



# WATER LOG

A Legal Reporter of the Mississippi-Alabama Sea Grant Consortium

## Bayou Site Deemed Not Available For Casino

**Mississippi Gaming Comm'n v. Board of Educ., 691 So. 2d 452 (Miss. 1997).**

by Richard Brownlow, 3L  
and John Duff, J.D., LL.M.

### Summary

In March, the Mississippi Supreme Court held that Bernard Bayou in Gulfport, Mississippi was not a site suitable for casino gambling. The Mississippi Gaming Commission had denied a gaming permit to Royal Casino on Bernard Bayou. The Circuit Court of Harrison County subsequently held that this decision was arbitrary and capricious and ruled that Bernard Bayou was a

"lawful and legal site for a casino."

On appeal, the Mississippi Supreme Court reversed the circuit court and reinstated the Gaming Commission's application denial. The state high court ruled that the Commission's regulation designating Bernard Bayou as an area not authorized for casino sites was a reasonable interpretation of the statute authorizing gaming. The Mississippi Supreme Court ruled that the Commission's decision to deny a request for preliminary site approval for gaming opera-

tions on Bernard Bayou was not arbitrary and capricious.

### Background

On April 20, 1993, Royal Casino Corporation filed an Application for State Gaming License with the State Gaming Commission, proposing to construct a gaming facility on a 125 acre site of land leased from the Board of Education in Harrison County.<sup>1</sup> The proposed casino site was located on Bernard Bayou, a bayou located at the far western end of the Back Bay of Biloxi which experiences some

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## Littoral Rights Start at High Watermark

**Watts v. Lawrence, 690 So. 2d 1162 (Miss. 1997).**

by John Braley, 2L  
and John Duff, J.D., LL.M.

### Overview

The Mississippi Supreme Court recently ruled that owners of property adjacent to the high tide line may build certain structures, such as piers and boathouses, subject to the regulation of the Bureau of Marine Resources (BMR). In doing so, the court held that a waterfront property owner's littoral rights (interests concerning the ocean, sea or lake abutting property)

are measured from the mean high watermark. In affirming the greater part of a chancery court decision, the Mississippi Supreme Court rejected the chancery court's attempt to define a littoral property line between neighboring waterfront lots.

### Background

Defendants David and Deborah Lawrence owned waterfront property adjacent to the Back Bay of Biloxi in Harrison County, Mississippi. They applied for and received a BMR

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permit to build a pier and a boathouse adjacent to their shoreline. The construction plans included motorized hoists to lift and lower a boat and placed the boathouse more than fifteen feet beyond the high watermark. After driving the pilings but before completion of the boathouse, adjoining property owner James Watts objected to the construction of the boathouse. Watts contended that the Lawrences did not own property possessing littoral rights and as a result were not entitled to build any structure over the water beyond the lot line.

To protest the construction of the boathouse, Watts filed suit against the Lawrences in the Harrison Court Chancery Court seeking a permanent injunction. The chancellor determined that the Lawrence property possessed littoral rights and denied the injunction. In so ruling, the chancellor drew a demarcation line between the respective water areas abutting the properties.

Watts appealed the denial of the injunction. The Lawrences cross-appealed on the decision to establish a line of demarcation.

**Littoral Rights Claim**

The Mississippi Code states in pertinent part:

[t]he sole right of . . . 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.<sup>1</sup>

Under this provision, Watts argued that riparian or littoral rights begin at the "average low water mark." Watts contended that since the land records showed no part of the Lawrence property touching water at the average low water mark, no littoral rights existed.<sup>2</sup> As a result, Watts argued that the Lawrences were not entitled to build any structure over the water.

The Lawrences countered that littoral rights begin at the average high water mark, and since the southern boundary of their property touched water at high tide, the land possessed littoral rights. Furthermore, the Lawrences argued that the chancery court's establishment of a littoral property line was inappropriate.

In their ruling, the state Supreme Court noted that Watts's claim that the Lawrence property did not enjoy littoral rights was not supported by case law and was based on a "misguided" interpretation of the law.<sup>3</sup>

The high court held that the statute did not establish a test for determining whether littoral

rights exist but only concerned the extent of such rights once established. The court relied on the case of *Cinque Bambini Partnership v. State*, 491 So. 2d 508, 516-517 (Miss. 1986), in which it held that the state owns the property between the mean low watermark and the mean high watermark in trust for all citizens. The court built on *Cinque Bambini* and ruled that any property adjacent to the mean high water line, not mean low water, possesses littoral rights.<sup>4</sup> Because the Lawrence property was adjacent to the mean high water line, the court affirmed the determination that the Lawrences had littoral rights.

