that there was some mistake in the original zoning, or that conditions have changed since the original zoning (City of Jackson v. Bridges). In addition to this, the Mississippi Supreme Court has held that any change in the zoning must be reasonably related to the public welfare, and that the burden of proving public need for a change is on the person seeking a change. Since the legislature has already declared it to be in the public welfare to establish these industrial parks (Section 57-5-1), the possibility of unreasonably restricting these uses of regional benefit through local regulation is remote under Mississippi Law.

Major Federal and State Parks

Major state and federal parks in the three coast counties total 4,451 acres. This includes the Gulf Islands National Seashore, Buccaneer State Park, the new Shepherd State Park in Jackson County, and McCloud Park in Hancock County. Based on studies of the Gulf Regional Planning Commission, the need for parks of this type will total 2,361 acres by the year 2,000. Clearly, because of the large existing supply of parks of this type, the issue of local regulations unreasonably restricting these uses of regional benefit is not relevant to the coastal program.

Major Public Beaches

The major public beaches of the area include the Harrison County Beach on U. S. 90, and the Bay St. Louis/Waveland Beach along Beach Boulevard in Hancock County, the Ocean Springs Beach and the Pascagoula Beach. All of these beaches are artificially created and fully protected from unreasonable restrictions by virtue of being built on public trust waterbottoms. In the case of the Harrison County Beach, additional protection is afforded by a federal court decision in the U. S. v. Harrison County Mississippi, 265 F. Supp. 76 (S.D. Miss. 1967). In this case, the court ruled that because of the perpetual dedication of the beach to public use, the rights of the general public to use the beach could not be interfered with.

Transportation

The right of eminent domain exists for major highways (Section 65-1-47 of the Mississippi Code), for railroads (Section 77-9-169), for airports (61-3-15), and for ports (59-5-39, and 59-9-19).

SECTION 3. BOUNDARIES

There are four elements in the state's coastal boundary: the inland boundary, the seaward boundary, excluded areas, and interstate boundaries.

Inland Boundaries (15 CFR 923.31)

For the purposes of the coastal program the boundary encompasses the three coastal counties of Hancock, Harrison and Jackson and all coastal waters. The inland boundary is clear and exact enough to permit the determination of whether property or an activity is located within the management area, and includes:

1. Those areas in which management is necessary to control uses which have a direct and significant impact on coastal waters.

2. Special management areas

3. Waters under saline influence

4. Salt marshes and wetlands

5. Beaches

6. Transitional and intertidal areas

7. The 100 year floodplains

8. Islands

Seaward Boundaries (15 CFR 923.32)

The seaward limit or boundary encompassed by the Mississippi Coastal Program is the outer limit of the United States territorial sea.

Figure II-2, Section 3, Chapter 1 delineates the inland and seaward extent of the state's coastal program boundaries.

Excluded Lands (15 CFR 923.33)

Excluded from the coastal area are those lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal government, its officers or agents. Table IX-2, which follows, lists those major lands excluded from the coastal area.

Interstate Boundaries (15 CFR 923.34)

Alabama - The coastal zone boundary in Alabama is the 10' MSL contour in Mobile and Baldwin Counties.

Louisiana - The coastal zone boundary in Louisiana is Interstate Highway 10.

The inland boundaries of both states were established prior to those of the State of Mississippi, but the determination of the boundary was made after consultation with neighboring states.

Additional general discussion of boundaries can be found in Chapter II, Section 3 of this program.

TABLE IX-2

EXCLUDED FEDERAL LANDS IN MISSISSIPPI'S COASTAL AREA

SITE	AGENCY	COUNTY
Air National Guard Training Site Gulfport Municipal Airport	United States Air Force	Harrison
Air National Guard Petroleum Storage Area, Gulfport	United States Air Force	Harrison
Gulf Islands National Seashore Ship, Horn and Petit Bois Islands	National Park Service	Harrison Jackson (MS Sound)
Gulf Islands National Seashore Visitor Center, Ocean Springs	National Park Service	Jackson
DeSoto National Forest	United States Forest Service	Harrison Jackson
Keesler Air Force Base, Biloxi	United States Air Force	Harrison
Keesler Air Force Base Housing	United States Air Force	Harrison
Keesler Radio Beacon Annex	United States Air Force	Harrison
Keesler Small Arms Range Annex	United States Air Force	Harrison
Keesler Training Annex No. 1, Biloxi	United States Air Force	Harrison
National Space Technology Laboratories-Fee Simple Areas	National Aeronautics and Space Administration	Hancock
Naval Home, Gulfport	United States Navy	Harrison
Sandhill Crane National Wildlife Refuge	Fish & Wildlife Service	Jackson
U. S. Naval Construction Battalion Center, Gulfport	United States Navy	Harrison
Veterans Administration Center Biloxi and Gulfport	Veterans Administration	Harrison
Coast Guard Station Pascagoula	United States Coast Guard	Jackson

NOTE: Not includea in this table, but likewise excluded from the coastal area, are individual building sites such as post offices and samll National Guard installations.

SECTION 4: SPECIAL AREAS AND PRIORITIES OF USE

AREAS OF PARTICULAR CONCERN (15 CFR 923.21)

Three special management areas (SMA's) have been described in Chapter VI. These areas are: industrial and port areas, shorefront access areas, and urban waterfronts. The program provides for the development of specific management plans for these areas. Once the SMA plans are approved by the state, they will provide the basis for regulatory decisions to be made by state and federal agencies. By interagency agreements, local governments will assist in the implementation of special management area plans.

PROCESS FOR SELECTING SPECIAL AREAS

Two methods were used to make an initial identification of areas of particular concern (APC's), and ultimately SMA's. First, guidelines established by the National Oceanic and Atmospheric Administration were used to delineate and categorize APC's. These criteria are listed below:

1. Areas of unique, scarce, fragile or vulnerable natural habitat, physical feature, historical significance, cultural value and scenic importance;

2. Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and the various trophic levels in the food web critical to their well being;

3. Areas of substantial recreational value and/or opportunity;

4. Areas where developments and facilities are dependent upon the utilization of or access to coastal waters;

5. Areas of unique geologic or topographic significance to industrial or commercial development;

6. Areas of urban concentration where shoreline utilization and water uses are highly competitive;

7. Areas of significant hazard if developed, due to storms, slides, floods, erosion, settlement, etc.; and

8. Areas needed to protect, maintain or replenish coastal lands or resources, such areas including coastal floodplains, aquifer recharge areas, sand dunes, coral and other reefs, beaches, offshore sand deposits, and mangrove stands.

Second, in identifying potential areas of particular concern, other coastal states were consulted regarding the procedures used in their APC designation process. This method resulted in the identification of 87 general

categories, many of which were later found to be duplicative or not relevant to Mississippi. After reviewing the information from 23 states, BMR developed three major categories of APC's: physiographic, biologic, and socio-economic. Twenty subcategories were also classified under each major heading.

Further review of proposed APC's in late 1978 and early 1979 reduced their number to ten. Many of these ten areas are managed adequately by the routine regulatory functions of the state, and therefore did not require special designation. Considering this, BMR reduced the number of APC's to three, and redesignated them as special management areas (SMA's) to reflect their purpose more accurately. This final selection was based on a programmatic decision to designate an area as a SMA because it is so unique as to justify specific planning and management on a site-specific basis.

Presently selected SMA's are described fully in Chapter VI. The method by which other areas of concern can be designated (in accordance with 15 CFR 923.23) is outlined in Chapter VIII.

As the concept of special management areas evolved during the development of the coastal program, the BMR staff began to search for the appropriate tools to manage areas of coastal wetlands previously considered in the APC selection process. As stated above, many of the APC's could be managed through the routine regulatory functions of the state. That decision having been made, the next question was how to structure the routine regulatory functions of the state to address the APC's. The coastal wetlands use plan, mandated by Mississippi Code Section 49-27-65 appeared to be the best management tool available.

Former APC's (such as spoil islands, oyster reefs, seagrass beds, and estuarine sanctuaries) became the skeleton of the coastal wetlands use plan. The concept first appeared in the program document issued in January, 1979. The plan was refined through the routine program review process, appearing in the 305(d) program document in May, 1979. The wetlands use plan received its most extensive exposure through the March 21, 1980 public hearing draft, and the May 12, 1980 DEIS version of the program.

More detailed information on APC's and the public interest considerations behind them may be found in the May 1979 draft of the program, as well as in earlier drafts and in the supplementary studies listed in Appendix J.

PRIORITIES OF USE

In the discussion of special management areas in Chapter VI, priorities of use are treated in a general way by outlining the broad priority uses for each of the three types of SMA's. It is premature to specify in any detail the priorities of use within a specific SMA, in that the function of the SMA planning process is to determine these priorities. However, the general priorities described in Chapter VI are sufficient to indicate the lowest use priorities for a given type of SMA.

SECTION 5: AUTHORITIES AND ORGANIZATION

GENERAL

Sections one and two of Chapter II provide an overview of the authorities and the organization which Mississippi will use to manage specified activities and uses in the coastal area. More specific discussions are to be found in Chapter III, Wetlands Management; Chapter IV, Fisheries Management; and Chapter V, Policy Coordination. Appendices A, B, C, D, E, and F provide the text of the statutes on which the program is based.

The authorities used to implement the MCP are sufficient to manage activities and uses in the coastal area to insure compliance with the program and to resolve conflicts among competing uses by virtue of Section 57-15-6 of the Mississippi Code. In implementing the MCP, Mississippi will be exercising direct state control over specified activities in the coastal area through a networking process. This is referred to as "Technique B" in 15 CFR 923.43.

ACQUISITION AUTHORITY

Section 57-1-6(6) of the Mississippi Code authorizes the Mississippi Commission on Wildlife Conservation to acquire real personal property by purchase, condemnation, lease or agreement as authorized from time to time by the legislature where necessary to implement the coastal program.

AIR AND WATER POLLUTION CONTROL (15 CFR 923.45)

The Mississippi Bureau of Pollution Control administers the provisions of the Clean Water Act in Mississippi. The authority of this agency is incorporated into the program by virtue of Section 57-15-6 of the Mississippi Code, and is exercised through the policy coordination procedures in Chapter V.

GUBERNATORIAL REVIEW AND APPROVAL (15 CFR 923.48)

This review and approval is provided by letter of endorsement from the Governor.

DESIGNATION OF RECIPIENT AGENCY (15 CFR 923.47)

The Department of Wildlife Conservation (DWC) is designated as the recipient agency pursuant to 15 CFR 923.47. The Bureau of Marine Resources within DWC will have administrative responsibility for the program. The Governor's letter of endorsement reflects this.

SECTION 6: PARTICIPATION IN PROGRAM DEVELOPMENT (15 CFR 923.3, 923.51, 923.55, 923.56, 923.57, 923.58)

GENERAL PUBLIC PARTICIPATION

Information concerning the program was dissiminated to the public on a continuing basis during the development phase. This included news releases, brochures, illustrated booklets, a detailed newspaper supplement, personal presentations, three series of public meetings, advisory committees, workshops, two public opinion surveys and displays at public events. Public participation in the development phase of the MCP was solicited in the form of comments, suggestions, and criticisms during public meetings, presentations to groups, in brochures and other publications, and in direct requests to specific individuals and groups.

Publications

Brochures and other publications have been a vital part of public involvement in the development process. One publication was "Mississippi's Coastal Area: Its Future". This was distributed through the mail to approximately 12,500 persons in the state's coastal area. The color brochures addressed issues and problems in the coastal area, goals and objectives of the program and the role of the former MMRC as the program development agency. It provided a self-addressed form to be returned for inclusion on a comprehensive mailing list.

Another publication was "Land, People, Water: Mississippi's Concern". This was a larger booklet re-emphasizing problems facing the coastal area, with use priorities, organizational structure, and agency coordination. It also contained a form for the recommendation of areas of particular concern. The booklet was distributed to approximately 64,000 coastal residents through local daily newspapers as a supplement.

Three more phamplets, "Questions and Answers about Coastal Zone Management," "Coastal Zone Boundaries," and "What is the Mississippi Marine Resources Council" (now the Bureau of Marine Resources) were used extensively during the first series of public meetings. The phamplets addressed many aspects of a coastal program.

In addition, copies of a publication produced by the Office of Coastal Zone Management, "It's Your Coast...Get Involved", were obtained and distributed at meetings.

Public Meetings

A number of public meetings were held in order to increase public awareness and involvement.

Direct involvement by the public in development of a coastal program for Mississippi began with the first series of public meetings on the subject of boundaries of the coastal zone. Held in Gulfport, Biloxi, Pascagoula, Bay St. Louis and Picayune, these meetings included detailed presentations by staff members and time for statements, comments and questions from the audience. Printed transcripts of those meetings were later prepared and mailed to everyone registered as attending.

The Bureau (then the Marine Resources Council) conducted its second series of public meetings addressing geographic areas of particular concern and priority of uses. The presentations described the method by which areas of concern could be designated and listed the types of areas that might be considered. There were four meetings held in this series, at Gulfport, Biloxi, Pascagoula and Bay St. Louis. Transcripts of this series were again printed and distributed as before.

A third series of meetings was held to explain the progress that had taken place in program development.

Held in the Gulfport-Biloxi area and in Pascagoula and Bay St. Louis, the meetings included a presentation of the boundary as proposed at that time and a review of future steps in the program.

Citizens Advisory Committee

A citizens advisory committee was organized to provide input relative to the individual members' expertise in reviewing particular aspects of the coastal program as it was being developed. The Committee included representatives of special interest groups, clubs, organizations and the public-at-large.

The interests represented on the advisory committee are shown in Table IX-3.

TABLE IX-3

CITIZENS ADVISORY COMMITTEE

Chambers of Commerce
- Biloxi
- Gulfport
- Hancock County
- Long Beach
- Ocean Springs
- Pascagoula/Moss Point
- Pass Christian

Financial Institutions
- Banks
- Savings & Loan Associations

Fishing Interests
- Bass
- Commercial
- Mississippi Fishing Banks, Inc.
- Sports/Charter

Industry
- Chemical
- Fertilizer
- Petroleum
- Small Craft Construction
- Wood Products

Marina Operators
- Hancock County
- Harrison County
- Jackson County

Real Estate
- Builder
- Realtor

Coast Electric Power Association
Singing River Power Association
Mississippi Power Company
Petroleum and Mineral Extraction
Natural Gas Company
Hotel/Motel Association
Restaurant Association
Seafood Processor
Labor
Mississippi Forestry Association
Community Action Agency
League of Women Voters
Gulf Coast Council Garden Clubs
Historical Society
Ducks Unlimited
Audubon Society
Coastal Zone Management Alliance
Save the Bay, Inc.
Sierra Club
Public-at-large

Surveys

The Mississippi Marine Resources Council (now BMR) conducted the first opinion survey on coastal program development. That survey, conducted by the Mississippi-Alabama Sea Grant Consortium under contract to the Council, provided an opportunity for local citizens to express their general feelings about the area in which they lived.

The second survey contacted coastal residents to find out how they felt about certain items that a coastal program might address. Again conducted by the Consortium, this second survey was a logical follow-up to the first.

These surveys were mailed to approximately 17,000 people in the coastal area and approximately 6,700 people responded.

Audio Visual Slide Show

Other public involvement has included individual meetings with civic clubs, organizations, and special interest groups. At many of these meetings an audio-visual slide show was shown to better increase awareness. This presentation was shown to over 80 civic clubs and groups in the coast area since January 1976 and was seen by over 1,200 people. The presentation was last shown in 1979. Staff members making these presentations have brought their audiences up to date on the progress of the program and answered questions raised about the program. Table IX-4 lists the organizations receiving the presentations.

TABLE IX-4

PRESENTATIONS TO ORGANIZATIONS

ORGANIZATION	NO. OF ATTENDEES
Kiwanis Club of Biloxi	30
Biloxi Businessmen Club	28
Bay St. Louis Rotary Club	30
Young Lawyers Section of Harrison County Bar	29
League of Women Voters	8
VFW Post 5699 Ocean Springs	15
Grow Beautiful Garden Club	12
Harrison County Community Action Agency	9
Gulfport Kiwanis Club	51
Biloxi Jaycees	11
South Mississippi Shrine Club	57
Gulfport Businessmen Club and the Gulfport Lions Club	18
Singing River Bass Masters	11
Youth for Environmental Action	15
Optimist Club	15
Beta Signa Phi	8
Long Beach Senior Citizens	24
Hancock County Senior Citizens	16
Gulfport Exchange Club	16
Kiwanis Club of Pascagoula	68
Mississippi Chapter of the American Right-of-Way Association Seminar	40
Newcomers Club	33
First Christian Church of Gulfport	20
Beach Garden Society	26
St. Martins Lions Club	43

ORGANIZATION	NO. OF ATTENDEES
Gulfport Jaycees	28
Jackson County Retired Teachers Association	22
Pass Christian Chamber of Commerce	14
Society of American Forestors	26
Pascagoula Business and Professional Womens Club	22
Picayune Noon Lions Club	10
Biloxi Civitan Club	21
American Business Women Association Biloxi Chapter	21
Sierra Club	24
Litton Industries	33
St. Michael School for Boys	21
Wiggins Rotary Club	30
American Legion Post 33	12
Pass Christian Rotary Club	23
Pascagoula Optimist Club	11
Mississippi City Lions Club	14
American Legion Post 160	45
Bel air Garden & Homemakers Club	10
Ocean Springs Rotary Club	35
Singing River Power Squadron	60
Pascagoula Rotary Club	122
The Boat Club	14
Biloxi Lions Club	33
Gulfport Civitans Club	9
American Association of Retired Persons	50
Jackson County Board of Realtors	49
Picayune Civitan Club	22
Mississippi Coastal Audubon Society	16
Picayune Rotary Club	23
Pascagoula Civitan Club	14
USCG Auxiliary Flotilla 38	30
Women of the Moose	35
Bay-Waveland Humane Society	10
Gulfport Elks Club	43
Gautier Lions Club	6
Gulf Coast Traffic Club	15
West Biloxi Merchants Association	12
Society of American Military Engineers	36
Mississippi Coast Power Squadron	21
Greater Gulfport Dental Society	14
Alpha Iota Esa Sorority	15

In addition to the presentation of a slide show, members of the BMR staff have made numerous updated presentations to these and other groups since January of 1979.

Display Unit

To further facilitate public awareness, a display unit featuring back-lighted film transparencies was constructed. This was used along and in conjunction with manned booths at such events as county fairs and fishing rodeos in the coastal area of the state.

Mailing List

A mailing list of federal, state and local governments, private parties and libraries has been used throughout program development to provide pertinent program information, documents and publications relevant to the coastal program.

LOCAL/STATE PARTICIPATION

In order to receive involvement on the state and local level, a Governor's Conference was called in Biloxi. Representatives of both state and local governments and other organizations were invited. At this conference, benefits to be derived from a coastal management plan were discussed in detail. A workshop session isolated many problems and concerns facing the coastal area which have been used extensively in the development of policy statements for the Mississippi Coastal Program.

Two months later the Gulf States Conference on Coastal Management was also held at Biloxi. Sponsored by Mississippi, the conference included participation by the states of Alabama, Florida, Louisiana, Mississippi and Texas. The objectives of the conference were to provide a basis for these five states to exchange information, to engender cooperation and coordination, and to identify interstate problems which might require additional emphasis to facilitate coherency in regional coastal management.

A third session, the Coastal Leaders Conference, was held and representatives from city and county governments in the coastal area attended to discuss their future involvement in coastal management. Other meetings with individual local officials have occurred throughout the entire planning process. The local governments asked to participate in the program planning process were the cities of Bay St. Louis, Biloxi, Gulfport, Long Beach, Moss Point, Ocean Springs, Pascagoula, Pass Christian, and Waveland, and the counties of Hancock, Harrison and Jackson.

State agencies have participated extensively in program development. Table IX-5 lists the agencies consulted for participation in program development. In addition, an intergovernmental advisory committee was formed to gather comments and advise the Mississippi Marine Resources Council (now BMR) on the development of the coastal program. The committee was composed of representatives of local and state governmental agencies as well as other planning bodies. Parties asked to participate in the committee are listed in Table IX-6.

TABLE IX-5

STATE AGENCIES CONSULTED IN PROGRAM DEVELOPMENT

Aeronautics Commission
Board of Economic Development
Air & Water Pollution Control Commission
(Bureau of Pollution Control)
Board of Trustees, Institutes of Higher Learning
Board of Water Commissioners
(Board of Land & Water Resources)

Boat and Water Safety Commission
(Bureau of Fisheries & Wildlife)
Bureau of Outdoor Recreation
(Bureau of Recreation & Parks)
Civil Defense Council
Cooperative Extension Service
Department of Agriculture & Commerce

Department of Archives and History
Forestry Commission
Game and Fish Commission
(Bureau of Fisheries & Wildlife)
Geological, Economic and Topographical Survey
(Bureau of Geology & Energy Resources)
Gulf Coast Research Laboratory

Marine Conservation Commission
(Bureau of Marine Resources)
Natural Heritage Program
Office of the Governor, Federal-State Programs
Office of Science and Technology
Park Commission
(Bureau of Recreation & Parks)

Pat Harrison Waterway District
Pearl River Basin Development District
Public Service Commission
Real Estate Commission
Research and Development Center
State Board of Health
State Central Data Processing Authority

State Highway Department
State Land Office
(Secretary of State)
Superport Coordinating Office
Tourism Study Commission

Note: The names in parentheses indicate those agencies whose names have changed since earlier consultation.

TABLE IX-6

INTERGOVERNMENTAL ADVISORY COMMITTEE

Biloxi Port Commission
Burk & Associates
(Planning Consultants)
City of Bay St. Louis
City of Biloxi
City of Gulfport

City of Long Beach
City of Moss Point
City of Ocean Springs
City of Pascagoula
City of Pass Christian

City of Waveland
Gulf Regional Planning Commission
Hancock County Board of Supervisors
Hancock County Port Authority
Harrison County Board of Supervisors

Jackson County Board of Supervisors
Jackson County Port Authority
Mississippi Agricultural and Industrial Board
(Board of Economic Development)
Mississippi Air and Water Pollution Control Commission
(Bureau of Pollution Control)
Mississippi Board of Water Commissioners
(Bureau of Land and Water Resources)

Mississippi Civil Defense Council
Mississippi Department of Archives and History
Mississippi Game and Fish Commission
(Bureau of Fisheries and Wildlife)
Mississippi Geological, Economic, Topographical Survey
(Bureau of Geology and Energy Resources) (BGER)
Mississippi Mineral Lease Commission
(Bureau of Geology and Energy Resources) (BGER)

Mississippi Marine Conservation Commission
(Bureau of Marine Resources)
Mississippi Oil and Gas Board
Mississippi Port Authority
Office of the Governor
Southern Mississippi Planning and Development District

NOTE: The names of some of these agencies have changed since the intergovernmental advisory committee was founded. These are indicated in parentheses.

Coastal Zone Management Workshop

An unusual opportunity was afforded members of the Intergovernmental Advisory Committee and staff by participation in a game-type workshop. As provided for through the Office of Coastal Zone Management, the workshop enabled participants to assume roles such as public officials, industrialists

and developers and to be faced with realistic situations similar to those which may be created as a result of coastal program implementation.

This workshop provided additional insight to possible day to day operations faced by the implementing agency of a coastal management program.

Recent Activities

The most recent activities of the Bureau in plan coordination involved extensive dialogue between the three county development commissions and with the state agencies expected to interact with the coastal program.

The major emphasis of the program and the county industrial development commissions stemmed from the need of a recommendation to the county governing bodies of an additional regulated activity to be included in the Wetlands Law. This stipulation was required in legislation which passed in 1979; however, it was deleted by legislation in 1980.

FEDERAL PARTICIPATION (15 CFR 923.51)

One of the first steps in involving the federal government in development of the Mississippi Coastal Program was an identification of those relevant agencies which might interact with the program. These agencies were afforded the opportunity for participation through preliminary correspondence which asked each agency to designate within their respective offices a coastal program development contact.

Those agencies which designated a contact were visited by a representative of BMR, then the MMRC. The purpose of these meetings was to meet the designated program contacts to establish working arrangements. Through these initial contacts, a working relationship was developed with the participating federal agencies.

The involvement process started in the early stages of coastal program development. Thirty-seven federal agencies were provided opportunities to participate through correspondence and individual meetings. These are listed in Table IX-7.

Other contacts were in the form of six major documents or reports regarding various aspects of the Mississippi Coastal Program. These documents were mailed to both federal and state agencies to ensure that federal and state interests would be considered in the developmental stages of Mississippi's Coastal Program as required in Section 307(b) of the CZM Act. These documents are: (i) informational worksheets, (ii) Land and Water Use Matrix, (iii) Methodology for Determining Areas of Particular Concern, (iv) Interim Report on Permissible Land and Water Uses, (v) Interim Report on Boundaries and Federal Lands, and (vi) Interim Report on Geographic Areas of Particular Concern.

TABLE IX-7

FEDERAL AGENCIES CONSULTED IN PROGRAM DEVELOPMENT

Department of Agriculture

- Agriculture Stabilization and Conservation Service
- Farmers Home Administration
- Forest Service
- Soil Conservation Service

Department of Commerce

- Economic Development Administration
- Maritime Administration
- National Marine Fisheries Service
- National Oceanic and Atmospheric Administration
- Office of Minority Business Enterprise

Department of Defense

- U. S. Air Force
- U. S. Army Corps of Engineers
- U. S. Navy

Department of Housing and Urban Development

- Area Office
- Federal Insurance Administration

Department of the Interior

- Office of the Secretary
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mining
- Bureau of Outdoor Recreation
- Fish and Wildlife Service
- U. S. Geological Survey
- National Park Service

Department of Transportation

- Representative of the Secretary
- U. S. Coast Guard
- Federal Aviation Administration
- Federal Railroad Administration
- Office of Pipeline Safety
- Urban Mass Transit Administration

*Energy Research and Development Administration
Environmental Protection Agency
*Federal Energy Administration
*Federal Power Commission
General Services Administration
Interstate Commerce Commission
National Aeronautics and Space Administration
Nuclear Regulatory Commission

*These agencies have been reorganized since program development began. The Energy Research and Development Administration and the Federal Energy Administration have been combined into D.O.E. The Federal Power Commission has become the Federal Energy Regulatory Commission (FERC). FERC's administrative functions are handled by D.O.E., but its regulatory functions are administered solely by FERC.

Results of State/Federal Involvement

State and federal agency comments have been instrumental in the development of program aspects regarding special management areas, shoreline erosion, energy facility sitings, federal lands and in the overall organization of the program document. Through the involvement of state and federal agencies, BMR has entered into interagency agreements with the Corps of Engineers on the federal level and with the Governor's office of federal-state programs on the state level.

Future Contacts

The BMR staff will continue to solicit federal agency views and comments through correspondence, meetings, interagency agreement and through routine working relationships. These contacts will be most valuable during the implementation of the Mississippi Coastal Program.

PUBLIC HEARINGS (15 CFR 923.58)

BMR held public hearings, in each coast county on April 21, 22, and 24, 1980. These hearings were held after 30 days notice. Comments were received on the Hearing Draft of the Mississippi Coastal Program, and a record of the hearings is being maintained. Approximately 101 persons attended these hearings. In addition to these hearings, a DEIS hearing was held June 16, 1980.

PLAN COORDINATION (15 CFR 923.56)

Since the inception of Mississippi's Coastal Program, the Marine Resources Council (now BMR) has attempted to incorporate existing plans and programs prepared by various planning and governmental agencies into program development in response to 15 CFR 923.56. A general description of the coordination efforts follows.

Local Government Plans

Local zoning ordinances and maps were obtained and reviewed. Determinations were made as to whether the program would conflict with existing municipal and county zoning.

Another aspect of local considerations was developed through consultation with several of the various city and county planning commissions. These include the Hancock and Harrison County Planning Commissions and the City of Biloxi Planning Commission. In addition, major contributions to the coastal management planning process were made by the Jackson County Planning Commission in supplying information for both urban and non-urban areas of the county.

Regional Planning Agency Plans

In preparing the Mississippi Coastal Program, BMR contracted with various regional planning agencies to study and develop numerous reports and to coordinate particular aspects of the coastal program. In addition, staff members of these regional planning agencies have participated on the Intergovernmental Advisory Committee which was responsible for reviewing and revising program documents and studies. Through these opportunities numerous regional planning agencies have made valuable contributions to the program planning process, while at the same time aiding in shaping the program and assuring consistency with regional plans. As an example both Southern Mississippi Planning and Development District (SMPDD) and Gulf Regional Planning Commission (GRPC) have prepared numerous reports on various aspects of the program.

Two planning activities that have a direct relationship with the Mississippi Coastal Program are the programs under the Department of Housing and Urban Development (DHUD) Section 701 and the Environmental Protection Agency (EPA) Section 208 Wastewater Management Effort.

The Section 208 program for the state's coastal areas - "Mississippi Gulf Coast Water Quality Management Program" encompasses the three coastal counties. This program will anticipate the long range wastewater treatment needs for the next 20 years.

Section 701, the Comprehensive Planning Assistance Program was established by the Housing Act of 1954. By a series of legislative amendments and administrative actions, the 701 program has become the basic federal grant program for most planning agencies. Recently, the program has been directed toward housing, equal opportunity, environmental impact assessments and technical assistance in planning and management.

Goals and policies developed for the 701 program to be used by GRPC in its planning efforts have been reviewed by the former Marine Resources Council (now BMR) and found to be consistent with the goals, policies and objectives of the state's coastal management program.

State Agency Plans

Listed below are those applicable and significant plans referenced in the development of the proposed coastal program.

1. The Bureau of Pollution Control - BMR has participated in the development of EPA's Section 201 Wastewater Planning Program; in addition, BMR will also participate in the forthcoming Section 208 planning program.

2. The Bureau of Water Resources - The Bureau reviewed several reports published by this agency including an analysis of the State's Furface Waters and Drainage Basin Studies.

3. Mississippi Department of Archives and History - The Statewide Comprehensive Historic Preservation Plan provided most of the material needed in determining those historic and archeological sites for recommendation as geographic areas of particular concern by Gulf Regional Planning Commission under contract with the program.

4. The Bureau of Fisheries and Wildlife - This agency provided information pertaining to wildlife and fish management areas, management refuges, and areas that sustain remnant species. In addition, the Natural Heritage Program provides a statewide survey of endangered plants, animals, plant communities, aquatic type habitats and other unique natural occurrences within the state.

5. The Bureau of Recreation and Parks - The Bureau aided directly in the preparation of Mississippi's Statewide Comprehensive Outdoor Recreational Plan (SCORP) developed by parks and recreational bureaus.

6. Mississippi Research and Development Center - The Bureau reviewed and commented on this agency's yearly planning programs, which included the use of HUD "701" planning funds. In addition, the Research and Development Center assists communities with applications for Community Development funds. The Research and Development Center is also the contact agency for the Federal Insurance Administration (FIA) flood insurance program.

7. Mississippi Civil Defense Council - The Bureau is coordinating its coastal management program with information being prepared by the Civil Defense Council.

The Bureau of Marine Resources anticipates continued coordination with agencies conducting planning activities in the coastal area during implementation. The review procedures included in the MCP will allow for a better exchange of information and materials therefore facilitating coordination of planning activities.

CONTINUING CONSULTATION MECHANISMS (15 CFR 923.57)

The Mississippi Coastal Program envisions future involvement in all aspects of public and governmental consultation and coordination in response to 15 CFR 923.57. This would employ many of the same means used in the developmental stages of the program, such as press releases, correspondence, mailing lists, and advisory committees. These participation measures are necessary to ensure further open consideration of the relevant interests in the coastal area.

In an effort to provide better coordination between various agencies and governments and the coastal program, several methods and processes will be initiated in the implementation stages of the program by the Bureau of Marine Resources. These are described below:

1. Coordination between the Bureau and local governments will continue, particularly with respect to SMA's.

2. The Bureau would continue to work with other state and federal agencies through the program's policy coordination procedures.

3. A working relationship will be maintained with the EPA Section "208" wastewater management agency - the Bureau of Pollution Control.

