University of Mississippi Law Center — University, MS 38677

# WATER LOG

*A Newsletter for the Mississippi-Alabama Sea Grant Consortium*

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## MISSISSIPPI COASTAL PROGRAM IS APPROVED

On September 29, 1980, Mississippi's coastal management program was approved by the federal Office of Coastal Zone Management. Approval of the Mississippi Coastal Program (MCP) was the culmination of many years of hard work by a group of people concerned with the wise management and use of Mississippi's coastal resources.

After finding that increasing and often conflicting demands upon the coastal zone of the United States had resulted in the loss of living marine resources and in permanent adverse changes to the ecological systems, Congress passed the Coastal Zone Management Act of 1972 (CZMA) to encourage effective management of coastal resources. The CZMA is primarily a mandate to coastal states to develop and manage their own coastal areas through the use of coastal management plans that are consistent with federal guidelines. CZMA encourages coastal states to plan the development of their coastal areas through defining permissible land and water uses and by instituting regulatory mechanisms to control those uses.

The CZMA provides incentives to encourage coastal states to develop coastal management programs. It establishes a two-stage federal grant program whereby coastal states can receive federal monies for both the development and the implementation of an approved plan. Mississippi received development grants in varying amounts for several years and will receive $800,000.00 in fiscal year 1981 to implement the approved Mississippi Coastal Program. Additional money is available to states with approved programs through the Coastal Energy Impact Program (CEIP). CEIP is designed to help coastal states and their local governments meet needs that result from activities relating to energy development in the coastal area. Another incentive for coastal states to develop their own coastal programs is the federal consistency provision of the CZMA which states that any federal activity within the state's coastal zone must, to the maximum extent practicable, be conducted in a manner consistent with the state's approved coastal plan.

In response to the CZMA, Mississippi passed its Coastal Wetlands Protection Law in 1973. (§49-27-1 through §49-27-69 of the MISS. CODE of 1972). The law addresses management and use of coastal resources in the three coastal counties, Harrison, Hancock and Jackson, including all adjacent coastal waters found within the 3 mile limit seaward of the coastline and the barrier islands along the coast. The Wetlands Protection Law provides the statutory basis for the regulatory program which is implemented in the Mississippi Coastal Program.

Three types of activities are regulated by the Wetlands Protection Law: (1) those activities which actually take place in the coastal wetlands; (2) those activities which indirectly affect the coastal wetlands; and (3) the erection of structures on sites suitable for water dependent industry. A permit is required to conduct any regulated activity. However, certain entities and activities may be carried on without a permit as long as the public policy as expressed in the Wetlands Protection Law is not violated. The permit system, which is the backbone of the Mississippi Coastal Program, is administered by the Bureau of Marine Resources.

As the state agency with primary responsibility for the implementation and enforcement of the Mississippi Coastal Program, the Mississippi Commission on Wildlife Conservation, through the Bureau of Marine Resources, must insure that certain goals established by the state legislature are met. Among these goals are provisions for: (1) reasonable industrial expansion on the coast with special consideration given to water dependent industries; (2) coordinated local, state and federal planning with the coastal program; and (3) one-stop permitting to coordinate the present processing and issuing of a variety of permits within the coastal area. All state agencies are required to comply with the coastal program to consider wetlands protection as a factor in their decision-making processes.

The goals expressed in the Mississippi Coastal Program are worthy, but often conflicting. The effectiveness of the Bureau of Marine Resources in administering the program will determine whether Mississippi's coastal resources are wisely used and managed. It is appropriate that the first issue of this newsletter focuses on the Mississippi Coastal Program. This newsletter will continue to monitor the implementation of the program and to report on significant developments.

## HIGHLIGHTS OF MISSISSIPPI'S COASTAL PROGRAM

Mississippi's coastal program is too lengthy and complex to be examined fully in a newsletter. Highlights of the program are summarized below.

### FISHERIES MANAGEMENT

While the primary concern of the program is with structural development within the wetlands, it also deals with the problem of managing the state's fisheries resources. The fisheries management section reflects concern with the long term stability of Mississippi's fisheries. Its major objective is to provide for the maintenance of the "optimum sustainable yield" of the fisheries; i.e., that the resources will be fished within the reproductive capacity of a species while at the same time deriving the greatest public benefit. The planners envision this being accomplished through the effective use of ordinances, licensing, the protection of natural habitats, educational, research and development projects, and the use of future technological advances. Primary authority for fisheries management will continue to be vested in the Mississippi Commission on Wildlife Conservation and the Bureau of Marine Resources.

### SPECIAL MANAGEMENT AREAS

Three areas have been identified as ones needing special management because of their economic and recreational importance. These are: (1) port and industrial areas, (2) urban waterfronts, and (3) shorefront access areas. (Specific sites are identified in the program.) Designation of these areas does not impose new regulatory authority, but it is hoped that development of specific, environmentally sound plans for these areas will reduce the need for regulation while simultaneously providing coastal resources with the greatest amount of protection.

### AFFIRMATIVE MANAGEMENT ACTIVITIES

The coastal program identifies certain activities which require affirmative management to complement the regulatory provisions of the program. Among these activities are: energy facility siting, shoreline erosion and mitigation, construction of public facilities such as sewer, water and drainage systems, marine fisheries research, designation of areas for preservation and restoration, the preservation of scenic qualities of an area, and public information and education regarding coastal resources.