Having ruled that littoral rights existed, the court turned to the issue of the nature and extent of those rights. The relevant statute allows, among other things, the building of structures, such as piers and boathouses over the water. However, the statute subjects any such development to the regulation of the Bureau of Marine Resources based on the fact that littoral rights are merely licenses to use property granted by the State and not full fledged property rights.<sup>5</sup>

The state Supreme Court allowed the Lawrences to continue the construction of the boathouse because the BMR approved the project via issuance of a permit. In doing so, the Mississippi Supreme Court affirmed the chancery court's denial of the permanent injunction.

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### Littoral Property Lines

In its effort to resolve the dispute between the neighboring waterfront property owners, the chancery court had established a littoral property line, or line of demarcation, between the litigants' respective water areas.<sup>6</sup> The Mississippi Supreme Court found the lower court's establishment of a demarcation line between the parties' littoral property unnecessary and improper given the BMR's regulatory authority. Since the BMR, through its permit issuance, deemed the boathouse properly placed, a littoral property line was not needed. Accordingly, the Mississippi Supreme Court struck down the chancellor's demarcation line.

#### Endnotes

1. Miss. Code Ann. § 49-15-9 (Supp. 1996).
2. *Watts v. Lawrence*, 690 So. 2d 1162, 1164 (Miss. 1997).
3. *Id.*
4. *Id.*
5. *Mississippi State Highway Commission v. Gilich*, 609 So. 2d 367, 375 (Miss. 1992).
6. *Watts*, 690 So. 2d at 1163.



## Defining Littoral Rights

According to Black's Law Dictionary, littoral rights are "rights concerning properties abutting an ocean, sea or lake rather than a river or stream (riparian). Littoral rights are usually concerned with the use and enjoyment of the shore." Mississippi courts have explicitly adopted this traditional definition.<sup>1</sup> Although the statute at issue in *Watts v. Lawrence* (Miss. Code Ann. § 49-15-9) refers to riparian rights rather than littoral rights, the Mississippi Supreme Court uses the terms interchangeably. "Riparian/littoral rights are codified in Miss. Code Ann. § 49-15-9 (1972)."<sup>2</sup> According to the court, examples of littoral rights "include the right to plant and gather oysters, construct bath houses, piers, and other structures in front of any land bordering on the Gulf of Mexico or Mississippi Sound."<sup>3</sup>

However, since 1908, the State's high court has held littoral rights to be something other than real-property rights.<sup>4</sup> In Mississippi, littoral rights are considered more akin to privileges or licenses.<sup>5</sup> These privileges or licenses can be revoked.<sup>6</sup> In interpreting a previous version of § 49-15-9, the state Supreme Court stated, "[the] privilege or license is necessarily subject to the superior right of the state to impose an additional public use upon such property already set aside for a public purpose, without requiring the payment of compensation for it."<sup>7</sup>

#### Endnotes

1. See *Watts v. Lawrence*, 690 So. 2d 1162, 1164 (Miss. 1997). See also *Mississippi State Highway Commission v. Gilich*, 609 So. 2d 367, 369 n.5 (Miss. 1992).
2. *Mississippi State Highway Commission v. Gilich*, 609 So. 2d 367, 375 (Miss. 1992).
3. *Id.*
4. *Id.* (citing *Catchot v. Zeigler*, 45 So. 707 (1908)).
5. *Id.*
6. *Id.* (citing *Crary v. State Highway Commission*, 68 So. 2d 468 (1953)).
7. *Crary v. State Highway Commission*, 68 So. 2d 468, 471 (1953).

*BAYOU cont. from pg. 1*

effect from the ebb and flow of the average tide.

On April 21, 1994, the Gaming Commission held a site assessment hearing where the parties presented expert affidavits and testimony regarding the hydrographic properties of the site. At this meeting proponents and opponents of the site discussed the economic and social impact of the project. The Commission's Executive Director recommended against approval of the Bernard Bayou site based on evidence presented at the hearing, as well as maps, a site visit, and the statutes and regulations governing gaming sites. The Commission relied on Gaming Commission Regulation No. 2 which provides that Bernard Bayou is not within the area authorized for casino gambling. The Commission denied the site application by a 2-1 vote at a meeting held on May 31, 1994.

On July 18, 1994, the Board of Education of Harrison County and Royal Casino filed a Petition for Review with the Harrison County Circuit Court. They argued that neither state statute nor Commission Regulation No. 2 prohibited gaming operations on the proposed site.<sup>2</sup> The Board of Education and Royal Casino contended that if Regulation No. 2 were found to bar development of the site, it should be declared void because the Legislature has already defined where casinos may be located.

In response, the Gaming

Commission asserted that the circuit court lacked jurisdiction over the matter because preliminary site approval is not statutorily subject to appeal and that Gaming Commission Regulation No. 2 was a proper exercise of their delegated power. The Commission also argued that the Board of Education of Harrison County, which had not filed the application for site approval, was not a proper party to the case.