4. The Bureau would seek and encourage interagency memorandums of agreement to aid in the management process, particularly with respect to the U. S. Army Corps of Engineers, the U. S. Fish and Wildlife Service and the National Marine Fisheries Service.

SECTION 7: NATIONAL INTEREST 915 CFR 923.52)

The Coastal Zone Management Act (CZMA) requires each coastal program to show that it provides for adequate consideration of the national interest in the planning for and in the siting of facilities necessary to meet requirements which are more than local in nature.

Early in the development of Mississippi's Coastal Program efforts were made to identify uses and national resources for which there is a prevalent national interest. These were:

1. National defense and aerospace
2. Energy production and transmission
3. Recreation--e.g., national seashores, parks, forests, outstanding beaches and recreational waterfronts
4. Transportation, ports and navigation
5. Air and water quality
6. Endangered flora and fauna
7. Living marine resources
8. Wetlands
9. Floodplains and barrier islands
10. Historic and cultural resources
11. Wild and scenic rivers

It is the intent of the Bureau of Marine Resources and the Mississippi Coastal Program to demonstrate that adequate consideration has been and will be given to facilities in which there is a national interest. However, in a balanced coastal program, it is important to recognize that other national interests, such as the national interest in resource conservation and protection, will be involved in decisions regarding the siting of identified national interest facilities. Consequently, resource issues were also considered during program development. The national interests in these resources and facilities is shared by Mississippi and is reflected in the goals of the coastal program, as specified in Section 57-15-6 of the Mississippi Code.

Involved federal agencies were contacted throughout the various stages of the development of the coastal program. Further, Mississippi state agencies representing both state and national concerns were consulted. Those agencies consulted are identified in Section 6, Chapter IX.

Consultation with both federal and state agencies, coupled with the use of major statutes and policy documents, has provided a sound basis for a program which has considered the national interest both in structure and content. In addition, the program provides for continued consideration of the national interest in ongoing decision-making through the policy coordination procedures of Chapter VIII, Section 4; national interest is treated specifically in the guidelines in Chapter VIII, Section 7.

NATIONAL DEFENSE AND AEROSPACE

In determining the national interest in national defense and aerospace, the following were consulted: (i) Department of Defense, including the U. S. Air Force, Army Corps of Engineers, and the Navy; (ii) the U. S. Coast Guard; and (iii) the National Aeronautics and Space Administration.

BMR has determined that the national interest in national defense and aerospace is:

1. To insure the sovereignty of the nation and to protect its citizens against physical harm or expropriation.

2. To establish and maintain the facilities necessary to carry out the first objective.

The Mississippi Coastal Program recognizes the importance of national defense facilities to insure the nation's sovereignty and to protect its citizens. Obviously, strategically located defense facilities such as Keesler Air Force Base, the Naval Construction Battalion Center, and National Space Technology Laboratories are necessary to achieve these ends.

As part of its ongoing decision-making process, the coastal program will consider the national interest in defense and aerospace through the policy coordination provisions in Chapter VIII, Section 4. In addition, the federal lands in Table IX-2 are excluded from the coastal area; included among these lands are defense and aerospace installations. This exclusion recognizes the national sovereignty in defense and aerospace matters. However, even though federal lands are excluded from the coastal area, any activities undertaken by beferal entities on such properties are subject to the federal consistency requirements of Section 307 of CZMA.

ENERGY

In determining the national interest in activities related to energy production and transmission, the following documents, legislation and federal agencies were consulted:

1. National Energy Plans I and II

2. National Environmental Policy Act of 1969

3. Outer Continental Shelf Lands Act

4. Department of Energy (formerly included the Energy Research and Development Administration, Federal Energy Administration, and Federal Power Commission)

5. Nuclear Regulatory Commission

6. Department of Interior, including the Office of the Secretary, the Bureau of Land Management, the Bureau of Mining, and the U. S. Geological Survey

7. Department of Transportation, including the Office of Pipeline Safety, the U. S. Coast Guard, and the Federal Highway Administration

8. Department of Commerce, including NOAA, the Maritime Administration and the Economic Development Administration.

9. Council on Environmental Quality

The most useful articulation of the national interest in energy facility planning and siting is found in National Energy Plans I and II. Overriding objectives are: (i) conservation and fuel efficiency; (ii) reasonable certainty and stability in government policies, (iv) substitution of abundant energy resources for those in short supply, and (v) development of non-conventional fuel sources.

The Mississippi Coastal Program has incorporated the national interest related to energy in several ways:

1. Goal eight of the program requires that all state agencies consider the national interest when carrying out their responsibilities in the coastal area. This goal is implemented through the policy coordination procedures in Chapter VIII, Section 4.

2. The energy facility planning process in Chapter VII of the program insures that the state will collect, analyze, and use important management information in considering new energy facilities.

3. BMR is responsible for CEIP in Mississippi and has incorporated CEIP into the coastal program. This insures that the coastal program can assist local governments in the provision of public facilities and services required as a result of energy activities so that energy developments are not impeded by inadequate public facilities at the local level.

4. The coastal wetland permitting procedures described in Chapter VIII, Section 2, are based on a use plan and guidelines that promote predictability and stability in the state regulation of potential energy facilities. In addition, the coastal

wetlands use plan specifically provides for the development of certain sites for industrial purposes. The energy facility planning process has shown that the coast will experience the development of industries, generally water related, in support of energy activity. The designation of wetland areas in support of designated sites specifically provides for the type of development required by energy activities.

RECREATION

In determining the national interest in recreation, the following documents, legislation and federal agencies were consulted: (i) Mississippi Statewide Comprehensive Outdoor Recreation Plan; (ii) Historic Preservation Act; (iii) Land and Water Conservation Fund Act; and (iv) Department of the Interior, including the Fish and Wildlife Service, National Park Service and Heritage Conservation and Recreation Service.

Major objectives of the national interest in recreational facilities have been determined to be:

1. To consider recreation as an equal among competing uses of the coastal region.

2. To provide high quality recreational opportunities to all people of the United States while protecting the coastal environment.

3. To increase public recreational opportunities in high density areas.

4. To improve coordination and management of recreation areas.

5. To protect existing recreation areas from adverse effects of contiguous uses.

The national interest has been incorporated into the Mississippi Coastal Program through several means. First, the special management areas in Chapter VI include shorefront access areas for which site-specific plans for recreation will be done. Second, the affirmative management activities in Chapter VII will support recreational development through public facilities assistance. Finally, the policy coordination procedures in Chapter VIII, Section 4 include the consideration of the national interest in recreation.

TRANSPORTATION, PORTS AND NAVIGATION

To determine the national interest in transportation, ports and navigation, the following documents and federal agencies were consulted: (i) Rivers and Harbors Act of 1899; (ii) Department of Commerce, Maritime Administration; (iii) Department of Defense, including the U. S. Army Corps of Engineers and the U. S. Navy; (iv) Department of Transportation, including the Office of the Secretary, the Federal

Aviation Administration, the Federal Railroad Administration, the Federal Highway Administration, the Urban Mass Transit Administration and the U. S. Coast Guard.

The major objectives of the national interest in transportation have been determined to be:

1. To develop a balanced national transportation system including well articulated and integrated surface air, water, and subsurface modes.

2. To provide fast, safe, efficient and convenient access via one or more modes of transportation for the movement of people, goods and services to, from, and through the coastal region.

The Mississippi Coastal Program has considered these objectives through the policy coordination procedures in Chapter VIII, Section 4, which requires that all state agencies consider the national interest in transportation. In addition, the coastal wetlands use plan in Chapter VIII, Section 2 provides for navigation channels, and the guidelines in the same chapter specifically address transportation facilities to improve predictability in governmental decision-making.

AIR AND WATER QUALITY

In determining the national interest in air and water quality, the following were consulted: (i) Federal Water Pollution Control Act; (ii) Clean Water Act of 1977; (iii) Resource Conservation and Recovery Act; (iv) Clean Air Act and 1970 Amendments; (v) Environmental Protection Agency; (vi) National Marine Fisheries Service; (vii) U. S. Fish and Wildlife Service; and (viii) U. S. Coast Guard; and (ix) U. S. Army Corps of Engineers.

Obviously, the national interest concerning air and water is to protect the quality of these resources which in turn enhance the quality of life of citizens of the United States. The Mississippi Coastal Program considers the national interest in air and water quality by incorporating the state policy "to conserve the air and waters of the state, and to protect, maintain, and improve the quality thereof for public use, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate beneficial uses." This policy is enforced by the Bureau of Pollution Control through the policy coordination provisions of Chapter VIII, Section 4.

ENDANGERED FLORA AND FAUNA

In determining the national interest in endangered flora and fauna, the following legislation and federal agencies were consulted: (i) Endangered Species Act of 1973; (ii) Fish and Wildlife Coordination Act; (iii) Marine Protection, Research and Sanctuaries Act of 1972;

(iv) Marine Mammal Protection Act of 1972; (v) Migratory Bird Act; (vi) National Marine Fisheries Service; (vii) U. S. Fish and Wildlife Service; and (viii) the Agricultural Stabilization and Conservation Service.

The Mississippi Coastal Program has determined that the national interest in endangered flora and fauna is:

1. To provide a means to preserve ecosystems which threatened and endangered species depend on.

2. To consider the effect of proposed activities on threatened and endangered species.

The national interest in endangered flora and fauna is considered principally through the special management areas outlined in Chapter VI, the coastal wetlands use plan and guidelines in Chapter VIII, and the consideration of the endangered or threatened species is achieved through the coordination procedures in Chapter VIII, Section 4. Within the state's Department of Wildlife Conservation, the National Heritage Program will be relied upon to provide input about endangered flora and fauna.

LIVING MARINE RESOURCES

In determining the national interest in living marine resources, the following documents, legislation, and federal agencies were consulted: (i) Offshore Shrimp Fisheries Act of 1973; (ii) Fishery Conservation and Management Act of 1976; (iii) Fish and Wildlife Coordination Act; (iv) Marine Mammals Protection Act of 1972; (v) Marine Protection, Research, and Sanctuaries Act of 1972; (vi) National Marine Fisheries Service; (vii) U. S. Army Corps of Engineers; (viii) U. S. Fish and Wildlife Service; (ix) U. S. Coast Guard; and (x) various fisheries management plans.

The major objectives of the national interest in living marine resources have been determined to be:

1. To conserve, enhance and manage in a rational manner commercial fishing, which constitutes a major source of employment and contributes significantly to the food supply, economy and health of the nation.

2. To develop and protect all species of wildlife, resources thereof and their habitat, and to control losses by damage to habitat areas through coordination with other resources management programs.

The national interest in living marine resources and the goals of the Mississippi Coastal Program are entirely congruent. BMR is charged with the responsibility to protect, propagate, and conserve the state's seafood and aquatic life in connection with the revitalization of the

seafood industry of the State of Mississippi. In addition, the habitats of living marine resources are preserved through the program's wetlands management efforts. These are fully described in Chapters III, and IV, and in Section 2 of Chapter VIII. In addition, the effects of proposed activities on living marine resources will be considered through the policy coordination procedures of Chapter VIII, Section 4.

WETLANDS

In determining the national interest in wetlands, the following documents, legislation and federal agencies were consulted: (i) the National Environmental Policy Act of 1969; (ii) the Fish and Wildlife Coordination Act; (iii) Executive Order 11990; (iv) the Clean Water Act; (v) the Department of Agriculture, including the Forest Service and the Soil Conservation Service; (vi) the U. S. Army Corps of Engineers; (vii) the Department of Commerce, including the Office of Coastal Zone Management and the National Marine Fisheries Service; (viii) the U. S. Fish and Wildlife Service; (ix) the Environmental Protection Agency; and (x) the Council on Environmental Quality.

The national interest in wetlands has been interpreted to be:

1. To protect wetlands because of their value as habitat and food sources for aquatic life and waterfowl.

2. To protect wetlands because of their functions relative to flood prevention, storm buffering, water supply, nutrient exchange, and as a recreational resource.

3. To avoid to the extent possible the long and short term adverse impacts associated with the disruption or modification of wetlands and to avoid direct or indirect support of new construction in wetlands whenever there is a reason able and prudent alternative.

The Mississippi Coastal Program considers the national interest in wetlands protection by virtue of the state's Wetlands Law which states that "it is the public policy of the state to favor the preservation of the coastal wetlands and ecosystems, except where a specific alteration of a specific coastal wetlands would serve a higher public interest in compliance with the public purposes of the public trust in which the coastal wetlands are held. Wetlands protection through the coastal program is described in Chapter III. Section 2 of Chapter VIII provides rules and regulations pursuant to wetlands protection, and Section 4, Chapter VIII describes the policy coordination procedures whereby wetlands protection is considered in decision-making in the coastal area.

FLOOD PLAINS AND BARRIER ISLANDS

In determing the national interest in flood plains, flood hazard areas, and barrier islands the following documents, legislation and federal

agencies were consulted: (i) the Mississippi Research and Development Center; (ii) the Barrier Islands Study; (iii) the Flood Disaster Protection Act of 1973; (iv) the National Flood Insurance Act of 1968; (v) the Water Resources Development Planning Act of 1974; (vi) Executive Order 11988; (vii) the Federal Insurance Administration; (viii) the Federal Emergency Management Administration; (ix) the U. S. Army Corps of Engineers; and (x) the Heritage Conservation and Recreation Service.

The major objective of the national interest in these areas is to avoid long and short term adverse impacts associated with the occupancy and modification of floodplains and barrier islands. Mississippi meets this objective through the policy coordination procedures described in Chapter VIII, Section 4.

HISTORIC AND CULTURAL RESOURCES

In determining the national interest in historic sites and cultural resources the following documents, legislation, and federal agencies were consulted: (i) the Mississippi Statewide Comprehensive Historic Preservation Plan; (ii) the National Historic Preservation Act; (iii) the Antiquities Act of 1906; (iv) the Historic Sites Act of 1935; (v) the National Historic Preservation Act of 1966, amended under the Land and Water Conservation Fund Act of 1976; (vi) the National Environmental Policy Act of 1969; (vii) the National Park Service and (vii) the Heritage Conservation and Recreation Service.

The major objectives of the national interest in historic sites and districts have been identified to be:

1. To afford protection to significant historic (including archeological sites) from adverse impacts.

2. To consider cultural resources in assessing the environmental impacts of proposed activities.

The Mississippi Coastal Program includes important provisions to consider the national interest in historic sites. The Department of Archives and History is one of the four coastal program agencies. This department administers the State Antiquities Law which declares that it is "the public policy and in the public interest of the State of Mississippi to locate, protect and preserve all sites, objects buildings, shipwrecks and locations of historical, archeological, educational or scientific interest..." (Section 39-7-3). This policy is carried out through the policy coordination provisions of Chapter VIII, Section 4.

WILD AND SCENIC RIVERS

In determining the national interest in wild and scenic rivers, the Heritage Conservation and Recreation Service's "River Inventory in the Southeastern United States" and Department of the Interior representatives were consulted.

BMR has determined that the national interest in wild and scenic rivers is to consider the benefits that these rivers provide in their free-flowing state, and to coordinate activities affecting these rivers with efforts authorized by Congress under the Wild and Scenic Rivers Act. This applies to the following rivers in the coastal area:

Black Creek	above R.M. 0
Excatawpa River	above R.M. 13
Pascagoula River	above R.M. 13
Pearl River	above R.M. 0
Red Creek	above R.M. 0
Wolf River	above R.M. 0

The national interest in wild and scenic rivers will be considered through the policy coordination procedures in Chapter VIII, Section 4, and through inventory and mapping efforts described in Chapter VII.

CONTINUED CONSIDERATION OF NATIONAL INTEREST

Mississippi will rely on contacts and working relationships with federal agencies to provide continued consideration of the national interest.

The policy coordination procedures and the wetlands permitting process have provisions for consideration of the national interest. These procedures will insure the consideration of the national interest in the planning for and siting of facilities on an ongoing basis.

Appendices

APPENDIX A

COASTAL WETLANDS PROTECTION LAW

§ 49-27-1. Title and citation of chapter.

This chapter is to be known as the "Coastal Wetlands Protection Law" and may also be cited by its common or popular name of "Wetlands Law."

SOURCES: Laws, 1973, ch. 385, § 1, eff from and after July 1, 1973.

§ 49-27-3. Public policy declared.

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

SOURCES: Laws, 1973, ch. 385, § 2, eff from and after July 1, 1973.

Cross references—

As to prohibitions against pollution of waters, streams and air, see Chapter 17 of this title.

As to required preparation and implementation of coastal area plan by marine resources council that would further public policy expressed by this section, see § 57-15-6.

As to leasing for the development of port and related industrial facilities in furtherance of the policy set forth in this section, see § 59-9-21.

§ 49-27-5. Definitions.

(a) "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.

(b) The term "coastal wetlands" shall be interpreted to include the flora and fauna on the wetlands and in the wetlands.

(c) "Regulated activity" means any of the following activities: (i) the dredging, excavating or removing of soil, mud, sand, gravel, flora, fauna or aggregate of any kind from any coastal wetland; (ii) the dumping, filling or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind or garbage, either directly or indirectly, on or in any coastal wetlands; (iii) killing or materially damaging any flora or fauna on or in any coastal wetland; (iv) the erection on coastal wetlands of structures which materially affect the ebb and flow of the tide; and (v) the erection of any structure or structures on suitable sites for water dependent industry.

(d) "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.

(e) "Filling" means either the displacement of waters by the deposition into coastal wetlands of soil, sand, gravel, shells or other material; or the artificial alteration of water levels or water currents by physical structures, drainage ditches or otherwise.

(f) "Person" means any natural person, partnership, joint stock company, corporation, unincorporated association or society, or the state and any agency thereof, or any county, municipality, or political subdivision, or any other corporation of any character whatsoever.

(g) "Council" means the Mississippi Marine Resources Council.

(h) "Water dependent industry" means those commercial, industrial or manufacturing activities which, for purposes basic to their existence must occur or locate on or adjacent to the estuaries, sounds, channels, shores or marshlands of the coast. "Suitable sites for water dependent industry" means those areas of land which are suitable for the development of water dependent industry because of their proximity to waters of navigable depth, size and configuration, topography, soil conditions and access to other means of transportation. After consultation with local governments, port authorities, development commissions, port and harbor commissions, and other interested parties, and after full consideration of zoning ordinances duly adopted by local governments, the council shall designate those sites it deems suitable for water dependent industry. The definition of "suitable sites for water dependent industry" shall be limited to, but not necessarily inclusive of, waterfront sites owned by county port authorities, development commissions and port and harbor commissions, and to areas that are now or are later made to be within one thousand (1,000) feet of the centerline of any natural or maintained channel having a depth of seven (7) feet or greater at mean low water. However, additional sites may be included in the definition of suitable sites for water dependent industry with the concurrence of the board of supervisors in the county affected.

SOURCES: Laws, 1973, ch. 385, § 3; 1974, ch. 401, § 1; 1979, ch. 492, § 2, eff from and after passage (approved April 18, 1979).

§ 49-27-7. Chapter inapplicable to certain activities, areas and entities—exempt parties or agencies to adhere to declared public policy and advise of activities.

The provisions of this chapter shall not apply to the following activities, areas and entities:

(a) The accomplishment of emergency decrees of any duly appointed health officer of a county or municipality or of the state, acting to protect the public health;

(b) The conservation, repletion and research activities of the Mississippi Marine Conservation Commission, the Mississippi Marine Resources Council, the Mississippi Gulf Coast Research Laboratory, the Mississippi Game and Fish Commission, and the Mississippi-Alabama Sea Grant Consortium when acting through the Mississippi Universities Marine Center;

(c) Hunting, erecting duck blinds, fishing, shellfishing and trapping when and where otherwise permitted by law;

(d) Swimming, hiking, boating or other recreation that causes no material harm to the flora and fauna of the wetlands;

(e) The exercise of riparian rights by the owner of the riparian rights, provided that the construction and maintenance of piers, boathouses and similar structures are constructed on pilings that permit a reasonably unobstructed ebb and flow of the tide; provided, further, that the riparian owner may reasonably alter the wetland at the end of his pier in order to allow docking of his vessels;

(f) The normal maintenance and repair of bulkheads, piers, roads and highways existing on the date of enactment of this chapter, and all interstate highways planned but not yet under construction; and financed in part by Federal Interstate Highway Trust Funds;

(g) Wetlands developed in the future by federal, state or county governments for the establishment of a superport or a pipeline buoy terminal for deep-draft, ocean-going vessels, including but not limited to, wetlands adjacent to Petit Bois Island and the Bayou Casotte Channel in Jackson County, Mississippi;

(h) The Biloxi Bridge and Park Commission, Biloxi Port Commission, Long Beach Port Commission, Pass Christian Port Commission, Pascagoula Port Commission, and any municipal or local port authorities;

(i) Wetlands used under the terms of the use permit granted by Chapter 395, Laws of 1954;

(j) Any activity affecting wetlands that is associated with or is necessary for the exploration, production or transportation of oil or gas when such activity is conducted under a current and valid permit granted by a duly constituted agency of the State of Mississippi;

(k) Activities of any mosquito control commission which is a political subdivision or agency of the State of Mississippi;

(l) The Fisherman's Wharf to be constructed in Biloxi and the Buccaneer State Park to be constructed in Hancock County, both by the state park commission;

(m) Wetlands conveyed by the state for industrial development thereon pursuant to section 211, Mississippi Constitution of 1890, and pursuant to section 29-3-61, Mississippi Code of 1972;

(n) Coastal wetlands within five (5) feet of private property;

(o) The activities of the Hancock County Port and Harbor Commission affecting wetlands within its jurisdiction;

(p) The activities of the Harrison County Development Commission affecting wetlands within its jurisdiction;

(q) The activities of the Jackson County Port Authority affecting wetlands within its jurisdiction;

(r) The activities of the Mississippi State Port at Gulfport affecting wetlands within its jurisdiction; and

(s) In the case of regulated activities which, in the judgment of the director or his delegate, after an on-site inspection, have no harmful impact on the environment and which make no substantial change in the wetlands, the director may issue a certificate of waiver, and no permit shall be required.

All parties or agencies exempt from the regulatory provisions, whether by name or reference, when carrying out what would otherwise be regulated activities in coastal wetlands shall at all times adhere to the policy as set forth in section 49-27-3 and each such agency shall further advise the council of all such activities so that the council may be fully advised of all activities in the coastal wetlands.

SOURCES: Laws, 1973, ch. 385, § 4; 1974, ch. 401, § 2, eff from and after passage (approved March 25, 1974).

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

No regulated activity shall affect any coastal wetlands without a permit unless excluded in Section 49-27-7. Any person proposing to conduct or causing to be conducted a regulated activity shall file an application for a permit with the Commission on Wildlife Conservation in such form and with such information as the commission may prescribe. An application fee in an amount to be established by commission regulations shall accompany each application and shall be payable to the commission. No permit shall be required for a regulated activity as defined in 49-27-5(c)(v) if such activity is an activity by a water dependent industry, not shall a permit be required pursuant to Section 49-27-5(c)(v) of any individual who seeks to construct a home, fishing camp, or similar structure on his own property.

§ 49-27-11. Application—contents.

(1) An application shall include the following:

(a) The name and address of the applicant;

(b) The names and addresses of the present owners of record of adjacent land, as determined by current tax assessment rolls and of known claimants of riparian or water rights in or immediately adjacent to the coastal wetland, or a certification that after diligent search and inquiry the said names and addresses could not be found;

(c) A detailed description of the proposed activity and a map, drawn to an appropriate and uniform scale showing by section, township and range, or by latitudinal and longitudinal coordinater, the location and area of the coastal wetlands to be affected, indicating the location and area of existing and proposed fill, excavation or other regulated activities; showing the location, width, depth and length of any proposed channel and dredge spoil disposal site; showing all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways and related appurtenances or facilities, including those on adjacent uplands; describing the type of equipment to be used and the means of equipment access to the activity site;

(d) An estimate of the cost of the activity;

(e) The primary and secondary purposes of the project, including contemplated future projects;

(f) A description of any public benefit to be derived from the proposed project dependent upon the proposed activity;

(g) A complete description of measures to be taken to reduce detrimental off-site effects to the coastal wetlands during and after the proposed activity;

(h) The completion date of the proposed activity and of the project dependent upon the activity;

(i) An appropriate written report or statement of the environmental impact of the proposed regulated activity and of the final project dependent on it upon the affected coastal wetlands and the life dependent upon them, provided that an environmental impact statement treating the same activity in the same area and supplied to another federal or state agency for considering a permit shall satisfy this requirement if submitted by the applicant; and

(j) A certification that a permit from the Mississippi Air and Water Pollution Control Commission has been applied for or that such permit is not required; that a permit from the United States Corps of Engineers has been applied for or that such permit is not required; that permits or other certificates of compliance with applicable municipal or county building codes and zoning ordinances have been applied for or are not required.

(2) Any person filing an application to dredge an existing channel for navigational purposes need only show that such channel was lawfully in existence on the date of enactment of this chapter and on the date such application was filed.

SOURCES: Laws, 1973, ch. 385, § 5(b)(c)(d); 1974, ch. 401, § 3, eff from and after passage (approved March 25, 1974).

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

The council shall cause a copy of any application to be mailed immediately to the following parties:

(1) The chief administrative officer in the municipality or municipalities where any part of the proposed activity will be located;

(2) The president of the board of supervisors of any county where any part of the proposed activity will be located;

(3) The director of the state game and fish commission;

(4) The county attorney of any county in which any part of the proposed activity will be located or in any county which may be affected by such activity;

(5) The district attorney of any judicial district in which any part of the proposed activity will be located or of any district which may be affected by such activity;

(6) The director of the Gulf Regional Planning Commission; and

(7) The chairman of the Mississippi Marine Conservation Commission

SOURCES: Laws, 1973, ch. 385, § 5(e), eff from and after July 1, 1973.

§ 49-27-15. Application—notice of date for filing objections—hearing and notice of hearing.

Not later than sixty (60) days from the receipt of any application, the council shall publish notice of a date on or before which written objections to any application must be filed. If written objection is filed or if the applicant requests a hearing, then a hearing must be held within twenty (20) days after the date on or before which objections must be filed unless a later date for the hearing is agreed to by all parties. Notice of the date on or before which objections must be filed shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper of general circulation in the county in which the affected wetlands are located. The last publication of such notice shall be made not more than seven (7) days prior to such date. The published notice shall describe the site of the proposed activity and shall give a general description of the proposed regulated activity. Further, notice shall be given describing the date, time and place for the said hearing by U. S. Mail, postage prepaid, to each of the objectors and to the applicant at the address furnished to the council by said parties, and by causing a copy of such notice to be published at least one (1) time in one (1) newspaper having a general circulation in the county in which the affected wetlands are located.

SOURCES: Laws, 1973, ch. 385, § 5(f); 1974, ch. 401, § 4, eff from and after passage (approved March 25, 1974).

§ 49-27-17. Application—notice to parties prior to date set for hearing—effect of failure to comply with section.

The following parties shall be notified of a hearing by the council by mail prior to the date set for the hearing, but a failure to meet this requirement shall not invalidate any permit granted thereafter:

(a) All of those parties who are entitled to receive a copy of such application in accordance with section 47-27-13 of this chapter; and

(b) All known present owners of record of adjacent land as reflected by current tax assessment rolls and all known claimants to water or riparian rights in or adjacent to the coastal wetlands affected.

SOURCES: Laws, 1973, ch. 385, § 5(g); 1974, ch. 401, § 5, eff from and after passage (approved March 25, 1974).

§ 49-27-19. Application—appearance at hearing by person filing objection—applicant's burden of proof and right to hearing.

(a) Any person who files a written objection pursuant to section 49-27-15 may appear at the public hearing and be heard.

(b) The burden of proof shall be on the applicant, whether a hearing is held or not provided, however, no application shall be denied without giving the applicant a right to a hearing according to the provisions of this chapter.

SOURCES: Laws, 1973, ch. 385, § 5(h)(i), eff from and after July 1, 1973.

§ 49-27-21. Public inspection of evidence, applications and related documents—record and transcription of oral testimony.

Documentary evidence offered at hearings and all applications and related documents shall be open for public inspection at the office of the council at reasonable times. Oral testimony shall be recorded and shall not be required to be transcribed except in the event of appeal.

SOURCES: Laws, 1973, ch. 385, § 5(j); 1974, ch. 401, § 6, eff from and after passage (approved March 25, 1974).

§ 49-27-23. Expressed public policy to be considered in connection with permits—permit from Mississippi Air and Water Pollution Control Commission—resolution of conflicts.

In granting, denying, suspending, revoking or limiting any permit, the council shall consider the effect of the proposed activity with reference to the public policy expressed in section 49-27-3 of this chapter. A permittee under this chapter must obtain a permit from the Mississippi Air and Water Pollution Control Commission if required by the Mississippi Air and Water Pollution Control Commission under sections 49-17-29 to 49-17-43, and nothing in this chapter is intended to waive the requirements and standards of the Mississippi Air and Water Pollution Control Commission. A Mississippi Air and Water Pollution Control Commission permit granted to an applicant under this chapter shall be proof of the applicant's meeting any water quality standard considered by the council under this chapter. Any conflict between the council under this chapter and the Mississippi Air and Water Pollution Control Commission shall be resolved in favor of the Mississippi Air and Water Pollution Control Commission; provided, however, that the council may undertake studies regarding water quality and submit the results of such studies to the air and water pollution control commission.

SOURCES: Laws, 1973, ch. 385, § 6(a); 1974, ch. 401, § 7, eff from and after passage (approved March 25, 1974).

§ 49-27-25. Permits for old channels to be issued without bond.

In response to applications for old channels under subsection (b) of section 49-27-11 of this chapter, upon satisfactory completion of the requirements of subsection (b) of section 49-27-11 by the applicant, the council shall issue a permit to the applicant without bond.

SOURCES: Laws, 1973, ch. 385, § 6(b), eff from and after July 1, 1973.

§ 49-27-27. Permits to dredge new channels—considerations and restrictions.

In considering permits to dredge new channels by applicants under subsection (c) of section 49-27-11, the council shall take into consideration in addition to section 47-27-23 the benefit of such channel to the public at large, or to surrounding landowners, and the extent of use projected for the channel, as well as the ecological, economic, commercial, recreational and aesthetic value of the wetlands affected. The council shall, where practical, require applicants to use existing channels, so as to reduce the coastal wetlands affected.

SOURCES: Laws, 1973, ch. 385, § 6(c), eff from and after July 1, 1973.

§ 49-27-29. Conditions or limitations may be imposed on grant of permit.

In granting any permit the council may impose conditions or limitations on the proposed activity designed to carry out the public policy set forth in this chapter.

SOURCES: Laws, 1973, ch. 385, § 6(d), eff from and after July 1, 1973.

§ 49-27-31. Performance bond may be required—exception.

The council may require a performance bond in an amount to be set by the council with surety and satisfactory conditions securing to the state compliance with the conditions and limitations set forth in any permit, except a permit under section 49-27-25.

SOURCES: Laws, 1973, ch. 385, § 6(e), eff from and after July 1, 1973.

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

The council, after reasonable notice in writing to the holder of a permit and after a hearing in the manner as provided in sections 49-27-15 to 49-27-21 of this chapter, shall suspend or revoke a permit if the council finds that the applicant has not substantially complied with one or more of the conditions or limitations set forth in the permit or has exceeded the scope of the activities as set forth in the application.

SOURCES: Laws, 1973, ch. 385, § 6(f); 1974, ch. 401, § 8, eff from and after passage (approved March 25, 1974).

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

The council shall state, upon its record, its findings and reasons for all actions taken pursuant to sections 49-27-23 to 49-27-37. When a permit is granted, the council shall describe the public interest to be served by granting a permit. When a permit is refused the council shall describe the public interest which would be adversely affected by granting the permit.

SOURCES: Laws, 1973, ch. 385, § 6(g), eff from and after July 1, 1973.

§ 49-27-37. Copy of order in issuance, denial, revocation or suspension of permit to be sent to parties—time.

The council shall send a copy of any order in issuance, denial, revocation or suspension of a permit to the parties stated in section 49-27-17, and such orders must be sent within ninety (90) days from the receipt of the application in the case of granting or denying or thirty (30) days from the date of the hearing in the case of suspension or revocation.