### A-95 CLEARINGHOUSE SYSTEM

The A-95 Clearinghouse system serves as a statewide notification and review system for federal assistance programs in Mississippi. To assist in the coordination and approval of projects affecting coastal areas, A-95 has been extended to include review of both state and federal actions. A weekly log of proposed projects is compiled by A-95 and distributed to interested agencies who may then submit comments on the project. Any interested person who requests it may receive copies of the weekly log. The A-95 Clearinghouse system is an important step in the interagency policy coordination procedure and should help the Bureau of Marine Resources insure that all federal and state action which affects the coastal area is consistent with the Mississippi Coastal Program.

### POLLUTION CONTROL

The requirements of the federal Clean Water and Clean Air acts and the Mississippi Air and Water Pollution Control Law are incorporated by reference into the coastal program. As a result, air and water quality standards and permitting requirements affecting the coast will continue to be administered by the Bureau of Pollution Control which in turn is required to carry out its responsibilities in compliance with the coastal program.

# VIEWPOINT

Water Log presents the views of three persons who were involved in the development of Mississippi's Coastal Management Program. These three individuals have very different views of the Coastal Program. Victor Franckiewicz is Special Projects Officer for the Bureau of Marine Resources. Cy Rhode is Conservation Chairperson, Mississippi Chapter, Sierra Club. Stanford E. Morse, Jr. is a Gulfport attorney.

## THE CHALLENGES AHEAD

*Vic Franckiewicz, Jr.*

Following months of controversy, the Mississippi Coastal Program was approved by the Mississippi Commission on Wildlife Conservation and Governor William Winter in August 1980; it became effective on October 1, 1980. Simply stated, the coastal program is Mississippi's way of balancing development and environmental preservation in the coastal area.

This balanced approach grew out of a vigorous debate between preservation and development interests. The result is a significant departure from past efforts. The coastal program replaces narrow, case-by-case regulatory decisions by substituting a decision-making process based on a long-term plan and a comprehensive set of goals for managing coastal resources. Four important features of the coastal program bear this out.

First, rules and regulations for coastal wetlands permitting (dating back to 1973) were repealed. New regulations provide substantive guidelines for *how* to conduct activities in the wetlands, and an overall plan for the use of coastal wetlands to show *where* the activities can be put without interfering with other activities.

A second feature is called policy coordination. Designed as the forerunner of one-stop permitting, policy coordination is a formal process for reviewing activities affecting the coastal areas at the early stages of a development proposal. Coupled with procedures for concurrent permit decisions, policy coordination can streamline the regulatory system.

A third feature of the program is called special management area (SMA) planning. SMA plans will be highly specific, site development plans for selected industrial, urban waterfront, and shorefront access areas. Once completed and formally adopted as part of the coastal program, each plan will be an authoritative interpretation of the coastal program for the selected area.

The thrust of all SMA planning efforts will be to secure regulatory approvals of overall development proposals, minimizing the need for future piecemeal permit decisions. In permit decisions by the state, the plan will prevail over the more general provisions of the coastal program. Furthermore, the plans will be officially recognized by the federal government as state policy.

A fourth feature of the program is a collection of affirmative management activities for preserving and restoring resources, for planning and for financial assistance to local governments.

These features of the program—improved wetlands permitting, policy coordination leading to one-stop permitting, SMA planning, and affirmative management—align the Mississippi Coastal Program with contemporary thinking on resource management. The 1970's were years of growing environmental awareness. As the 1980's approached, it became clear that traditional environmental regulation was strangling itself in procedural delays that threatened the credibility of environmental goals.

In response, the trend of the 1980's will be to eliminate unnecessary red tape by making specific public policy determinations about what should be developed, and about what should be preserved. In this way, both preservation and development interests will be informed of environmental constraints before major commitments of financial and natural resources are made. The coast program provides the legal structure, the administrative process, and the substantive policy statements for doing this. Of course, many details still need to be worked out.

After three months of implementation, it is clear that the real obstacle to a smoothly running coastal program is simple bureaucratic inertia. The entire environmental regulatory structure, particularly at the federal level, has been designed over several years to operate through piecemeal permit decisions. This approach, with its attendent regulations, permit application forms, lines of communication, and staffing patterns, is just an old habit. Like any habit, it is difficult to break.

But change is coming. The Corps of Engineers recently published new regulatory procedures in draft form. When formally adopted, the final regulations will streamline wetlands permitting decisions, especially for minor projects.

The 1980 amendments to the federal Coastal Zone Management Act clearly establish permit simplification and coordination as a national policy. They also give a congressional endorsement to SMA planning. Despite this congressional policy, some legal analysts contend that prior environmental legislation resists SMA planning, and that more statutory changes are necessary. Others disagree, noting that existing administrative mechanisms are flexible enough to modernize permit procedures.

Mississippi's program was designed before Congress's recent support for SMA planning, and is therefore workable under prior legislation. The new policy pronouncement only strengthens Mississippi's approach.

Legal debates aside, a number of important coastal issues are before the public. The oil and gas industry is seriously considering drilling in the Mississippi Sound. Increasing U.S. coal exports may spur local port expansion. A shrinking supply of waterfront industrial sites may begin to limit the Coast's growth potential. The cumulative impacts of residential waterfront development, especially in artifical canal systems, is of growing concern. The long term viability of the fishing industry remains a chronic issue. The need for restoration work to offset environmental impacts is pressing.