After a hearing on November 21, 1994, the Harrison County Circuit Court entered its opinion on December 30, 1994 reversing the Commission's order and finding that Bernard Bayou was "a lawful and legal site" for a casino. The circuit court also denied the Commission's motion to dismiss the Board of Education as a party. The Gaming Commission appealed the circuit court decision to the Mississippi Supreme Court.

#### **Mississippi Supreme Court Review**

The Mississippi Supreme Court began its review of the circuit court decision by noting that courts must afford great deference to administrative agencies' interpretations of their own regulations.<sup>3</sup> The Court went on to hold that the Commission's Regulation No. 2,<sup>4</sup> which designated Bernard Bayou as an area not authorized for gaming casino sites, was a reasonable interpretation of the controlling state statute (Mississippi Code § 97-33-1(a)) which authorizes

casino gambling in "waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties."

The Court relied on an earlier decision, Mississippi Casino Operators Ass'n v. Mississippi Gaming Commission,<sup>5</sup> in which they recognized that the Gaming Commission has the authority "to determine the locations of casinos which wish to build in the Gulf Coast area."<sup>6</sup> That earlier decision held that Regulation No. 2 was "a reasonable interpretation of the statute."<sup>7</sup>

At the application hearing, the Gaming Commission had held that the proposed site was part of Bernard Bayou and was therefore not suitable for gaming pursuant to Gaming Regulation No. 2.

Royal Casino and the Board of Education argued to the state Supreme Court that the proposed site was part of Biloxi Bay because its waters are subject to the ebb and flow of the tide. They based their argument on a case in which the Supreme Court referred to the general area of the proposed site as being a "commercially navigable portion of Biloxi Back Bay."<sup>8</sup>

The Court dismissed this argument, noting that the cited description was not a precedential part of its ruling but rather a general description of an area of the Back Bay that had no factual or legal bearing in this case.

The Court went on to find

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that Gaming Commission Regulation No. 2 is a reasonable interpretation of Miss. Code Ann. § 97-33-1(a) and that the circuit court erred in ruling that the Commission exceeded its authority when determining that Bernard Bayou was not a legal gaming site.

The Mississippi Supreme Court found that the Commission's decision to deny the request for preliminary site approval for gaming operations on Bernard Bayou was based on sound evidence and analysis and therefore was not arbitrary and capricious. The Court noted that an arbitrary and capricious decision is one done not according to reason or judgement, but one done based upon the decision maker's will alone.

The Mississippi Supreme Court based its conclusion on the nature of the evidence that the Commission considered in denying the application, including: 1) a variety of topographic and quadrangle maps, 2) the affidavit of Rear Admiral Wesley Hull of the National Oceanic and Atmospheric Administration regarding tidal observations, and 3) the testimony of a certified professional hydrologist that opined that Bernard Bayou is a bayou and not a bay.

#### **Board of Education's Role**

While the Mississippi Supreme Court found in favor of the Gaming Commission regarding the site denial, it ruled in

favor of the Board of Education regarding its legal standing in the case. The Gaming Commission argued that the Board of Education was not a proper party to the case because the Board was not a party in the application process or specified otherwise by statute.

The Board countered by noting that it was an aggrieved party since the Commission's decision would cause it to lose \$180,000,000 in anticipated lease revenues. The state Supreme Court agreed with the Board, stating that the School Board was a proper party in the case and had standing to appeal the decision by the Commission based on its "colorable interest" in potential earnings from the proposed project.<sup>9</sup>

The Court stated that the Board's early and active participation in the site approval proceedings, its more than "colorable interest" in the Commission's decision, and its special role as trustee of the sixteenth section lands allowed the circuit court to properly find that the Board had standing to appeal the Commission's decision.

#### **Endnotes**

1. "Sixteenth section land are held in trust for the benefit of the school children and these trusts with the attendant responsibilities of the trustee must be considered as other trusts are considered." *Bragg v. Carter*, 367 So. 2d 165, 167 (Miss. 1979).

2. Gaming Commission Regulation No. 2 provides locations where cruise vessels can operate as follows:

Waters within the State of Mississippi which lie adjacent to the three (3) most southern counties of the State. In addition to the Mississippi Sound, this would include St. Louis Bay, Biloxi Bay, and Pascagoula Bay. However, the rivers and bayous leading into these bays, including but not limited to Jourdan River, Wolf River, Bernard Bayou, Tchoutacabouffa River, Pascagoula River and Escatawpa are not within the authorized area. In determining where the river ends and the bay begins, an imaginary line shall be drawn from the foremost land mass at the intersection of the river and bay, straight across the river to the foremost land mass of the intersection on the other side.

3. *Casino Magic Corp. v. Ladner*, 666 So. 2d 452, 459 (Miss. 1995).

4. See supra note 2.

5. 654 So. 2d 892 (Miss. 1995)

6. *Casino Operators*, 654 So. 2d at 894.

7. *Id.* at 894-95.