SOURCES: Laws, 1973, ch. 385, § 6(h), eff from and after July 1, 1973.

§ 49-27-39. Appeal to chancery court—when council's order to be confirmed.

(a) An appeal may be taken by the applicant, or any person or corporation, municipal corporation, county or interested community group who has been aggrieved by such order, from the denial, suspension or revocation of a permit or the issuance of a permit or conditional permit and who has filed written protest or objection as specified in sections 49-27-9 to 49-27-21, within thirty (30) days after the mailing to the parties of the order of issuance, denial, suspension or revocation of any such permit, to the chancery court of any county having jurisdiction over the property which may be affected by any such proposed activity to be authorized by such permit.

(b) If the court finds that the order appealed from is supported by substantial evidence, consistent with the public policy set forth in this chapter, is not arbitrary or capricious and does not violate constitutional rights, it shall affirm the council's order.

SOURCES: Laws, 1973, ch. 385, § 7(a)(b), eff from and after July 1, 1973.

§ 49-27-41. Appeal to chancery court—complaint—return date—cost bond—record—appeal with supersedeas.

Such appeal shall be brought by a complaint in writing, stating fully the reasons therefor, signed by an authorized party, and shall be served at least twelve (12) days before the return date upon the council and upon all parties having an interest adverse to the appellant as designated under subsection (a) of section 49-27-39. Such appeals shall be brought to the next return day of the court after the filing of such appeal or may be returned to a day set by fiat of the court. A cost bond must be posted with sufficient sureties payable to the state in the sum of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), to be fixed in the order appealed from and to be filed with and approved by the director of the council, who shall forthwith certify the same, together with a certified copy of the transcription record of the proceedings of the council in the matter to the chancery court to which the appeal is taken, which shall thereupon become the record of the cause. An appeal to the chancery court as provided herein shall not stay the execution of an order of the council; provided, however, that any party aggrieved by an order of the council may petition the chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on said petition, and upon good cause shown may grant said appeal with supersedeas in which case the appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor.

SOURCES: Laws, 1973, ch. 385, § 7(c), eff from and after July 1, 1973.

§ 49-27-43. Appeal to chancery court—service upon council—certification of record.

Upon the filing of an appeal, the clerk of the chancery court shall serve notice thereof upon the council, whereupon the council shall within sixty (60) days, or within such additional time as the court may for cause allow, from the service of such notice certify to the chancery court the record in the case, which record shall include a transcript of all testimony, all objections, all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the council may stipulate that only a specified portion of the record shall be certified to the court as the record on appeal.

SOURCES: Laws, 1973, ch. 385, § 7(d), eff from and after July 1, 1973.

§ 49-27-45. Appeal to chancery court—when case to be referred back to council.

If, upon hearing such appeal, it appears to the court that any testimony has been improperly excluded by the council or that the facts disclosed by the record are insufficient for the equitable disposition of the appeal, it shall refer the case back to the council to take such evidence as it may direct and report the same to the court with the council's findings of fact and conclusions of law.

SOURCES: Laws, 1973, ch. 385, § 7(e), eff from and after July 1, 1973.

§ 49-27-47. Appeal to chancery court—precedence—powers of chancellor.

Such appeal shall have precedence in the order of trial, and the chancellor may order the granting, denial, revocation, suspension or limitation of any permit or may remand to the council for such order.

SOURCES: Laws, 1973, ch. 385, § 7(f), eff from and after July 1, 1973.

§ 49-27-49. Appeal to supreme court.

Appeals may be taken from the chancery court to the supreme court in the manner as now required by law, except that if a supersedeas is desired by the party appealing from the chancery court, he may apply therefor to the chancellor thereof, who shall award a writ of supersedeas without additional bond if, in his judgment, material damage is not likely to result thereby, but otherwise he shall require such supersedeas bond as he deems proper which shall be liable to the state or applicant for such damage.

SOURCES: Laws, 1973, ch. 385, § 7(g), eff from and after July 1, 1973.

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

(1) The attorney general of the State of Mississippi at the request of the council, a district attorney having jurisdiction, or a county attorney having jurisdiction may initiate the civil or criminal actions, or both civil and criminal actions, as described in this chapter against any person or persons believed to be in violation of this chapter.

(2) The parties described in subsection (1) of this section may initiate actions to enjoin any person or persons believed to be in violation of this chapter.

SOURCES: Laws, 1973, ch. 385, § 8(a)(b); 1974, ch. 401, § 9, eff from and after passage (approved March 25, 1974).

§ 49–27–53. Jurisdiction and venue for judicial actions.

Jurisdiction and venue for judicial actions brought pursuant to this chapter shall lie in any county or counties in which the alleged violation occurs or in which property affected by such violation is located.

SOURCES: Laws, 1973, ch. 385, § 8(c), eff from and after July 1, 1973.

§ 49–27–55. Civil liability of violators—restoration—punitive damages—mandatory injunction—jurisdiction of circuit or county court—remedies preserved.

(a) Any person who violates the provisions of this chapter shall be liable to the State of Mississippi for the restoration of all affected coastal wetlands to their condition prior to such violation, insofar as such restoration is possible, and for any and all damages to the wetlands. The appropriate chancery court by writ of mandatory injunction shall allow a reasonable time for completion of the restoration and may, in its discretion, order as punitive damages a sum not to exceed five hundred dollars ($500.00) per day for each day such violation has existed. The said chancery court may further order as punitive damages a sum not to exceed five hundred dollars ($500.00) per day for each day that the violation exists beyond the date set by said court in its injunction for the restoration of said wetland. If injunctive relief is not sought, the appropriate circuit or county court shall have jurisdiction over any action for damages and/or punitive damages as set forth in this paragraph.

(b) Nothing in this chapter shall preclude other statutory or common law remedies by public or private parties against violators or nonviolators of this chapter.

SOURCES: Laws, 1973, ch. 385, § 8(d)(e), eff from and after July 1, 1973.

§ 49–27–57. Fines and penalties.

(a) In addition to civil liability under this chapter, a violation of this chapter is a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100.00) and not more than one thousand dollars ($1,000.00) or by imprisonment of not more than thirty (30) days, or both.

(b) In the case of continuing violations, each day shall constitute a separate charge; however, separate violations under this chapter need not be severed for trial when an identity of parties and location exists.

(c) It shall be a misdemeanor to materially harm or disturb scientific devices and recording instruments left in coastal wetlands by authorized agencies of the state or federal government, and a violation of this subsection shall be punishable by a fine of not more than five hundred dollars ($500.00) or imprisonment of not more than thirty (30) days or both.

SOURCES: Laws, 1973, ch. 385, § 9, eff from and after July 1, 1973.

§ 49–27–59. Rules and regulations.

The council shall adopt, promulgate and publish rules and regulations for the implementation of this chapter. Before becoming effective, such rules and regulations, and any changes thereafter, must be published once a week for at least three (3) consecutive weeks in a newspaper having general cirrulation throughout the State of Mississippi. Such rules and regulations shall provide procedure whereby an individual or organization may receive at their own expense copies of the applications provided for in section 47–27–13 of this chapter.

SOURCES: Laws, 1973, ch. 385, § 10, eff from and after July 1, 1973.

§ 49–27–61. Charges for materials removed under permit.

The council may charge the fair market value of any materials removed from coastal wetlands by a permittee or his agent under the terms of any permit issued.

SOURCES: Laws, 1973, ch. 385, § 11, eff from and after July 1, 1973.

§ 49–27–63. Investigations and reports of violations.

The council and the marine conservation commission shall, from time to time, inspect the coastal wetlands to determine whether violations have been or are being committed and report any such violations to the council.

SOURCES: Laws, 1973, ch. 385, § 12, eff from and after July 1, 1973.

§ 49–27–65. Evaluation of coast wetlands—charts—education of public—overall use plan.

(a) In order to implement the policy set forth in the chapter and to assist the commission in protection of coastal wetlands, the council acting with the cooperation and assistance of the Gulf Regional Planning Commission and the Gulf Coast Research Laboratory shall evaluate the coastal wetlands and prepare charts at an appropriate scale showing the distribution of coastal wetlands as defined in this chapter. These charts will be provided to the offices of the chancery clerk of affected counties and to the Gulf Regional Planning Commission. The charts will be updated and reissued periodically as needed to provide a current inventory of coastal wetlands.

(b) The council shall promote the education of the public about scientific and economic knowledge concerning coastal wetlands.

(c) In recognition of the national policy expressed in the Coastal Zone Management Act of 1972, Public Law 92–583, the council is directed to include an overall plan for use of coastal and private wetlands in the Mississippi Coastal Zone Management Plan being prepared by the council, and the council is further directed to identify and include in such plan specific coastal and private wetlands which the council recommends should be set aside as estuarine sanctuaries.

SOURCES: Laws, 1973, ch. 385, § 13, eff from and after July 1, 1973.

§ 49–27–67. Exclusion from assessment for ad valorem taxes.

Any coastal wetlands now assessed for ad valorem taxes against the abutting landowner shall be excluded from the assessment of the said landowner's property upon proper application being made as otherwise provided by law.

SOURCES: Laws, 1973, ch. 385, § 14, eff from and after July 1, 1973.

§ 49–27–69. Disposition of fees and other sums.

All fees and other sums received by the council pursuant to this chapter shall be deposited to the credit of the general fund of the State of Mississippi.

SOURCES: Laws, 1973, ch. 385, § 15, eff from and after July 1, 1973.

APPENDIX B

MISSISSIPPI MARINE RESOURCES COUNCIL
(NOW BMR)
Enabling Legislation

§ 57-15-1. Legislative declaration.

The legislature hereby declares that this chapter is being enacted under the state's inherent general welfare and police power authority for the broad purposes hereinafter set forth in an effort to explore, develop, conserve and market the underwater natural resources of this state, particularly those lying offshore in the coastal waters of the State of Mississippi.

SOURCES: Codes, 1942, § 8946-160; Laws, 1970, ch. 293, § 10, eff from and after passage (approved April 3, 1970).

§ 57-15-3. Wildlife conservation commission to assume powers of marine resources council.

(1) The Mississippi Commission on Wildlife Conservation, hereinafter referred to as the "council," shall be the Mississippi Marine Resources Council, and shall function insofar as practicable under the provisions of Chapter 4 of Title 49, Mississippi Code of 1972, through the bureau of marine resources of the Mississippi Department of Wildlife Conservation, in cooperation with the Mississippi Agricultural and Industrial Board, the Mississippi Research and Development Council, and the board of trustees of state institutions of higher learning, with particular reference to the gulf coast research laboratory, the universities marine center, and the universities and colleges which are conducting oceanographic research. The offices of the bureau of marine resources shall be located in Hancock, Harrison or Jackson Counties.

(2) The words "Mississippi Marine Resources Council," wherever they may appear in the Laws of the State of Mississippi, shall be construed to mean the Mississippi Commission on Wildlife Conservation.

SOURCES: Laws, 1978, ch. 484, § 25, eff from and after July 1, 1979.

§ 57-15-5. Purposes; powers.

(1) It is hereby declared to be the intent of the legislature by this chapter that the policy of the council hereby created shall be conducted according to the following guidelines: the council shall have the general purpose and policy of studying and developing plans, proposals, reports and recommendations for the development and utilization of the coastal and offshore lands, waters and marine resources of this state in order to insure that all future plans and/or programs of the State of Mississippi involving the field of marine resources and sciences, oceanographic research, and related studies, will be coordinated with comparable functions and programs of agencies of the United States government. The council shall further have the purpose and policy to help coordinate, as hereinabove provided, all plans of other agencies of this state engaged in similar activities and of the various states of the United States of America, and also with all private agencies whose purpose is marine science and resource development. The council is further authorized to enter into contract with any state or federal agency as may be necessary and requisite to carry out the purposes of this chapter. The council shall have the responsibility for the general management of the state's wetlands.

(2) The council is authorized and empowered to solicit and accept financial support from sources other than the state, including private or public sources or foundations. All funds received by or appropriated to the council shall be deposited upon receipt thereof into a special fund in the state treasury to be known and designated as the "Mississippi Marine Resources Council Fund."

Expenditures from said special fund shall be made in the following manner: expenditures by and for the council for the purpose of carrying out its functions as provided by law shall be made with the approval of the council at any meeting upon requisitions presented to the state auditor in the manner provided by law, and paid by the state treasurer. Full and complete accounting shall be kept and made by the council for all funds received and expended by it. Representatives of the office of the state auditor of public accounts annually shall audit the expenditure of funds received by the council from all sources and the said auditor shall make a complete and detailed report of such audit to the legislature. It is further provided that all state appropriated funds expended shall conform to all requirements of law as provided for expenditures by the laws applicable to the commission of budget and accounting.

(3) The council may solicit, receive and expend contributions, matching funds, gifts, bequests and devises from any source, whether federal, state, public or private, as authorized by annual appropriations therefor.

(4) The council may enter into agreements with federal, state, public or private agencies, departments, institutions, firms, corporations or persons to carry out its policies as provided for in this chapter. To accomplish these goals, the council may expend any such sums from any source as herein provided.

The agreements provided for in this subsection shall include, but not be limited to, the following provisions:

(a) The duration of the agreement;

(b) The purpose of the agreement;

(c) A description of the procedures to be used in carrying out the purpose of the agreement; and

(d) Provisions for termination of the agreement.

Any entity entering into such an agreement shall comply with the provisions therein.

SOURCES: Laws, 1978, ch. 420, § 1; 1979; ch. 492, § 4, eff from and after passage (approved April 18, 1979).

§ 57-15-6. Goals of coastal program.

(1) In recognition of the Coastal Zone Management Act of 1972, as amended, the council is directed to prepare and implement a coastal program that establishes guidelines and procedures pursuant to the following goals:

(a) To provide for reasonable industrial expansion in the coastal area and to insure the efficient utilization of waterfront industrial sites so that suitable sites are conserved for water dependent industry;

(b) To conserve the resources of the coastal area for this and succeeding generations in accordance with the public policies expressed in sections 39-7-3, 49-15-1, 49-17-3, 49-27-3 and 51-3-1, Mississippi Code of 1972;

(c) To consider the national interest involved in planning for and in the siting of facilities in the coastal area;

(d) To encourage the preservation of natural scenic qualities in the coastal area;

(e) To assist local governments in the provisions of public facilities and services in a manner consistent with the coastal program; and

(f) To insure the effective, coordinated implementation of public policy in the coastal area of Mississippi comprised of Hancock, Harrison and Jackson Counties.

(2) It is the intent of the legislature that the coastal program described in subsection (1) of this section should comprise a statement of consolidated state policy in the coastal area, incorporating all applicable constitutional provisions, laws and regulations of the State of Mississippi. Where the coastal program includes provisions that are otherwise under the jurisdiction of another state agency, the coastal program shall not conflict with such agency's jurisdiction.

(3) In addition to the powers and duties now conferred upon them by law, all state agencies shall carry out their responsibilities in the coastal area in compliance with the coastal program described in subsection (1) of this section unless otherwise prohibited by law. The coastal program shall include procedures by which conflicts between state agencies concerning their compliance with the coastal program may be resolved. Further, the council shall establish in the program procedures to review and coordinate any decisions affecting the coastal area so that all state agencies and other interested parties will have the opportunity to participate in such decisions.

(4) In cooperation with other agencies having responsibilities in the coastal area, the council shall seek to develop "one-stop permitting" to coordinate the processing and issuing of permits, licenses and other such instruments in the coastal area. It is the intent of the legislature that one-stop permitting shall expedite the decision making of all governmental entities having separate regulatory jurisdiction or authority over activities in the coastal area without impinging on the regulatory jurisdiction or authority of these governmental entities.

One-stop permitting shall be implemented by means of the agreements authorized in subsection (4) of section 57-15-5, and shall provide for the following:

(a) A single application form for all required permits or approvals from governmental entities in the coastal area; such application form shall contain sufficient information so that the necessary reviews of all affected governmental entities can be expeditiously carried out;

(b) Consolidated public hearings so that a single public hearing may serve to meet the requirements of the several public hearings as may now be provided by law for issuing a permit, license or other such instrument in the coastal area;

(c) The shortest practicable review period for applications, proper allowances being made for all interested parties to become informed and to make their opinions heard by the appropriate agencies; and

(d) Joint permitting procedures for state and federal agencies.

The one-stop permitting provided for in this subsection shall not alter the powers, duties and responsibilities of any governmental entity, its expressed purpose being to improve the procedural operations of these entities.

(5) After consultation with county port authorities, development commissions, and port and harbor commissions having jurisdiction in the coastal area, the council shall prepare as part of the coastal program a long-term plan for the development of suitable sites for water dependent industry. The council shall include in this plan provisions for the disposal of spoil material from dredging operations. In designating suitable sites for water dependent industry, the council shall consider the nature and extent of specific altera-

tions that would serve a higher public interest pursuant to the development of these sites.

(6) Where necessary to implement the coastal program described in subsection (1) of this section, the council may acquire real or personal property by purchase, condemnation, lease or agreement as authorized from time to time by the legislature.

SOURCES: Laws, 1979, ch. 492, § 5, eff from and after passage (approved April 18, 1979).

§ 57-15-7. Objectives of council.

The council exercising the prerogatives and functions as set out in section 57-15-5, shall have as the aim for the State of Mississippi to provide for effective, efficient and economic development of marine resources available to the State of Mississippi, and to cause suitable skilled professionals and labor to harness the marine resources of this state's coastal, offshore and water resources toward achieving the highest economic growth potential possible through modern concepts and technology in the oceanographic field and scientific discovery of underwater marine resources. To accomplish these goals, the council shall carry out or cause to be carried out continuing study of the science of oceanography as it relates to Mississippi, and the development of a long-range oceanographic program for the State of Mississippi.

SOURCES: Codes, 1942, § 8946-153; Laws, 1970, ch. 293, § 3, eff from and after passage (approved April 3, 1970).

§ 57-15-9. Advisory functions.

The council, exercising its duties and responsibilities, shall also act in an advisory capacity to the governor and all related state agencies, including the board of trustees of state institutions of higher learning, the Gulf Coast Research Laboratory and the Universities Marine Center which are conducting oceanographic research. All state boards and agencies engaged in activities in the field of marine resources and technology shall utilize this commission as a clearinghouse on all present and future joint federal-state programs whether presently administered by an existing agency or not; to advise on the best programs available to the State of Mississippi for the development of its marine resources, and how to apply for, receive or hold any and all such authorizations, licenses and grants necessary and proper therefor; to advise on the utilization of all facilities in the State of Mississippi for marine research and development, such as the future maximum utilization of the NASA-Mississippi Test Facility, but not limiting the provisions of this chapter exclusively thereto; and to advise on all in-depth studies necessary to carry out the provisions of this chapter. This chapter shall not, however, abrogate the authority of the Mississippi Marine Conservation Commission, the board of trustees of state institutions of higher learning or the Gulf Coast Research Laboratory, the Universities Marine Center, or of the individual institutions under the board's control to apply for grants, and to carry out oceanographic research. Said council is hereby authorized to receive services, gifts, contributions, property and equipment from public and private sources to be utilized in the discharge of the council's functions, all to be done within the purview of this chapter.

SOURCES: Codes, 1942, § 8946-154; Laws, 1970, ch. 293, § 4, eff from and after passage (approved April 3, 1970).

§ 57-15-11. Repealed by Laws, 1978, ch. 484, § 26, eff from and after July 1, 1979.

§ 57-15-13. Repealed by Laws, 1978, ch. 484, § 26, eff from and after July 1, 1979.

§ 57-15-15. Repealed by Laws, 1978, ch. 484, § 26, eff from and after July 1, 1979.

§ 57-15-17. Minutes of proceedings.

The executive director of the council shall keep regular and accurate minutes of the council's proceedings in a minute book provided for that purpose which shall be a public record and all findings and recommendations and acts of the said council shall be entered upon its minutes as may be necessary for its official acts, deeds, expenditures and other major objectives to be in keeping with established state agencies.

SOURCES: Codes, 1942, § 8946-158; Laws, 1970, ch. 293, § 8, eff from and after passage (approved April 3, 1970).

APPENDIX C

MISSISSIPPI MARINE CONSERVATION COMMISSION
(NOW BMR)
Enabling Legislation Fisheries Management

§ 49–15–1. Public policy of the state as to seafood laws.

As a guide to the interpretation and application of this chapter, the public policy of this state shall be to recognize the need for a concerted effort to work toward the protection, propagation and conservation of its seafood and aquatic life in connection with the revitalization of the seafood industry of the State of Mississippi, which is one of the state's major economic resources and affords a livelihood to thousands of its citizens; and in this connection, it is the intent of the legislature to provide a modern, sound, comprehensive and workable law to be administered by specialists, who are vested with full and ample authority to take such action as may be necessary in order to help protect, conserve and revitalize seafood life in the State of Mississippi; it being at all times remembered that all of the wild aquatic life found in the waters of the State of Mississippi and on the bottoms of such waters, until taken therefrom in the manner hereinafter prescribed, is recognized as the property of the State of Mississippi because of its very nature, as well as because of the great value of the state of the aquatic life for food and other necessary purposes.

SOURCES: Codes, 1942, § 6047-01; Laws, 1960, ch. 173, § 1, eff from and after passage (approved March 23, 1960).

§ 49–15–3. Definitions.

(a) As used in this chapter, the term "seafood" shall mean all oysters, saltwater fish, saltwater shrimp, diamondback terrapin, sea turtle, crabs and all other species of marine or saltwater animal life existing or living in the waters within the territorial jurisdiction of the State of Mississippi.

(b) The word "inspector," when used herein, shall have reference to the chief inspector, the assistant chief inspector or any deputy inspector employed by the Mississippi Department of Wildlife Conservation and acting under authority of the Mississippi Commission on Wildlife Conservation.

(c) The term "commission," when used herein, shall refer to the Mississippi Commission on Wildlife Conservation.

(d) The words "Mississippi Marine Conservation Commission," wherever they appear in the laws of the State of Mississippi, shall be construed to mean the Mississippi Commission on Wildlife Conservation.

(e) The term "natural reefs" shall be defined as any bottom under the jurisdiction of the commission of one or more acres on which oysters grow naturally, or have grown naturally, in a quantity sufficient to warrant commercial fishing as a means of livelihood, or shall have been used in such a manner within a period of ten (10) years next preceding the time at which such bottoms may come up for determination by the commission.

(f) The term "tonging reefs" is defined as any bottom under the jurisdiction of the commission of one or more acres on which oysters grow naturally, and where they have been taken by the use of hand tongs in commercial quantities for a period of ten (10) years next preceding the time at which such bottoms may come up for determination by the commission.

(g) The term "tonging reef," in addition to the areas described in paragraph (f) hereof, shall include all of those areas described in section 49–15–39, and in addition thereto the following area hereinafter described:

Waters of the Bay of St. Louis north of the Louisville and Nashville Railroad Company's bridge, and

In the limits beginning at a point one (1) mile from shore in the City of Bay St. Louis at the Louisville and Nashville Railroad Company's bridge, thence southerly following the meanderings of the shore along Bay St. Louis and Waveland one and one quarter (1¼) miles therefrom to the head of Waveland Avenue in the Town of Waveland; thence westerly to the shore at the head of Waveland Avenue, and

In the limits beginning at a point one (1) mile from shore in the City of Bay St. Louis at the Louisville and Nashville Railroad Company's bridge, thence southerly following the meanderings of the shore along Bay St. Louis, Waveland, Clermont Harbor, Lake Shore and one and one forth (1¼) miles therefrom to a point known as Bayou Caddy, thence westerly to the shore to a point created by Bayou Caddy and the Mississippi Sound.

SOURCES: Laws, 1978, ch. 484, § 23, eff from and after July 1, 1979.

§ 49–15–5. All seafoods initially the property of the state.

All seafoods existing or living in waters within the territorial jurisdiction of the State of Mississippi not held in private ownership legally acquired, and all beds and bottoms of rivers, streams, bayous, lagoons, lakes, bays, sounds and inlets bordering on or connecting with the Gulf of Mexico or Mississippi Sound within such territorial jurisdiction, including all oysters and other shell fish and parts thereof grown thereon, either naturally or cultivated, shall be, continue, and remain the property of the State of Mississippi, to be held in trust for the people thereof until title thereto shall be legally divested in the manner and form hereinafter authorized, and the same shall be under the exclusive control of the commission until the right of private ownership shall vest therein as hereinafter provided.

SOURCES: Codes, 1942, § 6047-03; Laws, 1960, ch. 173, § 3, eff from and after passage (approved March 23, 1960).

§ 49–15–7. Oyster, clam, cay shells and other shells declared to be property of state.

All shells of dead oysters, clams and other shellfish; and all of the oyster shells, clam shells, mussel shells, dead reef shells, and cay shells, being upon or under the bottom of, or under the tidewaters within the territorial jurisdiction of the State of Mississippi, and all beds, banks and accumulations of such shells within such territorial jurisdiction on or under the bottoms of such waters, or surrounded by such waters, being the property of the State of Mississippi are hereby further declared to be the property of the State of Mississippi under the jurisdiction of the Mississippi Marine Conservation Commission.

SOURCES: Laws, 1974, ch. 572, § 1, eff from and after passage (approved April 25, 1974).

§ 49–15–9. Rights of riparian owners on Gulf Coast defined.

The sole right of planting and gathering oysters and erecting bathhouses and other structures in front of any land bordering on the Gulf of Mexico or Mississippi Sound or waters tributary thereto belongs to the riparian owner and extends not more than seven hundred fifty (750) yards from the shore, measuring from the average low water mark, but where the distance from shore to shore is less than fifteen hundred (1500) yards, the owners of either shore may plant and gather to a line equidistant between the two (2) shores, but no person shall plant in any natural channel so as to interfere with navigation, and such riparian rights shall not include any reef or natural oyster bed and does not extend beyond any channel. Stakes of such fra.l materials as will not injure any watercraft may be set up to designate the bounds of the plantation, but navigation shall not be impeded thereby. Any oysters planted by such riparian owner are the private property of such riparian owner, subject to the right of the commission to adopt reasonable rules and regulations as to the planting and gathering of such oysters. All bathhouses, piers, wharfs, docks and pavilions, or other structures owned by riparian owner are likewise the private property of such owner, who shall be entitled to the exclusive use, occupancy and possession thereof, and may abate any private or public nuisance committed by any person or persons in the area of his riparian ownership and may, for such purposes, resort to any remedial action authorized by law. The governing authorities of any municipality and the board of supervisors of any county are authorized to adopt reasonable rules and regulations to protect riparian owners in the enjoyment of their riparian rights, and for such purposes may regulate the use of beaches, landings, and riparian areas abutting or fronting on roads, streets or highways.

SOURCES: Codes, 1942, § 6047-10; Laws, 1960, ch. 173, § 10; 1962, ch. 195,

§ 49–15–11. Wildlife conservation commission to assume powers of marine conservation commission.

The Mississippi Commission on Wildlife Conservation shall be the Mississippi Marine Conservation Commission, and is hereby vested with full power to manage, control, supervise and direct any matters pertaining to all saltwater aquatic life not otherwise delegated to another agency. Said power shall be exercised through the bureau of marine resources of the Mississippi Department of Wildlife Conservation, insofar as practicable under the provisions of Chapter 4 of Title 49, Mississippi Code of 1972. The offices of the bureau of marine resources shall be located in Hancock, Harrison or Jackson Counties.

SOURCES: Laws, 1974, ch. 572, § 2; 1978, ch. 484, § 24, eff from and after July 4, 1979.

§ 49–15–12. [Repealed by Laws, 1978, ch. 484, § 26, eff from and after July 1, 1979].

§ 49–15–13. [Repealed by Laws, 1978, ch. 484, § 26, eff from and after July 1, 1979].

§ 49–15–15. Jurisdiction, authority and duties of commission.

(1) The express purpose of this section is to furnish the commission with jurisdiction and authority over all marine aquatic life.

(2) The commission shall have full jurisdiction and control of all public and natural oyster reefs and oyster bottoms of the State of Mississippi.

(3) In connection with its jurisdiction and authority, the commission:

(a) Shall set standards of measure.

(b) Shall open, close, and regulate fishing seasons for the taking of shrimp, oysters, fish taken for commercial purposes and crabs. However, the shrimp season shall open on the first Wednesday of June, 1974, and on the first Wednesday of June in each year thereafter; provided, however, that the commission, by majority vote, may open the season at an earlier or later date only after sampling areas within its jurisdiction where shrimp may be caught for the purpose of determining the count of shrimp per pound. The commission may also, by majority vote, close certain designated areas where the shrimp count is found, by sampling, to be in excess of sixty-eight (68) per pound.

(c) Shall set size, catching and taking regulations for all types of seafood and culling regulations for oysters. Unless otherwise permitted by the commission, no oysters shall be taken from the reefs of this state unless culled upon the natural reefs, and all oysters which shall measure less than three (3) inches from end to end, and all dead shells, shall be immediately replaced and scattered and broadcast from the natural reefs from which they are taken; and it shall be unlawful for any captain or person in charge of any vessel, or any canner, packer, commission man, dealer or other person to purchase, sell or to have in its possession or under his control any oysters off the public reefs or private bedding grounds not culled according to the provisions of this section, or any oysters under the legal size aforesaid. A ten percent (10%) tolerance shall be allowed in relation to any culling. The commission, in its discretion, may authorize the culling of oysters of a lesser measure. Such authorization shall be in response to special circumstances or extreme natural conditions affecting the habitat, including but not limited to flooding.

(d) For the purpose of growing oysters, may acquire and dispose of shells, seed oysters and other materials. However, fifty percent (50%) of all the oyster shells produced from oysters taken from the public reefs of the State of Mississippi and fifty percent (50%) of all oyster shells produced from the oysters processed within the State of Mississippi are hereby declared to be the nontransferable property of the State of Mississippi, and all persons, firms or corporations dealing in or canning oysters taken from the public reefs of the state shall deliver to the commission fifty percent (50%) of the oyster shells taken or processed by such person, firm or corporation, delivery of same to be at the place of business of the oyster processor, dealer or factory. The commission, at its option, may set a reasonable price to be paid to it for the above shells taken from waters within the territorial jurisdiction of the State of Mississippi, but processed in other states, in lieu of taking delivery of same; provided, further, that the commission may, at its option, elect to levy a shell retention fee in an amount which it shall set for each barrel of shells retained by any person, firm or corporation in lieu of demanding a remittance of fifty percent (50%) of the oyster shells, and upon election by the commission to exercise the option to accept such retention fee, then this option exercised by the commission shall be uniformly applied to all persons, firms and corporations affected by this chapter. Funds received from the shell retention fee shall be used by the commission to further oyster production in this state. Any person failing or refusing to deliver such shells or shell retention fee to the commission when called for by it, as provided in this section, shall, upon conviction, be fined not less than ten cents (10¢) nor more than fifty cents (50¢) for each barrel of shells they fail or refuse to deliver, or to tender the shell retention fee; and, in addition thereto, shall pay the reasonable value thereof and shall be ineligible to be licensed for any of the activities set forth in this chapter. The provisions herein for replanting oyster shells taken from the reefs of the State of Mississippi may be waived upon written notice by the director upon concurrence of the senior marine biologist.

(e) Shall set forth enforcement procedure and penalties for violations.

(f) May set requirements for employment of nonenforcement commission employees whose compensation shall be governed by the rules and regulations of the Mississippi Classification Commission.

(g) May acquire and dispose of commission equipment and facilities.

(h) Shall arrange for keeping of proper records of the commission.

(i) May enter into advantageous interstate and intrastate agreements with proper officials, which agreements directly or indirectly result in the protection, propagation and conservation of the seafood of the State of Mississippi, or continue any such agreements now in existence.

(j) May arrange, negotiate or contract for the use of available federal, state and local facilities which would aid in the propagation, protection and conservation of the seafood of the State of Mississippi.