The real measure of the Mississippi Coastal Program's value will be its ability to meet these challenges.

## A VIEW FROM THE GREEN SIDE

*Cy Rhode*

At the heart of our coast's problems is urbanization. As new residents continue to gravitate to the coastline, the demands rise for economic development and new jobs, for recreational areas and facilities, and for water, living space, energy, fresh produce and seafood, and shipped products. What will be our capability to satisfy future demands while preserving those endemic qualities which attracted people to the coast in the first place? Coast managers will eventually be forced to practice a "no growth" policy. Coastal Zone Management ("CZM") is not so much the management of natural resources as it is of people. By managing growth, humans will have gone a long way in conserving and preserving coastal resources.

Program implementation is guided by the "net benefit to society as a whole" definition of public interest. Jobs and increased tax bases from new industry are politically viewed as being to the public's advantage overall. Incremental pollution from industrialization, chemical technology, and energy production and consumption is viewed as a price that must be paid for progress and the economy. Unfortunately, the long-term cost to human health is normally not known with any certainty at the time a permit is approved and the more realistic cost may be disclosed later to be quite high and an unacceptable human risk.

Public furor arises most often over economic development perceived to be hurting more people than it benefits. Environmentalists believe that no one should get hurt by public decisions when that hurt can be avoided by siting alternatives and by better pollution controls and construction practices or when that hurt can be mitigated or compensated. If economic development removes an undeveloped section of waterfront from future consideration as a public use or wildlife preserve area, an equal length of shoreline should be publicly acquired for open space. If an area of multi-functioning salt marsh must be destroyed for commercial/port/ industrial development, an equal acreage of marshland should be created in a nearby estuarine area which is designated for general use or preservation. Changing a use designation of wetlands from the original plan in the Coastal Program should occur through trade-off. User exemptions, decision waivers, and periodic zoning changes and variances which favor development can make a good coastal wetland program meaningless. A proposed project should be judged "in the public interest" if it is to the net advantage of large numbers of citizens and not to anyone's disadvantage.

"Balance" is another term like "public interest" which is the subject of many interpretations. "Balance," a becoming cliche', is used, with or without knowledge of its actual or intended meaning, to idealize a CZM program. CZM balance should be viewed more in the light of resource maximization and diversification. The attainment of the highest and best use mix of land and water should provide (1) ample opportunity and notice for all affected and interested citizens to be seriously heard and (2) equitable and rational consideration of all legitimate uses, of all things being affected, and of all possible impacts. A look at Coastal Energy Impact Program (CEIP) expenditures, the composition of citizen adivsory committees or boards, and the background of a few key CZM

leaders or decision-makers will disclose that the scales are heavily weighted in favor of development along the Gulf of Mexico. The question is: Will the Mississippi Coastal Program become the benefactor of special interest groups for which it exists to regulate rather than the public interest for which it exists to protect?

Greatest political power legitimately resides in local government. Some coastal states have yielded to local pressure and adopted a "home rule" CZM policy. The problem with locally-run CZM is that many local jurisdictions have neither the will nor the technical know-how to implement a balanced environmental protection/economic development program. If each local entity has the freedom to do its own thing, the result will be piecemeal planning and fragmented development on the coast. Many local "ad hoc" attempts to resolve conflicts and problems and to meet the needs of the community in a comprehensive fashion have not proceeded beyond the planning stage. Implementation of sound local coastal plans for a pluralistic community requires strong political leadership.

CZM, if properly written and administered, should operate in the preventive mode rather than the reactive mode. It's just good planning sense to place the horse before the cart. But history points to case after case of having to deal with unfavorable growth or facility impacts as opposed to being able to control and direct growth. A CZM architect recently noted with concern that planning efforts generally follow decisions rather than preceding and influencing decisions. Once the initial decision is made to allow a proposed project to go forward, a train of government decisions follow that accommodate the first decision, whether right or wrong.

Planning should be futuristic in outlook. Yesterday's successes may be today's failures. A plan or program needs to have the flexibility to change as the world changes. Of course, the agency administering the plan or program cannot receive accurate feedback to make plan adjustments if it is only listening to elite or special groups. Furthermore, land use planners and decision-makers have a stewardhsip responsibility for future generations—preserving cultural and natural experiences, natural resources, options, and opportunities. Human development and psychological enrichment need to be emphasized in CZM to the same degree as economic development.

The Mississippi Coastal Program's ten goals will need to be operationalized so that the quality of life will be protected for future generations of coastal residents and workers. How much marshland is needed to support an optimum sustained yield of fish to feed a protein hungrier society of the future? How much open space is necessary to satisfy future recreational and educational needs of an expanding coastal population? How many acres of natural preserves are needed to maintain natural diversity and ecological balance so that the coast will continue to be a region of wonderment, fascination, and peace? How much fresh water/nutrient/sediment inflows are necessary to maintain the vitality of estuaries in a future of increasing water and shipping demands? How much of the floodplain should be left undeveloped to function naturally as a flood control feature in a future of increased storm water runoff due to urbanization? How much coastal prime farmland should be reserved for a future of continued increases in food demands and prices? How much waste should be allowed to be pumped deep into the ground without risking the drinking water quality of groundwater for future generations? The bottom line is: How should public resources be equitably allocated for present generations and in all fairness for future generations?