8. *Cinque Bambini Partnership v. State*, 491 So. 2d 508, 516 (Miss. 1986)

9. See supra note 1.

## Supreme Court Rules "Any Person" Can Sue Under ESA *Bennett v. Spear*, 117 S.Ct. 1154 (1997).

by John Braley, 2L and  
John Duff, J.D., LL.M.

### Overview

The United States Supreme Court recently held that the Endangered Species Act (ESA) citizen suit provision grants standing to sue to persons other than those who seek to use the law to protect endangered and threatened species. In doing so, the Court reversed a decision made by the federal district court in Oregon and upheld by the Court of Appeals for the Ninth Circuit. The lower courts had dismissed economic-oriented claims filed under the Endangered Species Act ruling in effect that standing under the ESA was limited to parties claiming under-protection of endangered and threatened species. The Supreme Court's decision opens the door for claims of over-enforcement of the Act which results in economic injury.

### Background

The Bureau of Reclamation (Bureau), a sub-division of the U.S. Department of Interior, administers the Klamath Irrigation Project in California and Oregon. The Project consists of irrigation canals, rivers, and reservoirs. Several Oregon irrigation districts receive water from the Clear Lake and Gerber reservoirs which are part of the Project.

In 1992, the Bureau alerted

the U.S. Fish and Wildlife Service (FWS) that Clear Lake and Gerber reservoirs contained two endangered species of fish, the Lost River Sucker and the Shortnose Sucker, which might possibly be affected by operational changes within the Project.

As required by the Endangered Species Act, the FWS issued a biological opinion on the matter. The opinion stated that the operation of the reservoirs would jeopardize the two species of fish. Accordingly, the FWS also issued an Incident Take Statement which recommended that the reservoir water levels be maintained at certain minimum levels to avoid harm to the fish. The Bureau of Reclamation indicated that it intended to comply with this recommendation.

While water level restrictions aid the fish, they reduce the quantity of water available for the irrigation districts and area ranchers. To protest the FWS recommendations, the irrigation districts and ranchers filed suit against the Secretary of the Interior and the FWS. The irrigation districts alleged that scientific evidence did not indicate that the Bureau's operation of the reservoirs jeopardized the fish, and no evidence pointed to beneficial results from implementation of the FWS recommendation. Further, they alleged that a critical habitat determination had been made

without the requisite economic impact analysis.

The United States District Court for the District of Oregon ruled in favor of the federal government by dismissing the complaint for lack of standing. The District Court held that the irrigation districts' "recreational, aesthetic, and commercial interests . . . do not fall within the zone of interests sought to be protected by ESA."<sup>1</sup> This decision was affirmed by the Court of Appeals for the Ninth Circuit which stated, "only plaintiffs who allege an interest in the preservation of endangered species fall within the zone of interests protected by the ESA."<sup>2</sup> The irrigation districts appealed to the United States Supreme Court.

### Zone of Interests and ESA

In reversing the lower court decisions, the Supreme Court held that the "zone of interests" test does not preclude the irrigation districts' claims under the ESA's citizen suit provision. The Court determined a plaintiff's standing to be valid if the interest the plaintiff wishes to protect is marginally within the "zone of interests" the statute regulates or protects.<sup>3</sup> Further, the Court noted that the "zone of interests" limitation can be negated by broader language in a statute that would confer standing upon a plaintiff who might otherwise fail under the test.

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The ESA contains a citizen suit provision which states, "any person may commence a civil suit on his own behalf."<sup>4</sup> The Court interpreted this language broadly in order to allow the citizen suit provision to negate the arguably narrower requirements of the zone of interests test. Whereas the zone of interests test might restrict standing to environmentalists alone, the Court reasoned, the "any person" provision kept the door open. In a treatise-like explanation, the Court set out a comprehensive analysis of standing requirements under the U.S. Constitution, the Administrative Procedure Act, and the statute at issue in this case—the Endangered Species Act.

#### **Standing and the United States Constitution**

Under Article III of the Constitution, standing (the right to bring suit) requires an "injury in fact," a connection between the plaintiff's injury and the defendant's acts, and the possibility of a favorable outcome for the plaintiff.<sup>5</sup>

The irrigation districts pointed to the reduction of water released to them due to the FWS' recommendation as the "injury in fact." In addition, the irrigation districts suggested that the biological opinion's powerful effect on the Bureau's decision-making connects their injury to the actions of the FWS and the Secretary of the Interior. In

their effort to show the third element, the irrigation districts reminded the Court that before the biological opinion, the Bureau had uniformly released water from the reservoirs without drastic restrictions. Given the modest constitutional standing requirements, the Court concluded that the irrigation districts met the burden and had standing under Article III.