(k) Is authorized to enact all regulations necessary for the protection, conservation or propagation of all shrimp, oysters, commercial fish and crabs in the waters under the territorial jurisdiction of the State of Mississippi. However, it shall be unlawful for any person, firm or corporation to take, catch or have in their possession within territorial waters of the State of Mississippi shrimp of a size weighing in the raw state less than one (1) pound to each sixty-eight (68) shrimp, except when a valid permit or affidavit of another state identifies the catch as having been taken in non-Mississippi waters. This provision may be changed by a two-thirds (⅔) vote of the commission.

(l) Shall establish minimum specifications for crab traps and shall require buoys of adequate size which are identified as to the owner of such buoys and traps.

(m) Shall prohibit the operation of double rigs in the waters lying between the mainland coast and the island chain.

(n) Shall establish open season for menhaden not later than the third Monday in April and ending no sooner than the second Tuesday in October.

(o) Shall require all boats used under regulation of this chapter which are also used in waters of other states and required by such states to pay licenses or fees for the same purposes as licenses and fees are required under this chapter to purchase a license which reflects that such licensed boats are used within and without the territorial waters of Mississippi. Upon the issuance of such license, such licensed boat, if used exclusively for commercial fishing and not for pleasure, sport or charter fishing, shall be deemed to be in the business of interstate transportation; however, this shall in no way affect the collection of other licenses and fees by the commission which would otherwise be due under this chapter.

(4) The commission shall keep and maintain an official ordinance book into which shall be copied all regulations promulgated by the commission under authority herein granted, and each regulation so promulgated shall immediately thereafter be advertised one (1) time in a newspaper or newspapers having general circulation in counties affected by such regulation, provided that the regulation shall not become effective less than seven (7) days after its publication, except in cases of emergency declared as such by two-thirds (⅔) of the members of the commission.

(5) The director shall have printed an abstract copy of this chapter and all subsequent amendments thereto, as well as all regulations promulgated by the commission, and shall distribute the same to all persons interested and desiring a copy thereof and to each licensee at the time of issuance of the license. New regulations and amendments to this chapter shall be supplied to each licensee within a reasonable time after their promulgation.

(6) Upon permit issued by the Mississippi Marine Resources Council, the commission is hereby specifically empowered and authorized to support projects in the nature of digging or constructing canals or ditches in order to bring additional water to existing oyster reefs or beds in need of same, or for the purpose of creating or establishing new oyster reefs or beds, and all reefs so created or established shall be deemed public reefs. The leasing of bottoms as provided in section 49-15-27 shall require the concurrence of the Mississippi Marine Resources Council. The commission is authorized to expend such monies as it shall deem necessary and expedient in order to participate in the digging of such canals. The commission may also enter into interstate or intrastate efforts toward this end, and may seek and utilize aid from all federal, state and local sources in this endeavor. To aid in the construction of such canals or ditches, the commission may exercise the right of eminent domain in the manner provided by law on the subject.

SOURCES: Laws, 1974, ch. 572, § 4; 1975, ch. 521, § 1; 1978, ch. 497, § 1, eff from and after passage (approved April 19, 1978).

§ 49-15-17. [Repealed by Laws, 1978, ch. 484, § 26, eff from and after July 1, 1979].

§ 49-15-19. [Repealed by Laws, 1978, ch. 484, § 26, eff from and after July 1, 1979].

§ 49-15-21. [Repealed by Laws, 1978, ch. 484, § 26, eff from and after July 1, 1979].

§ 49-15-23. Commission to enter agreement with game and fish commission to divide line between salt and fresh waters.

(1) (a) The Mississippi Marine Conservation Commission and the state game and fish commission are hereby authorized and empowered to enter into an agreement for jurisdictional purposes as to the dividing line between salt and fresh waters, and when such line has been established and notice thereof given as provided herein, it shall be recognized in the courts in connection with any proceedings under the game and fish laws of this state. Such line may be changed from time to time by supplemental agreements of said Mississippi Marine Conservation Commission and state game and fish commission on proper publication of such changes.

(b) In establishing the dividing line between salt and fresh waters, no part of the Bay of St. Louis shall be deemed to be fresh water.

(2) Whenever any agreement is executed as provided in paragraph (1)(a) above, or whenever any supplemental agreement is made as above provided, notice shall be given to the public by publication for three (3) weeks in a newspaper published and having general circulation in the county or counties affected thereby, and a copy of such agreement shall be filed in the office of the chancery clerk of such counties or county.

SOURCES: Codes, 1942, § 6051.5; Laws, 1954, ch. 191, §§ 1, 2; 1958, ch. 195, § 6; 1971, ch. 454, § 1, eff from and after passage (approved March 26, 1971).

§ 49-15-25. Advisory council may be appointed by commission.

The commission may appoint an advisory council of persons who may fairly be regarded as representative of all the various segments of the industry. This council shall aid the commission in formulating policies and discussing problems related to the administration of this chapter and the advancement and protection of the industry.

SOURCES: Codes, 1942, § 6047-14; Laws, 1960, ch. 175, § 14, eff from and after passage (approved March 23, 1960).

§ 49-15-27. Commission granted authority to lease bottoms.

The commission is hereby granted full and complete authority to lease the bottoms within its jurisdiction upon the following terms and conditions:

(1) All areas within the commission's jurisdiction, not designated tonging reefs by this chapter, or hereinafter designated tonging reefs by the commission; all areas not designated natural reefs by the commission, and all areas not within the boundaries of riparian property owners may be leased by the commission.

(2) All individual lessees shall be residents of the State of Mississippi, or if a firm or corporation, such firm or corporation shall be organized under the laws of the State of Mississippi.

(3) No individual, corporation, partnership or association may lease less than five (5) acres nor more than one hundred (100) acres; provided, however, that in the case of an individual there shall not be counted towards such limitation any lands leased by a corporation, partnership or association in which such individual owns ten percent (10%) or less interest and, in the case of a corporation, partnership or association, there shall not be counted toward such limitation any lands leased by an individual stockholder, partner or associate thereof who owns ten percent (10%) or less interest in such corporation, partnership or association.

(4) Individuals, firms or corporations desiring to lease bottoms shall make application to the commission in writing, describing the area to be leased, and the price proposed to be paid therefor.

(5) The commission shall consider such applications in the order in which each is filed and award, as promptly as possible, and after advertising and receiving sealed bids as provided herein, execute and deliver to the applicant a lease to the area described in the application upon payment of the rent in advance.

(6) Such leases shall be for a term of one (1) year, with the right of lessee to renew the lease of an additional year, and from year to year, at the same ground rental so long as lessee actively cultivates and gathers oysters, and complies with the provisions of this chapter, provided that no lease shall be renewed for more than twenty-five (25) years total unless it is rebid. In any such rebidding, if the successful bidder is someone other than the lessee, the successful bidder shall, before taking possession of the leased bottoms, pay to the lessee the fair market value of the lessee's oysters in place as determined by the commission. If the lessee is prevented from gathering oysters from the area leased, by storm or other natural phenomenon, he, nevertheless, may renew the lease if the grounds are actively worked by lessee during the remaining term of his lease. No lease may be transferred without approval by the commission of the transfer.

(7) The commission shall fix a ground rental at not less than one dollar ($1.00) per acre.

(8) The commission shall keep an accurate chart of the areas within its jurisdiction and shall mark on such chart those areas which are under lease. All leases shall be marked by appropriate poles, stakes or buoys of such material as will not injure watercraft, at the expense of the leaseholder. The commission shall keep an accurate book, designated "Mississippi Oyster Farms" which shall contain copies of all leases. If any lease be cancelled or expire, such fact shall be noted on the face of such lease. Lessees shall be "oyster farmers" for the purposes of any grants, aid, subsidies or other assistance from the federal government or other governmental or private agencies.

(9) All funds derived from leasing shall be paid into the general fund of the state treasury.

(10) All leases made by the commission under the authority of this section shall be subject to the paramount right of the state and any of its political subdivisions authorized by law, to promote and develop ports, harbors, channels, industrial or recreational projects, and all such leases shall contain a provision that in the event such authorized public body shall require the area so leased or any part thereof for such public purposes, that the lease shall be terminated on reasonable notice fixed by the commission in such lease. On the termination of any lease, the lessees shall have the right to remove any oysters within the leased area within such time as may be fixed by the commission and in accordance with such reasonable rules and regulations as the commission may adopt.

Any person convicted of taking oysters from leased land or from waters that are not of a safe sanitary quality without a permit as provided in section 49-15-37 shall, on the first offense, forfeit all equipment used, exclusive of any boat or boats; and be fined not to exceed two thousand dollars ($2,000.00) or sentenced not to exceed one (1) year in the county jail, or both. Subsequent convictions shall be punishable by forfeiture of all equipment, including any boat or boats; and a fine not to exceed five thousand dollars ($5,000.00) or not to exceed two (2) years in prison, or both such fine and imprisonment.

No lease of any area shall be made unless and until the commission shall have given at least fifteen (15) days' public notice of its intention to lease such area, such notice to be given by publication in a newspaper of general circulation in such county. In the awarding of such leases, the commission is authorized to exercise its discretion as to which bid is the highest responsible bid, and such leases shall be awarded under such conditions as will insure the maximum culture and propagation of oysters.

The commission is enjoined to cooperate with the Jackson County Port Authority, the Harrison County Development Commission, the municipal port commission and other port and harbor agencies, so that oyster beds shall not be planted in close proximity to navigable channels. The commission or lessee shall have no right of action as against any such public body for damages accruing to any natural reef or leased reef by any necessary improvement of such channel in the interest of shipping, commerce, navigation or other purpose authorized by law.

SOURCES: Laws, 1977, ch. 463, § 1, eff from and after passage (approved April 13, 1977).

§ 49-15-29. Taxes and licenses to be collected by the commission.

The commission is hereby authorized and directed to assess and collect, under its direction and subject to its regulation, the following licenses and taxes:

(a) Each vessel desired to be used to catch, take, carry or transport oysters from the reefs of the State of Mississippi, or engaged in transporting any oysters in any of the waters within the territorial jurisdiction of the State of Mississippi, must annually, before beginning operations, be licensed by the commission and pay the following license fee; an annual license fee of two dollars ($2.00) on all skiffs, or other vessels of one (1) ton burden gross or under, and five dollars ($5.00) on vessels or boats of over one (1) ton burden gross and under five (5) tons, and ten dollars ($10.00) on vessels of five (5) tons and under ten (10) tons, and twenty dollars ($20.00) on vessels of ten (10) tons and under twenty (20) tons, and thirty dollars ($30.00) on vessels of twenty (20) tons and over, for each vessel for which he may obtain a license.

(b) In addition to the privilege licenses required by this chapter, a further inspection tax and fee of five cents (5¢) per barrel is hereby levied upon all oysters canned and packed in, and on all oysters shipped raw in or from this state, on all oysters caught or taken from the public reefs or private bedding ground for packing, canning and for shipment for sale raw.

In addition to the privilege licenses required and in addition to the inspection tax and fee of five cents (5¢) per barrel hereinafter levied, a further inspection tax and fee of one and one-half cents (1½¢) per barrel is hereby levied upon all oysters caught, taken or removed from the reefs or waters of the State of Mississippi, for packing, canning and for shipment for sale raw.

Taxes may be collected by the chief inspector under this section by distress, and all laws regulating the collection of taxes by distress shall, so far as practicable, apply to the collection of this tax, but the chief inspector, and not the tax collector, shall collect the same.

In event any person, liable for the payment of the above license tax shall fail, refuse or neglect to pay the same, then, and in that event, no further license or permit under this chapter shall issue to such person so in default until the same be paid and such default be made good.

(c) Each factory canning oysters in the State of Mississippi, and each person engaged in shipping oysters shall pay an annual privilege tax of one hundred dollars ($100.00) and each shipper of raw oysters a tax of twenty-five dollars ($25.00), and shall receive from the secretary of the commission a license therefor upon the payment of such sum to the secretary, and it shall be unlawful for any person to can or ship raw oysters without first having paid such tax and received such license. Such privilege tax license shall be nontransferable and a license shall be required for each factory or place of business.

(d) No person shall catch or take any saltwater crabs in the waters of the State of Mississippi for commercial purposes without having paid an annual license fee of two dollars ($2.00) on each boat used therefor, and obtaining a license therefor from the secretary of the commission.

(e) All vessels to be used in catching or transporting fish for commercial purposes in said waters must, before beginning operations, obtain an annual license from the commission according to the following schedule:

The applicant therefor shall pay a fee of one dollar ($1.00) on boats used for commercial hook and line fishing, seven dollars and fifty cents ($7.50) on boats using trammel nets, gill nets or seines not more than two hundred (200) fathoms in length, fifteen dollars ($15.00) on boats using seines or other nets over two hundred (200) but not over three hundred (300) fathoms in length, and twenty-five dollars ($25.00) on those using seines or other nets over three hundred (300) but not over four hundred (400) fathoms in length and fifty dollars ($50.00) on those using seines or other nets over four hundred (400) but not over five hundred (500) fathoms in length, for each vessel for which he may obtain a license. All licenses issued shall expire on July 1 thereafter, irrespective of the date of issuance of same.

(f) Each factory canning fish in the State of Mississippi shall pay a privilege tax of one hundred dollars ($100.00).

(g) Each person buying or handling seafood secured from commercial fishermen, or from other wholesale dealers, for the purpose of resale, whether handling on a commission basis or otherwise, and every resident person shipping seafood out of the State of Mississippi on consignment or order, except fishermen shipping their own catch, shall be considered a wholesale dealer and shall be required to pay a license fee in the sum of one hundred dollars ($100.00) per annum, such license to be issued by the secretary of the commission. The privilege of a wholesaler shall also include the privilege of a retailer without additional license. Where seafoods are sold at retail in grocery stores and meat markets which pay a city, county or state privilege license for such operation, such grocery stores and meat markets shall not be liable for the payment of the tax above levied.

(h) Each factory or manufacturing establishment to engage in the manufacture of oil, fish scrap, fish meal, fertilizer or other products from menhaden, the sum of five hundred dollars ($500.00).

On each boat or vessel to engage in catching, taking or transporting menhaden in the waters of the State of Mississippi, the sum of fifty dollars ($50.00).

On each net, seine, trawl or purse net used in catching or taking menhaden in the waters of the State of Mississippi, the sum of fifty dollars ($50.00).

(i) Each person engaged in taking live bait shrimp shall pay an annual privilege tax of seven dollars and fifty cents ($7.50) for each boat so engaged in such operation, not to exceed three (3) boats in number for any one (1) licensee. Such shrimp may be taken in either the closed or open season and may be sold only when alive or with heads attached solely as bait. It shall be unlawful for any person other than a person to whom a "live shrimp dealer's license" shall have been issued to sell, exchange, barter or otherwise dispose of live shrimp.

(j) Every freight boat, ice boat, and catching boat used in catching or transporting saltwater shrimp taken from the waters of the State of Mississippi for sale in their fresh state, or for canning, packing, freezing or drying, shall first obtain from the secretary of the commission an annual privilege license at the following rates:

Boats or vessels under thirty (30) feet in length, overall measurements	$ 7.50
Boats or vessels over thirty (30) feet, and under forty-five (45) feet in length, overall measurements	$15.00
Boats or vessels over forth-five (45) feet in length, overall measurements	$25.00.

(k) In addition to the privilege licenses required, a tax and fee of twenty-five cents (25¢) per barrel, payable monthly, is hereby laid and levied upon all shrimp canned, packed, dried or frozen in, and all shrimp shipped raw in or from this state, and on all shrimp caught or taken from the waters within the jurisdiction of the State of Mississippi. The tax levied under this subsection shall be paid by the person packing, canning, drying or freezing such shrimp, and in case of shrimp sold or shipped raw, by the dealer selling or shipping same, that is to say, by the first dealer who handles such shrimp, and any shrimp sold by any person who has purchased same from a dealer who has paid the tax thereon shall not again be taxed. The tax and fee levied by this subsection shall not apply to shrimp taken within the territorial waters of another state on which a processing tax has been paid to or levied by such state.

Taxes may be collected by the chief inspector under this section by distress, and all laws regulating the collection of taxes by distress shall, so far as practicable, apply to the collection of this tax, but the chief inspector, and not the tax collector, shall collect the same.

(l) Each person engaged in canning, packing, freezing, drying or shipping saltwater shrimp in the State of Mississippi shall pay an annual privilege tax of fifty dollars ($50.00) and shall receive from the secretary of the commission a license therefor upon payment of such sum to the secretary, and it shall be unlawful for any person to can, pack, freeze, dry or ship any saltwater shrimp without first having obtained such license. Such license shall be nontransferable and a separate license shall be required for each factory or place of business. This license shall not apply to, nor shall the payment of the annual privilege tax of fifty dollars ($50.00) be due by, a dealer in fresh seafoods who merely preserves the same for future sale to prevent spoilage and is in competition with other retailers who are not required to pay this tax.

(m) On each boat engaged in operations outlined in section 49-15-15, subsection (o), an annual license fee of ten dollars ($10.00).

SOURCES: Laws, 1975, ch. 321, § 2; 1977, ch. 465, § 2, eff from and after passage (approved April 13, 1977).

§ 49-15-30. Commission may promulgate regulations for nonresident permits.

The commission may promulgate rules and regulations for nonresident permits in order to promote reciprocal agreements with other states.

SOURCES: Laws, 1974, ch. 572, § 9, eff from and after passage (approved April 23, 1974).

§ 49-15-31. Commission to maintain and operate patrol stations, camps and related facilities.

The commission is hereby authorized and empowered to construct, maintain and operate all patrol stations, camps and related facilities as may be deemed necessary by the commission.

SOURCES: Codes, 1942, § 6051.7; Laws, 1955, Ex. Sess., ch. 121, §§ 1-4; 1958, ch. 195, § 7.

§ 49-15-33. Repealed by Laws, 1974, ch. 572, § 10, eff from and after passage (approved April 23, 1974).

§ 49-15-35. Additional powers granted to commission.

Upon the request of the boards of supervisors of the respective coastal counties, the commission may adopt ordinances prohibiting the taking and catching of menhaden within certain limits of the coast line of the county so requesting, but the commission shall not fix such limits except upon request of the board of supervisors, and such limit shall not exceed two (2) miles from the shore line, or two (2) miles from the corporate limit boundaries of any municipality bordering on the Mississippi Sound.

SOURCES: Codes, 1942, § 6047-17; Laws, 1960, ch. 173, § 17, eff from and after passage (approved March 23, 1960).

§ 49-15-37. Cultivation of oyster reefs; removal of oysters from contaminated areas.

By order of the commission, the director, under the direction and control of the commission, shall employ boats, crews and laborers and shall cultivate the public reefs of the state, and shall dredge the oysters in the Mississippi Sound from places where they are too thick, and shall spread them on reefs where they are too thin, and shall carry shells from the factories and spread them in places where the oyster beds can be improved and enlarged thereby, and the commission may purchase such other materials as may be equally suitable for the propagation of oysters. The commission in cultivating the reefs, transplanting and spreading oysters and shells and other suitable materials, may expend such sums out of any funds available for that purpose, as they may deem proper. In taking seed oysters, care shall, however, be used so as not to injure or destroy the merchantable oysters on the reefs from which they are taken, and the same shall, unless it is practicable and safe to dredge same, be tonged from the "conner" or seed reefs. The commission shall have authority, by orders spread at large on its minutes, to establish new bedding grounds at such places within the boundaries of the state as it may determine, on advice of the director, or on advice of technical governmental experts, or competent aquatic biologists. There shall not be established any reef or bedding ground in any area over which the waters are not of a safe sanitary quality for oyster production for human consumption as determined by the state board of health, and in such existing public reefs in which oysters exist and over which the waters are not of a safe sanitary quality as determined by the state board of health, the commission shall prohibit any person, firm or corporation from taking oysters from such areas except that the commission shall from time to time remove the oysters from such areas and re-lay or replant them in an approved area for a period of not less than fifteen (15) days before they shall be harvested therefrom.

The commission shall have the authority to issue permits to persons to remove oysters by dredging or otherwise from water bottoms which are not of a safe sanitary quality for oyster production for human consumption even though those areas may have been reserved for tonging only in subsections (a), (b), (c) and (e) of section 49-15-39. These areas shall be designated as seed grounds, and permits to persons shall be issued only for the purpose of transplanting oysters to privately leased Mississippi territorial waters; provided, however, the commission may permit the transplanting of these seed oysters by a duly authorized public agency.

The commission may, upon certification of the state board of health that the water bottom from which oysters are to be removed is not of a safe, sanitary quality for oyster production for human consumption and has been so unsafe for a period of at least one (1) year immediately preceding certification, and upon complying with the following requirements, permit the dredging of oysters from contaminated public areas and re-laying said cargo of oysters to private leased grounds in the State of Mississippi:

(a) Permittee must hold valid lease of oyster bedding grounds in the State of Mississippi;

(b) Permittee must be bonded in compliance with the permit system established by the commission;

(c) Permittee must fulfill all permit requirements as established by the commission and the state board of health; and

(d) Permittee shall not move oysters from one (1) contaminated area to another contaminated area;

(e) Permittee shall move oysters only to an area leased by the commission after April 13, 1977;

(f) Permittee shall not move oysters form the contaminated area without the presence of a conservation officer of the commission at all times, from the dredging of the oysters from the contaminated areas to their deposit on private leased grounds

Harvesting of oysters shall be permitted only during daylight hours and with the most efficient gear possible consistent with conservation requirements of not damaging the reefs. This shall include permission to use two (2) dredges per boat on contaminated areas and on private leased grounds.

Any person obtaining a permit to remove oysters from seed grounds shall post a penal bond of one hundred dollars ($100.00) per leased acre with the commission to be forfeited upon any violation of this section, the bond to be approved by the director of the commission if he finds the bond to be secured by sufficient property or sureties.

The commission and the Mississippi State Board of Health shall regulate the amount and time of taking of oysters from seed areas and shall supervise the removal, planting and harvesting of oysters from the areas. The time or season so set for the taking of oysters from contaminated seed areas and the time or season so set for the taking of oysters from private leased grounds shall be separated by not less than a period of fifteen (15) days during which neither activity may be allowed.

Only persons who have been residents of Mississippi for at least five (5) years shall be eligible to obtain permits for removal of oysters from seed grounds.

The commission shall designate certain uncontaminated reefs in the state as public reefs and shall remove oysters from water bottoms which are not of a safe, sanitary quality for oyster production for human consumption and shall transport such oysters to such public reefs which shall be reserved for tonging only.

SOURCES: Laws, 1974, ch. 572, § 8; 1977, ch. 463, § 3, eff from and after passage (approved April 13, 1977).

§ 49–15–39. Dredging limits; reefs reserved for tonging.

It shall be unlawful for any person to catch or take oysters by means of dredging in any of the following waters in the State of Mississippi:

(a) The Bay of Biloxi, except as provided in section 49–15–37.

(b) Waters of the Bay of St. Louis north of the Louisville and Nashville Railroad Company's bridge, except as provided in section 49–15–37.

(c) In the limits beginning at a point one (1) mile from shore in the City of Bay St. Louis at the Louisville and Nashville Railroad Company's bridge, thence southerly following the meanderings of the shore along Bay St. Louis and Waveland one and one-quarter (1¼) miles therefrom to the head of Waveland Avenue in the Town of Waveland; thence westerly to the shore at the head of Waveland Avenue, except as provided in section 49–15–37.

(d) In the limits beginning at a point on the Mississippi seashore at Jeff Davis Avenue, in Long Beach, and extending south a distance of one and one-quarter (1¼) miles, thence west, following the meanderings of said seashore one and one-quarter (1¼) miles distant from same to the western corporate limits of the City of Pass Christian; thence north to the seashore at the head of Boisdore Avenue in said city.

(e) In the limits lying east of a line projected from the west bank of the mouth of Bayou Graveline in Jackson County to Round Island lighthouse and north of a line projected due east from Round Island lighthouse to the Mississippi-Alabama line, except as provided in section 49–15–37.

(f) In the limits described as follows: Commencing at the red beacon maintained by the United States governmental authorities offshore in the vicinity of the southern terminus of Church Street in the City of Pass Christian, Harrison County, Mississippi; from such red beacon running due south to a point two and one-half (2½) miles south of the shore line of the Mississippi Sound or Gulf of Mexico; thence running in an easterly direction, following the meanderings of the shore line to a point due south of the red beacon maintained by the United States governmental authorities situated in the vicinity of the southern terminus of Davis Avenue in the City of Pass Christian; thence running north to the red beacon situated near the southern terminus of Davis Avenue, thence running in a westerly direction to the place of beginning; that is to the red beacon situated near the southern terminus of Church Street.

(g) In the limits lying within one (1) mile from the shore line of the Gulf of Mexico or Mississippi Sound within the boundaries of a line extending due south from the foot of Jeff Davis Avenue in Long Beach for one (1) mile distance; thence easterly one (1) mile south of the meanderings of the Gulf of Mexico or Mississippi Sound to a point one (1) mile south of the Biloxi lighthouse in Biloxi, Mississippi. Also in the limits lying north of a point on the east end of Deer Island running thence east to a point one (1) mile south of Bayou Graveline in Jackson County, Mississippi. Also in the limits beginning at a point one (1) mile from shore in the City of Bay St. Louis at the Louisville and Nashville Company's bridge, thence southerly for a distance of one (1) mile, thence in an easterly direction following the meanderings of the shore line along Henderson Point and Pass Christian and one and one-quarter (1¼) miles therefrom to a point one and one-quarter (1¼) miles south of Boisdore Avenue in the City of Pass Christian.

(h) It shall be the duty of the commission to mark the boundaries of the areas above designated by appropriate poles, stakes or buoys of such material as will not injure watercraft, and such boundaries, when so designated by the commission, shall be final unless shown to be incorrect by a proceeding which may be brought by any person interested in the chancery court of the county adjacent thereto.

(i) In the event any boat or vessel shall be found catching or taking oysters by means of dredges, drags or scoops, other than hand tongs, from any of the areas described in this section, or with a dredge or dredges in the water, then and in that event, all oysters then on board such boat or vessel be and the same [illegible] hereby declared to be contraband and shall be taken and [illegible] cated by the commission or any of its inspectors without [illegible] procedure, and the captain and crew of such bo[illegible] or vessel promptly upon being ordered so to do, shall transport [illegible] oysters to a point on the public reefs of the state where such [illegible] or vessel is found and there scatter the same in accordance with [illegible] instructions of such inspectors. For failure of the captain and crew of any boat to comply with such instructions such captain and all members of the crew shall be guilty of resisting an officer and punished as for a violation of this chapter and no permit or license shall issue under the laws of Mississippi, within twelve (12) months thereafter, to operate any boat on which such captain or any member of such crew may be employed.

SOURCES: Laws, 1977, ch. 463, § 4, eff from and after passage (approved April 13, 1977).

§ 49–15–41. Oysters not to be caught at night.

It shall be unlawful for any person to fish, catch or take oysters from any of the oyster reefs in the State of Mississippi by the use of any tongs, dredge, rake or other mechanical device, during the hours between sunset and sunrise of each day.

Violation of this section shall be punishable by a fine nor to exceed ten thousand dollars ($10,000.00) and/or up to one (1) year in the county jail.

SOURCES: Laws, 1977, ch. 463, § 5, eff from and after passage (approved April 13, 1977).

§ 49–15–42. Landing and unloading of oysters.

All oysters caught in Mississippi territorial waters shall be landed and unloaded in Mississippi.

SOURCES: Laws, 1977, ch. 463, § 6, eff from and after passage (approved April 13, 1977).

§ 49–15–43. Packaging of oysters—containers.

Oysters for sale either wholesale or retail may be packaged in glass jars covered with a screw-type top or lid of the type customarily and heretofore used in the seafood industry in the State of Mississippi, but this section shall automatically be repealed if and when such type packaging becomes prohibited by any agency of the United States Government for shipment in interstate commerce.

SOURCES: Codes, 1942, § 608[illegible]; Laws, 1[illegible], ch. 74[illegible], § 1, eff from and after passage (approved June 3, 1964).

§ 49–15–45. Certain municipalities may enforce oyster laws.

(1) Any municipality bounded by the Gulf of Mexico or Mississippi Sound, which has wholly or partly within its corporate limits, or in the waters adjacent thereto, a public oyster reef reserved for catching oysters exclusively by use of hand tongs, is hereby authorized to aid and cooperate with the Mississippi Marine Conservation Commission in enforcing all laws regulating the catching, taking and transporting of oysters, including all of the provisions of this chapter, and all regulations and ordinances of such commission relating to such oyster reefs.

(2) Such municipality may, in its discretion, extend its corporate limits by continuing its boundaries at right angles to the shore line, into the waters of the Mississippi Sound or Gulf of Mexico or waters tributary thereto to any line within the boundaries of the State of Mississippi, and may, by ordinance spread upon its minutes, provide that all violations of such laws and ordinances regulating the catching, taking and transporting of oysters shall be violations of the municipal ordinances and punishable as such.

(3) In carrying out the provisions of this section such municipality may purchase, equip and maintain a suitable patrol boat and employ and pay the salaries of a crew to operate same and officers to enforce such laws and ordinances.

(4) Neither prosecutions nor convictions by such municipality shall bar further prosecution and conviction by the commission or its officers for the same offense.

(5) All fines collected by such municipality in enforcing the provisions of this chapter shall be paid into the general fund of the municipality and all costs and expenses incurred in connection with this chapter shall be paid out of the general fund of the municipality.

(6) Officers employed or deputized by the municipality to carry out the provisions of this section shall have the right to make arrests without warrant for any violations of the laws, ordinances or regulations referred to in subsection (1) hereof, committed in the presence or in the view of such arresting officer.

(7) Nothing herein contained shall be construed to authorize any municipality to adopt any ordinances regulating catching, taking or transporting oysters. The authority vested in such municipality under this section being limited to enforcement of statutes passed by the legislature and ordinances and regulations adopted by the marine conservation commission of the State of Mississippi.

SOURCES: Codes, 1942, § 6085-01; Laws, 1944, ch. 286, §§ 1–7; 1958, ch. 195, § 64.

§ 49–15–47. Repealed by Laws, 1974, ch. 572, § 10, eff from and after passage (approved April 23, 1974).

§ 49–15–49. Repealed by Laws, 1974, ch. 572, § 10, eff from and after passage (approved April 23, 1974).

§ 49–15–51. Repealed by Laws, 1974, ch. 572, § 10, eff from and after passage (approved April 23, 1974).

§ 49–15–53. Repealed by Laws, 1974, ch. 572, § 10, eff from and after passage (approved April 23, 1974).

§ 49–15–55. Repealed by Laws, 1974, ch. 572, § 10, eff from and after passage (approved April 23, 1974).

§ 49–15–57. Repealed by Laws, 1974, ch. 572, § 10, eff from and after passage (approved April 23, 1974).

§ 49–15–59. Repealed by Laws, 1974, ch. 572, § 10, eff from and after passage (approved April 23, 1974).

§ 49–15–61. Marine museum.

The governing body of any municipality or county on the Mississippi Sound having located therein a United States Department of Interior and wild life service facility are hereby authorized either severally or jointly to contribute to the cost of the construction and erection of a marine museum for the purpose of displaying aquatic products available in the Mississippi Sound and in the Gulf of Mexico. However, the United States Department of Interior shall contribute at least fifty per cent (50%) of the cost of the construction and erection of such marine museum.

SOURCES: Codes, 1942, § 6047-19; Laws, 1960, ch. 173, § 19, eff from and after passage (approved March 23, 1960).

§ 49–15–63. General penalty.

Any person, firm or corporation violating any of the provisions of this chapter or any act amendatory hereto, or any ordinance duly adopted by the commission, unless otherwise specifically provided for herein, shall, on conviction, be fined not less than fifty dollars ($50.00), nor more than one hundred dollars ($100.00), for the first offense; and not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00), or imprisonment in jail for a period not exceeding thirty (30) days for any subsequent offense; and upon the conviction of a third offense, it shall be the duty of the court to revoke the license of the convicted party and of the boat or vessel used in such violation, and no further license shall issue to such person or for said boat to engage in catching or taking of any sea foods from the waters of the State of Mississippi for a period of one year following such conviction. Except as provided under subsection 5 of section 49–15–45, any fines collected under this section shall be paid to the secretary of the Mississippi Marine Conservation Commission, to be paid into the seafood fund.