A method of getting the Coastal Program into the home is through the schools. CZM can visibly enter a community through the Bureau of Marine Resources' active support, participation, and assistance in local planning and implementation of waterfront projects. The Mississippi Coastal Program should be conducted as close to the people as possible. Publicity focused on what the Program can accomplish for the public good has been lacking.

Citizen participation will expand the zone of support for the Mississippi Coastal Program. The many and various coastal interests who are competing for the allocation of resources need to understand the viewpoint and motives of each other and to arrive at a consensus. A general agreement might be to work towards improving the quality of life for all, protecting options and benefits for future generations, and providing for justice, equality, effectiveness, efficiency, and democratization in government. Having agreed on this general premise, a coalition of diverse groups should then decide on the ways and means. Miles Law states: "Where you stand depends on where you sit." If government could arrange to have all the major and some minor diverse and sometimes conflicting interests sit around a large table, perhaps the perceptions of each would not be so different and the air of cynicism and distrust would diminish.

The federal "carrot" was sufficient to get Mississippi into the national coastal management program. Nevertheless, local support is currently insufficient for Mississippi to solely power its Coastal Program. Federal approval of the Coastal Program assured that Mississippi will be able to meet short-term needs, but did not necessarily provide the capability to meet long-term objectives. Once the federal umbilical cord is severed, support for the continued existence and increased State funding of the Program will occur only if the program has a good constituency and strong political backing. The next five years will be the formative period of the fledgling Program. If the Program serves primarily as a sink for federal funds and the coastal protection/enhancement aspects of the Program exist only on paper, the Program's life span will be short.

## UNCONSTITUTIONAL, UNNECESSARY AND UNWANTED

*Stanford E. Morse, Jr.*

Planning and regulation of land uses has been recognized for decades as a legitimate exercise of the states' police powers. Such regulation has been delegated to local governments and is usually expressed in zoning ordinances adopted by the elected officials of cities and counties.

In 1972, Congress adopted the Coastal Zone Management Act and, through this legislation, sought to encourage states bordering on the Atlantic, Gulf, Pacific and Great Lakes to adopt regional plans for regulating land uses within the states' respective coastal zones. Though some members of Congress wished to make the program mandatory upon all states, the serious constitutional questions involved in usurping the states' traditional powers to regulate land uses dictated another course. (See: *National League of Cities v. Usery*, 49 L. Ed. 2d 245.) Thus, Congress authorized planning grants to the various states which defrayed the costs of formulating plans, drafting legislation, and other expenses incidental to the plan.

Though paying lip service to the traditional forms of land use regulations, the federal regulations formulated new concepts of "networking" of environmental permits, consistency review to determine if the activity permitted was consistent with the broad goals of the program, area-wide or regional regulation as opposed to local regulation, and other means, the ultimate goal of which was to vest in a single public agency control of the use of land in the coastal zone.

In 1978, Congress enacted the Coastal Energy Impact Program (CEIP). Congress found that efforts to produce oil and gas on the Outer Continental Shelf (OCS) was impacting coastal states, creating undue stress and hardships because of influx of shore-based support for such offshore development and in order to alleviate the unusual demand upon local public facilities, authorized low interest loans and grants to communities to assist them in meeting these unusual and unexpected demands. Though the impact of development of the OCS on the Mississippi Gulf Coast was nonexistent, representatives of the Bureau of Marine Resources (BMR) scurried around the Coast and actively solicited applications from cities and counties for CEIP. Subsequently, approximately $20,000,000 in grants and loans were approved for various public works projects, none of which were actually necessitated by OCS development.

BMR conveniently failed to disclose to the various public agencies from which it solicited grant and loan applications that CEIP funds were only available to states which had adopted or were in the process of adopting a Coastal Program.

After approval of the CEIP projects, BMR published its first draft of the program, and when local interests objected to it, Washington and BMR responded that millions of dollars in CEIP loans and grants would be suspended or denied unless the program was approved. Efforts were made to secure an agreement from BMR and Washington to the state legislature to provide for an election on the question of adoption of the program, but Washington determined that such efforts indicated a lack of "suitable progress" and suspended the CEIP loans and grants.

*(Continued on page 7)*

# PERMIT APPLICATION PROCESS FOR REGULATED ACTIVITIES

The public policy expressed in the Mississippi Coastal Wetlands Protection Law is that wetlands should be preserved unless there is an overriding public interest inherent in a proposed activity affecting the wetlands. To carry out this policy, a permitting and compliance review procedure is authorized by the law and administered by the Bureau of Marine Resources (BMR). The permit process is summarized below and interested persons are urged to contact BMR for additional information.

**Regulated Activities**

Any activity which affects coastal wetlands is a "regulated activity" and cannot be conducted without a permit from BMR. Since some activities carried on outside the wetlands area may affect the wetlands, a permit may be needed for activities beyond the three county coastal area. The five (5) classes of regulated activities which require a permit are: (1) dredging or removing of any material from wetlands; (2) filling wetlands by direct or indirect means; (3) killing or materially harming any wetland plant or animal; (4) building any structure that materially affects the ebb and flow of the tide; and (5) erection of structures on sites suitable for water dependent industry.

The applicable coastal wetlands use plan, which is a document designating the types of activities allowed in specific coastal wetlands areas, should also be consulted before planning activity in the coastal zone. No permits will be granted for activities that are inconsistent with an applicable use plan. The MCP provides for a petition procedure to obtain revisions of use plans.