#### **ESA Section 1533 Claim**

The citizens suit provision of the Endangered Species Act allows "any person" to bring suit to stop the federal government from violating the ESA or for a failure by the Secretary of Interior to "perform any act or duty" required by ESA Section 1533.<sup>6</sup>

The irrigation districts claimed that the minimum water level recommendation for Clear Lake and Gerber reservoirs amounted to a determination of the critical habitat for the endangered fish. The irrigation districts claimed that a critical habitat determination, implicit in the biological opinion recommendation, was issued without the economic impact analysis mandated in Section 1533 of the ESA.

The federal government argued that the biological opinion did not amount to a critical habitat determination and therefore was not subject to an economic impact analysis. Upon review, the Court held in favor of the irrigation districts in light of the strongly worded recommendations in the biological opinion

and the expressed willingness of the Bureau of Reclamation to execute those recommendations. The fact that the actions were outlined in a biological opinion rather than a critical habitat designation did not sway the Court, "[the Fish and Wildlife Service] is . . . aware of the virtually determinative effect of its biological opinions."<sup>6</sup>

#### **ESA Section 1536 and the Administrative Procedure Act**

The Supreme Court also addressed the irrigation districts' claims under Section 1536 of the Endangered Species Act. The irrigation districts claimed the biological opinion violated section 1536 by not considering the best commercial and scientific data available. The irrigation districts contended that the best data available showed that the continued release of water would not harm the fish and that maintaining higher water levels would not aid the fish. As a result, they argued, the biological opinion and Incident Take Statement were based on erroneous findings and therefore violated Section 1536.

While the irrigation districts' Section 1536 claims are not reviewable under the ESA, they are reviewable under the Administrative Procedure Act (APA). The APA allows a court to "set aside agency action findings, and conclusions found to be . . . arbitrary, capricious, [or] an abuse of discretion."<sup>7</sup>

see ESA pg. 8

ESA from pg. 7 cont.

Review under the APA requires a zone of interests analysis. Accordingly, the Court looked to the purpose of Section 1536 to determine whether the irrigation districts were "in the zone."

The Court saw the "best scientific and commercial data available" provision of Section 1536 as having a dual purpose. Explicitly, the provision prevents haphazard enforcement of the

ESA. Implicitly, the Court said, the provision avoids "needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives."<sup>8</sup> The Court was thus able to rule that the irrigation districts' economic-oriented claims fell within the zone of interests protected by Section 1536 and therefore subject to judicial review under the Administrative Procedure Act.

#### Endnotes

1. *Bennett v. Spear*, 117 S.Ct. 1154, 1160 (1997)(citing App. to Pet. for Cert. 28).
2. *Bennett v. Plenart*, 63 F.3d 915, 919 (9th Cir. 1995).
3. *Bennett v. Spear*, 117 S.Ct. 1154, 1161 (1997)
4. 16 U.S.C. § 1540(g)(1).
5. *Bennett v. Spear*, 117 S.Ct. 1154, 1163 (1997).
6. *Id.* at 1165.
7. 5 U.S.C. § 706.
8. *Bennett v. Spear*, 117 S.Ct. 1154, 1168 (1997).

## U.S. Works to Clarify ESA Responsibility on Tribal Lands

Secretary of Interior Bruce Babbitt and Commerce Secretary William Daley signed a Joint Secretarial Order on June 5 as part of an effort to redefine and clarify the role and responsibilities of those departments regarding Endangered Species Act enforcement involving Native American Tribal Lands and Resources.

The Order sets out a Statement of Principles indicating that:

1. The departments shall work directly with Indian tribes on a government-to-government basis to promote healthy ecosystems;
2. The departments shall recognize that Indian lands are not subject to the same controls as federal public lands;
3. The departments shall assist Indian tribes in developing and expanding tribal programs so that healthy ecosystems are promoted and conservation restrictions are unnecessary;
4. The departments shall be sensitive to Indian culture, religion and spirituality; and
5. The departments shall make available to Indian tribes information related to tribal trust resources and Indian lands, and, to facilitate the mutual exchange of information, shall strive to protect sensitive tribal information from disclosure.

"This Secretarial Order is another important example of the ways the Clinton Administration is committed to making the Endangered Species Act more responsive to those it affects," said Interior Secretary Bruce Babbitt in a Department of Interior press release. "For too long, we have not explored or clarified the trust and treaty relations with sovereign Indian Tribes and endangered species and we have failed to take advantage of the deep and sacred relationship with the land that Tribal governments can share. This Order will not only give Tribes a seat at the table in the planning and consultation process, but an ability to lend their expertise and traditional knowledge to conserve and improve recovery for species with habitat on Indian lands."