SOURCES: Codes, 1942, § 6047-13; Laws, 1960, ch. 173, § 13, eff from and after passage (approved March 23, 1960).

§ 49–15–65. Jurisdiction of courts.

The justices of the peace of the various beats of the respective counties or county courts in which the Mississippi Marine Conservation Commission functions, shall have original jurisdiction of any prosecution or suit brought under authority of this chapter, or of any ordinance duly enacted by the commission, and shall likewise have jurisdiction of all seizures of property carried out by the chief inspector or any of his deputies for violation of any of the provisions herein, or any legal ordinance of the commission, including the right to order and direct the sale of such property in the manner that property is sold under civil executions proceeding from any judgment rendered. However, from each decision or judgment, whether from a fine, imprisonment, or the seizure or order of sale of any property, there shall be allowed an appeal, and such appeals and trials shall be had as now provided by law.

Any person claiming property so seized shall be entitled to invoke the procedures set out in sections 49–7–107 through 49–7–131, Mississippi Code of 1972, and for such purpose those sections are incorporated herein by reference as if set out seriatim.

SOURCES: Codes, 1942, § 6047-12; Laws, 1960, ch. 173, § 12; 1962, ch. 193, § 11, eff from and after passage (approved May 28, 1962).

§ 49–15–67. Right of appeal.

Any person aggrieved by an order of the commission may file a written petition with the commission, setting forth the grounds of complaint and the commission shall thereupon fix the time and place for a hearing to be held, notifying the petitioner thereof. At such hearing, the petitioner and any other interested parties may appear and submit evidence. Following the hearing, if the party presenting the petition is still dissatisfied with the decision of the commission, the commission's order may be appealed to the circuit court upon proper appeal filed within ten (10) days after the final order of determination issued by the commission. The manner of taking the appeal shall be by bill of exceptions to the Circuit Court of Harrison County, Mississippi, which bill of exceptions shall be signed by the person acting as the chairman of the commission. The clerk of the commission thereof shall transmit the bill of exceptions to the circuit court on or before the first day of the next succeeding term, or at once if the court be in session; and the court shall hear and determine the same on the case as presented by the bill of exceptions as an appellate court and shall affirm or reverse the judgment. If the judgment be reversed, the circuit court shall render such judgment as the commission ought to have rendered, and certify the same to the commission, and costs shall be awarded as in other cases.

SOURCES: Codes, 1942, § 6047-15; Laws, 1960, ch. 173, § 15, eff from and after passage (approved March 23, 1960).

§ 49–15–69. Exemption of certain youthful, aged or disabled persons from licensing requirements.

(1) Any resident citizen of the State of Mississippi (a) who is not over sixteen (16) years of age; or (b) who is sixty-five (65) years of age or more; or (c) who has been adjudged to have a service-connected one hundred percent (100%) disability, shall not be required to purchase or possess a license or permit, except as provided by subsection (2) of this section, or to pay any fee or charge when fishing for or taking for personal, noncommercial use the following: (a) crabs, (b) shrimps, or (c) oysters.

(2) The marine conservation commission is hereby directed to promulgate and publish rules and regulations to implement the policy set forth in subsection (1) of this section. Such rules shall provide that persons exempted under subsection (1) of this section shall apply to the marine conservation commission for certification as to age or disability and shall be required to carry a certification card issued by said commission while engaged in taking above-mentioned marine life.

SOURCES: Laws, 1974, ch. 405, eff from and after passage (approved March 25, 1974).

APPENDIX D

AIR AND WATER POLLUTION CONTROL COMMISSION
(NOW BUREAU OF POLLUTION CONTROL)
Enabling Legislation

MISSISSIPPI AIR AND WATER POLLUTION CONTROL LAW

§ 49-17-1. Short title.

Sections 49-17-1 to 49-17-43 may be cited as the "Mississippi Air and Water Pollution Control Law."

SOURCES: Codes, 1942, § 7106-135; Laws, 1966, ch. 258, § 25, eff from and after July 1, 1966.

§ 49-17-3. Statement of policy.

Whereas, the pollution of the air and waters of the state constitutes a menace to public health and welfare, creates a public nuisance, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of air and water, and whereas, the problem of air and water pollution in this state is closely related to the problem of air and water pollution in adjoining states, it is hereby declared to be the public policy of this state to conserve the air and waters of the state and to protect, maintain and improve the quality thereof for public use, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to maintain such a reasonable degree of quality of the air resources of the state to protect the health, general welfare and physical property of the people, and to provide that no waste be discharged into any waters of the state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing air or water pollution; and to cooperate with other agencies of the state, agencies of other states, and the federal government in carrying out these objectives.

SOURCES: Codes, 1942, § 7106-111; Laws, 1966, ch. 258, § 1, eff from and after July 1, 1966.

§ 49-17-5. Definitions.

For the purposes of sections 49-17-1 through 49-17-43, the following words and phrases shall have the meanings ascribed to them in this section:

(1) Water.

(a) "Pollution" means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

(b) "Wastes" means sewage, industrial wastes, oil field wastes, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state.

(c) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(d) "Treatment works" means any plant or other works, used for the purpose of treating, stabilizing or holding wastes.

(e) "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells, and other systems.

(f) "Waters of the state" means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, situated wholly or partly within or bordering upon the state, and such coastal waters as are within the jurisdiction of the state, except lakes, ponds, or other surface waters which are wholly landlocked and privately owned.

(2) Air.

(a) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke or vapor, or any combination thereof, produced by processes other than natural.

(b) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristic, and of a duration which are materially injurious or can be reasonably expected to become materially injurious to human, plant or animal life or to property, or which unreasonably interfere with enjoyment of life or use of property throughout the state or throughout such area of the state as shall be affected thereby.

(c) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.

(d) "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at, or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.

(e) "Air-cleaning device" means any method, process or equipment, the primary function of which is to remove, reduce or render less noxious air contaminants discharged into the atmosphere.

(f) "Area of the state" means any city or county or portion thereof, or other substantial geographical area of the state as may be designated by the Mississippi Air and Water Pollution Control Commission.

(3) General.

(a) "Commission" means the Mississippi Commission on Natural Resources acting through the bureau of pollution control of the department of natural resources.

(b) "Person" means the state or other agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.

SOURCES: Laws, 1972, ch. 505, § 1; 1978, ch. 484, § 54, eff from and after July 1, 1979.

§ 49-17-7. Natural resources commission to assume duties and responsibilities of air and water pollution control commission.

(1) The Mississippi Commission on Natural Resources shall be the Mississippi Air and Water Pollution Control Commission, and shall exercise the duties and responsibilities of the Mississippi Air and Water Pollution Control Commission through the bureau of pollution control of the Mississippi Department of Natural Resources, insofar as practicable under the provisions of Chapter 2 of Title 49, Mississippi Code of 1972.

(2) The words "Mississippi Air and Water Pollution Control Commission" wherever they may appear in the laws of the State of Mississippi shall be construed to mean the Mississippi Commission on Natural Resources.

SOURCES: Laws, 1972, ch. 369, § 14; ch. 505, § 2; 1973, ch. 406, § 1; 1977, ch. 327, § 1; 1978, ch. 484, § 55, eff from and after July 1, 1979.

Cross references—

As to coastal wetlands protection law, see Chapter 27 of this title.

As to reports to air and water pollution control commission pertaining to waters containing radioactive materials, see § 45-14-39.

As to Mississippi Department and Commission on Natural Resources generally, see §§ 49-2-1 et seq.

§ 49-17-9. Repealed by Laws, 1978, ch. 484, § 57, eff from and after July 1 1979.

§ 49-17-11. [Repealed by Laws, 1978, ch. 484, § 57, eff from and after July 1, 1979].

§ 49-17-13. Authorization to secure benefits from federal programs—disbursement of funds—assistance from other state entities.

(1) The commission is hereby designated as the state air and water pollution control agency for this state for all purposes of federal pollution control legislation and programs, and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of such legislation and programs. The commission shall be empowered to receive and disburse funds, all within the limits of the appropriations to it, funds which are or may become available to it from any source, including any grant funds provided by the state for purposes of preventing the pollution of the air and the water of the state. Provided, however, disbursement of funds shall be subject to the limitations included in appropriations to the commission and shall further be subject to the approval of the commission of budget and accounting.

(2) The commission shall have the right to call upon and receive the assistance of any officer, board, department, school, university, or any other state agency, and officers and employees thereof, for any reasonable assistance necessary or beneficial in carrying out the provisions of sections 49-17-1 through 49-17-43.

SOURCES: Laws, 1972, ch. 505, § 4 1978, ch. 484, § 55, eff from and after July 1, 1979.

§ 49-17-15. [Repealed by Laws, 1978, ch. 484, § 57, eff from and after July 1, 1979].

§ 49-17-17. Power and duties.

The commission shall have and may exercise the following powers and duties:

(a) General supervision of the administration and enforcement of sections 49-17-1 to 49-17-43 and all rules and regulations and orders promulgated thereunder;

(b) To develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the air and waters of the state;

(c) To advise, consult, contract and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of sections 49-17-1 to 49-17-43 and shall have the authority to enter into compacts with any other state or states for the purpose of achieving the objectives of such sections with respect to air and waters;

(d) To administer funds allocated to the state's water and air pollution abatement grant program, to accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;

(e) To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to air and water quality and pollution and causes, prevention, control and abatement as it may deem advisable and necessary for the discharge of its duties under sections 49-17-1 to 49-17-43; to make funds available from the water pollution abatement grant fund by means of advances to political subdivisions in this state in an amount not to exceed one percent (1%) of the estimated project cost as approved by and under such rules and regulations as adopted by the commission for the preparation of project planning reports and feasibility analyses; and to exercise such supervision as it may deem advisable and necessary for the discharge of its duties under sections 49-17-1 to 49-17-43;

(f) To require the repayment of funds made available to a political subdivision under subsection (e) above to the water pollution abatement grant fund prior to the receipt of any other funds by any political subdivision providing services to the area and receiving funds provided under sections 49-17-1 to 49-17-43; any funds made available to any political subdivisions providing services to the area and receiving funds under the provisions of said sections shall be repaid in the same manner as are other funds made available to the political subdivisions under the provisions of said sections;

(g) To collect and disseminate information relating to air and water quality and pollution and the prevention, control, supervision and abatement thereof;

(h) To adopt, modify, or repeal and promulgate standards of quality of the air and water of the state under such conditions as the commission may prescribe for the prevention, control and abatement of pollution;

(i) To adopt, modify, repeal, and promulgate, after due notice and hearing, and to enforce rules and regulations implementing or effectuating the powers and duties of the commission under sections 49-17-1 to 49-17-43 and as the commission may deem necessary to prevent, control and abate existing or potential pollution;

(j) To issue, modify, or revoke orders (1) prohibiting, controlling or abating discharges of contaminants and wastes into the air and waters of the state; (2) requiring the construction of new disposal systems, or air-cleaning devices, or any parts thereof, or the modification, extension or alteration of existing disposal systems, or air-cleaning devices, or any parts thereof, or the adoption of other remedial measures to prevent, control or abate air and water pollution; and (3) setting standards of air or water quality or evidencing any other determination by the commission under sections 49-17-1 to 49-17-43;

(k) To hold such hearings, to issue notices of hearing and subpoenas requiring the attendance of such witnesses and the production of such evidence, to administer oaths, and to take such testimony as the commission deems necessary;

(l) To require the prior submission of plans, specifications and other data relative to, and to inspect the construction of, disposal systems, or air-cleaning devices, or any part thereof, in connection with the issuance of such permits or approval as are required by sections 49-17-1 to 49-17-43;

(m) To require proper maintenance and operation of disposal systems, or air-cleaning devices; and to require the installation and operation of monitoring devices or methods as may be deemed necessary and the maintenance and submission of monitoring and operating records as may be prescribed;

(n) To exercise all incidental powers necessary to carry out the purposes of sections 49-17-1 to 49-17-43; and

(o) To delegate in such manner as it sees fit the duties and powers relating to air and water quality and pollution control to the agency members presently engaged in the several fields of water or air control of pollution. In cases of difference of opinion between such agencies as to their respective field of operation, the commission shall delegate said responsibility to the proper agency, and the commission's action therein shall be final.

Nothing contained in this law shall be deemed to grant to the commission any jurisdiction or authority to make any rule or regulation, recommendation or determination or to enter any order with respect to air conditions existing solely within the property boundaries of commercial and industrial plants, works, or shops or to affect the relations between employers and employees with respect to or arising out of any air condition.

SOURCES: Laws, 1972, ch. 505, § 5; 1977, ch. 327, § 2, eff from and after passage (approved March 4, 1977).

§ 49-17-19. Standards of air and water quality.

(a) In order to carry out the purposes of sections 49-17-1 to 49-17-43, the commission may set standards of air and water quality for the state or portions thereof. Such standards of quality shall be such as to protect the public health and welfare and the present and prospective future use of such air and of such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial and other legitimate uses. Such standards may be amended from time to time as determined to be necessary by the commission.

(b) Prior to establishing, amending or repealing standards of air and water quality, the commission shall, after due notice, conduct public hearings thereon. Notice of public hearing shall specify the areas or waters for which standards are sought to be adopted, amended or repealed and the time, date and place of such hearing. Such notice shall be given by publication once a week for three (3) successive weeks in a newspaper published in Hinds County and in a newspaper published or having a general circulation in each county in the area affected or in which the waters to be affected may be situated, and by mailing notice to all county and municipal officials in the counties and municipalities affected, as well as to all persons and agencies who have had their names placed on the mailing list of the commission.

(c) When standards of air or water quality have been adopted as provided herein, the commission shall give notice thereof in the same manner as provided in subsection (b) of this section, and may further give notice thereof by certified mail to all persons holding permits who may be affected thereby. Upon the adoption of such standards of air or water quality, all persons affected thereby shall thereupon comply therewith. However, where necessary and proper, the commission may specify a reasonable time for persons discharging wastes into the waters of the state to comply with such standards.

SOURCES: Laws, 1972, ch. 505, § 7, eff from and after passage (approved May 18, 1972).

§ 49-17-21. Inspections and investigations—maintenance of records—municipal sewage treatment and disposal systems.

(a) The commission or its duly authorized representative shall have the power to enter at reasonable times upon any private or public property, and the owner, managing agent or occupant of any such property shall permit such entry for the purpose of inspecting and investigating conditions relating to pollution or the possible pollution of any air or waters of the state and to have access to such records as the commission may require under subsection (b) of this section.

(b) The commission may require the maintenance of records relating to the operation of air contamination sources or water disposal systems, and any authorized representative of the commission may examine and copy any such records or memoranda pertaining to the operation of such air contamination source or water disposal system. The records shall contain such information as the commission may require. Copies of such records shall be submitted to the commission upon request.

(c) The commission may conduct, authorize or require tests and take samples of air contaminants or waste waters, fuel, process material or other material which affects or may affect (1) emission of air contaminants from any source, or (2) waste water disposal systems. Upon request of the commission, the person responsible for the source to be tested shall provide necessary sampling ports in stacks or ducts and such other safe and proper sampling and testing facilities as may be necessary for proper determination of the emission of air contaminants. If an authorized employee of the commission during the course of any inspection obtains a sample of air contaminant, fuel, process material or other material, he shall give the owner or operator of the equipment or fuel facility a receipt for the sample obtained.

(d) The commission may require the installation, maintenance and use of such monitoring equipment and methods at such locations and intervals as the commission deems necessary.

SOURCES: Laws, 1972, ch. 505, § 10; 1973, ch. 412, § 1; 1977, ch. 327, § 3, eff from and after passage (approved March 4, 1977).

§ 49-17-22. Enforcement powers of marine conservation commission.

The marine conservation commission is hereby authorized to cooperate with the air and water pollution control commission for the enforcement of the provisions of sections 49-17-1 to 49-17-43 in and on the salt waters of the State of Mississippi.

SOURCES: Codes, 1942, § 7106-116 (last 3); Laws, 1972, ch. 505, § 5, eff from and after passage (approved May 18, 1972).

§ 49-17-23. Record of minutes, rules, regulations and orders.

The executive director of the commission shall keep the minutes of the commission, including all orders, rules and regulations promulgated, in a record book, or books, especially prepared for that purpose.

All minutes of commission meetings and hearings, and all rules, regulations, and orders made by the commission shall be in writing and shall be filed in full by the executive director in a book, for such purposes, to be kept by the commission which shall be a public record and open to inspection by the public at all times during all reasonable hours. A copy of any rule, minutes, regulation or order certified by the executive director or chairman of the commission shall be received in evidence in all courts of this state with the same effect as the original.

SOURCES: Laws, 1972, ch. 505, §§ 12, 16; 1977, ch. 327, § 4, eff from and after passage (approved March 4, 1977).

§ 49-17-25. Rules and regulations—publication.

Rules and regulations of the commission shall be published in the following manner: Those having general application through the state shall be published once in some newspaper in and having general circulation throughout the state; those of special character having local application only shall be published once in some newspaper published in and having general circulation in the locality where such rules, regulations and orders are applicable; but if no such newspaper is so published and circulated, a copy of such rules and regulations shall be posted in three (3) conspicuous places in which they are applicable, and such posting shall be all that is required under this section whether such notice remain so posted or not.

Rules and regulations of the commission having general application shall also be filed with the chancery clerk in each county of the state, and those of special character shall be filed with the chancery clerk of the county or counties affected by such rules or regulations.

SOURCES: Laws, 1977, ch. 327, § 5, eff from and after passage (approved March 4, 1977).

§ 49-17-27. Emergency orders; public notice of emergency situations.

In the event an emergency is found to exist by the commission, it may issue an emergency order as circumstances may require. Said emergency order shall become operative at the time and date designated therein and shall remain in force until modified or cancelled by the commission or superseded by a regular order of the commission or for a period of forty-five (45) days from its effective date, whichever shall occur first, and may be enforced by an injunction if necessary. The chancery court shall always be deemed open for hearing requests for injunctions to enforce such emergency orders and the same shall have precedence over other matters.

When, in the opinion of the commission or its executive director, an emergency situation exists which creates an imminent and substantial endangerment threatening the public health and safety or the lives and property of the people of this state, notice shall be given immediately to local governing authorities, both county and municipal, the state civil defense organization, and the governor for appropriate action in accordance with applicable laws for protections against disaster situations.

SOURCES: Laws, 1972, ch. 505, § 11, eff from and after passage (approved May 18, 1972).

§ 49-17-28. Permit board; membership.

There is hereby created a permit board for the purpose of issuing, modifying, revoking or denying, under such conditions and limitations as it may prescribe, permits to control or prevent the discharge of contaminants and wastes into the air and waters of the state. The membership of the permit board shall be composed of the chief of the bureau of environmental engineering of the state board of health; the director of the bureau of fisheries and wildlife of the department of wildlife conservation; the chief of the division of state land and water resources of the bureau of land and water resources of the department of natural resources; the supervisor of the state oil and gas board; and the director of the bureau of marine resources of the department of wildlife conservation.

SOURCES: Laws, 1973, ch. 373, § 1; 1977, ch. 327, § 6; 1978, ch. 484, § 56, eff from and after July 1, 1979.

§ 49-17-29. Permit board; prohibitions; air and water permits; permit hearings; permit appeals.

(1) **Air Prohibitions.** (a) It shall be unlawful for any person (i) to cause pollution of the air in the state or to place or cause to be placed any wastes or other products or substances in a location where they are likely to cause pollution of the air; and (ii) to discharge any wastes, products or substances into the air of the state which reduce the quality of the air below the air quality standards established by the commission. Any such action is hereby declared to be a public nuisance.

(b) It shall be unlawful for any person to build, erect, alter, replace, use or operate any equipment which will cause the issuance of air contaminants unless he holds a permit from the permit board, except repairs or maintenance of equipment for which a permit has been previously inssued.

(2) **Water Prohibitions.** (a) It shall be unlawful for any person (i) to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state; and (ii) to discharge any wastes into any waters of the state which reduce the quality of such waters below the water quality standards established therefor by the commission. Any such action is hereby declared to be a public nuisance.

(b) It shall be unlawful for any person to carry on any of the following activities unless he holds a current permit therefor from the permit board as may be required for the disposal of all wastes which are or may be discharged thereby into the waters of the state: (i) the construction, installation, modification or operation of any disposal system or part thereof or any extension or addition thereto; (ii) the increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit; (iii) the construction, installation or operation of any industrial, commercial or other establishment including irrigation projects or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized; (iv) the construction or use of any new outlet for the discharge of any wastes into the waters of the state.

(3) **Air and Water Permits.** (a) The permit board created by section 49-17-28 shall be the exclusive administrative body to make decisions on permit issuance, denial, modification or revocation of permits required hereinabove. The decisions of the permit board shall be recorded in minutes of the permit board and shall be kept separate and apart from the minutes of the full commission. The decision of the permit board to issue, deny, modify or revoke permits shall not be construed to be an order or other action of the full commission.

(b) The executive director of the commission shall also be the executive director of the permit board and shall have available to him, as executive director of the permit board, all resources and personnel otherwise available to him as executive director of the commission.

(c) All persons required to obtain an air or water permit shall make application therefor with the permit board. The permit board, under such rules and regulations as the board may prescribe, may require the submission of such plans, specifications and other information as it deems necessary to carry out the provisions of sections 49-17-1 through 49-17-43 or to carry out the rules and regulations adopted pursuant to such sections. The permit board, based upon such information as it deems relevant, shall issue, deny, modify or revoke such air or water permit. The permit board shall take action upon such application within one hundred eighty (180) days of its receipt in the board's principal office.

(d) Notwithstanding any other provision found in sections 49-17-1 through 49-17-43, all hearings in connection with permits heretofore or hereafter issued, denied, modified or revoked and all appeals from decisions of the permit board shall be as set forth hereinbelow.

(4) **Permit Hearings.** (a) Public hearings. Prior to the issuance, denial, modification or revocation of any air or water permit, the permit board, in its discretion, may hold a public hearing or meeting to obtain comments from the public on its proposed action. Such hearing or meeting shall be informal in nature and conducted under such procedures as the permit board may deem appropriate.

(b) Formal hearings. Within thirty (30) days after the date the permit board takes action upon permit denial, modification or revocation, as shown on the minutes of the permit board, any permittee aggrieved by such action may file a written request for a formal hearing before the permit board.

The permit board shall thereupon fix the time and place of such hearing and shall notify the permittee thereof.

In conducting the hearing, the permit board shall have the same full powers as to subpoenaing witnesses, administering oaths, examining witnesses under oath and conducting the hearing, as is now vested by law in the Mississippi Public Service Commission, as to the hearings before it, with the additional power that the executive director of the permit board may issue all subpoenas at the instance of the permit board or at the instance of the permittee. Said subpoenas shall be served by any lawful officer in any county to whom the same shall be directed and return made thereon as provided by law, with the cost of service being paid by the party on whose behalf the subpoena was issued. Witnesses summoned to appear at the hearing shall be entitled to the same per diem and mileage as witnesses attending the circuit court and shall be paid by the person on whose behalf the witness was called. Sufficient sureties for the cost of service of the subpoena and witness fees shall be filed with the executive director of the permit board at the time that issuance of the subpoena is requested. At such hearings, the permittee may present witnesses and submit evidence and cross-examine witnesses.

The permit board may designate a hearing officer to conduct the hearing on all or any part of the issues on behalf of the permit board. The hearing officer shall prepare the record of the hearing conducted by said officer for the permit board and shall submit findings of fact and recommended decision along with such record to the permit board.

Upon conclusion of the formal hearing, the permit board shall enter in its minutes the board's final decision affirming, modifying or reversing its prior decision to deny, modify or revoke a permit. Such decision shall be final and conclusive unless an appeal, as provided hereinbelow, is taken to chancery court within twenty (20) days of the date the decision is entered in the board's minutes.

(c) Within twenty (20) days after the date the permit board takes action upon permit issuance as shown on minutes of the permit board, any person aggrieved of such action may appeal such action as set forth in the permit appeal section below.

(5) **Permit Appeals.** (a) Notwithstanding any other provisions of sections 49–17–1 through 49–17–43, appeals from any decision or action of the permit board shall be only to chancery court as provided hereinbelow.

(b) Any person who is aggrieved by any final decision of the permit board issuing, denying, revoking or modifying may appeal such final decision to the chancery court of the county of the situs in whole or in part of the subject matter by giving a cost bond with sufficient sureties, payable to the state in the sum of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), to be fixed by the permit board and to be filed with and approved by the executive director of the permit board, who shall forthwith certify the same together with a certified copy of the record of the permit board in the matter to the chancery court to which the appeal is taken, which shall thereupon become the record of the cause. An appeal to the chancery court as provided herein shall not stay the decision of the permit board. The aggrieved party may, within said twenty (20) days, petition the said chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on said petition and upon good cause shown may grant said appeal with supersedeas; the appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made before the permit board. The chancery court shall always be deemed open for hearing of such appeals and the chancellor may hear the same in termtime or in vacation at any place in his district, and the same shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error be found, the matter shall be affirmed. If prejudicial error be found the same shall be reversed and the chancery court shall remand the matter to the permit board for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the supreme court in the manner as now required by law, except that if a supersedeas is desired by the party appealing to the chancery court, he may apply therefor to the chancellor thereof, who shall award a writ of supersedeas, without additional bond, if in his judgment material damage is not likely to result thereby; but otherwise, he shall require such supersedeas bond as he deems proper, which shall be liable to the state for such damage.

SOURCES: Laws, 1972, ch. 505, § 6; 1973, ch. 373, § 1; 1977, ch. 327, § 7, eff from and after passage (approved March 4, 1977).

Cross references—

As to coastal wetlands protection law, see Chapter 27 of this title.

§ 49–17–31. Proceedings before commission.

(a) Whenever the commission or an employee thereof has reason to believe that a violation of any provision of sections 49–17–1 to 49–17–43 or a regulation or of any order of the commission has occurred, the commission may cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provisions of said sections or regulation or order alleged to be violated and the facts alleged to constitute a violation thereof, and shall require that the alleged violator appear before the commission at a time and place specified in the notice and answer the charges complained of. Said time of appearance before the commission shall be not less than ten (10) days nor more than thirty-one (31) days from the date of the service of the complaint; however, the commission may set a special date for such appearance upon written request of the person cited in the complaint.

(b) The commission shall afford an opportunity for a fair hearing to the alleged violator or violators at the time and place specified in the complaint. On the basis of the evidence produced at the hearing, the commission shall make findings of fact and conclusions of law and enter such order as in its opinion will best further the purposes of sections 49–17–1 to 49–17–43 and shall give written notice of such order to the alleged violator, and to such other persons as shall have appeared at the hearing or made written request for notice of the order, and the commission may assess such penalties as hereinafter provided.

(c) Except as otherwise expressly provided, any notice, or other instrument issued by or under authority of the commission may be served on any person affected thereby personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the commission; or such service may be made by mailing a copy of the notice, order, or other instrument by certified mail, directed to the person affected at his last-known post office address as shown by the files or records of the commission, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the commission.

SOURCES: Laws, 1972, ch. 505, § 8; 1977, ch. 327, § 8, eff from and after passage (approved March 4, 1977).

§ 49–17–33. Hearings.

The hearings herein provided may be conducted by the commission itself at a regular or special meeting of the commission, or the commission may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the commission at any time and place as conditions and circumstances may warrant. However, on the fourth Tuesday of each month at least five (5) members of the commission shall convene at the commission's offices at Jackson, Mississippi, for the purpose of hearing the substance of complaints issued, the responses of alleged violators, and the determining of what penalties, if any, should be levied and the imposition of the penalties, if any, and also for such conferences with alleged violators and/or others as may seem necessary or appropriate. Any person ordered to appear for an alleged violation shall have the right to request a hearing before a majority of the commission if he prefers and such a hearing may then be set for the fourth Tuesday, the next regular meeting of the full commission, or specially. A verbatim record of the proceedings of such hearings shall be taken and filed with the commission, together with findings of fact and conclusions of law made by the commission. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the circuit court shall have jurisdiction upon application of the commission or its representative, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof.

SOURCES: Laws, 1972, ch. 505, § 9, eff from and after passage (approved May 18, 1972).

§ 49–17–35. Request for hearing.

Any interested person shall have the right to request the commission to call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commission by making a request therefor in writing. Upon receipt of any such request, the commission shall conduct such investigations as it deems necessary and may call a special hearing or may schedule such matter for its next regular meeting or hearing day, and after such hearings and with all convenient speed and in any event within thirty (30) days after the conclusion of such hearing shall

take such action on the subject matter thereof as it may deem appropriate.

SOURCES: Laws, 1972, ch. 505, § 13, eff from and after passage (approved May 18, 1972).

§ 49-17-37. Transcript of hearings.

All hearings before the commission shall be recorded either by a court reporter or by tape or mechanical recorders and subject to transcription upon order of the commission or any interested party, but in the event that the request for transcription originates with an interested party, such party shall pay the cost thereof.

SOURCES: Codes, 1942, § 7106-126; Laws, 1966, ch. 258, § 16, eff from and after July 1, 1966.

§ 49-17-39. Protection of confidential information.

Any information other than emission data or effluent data relating to confidential processes, devices, or methods of manufacture or production obtained by the commission or its employees in the administration of sections 49-17-1 to 49-17-43 shall be kept confidential. Anyone violating this section shall be liable in a civil action for damages arising therefrom and shall also be guilty of a misdemeanor punishable as provided by law.

Internal reports, memoranda, field reports, laboratory analyses and like material, other than emission data or effluent data, shall be treated confidentially by the commission, provided they may be made available to the subject parties or their attorneys, but no others, upon proper request.

SOURCES: Laws, 1977, ch. 327, § 9, eff from and after passage (approved March 4, 1977).

§ 49-17-41. Appeals to chancery court.

In addition to any other remedies that might now be available, any person or interested party aggrieved by any order of the commission, shall have a right to file a sworn petition with the commission setting forth the grounds and reasons for his complaint and asking for a hearing of the matter involved, provided that no hearing on the same subject matter shall have been previously held. The commission shall thereupon fix the time and place of such hearing and shall notify the petitioners thereof. In such pending matters, the commission shall have the same full powers as to subpoenaing witnesses, administering oaths, examining witnesses under oath and conducting the hearing, as is now vested by law in the Mississippi Public Service Commission, as to hearings before it, with the additional power that the executive director may issue all subpoenas, both at the instance of the petitioner, and of the commission. At such hearings the petitioner, and any other interested party, may offer, present witnesses and submit evidence.

Following such hearing the final order of determination of the commission upon such matters shall be conclusive, unless the petitioner, or such other interested party appearing at the hearing, shall, within fifteen (15) days after the adjournment of the meeting at which said final order was made, appeal to the chancery court of the county where the hearing was held, or of the situs in whole or in part of the subject matter of the hearing by giving a cost bond with sufficient sureties, payable to the state in the sum of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), to be fixed in the order appealed from, to be filed with and approved by the executive director of the commission, who shall forthwith certify the same together with a certified copy of the record of the commission in the matter to the chancery court to which the appeal is taken, which shall thereupon become the record of the cause. An appeal to the chancery court as provided herein shall not stay the execution of an order of the commission. Any party aggrieved by an order of the commission may, within said fifteen (15) days after the adjournment of the commission meeting at which said final order was entered, petition the chancery court of the situs in whole or in part of the subject matter for an appeal with supersedeas and the chancellor shall grant a hearing on said petition and upon good cause shown may grant said appeal with supersedeas; the appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made before the commission. The chancery court shall always be deemed open for hearing of such appeals and the chancellor may hear the same in term time or in vacation at any place in his district, and the same shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error be found, the matter shall be affirmed and remanded to the commission for enforcement. If prejudicial error be found, the same shall be reversed and the chancery court, shall remand the matter to the commission for appropriate action as may be indicated of necessary under the circumstances. Appeals may be taken from the chancery court to the supreme court in the manner as now required by law, except that if a supersedeas is desired by the party appealing to the chancery court, he may apply therefor to the chancellor thereof, who shall award a writ of supersedeas, without additional bond, if in his judgement material damage is not likely to result thereby, but otherwise, he shall require such supersedeas bond as he deems proper, which shall be liable to the state for such damage.