If a proposed activity requires a permit, and is allowed by the use plan, a permit application must be filed with BMR. The application must include, among other things, the names and addresses of the applicant and all adjacent land owners, an estimate of the cost of the project, a detailed description of the proposed activity with a map, a statement of its purpose and of its intended and possible unintended effects, a description of the public benefits to be gained from the project, and an estimated completion date. The application should include an environmental assessment of the proposed activity. The applicant must also certify that all other required permits have been applied for, or that no other permits are required.

When BMR receives an application, copies are forwarded to certain public officials and a public notice is published stating the date by which written objections to the application must be filed. This notice is published once a week for 3 consecutive weeks with the final publication appearing at least 7 days before the deadline for filing written objections. Any interested person may file a written objection to the permit application.

If an objection is made, or upon the applicant's request, a public hearing must be held within 20 days of the deadline for filing written objections. The applicant and each person who filed a written objection is informed by mail of the date, time and place of the hearing. All others receive notice of the hearing by publication. Adjacent landowners are given written notice of the public hearing, but do not receive notice of the time for filing written objections except in the newspaper. Since only those persons who filed written objections may be heard at the public hearing, the notice of hearing date to the landowner may be of no practical value.

The authority to grant or deny a permit is specifically given to the Mississippi Commission on Wildlife Conservation (MCWC), but it is not clear who is responsible for conducting public hearings on permit applications. While the MCP specifically states that the MCWC "shall base all of its decisions generally on the rules, guidelines and procedures . . . and on the findings and recommendation of BMR", it doesn't state who will hold the required hearings.

The MCP provides guidelines which must be used in evaluating proposed activities against the public policy of wetlands protection. The factors which must be considered include; (1) the public interest as seen by the courts and the legislature; (2) the detailed guidelines for regulated activities; (4) cumulative impacts of similar development; (5) ecological concerns; and (6) the extent of alternative sites available to reduce unavoidable impacts.

BMR must follow the guidelines in recommending decisions on permit applications unless a variance is requested and specifically justified. A variance is required for regulated activities conducted in a manner inconsistent with the guidelines. MCWC may, in its discretion, grant a variance if it determines that; (1) the impacts on coastal wetlands will be no more detrimental than if the guidelines were followed; (2) the variance will be temporary; (3) there are no feasible alternative construction techniques or sites; or (4) if the project requires a waterfront site. MCWC is required to specifically state the grounds for granting or denying a permit or a variance.

In issuing a permit, the MCWC may provide for such conditions as are necessary to insure compliance with the MCP. For example, it may require mitigation as a means of minimizing net adverse impacts. Any variation from the permit conditions will constitute a violation of the Coastal Wetlands Protection Law and will subject the applicants to enforcement actions.

**Exemptions and Exclusions**

A controversial issue throughout the development of the MCP involved the extent of the program's coverage. A number of activities and agencies are specifically excluded or exempted from the wetlands permit requirements. Among the "excluded" activities are hunting, fishing, swimming, hiking, boating, and the regular maintenance and repair of bulkheads, piers, roads and highways. Among the excluded entities are the Biloxi Bridge and Park Commission, Biloxi Port Commission, Long Beach Port Commision, Pass Christian Port Commission, Pascagoula Port Commission, and any municipal or local port authorities. A more limited "exemption" is extended to 2 classes of activities: (1) construction by a water dependent industry on a site suitable for water dependent industry; and (2) construction by an individual on his own property.

BMR must be notified of every excluded or exempt activity. The notice must state the specific basis for the request for an exclusion or exemption. Within 30 days of receiving notification, BMR will prepare a set of findings and send them to the notifying party. Based upon these findings, BMR may grant the request for an exclusion or exemption, require a permit to be obtained, or may find that the activity is not in compliance with the public policy of wetlands protection.

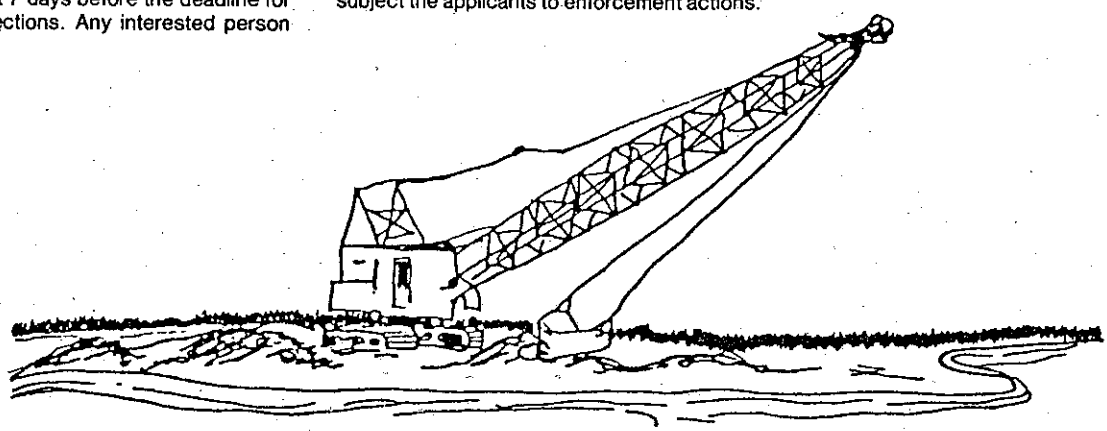
Even though an excluded or exempt activity may be conducted without a permit, it must be conducted in a manner consistent with the public policy expressed in the Coastal Wetlands Protection Law.