# MISSISSIPPI LEGISLATIVE UPDATE 1997

*by Michael L. McMillan, 3L, Heath Franklin, 3L, and John Duff, J.D., LL.M.*

*The following is a summary of coastal, fisheries, marine, and water resources related legislation enacted by the Mississippi legislature during the 1997 session.*

## 1997 Mississippi Laws 306

*Approved March 10, 1997. Effective March 10, 1997.*

Comprehensively revises the Mississippi Surface Coal Mining and Reclamation Law (Mississippi Code Section 53-9-1 et seq.) to be consistent with the Federal Surface Mining Control and Reclamation Act of 1977. The law incorporates environmental restrictions to prevent contamination of "water courses" and streams by toxic drainage created by the mining process.

## 1997 Mississippi Laws 343

*Approved March 17, 1997. Effective March 17, 1997.*

Adds Madison County to the list of 17 other counties already eligible to become members of the Pearl River Basin Development District.

## 1997 Mississippi Laws 353

*Approved March 17, 1997. Effective July 1, 1997.*

Enlarges the boundaries for commercial and recreational shrimping activities along the Pearl River. The western boundary is relocated to the "southernmost point of the Mississippi shoreline on the east bank of the mouth of the Pearl River . . . to a point where the east bank of the Pearl River intersects . . . the Highway 90 bridge . . . thence westerly . . . to a point where that intersects the Mississippi-Louisiana state boundary."

## 1997 Mississippi Laws 362

*Approved March 17, 1997. Effective March 17, 1997.*

Removes requirement that Department of Wildlife, Fisheries and Parks enforcement officers wear uniforms at all times while on duty and removes standard that only those officers in uniform may carry firearms.

## 1997 Mississippi Laws 370

*Approved March 18, 1997. Effective March 18, 1997.*

Authorizes Mississippi State University to oversee a pilot program allowing for the cultivation, marketing, and sale of hybrid bream and hybrid black stripe crappie. The Act also amends the relevant statute to allow for the export of game fish produced in a legally permitted aquaculture facility.

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## 1997 Mississippi Laws 374

*Approved March 18, 1997. Effective July 1, 1997.*

Revises the labeling requirements for Tilapia in accordance with the Mississippi Aquaculture Act of 1988. Now, tilapia sold must bear either the labeling "FARM-RAISED TILAPIA" or "IMPORTED TILAPIA." The Act also authorizes the Commissioner of Agriculture and Commerce to promulgate rules and regulations to enforce this provision.

## 1997 Mississippi Laws 379

*Approved March 18, 1997. Effective July 1, 1997.*

Revises the penalty provisions regarding the illegal use of fishing nets. The act increases the first offense fine to a minimum of \$2,000 and a maximum of \$4,000 for the following illegal fishing practices:

- Use of illegal nets in areas where freshwater rivers and saltwater meet.
- Use of a purse seine within 1 mile of the shoreline of Hancock and Harrison Counties.
- Commercial harvesting of particular species in portions of the Pascagoula River System.
- Use of a gill net within 1/2 mile of the shoreline in marine waters.

## 1997 Mississippi Laws 388

*Approved March 18, 1997. Effective March 18, 1997.*

Creates a new code section (Mississippi Code 49-17-44) which authorizes:

- Requirements for certain water pollution control permit applicants to provide a performance bond.
- The Commission on Environmental Quality to require forfeiture of bond in certain situations.
- The creation of the Water Pollution Control Bond Forfeiture Fund.

## 1997 Mississippi Laws 389

*Approved March 18, 1997. Effective July 1, 1997.*

Creates new code sections which direct:

- That the State assume primary enforcement responsibility under the federal Safe Drinking Water Act.
- The development of a state program to implement and enforce federal drinking water standards.
- That the state regulate the construction and operation of public and semi-public water systems.
- The creation of the Public Water System Assistance Fund
- Assessment of fines not to exceed \$25,000 for each violation of drinking water regulations.
- The naming of the Mississippi Safe Drinking Water Act of 1997.
- The authority to establish administrative hearings by the State Health Officer or an administrative law judge.

## **1997 Mississippi Laws 392**

*Approved March 18, 1997. Effective July 1, 1997.*

Requires members of a governing board of any community public water system serving a population of less than two thousand five hundred (2,500) to attend at least eight (8) hours of management training.

## **1997 Mississippi Laws 393**

*Approved March 18, 1997. Effective July 1, 1997.*

Requires certain boats and motors to be registered for a certificate of title to be issued by the Department of Wildlife, Fisheries and Parks.

## **1997 Mississippi Laws 403**

*Approved March 18, 1997. Effective July 1, 1997.*

Repealed sections which authorize the creation and powers and duties of the:

- Big Black River Basin District.
- West Central Mississippi Waterway Commission.
- Lower Mississippi River Basin Development District.
- Lower Yazoo River Basin District.
- Flood Control Districts Under the 1936 Flood Control Law of Mississippi.

The Act authorizes the Department of Environmental Quality to provide water resources—related assistance to the above referenced authorities and districts.