SOURCES: Laws, 1972, ch. 505, § 15, eff from and after passage (approved May 18, 1972).

§ 49-17-43. Penalties.

(a) Any person found by the commission violating any of the provisions of sections 49-17-1 to 49-17-43, or any rule or regulation or written order of the commission in pursuance thereof or any condition or limitation of a permit, shall be subject to a penalty of not less than fifty dollars ($50.00) and not more than five thousand dollars ($5,000.00), for each violation, such penalty to be assessed and levied by the commission after a hearing as provided hereinabove. Appeals from the imposition of the penalty may be taken to the chancery court in the same manner as appeals from orders of the commission. If the appellant desires to stay the execution of a penalty assessed by the commission, he shall give bond with sufficient resident sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of Mississippi, in a penalty equal to double the amount of any penalty assessed by the commission, as to which the stay of execution is desired, conditioned, if the judgment shall be affirmed, to pay all costs of the assessment entered against the appellant. Each day upon which a violation of the provisions of sections 49-17-1 to 49-17-43 occurs shall be deemed a separate and additional violation. Funds collected under this section shall be deposited in the water pollution abatement grant fund. Action pursuant to this section shall not be a bar to enforcement of sections 49-17-1 to 49-17-43, rules and regulations in force pursuant thereto and orders made pursuant to the aforementioned sections, by injunction or other appropriate remedy. The commission shall have power to institute and maintain in the name of the state any and all such enforcement proceedings in the chancery court of the county in which venue may lie.

(b) Any person who violates any of the provisions of, or fails to perform any duty imposed by, sections 49-17-1 to 49-17-43 or any rule or regulation issued hereunder, or who violates any order or determination of the commission promulgated pursuant to such sections, and causes the death of fish or other wildlife shall be liable, in addition to the penalties provided in subsection (a) hereof, to pay to the state an additional amount equal to the sum of money reasonably necessary to restock such waters or replenish such wildlife as determined by the commission after consultation with the state game and fish commission. Such amount may be recovered by the commission on behalf of the state in a civil action brought in the circuit court of the county in which venue may lie.

(c) Any person who owns or operates facilities which, through misadventure, happenstance or otherwise cause pollution necessitating immediate remedial or cleanup action shall be liable for the cost of such remedial or cleanup action and the commission may recover the cost of same by a civil action brought in the circuit court of the county in which venue may lie.

In the event of the necessity for immediate remedial or cleanup action, the commission may contract for same and advance funds from the water pollution abatement grant fund to pay the costs thereof, such advancements to be repaid to the water pollution abatement grant fund upon recovery by the commission as provided above.

(d) It is unlawful for any person to: (1) discharge pollutants in violation of section 49-17-29 or in violation of any condition or limitation included in a permit issued under section 49-17-29 or (2) introduce pollutants into publicly owned treatment works in violation of pretreatment standards or in violation of toxic effluent standards; and, upon conviction thereof, such person shall be punished by a fine of not less than two thousand five hundred dollars ($2,500.00) nor more than ten thousand dollars ($10,000.00) per day of violation.

SOURCES: Laws, 1972, ch. 505, § 14; 1973, ch. 402, § 1; 1977, ch. 327, § 10, eff from and after passage (approved March 4, 1977).

NOTE: Sections 49-17-61 through 49-17-70 deal with Water Pollution Abatement Grant Program. These are not germane to the Mississippi Coastal Program and are not reproduced here.
Sections 49-17-101 through 49-17-123 deal with County and Municipal Bonds for Pollution Control. As such they are not germane to the Program and are not reproduced here.

APPENDIX E

BOARD OF WATER COMMISSIONERS
(NOW BUREAU OF LAND AND WATER RESOURCES)
Enabling Legislation

WATER RESOURCES LAWS

§ 51-3-1. Declaration of policy on conservation of water resources.

It is hereby declared that the general welfare of the people of the State of Mississippi requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, that the waste or unreasonable use, or unreasonable method of use, of water be prevented, that the conservation of such water be exercised with the view to the reasonable and beneficial use thereof in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources shall be invested to the end that the best interests and welfare of the people are served.

Water occurring in any watercourse, lake, or other natural water body of the state is hereby declared to be among the basic resources of this state and subject to appropriation in accordance with the provisions of this chapter; and the control and development and use of water for all beneficial purposes shall be in the state, which, in the exercise of its police powers, shall take such measures as shall effectuate full utilization and protection of the water resources of Mississippi.

SOURCES: Codes, 1942, § 5956-01; Laws, 1956, ch. 167, 1; 1962, ch. 218.

Cross references—
For another section derived from same 1942 code section, see § 51-3-5.
As to creation of master water management districts, see § 51-7-1.
As to powers of drainage districts, see §§ 51-31-1 et seq.
As to Urban Flood and Drainage Control Law, see §§ 51-35-301 et seq.

§ 51-3-3. Definitions.

The words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning.

(a) "Person"—Every natural person, firm, partnership, association, cooperative, public and private corporation, irrigation or other improvement district, and any state or federal agency.

(b) "Surface water"—That water occurring on the surface of the ground; and "ground water"—That water occurring beneath the surface of the ground.

(c) "Domestic uses"—The use of water for ordinary household purposes, the watering of farm livestock, poultry and domestic animals, and the irrigation of home gardens and lawns.

(d) "Municipal use"—The use of water by a municipal government and the inhabitants thereof, primarily to promote the life, safety, health, comfort, and business pursuits of the inhabitants. It does not include the irrigation of crops, although within the corporate boundaries.

(e) "Beneficial use"—The application of water to a useful purpose that inures to the benefit of the water user and subject to his dominion and control, but does not include the waste of water.

(f) "Appropriator"—The person who obtains a permit from the board authorizing him to take possession by diversion or otherwise and to use and apply an allotted quantity of water for a designated beneficial use, and who makes actual use of the water for such purpose.

(g) "Appropriation"—

(1) The use of a specific amount of water at a specific time and at a specific place, authorized and allotted by the board for designated beneficial purpose within the specific limits as to quantity, time, place, and rate of diversion and withdrawal.

(2) The right to continue the use of water having actually been applied to any beneficial use as of April 6, 1956, or within three years prior thereto to the extent of the beneficial use made thereof. It is not the intent of this chapter that any person making use of any watercourse for waste disposal or in pollution abatement, on said date, shall be construed as having any vested right to pollute the waters of the watercourse.

(3) The right to take and use water for beneficial purposes where a person is bona fide engaged in the construction of works for the actual application of water to a beneficial use as of April 6, 1956, provided such works shall be completed and water is actually applied for such use within three years after said date, with extension of not more than seven years in the discretion of the board. It is not the intent, however, to validate any claim to the use of water, or for rights of construction looking to the use of water, not lawful on said date.

(h) "Watercourse"—Any natural lake, river, creek, cut, or other natural body of fresh water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except such lakes without outlet to which only one landowner is riparian.

(i) "Established average minimum flow"—When reasonably required for the purposes of this chapter, the board shall determine and establish the average minimum flow for a given stream at a given point thereon. The "average minimum flow" as used in this chapter shall be the average of the minimum daily flow occurring during each of the five lowest years in the period of the preceding twenty consecutive years. Such determinations shall be based upon available stream-flow data, supplemented, when available data is incomplete, by reasonable calculations.

(j) "Established average minimum lake levels"—When reasonably required for the purposes of this chapter, the board shall determine and establish the average minimum lake levels for a given lake. The "average minimum lake level," as used in this chapter, shall be the average of the minimum lake level during each of the five lowest years in the period of the preceding twenty consecutive years. Such determination shall be based upon the best available data, supplemented, when data is incomplete, by reasonable calculations.

(k) "Board"—The board of water commissioners of the State of Mississippi.

(l) "Water engineer"—The water engineer of the board of water commissioners of the State of Mississippi.

SOURCES: Codes, 1942, § 5956-02; Laws, 1956, ch. 167, 2; 1958, ch. 196, § 1.

Research and Practice References—
56 Am Jur (1st ed), Waters § 65.
93 CJS, Waters § 112.

§ 51-3-5. Construction.

Nothing in this chapter shall be construed or interpreted as affecting ground or subterranean water rights or usage, nor shall it be construed as being applicable to dredging or washing of sand and gravel.

SOURCES: Codes, 1942, §§ 5956-01, 5956-03; Laws, 1956, ch. 167, §§ 1, 3; 1962, ch. 218.

Cross references—
For another section derived from same 1942 code section, see § 51-3-1.

§ 51-3-7. Water rights defined.

(1) No right to appropriate or use water subject to appropriation shall be initiated or acquired except upon compliance with the provisions of this chapter, and no person shall take water from a stream, lake or other watercourse without having a valid right to do so. However, any person or persons claiming their rights as defined under subsection (g)(2) of section 51-3-3, where that person had begun to make beneficial use of water as of April 6, 1956, the effective date of the original law, or within three (3) years prior thereto, shall file their claim with the board of water commissioners, but the priority of all claims filed after December 31, 1958, will be determined by the date the claim is received by the board. Any person convicted of violating the provisions hereof shall be fined not to exceed one hundred dollars ($100.00), or be imprisoned not to exceed thirty (30) days, or both, in the discretion of the court. Nothing herein shall interfere with the customary use of water for domestic purposes. Nothing herein shall operate to deprive any landowner of the right to the use of the water from a spring arising on his land so long as such use does not interfere with the right of any water user below. The user of water for domestic purposes and the landowner using water from a spring arising on his land may elect to file a claim to establish a right to the use of such water under the procedures provided in section 51-3-25, Mississippi Code of 1972.

(2) Subject to the common law or other lawful water rights of others, any person may build and maintain a dam on any stream where the drainage area is fifty (50) acres or less and utilize the impounded water without a permit from the board so long as such action does not affect the established average minimum flow in the stream below the dam. The user may elect to establish a right to the use of such impounded water under the procedures provided in section 51-3-25, Mississippi Code of 1972.

(3) The board shall have the authority to permit the appropriation of water of any stream only in excess of the established average minimum flow as based upon records or computations by the board. However, exceptions may be made for domestic and municipal users. The board may authorize any appropriator to use the established minimum flow upon written assurance that such water will be immediately returned to the stream in substantially the same amount to insure the maintenance at all times of the average minimum flow. The board may authorize an appropriator to use the established minimum flow for industrial purposes when such water shall be returned to the stream at a point downstream from the place of withdrawal, where the board shall find that such appropriation will not result in any substantial detriment to property owners affected thereby or to the public interest.

(4) The board shall have the authority to permit the appropriation of water of any lake only in excess of the established average minimum lake level as based upon records or computations by the board. However, exceptions may be made for domestic and municipal users. The board, upon affording a hearing to interested parties, may authorize any appropriator to use below the established average minimum level when such use will not affect plans for the proper utilization of the water resources of the state, or the board may establish a level above the established average minimum lake level, after affording an opportunity for a hearing, where plans for the proper utilization of the water resources of the state require it.

(5) No appropriation of water shall be authorized that will impair the effect of stream standards set under the pollution control laws of this state based upon a minimum stream flow.

(6) No appropriation of water shall be authorized or continued that will impair the navigability of any navigable watercourse.

SOURCES: Laws, 1978, ch. 437, § 1, eff from and after July 1, 1978.

Research and Practice References—
Rights and interests in water generally, 20 Am Jur Legal Forms 2d, Waters, §§ 260:11 et seq.

ALR Annotations—
Landowner's right to relief against pollution of his water supply by industrial or commercial waste. 39 ALR3d 910.

§ 51-3-9. Water appropriation equal to other property rights.

No water appropriation acquired pursuant to law shall be declared forfeited and surrendered except by a court of competent jurisdiction as other property rights are determined. However, upon good cause shown, the board may modify or terminate any appropriation at any time.

SOURCES: Codes, 1942, § 5956-05; Laws, 1956, ch. 167, § 5, eff from and after passage (approved April 6, 1956).

§ 51-3-11. Termination of water rights.

The right of the appropriator and his successors to the use of water shall terminate when he ceases for three consecutive years to use it for the specific beneficial purpose authorized in his permit or license. However, upon his application prior to the expiration of said three year period for extension of said permit or license, the board may grant such extension without the loss of priority.

SOURCES: Codes, 1942, § 5956-06; Laws, 1956, ch. 167, § 6, eff from and after passage (aproved April 6, 1956).

§ 51-3-13. Application for appropriation of water.

Appropriation of surface waters of the state shall not constitute absolute ownership or absolute rights of use of such waters, but such waters shall remain subject to the principle of beneficial use. It shall be the duty of the board to approve all applications made in such form as shall meet the requirements of this chapter and such rules and regulations as shall be promulgated by the board and which contemplate the utilization of water for beneficial purposes, within reasonable limitations, provided the proposed use does not prejudicially and unreasonably affect the public interest. If it is determined that the proposed use of the water sought to be appropriated is not for beneficial purposes, is not within reasonable limitations, or is detrimental to the public interest, it shall be the duty of the board to enter an order rejecting such application or requiring its modification.

SOURCES: Codes, 1942, § 5956-07; Laws, 1956, ch. 167, § 7, eff from and after passage (approved April 6, 1956).

§ 51-3-15. Natural resources commission to assume powers and duties of board of water commissioners.

(1) The Mississippi Commission on Natural Resources shall be the board of water commissioners, and shall exercise the duties and responsibilities of the board of water commissioners through the division of state land and water resources of the bureau of land and water resources of the Mississippi Department of Natural Resources, insofar as practicable under the provisions of Chapter 2 of Title 49, Mississippi Code of 1972.

(2) The words "board of water commissioners" wherever they may appear in the laws of the State of Mississippi shall be construed to mean the Mississippi Commission on Natural Resources.

SOURCES: Laws, 1978, ch. 484, § 36, eff from and after July 1, 1979.

Cross references—
As to regulation of groundwaters, see Chapter 4 of this title.
As to Mississippi Department and Commission on Natural Resources generally, see §§ 49-2-1 et seq.

§ 51-3-16. Bureau of land and water resources—duties and powers in assisting waterway, river basin and watershed authorities and districts.

The bureau of land and water resources through the division of regional water resources shall have the following duties and powers in assisting waterway, river basin and watershed authorities and districts:

(a) To offer such assistance as may be appropriate to the various authorities and districts, as set forth in section 51-3-18, in the performance of any of their powers and programs;

(b) To keep the authorities and districts informed of the activities and experiences of all other such authorities and districts and to facilitate an interchange of experiences among such authorities and districts;

(c) To coordinate the programs of the various authorities and districts;

(d) To secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of such authorities and districts;

(e) To disseminate information throughout the state concerning the activities and programs of the various authorities and districts and to encourage the formation of such authorities and districts in areas where their organization is desirable;

(f) To seek and receive grants of monies, and other assets, from any legitimate sources for use in carrying out the purposes of this section;

(g) To distribute any appropriated or other funds or assets in its custody or under its control, from state, federal or other governmental agencies or political subdivisions thereof, or from private grants, appropriate in carrying out the purposes of this article, including matching funds to districts;

(h) To give guidance and overall supervision to districts when such assistance is requested, or acceptable.

SOURCES: Laws, 1978, ch. 484, § 38, eff from and after July 1, 1979.

§ 51-3-17. Repealed by Laws, 1978, ch. 484, § 37, eff from and after July 1, 1979.

§ 51-3-18. Authorities and districts to receive assistance from division of regional water resources.

The waterway, river basin and watershed authorities and districts to receive assistance from the division of regional water resources shall include:

(a) the Pearl River Industrial Commission, created by section 51-9-1, Mississippi Code of 1972;

(b) the Pearl River Valley Water Supply District, created by section 51-9-105, Mississippi Code of 1972;

(c) the Pearl River Basin Development District, created by section 51-11-3, Mississippi Code of 1972;

(d) the Tombigbee Valley Authority, created by section 51-13-1, Mississippi Code of 1972;

(e) the Tombigbee River Valley Water Management District, created by section 51-13-103, Mississippi Code of 1972;

(f) the Pat Harrison Waterway Commission, created by section 51-15-1, Mississippi Code of 1972;

(g) the Pat Harrison Waterway District, created by section 51-15-103, Mississippi Code of 1972;

(h) the Big Black River Basin District, created by section 51-17-3, Mississippi Code of 1972;

(i) the West Central Mississippi Waterway Commission, created by section 51-19-1, Mississippi Code of 1972;

(j) the Lower Mississippi River Basin Development District, created by section 51-21-3, Mississippi Code of 1972;

(k) the Lower Yazoo River Basin District, created by section 51-23-3, Mississippi Code of 1972; and

(l) the Yellow Creek Watershed Authority, created by section 51-21-1, Mississippi Code of 1972.

SOURCES: Laws, 1978, ch. 484, § 39, eff from and after July 1, 1979.

§ 51-3-19. Repealed by Laws, 1978, ch. 484, § 37, eff from and after July 1, 1979.

§ 51-3-20. Waterway, river basin and watershed authorities council.

(1) There is hereby created a waterway, river basin and watershed authorities council to be composed of the directors of the authorities and districts set forth in section 51-3-18.

(2) The council shall coordinate its efforts and schedule its meetings through the division of regional water resources of the bureau of land and water resources of the Mississippi Department of Natural Resources.

(3) The council shall develop an annual statewide plan for implementing works of improvement for the purposes of drainage, prevention of flood water damage or the conservation, development, utilization and disposal of waters for recreation, beautification, welfare and other beneficial use.

SOURCES: Laws, 1978, ch. 484, § 40, eff from and after July 1, 1979.

§ 51-3-21. Co-operation with other agencies.

(1) The board shall co-operate with all persons and agencies interested in regulating and conserving the use of water.

(2) The board shall establish such units of measurement as are necessary in the administration of this chapter.

SOURCES: Codes, 1942, § 5956-11; Laws, 1956, ch. 167, § 11, eff from and after passage (approved April 6, 1956).

§ 51-3-23. Inventory of water resources.

As soon as practicable, the board shall inventory the water resources of the state and gather such adequate data as may be helpful in the administration of this chapter. The board may co-operate with any agency of the federal or state governments in accumulating such data.

SOURCES: Codes, 1942, § 5956-12; Laws, 1956, ch. 167, § 12, eff from and after passage (approved April 6, 1956).

§ 51-3-25. Powers and duties of board.

(1) The board shall make such observations and measurements as will enable it to administratively determine and establish the rights of all water users who were making beneficial use of water prior to December 31, 1958. The user of water for those uses exempt under this chapter and those uses exempt by provisions in effect at the time the uses were initiated may claim their rights as recognized elsewhere in this chapter and have them administratively determined and established under this subsection. The board shall afford all such water users an opportunity to be heard.

(2) Such administrative determination of rights, as provided for in this section, shall be made the subject of a written order, the original of which shall be furnished the person concerned. Such observations and measurements as were made shall be reduced to writing and filed with a copy of the order of determination certified to by the chairman of the board, in the office of the clerk of the chancery court in the county in which the point of diversion exists.

(3) Service of notice shall be deemed completed upon depositing the notice in the post office, as registered mail, addressed to the person concerned at his last known post office address. The order of determination of the board shall be in full force and effect from the date of its entry in the records of the office of the clerk of the chancery court until its operation shall be stayed by an order of a court of competent jurisdiction.

SOURCES: Laws, 1978, ch. 437, § 2, eff from and after July 1, 1978.

Cross references—
As to regulation of groundwaters, see Chapter 4 of this title.

§ 51-3-27. Water districts.

The board shall divide the state into water districts with reference to water resources; however, no district shall be created until a necessity therefor exists.

SOURCES: Codes, 1942, § 5956-14; Laws, 1956, ch. 167, § 14, eff from and after passage (approved April 6, 1956).

Cross references—
As to apportionment of taxes collected in counties lying in two or more districts, see § 51-7-71.

§ 51-3-29. Unappropriated waters.

The following are hereby declared to constitute unappropriated waters: (a) All water which has never been appropriated. (b) All water heretofore appropriated which has not been in process, from the date of the initial act of appropriation, of being put, with due diligence in proportion to the magnitude of the work necessary properly to utilize it for the purpose of appropriation, or which has ceased to be put to that useful or beneficial purpose for which appropriated. (c) All water appropriated pursuant to authority of the board which has ceased to be put to the useful or beneficial purpose for which it was appropriated. (d) Water which having been appropriated or used seeps or flows back into a watercourse.

SOURCES: Codes, 1942, § 5956-15; Laws, 1956, ch. 167, § 15, eff from and after passage (approved April 6, 1956).

§ 51-3-31. Application for appropriate rights.

Any person intending to acquire an appropriate right to any of the surface streams, lakes, and other watercourses of the state for beneficial use may do so only by making application to the board for a permit to make such appropriation, with a fee of three dollars ($3.00) accompanying such application. The application shall set forth: (a) the name and post office address of the applicant; (b) the source of water from which the appropriation shall be made; (c) the amount of water sought, in standard units of measurement; (d) the location of the proposed works for the diversion and use of the water, including such maps or plats as may be necessary for positive identification; (e) the estimated time for the completion of the works; (f) the estimated time for the first actual application of the water for the beneficial use proposed; (g) if for irrigation use, a description of the land to be irrigated by designating the number of irrigable acres, and its relative location with respect to the source of the water supply; (h) if for municipal water supply or the supply of an adjacent area to be served by the municipality, it shall give the present population to be served and the estimated future requirements of the city, not to exceed twenty years, said twenty years' estimate of future requirements to be based on the same rate of increase of population as that had in the twenty year period, or such fraction thereof as required, immediately preceding the estimate, unless an unusual situation shall be shown to the board to exist or is foreseen which would justify a deviation from the twenty year rule; and (i) any additional factors which may be required by the board.

All fees received by the board as herein prescribed shall be deposited in the general fund of the state.

SOURCES: Codes, 1942, § 5956-16; Laws, 1956, ch. 167, § 16, eff from and after passage (approved April 6, 1956).

Cross references—
As to appropriation permits, see §§ 51-9-129, 51-13-119, 51-35-321.

§ 51-3-33. Duty of board as to application.

(1) Upon receipt of the application it shall be the duty of the board to have endorsed thereon the date of the receipt and to assign it a number. If upon examination the application is found to be defective, inadequate, or insufficient to enable the board to determine the place, nature, and amount of the proposed appropriation, it shall be returned for correction or completion or for other required information. No application shall lose its priority of filing on account of such defects, provided acceptable data, proofs, maps, plats, plans, and drawings are filed in the office of the board within thirty days following the date of the posting of the return of such application or such further time, not exceeding one year, as may be given by the board.

(2) All maps, plats, plans and drawings shall conform to prescribed uniform standards as to materials, size, coloring, and scale as prescribed by the board, and shall show: (a) the source from which the proposed appropriation is to be taken; (b) all proposed dams, dikes, reservoirs, canals, pipe lines, power houses, and other structures for the purpose of storing, conveying, or using water for the purpose approved and their positions or courses in connection with the boundary lines and corners of the lands which they occupy. Land listed for irrigation shall be shown in acres. Default in the refiling of any application within the time limit specified shall constitute a forfeiture of priority date and the dismissal of the application. All maps, plats, plans, drawings, and applications submitted shall become the property of the board.

SOURCES: Codes, 1942, § 5956-17; Laws, 1956, ch. 167, § 17, eff from and after passage (approved April 6, 1956).

§ 51-3-35. Approval of application.

(1) Upon approval of the application the board shall notify the applicant to that effect and issue a permit authorizing him to proceed with the construction of the proposed diversion works and to take all steps required to apply the water to the approved and proposed beneficial use, and otherwise perfect his proposed appropriation. An application may be approved for a less amount of water than that requested if, in the opinion of the board, the approval of the full amount requested would interfere with a vested right or is against public interest. An applicant shall be entitled to proceed with construction of diversion works and with the diversion and use of water in accordance with the approval and such limitations as may be prescribed by the board. No application shall be approved until the substance thereof shall have been published by the applicant in a newspaper having general circulation in the county wherein the point of diversion exists, at least ten days before approval of such application, and a public hearing accorded any person whose rights may be adversely affected by such approval. At such hearing all persons concerned will be accorded the right of counsel and the right to introduce evidence in their behalf.

(2) If the application is refused the board shall so notify the applicant, and it shall be unlawful for such applicant to take any steps toward the construction of the proposed diversion works or to divert or use any such water, so long as the refusal shall continue in force. Any person who proceeds to construct and

maintain diversion works, without the approval of the board being first obtained, may be enjoined in any court of competent jurisdiction. The board shall limit the time for the perfecting of an appropriation to a reasonable period within which the proposed works can be completed by due diligence, taking into consideration the size, complexity, and cost of the work and seasonal conditions, and may for good cause shown by the applicant allow an extension of time.

SOURCES: Codes, 1942, § 5956-18; Laws, 1956, ch. 167, § 18, eff from and after passage (approved April 6, 1956).

Attorney General's Opinions—
Public notice of "substance" of application must include information so that (1) interests to whom such notice is directed can identify themselves, (2) the noticee can identify his interest, (3) the initiator is identified, and (4) provisions for objections are set out. Ops. Atty. Gen. 1965–1967, p 56.

§ 51–3–37. Issuance of license.

Within sixty days after the completion of the construction of the works and the actual application of water to the proposed beneficial use within the time allowed, the permittee shall so notify the board. The board shall then examine and inspect the appropriation diversion works and, if it is determined that such works have been completed and the appropriation right perfected in conformity with the approved application and plans, the board shall issue a license in duplicate. The original of such license shall be sent to the licensee and shall be recorded in the office of the clerk of the chancery court in the county wherein the point of diversion is located as other instruments affecting real estate, and the duplicate shall be made a matter of record in the office of the board. The fee for filing the license in the office of the clerk of the chancery court shall be one dollar ($1.00), to be paid by the applicant.

SOURCES: Codes, 1942, § 5956-19; Laws, 1956, ch. 167, § 19, eff from and after passage (approved April 6, 1956).

§ 51–3–39. Construction, modification, and inspection of dams and reservoirs.

(1) Any person proposing to construct, enlarge, repair or alter a dam or reservoir on any watercourse in this state except as provided elsewhere in this chapter, before proceeding with the construction thereof, must obtain written authorization from the board. Applications shall be made on forms provided by the board, and detailed plans shall be required when deemed necessary by the board in order to determine whether the proposed construction will provide adequate safety for downstream lives and property, and will not adversely affect downstream water rights or plans for the proper utilization of the water resources of the state. Provided, further, that:

(a) Any person who seeks to build and maintain a dam on a stream within the territorial limits of any watercourse lying in whole or in part within a levee district duly constituted under the laws of this state shall first obtain permission from the levee board of such levee district.

(b) Any person intending to acquire an appropriative right to store or use water from a reservoir formed by the proposed dam, may do so only by making an application for a permit as provided elsewhere in this chapter.

(2) The board may request other agencies, or contract with consultants, to recommend land treatment or facilities necessary to prevent pollution of the waters of this state, or to protect the safety and general welfare of the people, and in the board's discretion, may require that these recommendations be followed before authorization to construct or modify the dam is issued, or order the removal of the dam after it has been constructed or modified when such recommendations are not followed.

(3) The board shall be authorized to make inspections of dams for the purpose of determining their safety, and shall require owners to perform at their expense such work as may be necessary for maintenance and operation which will safeguard life and property. Provided, however, a dam may be exempt from inspections when the board determines that the location, size or condition is such that lives and property will not be endangered. In carrying out the provisions of this section, the board is authorized to expend available state funds, to receive funds from federal agencies, to contract with consultants and/or other agencies, and to issue orders to owners of dams found to be unsafe requiring them to take the prescribed remedial action to safeguard downstream lives and property.

(4) When the board finds a dam constructed or modified in violation of this chapter or that the owner of a dam has allowed the structure to deteriorate and remain in an unsafe condition after having been ordered to make the necessary repairs, then the board may cause the structure to be removed and/or revoke or modify any other authorization pertaining thereto.

(5) The provisions of this section shall not be construed as creating any liability for damages against the state and/or against its officers, agents and employees.

SOURCES: Laws, 1978, ch. 437, § 3, eff from and after July 1, 1978.

Cross references—
As to penalties for violation of this section, see § 51–3–55.

Research and Practice References—
78 Am Jur 2d, Waters §§ 200 et seq.

ALR Annotations—
Applicability of rule of strict or absolute liability to overflow or escape of water

§ 51–3–40. Private dams across waters without a continuous flow.

The provisions of this chapter shall not apply to a dam constructed on private property by the owner for farm, agricultural, or his private recreational use provided such dam shall not be built across a stream or watercourse which has a continuous flow.

SOURCES: Laws, 1978, ch. 437, § 5, eff from and after July 1, 1978.

§ 51–3–41. Compacts and agreements.

The board shall have authority to enter into compacts and agreements concerning this state's share of waters flowing in watercourses where a portion of such waters are contained within the territorial limits of a neighboring state.

SOURCES: Codes, 1942, § 5956-21; Laws, 1956, ch. 167, § 21, eff from and after passage (approved April 6, 1956).

§ 51–3–43. Surveys.

Any member of the board or any person authorized by it shall have the right to enter upon private, county, or state lands for the purpose of making surveys and examinations necessary in the gathering of facts concerning streams and natural watersheds, subject to responsibility for any damage done to property entered.

SOURCES: Codes, 1942, § 5956-22; Laws, 1956, ch. 167, § 22, eff from and after passage (approved April 6, 1956).

§ 51–3–45. Changes in approved diversion.

(1) The board may consider, approve, modify at the request of the applicant, or reject applications for permanent or temporary changes in the place of diversion or use of water from those originally appropriated or approved, subject to the rules and regulations of the board and following the procedure herein established for original application for appropriation.

(2) Any person who changes or attempts to change the point or place of diversion or use of water, either permanently or temporarily, without first applying to the board in the manner prescribed, shall obtain no right thereby and shall be guilty of a misdemeanor and punished therefor, in the discretion of the court, not to exceed a fine of two hundred dollars ($200.00). Each day of such unlawful change shall constitute a separate offense, separately punishable.

(3) Each application for a temporary or permanent change shall be accompanied by a fee of one dollar ($1.00). All fees received by the board as herein prescribed shall be deposited in the general fund of the state.

SOURCES: Codes, 1942, § 5956-23; Laws, 1956, ch. 167, § 23, eff from and after passage (approved April 6, 1956).

§ 51–3–47. Water rights adjudicated by court.

Whenever the rights for the use of waters within the state shall have been adjudicated by any court, the board shall aid in the distribution of water in accordance with the terms of the decree; and it shall be the duty of the clerk of any court in which such decree has been issued, within ten days after such decree shall have been entered, to forward to the board of water commissioners, by registered mail, a certified copy of the decree.

SOURCES: Codes, 1942, § 5956-24; Laws, 1956, ch. 167, § 24, eff from and after passage (approved April 6, 1956).

§ 51–3–49. Appeal from acts of board.

(1) Any order, decision, or other official act of the board in administering the provisions of this chapter may be appealed by any person aggrieved thereby to the circuit court of the county wherein the point of diversion exists by serving the chairman or someone of discretion at the office of the board, within sixty days after receipt of written notice of the order, decision, or official act, notice of appeal stating the grounds upon which the appeal is founded. The appeal may be based on legal or factual grounds, or both. After proper hearing, at which testimony may be offered for any aggrieved person, the court may sustain, reverse, or modify the order of the board, which may be appealed to the supreme court the same as other orders of the circuit court. The attorney general, or his representative, shall represent the board on all appeal matters. The board shall, within thirty days after service of the notice of appeal, make a return to the circuit court, giving copies of all documents and orders and a transcript of the testimony taken.

(2) Within fifteen days after the service of the notice of appeal, the board may serve upon the appellant an offer in writing to correct the order from which appealed in any of the particulars mentioned in the notice of appeal. The appellant may thereupon, and within fifteen days thereafter, file with the board a written acceptance of such offer; and in such cases the board shall thereupon make a minute of such acceptance in its permanent files and correct the order accordingly, and the same, so corrected, shall stand as the order of the board and shall be filed in the office of the clerk of the circuit court.

SOURCES: Codes, 1942, § 5956-25; Laws, 1956, ch. 167, § 25, eff from and after passage (approved April 6, 1956).