**Compliance Review**

All state agencies must carry out their responsibilities in the coastal area in compliance with the MCP. To insure compliance, the MCP includes policy coordination procedures governing state agencies.

When BMR publishes notice of a date for filing written objections to a permit application, BMR also notifies all other state agencies through the A-95 clearinghouse. All other agencies are given the opportunity to comment on proposed actions related to their respective statutory responsibilities. "Coastal program agencies," which include BMR, the Bureau of Pollution Control, the Bureau of Land and Water Resources and the Department of Archives and History, must insure that all other agency activities are consistent with the MCP. If a coastal program agency objects to a proposed action, the action cannot go forward. Enforcement procedures are provided if an agency proceeds in a manner contrary to the MCP.

*Stanton Fountain*



# LOUISIANA AND ALABAMA COASTAL PROGRAMS

Louisiana and Alabama also had coastal programs approved in late 1980. As a result, the development of the Gulf Coast from the western Louisiana boundary to the eastern Alabama boundary is subject to federally-approved, state-managed guidelines and regulatory procedures designed to promote rational management of coastal resources. Since each state's coastal program must meet minimal requirements of the federal Coastal Zone Management Act, the three programs have many similarities (e.g., federal consistency provision, designation of Special Management Areas, designation of a coastal boundary, etc.). However, each state has special interests and a different concentration of resources, and each plan is specially tailored to the needs of that state in planning the use of its resources.

Alabama's Coastal Area Management Program is administered by the Alabama Coastal Area Board (CAB) as authorized by the Alabama Coastal Area Act of 1976. The CAB has authority to review all uses which have a direct and significant impact on the Alabama coastal area and render a compliance, consistency or permit decision. This review is primarily done through existing permit programs. For those uses which are subject to management but which are not otherwise regulated by state agencies, the CAB may issue permits under a new permitting program.

All uses which are determined by the CAB to have a direct and significant impact upon coastal waters are subject to the Alabama Coastal Area Management Program. Some of these uses are port and harbor development, industrial development, dredge and fill operations, commercial fishing, energy development, and uses which affect air and water quality. Certain uses are specifically excluded from the management program to the extent that they do not involve dredging, filling, new or additional discharge into the coastal waters, or the draining of wetlands. The CAB monitors regulated uses and is authorized to enforce their decisions when a user is not in compliance.

State authorization for the Louisiana Coastal Resource Program (LCRP) is found in the Louisiana State and Local Coastal Resources Management Act of 1978. The Louisiana Coastal Commission, representing state, local and various private interest groups, is responsible for developing enforceable policies to guide land and water use decision making within the designated coastal area. The guidelines, which are published in the LCRP, are designed to protect, develop, and where feasible, restore the natural resources of the state while providing for adequate economic growth. They are meant to be used as the standards for evaluating proposed activities in the coastal zone. As with the Alabama program, the policies apply only to those uses which have direct and significant impacts on coastal waters.

The LCRP guidelines are administered by the Coastal Management Section of the Louisiana Department of Natural Resources through a permit, review and certification system. Any use or activity within the coastal zone which has a direct and significant impact on coastal waters is subject to the Coastal Use Permit Program, unless specifically excluded or otherwise provided for in the program. Uses subject to the new permit program include dredge and fill operations, levee siting, energy development and waste disposal activities.

Local governments are free to develop their own local programs consistent with the state program. Upon approval of a local program, a local government may issue permits for uses of local rather than state concern. The Louisiana Coastal Commission determines whether a use is of local or state concern, based upon guidelines set out in the LCRP.

Activities subject to previously existing state permit programs are incorporated into the LCRP in an attempt to streamline state and federal permitting through a coordinated coastal permitting process. An exception to this are permits related to the location, drilling, exploration and production of oil and other mineral resources and those relating to oyster bedding. These permits will continue to be issued by their traditional state agencies, with the added requirement that the permits be consistent with the coastal use guidelines. Special procedures are provided for the management of deepwater port activities. Again, while these activities are not subject to the new permitting process, they are required to be consistent with the LCRP. Governmental actions outside the coastal zone but which directly affect the coastal zone must also be managed consistently with the policies of the LCRP.

Implementation and enforcement of the Mississippi, Louisiana and Alabama coastal programs should aid the rapidly growing Gulf Coast area in providing a reasonable balance between resource protection and enhancement and economic development.

*Casey Jarman*

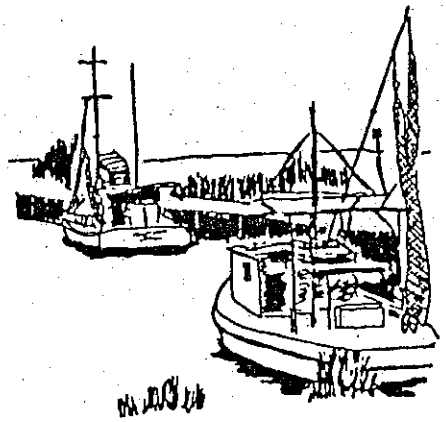
# COMMERCIAL SHRIMPERS MAY BE EXCLUDED

In a recent decision, the Mississippi Supreme Court affirmed a lower court ruling which allows live bait fishermen to take shrimp from an area closed to commercial fishermen. *Mississippi Gulf Coast Fishermen's Organization, Inc. v. Mississippi Marine Conservation Commission,* 787 So. 2d 757 (Miss. 1980).