## **1997 Mississippi Laws 416**

*Approved March 24, 1997. Effective July 1, 1997.*

Creates the Water Pollution Control Hardship Grants Fund and gives the Commission on Environmental Quality authority to administer the fund. The Act calls for the Commission to establish a hardship grants program for rural communities to assist in the construction of water pollution control projects.

## **1997 Mississippi Laws 451**

*Approved March 25, 1997. Effective March 25, 1997.*

Amends the classification of nongame and game fish set out in Mississippi Code Section 49-7-1.

### **1997 Mississippi Laws 477**

*Approved March 27, 1997. Effective July 1, 1997.*

Creates the Mississippi Watershed Repair and Rehabilitation Cost-Share Program to assist local watershed districts in the repair, rehabilitation or removal of water impoundment structures constructed with financing from the federal government.

### **1997 Mississippi Laws 481**

*Approved March 27, 1997. Effective July 1, 1997.*

Provides that the Department of Wildlife, Fisheries, and Parks shall promulgate rules and regulations allowing for reasonable access to hunting areas for handicapped hunters in public wildlife management areas under its jurisdiction.

### **1997 Mississippi Laws 488**

*Approved March 27, 1997. Effective March 27, 1997.*

Designates the Cobia as a game fish and prohibits the sale of such. However sale is allowed if the cobia is purchased.

### **1997 Mississippi Laws 495**

*Approved March 27, 1997. Effective March 27, 1997.*

Provides for the issuance of bonds to fund construction of the University of Southern Mississippi Center for Marine Sciences at Stennis Space Center.

### **1997 Mississippi Laws 522**

*Approved April 10, 1997. Effective July 1, 1997.*

Establishes a Board of Registered Professional Geologists and establishes minimum requirements in order to be registered as a Certified Geologist or Geologist-in-Training.

### **1997 Mississippi Laws 523**

*Approved April 10, 1997. Effective July 2, 1997.*

Creates the Drinking Water Quality Analysis Fund. The State Department of Health will assess a fee to perform water quality analysis for those suppliers of water falling under the requirements of the federal Safe Drinking Water Act.

### **1997 Mississippi Laws 539**

*Approved April 10, 1997. Effective April 10, 1997.*

Allows members of the Pat Harrison Waterway District to levy ad valorem taxes for payment of bonds to support the improvement or development of a port or harbor. The Act also ratifies any such ad valorem tax levied by members in 1996.

### **1997 Mississippi Laws 540**

*Approved April 10, 1997. Effective July 1, 1997.*

Requires certain public utilities providing water and sewage services to give notice in a newspaper of any proposed rate change, any hearing on the proposed rate change, and the average amount of increase to customers.

### **1997 Mississippi Laws 543**

*Approved April 10, 1997. Effective July 1, 1997.*

Increases the state millage rate levied against oil and gas:

1. From thirty five (35) to sixty (60) mills on each barrel of oil produced and saved.
2. From four (4) to six (6) mills on each one thousand (1,000) cubic feet of gas produced, saved and sold.

### **1997 Mississippi Laws 546**

*Approved April 10, 1997. Effective July 1, 1997.*

Includes commercial wildlife enclosures in same statutes which regulate shooting preserves. The Commission on and Department of Wildlife, Fisheries and Parks will share regulatory authority over these enclosures.

### **1997 Mississippi Laws 549**

*Approved April 10, 1997. Effective July 1, 1997.*

Authorizes the Commission on Wildlife, Fisheries and Parks to regulate hunting and fishing guide and outfitter services.

### **1997 Mississippi Laws 571**

*Approved April 23, 1997. Effective April 23, 1997.*

Classifies particular wild animals as inherently dangerous to humans. Possession of such species including gorillas, wolves, bears and others shall require a permit issued by the Department of Wildlife, Fisheries and Parks.

*cont.*

## **1997 Mississippi Laws 575**

*Approved April 23, 1997. Effective July 1, 1997.*

Authorizes Justice Courts in this state to order the seizure of any animal being treated cruelly or neglected or are abandoned.

## **1997 Mississippi Laws 579**

*Approved April 11, 1997. Effective July 1, 1997.*

Recodifies and revises the Mississippi Seafood Laws creating additional sections in the Mississippi Code of 1972. These revisions, among other things:

- require the publication of the Mississippi Seafood Laws and Regulations;
- provide for licenses for seafood wholesalers and processors;
- establish full jurisdiction over oyster reefs and oyster bottoms by the Commission on Marine Resources;
- provide for penalties for the illegal sale of oysters;
- require that live bait dealers be licensed and to pay various fees; and,
- provide for the regulation of crab taking by the Commission on Marine Resources.

## **1997 Mississippi Laws 588**

*Approved April 24, 1997. Effective July 1, 1997.*

Section 18, of this Act establishes a statutory right to fish by stating that "[a]ny resident of the State of Mississippi shall be entitled to receive a resident fishing license."