§ 51-3-51. Power of board at hearings.

At any hearing or other proceeding authorized by this chapter, the board shall have power to administer oaths; to take testimony; to issue subpoenas and compel the attendance of witnesses, which shall be served in the same manner as subpoenas issued by the courts of the state; and to order the taking of depositions in the same manner as depositions are taken in the courts.

SOURCES: Codes, 1942, § 5956-26; Laws, 1956, ch. 167, § 26, eff from and after passage (approved April 6, 1956).

§ 51-3-53. Repealed by Laws, 1978, ch. 484, § 37, eff from and after July 1, 1979.

§ 51-3-55. Penalties.

(1) When the state board of water commissioners finds that any provision of section 51-3-39, Mississippi Code of 1972, has been violated and that disciplinary action by the board is insufficient or unavailable, then it shall be the duty of the said board to proceed with enforcement of this chapter by proper proceedings through any court of competent jurisdiction available therefor.

(2) Any person who violates any provision of section 51-3-39, Mississippi Code of 1972, shall, upon conviction, be guilty of a misdemeanor, and fined not less than one hundred dollars ($100.00) within the discretion of the court. Each day in which such violation exists or continues shall constitute a separate offense.

(3) In addition to the penalties prescribed herein, any person who violates any order of the board requiring described remedial action as set out elsewhere in this chapter, which shall specify a time requirement for compliance with such order, shall be subject to a penalty not to exceed one hundred dollars ($100.00) for each day such noncompliance continues.

SOURCES: Laws, 1978, ch. 437, § 4, eff from and after July 1, 1978.

Groundwaters

§ 51-4-1. Legislative declarations; exempted activities.

(1) It is hereby declared that the general welfare and public interest of the state require that the water resources of the state be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation in order to conserve these resources and to provide and maintain conditions which are conducive to the development and use of water resources. Groundwaters are hereby declared to be among the basic resources of this state and the control of development and use of water for all beneficial purposes shall be in the state, which in the exercise of its police powers shall take such measures as shall effectuate full utilization and protection of the groundwaters of Mississippi.

(2) Groundwater occurring beneath the surface of the state shall be subject to the provisions of this chapter; provided, however, the provisions of this chapter shall not apply to activities associated with exploration and production of oil or gas when such activities are conducted under a current and valid permit granted by a duly constituted agency of the State of Mississippi, or to wells constructed by an individual and intended for domestic use, or to wells being used or drilled for agricultural purposes; provided that the exemption of the foregoing from the provisions of this chapter shall not continue in the event of an affirmative finding that the public health, welfare and safety will be endangered.

SOURCES: Laws, 1976, ch. 474, § 1, eff from and after July 1, 1976.

Cross references—

As to licensing and regulation of water well drillers, see §§ 51-5-1 et seq.

As to development, production and distribution of gas and oil, see Chapter 3 of Title 53.

§ 51-4-3. Definitions.

For purpose of this chapter, the following words and phrases shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Area of the state" shall mean any geographical area of the state as may be designated by the board.

(b) "Board" shall mean the Mississippi Board of Water Commissioners.

(c) "Domestic uses" shall mean and include the use of water for ordinary household purposes, the watering of farm livestock, poultry and domestic animals, and the irrigation of home gardens and lawns; provided, however, such use does not exceed fifty thousand (50,000) gallons per day.

(d) "Person" shall mean every natural person, firm, partnership, association, cooperative, public and private corporation, irrigation, or other improvement district, and any state or federal agency.

(e) "Groundwater" shall mean that water occurring beneath the surface of the ground.

(f) "Aquifer" shall mean a geologic formation, group of such formations, or part of such a formation that is water bearing.

(g) "Well" shall mean an excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing, or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer.

SOURCES: Laws, 1976, ch. 474, § 2, eff from and after July 1, 1976.

§ 51-4-5. Declaration and delineation of capacity use areas.

(1) The board may declare and delineate from time to time, and may modify, capacity use areas of the state where it finds that the use of groundwater requires coordination and limited regulation for protection of the interest and rights of residents or property owners of such areas or of the public interest.

(2) Within the meaning of this chapter "a capacity use area" is one where the board finds that the aggregate uses of groundwater in or affecting such area (a) have developed or threatened to develop to a degree which requires coordination and regulation, or (b) exceed or threaten to exceed or otherwise threaten or impair, the renewal or replenishment of such waters or any part of them.

(3) The board may declare and delineate capacity use areas in accordance with the following procedures:

(a) Whenever the board believes that a capacity use situation exists or may be emerging in any area of the state, it may direct its water engineer to conduct an investigation and report to the board thereon.

(b) In conducting the investigation the water engineer shall notify, by certified mail, all water users in excess of fifty thousand (50,000) gallons per day and allow either written or oral consultation; may retain consultants; and shall consider all factors relevant to the conservation and use of water in the area. The report shall include the findings and recommendations as to the water use problems of the area involving groundwater, whether effective measures can be employed limited to groundwater, and whether timely action by any agency or person may preclude the need for additional regulation at that time. The report shall also include such other findings and recommendations as may be deemed appropriate.

(c) If the board finds, following its review of the report that a capacity use area should be declared, it may adopt an order declaring the capacity use area. Prior to adopting such an order the board shall give notice of its proposed action and shall conduct at least one (1) public hearing with respect to such proposed action.

(d) Such notice shall be given not less than thirty (30) days before the date of such hearing and shall either include details of such proposed action, or where details are too lengthy for publication, the notice shall state the information is available to all interested persons in the office of the board.

(e) Any such notice shall be published at least once in a newspaper published in and having general circulation in each county wherein the water area is affected.

(f) Any person who desires to be heard at any public hearing shall give notice thereof in writing to the board on or before the date set for the hearing. The board is authorized to set reasonable rules and regulations concerning such public hearings.

(g) Following the public hearing(s), written comments will be received by the board for the period of fifteen (15) days, and these will be considered the same as information received at the hearing. Following this period of fifteen (15) days, the board shall adopt its final action with respect thereto and shall enter such final action in the official minutes of the board. The board is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this section, any such modification, or revocatoin, however, to be subject to the procedural requirements of this chapter. If the board finds and orders that a capcity use area shall be declared, its order shall include a delineation of the boundary of the area, and the board shall instruct its water engineer to prepare proposed regulations consistent with the provisions of section 51-4-7.

SOURCES: Laws, 1976, ch. 474, § 3, eff from and after July 1, 1976.

Cross references—
As to general powers and duties of board of water commissioners, see § 51-3-25.

§ 51-4-7. Adoption of regulations affecting capacity use areas.

(1) Following the declaration of a capacity use area by the board, it shall prepare proposed regulations specific for said area, containing such of the following provisions as the board finds appropriate concerning the regulation of groundwaters:

(a) Provisions requiring water users within the area to submit reports not more frequently than at intervals of thirty (30) days concerning quantity of water used or withdrawn, sources of water and the nature of the use thereof;

(b) Provisions concerning the timing of withdrawals, provisions to protect against or abate saltwater encroachment; provisions to protect against or abate unreasonable adverse effects on other water users within the area, including but not limited to adverse effects on public use;

(c) Provisions concerning well depth and spacing controls and provisions establishing a range of prescribed pumping levels (elevations below which water may not be pumped) or maximum pumping rates, or both, in wells or for the aquifer or for any part thereof based on actual proof of the capacities and characteristics of the aquifer; and

(d) Such other provisions not inconsistent with this chapter as the board finds necessary to implement the purposes of this chapter.

(2) The board shall conduct at least one (1) hearing upon the proposed regulations, upon notice, as required in subsection (3), paragraphs (d), (e), and (f) of section 51-4-5. Following the public hearing(s), written comments will be received by the board for a period of fifteen (15) days and these will be considered the same as information received at the hearing. Following this period of fifteen (15) days, the board shall adopt its final action with respect thereto, and shall enter such final action in the official minutes of the board. The board is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this section, any such modifications or revocations, however, to be subject to the procedural requirements of this chapter.

SOURCES: Laws, 1976, ch. 474, § 4, eff from and after July 1, 1976.

Research and Practice References—
Ground water rights, 24 Am Jur Pl & Pr Forms (Rev ed), Waters, Forms 111 et seq.

ALR Annotations—
Liability for obstruction or diversion of subterranean waters in use of land. 29 ALR2d 1354.
Liability for pollution of subterranean waters. 38 ALR2d 1265.

§ 51-4-9. Granting of permits for use of groundwaters in capacity use areas; appeals.

(1) In areas declared by the board to be capacity use areas, except as hereinbefore provided in section 51-4-1, paragraph (2), no person after the expiration of such period of time as specified in regulations pursuant to section 51-4-7 shall withdraw, obtain or utilize groundwaters in excess of fifty thousand (50,000) gallons per day for any purpose unless such person shall have first obtained a permit therefor from the board. Applicants for such permits shall set forth such facts as the board shall deem necessary to enable it to establish and maintain adequate records of all groundwater uses within the capacity use area.

(2) In all cases the applicant shall notify by following the requirements of subsection (3)(e) of section 51-4-5, stating the nature of the proposed use, which permit shall be issued by the board within fifteen (15) days from date of notice, if by that date no request has been received by the board for a public hearing.

(3) The board shall have the power to:

(a) Grant such permit with conditions as the board deems necessary to implement the regulations adopted pursuant to section 51-4-7;

(b) Grant any temporary permit for such a period of time as the board shall specify where conditions make such temporary permit essential, even though the action allowed by such permit may not be consistent with the board's regulations applicable to such capacity use area;

(c) Modify or revoke any permit upon not less than sixty (60) days written notice to the permittee affected; and

(d) To deny such permit if the proposed use is found to be contrary to public interest. Any water user wishing to contest the proposed action shall be entitled to a hearing before the board upon request therefor.

(4) All notices required to be given by any party to a proceeding shall be given by requirements of subsection (3)(e) of section 51-4-5. The board may prescribe the form and content of any particular notice.

(5) The following provisions shall be applicable in connection with hearings pursuant to this section:

(a) Any hearing held pursuant to this section or section 51-4-5 whether called at the instance of the board or of any person, shall be held upon not less than thirty (30) days notice given by the applicant, unless a shorter notice is agreed upon by all such parties;

(b) All hearings under this section shall be before the board, before one (1) or more of its own members or before one (1) or more of its own qualified employees, and shall be open to the public. Any member or employee of the board to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the board for decision;

(c) A full and complete record of all proceedings at any hearing under this chapter shall be taken by the board, or by any other method approved by the board. Any party to a proceeding shall be entitled to a copy of such record upon payment of reasonable cost thereof;

(d) At any hearing or other proceeding authorized by this chapter, the board and its duly authorized agents, shall follow the procedure followed by the courts of this state. The board or its duly authorized agents shall have power to administer oaths; to take testimony; to issue subpoenas and compel the attendance of witnesses, which subpoenas shall be served in the same manner as subpoenas issued by the courts of this state; and to order the taking of depositions in the same manner as depositions are taken in the courts;

(e) The burden of proof at any hearing under this chapter shall be upon the person at whose instance the hearing is being held;

(f) All orders and decisions of the board shall set forth separately the board's findings of fact and conclusions of law on which any action or decision by the board is based.

(6) Any order, decision, or other official act of the board in administering the provisions of this chapter may be appealed by any person aggrieved thereby to the circuit court of the county wherein the point of withdrawal exists by serving the chairman or other proper personnel at the office of the board, within sixty (60) days after receipt of written notice of the order, decision, or official acts, notice of appeal stating the grounds upon which the appeal is founded. The appeal may be based on legal or factual grounds, or both. After proper hearing, at which testimony may be offered for any aggrieved person, the court may sustain, reverse, or modify the order of the board, which may be appealed to the supreme court the same as other orders of the circuit court. The attorney general, or his representative, shall represent the board on all appeal matters. The board shall, within thirty (30) days after service of the notice of appeal, make a return to the circuit court, giving copies of all documents and orders and a transcript of the testimony taken.

(7) Within fifteen (15) days after the service of notice of appeal, the board may serve upon the appellant an offer in writing to correct the order from which appealed in any of the particulars mentioned in the notice of appeal. The appellant may thereupon, and within fifteen (15) days thereafter, file with the board a written acceptance of such offer; and in such cases the board shall thereupon make a record of such acceptance in its permanent files and correct the order accordingly, and the same, so corrected, shall stand as the order of the board and shall be filed in the office of the clerk of the circuit court.

(8) In adopting any regulations pursuant to the provisions of section 51-4-7 and in considering permit applications, revocations, or modifications under this section, the board may consider:

(a) The number of persons using an aquifer and the object, extent and necessity of their respective withdrawals or uses;

(b) The nature and size of the aquifer;

(c) The physical and chemical nature of any impairment of the aquifer adversely affecting its availability or fitness for other water uses, including public use;

(d) The probable severity and duration of such impairment under foreseeable conditions;

(e) The injury to public health, safety or welfare which would result if such impairment were not prevented or abated;

(f) The kinds of businesses or activities to which the various uses are related;

(g) The importance and necessity of the uses claimed by permit applicants under this section, or of the water uses of the area and the extent of any injury or detriment caused or expected to be caused to other water uses including public use;

(h) Diversion from or reduction of flows in other watercourses or aquifers; and

(i) Any other relevant factors.

SOURCES: Laws, 1976, ch. 474, § 5, eff from and after July 1, 1976.

Research and Practice References—
Ground water rights, 24 Am Jur Pl & Pr Forms (Rev ed), Waters, Forms 111 et seq.

ALR Annotations—
Liability for obstruction or diversion of subterranean waters in use of land. 29 ALR2d 1354.
Liability for pollution of subterranean waters. 38 ALR2d 1265.

§ 51-4-11. Duration and transfer of permits; statements of permittees as to water use.

(1) No permit under section 51-4-9 shall be issued for a longer period than the longest of the following: (a) ten (10) years, or (b) the duration of the existence of a capacity use area, or (c) the period found by the board to be necessary for reasonable amortization of the applicant's water withdrawal and water-using facilities. Permits may be renewed following their expiration upon compliance with the provisions of section 51-4-9.

(2) Permits shall not be transferred except with the approval of the board.

(3) Every person in a capacity use area who is required by this chapter to secure a permit shall file with the board in the manner prescribed by the board a certified statement of quantities of water used and withdrawn, sources of the water, and the nature of the use thereof not more frequently than thirty (30) day intervals. Such statements shall be filed on forms furnished by the board within ninety (90) days after the adoption of an order by the board declaring a capacity use area. Water users in a capacity use area not required to secure a permit shall comply with procedures established by the board to protect and manage the groundwater resources of the area.

(4) If any person who is required to secure a permit under this chapter is unable to furnish accurate information concerning amounts of water being withdrawn or used, or if there is evidence that his certified statement is false or inaccurate or that he is withdrawing or using a larger quantity of water or under different conditions than authorized by the board, then the board is authorized to revoke the permit authorizing the withdrawal. In determining the amount of water being withdrawn or used by a permit holder or applicant the board may use any accepted method or standard.

(5) In any case where a permit applicant can prove that the applicant was withdrawing or using water prior to the date of declaration of a capacity use area, the board shall grant a permit for the average annual water usage of said applicant during the preceding five (5) years; provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other current water uses in the area, including public use.

(6) The board shall also take into consideration in the granting of any permit the prior investments of any person in lands, and plans for the usage of water in connection with such lands.

(7) Pending the issuance or denial of a permit pursuant to subsection (5) or (6) of this section, the applicant may continue the same withdrawal or use which existed prior to the date of declaration of the capacity use area. In the event of a permit denial followed by an appeal, the applicant may continue the same withdrawal or use which existed prior to the denial of the permit until final court actions have been completed; provided, however, that said continuance may not continue in the event of an affirmative finding that the public health, welfare and safety will be endangered.

(8) Users of groundwater in excess of fifty thousand (50,000) gallons per day whether within a capacity use area or not shall submit information to the board as specified in rules and regulations adopted by the board; provided, that no person shall be required to disclose any secret formula, processes or method used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision.

SOURCES: Laws, 1976, ch. 474, § 6, eff from and after July 1, 1976.

§ 51-4-13. Penalties.

Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) for each violation. Each day during which such violation exists or continues shall constitute a separate offense.

SOURCES: Laws, 1976, ch. 474, § 7, eff from and after July 1, 1976.

§ 51-4-15. Definition of boundaries of capacity use areas; admissibility into evidence of copies of maps and descriptions.

The board in designating the boundaries of any capacity use area may define such boundaries by showing them on a map or drawing, by a written description, or by any combination thereof, to be designated appropriately and filed permanently by the board. Alterations in these lines shall be indicated by appropriate entries upon or additions to such map or description. Photographic, typed or other copies of such map or description, certified by the water engineer, shall be admitted in evidence in all courts and shall have the same force and effect as would the original maps or description. If the boundaries are changed pursuant to other provisions of this chapter, a redrawn map shall supersede for all purposes the earlier map or all maps which it is designated to replace.

SOURCES: Laws, 1976, ch. 474, § 8, eff from and after July 1, 1976.

§ 51-4-17. Investigations; comprehensive plans; entry onto public or private property.

The board shall conduct such investigations as may reasonably be necessary to carry out its duties prescribed in this chapter and shall formulate comprehensive plans for the development, conservation, and utilization of the water resources of the state; however, the board shall cooperate with other agencies in accumulating such data and formulating such plans. The board shall have the right to enter at reasonable times upon any property, public or private, for the purpose of investigating water sources, and obtaining information required by provisions of this chapter. No person shall refuse entry or access to any authorized representative of the board who requests entry for the purposes of a lawful inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his official duties consistent with the provisions of this chapter.

SOURCES: Laws, 1976, ch. 474, § 9, eff from and after July 1, 1976.

§ 51-4-19. Rules and regulations.

The board may adopt and modify from time to time rules and regulations to implement the provisions of this chapter.

SOURCES: Laws, 1976, ch. 474, § 10, eff from and after July 1, 1976.

APPENDIX F

MISSISSIPPI DEPARTMENT OF ARCHIVES AND HISTORY
Enabling Legislation

ANTIQUITIES LAW OF MISSISSIPPI

§ 39-5-1. Department of archives and history—objects and purposes.

There shall be for the State of Mississippi a department of archives and history located in the state capitol in apartments set aside for its use by the governor. The objects and purposes of the department are the care and custody of official archives, the collecting of materials bearing upon the history of the state and of the territory included therein, from the earliest times, the editing of official records and other historical material, the diffusion of knowledge in reference to the history and resources of this state, the preparation and publication of annual reports, the encouragement of historical work and research and the performance of such other acts and requirements as may be enjoined by law.

SOURCES: Codes, 1906, § 1633; Hemingway's 1917, § 3447; 1930, § 3626; 1942, § 6180.

§ 39-5-3. Board of trustees to control department.

The department of archives and history shall be under the control of a board of nine trustees. The board shall have the power and authority to fill all vacancies occurring therein, whether by expiration of term of service or by death or resignation, but the names of all newly elected members shall be communicated to the next ensuing session of the state senate for confirmation, and in case it shall reject any of the said newly elected trustees it shall proceed forthwith to fill the vacancy or vacancies by an election. All trustees chosen to succeed the present members or their successors shall serve for a term of six years. The board of trustees shall hold at the state capitol at least one regular meeting during the year, and as many special meetings as may be necessary, and at said meetings five members shall constitute a quorum. The director of the department of archives and history, hereinafter provided, shall be secretary of the board. The trustees shall receive no compensation for their services other than the amount of their necessary expenses actually paid out while in attendance on the meetings of the board or the business of the department. The board is empowered to adopt rules for its own government and for the government of the department, to elect and fix the compensation of a director not to exceed the maximum set by the legislature, and other officials or employees, and to do and perform such other acts and things as may be necessary to carry out the true intent and purposes of this chapter.

SOURCES: Codes, 1906, § 1634; Hemingway's 1917, § 3448; 1930, § 3627; 1942, § 6181; Laws, 1960, ch. 237; 1966, ch. 445, § 16, eff from and after July 1, 1966.

§ 39-5-5. Additional powers and duties of department.

The duties and powers of the board of trustees of the department of archives and history shall include, in addition to other duties and powers granted or prescribed by law, the following:

(a) To determine the location of places of historical interest within the state;

(b) To make a survey of buildings of all types throughout the state which are in danger of destruction, without proper care, and which in the opinion of the board of trustees should be preserved for historical purposes;

(c) To contact the proper authorities of the United States national cemeteries and military parks to determine whether or not the record of Mississippi troops is adequately commemorated;

(d) To acquire, preserve, restore or operate any real or personal property deemed significant for historical, architectural, archeological or cultural reasons, to expend funds for such purposes, to enter into contracts or agreements with any agency of the United States or any person, firm, corporation or association for such purposes and to do any and all things which may be necessary or desirable to carry out such purposes;

(e) To participate with any agency of the United States, any other governmental agency or any person, firm, corporation, association or group in mutual or cooperative programs or projects within the duties and powers of the board of trustees; and

(f) To accept grants or donations of money or property, real or personal, from any agency of the United States, any other governmental agency or any person, firm, corporation, association or group. However, the board of trustees shall not be required, except by specific act of the legislature, to accept any property without its consent.

SOURCES: Laws, 1979, ch. 438, § 13, eff from and after February 1, 1980.

§ 39-5-6. Governor's mansion.

The duties and powers of the board of trustees of the department of archives and history shall include, in addition to other duties and powers granted or prescribed by law, the following:

(a) To promulgate rules and regulations governing the acquisition of furniture and furnishings, including but not limited to carpets, rugs, paintings, draperies and objects of art, for the original or historic area of the governor's mansion;

(b) To promote the donation or loaning of money or property, real or personal, from any agency of the United States, state or local government, any person, firm, corporation, association or group, for the purpose of furnishing or decorating the original or historic area of the governor's mansion;

(c) To accept such donations of money or property, real or personal, from any agency of the United States, state or local government, any person, firm, corporation, association or group, for the purpose of furnishing or decorating the original or historic area of the governor's mansion, provided that the board of trustees shall not be required to accept any donation of furniture or furnishings without its consent;

(d) To maintain a descriptive inventory of all furniture and furnishings in the governor's mansion;

(e) To sell, donate or otherwise dispose of surplus property of the governor's mansion which is not in use; and

(f) To review and approve any major changes in the architecture, furnishings, or decoration of the governor's mansion.

SOURCES: Laws, 1974, ch. 337; 1979, ch. 438, § 14, eff from and after February 1, 1980.

§ 39-5-7. Director of department—term of office—duties and powers.

The department of archives and history shall be under the immediate management and control of a director, to be elected by the board of trustees, whose term of office shall be six years, and until his successor is elected and qualified. He shall take an oath of office as do other state officials, and shall be commissioned in like manner. He shall have authority to adopt a seal for use in official business. He shall devote his time to the work of the department, using his best endeavor to develop and build it up, so as to carry out the design of its creation. He shall have the control and direction of the work and operations of the department, and shall preserve its collection, care for the official archives that may come into his custody, collect, as far as possible, all materials bearing upon the history of the state and the territory included therein from the earliest times, prepare the official registers hereinafter provided, and diffuse knowledge in reference to the history and resources of the state. The director of the department shall make a report of the expenses of the department to the legislature of the state as state officers.

SOURCES: Codes, 1906, § 1635; Hemingway's 1917, § 3449; 1930, § 3628; 1942, § 6182.

§ 39-5-9. Repealed by Laws, 1978, ch. 520, § 16, eff from and after July 1, 1978.

§ 39-5-11. State and county officials empowered to turn over all records to director not in current use.

Any state, county, municipal or other official is hereby authorized and empowered, in his discretion, to turn over to the department for permanent preservation therein, any official books, records, documents, original papers, newspaper files and printed books not in current use in their offices. When so surrendered copies therefrom shall be made and certified by the director upon the application of any person interested, which certification shall have all the force and effect as if made by the officer originally in the custody of them, and for which the same fees shall be charged, to be collected in advance.

SOURCES: Codes, 1906, § 1636; Hemingway's 1917, § 3450; 1930, § 3629; 1942, § 6183.

§ 39-5-13. County boards of supervisors empowered to turn over historical portraits and make appropriations for oil portraits of distinguished men.

The county boards of supervisors are hereby authorized and empowered to turn over to the department historical portraits which may be the property of the counties, and to make appropriations, on application of the director, for the purpose of placing oil portraits of distinguished citizens of Mississippi in the state's hall of fame. The selection of such portraits shall be made at the request and under the direction of the board of trustees of the department.

SOURCES: Codes, 1906, § 1637; Hemingway's 1917, § 3451; 1930, § 3650; 1942, § 6184.

§ 39-5-15. Official and statistical register.

An official and statistical register of the State of Mississippi shall be compiled by the secretary of state after each general election, to contain brief sketches of the several state officials, the members of congress from Mississippi, the supreme court judges, the members of the senate and house of representatives of the State of Mississippi; a roster of all state and county officials, lists of all state institutions, with officials; state and county population and election statistics, and miscellaneous statistics. This register shall be published in an edition of twenty thousand copies and shall be for free distribution, the printing and the binding to be paid for as is other public printing and binding. Its distribution shall be paid out of the fund provided for the distribution of other public documents.

SOURCES: Codes, 1906, § 1638; Hemingway's 1917, § 3452; 1930, § 3651; 1942, § 6185; Laws, 1948, ch. 423, § 1; 1964, ch. 380, eff from and after passage (approved April 28, 1964).

§ 39-5-17. Historic and prehistoric ruins, etc.—purchase by counties for parks.

The board of supervisors of any county in the state, in its discretion, shall be authorized to acquire title by gift or grant the site of any historic or prehistoric ruin or monument or any object of historical, archeological or scientific value situated in said county, for public parks and reservations to be devoted solely to the educational and recreational advantages of the people, upon the written permission of the director of the department of archives and history of the State of Mississippi. Said board shall be authorized to expend in the maintenance of said public parks and reservations an amount not exceeding one hundred dollars ($100.00) per annum out of the general funds of said county.

SOURCES: Codes, 1942, § 6191; Laws, 1958, ch. 309.

§ 39-5-19. Restoration and maintenance of abandoned cemeteries by counties.

Upon the official certificate of the trustees of the state department of archives and history that any abandoned cemetery is of historical significance and should be repaired, rehabilitated, or maintained as a historical monument, the boards of supervisors of the respective counties in this state are hereby authorized and empowered, in their discretion, to repair, rehabilitate, and maintain any such cemetery within the borders of the county over which such board has jurisdiction.

Subject to like certificate from the said trustees, the board of supervisors in adjoining counties may, in their discretion, jointly accomplish such repairs, rehabilitation, or maintenance in those instances where the cemetery in question occupies territory which at one time or another was located as a part of said adjoining counties.

SOURCES: Codes, 1942, § 3019.5; Laws, 1971, ch. 425, §§ 1 and 2, eff from and after passage (approved March 23, 1971).

ANTIQUITIES LAW OF MISSISSIPPI

§ 39-7-1. Short title.

This chapter shall be known, and may be cited, as the "Antiquities Law of Mississippi."

SOURCES: Codes, 1942, § 6192-101; Laws, 1970, ch. 267, § 1, eff from and after passage (approved March 2, 1970).

§ 39-7-3. Declaration of public policy.

It is hereby declared to be the public policy and in the public interest of the State of Mississippi to locate, protect, and preserve all sites, objects, buildings, shipwrecks, and locations of historical, archeological, educational, or scientific interest, including, but not limited to prehistoric and historical American Indian or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure imbedded in the earth, sunken or abandoned ships and wrecks of the sea or any part or the contents thereof, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants, prehistory, history, natural history, government, or culture in, on or under any of the lands, tidelands, submerged lands, and bed of the sea within the jurisdiction of the State of Mississippi.

SOURCES: Codes, 1942, § 6192-102; Laws, 1970, ch. 267, § 2, eff from and after passage (approved March 2, 1970).

§ 39-7-5. Archives and history trustees to administer chapter; record of proceedings to be subject to examination.

The authority to administer the provisions of this chapter is vested in the board of trustees of the department of archives and history, hereinafter referred to as the board. A record of the board's proceedings under this chapter shall be kept, and shall be subject to inspection by any citizen of Mississippi desiring to make an examination in the presence of a member of the board or an authorized employee of the department of archives and history.

SOURCES: Codes, 1942, § 6192-103; Laws, 1970, ch. 267, § 3, eff from and after passage (approved March 2, 1970).

§ 39-7-7. Duties of board.

The duties of the board shall be to determine the site of and to designate state archeological landmarks; to remove from such designation certain of such sites as hereinafter provided; to contract or otherwise provide for the discovery and salvage operations herein covered; to consider the requests for and issue the permits hereinafter provided for; and to protect and preserve the archeological resources of the State of Mississippi. The board shall be the legal custodian of all items hereinafter described which have been recovered and retained by the State of Mississippi, and shall maintain an inventory of such items showing the description and depository thereof.

SOURCES: Codes, 1942, § 6192-104; Laws, 1970, ch. 267, § 4, eff from and after passage (approved March 2, 1970).

§ 39-7-9. Shipwrecks and buried treasure designated archeological landmarks to be sole property of state.

All sunken or abandoned ships and wrecks of the sea, and any part or the contents thereof, and all treasure imbedded in the earth, located in, on or under the surface of lands belonging to the State of Mississippi, including its tidelands, submerged lands and the beds of its rivers and the sea within the jurisdiction of the State of Mississippi are hereby declared to be state archeological landmarks and are the sole property of the State of Mississippi and may not be taken, altered, damaged, destroyed, salvaged or excavated without a contract or permit of the board.

SOURCES: Codes, 1942, § 6192-105; Laws, 1970, ch. 267, § 5, eff from and after passage (approved March 2, 1970).

§ 39-7-11. State archeological landmarks; removals from or alteration of private lands within areas.

All other sites, objects, buildings, artifacts, implements, and locations of historical, archeological, scientific, or educational interest, including, but expressly not limited to, those pertaining to prehistoric and historical American Indian or aboriginal campsites, dwellings, and habitation sites, their artifacts and implements of culture, as well as archeological sites of every character that are located in, on or under the surface of any lands belonging to the State of Mississippi or to any county, city, or political subdivision of the state, are hereby declared to be state archeological landmarks and are the sole property of the State of Mississippi. All such sites or items located on private lands within the State of Mississippi in areas that have been designated as a "state archeological landmark" as hereinafter provided, may not be taken, altered, damaged, destroyed, salvaged, or excavated without a permit from, or in violation of the terms of such permit of, the board.

SOURCES: Codes, 1942, § 6192-106; Laws, 1970, ch. 267, § 6, eff from and after passage (approved March 2, 1970).

§ 39-7-13. Sites located upon private lands; requisites for designation.

Any site located upon private lands which is determined by majority vote of the board to be of sufficient archeological, scientific or historical significance to scientific study, interest or public representation of the aboriginal or historical past of Mississippi may be designated by the board as a "state archeological landmark." It is specifically provided, however, that no such site shall be so designated upon private land without the written consent of the landowner or landowners in recordable form sufficiently describing the site so that it may be located. Upon such designation the consent of the landowner shall be recorded in the deed records of the county in which the land is located. Any such site upon private land shall be marked by at least one marker bearing the words "state archeological landmark" for each five acres of area.

SOURCES: Codes, 1942, § 6192-107; Laws, 1970, ch. 267, § 7, eff from and after passage (approved March 2, 1970).

§ 39-7-15. Removal from designation.

Upon majority vote of the board any state archeological landmark on public or private land may be determined to be of no further historical, archeological, educational, or scientific value, or not of sufficient value to warrant its further classification as such, and upon such determination it may be removed from such designation. In the case of sites located on private land that have theretofore been designated by instrument of record, the board is authorized to cause to be executed and recorded in the deed records of the county where such site is located an instrument setting out such determination and releasing the site from the provisions hereof.

SOURCES: Codes, 1942, § 6192-108; Laws, 1970, ch. 267, § 8, eff from and after passage (approved March 2, 1970).

§ 39-7-17. Contracts for salvage.