Mississippi Gulf Coast Fishermen's Organization, (MGCFO) a non-profit corporation of commercial fishermen, sued in the Chancery Court of Harrison County to prevent the Mississippi Marine Conservation Commission (MMCC), now the Bureau of Marine Resources (BMR), from enforcing ordinance #0-86 which allows only live bait fishermen to take shrimp from a designated area north of Deer Island. MGCFO argued that: (1) the MMCC had exceeded its rule-making authority granted under MISS. CODE ANN. §49-14-1 (1972), when it passed the ordinance, and (2) the ordinance denied commercial fishermen their right to equal protection of the laws.

Both the Chancery Court and the Mississippi Supreme Court ruled against the commercial fishermen. The ordinance was found to be a proper exercise of the MMCC's broad statutory authority to regulate Mississippi's fishing industry. The Courts ruled that the ordinance did not deny commercial fishermen equal protection of the law because commercial fishermen were also entitled to take bait shrimp in the designated areas if they complied with the applicable regulations.

*William B. Carter*



# OPINION

## TOWARD ONE STOP PERMITTING . . . SLOWLY

The Mississippi Coastal Program (MCP) is a comprehensive management program for activities which have a direct and significant effect on the Mississippi coastal area. Implementation of the program should result in both increased protection and more efficient and productive utilization of coastal resources. The success of the program depends, however, on how well coastal managers are able to balance resource development and conservation in the new environmental atmosphere demonstrated by the recent election.

The 1979 legislation which authorized implementation of the MCP also instructed the Bureau of Marine Resources (BMR) to develop a "one stop permitting" system to coordinate the processing and issuance of permits, licenses and other such instruments in the coastal area. The legislation was a response to industry complaints that the necessity of obtaining numerous permits from several different permitting authorities resulted in costly delays and impeded economic development. One stop permitting has often been touted as a means of "streamlining" the regulatory process—one of the goals of the new administration.

Not even the most concerned environmentalists oppose "streamlined" regulatory programs which enhance resource management. But in moving toward development and implementation of a one stop permitting system, responsible authorities should recognize that the public is still concerned about environmental protection *and* willing to pay for it. The results of a recent poll conducted for the President's Council on Environmental Quality demonstrate that environmental protection enjoys continued strong public backing. (CEQ Public Opinion on Environmental Issues 1980). In answer to the oft- repeated question whether spending on domestic programs is too much, too little, or about right, 50 percent of the poll respondents said that spending on environmental problems was "too little" and only 15 percent said that the amount was "too much".

Fortunately, the Mississippi legislature did not call for the establishment of a single "super" state environmental agency to bring all permit decisions under one umbrella. Instead, the 1979 legislation requires development of a single application form for all required permits, consolidated public hearings, the shortest practicable review period for applications and joint permitting procedures for state and federal agencies. The idea is to retain the system of separate permits from separate authorities, but to implement procedures whereby all information for the permitting agencies is available on one form and all agencies make their decisions at the same time. This broad statutory directive, coupled with subtle opposition from agencies desiring to protect their own programs and permit procedures, means that one stop permitting is not likely to be implemented in the near future.

The MCP receives broad support from the public and from industry because it establishes "streamlined" regulatory procedures without adopting the one stop permit approach. The list of excluded and exempt activities and agencies and the waiver provisions permit many activities to go forward with very little state involvement. Nonetheless, implementation of the MCP should insure, to the maximum extent possible, application of the public policy of preservation of the wetlands, as expressed in the Mississippi Coastal Wetlands Protection Law. (§49-27-1 thru §49-27-69 Mississippi Code of 1972).

It is far from certain that a "pure" one stop permitting system would reduce or eliminate regulatory delays. The responsible permitting authority would be required to maintain a staff with sufficient expertise in all relevant areas in order to provide adequate and useful information and recommendations to the central decision-making body. Due process requirements prohibit significant limitations on the public's right to participate in the regulatory process, whether the process involves one stop permitting or multiple permitting authorities. Unless the decision- makers are fully informed and adequately consider all relevant issues raised by a proposed activity, final decisions will be more susceptible to successful legal challenges.

Local government, which is generally supportive of one stop permitting, should also recognize that the next logical step in the streamlining process would be state preemption of all local government land use and environmental regulatory authority.

The most obvious and most important problem with one stop permitting is that every proposed activity or development may involve a variety of issues, some related and some totally distinct in nature. Each of these issues should be addressed individually by people and agencies with specific responsibilities. Members of the public upset or concerned by particular aspects of a proposed activity should have an opportunity to state their concerns to the appropriate public authorities. All competing societal interests should be considered when decisions are made regarding resources important to all of the state's citizens. To expect one government entity to resolve all of the issues is to encourage uninformed and unprincipled decision making.

There is no clearly discernible or universally acceptable formula for resolving the coastal area's natural resource development and environmental protection problems. A significant effort must be made to attract economic development to Mississippi, but one stop permitting and other actions which threaten to destroy the gains that have been made in environmental protection should be taken cautiously and with great deliberation.

*Mike Gibbs*

## VIEWPOINT

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Naturally, local officials who were affected by such suspension reversed themselves and fell into line.

Specific objections were made to various parts of the program, but BMR simply bucked them up the line to Washington which determined that such objections were groundless, and the program had to be adopted in its present form as it was the "minimum" which it would approve. The CEIP bait had its desired result; the hook was firmly set, and Washington, through BMR, reeled another state into its CZM net.