## **1997 Mississippi Laws 596**

*Approved April 24, 1997. Effective July 1, 1997.*

Establishes the Local Governments Solid Waste Assistance Fund to help meet community and regional needs in solid waste management program activities including enforcement, recycling, and dump cleanups.

## **1997 Mississippi Laws 600**

*Approved April 24, 1997. Effective July 1, 1997.*

Authorizes the Department of Marine Resources to pay for the removal of derelict vessels from the coastal wetlands if funds are unavailable from the county or municipality. The Act also revises the description of derelict vessels to exempt those vessels submerged more than one hundred years.

## **1997 Mississippi Laws 614**

*Approved April 24, 1997. Effective July 1, 1997.*

Authorizes the issuance of bonds to match federal money allotted for the U.S. Army Corps of Engineers Bluff Stabilization Project for the City of Natchez.

## Lagniappe *(a little something extra)*

### *Around the Gulf...*



The Mississippi Department of Marine Resources and The Gulf Coast Research Laboratory recently announced a joint study on the effects of the freshwater release at the Bonnet Carre Spillway. The spillway was opened as a means of diverting extraordinarily high volumes of flood waters during the Mississippi River's spring flood stage. The U.S. Army Corps of Engineers will fund the study with a \$135,000 grant to determine the impact of the release on oysters, finfish, shrimp and crab.

In its May meeting, the Gulf of Mexico Fishery Management Council submitted a proposed red snapper commercial license limitation system to the National Marine Fisheries Service (NMFS). The system would create two classes of license: those fishers holding red snapper endorsements as of March 1, 1997 would be subject to an initial trip limit of two thousand pounds, while those who held reef fish permits on March 1, 1997 and had landings of red snapper between January 1, 1990 and March 1, 1997 would be subject to an initial trip limit of two hundred pounds.

In June, the NMFS on behalf of the Joint Subcommittee on Aquaculture announced the release of a report entitled "An Evaluation of Shrimp Virus Impacts on Cultured Shrimp and on Wild Shrimp Populations in the Gulf of Mexico and Southeastern U.S. Atlantic Coastal Waters." Three public hearings will be held in July. Public comment will be solicited to help develop plans for an ecological risk assessment on shrimp viruses. Federal Register Vol. 62, No. 112 (June 11, 1997- 62 FR 31790).



### *Around the Nation and World*



In June, the United States Supreme Court ruled that large areas of submerged lands lying off the coast of the Arctic National Wildlife Refuge belong to the United States and not the state of Alaska. The ruling governs the distribution of oil and gas revenues derived from production in those areas. United States v. Alaska, 1997 WL 331816 (U.S.).

In June, environmental groups filed a lawsuit against the U.S. Dept. of the Interior, charging that the U.S. government was not protecting sea turtles by taking actions that would promote development of important sea turtle nesting beaches on barrier islands adjacent to the Archie Carr National Wildlife Refuge on the Atlantic coast of Florida. The lawsuit seeks to block efforts that would make important sea turtle nesting beaches available for development.

On May 30, 1997, the Washington state Fish and Wildlife Commission approved regulations designed to better protect diving sea birds from entanglement in commercial salmon nets. Commercial fishermen will be required to modify gear and restrict fishing hours during the Fraser River sookeye and pink salmon fishery in northern Puget Sound.

In May and June, talks between the United States and Canada regarding the Pacific Salmon Treaty, heated up, broke down, cooled down and resumed. An ongoing issue in the talks is the proper determination of the number of salmon that can be caught by U.S. and Canadian vessels.

On June 18, 1997, an effort by Cuba at the CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) conference in Zimbabwe to downlist hawksbill sea turtles failed to garner the requisite two-thirds vote. The island nation sought the action as part of an effort to allow commercial trade in turtle shells.

**WATER LOG** is a quarterly publication reporting on legal issues affecting the Mississippi-Alabama coastal area. Its purpose is to increase public awareness and understanding of coastal problems and issues.

If you would like to receive future issues of **WATER LOG** free of charge, please send your name and address to: Mississippi-Alabama Sea Grant Legal Program, University of Mississippi Law Center, University, MS 38677, or contact us via e-mail: [waterlog@olemiss.edu](mailto:waterlog@olemiss.edu). We welcome suggestions for topics you would like to see covered in **WATER LOG**.

This work is a result of research sponsored in part by the National Oceanic and Atmospheric Administration, U.S. Department of Commerce under Grant Number NA56RG0129, the Mississippi-Alabama Sea Grant Consortium, the State of Mississippi, and the University of Mississippi Law Center. The U.S. Government and the Mississippi-Alabama Sea Grant Consortium are authorized to produce and distribute reprints notwithstanding any copyright notation that may appear hereon. The views expressed herein are those of the authors and do not necessarily reflect the views of NOAA or any of its sub-agencies.

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MASGP-97-004-02

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Mississippi-Alabama Sea Grant Legal Program  
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