The board shall be authorized to enter into contracts with other state agencies or institutions and with qualified private institutions, corporations, or individuals for the discovery and salvage of treasure imbedded in the earth, sunken or abandoned ships or wrecks of the sea, parts thereof and their contents. Such contracts are to be on forms approved by the attorney general. The contracts may provide for fair compensation to the salvager in terms of a percentage of the reasonable cash value of the objects recovered, or at the discretion of the board, of a fair share of the objects recovered. The amount constituting a fair share shall be determined by the board, taking into consideration the circumstances of each such operation. The reasonable cash value may be determined by contract provision providing for appraisal by qualified experts or by representatives of the contracting parties and their representative or representatives. Such contract shall provide for the termination of any right in the salvager or permittee thereunder upon the violation of any of the terms thereof. Superior title to all objects recovered shall be retained by the State of Mississippi unless and until it is released to the salvager or permittee by the board. No person, firm, or corporation may conduct such salvage or recovery operation herein described without first obtaining such contract. All such contracts shall specify, among other things, the location, nature of the activity, and the time period covered thereby, and when executed are to be recorded by the person, firm, or corporation obtaining such contract, in the office of the chancery clerk in the county or counties where such operations are to be conducted, prior to the commencement of such operation.

SOURCES: Codes, 1942, § 6192-109; Laws, 1970, ch. 267, § 9, eff from and after passage (approved March 2, 1970).

Cross references—
As to permits for salvage or studies, see § 39-7-19.
As to supervision of salvage operations and custody of antiquities, see § 39-7-21.

§ 39-7-19. Permits for salvage or studies at state archeological landmarks.

The board shall be authorized to issue permits to other state agencies or institutions and to qualified private institutions, companies, or individuals for the taking, salvaging, excavating, restoring, or the conducting of scientific or educational studies at, in, or on state archeological landmarks as in the opinion of the board would be in the best interest of the State of Mississippi. Such permits may provide for the retaining by the permittee of a portion of any recovery, as set out for contracting parties under section 39-7-17. Such permit shall provide for the termination of any rights in the permittee thereunder upon the violation of any of the terms thereof and shall be drafted in compliance with forms approved by the attorney general. All such permits shall specify, among other things, the location, nature of the activity, and time period covered thereby. No person, firm, or corporation shall conduct any such operations on any state archeological landmark herein described without first obtaining and having in his or its possession such permit at the site of such operation, nor shall such operations be conducted in violation of the provisions of such permit.

SOURCES: Codes, 1942, § 6192-110; Laws, 1970, ch. 267, § 10, eff from and after passage (approved March 2, 1970).

Cross references—
As to supervision of salvage operations and custody of antiquities, see § 39-7-21.

§ 39-7-21. Supervision of salvage or recovery operations; custody of antiquities; promulgation of rules and regulations.

All salvage or recovery operations described under section 39-7-17, and all operations conducted under permits set out in section 39-7-19, must be carried out under the general supervision of the board, in accordance with reasonable rules and regulations adopted by the board, and in such manner that the maximum amount of historic, scientific, archeological, and educational information may be recovered and preserved in addition to the physical recovery of items. The board shall be the legal custodian of all antiquities recovered, and is specifically authorized and empowered to promulgate such rules and regulations and to require such contract or permit conditions as to reasonably effect the purposes of this chapter.

SOURCES: Codes, 1942, § 6192-111; Laws, 1970, ch. 267, § 11, eff from and after passage (approved March 2, 1970).

§ 39-7-23. Expenditures for acquisition of items; gifts and bequests; contracts for temporary possession of items by others.

The board is hereby authorized to expend such sums, from any appropriations hereafter made for such purposes, as it may deem advisable, to purchase from the salvager or permittee such salvager's or permittee's share, or portion thereof, of items recovered which in the opinion of the board should remain the property of the State of Mississippi. The board is authorized and empowered to accept gifts, grants, devises, and bequests of money, securities, or property to be used in the purchase of such items from the salvager or permittee. Further, in this respect, the board may enter into contracts or agreements with such persons, firms, corporations, or institutions, as it might choose, whereby such persons, firms, corporations, or institutions, for the privilege of retaining temporary possession of such items, may advance to the board the money necessary to procure from the salvager or permittee such items as the board might determine should remain the property of the State of Mississippi, upon the condition that at any time the board may choose to repay to such person, firm, corporation, or institution such sum so advanced, without interest or additional charge of any kind, it may do so and may recover possession of such items. During the time these items are in the possession of the person, firm, corporation, or institution advancing the money for the purchase thereof, they shall be available for viewing by the general public without charge or at no more than a nominal admission fee, and such items may not be removed from the State of Mississippi for appraisal, exhibition, or restorative purposes, except upon written authorization of the board.

SOURCES: Codes, 1942, § 6192-112; Laws, 1970, ch. 267, § 12, eff from and after passage (approved March 2, 1970).

§ 39-7-25. Restoration of antiquities for private parties.

The restoration of antiquities for private parties is authorized and shall be under the rules and regulations promulgated by the board, and all costs incurred in such restoration, both real and administrative, shall be paid by the private party.

SOURCES: Codes, 1942, § 6192-113; Laws, 1970, ch. 267, § 13, eff from and after passage (approved March 2, 1970).

§ 39-7-27. Reproduction or forgery prohibited.

No person shall intentionally reproduce, replicate, retouch, rework, or forge any archeological or other object which derives value from its antiquity, with intent to represent the same to be original or genuine and with intent to deceive or offer any such object for sale or exchange.

SOURCES: Codes, 1942, § 6192-114; Laws, 1970, ch. 267, § 14, eff from and after passage (approved March 2, 1970).

§ 39-7-29. Defacing of American Indian or aboriginal markings or carvings prohibited.

No person shall intentionally and knowingly deface any American Indian or aboriginal paintings, hieroglyphics, or other marks or carvings on rock or elsewhere which pertain to early American Indian or aboriginal habitation of the country.

SOURCES: Codes, 1942, § 6192-115; Laws, 1970, ch. 267, § 15, eff from and after passage (approved March 2, 1970).

§ 39-7-31. Entry upon land of another to deface, remove or destroy archeological relics or sites.

No person, not being the owner thereof, and without the consent of the owner, proprietor, lessee, or person in charge thereof, shall enter or attempt to enter upon the lands of another and intentionally injure, disfigure, remove, excavate, damage, take, dig into, or destroy any historical structure, monument, marker, medallion, or artifact, or any prehistoric or historic archeological site, American Indian or aboriginal campsite, artifact, burial, ruin, or other archeological remains located in, on or under any private lands within the State of Mississippi.

SOURCES: Codes, 1942, § 6192-116; Laws, 1970, ch. 267, § 16, eff from and after passage (approved March 2, 1970).

§ 39-7-33. Unlawful to injure or destroy any historical structure or artifact.

It shall be unlawful for any person, not being the owner thereof, and without lawful authority, to wilfully injure, disfigure, remove or destroy any historical structure, monument, marker, medallion, or artifact.

SOURCES: Codes, 1942, § 6192-120; Laws, 1970, ch. 267, § 20, eff from and after passage (approved March 2, 1970).

§ 39-7-35. Violation of chapter a misdemeanor; penalties.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars ($50.00) and not more than five hundred dollars ($500.00), or by confinement in jail for not more than thirty days, or by both such fine and confinement. Each day of continued violation of any provision of this chapter shall constitute a distinct and separate offense for which the offender may be punished.

SOURCES: Codes, 1942, § 6192-117; Laws, 1970, ch. 267, § 17, eff from and after passage (approved March 2, 1970).

§ 39-7-37. Right of action; injunction; venue.

In addition to, and without limiting the other powers of the attorney general of the State of Mississippi and without altering or waiving any criminal penalty provision of this chapter, the attorney general shall have the power to bring an action in the name of the State of Mississippi in any court of competent jurisdiction to enjoin violations or threatened violations of this chapter, and for the return of items taken in violation of the provisions hereof. The venue of such actions shall lie in the county in which the activity sought to be enjoined is alleged to be taking place, or in the county from which the items were taken. Any citizen in the State of Mississippi shall have the power to bring an action in any court of competent jurisdiction to enjoin violations or threatened violations of this chapter, and for the return of items taken in violation of the provisions hereof. The venue of such actions shall lie in the county in which the activity sought to be enjoined is alleged to be taking place, or in the county from which the items were taken.

SOURCES: Codes, 1942, § 6192-118; Laws, 1970, ch. 267, § 18, eff from and after passage (approved March 2, 1970).

§ 39-7-39. Other agencies to assist in enforcement.

The chief administrative officers of all state agencies are authorized and directed to cooperate with and assist the board and the attorney general in carrying out the intent of this chapter. All law enforcement agencies and officers, state and local, are authorized and directed to assist in enforcing and in carrying out the intent of this chapter.

SOURCES: Codes, 1942, § 6192-119; Laws, 1970, ch. 267, § 19, eff from and after passage (approved March 2, 1970).

APPENDIX G

ATTORNEY GENERAL'S OPINION (MAY 31, 1978)
Detailing MMRC Authorities Under 1978
Wetlands Management Amendment

DEPARTMENT OF JUSTICE
Office of the Attorney General
JACKSON, MISSISSIPPI 39205

A. F. SUMMER
ATTORNEY GENERAL

MRS. JEAN R. RICHEY
SPECIAL ASSISTANT ATTORNEY GENERAL

May 31, 1978

Mr. J. E. Thomas, P. E.
Executive Director
Mississippi Marine Resources Council
Post Office Drawer 959
Long Beach, Mississippi 39560

Dear Mr. Thomas:

Attorney General Summer has received your letter of request dated April 7, 1978 which has been forwarded to the undersigned for research and reply. You ask for our opinion as follows:

> On behalf of the Mississippi Marine Resources Council I respectfully request your assistance in the interpretation of certain provisions of Senate Bill 2498 which was adopted at the Regular 1978 Session of the Mississippi Legislature. This bill amended Section 57-15-5 of the Mississippi Code of 1972 by which the Marine Resources Council was created, and it adds a new sentence at the end of the first paragraph of that section as it appears in the Code. The new sentence reads as follows: "The Council shall have the responsibility for the general management of the State's wetlands." It occurs to me that the language of the new sentence may impose very broad responsibilities and duties upon the Council. In the light of this amendment, I would appreciate your opinion on the following matters:
>
> 1. Whether under this provision, and in the light of other statutes pertaining to the Council and its relationship to the State's coastal wetlands, the Council is authorized and required to develop a plan for the management of the coastal wetlands, such a plan to include a statement of the goals and policies underlying the plan.
>
> 2. If the Council does have such responsibility, would it be authorized to designate areas for conservation, preservation, and recreation and their overall use in the coastal wetlands?

3. Does the Council have the duty in its management of the coastal wetlands to take appropriate action to increase their value and to rehabilitate, restore or modify them?

4. In connection with its management duties, may the Council's plan include cooperation with, coordination and guidance of, other State agencies in matters relating to the coastal wetlands so that any activities of other State agencies relating to such wetlands will be consistent with the plan?

5. Would the question in 4 above apply also to Federal agencies?

6. In view of the exemption provisions of the Coastal Wetlands Protection Act (Section 49-27-7), how do the managerial functions of the Council affect such exemptions?

7. If it is appropriate for the Council to develop a coastal wetlands management plan, who or what other agency, if any, would have to approve the plan?

8. Under its management authority could the Council issue guidelines and statements of policy to implement the management plan?

9. What recourse would the Council have against activities which have or would have a detrimental effect on the coastal wetlands?

The word "management" is defined in Webster's Unabridged Dictionary as the "act or art of managing, the manner of treating, directing, carrying on, or out, for a purpose; conduct, control." Other meanings include administering, guiding, to work upon, to cultivate, to husband. In the light of the breadth of meaning of this word and the fact that the Council is not merely given the authority to manage but is charged with the responsibility for management, it would seem to me that the new statute does impose heavy responsibility on the Council. I wish to advise them properly as to the course to be taken under the new act.

As you stated, Section 57-15-5, Mississippi Code of 1972, was amended at the Regular 1978 Session of the Mississippi Legislature by adding a new sentence reading as follows:

> The council shall have the responsibility for the general management of the state's wetlands.

Since the term "state's wetlands" is synonymous with the term "coastal wetlands" as defined in Section 49-27-5, the word "management" is the operative word in the latest amendment and which is the subject of your inquiry.

The fundamental rule of construction is to ascertain the intention of the Legislature which is determined primarily from the language used in a statute. Russell v. State, 231 Miss. 176, 94 So. 2d 916 (1957); Moran v. Moran, 252 Miss. 890, 173 So. 2d 916 (1965) The Supreme Court in many decisions has applied the rule that in an interpretation of statutes words in common use are to be given their plain, usual and ordinary meaning, unless they have some strictly legal or technical signification. See, e.g., Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880 (1939); Mississippi State Tax Commission v. Columbia Gulf Transmission Co., 249 Miss. 88, 161 So. 2d 173 (1964); Entrican v. King, 289 So. 2d 913 (Miss. 1974).

The word "management" has no strictly legal or technical signification or application and we must therefore ascertain its ordinary and common meaning. Webster's Unabridged Dictionary defines the word "management" as the act or art of managing, conducting, supervising, planning, organizing, coordinating, directing, controlling any activity with responsibility for results; and "to manage" means to control and direct, conduct, administer, guide, husband, cultivate, supervise, to direct or carry on business or affairs. Webster's Third New International Dictionary (1971)

An early Mississippi case dealing with a sinking fund established under the management of Commissioners for the redemption of bonds construed the term "management" as follows:

> The power to manage implies the power to control. It allows the exercise of a discretion. It could not be managed without the power to do so, and by requiring the one, the other was conferred. Commissioners of the Sinking Fund v. Walker, 6 How. (7 Miss.) 143, 186 (1842)

It was contended that the Commissioners had no authority to lend the fund in the interim period prior to the redemption of the bonds which would not be due for many years, and that the Commissioners merely had the power to "hold" the fund. The Mississippi Supreme Court held that the fund had been placed under the management of the Commissioners for a particular purpose--to pay off the bonds when they became due--and that it was the intention that this fund could be loaned in the meantime. "It was by them to be managed, not merely kept; and it was so placed upon a confidence that it would be properly managed for the benefit of the State." (Id. at 1186) The term "management" thus has an active rather than a passive connotation.

It is also a well established principle of statutory construction recognized in many decisions by the Mississippi Supreme Court that statutes In pari materia must be construed together to ascertain the legislative intent. See Aikerson v. State, 274 So. 2d 124 (Miss. 1973) and other cases cited in Mississippi Digest Statutes, Section 223. This means that all statutes on the subject of the Council's authority in coastal wetlands must be considered together and harmonized if possible. The relevant statutes include Sections 49-27-1 et seq. (known as the "Coastal Wetlands Protection Law" or simply the "Wetlands Law"), with particular reference to Sections 49-27-3, 49-27-7 and 49-27-65, and Sections 51-15-1 et seq., which includes the amended Section 57-15-5 (Purposes; Powers of the Council).

Section 57-15-5 provides that the policy of the Council shall be conducted according to the following guidelines:

1. The council shall have the general purpose and policy of studying and developing plans, proposals, reports and recommendations for the development and utilization of the coastal and offshore lands, waters and marine resources of this state in order to insure that all future plans and/or programs of the State of Mississippi involving the field of marine resources and sciences, oceanographic research, and related studies, will be coordinated with comparable functions and programs of agencies of the United States Government.

2. The council shall further have the purpose and policy to help coordinate, as hereinabove provided, all plans of other agencies of this state engaged in similar activities and of the various states of the United States of America, and also with all private agencies whose purpose is marine science and resource development.

3. The council is further authorized to enter into contract with any state or federal agency as may be necessary and requisite to carry out the purposes of this chapter.

Section 49-27-3 provides:

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

Section 49-27-65 provides:

(a) In order to implement the policy set forth in the chapter and to assist the commission in protection of coastal wetlands, the council acting with the cooperation and assistance of the Gulf Regional Planning Commission and the Gulf Coast Research Laboratory shall evaluate the coastal wetlands and prepare charts at an appropriate scale showing the distribution of coastal wetlands as defined in this chapter. These charts will be provided to the offices of the chancery clerk of affected counties and to the Gulf Regional Planning Commission. The charts will be updated and reissued periodically as needed to provide a current inventory of coastal wetlands.

(b) The council shall promote the education of the public about scientific and economic knowledge concerning coastal wetlands.

(c) In recognition of the national policy expressed in the Coastal Zone Management Act of 1972, Public Law 92-583, the council is directed to include an overall plan for use of coastal and private wetlands in the Mississippi Coastal Zone Management Plan being prepared by the council, and the council is further directed to identify and include in such plan specific coastal and private wetlands which the council recommends should be set aside as estuarine sanctuaries.

Regarding your questions 1 through 5, it is the opinion of this office that, considering the various meanings of the word "management", together with the expressed goals and policies mentioned above, the answer to each of these questions is that the Council would have the powers, duties and responsibilities described in such questions. The amendment giving the Council the responsibility for the general management of the State's wetlands expands the authority of the Council over coastal wetlands, as compared with its previous authority under the Wetlands Law to regulate the coastal wetlands through a permit procedure. The Council was also authorized under the Wetlands Law to prepare an overall plan for use of coastal wetlands and the Council has now been given authority to manage the coastal wetlands. Any management plan, of course, must be in accordance with the public policy declared in Section 49-27-3 together with the guidelines set out in Section 57-15-5.

With further reference to question No. 5, Section 57-15-5 authorizes the Council to coordinate its plan with comparable functions and programs of agencies of the United States Government. Section 307(c)(2) of Public Law 92-583 (Coastal Zone Management Act of 1972) provides that "any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs."

In answer to question No. 6, Section 49-27-7 of the Coastal Wetlands Protection Law exempts certain activities, areas and entities from compliance with the permitting requirements of said law. Although such exempt parties or agencies are not required to obtain permits when carrying out what would otherwise be regulated activities for dredging and filling in coastal wetlands, a proviso at the end of said Section provides as follows:

> All parties or agencies exempt from the regulatory provisions, whether by name or reference, when carrying out what would otherwise be regulated activities in coastal wetlands shall at all times adhere to the policy as set forth in section 49-27-3 and each such agency shall further advise the council of all such activities so that the council may be fully advised of all activities in the coastal wetlands.

As used in a statute, a proviso has been defined as:

> A clause or part of a clause in a statute, the office of which is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extent. Black's Law Dictionary 1390 (Rev. 4th ed. 1968)

The proviso means that such exempt parties or agencies must advise the Council of all their dredge and fill activities in the coastal wetlands and that they must conduct such activities in accordance with the policy expressed in Section 49-27-3. The new amendment conferring management responsibilities upon the Council does not affect the exempt status of such parties or agencies listed in Section 49-27-7 of the Coastal Wetlands Protection Law, as far as permits are concerned. The new amendment is not inconsistent with the provisions of the prior Section 49-27-7 since it does not change the prior provisions but, on the basis that the latest declaration of the Legislature prevails, the new amendment conferring authority upon the Council to manage the coastal wetlands in effect adds to the prior enactment so that the activities of exempt parties or agencies in the wetlands must be conducted not only in accordance with the public policy expressed in Section 49-27-3 but, under the new managerial functions of the Council, must also be conducted in a manner consistent with the management plan developed by the Council. Craig v. Dun & Bradstreet, 202 Miss. 207, 30 So. 2d 798 (Miss. 1947); Mobile Savings Bank v. Patty, 16 F. 751 (D.C. Miss. 1882)

In answer to question No. 7, if the Council develops a coastal wetlands management plan, there is no provision in the amended Section 57-15-5 for any other agency to approve the plan. However, the Legislature has established guidelines in said Section requiring the Council to coordinate such plan with programs of other Federal and State agencies. For example, such plan should be coordinated with the water quality requirements of the Mississippi Air and Water Pollution Control Commission under Section 49-27-23 which provides that any conflict between the Council and said Commission concerning water quality requirements "shall be resolved in favor of the Mississippi Air and Water Pollution Control Commission."

In answer to question No. 8, the Council, under its management authority, could issue guidelines and statements of policy to implement the management plan, if the Council considers them necessary to carry out its management responsibilities. The Legislature has conferred upon the Council the power to manage the coastal wetlands in accordance with a declared policy

but it has not prescribed the means of effectuating such management.

In answer to question No. 9, one of the meanings of the word "manage" is to husband, i.e., to conserve. It is the declared public policy in Section 49-27-3 "to prevent the despoliation and destruction" of the coastal wetlands. Therefore, it is the opinion of this office that if any activity is determined by the Council to have a detrimental effect on the coastal wetlands, the Council would have the authority to institute the appropriate proceedings to protect and preserve the coastal wetlands. The State is entitled to bring all actions and all remedies to which individuals are entitled in a given state of case. (Section 11-45-11, Mississippi Code of 1972)

If you have any further questions relating to this matter, please do not hesitate to call on us.

Sincerely yours,

A. F. SUMMER
ATTORNEY GENERAL

BY: Jean R. Richey
(Mrs.) Jean R. Richey
Special Assistant Attorney General

JRR: db

APPENDIX H

ATTORNEY GENERAL'S OPINION (DECEMBER 14, 1976)
Identifying Upland Activities Subject to Management

DEPARTMENT OF JUSTICE
Office of the Attorney General
JACKSON, MISSISSIPPI 39205

A. F. SUMMER
ATTORNEY GENERAL

MRS. JEAN R. RICHEY
SPECIAL ASSISTANT ATTORNEY GENERAL

December 14, 1976

Honorable Joel Blass
MIZE, THOMPSON & BLASS
Suite 310, Gulf National Bank Building
P. O. Box 160
Gulfport, Mississippi 39501

Dear Mr. Blass:

Attorney General Summer has received your letter of request dated December 6, 1976 and has assigned it to the undersigned for research and reply. You ask for an opinion as follows:

> "Prior to the enactment of the Coastal Wetlands Protection Act, a certain subdivision was developed in Jackson Conty. And a navigable bayou was developed in the area and the waters therein are subject to the ebb and flow of the tide. This bayou is gradually being filled by the process of erosion from soil deposits and fill dirt placed on certain lots along its shore. It is our understanding that this fill dirt was placed upon the lots by a former owner in the development of the area and that the lots have been acquired by the present owner after the fill was in place. There is no bulkhead or other device to contain this fill material which was placed upon the lot and, consequently, it continues to wash into the bayou and has now almost closed the channel.
>
> "Complaints have been made to the Mississippi Marine Resources Council, asking that it take appropriate action to prevent this continuing damage. Our question is whether or not the Mississippi Marine Resources Council has jurisdiction over this problem and if so, what the courses of action are available to it.

> "Section 49-27-5, Mississippi Code of 1972, defines regulated activity to include 'the dumping, filling, or depositing of any soil, stone, sand, gravel, mud aggregate of any kind or garbage, either directly or indirectly on or in the coastal wetlands;---.' One question that occurs to me is whether or not the ownership of a tract of land from which fill material is eroding into the bayou constitutes an 'activity'. We would be most grateful if your office could consider this matter and advise us so that we may present your opinion to the Council at its next meeting."

A "regulated activity" under Section 49-27-5, Mississippi Code of 1972, includes filling or depositing of any soil, sand, gravel, etc. indirectly on or in the coastal wetlands. This contemplates affirmative action by the owner of property adjacent to coastal wetlands to cause an artificial erosion into the coastal wetlands, which would bring such activity within the jurisdiction of the Mississippi Marine Resources Council. Of course, a situation where natural erosion is taking place would not be within the jurisdiction of the Council, so that initially it would be a factual determination by the Council as to whether the erosion was artificial or natural in origin.

As I understand it, in the present instance the fill dirt was placed on the lots close to the wetlands by the previous owner prior to the enactment of the Wetlands Law and consequently he was not required to obtain a permit to place it on said lots. In my opinion, the statute encompasses affirmative action taken only after the effective date of the Act and consequently would not apply to the present factual situation, so that the Council would not have jurisdiction in this instance.

In a case where artificially induced erosion is occurring as a result of acts subsequent to the effective date of this statute, the course of action available to the Council would appear to be the issuance of an order to the landowner to cease such activity or to comply with the permit regulations of the Council covering such activity, or, failing to do either, to be subject to the civil actions under Section 49-27-55 or the criminal fines and penalties under Section 49-27-57.

Sincerely yours,

A. F. SUMMER, ATTORNEY GENERAL

BY: Jean R. Richey
(Mrs.) Jean R. Richey
Special Assistant Attorney General

JRR:db

APPENDIX I

ATTORNEY GENERAL'S OPINION (OCTOBER 30, 1974)
Regarding Exempted Activities

DEPARTMENT OF JUSTICE
Office of the Attorney General
JACKSON, MISSISSIPPI 39205

A. F. SUMMER
ATTORNEY GENERAL

MRS. JEAN R. RICHEY
SPECIAL ASSISTANT ATTORNEY GENERAL

October 30, 1974

Honorable Joel Blass
Mize, Thompson & Blass
Suite 310 Gulf National Bank Building
P.O. Box 160
Gulfport, Mississippi 39501

Dear Mr. Blass:

Attorney General Summer has received your letter of October 23, 1974 and has assigned it to the writer for research and reply. You request an opinion from this office on the following:

> "The Wetlands Protection Act contains many exceptions to the permitting power of the Mississippi Marine Resources Council. Despite these exceptions or exemptions, however, the statute says that all those who are engaging in activities which would be regulated except for the exemption shall keep the Council fully advised as to their activities. Essentially, the question is as to the extent to which Council must be kept advised of these activities and the purpose of such advice being given to the Council."

Under Section 49-27-7, Mississippi Code of 1972, as amended by Chapter 401, House Bill No. 600, Laws of 1974, certain specified activities, areas and entities are exempt from the necessity of obtaining a permit from the Mississippi Marine Resources Council. At the end of this Section appears the following:

> "Provided, however, that all parties or agencies exempt from the regulatory provisions, whether by name or reference, <u>when carrying out what would otherwise be regulated activities</u> in coastal wetlands <u>shall at all times adhere to the policy as set forth in Section 49-27-3 and</u> each such agency <u>shall further advise the council of all such activities</u> so that the council may be fully advised of all activities in the coastal wetlands." (Emphasis added)

"Regulated activity" is defined in Section 49-27-5 (c) as follows:

> "(c) 'Regulated activity' means any of the following activities: the dredging, excavating or removing of soil, mud, sand, gravel, flora, fauna or aggregate of any kind from any coastal wetland; the dumping, filling or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind or garbage, either directly or indirectly, on or in any coastal wetlands; killing or materially damaging any flora or fauna on or in any coastal wetland; and the erection on coastal wetlands of structures which materially affect the ebb and flow of the tide."

The public policy involved in this law is set out in Section 49-27-3, Mississippi Code of 1972 (Cum. Supp. 1974), as follows:

> "It is declared to be the public policy of this state to favor the preservation of the natural state of the coastal wetlands and their ecosystems and to prevent the despoliation and destruction of them, except where a specific alteration of specific coastal wetlands would serve a higher public interest in compliance with the public purposes of the public trust in which coastal wetlands are held." (Emphasis added)

From an examination of the above provisions of the Coastal Wetlands Protection Law, it is my opinion that the Council must be kept advised by those exempt from the permit requirement concerning all activities in which they engage in the wetlands which would otherwise be considered "regulated activity" but which are associated with and necessary for the carrying out of the particular exempt activity. This is for the purpose of enabling the Council as the administrative agency to be fully informed as to all activities in the wetlands, whether exempt or regulated by permit. Even though certain activities have been given preference by the Legislature, as presumably serving a "higher public interest" requiring a "specific alteration of specific coastal wetlands", those engaging in such exempt activities must still "adhere to the policy as set forth in Section 49-27-3", that is, to do everything possible to preserve the "natural state of the coastal wetlands and their ecosystems" and to "prevent the despoliation and destruction of them."

The purpose of such advice, as required by Section 49-27-7, is so that the Council, as the administering agency of the Wetlands Law, may decide whether unnecessary alteration of wetlands is taking place by an exempt party, that is, to an extent greater than is required by the activity which the Legislature has decided is a "higher public interest." Whether the "exempt" authority is being exceeded then becomes a factual matter to be determined by the Council.

Sincerely yours,

A. F. SUMMER
ATTORNEY GENERAL

BY: Jean R. Richey
(Mrs.) Jean R. Richey
Special Assistant Attorney General

JRR:db

APPENDIX J

PUBLICATIONS USED IN PROGRAM DEVELOPMENT

PUBLICATIONS USED IN PROGRAM DEVELOPMENT

1. Analysis of Mississippi's Potential as a Site for Staging Operations Associated With the Development of Oil and Gas Resources in the Outer Continental Shelf of the Gulf of Mexico. By University of Southern Mississippi. 1976 (44 pages). (Out of Print)

2. Analyzation of Six State Agencies. Oxford. 1977. (Unpublished) Summaries of powers and duties of state agencies which may be involved in a CZM Program.

3. Areas of Particular Concern and Priority of Uses. Gulf Regional Planning Commission Gulfport. 1976. (24 pages). Generalized criteria for designating GAPCs. (Out of Print)

4. Areas of Particular Concern and Priority of Uses, Jackson County. Jackson County Planning Commission. Pascagoula. 1976. 61pp. Identification of specific GAPCs. (Out of Print)

5. Areas of Particular Concern and Priority of Uses, Moss Point, Ocean Springs, and Pascagoula. 1976. 17 pp. Identification of specific GAPCs. (Out of Print)

6. Assessment of Ambient Air Quality of the Mississippi Gulf Coastal Zone. Hattiesburg. University of Southern Mississippi. 1975. (Unpublished) Description of climate and pollution levels.

7. Base Maps of the Mississippi Coastal Zone. University of Southern Mississippi Hattiesburg. 1975. 51 maps. (Unpublished) Base maps at common scale of 1:24,000 of the coastal area from the Mississippi Sound north to above Perkinston.

8. Coastal Resources and Environment Digital Inventory Techniques Applications Project. Phase 1 Products. A Satellite Remote Sensing Applications Project. National Space Technology Laboratories. Earth Resources Laboratory, State of Louisiana (Department of Transportation and Development) State of Mississippi (Mississippi Marine Resources Council) and State of Alabama (Alabama Development Office). 1977.

9. Coastal Zone Management in Mississippi. Mississippi Marine Resources Council. Long Beach, Mississippi, n.d. (7 pages) (Limited publication).

10. Coastal Zone Management in Mississippi -- Assessment of State Agencies. University of Mississippi Law Center. 1976. (30 pages). (Limited Publication)

11. Coastal Zone Management Program. Mississippi Marine Resources Council, State of Mississippi. January 1972. (53 pages). (Out of Print)

12. Determination of a Map Display System for Use by the Mississippi Marine Resources Council. Hattiesburg, August 1978 (40 pages). (Limited Publications)

13. The Economic Impact on Mississippi of Offshore Oil Activities and of a Proposed Terminal for Supertankers. Jackson. October 1976. (22 pages) (Out of Print)

14. Energy Facility Siting in Coastal Zone Management "Legal Assessment". Oxford 1978. 24 pages. (Limited Publication)

15. Generalized Siting Criteria for Onshore OCS Impacts. Jackson County Planning Commission Pascagoula. 1976. (27 pages) (Out of Print)

16. Geographic Areas of Particular Concern and Priority of Uses for Hancock and Harrison Counties. Gulfport. 1976. (71 pages) 4 maps. Identification of specific GAPCs and a method for factor mapping of uses. (Out of Print)

17. Geographic Areas of Concern and Priority of uses in South Pearl River County. Gulfport. 1976. (27 pages) 2 maps, 1 chart. Identification of specific GAPCs. (Out of Print)

18. Geographic Areas of Particular Concern in Jackson County for Mississippi OCS Impact Study. Jackson County Planning Commission. Pascagoula. 1976. (46 pages) Identification of specific GAPCs as related to OCS activities. (Out of Print)

19. Interim Report on Boundaries. Mississippi Marine Resources Council. 1977. (Out of Print)

20. Interim Report on Geographic Areas of Particular Concern, Priority of Uses and Areas of Preservation and Restoration in the Mississippi Coastal Zone. Mississippi Marine Resources Council, February 1977. (45 pages). (Out of Print)

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