The methods employed by the Federal and State bureaucracy to force this plan upon the three coastal counties without approval of its citizens should serve as a warning to public officials in the future as offers of millions of dollars of "free" federal funds may carry with them a surrender of powers to Washington which were traditionally exercised by local governments.

In addition to the means employed by BMR and Washington to force this program upon the coastal counties, there are other specific objections, including the following:

1. The legislation upon which the Program relies is vague, indefinite, and overbroad, and vests in BMR authority to determine public policy which is traditionally the function of the legislature. For this reason, it is unconstitutional.

2. The rules and regulations adopted by BMR are vague, indefinite, and ill-defined, and are an unconstitutional exercise of legislative authority.

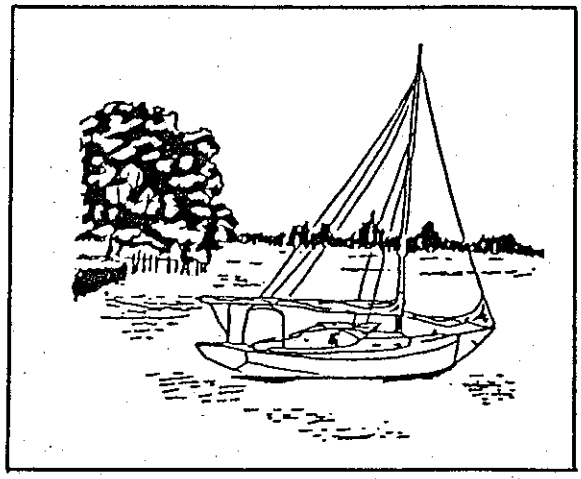
3. The Program purports to authorize BMR to review permits issued by various state agencies, such as Bureau of Pollution Control, Public Service Commission, and other state agencies which permit activity in the coastal zone, but such authority is expressly denied it by law.

4. Whether the Program was adopted or not, established environmental agencies had jurisdiction over the same areas of particular concern as BMR, and the imposition of the BMR as the reviewing agency simply establishes one more level of bureaucracy upon economic development in the three coastal counties.

5. The traditional planning functions and zoning of land uses by cities and counties have been transferred to a nonelected agency composed of one member from each congressional district of the State. The only way the exercise of such functions could be further removed is to transfer it to Washington, which, as a practical matter, it may have been.

6. The premise which is implicit in this program is that elected officials cannot be trusted to exercise powers traditionally exercised by them, and only appointed bureaucrats (Elitists?) are blessed with sufficient wisdom and insight to guide the Coast to its economic destiny.

To summarize, the program was forced upon this area through the classic strategy of carrot and stick, and specifically in this case, deceit. It is probably unconstitutional. It is certainly unnecessary. And, finally, without a vote of the people of this area, it cannot be said that it is wanted. Other than that, I can find nothing wrong with it.



**Mississippi Coastal Program**

The Mississippi Coastal Program is administered by the Bureau of Marine Resources, Mississippi Department of Wildlife Conservation.
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**EDITOR'S NOTE:**

We are pleased to present the first issue of the "Water Log", a quarterly newspaper which will include information and news concerning coastal and marine affairs. It is our hope that this newsletter will facilitate interaction and communication among Sea Grant researchers and "users" of the research results. We welcome your suggestions and comments and solicit your input and support.

Each issue of the "Water Log" will concentrate on a current topic pertinent to the Mississippi-Alabama Coastal area. It is appropriate that this first issue focuses on coastal zone management since the Office of Management and Budget has recommended to Congress that federal financial support of state CZM programs be ceased. If Congress follows OMB's recommendation, the Mississippi and Alabama legislatures and the legislatures of other states with federally approved CZM programs will have to decide whether their programs are worthy of the state's full financial support.

CZM is not the only federally supported coastal program proposed for termination by the new administration. OMB has also recommended no further funding of the national Sea Grant program beyond the 1981 fiscal year, except for necessary "termination" funds. The OMB recommendations are currently being considered by various committees in the Senate and House, where Sea Grant has traditionally received strong support.

We will keep you advised of these and other issues in the "Water Log."

# WATER LOG

This newsletter is a quarterly publication reporting on the activities of the Mississippi-Alabama Sea Grant Consortium and on issues and events affecting the Mississippi-Alabama coastal area. The purpose of the newsletter is to increase public awareness of coastal problems and issues.

If you would like to receive future issues of the *Water Log* free of charge, please send your name and address to: Sea Grant Legal Program, University of Mississippi Law Center, University, Mississippi 38677. We welcome suggestions for topics you would like to see covered in the Water Log.

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# NOTES

The Mississippi Sea Grant Advisory Service is planning a symposium on the Mississippi Sound. The primary objective of the conference is to formulate a listing of physical, meteorological, chemical, geological, biological, and socio-economic/legal information currently available on the Mississippi Sound with the ultimate goal of closing many of the informational gaps in these areas. The symposium has been set for June 25-26, 1981, at the Biloxi Beach Motor Inn in Biloxi, MS. For further information, contact John R. Kelly at the Mississippi Sea Grant Advisory Service Office in Biloxi. (601-388-4710).

The next issue of the Water Log will include:

. . . A review of fisheries management in the Gulf of Mexico.

. . . An analysis of the 1980 American Fisheries Promotion Act.

. . . An update on recent amendments to the Coastal Zone Management Act.



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